The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Wednesday 24 June 2015

Session 4

Wednesday 24 June 2015

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Scottish Parliament

Wednesday 24 June 2015

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

Business Motions

The Presiding Officer (Tricia Marwick): The first item of business is consideration of business motion S4M-13621, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a revision to the business programme for today.

Motion moved,

That the Parliament agrees to the following revisions to the programme of business for

Wednesday 24 June 2015

after

2.00 pm	Portfolio Questions Education and Lifelong Learning

insert

followed by	Ministerial Statement: The Clyde and Hebrides Ferry Services

delete

6.40 pm	Decision Time

and insert

7.10 pm	Decision Time—[*Joe FitzPatrick*.]

Motion agreed to.

The Presiding Officer: The next item of business is consideration of business motion S4M-13605, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a timetable for the stage 3 consideration of the Mental Health (Scotland) Bill.

Motion moved,

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

Groups 1 to 3:	45 minutes
Groups 4 to 6:	1 hour 30 minutes
Groups 7 to 10:	2 hours 15 minutes
Groups 11 to 15:	3 hours.—[*Joe FitzPatrick*.]

Motion agreed to.

Portfolio Question Time

14:01

Education and Lifelong Learning

Teachers (Registration)

1. Alex Johnstone (North East Scotland) (Con): To ask the Scottish Government what analysis it has undertaken of its proposed changes to registering teaching staff. (S4O-04488)

The Cabinet Secretary for Education and Lifelong Learning (Angela Constance): Teacher data that was provided by individual schools was analysed to show how many teachers would be affected by changes to registration. As of September 2014, 100 independent schools employed 4,034 individuals as teachers. Of that total, approximately 645 staff were not registered with the General Teaching Council for Scotland.

Alex Johnstone: The cabinet secretary will be aware that a number of submissions to the Education and Culture Committee on the Education (Scotland) Bill have expressed serious concerns about the Scottish Government's proposals. In particular, the International School of Aberdeen explained that delivering its unique curriculum to a diverse group of students would not be possible if it could hire only teachers who were registered with the GTCS. How does the cabinet secretary plan to address those concerns?

Angela Constance: There are many stakeholders, including the Scottish Council of Independent Schools, who are keen to work with the Government as we roll out these proposals to ensure that all teachers, irrespective of where in the education system they work, are registered. We have been working with the independent sector on the matter for some 15 years now.

We understand that for, some independent schools, particularly the smaller ones such as the International School of Aberdeen, things can be a bit more challenging. Currently, the International School of Aberdeen employs 68 staff and only 11 are GTCS registered. However, from initial information received, it seems that more than 50 per cent of the staff who are listed as not being registered hold a teaching qualification that potentially could allow them to register.

In the work that we will take forward with the GTCS, which is already leading a working group that is working closely with the independent sector, we will be looking to be supportive, particularly of the smaller schools, and to show some flexibility—but, of course, with no dilution of standards.

George Adam (Paisley) (SNP): Does the cabinet secretary agree that it is in the public interest to register teachers in all school sectors so that, no matter where their child is educated, parents will know that the quality of teaching staff is regulated by the GTCS?

Angela Constance: Yes, I believe that it is in the public interest that, irrespective of whether teachers work in state schools, state-funded schools, or the independent sector, parents and schools, as employers, have the reassurance that teachers are registered. One of the quality marks of Scottish education is that we have a graduate teaching workforce, that teachers have a teaching qualification, and that they are registered. The registration of teachers is very important, particularly in terms of the fitness to teach and professional update requirements. Teaching is a learning profession and of course we expect teachers, irrespective of where they teach, to be lifelong learners as well.

Scottish Further and Higher Education Funding Council (Meetings)

2. Paul Martin (Glasgow Provan) (Lab): To ask the Scottish Government when it last met the Scottish Further and Higher Education Funding Council and what was discussed. (S4O-04489)

The Cabinet Secretary for Education and Lifelong Learning (Angela Constance): I last met the chair and chief executive of the Scottish funding council on 4 March, when we discussed a range of matters of importance to the higher and further education sectors in Scotland. My officials regularly meet their counterparts at the Scottish funding council to discuss a wide range of issues.

Paul Martin: I wonder whether, when the cabinet secretary met the funding council, they discussed the plight of the 13 members of the catering staff at Glasgow Kelvin College who have been served with compulsory redundancy notices. Will she confirm that it is Scottish Government policy that there should be no compulsory redundancy notices in any sector or for any employees in the college sector?

Angela Constance: It is indeed part of the Scottish Government's public sector pay policy not to have compulsory redundancies. The college sector must have regard to that policy, but it is not obliged to follow the detail of it. My predecessor, Michael Russell, and I have been consistently clear since 2011 about the Government's expectation with regard to compulsory redundancies in the college sector. However, we have always been clear that we are not in a position to force the college sector to apply that policy. Indeed, that power of direction was forgone in 2005 by the then minister Allan Wilson.

Paul Martin's substantive point is very important. I met Unison this morning and I have recently met the Educational Institute of Scotland. Unison raised with me the plight of the 13 members of staff employed in the canteen that Paul Martin refers to. Although the catering contract at Glasgow Kelvin College ultimately is an operational matter for the college and the firm that manages it and the employment of catering staff is the contractor's responsibility, I have to say that, when I look at the history of the situation, I am concerned about the process and how events have transpired. I call on all involved to ensure that as much as possible is done for those affected, who are now facing job loss.

Mary Scanlon (Highlands and Islands) (Con): Given that the Scottish Government aligns its skills and training priorities with the Scottish funding council, why have 25,000 college places in information and communication technology been cut at a time when there is a drastic shortage of ICT employees across Scotland?

Angela Constance: Mary Scanlon raises a sensible point. It is important that the courses that our college sector funds and supports are aligned with the economy, both locally and nationally. The number of places for recognised IT qualifications has largely been held static, but there has been a deprioritisation in the range of computing courses that are about things such as how to work a mouse and how to organise your calendar at Christmas. I am not saying that those things are not important—

Mary Scanlon: It is not just how to work a mouse; it is higher national certificate, higher national diploma and degree courses.

The Presiding Officer (Tricia Marwick): Mrs Scanlon.

Angela Constance: I am saying that a range of ICT courses are available in the FE sector and it is important that the sector focuses on ICT courses that enable people to get into jobs, which are HNC level and higher level courses. Of course, we will always look at the detail that Mary Scanlon gives us.

The Presiding Officer: Before we come to question 3, I say to members and the cabinet secretary that I would be grateful if questions and answers could be as succinct as possible, to allow me to make some progress.

College Students (Head Count)

3. Mark Griffin (Central Scotland) (Lab): To ask the Scottish Government how the college student head count in 2014-15 compares with 2008-09. (S4O-04490)

The Cabinet Secretary for Education and Lifelong Learning (Angela Constance): This Government has a strong track record on colleges. We are investing more than Labour ever did, and we have exceeded our commitment to maintain full-time equivalent college places, with more than 119,000 such places for students in 2013-14. Just over 14,000 more students successfully completed full-time courses leading to recognised qualifications—a third higher than in 2008-09. There are more full-time students under 25 and over 25, and the number of women studying full time has increased by 15 per cent since 2006-07.

Mark Griffin: I thank the cabinet secretary for that information but that is not quite the answer to my question—perhaps she will provide that in her second response. I asked about student head count this year compared with 2008-09. According to Audit Scotland, student numbers dropped by 36 per cent between 2008-09 and last year, which means 140,000 fewer people picking up extra skills in our colleges. Some 74,000 of those people who are no longer at college were adult learners—those who returned to education to pick up qualifications that they did not get at school, or to retrain for a new career. Does the cabinet secretary believe that colleges are still institutions for lifelong learning?

Angela Constance: I certainly believe that colleges remain institutions for lifelong learning, and 27 per cent of college provision goes to people who are over the age of 25. I know that Mr Griffin and his colleagues are very focused on the head count, and if we consider the full-time head count in Scotland's colleges by age group we see a 17.5 per cent increase across the piece between 2006-07 and 2013-14 for 16 to 24-year-olds. That is important, given that young people are always affected the hardest in times of recession. We have prioritised young people, but it is wrong to say that that has been at the exclusion of others. It is important that colleges provide young people and older learners with the opportunity to study more full-time courses that lead to recognised qualifications. For example, full-time student numbers for advanced level information technology courses—which are the most prized by employers—have remained virtually unchanged since 2006-07.

Free School Meals

4. Stuart McMillan (West Scotland) (SNP): To ask the Scottish Government what discussions it has had with local authorities regarding the provision of free school meals. (S4O-04491)

The Minister for Children and Young People (Fiona McLeod): We have worked closely with the Convention of Scottish Local Authorities and local authorities to implement our policy of providing free school meals to all children in primary 1 to 3. We are fully funding that policy, providing £70.5 million over two years in revenue funding and £24.8 million in capital funding. I am delighted that more than 129,000 P1 to P3 pupils are now benefiting from a healthy and nutritious free school lunch. The latest statistics show that almost 99,000 more primary school children are taking a free school meal. That is helping them to get the best possible start in life and succeed at school, while also delivering a saving for families of around £380 per child per year, protecting household incomes and helping to tackle the scourge of child poverty in Scotland.

Stuart McMillan: The Scottish Government is fully funding the extension of free school meals to all pupils in primary 1 to 3 with revenue and capital funding. Does that extension include hot meals as one of the daily options?

Fiona McLeod: No, the free school meal does not have to be a hot meal, but I reassure Mr McMillan that although lunches can be either hot or cold, they must comply with national requirements for school food and drink. Those requirements include a choice of two vegetables and two types of fruit every day, as set out in the Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2008.

Private Finance Initiative and Public-private Partnership Schools (Educational Impact)

5. John Finnie (Highlands and Islands) (Ind): To ask the Scottish Government what assessment it has made of the educational impact of schools built under the private finance initiative and public-private partnership. (S4O-04492)

The Minister for Learning, Science and Scotland's Languages (Dr Alasdair Allan): The Scottish Government has made clear that the PPP/PFI approach used in the past has not delivered best value for the taxpayer in Scotland. As a result, since May 2007 no new PPP/PFI projects have been initiated by the Scottish Government. By the time we have finished repaying those contracts, the total estimated cost will be £13.9 billion.

We have tasked the Scottish Futures Trust with examining potential ways of reducing existing PPP/PFI contract payments, and it has undertaken a review of a number of operational PPP/PFI contracts across Scotland to identify where, with further focused work, significant savings could be achieved.

John Finnie: I thank the minister for that positive response and acknowledge the stunning sum of money involved.

The minister will be aware of the implications for out-of-school activities in music and sport and the

costs that can be associated with those activities. Will he encourage the negative impacts of PPP and PFI to be reflected in additional support for the fèisean movement?

Dr Allan: The member will be aware of my support for the fèisean movement and the Government's support for arts and music in schools.

If I understand it correctly, the member's wider point is about efficiency. If we find significantly more efficient ways of financing school building projects in future, we will ensure that money is available to be put into services as well as buildings.

Post-study Work Visas

6. Roderick Campbell (North East Fife) (SNP): To ask the Scottish Government what recent discussions it has had with the United Kingdom Government regarding the post-study work visa. (S4O-04493)

The Cabinet Secretary for Education and Lifelong Learning (Angela Constance): This Government is committed to working with the UK Government, as recommended in the Smith report, to ensure that a post-study work route is put in place in Scotland. I welcome the recent backing for the scheme by 100 figures from business and academia.

My colleague Humza Yousaf, the Minister for Europe and International Development, has twice written to Mr Brokenshire, who was previously the UK Minister for Immigration and Security and is now the Minister for Immigration, about the issue—most recently on 20 May, following the UK election. My colleague, Mr Matheson, the Cabinet Secretary for Justice, also raised the issue in a letter to the Home Secretary, Theresa May, on 15 May. I understand that officials are currently seeking a meeting to discuss the post-study work visa, among other matters.

In addition, Scottish Government and UK Government officials met on 23 January and again on 13 March to discuss a potential post-study work route.

Roderick Campbell: I thank the cabinet secretary for that comprehensive answer, which dealt with my supplementary question.

Angela Constance: I hope to reassure Mr Campbell and the rest of the chamber that we will continue to keep up the pressure. Colleagues may be aware that Humza Yousaf has established a new cross-party working group that includes representatives from across the chamber. We look forward to progressing the matter further.

Secondary Schools (Remote Learning)

7. Rob Gibson (Caithness, Sutherland and Ross) (SNP): To ask the Scottish Government what impact the use of videoconferencing and other remote learning facilities can have in helping smaller secondary schools broaden the range of subjects offered at all levels. (S4O-04494)

The Minister for Learning, Science and Scotland's Languages (Dr Alasdair Allan): The Scottish Government acknowledges that technology can play an important role in delivering education across a wide geographic area. It can afford learners and educators the opportunity to connect from different physical locations and can help to broaden access to learning opportunities. That is one of the reasons why we continue to offer the glow online learning portal, which provides all learners and teachers in Scotland with free access to a range of tools and services, including web conferencing.

We also support SCHOLAR, which is an online learning environment that delivers regular subject-specific live online homework and revision sessions. However, it is for schools and local authorities themselves to decide how best to deliver education services that meet local needs, including which online resources to use.

Rob Gibson: I have heard of parents moving their children from Farr secondary in Bettyhill to Thurso in order to access a greater number of subjects. The issue does not apply only to Farr secondary; the high schools in Kinlochbervie, Ullapool and Gairloch in my constituency all need to make curriculum for excellence available in a larger range of subjects but have constraints on their teacher numbers.

Can the minister roll out national guidelines again to ensure that students in small schools have a fairer chance to access the full range of Scottish Qualifications Authority-approved certificate subjects?

Dr Allan: The technological solutions that I mentioned are only part of the story. On staffing levels, as the member will be aware, this Government has invested in an agreement with all local authorities to maintain teacher pupil ratios. However, there are many other technological solutions, such as those that I mentioned in my first answer, and the Government is happy to work with local authorities on them.

Secondary School Subjects (Highlands and Islands)

8. Rhoda Grant (Highlands and Islands) (Lab): To ask the Scottish Government what it is doing to ensure that secondary school pupils in the Highlands and Islands can study the subjects

that they need to meet their career ambitions. (S4O-04495)

The Minister for Learning, Science and Scotland's Languages (Dr Alasdair Allan): As I just indicated, the Scottish Government wants all our learners to have access to a broad range of curriculum choices. However, responsibility for the delivery and management of the curriculum sits with local authorities. The commission on the delivery of rural education, which reported in 2013, made recommendations for local authorities about resourcing the curriculum in small rural secondary schools and highlighted the need for flexibility and innovation. We want to ensure that learners have access to the subjects that they want and that the right teachers are in the right place at the right time. That is why we have provided £51 million and secured a commitment from every local authority that it will maintain teacher numbers.

Rhoda Grant: The minister will be aware that pupils in Uist have complained about not being able to study the subjects that they would like, which harms their chances of accessing further education and higher education, and the jobs that they want. We have also seen fewer young people from the state school sector entering medicine because of the difficulty of studying the required number of sciences. What is the minister doing to ensure that where someone lives and learns is not a barrier to their career choices in Scotland?

Dr Allan: On the point regarding Uist and Sgoil Lionacleit, it will not come as a surprise to the member that, being the local MSP, I have met the director of education about some of the issues there that were raised publicly and I pursue and continue to keep in touch with the local authority about those concerns.

Regarding the wider issue that the member raises about science qualifications and their relevance for people going into medicine, I think that, without taking anything away with regard to the importance of the qualifications for the particularly onerous entry requirements for medicine, we all have a responsibility to look at the changes that have taken place in the new qualifications system and to understand that in any given year, but particularly in fourth year at school, although a small number of subjects might be taken that does not mean that people will come out of school at the end of their six years with fewer qualifications. Indeed, the universities have been very quick to point that out.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Does the minister agree that one of the core principles of curriculum for excellence is that decisions are made locally to take account of local circumstances?

Dr Allan: Yes, indeed. It is of course the responsibility of individual local authorities and schools to decide which subjects are taught, taking account of their local circumstances and needs.

School Leavers (Positive Destinations)

9. Richard Lyle (Central Scotland) (SNP): To ask the Scottish Government what proportion of young people who left school in 2013-14 went on to positive destinations and what those destinations were. (S4O-04496)

The Cabinet Secretary for Education and Lifelong Learning (Angela Constance): A record 91.7 per cent of young people leaving school in 2013-14 in Scotland were in a positive follow-up destination in March 2015. Those in positive follow-up destinations include school leavers who are in employment and undertaking modern apprenticeships, and school leavers who are participating in higher education, further education, training, voluntary work or activity agreements approximately nine months after leaving school.

I am particularly pleased that the gap between school leavers who have been looked after and their non-looked-after peers is narrowing, and that 73 per cent of the former are in a positive destination nine months after leaving school. However, we always have much more work to do and must focus our efforts relentlessly on closing the gap.

Richard Lyle: What progress is the Scottish Government making in widening access for those in deprived areas to help support them to go to university?

Angela Constance: The school leaver destination figures show that 63 per cent of school leavers are going into further education or higher education, which is a record high. We have, of course, made steady progress in widening access. University acceptances for those from the most deprived areas are increasing, and figures released by the Universities and Colleges Admissions Service just last week show a 50 per cent increase since 2006 in the application rate for 18-year-olds living in our most deprived areas.

Those are encouraging signs, but we recognise the need to go much further. That is why we have created the commission on widening access to advise ministers on achieving our ambitions that a child born today, irrespective of their background, should have an equal chance of accessing higher education. This week, the commission issued a call for evidence, and I encourage everyone with an interest in the issue to respond.

Private Finance Initiative Schools (Edinburgh)

10. Jim Eadie (Edinburgh Southern) (SNP): To ask the Scottish Government what its most recent estimate is of the PFI service charges payable by the City of Edinburgh Council for school infrastructure projects. (S4O-04497)

The Minister for Learning, Science and Scotland's Languages (Dr Alasdair Allan): The total estimated unitary charge payable by the City of Edinburgh Council for its two school PFI contracts is £1.27 billion.

Jim Eadie: Is the minister aware that the amount that the City of Edinburgh Council has to pay in unitary charge payments for schools that were built using the private finance initiative is now running at an eye-watering £39.6 million for the financial year 2015-16? Does he agree that PFI is robbing councils of much-needed resources that would improve the learning experience for many of our young people and that the people who are paying the price are the pupils, such as those at Liberton primary school in my constituency, who are being denied the investment that is needed to fund a new five-classroom extension? According to the parents association, that extension would ease the pressures at the school.

Dr Allan: The member is of course right to point to the fact that, for very good reasons, the Government has consigned to history the public-private partnership and PFI models of funding. The member refers to the two PFI projects that Edinburgh embarked on. The first had a capital value of £129 million and unitary payments of £527 million, and the second had a capital value of £208 million and unitary payments totalling £743 million. Although we must all accept that those payments include things such as on-going maintenance and management of the buildings, the case is clearly made as to why the Government decided that the policies were best changed and that better ways of funding our school buildings had to be found.

Cameron Buchanan (Lothian) (Con): Does the Scottish Government consider that local authorities are best able to tackle budget difficulties when they make spending decisions autonomously?

Dr Allan: It is of course up to local authorities how they spend their money, but local authorities throughout the country are increasingly coming to the view that we hold, which is that the Government has to work with local authorities to find systems of funding large capital projects that do not burden the taxpayer locally or nationally with undue payments into the distant future.

School Leavers (Positive Destinations)

11. Colin Keir (Edinburgh Western) (SNP): To ask the Scottish Government how it ensures that school leavers are given the best opportunity to go on to a positive destination. (S4O-04498)

The Cabinet Secretary for Education and Lifelong Learning (Angela Constance): As I said earlier, the proportion of young people who left school and who have sustained a positive destination has reached a record 91.7 per cent. Curriculum for excellence offers young people learning that promotes academic and vocational qualifications that are informed by the needs of our employers. "Developing the Young Workforce—Scotland's Youth Employment Strategy" sets out our aim to further the links between education and industry. Our opportunities for all commitment ensures that an offer of further learning or training is in place for all young people until their 20th birthday. Young people are better supported than ever to make the most of the opportunities that are available to them. That includes better career information, advice and guidance so that they can make informed learning and career choices based on labour market demand.

Colin Keir: Does the cabinet secretary agree that the actions that have been taken at Craigroyston community high school in my constituency, which has had a magnificent improvement in Education Scotland reports through enlightened changes to its curriculum as well as partnership with local businesses, should be seen as an excellent model for preparing students for life beyond school as well as a source of pride for the local community?

Angela Constance: Yes. I have visited Craigroyston community high school on two occasions, the first of which was for the launch of the report of the commission for developing Scotland's young workforce. I congratulate the headteacher, staff and pupils of Craigroyston on the improvements that they have made. Education Scotland has identified key strengths in the school, such as its co-ordinated and high-quality support for young people and their families and the shared vision that is securing positive destinations for young people. Those are key aspects of raising attainment. I know that the headteacher shared his curriculum model with other secondary headteachers at a national conference on curriculum for excellence earlier this year.

College Principals

12. Graeme Dey (Angus South) (SNP): To ask the Scottish Government what importance it places on the role of college principals. (S4O-04499)

The Cabinet Secretary for Education and Lifelong Learning (Angela Constance): Colleges are vital to our continued success in education in helping to develop a skilled and productive workforce that drives our economy. Strong and ambitious leaders are essential in realising that ambition.

We are fortunate to have a wealth of talent and commitment in our college principals and their staff. Last week, I was pleased to launch the new guide for college board members to support them in meeting their responsibilities. I also took the opportunity to thank them for their commitment, which has contributed to huge progress in college reform.

Graeme Dey: The principal of Dundee and Angus College, Christina Potter, retires from further education tomorrow. She is calling time on a 17-year-plus career as a principal that began at Elmwood College in 1997 and took in leadership at Dundee College, before she oversaw the successful merger of Dundee College and Angus College. She is also a straight-to-the-point and highly respected member of the board of Colleges Scotland. Will the cabinet secretary join me in acknowledging Christina Potter's fantastic contribution to the sector, and in wishing her a long and enjoyable retirement?

Angela Constance: Of course I welcome the opportunity to add my best wishes and thanks to Christina Potter as she retires from her role as the principal of Dundee and Angus College. Her leadership and commitment allowed for the successful creation of the new regional college, and she is departing having established the college's reputation as a highly respected and forward-looking institution. I hope that she will continue to find a way to share her considerable experience and the expertise that she has developed over her many years in education.

Drew Smith (Glasgow) (Lab): I welcome the cabinet secretary's comments in response to Paul Martin's question about the canteen 13 at Glasgow Kelvin College. Given that many former principals have enjoyed enhanced redundancy arrangements, does she agree that current principals whose role involves decisions about redundancies for others should perhaps have more regard for fairness to people who are paid less than they are? Will she make that point to college principals, including the principal of Glasgow Kelvin College, who wrote to Glasgow members on 9 June to say that he could do no more for the canteen 13?

Angela Constance: It is imperative that we all always look to do more, but it is fair to say that there are limitations on the role of ministers in resolving that matter in a way that would be to the satisfaction of members across the chamber.

The important aspect of college reform is that it has improved accountability. Mr Smith has touched on the issue of voluntary severance. There are, of course, far more rigorous procedures in place now for the signing of voluntary severance agreements.

It is important that everybody pulls together, where possible, to ensure that the canteen staff can look forward to a future. I know that there may be some opportunities for continued employment in the college sector that some of the canteen staff would be willing to pursue.

Glasgow Clyde College (Meetings)

13. Anne McTaggart (Glasgow) (Lab): To ask the Scottish Government when it last met the management of Glasgow Clyde College and what was discussed. (S4O-04500)

The Cabinet Secretary for Education and Lifelong Learning (Angela Constance): There have been no recent meetings with the management of Glasgow Clyde College. One of my officials attended a meeting of the college's board on 19 May 2015, at the invitation of the board's chair, to outline the expectations of the Scottish ministers in relation to compliance with the "Code of Good Governance for Scotland's Colleges".

Anne McTaggart: Although the cabinet secretary has not met the management of Glasgow Clyde College recently, although one of her officers has, has the Government had a discussion with the college's management in order to reassure students and to secure nominations for executive positions? What implications are there for the funding of the college if it does not have a students association?

Angela Constance: Ms McTaggart has raised a very important issue about student representation. A few weeks ago I, with the sector, launched guidance and a body of work about how the sector should pull together to support the sustainability of student associations. I am disappointed to hear that, for a variety of reasons, no students have put themselves forward at Glasgow Clyde College. That concerns me greatly. I am paying close attention to a number of issues around that matter. I am in regular contact with my officials and with the Scottish Further and Higher Education Funding Council. Having students involved and on board is not an optional extra: it is part and parcel of what we do.

Scots Language

14. Colin Beattie (Midlothian North and Musselburgh) (SNP): To ask the Scottish Government what actions it is taking to support

and develop the use of Doric and Lallans Scots. (S4O-04501)

The Minister for Learning, Science and Scotland's Languages (Dr Alasdair Allan): The Scottish Government is a strong supporter of the Scots language in all its forms, including Doric and Lallans. We have appointed a team of Scots language co-ordinators to support Scots in schools throughout Scotland. Later this year we will publish our policy on the Scots language.

We have encouraged and continue to encourage, by means of Education Scotland, the study of Scottish texts in schools. We continue to fund key organisations including Traditional Arts and Culture Scotland, the Scottish Book Trust, the Scottish Poetry Library, the National Library of Scotland, Scottish Language Dictionaries and the Scots Language Centre.

The Scottish Government also values Scots as a language of everyday communication and, like Creative Scotland, will accept any form of correspondence in Scots.

Colin Beattie: Given the increasingly successful support and recognition that has been given to Gaelic as a native language, are there any plans to support similarly use of Scots as a mainstream language in education and culture?

Dr Allan: As I indicated, the Government and I have made a strong commitment in the area. The fact that the Scottish Qualifications Authority has developed a Scots language award is testimony to its dedication. As well as providing pupils with the opportunity to learn Scots, the award touches on the history of Scots and its dialects. Education Scotland's Scots co-ordinators have also developed a series of training sessions for teachers who wish to learn how to teach about the Scots language in schools. Scots could be studied in many other areas, for example in Scottish studies awards and through Scots texts in the national 5 and higher English exams. Together with the work that we are doing for the Scots language in the community, that represents a strong commitment from the Scottish Government.

Lifelong Learning (Fife College)

15. Cara Hilton (Dunfermline) (Lab): To ask the Scottish Government what recent discussions it has had with Fife College regarding the future of lifelong learning. (S4O-04502)

The Cabinet Secretary for Education and Lifelong Learning (Angela Constance): The Scottish Government engages regularly with colleges in Scotland, and through the Scottish Further and Higher Education Funding Council, we support the delivery of high-quality lifelong learning.

Cara Hilton: The cabinet secretary will be aware that last week it was revealed that 4,000 student places are being axed at Fife College. That represents one third of all part-time places that are currently available in Fife. What assurances can the cabinet secretary give my constituents in Dunfermline who are looking to get back into part-time study while bringing up their children, or who are looking to retrain or reskill in the evenings, that there will be lifelong learning opportunities in the future? What actions will the Scottish Government take to give adult education the investment and priority that it deserves?

Angela Constance: The figures that Ms Hilton refers to are based on the college's planning assumptions. The latest available figures are from 2013-14. The figures that the college has supplied illustrate an expected increase in full-time-equivalents for 2015-16.

Part-time provision exists across the sector. We have asked colleges to deliver more for women, for example, and we have invested £6.5 million in 2014-15 for part-time places, which are often favoured by women and older learners. Women are also supported with record levels of student support. The funding council is investing more than £104 million this academic year in bursaries, childcare and discretionary funds.

Clyde and Hebrides Ferry Services

The Presiding Officer (Tricia Marwick): The next item of business is a statement by Derek Mackay on the Clyde and Hebrides ferry services. As the minister will take questions at the end of his statement, there should be no interventions or interruptions.

14:40

The Minister for Transport and Islands (Derek Mackay): I will update members on the Clyde and Hebrides ferry services contract procurement. The Scottish Government would rather that we did not have to tender the services; my party opposed the initial tender of the services in 2004. However, it has been demonstrated that European Union law requires the Scottish Government to tender them.

The requirement stems from a Council regulation that applies the principle of freedom to provide services to maritime transport in member states and from the relevant provisions of the Treaty on the Functioning of the European Union. Article 4 of the maritime cabotage regulation states:

"Whenever a Member State concludes public service contracts or imposes public service obligations, it shall do so on a non-discriminatory basis in respect of all Community shipowners."

Furthermore, the Commission guidelines on the regulation state:

"The Commission … therefore considers that launching an open tender procedure is in principle the easiest way to ensure non-discrimination."

Successive Scottish Administrations have attempted to achieve an exemption from tendering CHFS since 2000, when the Commission first wrote to ministers questioning the compatibility with EU law of the subsidies that were being paid to CalMac Ferries. In January 2001, the Scottish Executive announced a package of provisional proposals, which it submitted to the European Commission for consideration. The Commission responded in November 2001. It agreed to the tendering of the CHFS network as a single bundle but confirmed the requirement to tender.

In June 2004, Nicol Stephen, the then minister for transport, announced that, following discussion with the European Commission on the implications of the Altmark case, tendering of the entire CHFS network would proceed. Ministers held further discussions and exchanged correspondence with the European Commission between December 2004 and July 2005. The Scottish Executive concluded that tendering the CHFS network was a legal requirement and published its consideration of the requirement to tender in September 2005.

The CHFS contract was awarded to CalMac in August 2007, and the Commission began an in-depth state-aid investigation of Scottish ferry subsidies. The formal process began in April 2008 and concluded in October 2009. The Commission looked in detail at how contracts had been awarded and subsidies paid. Its decision that state-aid payments for CHFS were allowable and proportionate recognised that the contract had been awarded in compliance with the maritime cabotage regulation.

The Commission's position on tendering can be seen clearly from decision C 16/2008 of 28 October 2009. In 2012, Keith Brown, the then minister for transport, wrote to Commissioner Almunia, the then competition commissioner. Keith Brown stated:

"I would therefore encourage a review of the requirement to tender ferry services to ensure that the rules are proportionate and appropriate to the sector and support the provision of these essential services."

Commissioner Almunia replied:

"Consequently the Commission strongly advocates the widest possible use of open and transparent tendering procedures when public authorities entrust companies with a public service obligation."

We are obliged to tender CalMac's services. That was recognised by the previous Lab-Lib Administration. We recognise the outcome of the Commission's investigations. We also recognise our legal obligations and are bound by the precedent that they set.

The Labour-Lib Dem coalition initiated the first tendering of the CHFS contract. Some Opposition members who supported the tender then appear to be suggesting that we should now break EU law, the consequences of which would surely result in challenge.

Let me be clear about why we will not breach the law. Were we not to tender the services, we would put at risk the services, our subsidy to them, the routes, the vessels and the investment. A free-for-all on Clyde and Hebrides services would see competition on some islands and a reduction in services to others, which is not what the Government wants. I do not believe that that is what the Opposition or island communities want either.

The National Union of Rail, Maritime and Transport Workers will undertake industrial action on CalMac ferry services today, tomorrow and on Friday. Action is being taken to support island communities and the travelling public at this time. As the Minister for Transport and Islands, I appreciate the full nature of those lifeline services.

The trade unions expressed concern about CalMac's proposals for changes to the existing pension scheme and how pensions would be treated in the next CHFS contract. They also oppose the tendering process being contested by CalMac and Serco. Ministers have actively engaged with the unions to develop a tender that provides employment and pension protections to the current workforce. The Cabinet Secretary for Infrastructure, Investment and Cities and I have met the unions on a number of occasions and provided assurances that a fair, affordable and sustainable pension scheme will be written into the new CHFS contract.

We remain committed to further engagement and dialogue with the unions to ensure that appropriate employment and pension protections are included in the invitation to tender and subsequent contract to operate the CHF services. The cabinet secretary will meet the RMT in London to discuss the way forward. A number of meetings have been scheduled between the current operator—CalMac Ferries Ltd—and other trade unions to discuss the pension issue. We will also continue to encourage CalMac Ferries and the RMT to engage in meaningful and constructive dialogue in an attempt to resolve the current dispute.

The current tender process does not involve the Scottish Government selling any assets or controlling interests to the private sector. It is a tender for the provision of a state-aid subsidy to an economic operator for operating lifeline ferry services for a set duration of eight years. Of course, it is not possible or indeed appropriate for the Scottish ministers to predict or prejudice the outcome of the tender process. I emphasise that, no matter the outcome of that process, the Scottish ministers will retain ownership and control of all the vessels and ports that are currently under public ownership. We will set routes, timetables and fares as now and retain full control of the services that the operator provides through the public service contract.

Contrary to reports in the press, there shall be no cherry picking of routes, and successful bidders will not be able to cut routes. The specification that ministers set is designed to protect and enhance our lifeline ferry routes, not to diminish them.

This Administration has made significant investments to support lifeline ferry services, the commissioning of new vessels and harbour infrastructure since it came to power. A record £1 billion has been invested in port infrastructure, vessels and ferry services from 2007 to date. Support for the road equivalent tariff, which the Government delivered, will substantially reduce the cost of ferry travel for passengers, cars, coaches and small commercial vehicles on the CHFS network.

The accusation that the Government wishes to privatise ferry services is simply not true. I want the highest levels of confidence that the procurement process is fair and transparent. Therefore, I announce a further initiative in the procurement of ferry services in Scotland: the setting up of an independent procurement reference panel to ensure fairness, openness and transparency in the procurement process.

The remit for that procurement reference panel will include assurance that nothing is being done in the CHF services procurement that could be perceived as discriminating against either of the tenderers. The panel shall be invited to review and comment to Transport Scotland on the initial invitation to tender, which is due to be issued on 10 July 2015; the interim invitation to tender, which is due to be issued in autumn 2015; and the final invitation to tender, which is due to be issued in December 2015. Transport Scotland will take that independent procurement reference panel's views into account and provide an undertaking to consider all relevant points that it makes. Any necessary changes arising from the panel's assessment will be incorporated into the subsequent or final version of the invitation to tender.

Six groups have been set up to offer their insights into the procurement of CHFS. Those groups cover trade unions; local authorities; ferry user groups; tourism, economy and business; ports and harbours; and health, social care and accessibility. Because of procurement rules, the procurement reference panel cannot be involved in evaluating the bids or overseeing the appointment of the successful tenderer. However, it is proposed that a suitable representative from each of those six groups be invited to provide assurance to Transport Scotland and the broad ferry users community that the procurement process is being implemented in a fair, transparent and balanced way that represents local communities, various sectors and interest groups. The obligation to appoint the successful tenderer rests with the Scottish ministers, and it cannot be transferred in whole or in part to the procurement reference panel.

In the interests of openness and transparency, each version of the invitation to tender will be published on the Transport Scotland website and will thereby be available to the public. I also propose that the final views of the procurement reference panel, at each stage of the process, should be published.

I consider that the initiative is a positive step forward in ferry service procurement, and I commend it to the chamber.

David Stewart (Highlands and Islands) (Lab): I thank the minister for early sight of his statement.

From Oban to Stornoway and Uig to Lochboisdale, CalMac is the genuine face of public service: publicly owned; publicly managed; and publicly delivered. CalMac staff want the lifeline ferry services to stay in public hands and for certainty to be provided to staff, passengers and taxpayers.

Does the minister accept the uncertainty that was created when Serco won the NorthLink contract, which led to job losses, services being cut and the first industrial action in the service in 30 years? Some say that the idea of Serco being driven by a public-service ethos is like nominating Jeremy Clarkson to be the next Dalai Lama.

What reassurances will the minister provide to Parliament and to the workforce that history will not repeat itself? Will the minister, even at this 11th hour, go to Brussels to make the case to the European Commission that lifeline ferry services do not need to be tendered under the Teckal exception?

Derek Mackay: Mr Stewart must have been listening to my statement and he will have heard me say that this Administration and previous Administrations tried to get Europe to change its position, but Europe has not done so. That point was accepted by the previous Administration, which set the precedent that we are now bound by to retender the services in line with European procurement legislation.

Are Opposition members

"prepared to play fast and loose with the possibility that the Commission could order the cessation and recovery of subsidy to CalMac? Are they prepared to abdicate responsibility and place in jeopardy the lifeline services that the islands need"?—[*Official Report*, 14 September 2005; c 19033.]

Those are not my words; they are the words of Labour's Michael McMahon MSP, showing the sheer hypocrisy of the Labour Party on this issue

It is important that we get the services running to the islands, so I assure members that we will continue to work incredibly hard to avert further industrial action and will ensure that we carry out this procurement process in accordance with the law, so that we can protect these lifeline services and get the best for staff and islanders.

Jamie McGrigor (Highlands and Islands) (Con): I thank the minister for early sight of this statement.

I share the concerns of constituents and businesses—especially tourism businesses as we enter the peak holiday period across the west coast and the islands—about the economic impact of this very unwelcome industrial action, and I call on the RMT, even at this late stage, to get back around the negotiating table and cancel the strike.

Does the minister agree that CalMac has already made several serious concessions to the RMT in its bid submission, including a commitment on no compulsory redundancies, and is prepared to negotiate further on greater protection to employees on terms and conditions of employment? Given the progress that has already been made through talks, does he agree that a negotiated agreement is perfectly possible and must be a priority, and that the strike is not going to help?

Can the minister also give more details on how the members of the procurement reference panel will be chosen?

Derek Mackay: Mr McGrigor makes a reasonable point about the fact that the message that the islands are open for business will suffer as a result of the industrial action. That is all the more reason for CalMac and the trade unions to continue to engage and discuss matters. I believe that there is a way forward, and the cabinet secretary will cover more of that ground on Tuesday.

We have been meeting the trade unions, and I think that we can reach a resolution, which is what we all want. I will also meet other colleagues, including Fergus Ewing, to discuss what more we can do to support the tourism industry, which will be suffering as a consequence of the dispute. That is all the more reason for us to work together to avert any more industrial action and resolve the issues.

We have issued an assurance around pension entitlement, and we want to have a constructive relationship with the employer and the trade union to take these matters forward.

On the question about the procurement preference panel, I will write to the member with more thoughts on the composition of that panel, how people can be involved and how the members will be selected. That will, of course, be a matter of engagement with the groups that I have proposed should be included in the first procurement reference panel for ferry services.

The Presiding Officer: I recognise the importance of the minister's statement, and I am also mindful of the large number of members who wish to ask a question and the fact that we have no choice but to finish at 3.10. I therefore implore everyone to keep their questions and answers as brief as possible, and I will try my very best to get everyone in.

Kenneth Gibson (Cunninghame North) (SNP): I welcome the minister's statement. Does he agree that

"the tendering of the Clyde and Hebrides lifeline ferry services is required to protect these vital services"

as set out and debated in this chamber on 14 September 2005 by Labour and Liberal Democrat MSPs, including a number who are present this afternoon, and that accusations of privatisation from such MSPs are incendiary with regard to the dispute, do nothing to resolve it on behalf on island constituents and are wholly opportunistic?

Derek Mackay: I would, of course, agree with that sentiment. We want to conclude the dispute and move forward in the interests of staff, services and islanders. Many members, some of whom are present today, have in years gone past said that this exercise was necessary, and the fact that they seem to have changed their minds is, I suspect, more down to political posturing than anything else.

Rhoda Grant (Highlands and Islands) (Lab): The minister insists that awarding Serco the contract does not amount to privatisation, but Angus MacNeil MP has been quoted in *Am Pàipear* as saying:

"We do not want to see a situation on Friday when government-owned Caledonian MacBrayne has its Hebridean boats tied up while the privately run Serco sails to the Northern Isles".

In light of that, can the minister explain when privatisation is not privatisation?

Derek Mackay: As I have said, the vessels, the harbours and the service will continue to be in the ownership of the public sector.

Other members in this chamber and other parliamentarians might be able to express a view on which of the two tenderers they would like to be successful, but ministers cannot prejudice that process and have to work in accordance with the law. We will put these lifeline services first, work towards a resolution in the interests of staff and do everything that we can to avert strike action, and I have made it clear exactly what the services will look like with regard to the ferries plan and what is proposed.

Michael Russell (Argyll and Bute) (SNP): My constituents, many of whom use these services daily, will, like me, warmly welcome the minister's definitive, clear and comprehensive statement, which will counter the Opposition's cynical but very damaging mischief making.

As for the regrettably necessary tender, will the minister ensure that it emphasises experience and quality of service, not merely price, and that the new stakeholder group overseeing the process, which I warmly welcome, is chosen with that in mind to ensure that it can give practical advice on what my constituents need every day from a publicly funded ferry service and not simply look closely at what those services might cost the Scottish Government or anybody else?

Derek Mackay: That is a very important point to bear in mind, and I can advise the member that quality and cost will be taken into account in the tenders and the procurement process. As quality is very important to the islands, I can reassure Mr Russell that the matter is very much being taken into account. Moreover, the procurement panel will have a view and will be consulted on it.

Tavish Scott (Shetland Islands) (LD): I thank Mr Mackay for the courtesy of his statement. He was not in the Parliament in 2003 during its first session, but I can tell him that at that time his party advocated breaking the law, so I do not know where all of this is coming from today.

Does the minister accept that the RMT concerns leading to the strike that is affecting islanders have been fuelled by CalMac losing the Scottish Government's Northern Isles shipping contract to Serco on unspecified and, frankly, unbelievable quality grounds, despite its bid being the cheapest, a fact that Audit Scotland is now bound to investigate?

Derek Mackay: Mr Scott might not have been in the chamber at that earlier stage—nor was I—but he was certainly in the chamber in 2005 when he voted for a motion that said:

"the tendering of the Clyde and Hebrides lifeline ferry services is required to protect these vital services."

Indeed, Johann Lamont and other members said the same.

On the specific question, we will of course learn lessons from any procurement exercise, and we will do so in keeping with the letter of the law, delivering first-class public services on which people depend. We intend to protect the rights and interests of staff, and we will continue to engage with CalMac to ensure that the process is above board. We are convening the first procurement reference panel to assure people that there is a level playing field.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): Coming back to the immediate impact of the strike later this week, I too am very concerned for my constituents and for tourism businesses in particular, in my constituency and further afield. Can the minister elaborate a wee bit on what he is doing to help to mitigate the effects of the strike?

Derek Mackay: The impact of the strike is likely to be varied across the network. CalMac estimates that, today and tomorrow, approximately 80 to 90 per cent of service provision is likely to be delivered.

On Friday, the main strike day, the major vessel routes are expected to be off, so my advice to the travelling public is to check with information sources such as CalMac. The Scottish Government resilience unit has met twice to discuss the subject. There has been ministerial involvement to ensure that the impact of industrial action is minimised, and we have put out extensive messaging on road and rail networks advising travellers of the impact of ferry disruption. We are asking people to check with CalMac, and we are trying to help individuals through what is a difficult time for the islands.

CalMac has issued more specific information on the revised timetables for the rest of the week. I hope that the on-going efforts will avert any further action.

Mary Fee (West Scotland) (Lab): This Government frequently tells us that the use of private companies in the national health service is privatisation. With that in mind, does the minister agree that to award the contract for lifeline ferry services to a private company is in fact privatisation, despite the Government's frequent protestations? Furthermore, does he agree that the Government is simply dancing on the head of a pin in continuing to refute the assertion that those lifeline ferry services will be privatised?

Derek Mackay: I am trying to protect public services, avert strike action and support our island communities. I am not quite sure what the Labour Party is doing during this period.

I do not accept the charge that it is privatisation. I have already outlined that the vessels and the harbours will remain in public ownership. The specification on services that are to be provided is to be clear—[*Interruption*.]

The Presiding Officer: Order.

Derek Mackay: Mary Fee hails from the west of Scotland, where the leader of Glasgow City Council has said that the operator will be able to cherry pick services and routes. That is not true. The dispute is being stoked by ill-informed comments from Labour politicians. They should stop that, so that we can get on with the business of providing quality services to our island communities, which depend on those lifeline services.

Mike MacKenzie (Highlands and Islands) (SNP): In order to help to put this red herring to bed—if that is not too mixed a metaphor—can the minister offer any detail on the efforts that successive Administrations have made to achieve an exemption from the EU rules on tendering ferry services?

Derek Mackay: I covered a great deal of that in my statement. If Mr MacKenzie would like further information, I would be happy to provide more of the detailed correspondence and information around the exchanges that have taken place to try to get an exemption for Scotland's ferry services in that respect. Unfortunately, our efforts to stop the necessity of tendering our ferry services have not been successful, which was the previous Administration's position, too.

However, lobbying by the cabinet secretary enabled us to secure an extension of current services, and procurement has not been unbundled. We have been able to make some progress, but not on the process of tendering itself. I am happy to share that information with Mike MacKenzie.

Elaine Smith (Coatbridge and Chryston) (Lab): If the Government is determined to persist with tendering the contract, will the minister at least try to protect staff by decoupling the pension scheme from the tendering process; by including in the contract a guarantee of no compulsory redundancies; and by including a guarantee that no changes to staffing levels or conditions of service will be made without agreement being reached with the RMT? Quite frankly, the alternative is free rein for Serco to maximise profits and attack jobs and conditions if the minister gives the company the contract.

Derek Mackay: I restate that we cannot prejudice the outcome of the process, but the commitment is that we will work with the trade unions and the operators through the procurement exercise to try to get the best result and safeguard the interests of the employees. That willingness to co-operate and to work positively is most certainly there. We have, in good will, offered further meetings and we have set out our position on pensions being fair, affordable and sustainable.

We will continue to work constructively with the trade unions, but we have to comply with the law, because if we do not, the services will be subject to challenge, and that would be devastating for island communities and the staff concerned.

Stuart McMillan (West Scotland) (SNP): Presiding Officer, my wife works part time at CalMac, as I have previously declared in the chamber.

I welcome the minister's statement and the introduction of the independent procurement reference panel. I would be grateful if the minister could provide all MSPs with more information on the panel. Also, will the Government consider extending the use of such a panel to other procurement exercises?

Derek Mackay: I have advised Parliament of my early thoughts on how the panel will work. This is the first time that an independent procurement reference panel has been used in the tendering of

our ferry services. We will review and learn lessons from the impact of the panel on the procurement process and consider its application to future tenders. Engagement processes were already under way, but I am sure that the panel will add confidence that the process will create a level playing field for all who are involved.

John Finnie (Highlands and Islands) (Ind): I am sure that the minister will be keen to recognise that many RMT members are valued parts of our island communities as well. I am trying to understand who is in charge here. In his statement, the minister said that Scottish ministers will "retain ownership and control" and

"retain full control of the services".

If that is the case, will he instruct CalMac to meet the very modest assurances that the RMT seeks in respect of terms and conditions, please?

Derek Mackay: Live discussions are under way, and we have encouraged CalMac and the trade unions to be positive and constructive in their approach. It is not for me to say that CalMac should accept all the demands from the RMT, but I believe that the potential for an agreement is very close.

Jean Urquhart (Highlands and Islands) (Ind): I apologise for covering an area that has been mentioned already, but to go right back, my understanding from Neil MacCormick, who was an MEP at the time when the agreement was sealed, is that at the time of the discussions in Europe, other island nations asked for and got derogations in relation to competitive tendering for lifeline services. I hear that the case has been made, and I know that previous Governments declared to Parliament that they had made the strongest possible case.

Does the minister know whether there is a time for a review of this? It is a number of years since the agreement was made, and I think that Scotland was badly represented at the time, although not by anybody who was representing Scotland and certainly not by an MEP representing an island community—

The Presiding Officer: I am sorry. You need to bring your question to an end.

Derek Mackay: In essence, the question was about efforts to pursue an exemption. Extensive efforts have been made and, in short, we will continue to make efforts to try to get an exemption for Scotland's services. So far, we have not been able to do that, and neither was the previous Administration.

The Presiding Officer: I ask Neil Findlay to be brief.

Neil Findlay (Lothian) (Lab): RMT delegates at its annual general meeting on Monday were scathing about the minister's mangled protests and attempts to explain why privatisation is not privatisation. Can he guarantee that the public sector envelope will actually be opened this time?

Derek Mackay: That is a typically unhelpful comment from Neil Findlay. It is beneath contempt. He should join others in trying to find a positive way forward to genuinely help the employees' interests and the island communities. We will undertake the process in accordance with the law and good practice, and in establishing our procurement reference panel we will give confidence that we have presented a level playing field and best practice to deliver a fully compliant procurement process that delivers first-class public services.

Mental Health (Scotland) Bill: Stage 3

15:10

The Deputy Presiding Officer (Elaine Smith): The next item of business is stage 3 proceedings on the Mental Health (Scotland) Bill. Members should have the bill as amended at stage 2, the marshalled list of amendments and the groupings of amendments. The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The voting period thereafter will be 30 seconds. Following that, I will allow a period of one minute for the first division after each debate.

After section 2A

The Deputy Presiding Officer: Group 1 is on use of psychotropic substances. Amendment 24, in the name of Dr Richard Simpson, is the only amendment in the group.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): Amendment 24 follows stage 2 amendment 109, which was lodged by Adam Ingram in response to concerns that were raised with him, me and Nanette Milne. When that amendment was lodged, the National Institute for Health and Care Excellence had just published guidance reinforcing Adam Ingram's remarks and evidence that was given to the committee by Autism Rights.

The guidance says that patients who have a learning disability, including autism spectrum disorder alone, should not, in the absence of additional serious mental illness, be given psychoactive substances as a first-line treatment. When such substances are given, they should be used only with caution and should be discontinued after six weeks if there is no improvement. I have no doubt that my professional colleagues will pay heed to that guidance.

I should have said at the outset of the debate—I will say this only once—that I am a fellow of the Royal College of Psychiatrists, so I have an interest in the subject.

Too often, there is no recording of medicines used in the treatment of associated conditions such as epilepsy, and so polypharmacy occurs. We know from evidence that has been given to the committee that numerous admissions to hospitals are associated with iatrogenic causes—that is, they are caused by the administration of inappropriate medicine. Part 5 of the Adults with Incapacity (Scotland) Act 2000 gives the added protection to a patient with impaired capacity that their carer or guardian must be consulted and treatment agreed with them, but that is not the case under the Mental Health (Care and Treatment) (Scotland) Act 2003.

At stage 2, I expressed specific concerns about patients with dementia, who we know are not having their diagnosis recorded on admission to an acute hospital in 50 per cent of cases, according to recent Scottish research relating to Scottish hospitals that was published in the *British Journal of Psychiatry*. I stress that those are patients who already have a diagnosis of dementia. Too often, such patients are treated with psychoactive substances, which can render them more confused and more likely to suffer falls. Although the situation in care homes has definitely improved since Mary Scanlon, I think, raised the issue in the first session of Parliament, it remains a worry.

I appreciate that the principles embodied in the Mental Health (Care and Treatment) (Scotland) Act 2003 should adequately protect patients, but the reality is that they do not. In his reply at stage 2, the minister quoted the Patient Rights (Scotland) Act 2011. That act, too, is helpful, but it is not sufficient. The minister also pointed to the valuable work that is done by the Care Inspectorate and the Mental Welfare Commission for Scotland. The work of both organisations is having an effect in care home and mental health settings, but that is not the case in acute hospitals.

Healthcare Improvement Scotland is carrying out inspections of elderly care, yet in the 950 case records that it has examined since its inspections started, only 50 per cent of patients were assessed for cognitive impairment. I believe that the time has come to regulate matters rather than rely on guidance. Of course regulations cannot interfere with clinical judgment, but we should insist on proper recording. For example, no psychoactive substance should be used unless the patient's cognitive status has been recorded. We should ensure that the NICE guidelines are followed strictly; otherwise, we will continue to have this debate in future parliamentary sessions. Amendment 24 would tighten up this area of practice, which for too long has continued to affect too many adversely.

I move amendment 24.

15:15

Jim Hume (South Scotland) (LD): One of the most important factors for any legislation to take into account is how it affects the most vulnerable and those in most need of protection in our society—a duty that this Parliament must continue to take extremely seriously.

I support Dr Simpson's amendment 24 on psychotropic substances. It would provide a layer of protection for those who are vulnerable to being

wrongly steered towards the provision of psychotropic substances without their full consent or acquiescence.

Although I fully understand the scientific justification for treatment by psychotropic substances, we must be fully ready to control any potential gaps in legislation that risk extending their use beyond what is necessary. The safeguard of regulations on prescribing conditions that have to be satisfied for the groups of people included in Dr Simpson's amendment is a positive step and a fulfilment of the Parliament's duty to protect the vulnerable while extending their rights in relation to medical treatments.

The Minister for Sport, Health Improvement and Mental Health (Jamie Hepburn): I thank Dr Simpson for speaking to his amendment. Amendments were lodged on this issue at stage 2 that would have applied specific measures around the giving of psychoactive medication.

Amendment 24 does not seek to apply specific measures; rather, it seeks to require ministers to make regulations setting out conditions that must be satisfied before treatment by psychotropic substances may be given.

I had a useful discussion with Adam Ingram, who raised the issue at stage 2, and with Dr Simpson and Dr Milne after stage 2, and I thank them for taking the time to speak to me and for their work on the issue.

Dr Simpson raised the use of psychotropic substances for those with dementia, which is relevant to the point that Jim Hume rightly made that we should always do what we can to protect the most vulnerable.

I understand that there are particular concerns around the prescribing of psychotropic drugs in care homes. Safeguards and actions are already in place in that regard, including the publication of revised polypharmacy guidance by the Scottish Government in March 2015, which reinforces the principles on the review of, and reduction in, the use of antipsychotics for people with dementia. The guidance identifies three groups that practitioners should prioritise for review: people in care homes, those with vascular dementia, and those with dementia who have a history of cardiovascular disease, cerebrovascular disease or other vascular risk factors.

We have taken more action this year to further reduce the inappropriate prescribing of antipsychotics for dementia, focusing on three areas: initiation, review and legality. Our proposal has been approved by the national dementia group and is now being aligned with the aforementioned new polypharmacy guidance.

Moreover, as I set out at stage 2, I believe that the Mental Health (Care and Treatment) (Scotland) Act 2003 already provides strong safeguards. That includes requiring medical practitioners to have regard both to the principles set out in section 1 of the act, including those relating to patient participation and minimum restriction, and to any advance statement that a patient makes. Richard Simpson himself said that he has no reason to doubt that professionals are working to those standards.

In relation to medication-specific safeguards, the commission must be informed in writing after use of emergency detention certificates, and there is a requirement for second-opinion medication consent for those on long-term orders.

However, I understand the strongly held concerns that have been raised by some individuals and organisations on the issue and I believe that it would be appropriate for it to be covered in the review that I have said we will undertake on the inclusion of learning disability and autism under the 2003 act.

I do not, however, believe that it would be appropriate to pre-empt the outcome of that review by taking such a regulation-making power now, given that it would require Scottish ministers to make regulations prescribing matters that have yet to be reviewed. Amendment 24 says that regulations must be made, but it would not be appropriate or sensible to do so before we know the outcome of the review.

I am also concerned by the definition of "psychotropic substances". The reference to the convention on psychotropic substances will capture the substances that are listed in the schedules at the point in time when the provision is commenced, but it does not reflect any subsequent changes to those schedules. The effect would be that newly regulated substances could not be captured by the safeguards in the regulations, while substances that were no longer listed would continue to be captured.

On the basis of those significant problems with amendment 24, and given the work that is, or will be, under way, I ask Dr Simpson not to press the amendment; should he choose to press it, I strongly urge members to vote against it.

Dr Simpson: It is certainly true that amendment 109 was a much more specific amendment: it required action, and detailed that action. That is, I think, what Adam Ingram—the member who moved that amendment—felt was appropriate, and I supported him on that.

However, following discussion with the minister, which was a welcome opportunity to review the issue, it was decided that we should not pursue that approach but instead give the minister, as a

back-up for the excellent work that he is already doing, power to bring in regulations at a point when he felt that that was necessary.

This Government has a history of not bringing forward regulations when it has not felt that they were necessary. For example, we are still waiting for regulations on the responsibility levy in the Alcohol etc (Scotland) Act 2010. The Government does not have to bring in the regulations; it can bring them in if it feels that that is appropriate.

Jamie Hepburn: Given that such regulations would apply very specifically to the rights of individuals, does the member accept that if we put on the face of the bill a regulation-making power that we do not use, we could be leaving ourselves open to legal challenge?

Dr Simpson: Exactly. That is correct—that is absolutely correct. However, what concerns me is that we have debated the issue for more than 14 years: Mary Scanlon and others raised it in the first session of Parliament, and it continues to be a concern.

Indeed, in the acute hospitals, the situation is getting worse. There are more cases now of people being given psychoactive drugs inappropriately by doctors who are not psychiatrically experienced. That is an abuse of those medicines, and the Government should take the power now, and should commence the provision only when it is needed. My amendment will give the Government the power to bring forward regulations when it believes that to be necessary, which I hope will be before legal action is taken against the Government—I would regret that.

I press amendment 24.

The Deputy Presiding Officer: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. I suspend the meeting for five minutes.

15:22

Meeting suspended.

15:27

On resuming—

The Deputy Presiding Officer: We move to the division on amendment 24.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Wilson, John (Central Scotland) (Ind)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)

Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 48, Against 63, Abstentions 0.

Amendment 24 disagreed to.

Section 3—Emergency detention in hospital

The Deputy Presiding Officer: Group 2 is on safeguarding of patient's interests. Amendment 2, in the name of the minister, is grouped with amendments 12, 14, 15, 17, 18, 21, 34 and 37. I ask the minister to speak to and to move amendment 2, and to speak to all the amendments in the group. I also ask members in the chamber to be quiet while the minister does so.

Jamie Hepburn: The Government amendments in group 2 will provide further protection for patients who do not have a named person. Amendment 2 complements amendments that were agreed at stage 2 that will allow certain listed persons to act where a patient does not have capacity and does not have a named person. It will ensure that, if a patient is detained in hospital on a 72-hour emergency detention certificate, any guardian or welfare attorney who is known to the hospital managers will be informed quickly.

15:30

Amendments 14, 15, 17 and 18 are minor amendments that will ensure consistency in the ability of guardians and welfare attorneys to obtain notification of actions and decisions under the act, where there is no named person. In particular, they will ensure that the relevant guardian or welfare attorney can be notified about a determination that will extend a compulsion order, or about the revocation of a certificate that suspends detention for patients on certain orders.

Amendment 12 is a technical drafting amendment to the definition of "named person" in the 2003 act. It is a consequence of changes to remove default named person provisions from that act, as set out in section 18 of the bill, and it will ensure that the definition reflects the new position that a person may not have a named person. Amendment 21 is a minor technical amendment that will remove a superfluous word—"and"—from section 47(2) of the 2003 act, and is a consequence of amendments that were agreed at stage 2 on preventing conflicts of interest at medical examinations.

I thank Nanette Milne for lodging amendment 34, which I am happy to support. I also thank Voices of Experience for highlighting at our meeting last month the consequences of that lack of a right to appeal. As I noted at stage 2, I agreed with Dr Milne's policy on the matter, and I intended to ensure that the appeal right was covered by revised cross-border transfer regulations. I agree, however, that it is useful to include that measure in primary legislation and to put it beyond doubt that named persons should have the right to appeal a cross-border transfer to the tribunal. I am pleased that the amendment reflects section 20A of the bill and will ensure that the regulations provide a right of appeal where the patient does not have a named person. I therefore encourage members to support amendment 34.

I also thank Nanette Milne for lodging amendment 37 and for taking time to discuss it with me after stage 2. The amendments that I have lodged will ensure that patients who do not have the capacity to lodge an appeal will not be disadvantaged when appealing a tribunal decision. Currently, the named person and guardian or welfare attorney can make such an appeal, but once the bill is enacted that option will also be available to a carer or nearest relative, if there is no named person. If the curator is concerned about the tribunal's decision, they will be able to advise the named person, or others, of their concerns.

I carefully considered whether there was any reason not to extend the right of appeal to the curator. Given the number of parties that can lodge an appeal, my concern is that such a

measure would be needed only where there was a disagreement between the curator and those who have a right of appeal. It is not hard to envisage a scenario in which a family member or carer and the curator disagree about whether it is in the best interests of a patient to appeal. The curator could make a valid case for appeal, but other parties might feel that that would be disruptive for the patient, or otherwise not in their interests. Currently, the decision to lodge an appeal rests with the named person or the other listed persons, such as the guardian or carer, and I am not fully convinced that we should change that balance to enable the curator to lodge an appeal against their wishes. For that reason, I ask Nanette Milne not to press amendment 37.

I move amendment 2.

Nanette Milne (North East Scotland) (Con): Amendment 34 relates to decisions on cross-border transfers of patients under detention in Scotland. At present, the 2003 act requires regulations to provide for a patient to appeal against such a decision, and the amendment would extend that right in statute to a patient's named person. Where a patient does not have a named person, the amendment would allow an appeal to be made by the person's guardian, welfare attorney, primary carer or nearest relative. As there is currently no highly secure provision for women and young people in Scotland, transfers of this nature are a common feature of our compulsory-care landscape. It is in keeping with the spirit of the bill that powers to appeal in such cases rest not only with the patient, but with other persons who may act on their behalf.

Amendment 2 will provide additional notice provisions for a detained person, and will add guardians and welfare attorneys to the list of those who are to be notified when a person is subject to emergency detention. Amendments 14, 15, 17 and 18 relate to cases in which a patient has no named person, and amendments 12 and 21 are minor technical amendments.

Amendment 37 would create a right of appeal for curators ad litem to the sheriff principal and the Court of Session regarding particular decisions of the tribunal, as set out in section 320 of the 2003 act. Currently, patients with capacity can instruct a solicitor to appeal on their behalf in those circumstances, but a patient who lacks capacity, and consequently has a curator appointed, cannot. That gap in provision could give rise to concerns under the European convention on human rights and the UN Convention on the Rights of Persons with Disabilities. When the measure was proposed at stage 2, on the suggestion of the Law Society of Scotland, the minister agreed to consider its merits. He has since expressed the view that the gap that was identified by the Law Society has been addressed through section 20A of the bill, which ensures that where there is no named person, the carer or nearest relative can appeal.

The minister has also questioned whether, in situations in which there is a disagreement between the curator and the named person or others who have the right of appeal, the curator should have the ability to overrule the named person or others and to appeal. On that point, the Law Society does not share his view that section 20A would address its concerns.

Within the tribunal system, the curator ad litem is the only person whose sole function is to act purely in the interests of the patient. Although there are many named persons, carers and relatives who absolutely have the patient's best interests in mind, unfortunately there are also occasions on which their position will be at odds with the patient's interests.

There are also occasions on which, as well as having no named person, the patient will have no carer or relative to appeal a tribunal decision that is not in his or her best interests. The Law Society is therefore of the view that the right of appeal could be useful in instances both where there is a named person and where there is not, which is why section 20A does not adequately fill the gap.

In response to the minister's concern about giving the curator the power effectively to overrule the named person or other relevant party, the Law Society stresses, first of all, that that power would not be exercised lightly or, in practice, regularly. It would be exercised only in situations in which either there was no one else to appeal on the patient's behalf, or the curator believed that the right was or was not being exercised in the patient's best interests, which is—as I have stressed—the curator's sole motivation.

Jamie Hepburn: I will direct most of my remarks at Nanette Milne's amendment 37. My earlier comments on the rest of the group speak for themselves.

Amendment 37 would give the right of appeal to curators ad litem not only when no one else can appeal but in all cases. Section 28 of the bill means that not only will the patient, named person, guardian or welfare attorney be able to lodge an appeal but, where there is no named person, the carer or nearest relative will also be able to do so. The Government believes that that does not leave a gap for vulnerable patients. My main concern here is that, currently, the curator can recommend to the named person or others who have a right of appeal that they should lodge an appeal. However, the named person or others with the right of appeal may not think that that is in the patient's best interests—for example, because they are concerned that it could be disruptive to

the patient. The ultimate decision to appeal would therefore lie with the named person, guardian, welfare attorney, carer or nearest relative.

The Law Society has suggested that the named person may not act in the best interests of the patient. However, it may also be the case that both parties have a different view of what the best interests of the patient are. The current balance lies with the named person and the others whom I have listed, as they have the ultimate decision. I am not convinced that we should change that to allow the curator to overrule the named person, guardian and so on. That would be quite a substantial change to current practice, which is why I do not support amendment 37.

Amendment 2 agreed to.

Section 9—Maximum suspension of particular measures

The Deputy Presiding Officer: Group 3 is on suspension of detention. Amendment 3, in the name of the minister, is grouped with amendments 4 to 10, 13 and 16.

Jamie Hepburn: The bill will make changes to the provisions in relation to suspension of detention to provide a more effective system for calculating the maximum allowable period in any 12-month period, following recommendations in the McManus report. That maximum will now be 200 days. The bill clearly sets out how periods of suspension should be counted towards that total. That will address the confusion under the current legislation when totting up individual periods of suspension of detention.

We had also introduced provisions that were derived from McManus recommendations that would allow that total to be extended by 100 days with the agreement of the Mental Health Tribunal for Scotland. Although concerns were raised about that approach, we wanted to provide some flexibility in the very small number of cases, as identified by the report, in which variation to a community-based order might not yet be appropriate. [*Interruption*.]

The Deputy Presiding Officer: There is far too much conversation going on in the chamber. Can members please be quiet and give the minister some respect?

Jamie Hepburn: I appreciate that, Presiding Officer.

In relation to the provision that we set out at stage 2, I wanted to introduce the provision only if we could get it exactly right, with a solution that would be effective and workable in practice, but that has proved not to be possible. The Mental Welfare Commission and others did not feel that the additional days were needed in any case, and there was no clear and simple way to achieve our aim of flexibility.

I have reflected further on the concerns that stakeholders raised and on the important points that Richard Simpson raised at stage 2, for which I express my thanks. I propose that the provisions related to increasing the total by a further 100 days be removed—that will be achieved by amendments 3, 5, 7, 9 and 10. Amendments 4 and 8 will ensure that the maximum total of 200 days is in any 12-month period, and will do so in a way that relates appropriately to how section 8 of the bill expresses a period of suspension of detention. Amendments 13 and 16 will make changes to section 20A of the bill as a consequence of the other amendments. Amendment 6 will ensure clarity in relation to counting the total allowed period of 90 days for suspending measures other than detention.

Throughout the bill's progress I have tried to ensure that service users' rights and interests are protected and that the system is made more effective for them. I believe that the amendments will help to achieve that in relation to suspension of detention.

I move amendment 3.

Amendment 3 agreed to.

Amendments 4 to 10 moved—[Jamie Hepburn]—and agreed to.

Section 11—Orders relating to non-state hospitals

The Deputy Presiding Officer: Group 4 is on excessive security. Amendment 25, in the name of Dr Richard Simpson, is grouped with amendments 11, 26 and 23.

Dr Simpson: Amendment 25 is a technical amendment to extend the regulation-making power to all units or qualifying hospitals other than the state hospital. Amendment 26 would require a review of all security before further regulations are made. I moved an extensive amendment at stage 2 seeking to recognise that levels of security in mental health units, apart from provision in the state hospital, were no longer at discrete levels but almost on a continuum.

As it stands, the bill and the accompanying regulations—very helpfully provided by the Government at an early stage—refer only to the three units previously designated as medium secure, which are at Stobhill hospital in Glasgow, the Orchard clinic at the Royal Edinburgh hospital and the Murray royal hospital. However, the amendment now to be enacted is in my view only a partial response to the Supreme Court judgment that found that the Scottish Government had failed to make regulations to allow patients in secure

hospitals other than the state hospital to appeal if they consider that they are being held in conditions of excessive security. However, it must be noted that the appellant in that case had been in a low-security unit at Leverndale hospital for a decade.

Amendment 26, which would require a review to be introduced, is supported by the Scottish Association for Mental Health, the Scottish Human Rights Commission, the Law Society of Scotland, the Equality and Human Rights Commission, the Scottish Independent Advocacy Alliance, the centre for mental health and incapacity law, and Inclusion Scotland. I believe that the time has come for patients to have the right to appeal against any level of security, without the detention order being rescinded. However, the purpose of amendments 25 and 26 is to recognise that that will not be straightforward. Rather than seek to introduce a global measure immediately, amendment 26 seeks a review of all levels of security before regulations are introduced covering all levels of security. [*Interruption*.]

However, to make sure that we are not taken back to court because of a failure to introduce regulations, I have included a time limit provision in amendment 26 to ensure that a review is followed up.

I realise that the Mental Welfare Commission has slight doubts about the narrow nature of amendment 26 and feels that we will need to look at not simply the estates and their levels of security but the overall situation. Of course, that would be possible without further regulation, but I believe that there should be a review of what is now a continuum.

I move amendment 25.

The Deputy Presiding Officer: Can members please ensure that electronic devices are switched off or at least on silent?

15:45

Jamie Hepburn: The amendments in the group relate to appeals against being detained in conditions of excessive security in hospitals other than the state hospital. The Government's stated policy intention has been set out in draft regulations and, as Richard Simpson alluded to, the draft timetable for the introduction of the right of appeal outwith the state hospital was provided to the Health and Sport Committee on 24 April. That demonstrates our commitment to bringing regulations into force as soon as possible after royal assent.

Amendments 11 and 23 introduce a new provision that will allow the regulation-making powers that are introduced by section 11 to be exercised in advance of the legislation being fully commenced, and ensure that the provision will come into force on the day after the bill receives royal assent. That will ensure that, as soon as possible after the bill is passed, ministers can make the regulations that are necessary for the excessive security appeal system to become operational.

That will fulfil the intention at the time of the passage of the 2003 act to enable patients who are in the state hospital and those in medium-secure units to seek a move to a lower level of security. That was the Millan recommendation. We do not seek to extend the scheme that was provided for in 2003 to persons or purposes that it was never intended to cover. However, Dr Simpson's amendment 25 seeks to do just that by defining "qualifying hospital" as a hospital that is not a state hospital. It would give a right of appeal to all patients. However, as Dr Simpson said at stage 2, mental health professionals are not yet ready for an appeal right for patients in low-secure units. We are clear that an extension of the right of appeal to all such patients would require to be supported by a more fundamental reworking of the provisions of the 2003 act, which amendment 25 does not propose. Therefore, with respect, I am unable to support the amendment.

Dr Simpson's amendment 26 takes a different approach. It would require the Mental Welfare Commission to carry out a review to establish the levels of security to which patients who are detained in hospital are subject. However, broadly speaking, levels of security are high, medium and low and it is already clear when patients are in high security, in the state hospital, or in the medium-secure units of the Orchard clinic in Edinburgh, Rowanbank clinic in Glasgow or the medium-secure service at Rohallion clinic in Perth. Therefore, it is clear when a patient is detained in low-secure conditions. It is not clear what the proposed review by the commission in the terms that are proposed could achieve.

Dr Simpson is correct that the legal appeal was taken forward by a patient in the low-secure estate, but that is incidental. The Supreme Court's ruling did not relate to that; in fact, the judgment was only on the basis that regulations had not been made. The court did not express a view on who the right of appeal should extend to. It is important to place that on the record.

Amendment 26 would also require ministers to make regulations within a set period of time to implement any recommendations that the commission makes about regulations under new section 271A(1)(a) in the 2003 act. If ministers did not do so, they would be required to report to the commission on why they had not. We understand that the intention behind the amendment is to

allow a right of appeal beyond medium secure to be introduced within a maximum of four years, if that was recommended by the commission. However, we have been clear that, if there was a wish to change the nature of the appeal so that it could sensibly be extended to all patients, that would have to be supported by a more fundamental reworking of the scheme in the 2003 act, which amendment 26 does not provide.

Patients who are in low security are subject to detention in conditions of lesser security than patients in the state hospital and those in medium security. They are more likely to be treated in hospitals that are closer to their communities and they have gradually increasing periods of time outwith the hospital ward, with up to 200 days' suspension of detention in any 12 months, as they progress to overnight passes and finally discharge. There are no indications that being in a low-secure unit poses a barrier to rehabilitation and release into the community.

Other applications may be made under the 2003 act that would allow such patients to seek to vary or revoke their detention orders. An appeal by patients in low security is likely to be an appeal against detention and there is already a mechanism for contesting compulsory treatment.

For all those reasons, I am unable to support amendment 26.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): At the end of the consideration of the Mental Health (Care and Treatment) (Scotland) Bill in 2003, the current Cabinet Secretary for Health, Wellbeing and Sport, who was leading for the Scottish National Party on health at the time, said:

"For me, the most satisfying aspect of the bill is that it enshrines in statute the right to appeal against excessive security."—[*Official Report*, 20 March 2003; c 16807.]

That gives us some context and an idea of the importance of the aspect of the bill that we are discussing.

Mary Scanlon also made her mark in those debates, because it was her amendment that ensured that regulations should be made by May 2006. As a result, because my Government and the current Government did not make such regulations, there was one of those rare occasions on which the matter ended up in the Supreme Court. That is why we have the minister's amendment 11, which contains an unusual power to allow regulations to be made before the act comes into force. That is because there is a requirement from the Supreme Court that regulations be made.

The minister says that it is irrelevant that the person who took the case to the Supreme Court was in low security, but the fact is that his appeal would not have been valid at all if the 2003 act had specifically said that it is only about those in medium security. That was never in the original act.

Richard Simpson's amendment 26 is very modest. He is not demanding that we should decide that people in low security should have the right of appeal; he is merely saying that the Mental Welfare Commission for Scotland should do a review of levels of security that can inform regulations at a future date.

The minister talks so much about the intentions of the 2003 act, but the reality is that what drove the change then was the principle of

"the least restrictive manner and environment compatible with the delivery of safe and effective care".

That was a fundamental principle of the Mental Health (Care and Treatment) Scotland Act 2003, and it applies as much to somebody in low security as it does to somebody in medium security. There is no reference to medium security in the 2003 provisions. The provisions looked to the future because everyone said then, of course, that the estate had to be developed, so we had different levels of security. The provision talked about a

"qualifying patient in the qualifying hospital".

I note that, when the Mental Welfare Commission had a major event to consult on that, the conclusion was that qualifying hospitals should include low-secure units. As Richard Simpson said, that is the view of SAMH, the Scottish Human Rights Commission, the Law Society of Scotland, the Equality and Human Rights Commission and the Scottish Independent Advocacy Alliance—I could go on.

Amendment 26 is very modest. We are not insisting that low-security patients are given that right; we are saying that there should an amendment that investigates the issue to make that a possibility in the regulations that will come in due course.

I have a general concern that, for the past 12 years, both Governments have dragged their feet on the issue and a concern that, even in respect of the Government's plans for medium-secure units, proposed section 271A(3)(b) of the 2003 act talks about

"further requirements for the test to be met"

over and above the excessive level of security, but that has passed by without an amendment.

We have an opportunity to broaden out the right of appeal in accordance with the fundamental Millan principle of

"the least restrictive manner and environment compatible with the delivery of safe and effective care".

My final word to the minister is that he should be inspired by what the cabinet secretary said about that provision in 2003.

Mary Scanlon (Highlands and Islands) (Con): Malcolm Chisholm mentioned a rare occasion. It is indeed a rare occasion when a Conservative MSP gets unanimous support across the Parliament for an amendment. That was in 2003. Uniquely, the amendment ended up in the Supreme Court.

I want to reiterate the point that Malcolm Chisholm made, as it should not be lost. The 2003 act was based on the 10 Millan principles, the eighth of which is the least restrictive alternative principle. It says:

"Service users should be provided with any necessary care, treatment and support in the least invasive manner and in the least restrictive manner".

That was the principle on which the 2003 act was based. All of us understood that.

In 2003, I spoke to the amendment and used the case of the state hospital at Carstairs, because there were 29 blocked beds at that time. There were no medium-secure units to move people on to. I gave that as an example of excessive security. Shona Robison, Nicola Sturgeon and many other members were members of the Health and Community Care Committee at that time. The understanding was that there could be excessive security in Carstairs or in the local psychiatric hospital. It was excessive security whether it was in Carstairs, a medium-secure unit, a low-secure unit or a psychiatric hospital. That is because the basic Millan least restrictive alternative principle applied.

I am very much in favour of what has been said by Richard Simpson and Malcolm Chisholm, both of whom were on the Health and Community Care Committee at that time, and Richard Simpson's amendment 26, which we should all support. If we take one thing from the 2003 act and the many emails and issues that have been raised in the cross-party group on mental health and in the past 12 years, it should be that one fundamental principle that we unanimously agreed on, based on the Millan principles in 2003. We should all support Richard Simpson.

Dr Simpson: I have tried not to be overly prescriptive. I will look at two parts of amendment 26. Although it would require the Scottish ministers to make regulations within a year of receiving the report from the Mental Welfare Commission, there is an escape clause. If ministers did not plan to make such regulations, they could publish a response to the report setting out their reasons. It is an incredibly modest approach to something that is supported by nine organisations—I forgot to include the Royal College of Psychiatrists, which also supports the Mental Welfare Commission's position.

We should really undertake to do this now. Not to do it is frankly an affront to those organisations and does not support the eighth Millan principle. I will be appalled if the Government uses its majority on this occasion to vote down my very modest amendment. I press amendment 25.

The Deputy Presiding Officer: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
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Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 52, Against 61, Abstentions 0.

Amendment 25 disagreed to.

After section 11

Amendment 11 moved—[Jamie Hepburn]—and agreed to.

After section 11A

Amendment 26 moved—[Dr Richard Simpson].

The Deputy Presiding Officer: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Wilson, John (Central Scotland) (Ind)

Against

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

The Deputy Presiding Officer: The result of the division is: For 52, Against 62, Abstentions 0.

Amendment 26 disagreed to.

Section 18A—Named person not to be automatic

Amendment 12 moved—[Jamie Hepburn]—and agreed to.

Section 20A—Ability to act if no named person

Amendments 13 to 18 moved—[Jamie Hepburn]—and agreed to.

Before section 21

16:00

The Deputy Presiding Officer: Group 5 is on advance statements. Amendment 27, in the name of Dr Richard Simpson, is grouped with amendments 19, 20 and 28.

Dr Simpson: At stage 2, I moved amendment 88, which attempted to ensure that the wishes that patients with full capacity express in advance statements are respected. Although I hope that the minister will support Jackie Baillie's amendment 1, which is in group 8, amendment 27 makes another attempt to ensure that when the patient makes it absolutely clear that they do not wish to receive treatment in any circumstances whatsoever, the right to refuse treatment is respected. When patients are physically ill—even if they are going to die—they are entitled to refuse treatment, if they have full capacity. I propose that the minister should be able to determine in regulations exactly the circumstances in which the right should be fully respected.

I appreciate that, under the Mental Health (Care and Treatment) (Scotland) Act 2003, there is a requirement and indeed an obligation on the responsible medical officer and the tribunal to make clear why and in what circumstances they have chosen to overrule the patient's advance statement. However, there are limited circumstances in which the patient has an absolute rather than a partial right. Those circumstances should be defined. For example, if the patient chooses that in no circumstances should they be treated with electroconvulsive therapy or with a specific psychotropic or psychoactive substance, and provided that that was determined only when they had full capacity and was written in an advance statement that was witnessed by someone such as their general practitioner or a psychiatrist in whom they had confidence, that choice should not be overridden.

When a physical illness exists that might be fatal, a patient with capacity is fully entitled to refuse treatment. However, the view of a patient with a mental illness who has previously stated in writing in a witnessed statement that they wish to refuse treatment can be overridden. That is yet

another gap in the parity of esteem between patients with mental health issues and patients with physical issues.

Regulations are needed to ensure that, for example, when a named person or anyone such as a next of kin is conscious that the patient, notwithstanding their advance statement, has changed their mind but has not withdrawn the statement, it can still be overridden.

I look forward to the minister speaking on amendments 19 and 20. I very much welcome amendment 28, in the name of Bob Doris, as it is clear that that will move us towards achieving what we all want—greater awareness and, I hope, more use of advance statements.

I move amendment 27.

Jamie Hepburn: I thank Dr Simpson for speaking to amendment 27 and I look forward to hearing what Bob Doris has to say on his amendment 28.

I understand that Dr Simpson's concerns relate to the capacity of patients and situations when their wishes as set out in advance statements should or must be adhered to. However, I am not clear about what circumstances it is envisaged should be set out in the proposed regulations. The current framework ensures that doctors and tribunals take account of advance statements and requires them to set out any reasons for overriding statements whenever that is the case.

A competently made advance statement is a strong indication of a patient's wishes about medical treatment, but it should not be considered in isolation. There must be flexibility. The advance statement cannot bind the medical practitioner or member of the care team to do anything that is illegal or unethical, and nor can it bind them to provide a range of or withhold specific services, medicines or treatments.

I am aware that the Mental Welfare Commission has raised concerns that changes to the balanced approach in the current legislation could lead to dilemmas in cases where not giving treatment could result in severe harm. I recognise the positive intentions behind amendment 27, but I am concerned about the unintended consequences. We should heed the commission's concerns.

Given that we would not intend to use the proposed regulation-making powers, and given the difficulties that can arise if we agree to a regulation-making power but do not use it, I say with respect that I cannot support amendment 27 and I ask Dr Simpson not to press it.

I thank Bob Doris for amendment 28, which I am happy to support. The Government sees advance statements as an important tool in helping service users to participate in decisions about their treatment when they are not well. We want their use to increase.

I am confident that, taken together with the other measures that the bill introduces, amendment 28 would help to increase the numbers of advance statements that are made. I am aware that, sometimes, service users are not sure about how to access support to make an advance statement. Amendment 28 would make sure that they have information about who in their treatment team, or which other medical professional, can help them with making one and what support they can expect.

Malcolm Chisholm: Can the minister do anything through regulations or guidance to promote advance statements and to get the relevant authorities, particularly health boards, to promote them as well?

Jamie Hepburn: I recognise that amendment 28 cannot be the sum total of what we do to promote advance statements, but it is an important step. I will ask the working group that is to update the code of practice to include guidance in the code that sets out best practice for how health boards could work with local authorities and other organisations in their areas to produce and promote information about the support that is available to anyone in their areas to make advance statements. That goes beyond the support that is directly available from the health board and I hope that it will be of further assistance.

I urge members to support Mr Doris's amendment, which I have not quite bottomed out yet. Importantly, it will allow the Mental Welfare Commission to find out what support is being offered, which will help with the work that it is undertaking to promote the greater use of advance statements. That will help to address the concern that Malcolm Chisholm expressed.

The purpose of amendments 19 and 20, in my name, is simply to tidy the provisions that were amended at stage 2 on registering advance statements. They make minor technical changes that have no policy effect.

Bob Doris (Glasgow) (SNP): At stage 1, several witnesses highlighted the fact that the use of advance statements is rare. That is worrying because we all—or at least, I am sure, most of us—want our future treatment and care to be informed, or directed, by our wishes, if it is appropriate and possible to respect those wishes even after we are no longer in a position to express them. That is the drive behind the validity of advance statements, which we have to promote.

At stage 2, I proposed a detailed amendment to place duties on health boards regularly to publish

and promote information on advance statements, but I could not persuade the Scottish Government at that point. It believed that the amendment was overly prescriptive and that it would not drive the change that was required. However, I promised to go away and work on the matter further, which I have done by lodging a stage 3 amendment.

Amendment 28 would insert new provisions in section 21 of the bill, which relates to advance statements. It would insert a new section 276D in the 2003 act to impose duties on health boards to publicise support for making advance statements, but not in an overly prescriptive way. The amendment would require health boards to publicise the support that they offer for persons to make or withdraw advance statements, as well as any support that they offer for persons who wish to provide them with a copy of a statement, in accordance with proposed new section 276D(1).

Crucially, the amendment would also require health boards to provide the Mental Welfare Commission with information about what they do to comply with subsection (1) when the commission requests that they do so. The commission has a crucial role in garnering that information and driving change, which is why I have placed amendment 28 before the Parliament.

On amendment 27, I have concerns about the absolutely binding nature of advance statements. I said that the use of advance statements is rare. We have to allow for them to be revised and amended because, while people still have capacity, their will and decisions can change over time and we have no idea how attentive authorities are to having existing advance statements regularly revised and updated.

Because of those concerns, I cannot support amendment 27. I would appreciate the Parliament's support for amendment 28.

Dr Simpson: Amendments 19, 20 and 28 are welcome.

The minister said that I have not defined the circumstances that would apply to the absolute right in an advance statement. That was completely deliberate and was done with the intention of allowing the minister to define those circumstances after consulting those who feel that their wishes have previously been flouted by the tribunal. That is a rare occurrence but, nevertheless, I believe that the time has come for patients to be given the right to refuse treatment if they choose to do so.

Bob Doris talked about the fact that people's wishes might change over time. Of course, they have the right to withdraw a statement, which is entirely appropriate. However, even if they did not do so, it would be perfectly possible to say in regulations that, if they indicated to their GP, psychiatrist, named person or next of kin that their advance statement should no longer apply, that could be the case. Carefully drawn regulations would have get-out clauses.

Not to allow people who have full capacity to have an absolute right, if they define clearly their wishes about specific treatments—this is not about treatment in general—is an infringement of individuals' human rights, and the Parliament might well be challenged on that. My amendment would give the minister the power to make regulations if he wished to do so.

The Deputy Presiding Officer: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Wilson, John (Central Scotland) (Ind)

Against

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

The Deputy Presiding Officer: The result of the division is: For 52, Against 59, Abstentions 0.

Amendment 27 disagreed to.

Section 21—Advance statements to be registered

Amendments 19 and 20 moved—[Jamie Hepburn]—and agreed to.

Amendment 28 moved—[Bob Doris]—and agreed to.

After section 21

The Deputy Presiding Officer: Group 6 is on advocacy services. Amendment 29, in the name of the minister, is grouped with amendments 30 and 31.

Jamie Hepburn: Richard Simpson lodged a number of amendments at stage 2 relating to advocacy services. Following stage 2, I had some useful meetings with Richard Simpson and I thank him again for his work on these issues.

Amendment 29 relates to monitoring of advocacy provision. I committed to working with Dr Simpson on this issue at stage 3. Although Dr Simpson lodged an amendment at stage 3 on this issue, he has withdrawn it and I hope that he can support amendment 29.

Amendment 29 varies from the amendment that Dr Simpson lodged at stage 2 in the following ways. It adds the State Hospitals Board for Scotland to the list of bodies that must report to the Mental Welfare Commission on the exercise of their functions under the act. It removes the provision that set out the requirement on the commission to monitor the provision of services and report to the Scottish ministers.

16:15

The Mental Health (Care and Treatment) (Scotland) Act 2003 contains a general duty on the Mental Welfare Commission to monitor and report on the act's operation, and I do not believe that it is necessary to add a specific provision in that regard. The act allows the Mental Welfare Commission to seek information from local authorities, health boards and the state hospital at times decided by the commission, covering a period of operation of two years or more. I accept that people's experience of accessing advocacy does not always meet their expectations, and it is important that we understand that and ensure that people are able to access services and their rights. I believe that amendment 29 will help to achieve that aim.

Other amendments that Richard Simpson lodged at stage 2 would have made provision for

rights for advocates that would have gone well beyond the role that they have under the 2003 act of assisting patients in accessing their rights. The amendments would have fundamentally changed the nature of that role by giving advocates rights that they could exercise independently of the patient in order to make representations, access information and lead and produce evidence at the tribunal.

On that basis, I resisted those amendments at that time and, although amendments 30 and 31 simply allow for regulations to be made to set out the circumstances in which advocates must be informed or be allowed to make representations, I remain of the view that the role of advocates should not be extended in that way either through primary legislation or in regulations. As I have pointed out in the debates on other groups of amendments, the general position is that I cannot support the Government taking regulation-making powers when we cannot envisage the circumstances in which we would seek as a matter of policy to exercise them. On that basis, I do not support amendments 30 and 31.

I noted at stage 2 that the amendments might have been developed, at least in part, to fill a gap created by removing the default position of having a named person in cases where a person has not appointed a named person and where the person is not able to act on their own behalf. A Government amendment that was passed at stage 2 addressed that situation by setting out a limited list of people who could act in limited circumstances on behalf of a patient without a named person and unable to act on their own behalf. Indeed, some of that was covered in an earlier debate. I therefore ask Richard Simpson not to press his amendments and, should he do so, ask members not to support them.

I move amendment 29.

Dr Simpson: I thank the minister for meeting me on this issue and for lodging amendment 29, which I think is a welcome move and with which I fully concur. In research carried out in May 2015, the Scottish Independent Advocacy Alliance showed that only six of the 14 geographical national health service boards have current strategic advocacy plans; given that a significant proportion of those plans will be expiring soon and that only one board has said that it will be updating its plan, allowing the Mental Welfare Commission to take a much more stringent approach to this matter is a very welcome move.

The reason for lodging amendments 30 and 31, which are designed to strengthen advocacy services further, is that up to the point at which the named person default system was withdrawn and it became apparent that a person could end up without a named person or indeed any other person to act in their interest, the role of the advocate was, as the minister has said, quite circumscribed. At that time, that was entirely appropriate. However, under the new circumstances brought about by the Government amendments to the 2003 act as set out in the bill, the advocates should, as amendment 30 sets out, at least be notified by the tribunal. Reference has been made to others who would be notified in these circumstances, but my point is that, if those others do not exist, the advocate should surely be notified. Amendment 30 does not extend advocates' powers but simply ensures that they are notified of certain things when no one else is around to be notified.

I accept that amendment 31 is a little more contentious in that it extends the role of the advocate—but only when there is no one else around to make applications or representations on behalf of the patient who, on the presumption that they have reduced capacity or seriously impaired decision-making ability, might not be able to make those representations or applications themselves. Moreover, in such circumstances, no one might be available except for the responsible medical officer, but the patient might not agree with that person making notifications or representations on their behalf. As a result, someone else should be in a position to do that, but I accept that amendment 31 might be a step too far. That said, I will be pressing amendment 30.

Malcolm Chisholm: This is an important part of the bill, and I very much welcome amendment 29. The lack of any provisions on advocacy in the bill as introduced was a notable omission. In fact, advocacy was one of the main issues that the Equal Opportunities Committee dealt with when it did some work on the McManus review in 2010.

As we know, the 2003 act states:

"Every person with a mental disorder shall have a right of access to independent advocacy".

In practice, however, advocacy has often been targeted at people who are subject to compulsory proceedings. As Richard Simpson said, the recent review highlighted problems with advocacy in a large number of boards, and I welcome the fact that boards and local authorities will be accountable to the Mental Welfare Commission and that there will be more scrutiny of strategic advocacy plans. I think that all members in the chamber will be pleased about that.

Richard Simpson's amendments 30 and 31 are interesting. I always follow the advice of the Scottish Independent Advocacy Alliance, which accepts amendment 30 with the qualification that the code of practice has to provide more detail on ensuring that advocates do not have access to information that they do not have the person's

permission to see. Presumably, as amendment 30 provides for regulations, that point could be covered by them, so I am glad that Richard Simpson will move the amendment.

I am not sure whether Richard Simpson will move amendment 31, so I am not sure that I should say what I am going to say. There is an interesting dimension to amendment 31. Although Jamie Hepburn said that the current bill goes beyond the 2003 act, the bill that became that act originally contained a section 182(4)(b) that stated that those so affected by their mental disorder that they could not express an opinion should have an advocate. The Health and Community Care Committee objected to that provision, presumably for reasons similar to those that Jamie Hepburn has outlined today.

I could go either way on amendment 31—I will see what Richard Simpson advises.

Jamie Hepburn: I thank Richard Simpson and Malcolm Chisholm for setting out their support for amendment 29. I agree that the amendment should improve the situation.

I want to focus on the protections for patients without capacity that are now in the bill. At stage 2, I lodged amendments to remove the default named person provision from the 2003 act—a move that was widely supported—and to introduce protections for patients without capacity. Those amendments included the provision that, where there is no named person, the guardian, welfare attorney, carer or nearest relative could initiate an application or appeal to the tribunal.

Under the existing provisions in the 2003 act, a curator ad litem could be appointed to protect the patient's legal interests where the patient does not have the capacity to instruct legal representation. The 2003 act and the bill therefore already provide strong protections for patients without capacity.

I turn to the issue of changing the role of the advocate. An independent advocate helps the patient to understand their rights and communicate their wishes and views. The advocate does not act independently of the patient, and I believe that Dr Simpson's amendments—amendment 31 in particular—seek to give advocates such an independent role. I am not clear that that is desirable, particularly in relation to appeals, and I am not convinced that such a move has been widely consulted on. It was interesting that Malcolm Chisholm made the point that there was a provision in the 2003 bill as introduced that was later removed. I think that it was removed for good reasons that still stand today.

With regard to notifications, there are already certain circumstances in which the code of practice sets out when it would be best practice to involve the advocate—for example, before a hospital transfer. I believe that the working group should consider further best practice in that respect, and I hope that that will take care of some of the concerns raised in amendment 30, which I still oppose.

Amendment 29 agreed to.

Amendment 30 moved—[Dr Richard Simpson].

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

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Wilson, John (Central Scotland) (Ind)

Against

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

The Deputy Presiding Officer: The result of the division is: For 52, Against 60, Abstentions 0.

Amendment 30 disagreed to.

Amendment 31 not moved.

Section 22A—Conflicts of interest to be avoided

Amendment 21 moved—[Jamie Hepburn]—and agreed to.

After section 23

The Deputy Presiding Officer: Group 7 is on the meaning of "responsible medical officer". Amendment 33, in the name of Nanette Milne, is the only amendment in the group.

Nanette Milne: Amendment 33 seeks to provide the Scottish ministers with the flexibility to permit, by regulations, professionals who are not approved medical practitioners to perform the statutory functions of responsible medical officers under the 2003 act. It follows an appeal by the British Psychological Society for us to allow practitioner psychologists who are involved in compulsory care to perform additional statutory duties.

Currently, both the AMP and the RMO roles are the exclusive preserve of the medical profession despite the primary treatments for many mental health problems being psychological, particularly in the case of patients with learning disabilities, autistic spectrum disorders, eating disorders or personality disorders. As the clinicians who are most responsible for and have the broadest understanding of the patient's treatment in such cases, psychologists are best placed to be able to oversee their care in that way.

Under the Mental Health Act 2007, the equivalent positions of approved clinician and responsible clinician in England and Wales can be undertaken by psychologists. As a result, we have access to a wealth of guidance, training and learning to inform how the roles could function in Scotland, so we are by no means venturing into the unknown.

When the issue was raised at stage 2, the minister stated that further consultation would have to take place before additional powers of this nature were extended to psychologists. Amendment 33 addresses that concern by allowing any processes that the minister may need to satisfy himself of the viability of the change to take place. He can then decide whether to extend the categories of eligible RMOs without further primary legislation.

The amendment extends only to the RMO position in connection with treatment. It does not change eligibility for the AMP position, the holder of which is responsible for the initial process of assessment. It is worth noting that the process was subject to extensive scrutiny in the UK Parliament during the passage of the bill that became the 2007 act, which applied equivalent measures in England and Wales.

The statutory positions require a great deal of work from the psychiatric profession, with assessments, reports and appearances at hearings. In addition to providing for the most appropriate clinician to oversee the treatment of people who are receiving psychological treatments, the amendment provides additional professional capacity to support patients who are undergoing compulsory care.

I move amendment 33.

Malcolm Chisholm: I support amendment 33. It is a modest proposal that uses the words "may by regulations", so the minister and the Scottish Government can be assured that on this occasion there is no prospect of them ending in the Supreme Court. They may, if they wish, not introduce regulations.

I think that the amendment is a response to what the minister said at committee, which Nanette Milne alluded to, because he admitted that there was merit in considering the duties that a broader range of health professionals can undertake. The amendment seems to be the perfect way to progress the view that the minister expressed at that time. As Nanette Milne says, it applies only to the responsible medical officer, who deals not with the admissions process but with the supervision of compulsory treatment orders and advice to the Mental Health Tribunal.

I would not usually invoke English mental health legislation because, in general, the Scottish mental health legislation came before it and is better than it, but the fact is that there is a broader definition in England, with a responsible clinician and an approved clinician under the 2007 act, and there have been no problems with that. There has been post-legislative scrutiny of the legislation and no one has suggested any problems, which suggests that there is no fundamental reason why the definition should not be broadened. If we want to look to English practice, there is a body of relevant guidance, training and learning that could help us, and I do not think that we should rule that out just because it is from England.

16:30

There are other reasons for agreeing to the amendment, which Nanette Milne has suggested. One fairly practical reason that she has not mentioned is that we have a workforce supply issue with psychiatrists. Quite a lot of work is involved in the role of the RMO, and I would have thought that a lot of psychiatrists would welcome the amendment. I note that the briefing from the Royal College of Psychiatrists for today's debate does not tell us to oppose the amendment.

However, as Nanette Milne said—I hope that the Royal College of Psychiatrists would agree—there are some conditions for which it is better that the decisions are made by psychologists. That may be the case for people with learning disabilities—we will hear more about them in a moment—and for those with autistic spectrum disorder, eating disorders, personality disorders and so on. We should remember that the primary treatments for mental health problems are sometimes psychological.

The amendment sets out a modest proposal that does not commit the minister to making a final decision today but provides a practical way of implementing the view that he himself expressed to the committee.

Dr Simpson: I apologise to Nanette Milne for my brief absence from the chamber. I support the amendment.

In his very full remarks, Malcolm Chisholm has said most of what I wanted to say. However, I add that the proposal fits with the 2020 vision of the Government. It is all about upskilling and allowing practitioners to participate more fully. The other day, I was told by a senior member of the Royal College of Psychiatrists that 42 per cent of the psychiatrists who are qualifying in the UK today by passing the foundation exams are emigrating. We are faced with a serious workforce problem in this and many other areas, and I suggest that the minister would want to take the power to make regulations upskilling psychologists so that he would not have to bring the matter back to the Parliament in seeking a further amendment to the legislation.

Jamie Hepburn: I thank Nanette Milne for lodging the amendment and I thank all those members who have engaged with me on the issue.

Psychologists play a key role, particularly in the care and treatment of persons with learning disabilities and autism spectrum disorder. I am therefore happy to commit to stating that the role played by psychologists is something that I would like to see covered in the review that I spoke about in the debate on amendment 24. I look forward to working with the British Psychological Society and other professional bodies as part of that work.

My concern with amendment 33 is that it would have the effect of extending the responsible medical officer role as a whole beyond approved medical practitioners. Nanette Milne stated that the provisions are limited and that the amendment would apply only in relation to the treatment, but that is not the case as the amendment is drafted—I am afraid that it may have been drafted more widely than was her intention. The duties of the responsible medical officer are wide ranging, beyond supervising treatment, and include assessing the need for, and authorising the

detention of patients for, compulsory treatment of a mental disorder.

Mental health services are delivered by multidisciplinary teams, and it is important that the different members of those teams undertake roles that allow them to support patients most effectively. Although there is now an approved clinician role in England and Wales, which could, under the English and Welsh legislation, include a psychologist, a medical doctor is still required to assess the patient and agree their detention just as a responsible medical officer must under the Scottish 2003 act. As I have set out, the amendment would not allow the regulations to alter the specific duties of the responsible medical officer or make other adjustments such as to ensure that a doctor has assessed a patient and agreed their detention under the 2003 act.

It is not clear to me that that is what Nanette Milne wanted in lodging amendment 33 to extend the role of psychologists in the bill. I am not unsympathetic to the general principles behind the amendment, but it would only allow all duties or none to be extended, and it is for that reason that I urge members to vote against it. Nevertheless, I emphasise the Government's commitment to give the matter serious attention going forward.

Nanette Milne: Malcolm Chisholm absolutely got it right: amendment 33 is a very modest amendment, which may lead to change in the future without the need for further primary legislation should ministers wish to expand the psychologist role as time moves on. I agree with both Malcolm Chisholm and Richard Simpson that we have a serious workforce issue, which the amendment could help to resolve in the future. I intend to press it.

The Deputy Presiding Officer (John Scott): The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Wilson, John (Central Scotland) (Ind)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

MacDonald, Gordon (Edinburgh Pentlands) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 52, Against 59, Abstentions 0.

Amendment 33 disagreed to.

Section 24—Cross-border transfer of patients

Amendment 34 moved—[Nanette Milne]—and agreed to.

After section 27

The Deputy Presiding Officer: Group 8 is on the meaning of "mental disorder". Amendment 1, in the name of Jackie Baillie, is the only amendment in the group.

Jackie Baillie (Dumbarton) (Lab): The purpose of amendment 1 is very simple: it requires ministers to bring forward a review of the meaning of "mental disorder"—and specifically whether learning disability should continue to be included in that definition—and requires that review to report within three years of royal assent. I believe that all of that is perfectly reasonable.

At stage 2, I moved an identical amendment but set a time limit of one year for the review to be complete. I listened very carefully to the minister then and during our subsequent very helpful discussion. He argued that civil servants would be engaged in implementing the bill and that would mean that they would be too busy to carry out the review. He also argued—and I entirely agree with him—that it is important to ensure that those with learning disabilities are fully involved in the review, which takes time. This revised amendment allows for up to three years for the review to be undertaken, which is plenty of time to ensure that it is thorough and inclusive.

I will explain to the chamber the context of this amendment. In 2001, the Millan committee supported the idea of removing learning disability from the definition of mental disorder. In 2009, the McManus review also supported the idea of removing learning disability from the definition of mental disorder as set out in the Mental Health (Care and Treatment) (Scotland) Act 2003. A review was promised.

We have therefore had two separate expert committees both recommending the same thing, and yet here we are 14 years later and still there is no review.

Let me be clear that this is not party political. The previous Labour Scottish Executive did not carry out a review. The current Scottish Government has not carried out a review. The cross-party group on learning disability has discussed this issue at length. There is huge support from members for a review. People with learning disabilities have been patient. Today is about rewarding their patience and doing the right thing.

Amendment 1 does not in any way prejudge the outcome of such a review. I recognise that there are strongly held arguments on both sides. Some passionately believe that learning disability should not be included in a definition of mental disorder. Those include Enable Scotland, Inclusion Scotland, People First (Scotland) and many more besides.

Let me set out some of their rationale. First, they believe that the inclusion of people with learning disabilities in an act that clearly has as its focus the treatment of people with mental ill health conditions has a detrimental impact.

Secondly, people with learning disabilities are not mentally ill. Unlike mental illness, learning disability is a lifelong condition that cannot be cured or alleviated by medication. It is an intellectual impairment rather than a mental disorder.

Thirdly, people with learning disabilities may require care and support and—except where a mental illness is also present—psychiatrists are unlikely to take the lead role in providing care and support for people with a learning disability.

Additionally, there is evidence that people with learning disabilities are subject to compulsory treatment as a result of their learning disability alone. People with learning disabilities account for more than 11 per cent of those in mental health institutions when they represent just 2 per cent of

the population and their stay is longer than average. Clearly, that is not right.

On the other hand, some will argue equally passionately that the inclusion of learning disability means access to services and will point to the safeguards that are inherent in the 2003 act so that those with a learning disability are not made subject to its provisions.

Clearly there are complex arguments here, and clearly there are different views, but the desire for a review is long-standing. It transcends Governments; it transcends ministers. The amendment does not presuppose the outcome of that review but, 14 years on, it really is time that we conducted it.

I urge members to support the amendment and to listen to the views of those with learning disabilities, their families, and the organisations that support them.

I move amendment 1.

Mark McDonald (Aberdeen Donside) (SNP): I thank Jackie Baillie for her amendment and for her remarks. I looked at the stage 2 discussions, and I noted that the minister gave a commitment at that stage that a review would be undertaken. I am interested to hear from the minister about what progress there has been in relation to that.

I do not disagree with much of what Jackie Baillie has said. Indeed, in the meetings that I have had with organisations such as the National Autistic Society Scotland, there has been discussion about the views that are held regarding the inclusion of learning disability within the category of mental disorders. Jackie Baillie articulates the points on that very well. She also articulates that there are strongly held views on the other side of the equation in relation to retaining learning disability within that category.

My issue with the amendment as framed comes with subsection (5) of the proposed new section, which states that

"The Scottish Ministers must make provision by regulations".

If we are going to have this review, have recommendations from the review and then enact the recommendations, I have a concern that provision by regulations does not perhaps allow for the fullest parliamentary scrutiny in terms of evidence taking and debate within Parliament, on something that Jackie Baillie has acknowledged has arguments on both sides and elements of contention.

The minister has given a commitment in relation to the review. Jackie Baillie has articulated the points well, but I think that making provision by regulations would not allow for the fullest debate on the matter to continue both during the review and afterwards.

I hope that Jackie Baillie will take my remarks in the spirit in which they are meant—they are not party political in any way and I agree with much of what she has said. I feel, however, that the way that the amendment is drafted does not give me comfort that we could ensure that the fullest debate was had in relation to the issue.

Malcolm Chisholm: Amendment 1 is a very modest one because it is merely calling for a review and does not pre-empt the conclusions of that review. Goodness knows we have been hearing about reviews on this issue for the whole of this century.

Bruce Millan has been referred to and I can quote him. He said:

"There should be an expert review at an early date on the position of learning disability within mental health law".

Responding to his report in 2001, the Scottish Executive at the time said in "Renewing Mental Health Law":

"It will be important to get the context for such a review right, and we will discuss this with the *Same as You?* Implementation Group and the Scottish Consortium for Learning Disabilities before bringing forward proposals."

I regret the fact that those proposals were not brought forward. As Jackie Baillie said, this is not a party political matter. Both main parties have failed to have a review, but I think that enough years have passed for a review to be done within the next three years.

Other jurisdictions have had plenty of experience of this issue. For example, in 1992 New Zealand changed its mental health law, and from that time people with learning disabilities were excluded unless they also had a mental illness. That clearly is a position that a lot of people would accept, so it can be done.

Amendment 1 calls only for a review, and I am not quite clear how anybody can still object to that after 15 years.

16:45

Jim Hume: I support amendment 1, in the name of Jackie Baillie, which seeks to set clearer and more progressive definitions of who is to be considered as having mental health disabilities. Clearly in the 21st century we should be expected to have the expertise to distinguish different conditions through not just medical but legislative means. That is why the amendment is important: to delineate the more exact and specific medical conditions that constitute someone having a mental health disorder and better protect those who fall under that category—and those who do not.

I agree that the review must take place within the amendment's three-year condition, or else we risk failing many people and bringing more burden on to the already stretched mental health services. Ministers must commit to review the term "mental disorder", with professional and expert consultation, if they are serious about their mental health and human rights priorities.

I support Jackie Baillie's amendment.

Dr Simpson: As I said at stage 2, the inclusion of learning disabilities and autism spectrum disorder in the mental health legislation was raised by a number of witnesses. As Mark McDonald said, there are contrasting views on the issue, but the weight of opinion is in favour of removing learning disability from the meaning of "mental disorder", unless a mental illness accompanies the learning disability.

The evidence of Steve Robertson of People First (Scotland), which I quoted at stage 2, was particularly apposite. He said:

"We honestly believe that the time has come for a new piece of legislation that is just about people with learning disabilities. We think that it is only right and fair that learning disability is properly defined as an intellectual impairment rather than a mental disorder."—[*Official Report*, *Health and Sport Committee*, 11 November 2014; c 39-40.]

Indeed, the faculty that covers this area is changing its name to include the term "intellectual disability". Such conditions are disabilities, not mental illnesses. Although classifying them as mental disorders may have appeared to be appropriate in the past, I am not sure that it does now.

Amendment 1 does not seek to determine the outcome of a review; the important thing about it is that it says that there must be a review. The timescale of the review has been extended to three years, to allow for the bill to be implemented. The bill is fairly modest and it should not take that long to get it through.

Mark McDonald is wrong and is slightly misleading us. The amendment says that ministers must publish a report

"making a recommendation as to whether 'learning disability' should continue to be within the meaning of 'mental disorder'".

It does not presume to say what its recommendation should be. It allows for discussion and for the review to be set up.

Mark McDonald: I take Dr Simpson's point. My point was about not what the review's conclusions would be, but how the conclusions would be enacted. Enacting them via regulations as opposed to, for example, primary legislation would reduce the opportunity for parliamentary scrutiny and debate. That was the point that I was making in my comments on the amendment, which were not about presupposing the review's conclusions.

Dr Simpson: Of course, the Government could introduce primary legislation following the review's conclusions if it believed that that was necessary at that point. Amendment 1 provides a mechanism that might make it simpler to remove learning disability from the meaning of "mental disorder" if there is a degree of unanimity on the issue at the time.

The other point is that, as Malcolm Chisholm said, if the issue had just come up very recently, the Government's objections might be valid. However, it has been on the cards since the Millan committee sat. The Government has been on a journey. It began by saying no, and then it said that a review would be extremely complex—it is right, of course, because we would need to look at the Mental Health (Patients in the Community) Act 1995, the Adults with Incapacity (Scotland) Act 2000, the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Mental Health Act 2007. It is important that we get this right and protect people with learning disabilities.

The Government has committed to a review, and I am sure that it will do so again, so if it wishes to oppose the amendment, I invite it to provide an idea of the timetable under which that review will be established. If it does not do that, we will wonder whether we can take ministers seriously when they speak about moving this issue forward. I support Jackie Baillie's modest amendment.

Nanette Milne: I also support the amendment. I accept that the minister has committed to a review but, as Dr Simpson said, such a review was first proposed by the Millan committee as far back as 2001, and it was recommended again by McManus in 2009. I understand the frustration that it has not yet happened. Jackie Baillie's suggestion of a three-year gap between now and the review being carried out is reasonable. I will not say any more, but I very much support the amendment.

Jamie Hepburn: Let me say at the outset that I appreciate the work done by Richard Simpson and Jackie Baillie on this issue at stage 2, as well as the constructive meeting that followed. I recognise that a number of people and organisations have raised the issue of the inclusion of learning disabilities and autism spectrum disorders under the 2003 act. Indeed, I met representatives from People First and heard their perspective on that matter, and I understand the frustration that a review has not been undertaken thus far. For that reason I have committed to carry out a review on the inclusion of learning disability and autism spectrum disorders under that act.

I am listening to the views of those with learning disability. I put that commitment on the record in the Scottish Government's response to the stage 1 report—that was a rather stronger response than the one given by the Scottish Executive in 2001 which Malcolm Chisholm alluded to. I repeated that commitment in the stage 2 debate, and I do so again now: the Government will undertake that review; there are no objections to that from this Administration.

Richard Simpson's point about the Government's seriousness of intent and how quickly we can establish that review is fair, and I intend to start the process as soon as possible. Indeed, we have already begun that, and my officials have started to discuss with partners how the review will happen. I will share information about progress on that with the Health and Sport Committee.

As Mark McDonald said, there is nothing to disagree with in the general thrust of Jackie Baillie's amendment; the issue is finding the right way forward. I do not believe that it is sensible for the legislation to require a timescale for the completion of the review. The review must be genuinely participative and must not start with a pre-determined outcome or process. It requires a flexible approach that can adjust to the views of those who are involved.

I understand the desire for a clear timescale, not just for beginning the process but for completion, and I am clear that a review will take place and I want it to start as soon as possible. I believe that a timescale of three years from royal assent—as set out in the amendment—is reasonable, but I do not want to place an artificial time limit on that review or to prejudge where it will go. It is important that the review is participative and allows all voices an opportunity to influence the process and be heard. That should determine how long the review takes, but my clear commitment is for it to be completed as quickly as possible.

More substantially, I am concerned about proposed new subsection (5), which sets out what must be done if ministers recommend in the required report that learning disability should not continue to be within the meaning of mental disorder. It states that, in those circumstances,

"The Scottish Ministers must make provision by regulations for the removal of 'learning disability' from the meaning of 'mental disorder'."

Mr McDonald set out the reasonable concern that that would not allow for a change to be made through a bill, which would allow for far more scrutiny of and engagement on such a major change.

Even more crucially, it is not clear to me that the amendment would allow for any new system to ensure support and protection for those with a learning disability, as exists in the 2003 act. There was common recognition at stage 2 of the importance of doing so, and Ms Baillie and Dr Simpson have set that out again.

The approach also seeks to require ministers to legislate, but their powers to do so are subject to parliamentary approval. While ministers could lay draft regulations before Parliament to implement the recommendations of the report, it is outwith their powers to ensure that they are made. That, rightly, is the prerogative of Parliament. The amendment would appear to be an attempt to bind Parliament to legislate in a particular way in future, just because ministers have published a report containing recommendations to that effect. I am not sure that that is what Jackie Baillie intends.

We all agree that this is an important issue and that it is important that the whole range of views are heard—those who make the case that learning disability and autism should not be included under the 2003 act and those who make the case for the benefit of the protections, safeguards and access that the legislation provides. I have committed to a review; that is my serious and determined commitment. I urge Jackie Baillie not to press amendment 1. If she does so, I urge members not to support it.

Jackie Baillie: I say to the minister that my intentions are always honourable.

We had the Millan committee in 2001; nothing happened. We had the McManus review in 2009, under this Government; nothing happened. I am not questioning the minister's personal commitment to the issue, but to be frank—I say this to Mark McDonald, too—we have had commitments before. We have waited 14 years. Amendment 1 means that a review will happen and can never be put on the back burner.

Jamie Hepburn *rose—*

Jackie Baillie: Just give me a second. I would also say to the minister that I anticipate that there would be significant debate and engagement around the review. He has promised that it would be an inclusive process, and I believe him.

If the minister has a problem with the suggestion of regulation, there are opportunities open to this Parliament. It can use a super-affirmative procedure, with additional time for consultation and scrutiny. Committees of this Parliament have challenged Government in the past.

Richard Simpson is absolutely right: this Scottish Government could introduce a bill that would amend the power in proposed new subsection (5). The Government could put it in primary legislation if it chose to do so. Please let us not dance on the head of a pin, because this is

a reasonable and modest amendment. It reflects what the minister has previously said to me was his concern. I can see no sensible reason for not supporting it.

What I have heard around the chamber is agreement about the principle of what we are doing and the need for a review. I genuinely do not understand, therefore, why the minister will not have that review and put it in legislation. Amendment 1 recognises the complexity of the issue. It does not presuppose the outcome—it would not be appropriate to do so. People with learning disabilities have been more than patient. This Parliament and this Government should do the right thing and act now. I urge members to support amendment 1, which I will press.

Jamie Hepburn *rose—*

The Deputy Presiding Officer: I will take your intervention.

Jamie Hepburn: I was not clear that Ms Baillie was giving way to me, but would she recognise that we have in fact begun that process? We have done it because it is a serious intention.

Jackie Baillie: Presiding Officer, it is usually for the member to accept an intervention, but I bow to your judgment.

People have started the process before. Minister after minister has said, "We will do this." The minister, in reflecting one of his concerns to me, said there was not time for civil servants to do it now because they would need to get on with the enactment of the bill. That has not changed; therefore, while the minister may have started the process, it is the finish of that process that people care about.

As I said before, I intend to press amendment 1 because it is the right thing to do.

The Deputy Presiding Officer: The question is, that amendment 1 be agreed to. Are we all agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)

Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

17:00

The Deputy Presiding Officer: The result of the division is: For 52, Against 59, Abstentions 0.

Amendment 1 disagreed to.

The Deputy Presiding Officer: Group 9 is on commission: statistical information. Amendment 35, in the name of Dr Richard Simpson, is the only amendment in the group.

Dr Simpson: At stage 2, Adam Ingram moved amendment 109, which specified a significant amount of information that would be required to be collected, collated and analysed by the Mental Welfare Commission. The minister said in response that he felt that the requirements in the amendment were far too onerous. However, amendment 35 seeks simply to require the Scottish ministers to direct in regulation as they see fit, after consultation, the nature of the information that the Mental Welfare Commission should collect and collate, and the circumstances in which it should do so.

I accept that the issue has been partly covered by the principle of the very helpful amendment 29, which indicates that the minister is prepared to allow situations in which the Mental Welfare Commission can command information from health boards, the state hospital and local authorities. However, that is in relation only to advocacy services. There can be no doubt that the current system is dysfunctional and that effective collection and analysis of data on, for example, suicides, assaults, adverse incidents and the use of restraint within the mental health system are required.

The Scottish Information Commissioner has been critical of at least one health board's recording of significant adverse events within the mental health system. What we propose in amendment 35 is a much broader approach, but it would allow the minister and his successors to determine how much information should be collected and collated, and how that should be done.

I move amendment 35.

Jamie Hepburn: It has been useful to hear why Richard Simpson lodged amendment 25. Members will know that in its briefing for stage 3, the Mental Welfare Commission set out the extensive range of information that it publishes and noted that it would be happy to consider any requests by ministers for it to produce more statistical information. I know that the commission is keen to do more to make the statistical information that it collects useful and that it is already in discussion with the Information Services Division, NHS National Services Scotland and others about that.

Notwithstanding that, I acknowledge that there is a desire for information to be requested of the commission through regulations that have been consulted on, rather than via ministerial direction. On that basis, I am happy to accept amendment 35. However, it is important that any subsequent regulations do not cause undue or disproportionate burdens or bureaucracy. I will work to ensure that that is not the case. As I said, however, I am happy to accept Richard Simpson's amendment 35.

Amendment 35 agreed to.

The Deputy Presiding Officer: Group 10 is on deaths in detention. Amendment 36, in the name of Dr Richard Simpson, is the only amendment in the group.

Dr Simpson: Amendment 36 covers the question of deaths in detention and would require a review of the arrangements for investigating

"deaths in detention or otherwise in hospital for treatment for a mental disorder".

The Justice Committee is currently considering the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill, but people who are detained under mental health legislation or who are voluntarily in hospital for treatment for mental disorders might not be covered by that bill. About half the deaths of patients who die while receiving treatment might be due to natural causes, so a

blanket approach that insists on a fatal accident inquiry for every death would not be appropriate.

However, SAMH, along with the Scottish Human Rights Commission and the Mental Welfare Commission, is concerned that the current system might lead to some individuals falling through the gaps, so they are of the view that the arrangements for investigating the deaths of mental health patients need to be addressed.

Currently, the reports of the Mental Welfare Commission are mainly statistical; although they are interesting, that is not sufficient. In the most recent report, of 78 deaths there was no information for five. Once again, we are not getting from health boards the information that is absolutely necessary to understanding even the statistical progress on the issues. Of the deaths, 38 were deemed to be natural, but we have no idea whether they were premature. One of the big issues is that people with mental illness, particularly severe and enduring mental illness, die much younger. Therefore, it is important to understand their deaths, even if they are apparently from natural causes and a physical condition.

There is a need to ensure that, as happens with Healthcare Environment Inspectorate and Healthcare Improvement Scotland reports, there are transparent assurances that boards will in the future take such action as is required to improve prevention of suicide or of other deaths that may—I stress "may"—be preventable. Families want to know that any lessons that can be learned are learned. I do not believe that that happens at present. I hope that the minister will support amendment 36, as he did with amendment 35, which was very welcome.

I move amendment 36.

Jamie Hepburn: I thank Richard Simpson for his continuing work on the issue, and for the constructive meeting that we had following stage 2 to discuss it.

As I said at stage 2, I believe that improvements should be made to the way in which deaths in detention are reviewed, in order to ensure that the process is effective and timely, that it supports learning and that the reviews are of consistent quality. Members will be aware of the briefing from the Mental Welfare Commission on the issue. The commission noted that it agrees that the arrangements for investigating deaths need streamlining, so it set out a proposed approach, which includes notification of all deaths of patients who are subject to compulsion to the procurator fiscal and the Mental Welfare Commission; a review by the commission of all such deaths to determine whether more detailed investigation is required; in appropriate cases, a more formal review, building on Healthcare Improvement Scotland guidance on adverse events investigation; and a protocol between the commission and the Crown Office to ensure joint working in the context of the Lord Advocate's responsibilities for investigation of deaths.

My officials have already started to explore with the Mental Welfare Commission how we can bring together a working group to develop a streamlined and effective approach to reviewing deaths in detention. It is important that the approach be focused on ensuring that services can learn from reviews that are carried out, and can improve so that they are more effective and safer. The approach should also ensure that relatives or carers can participate fully in the process.

I believe that the work that is under way is an effective way of dealing with the issue and I do not consider that there is a need for ministers to be compelled to undertake reviews, given that we have given an undertaking to do so. However, I do not consider that amendment 36 will have adverse consequences, so I am happy to support it.

Amendment 36 agreed to.

Amendment 37 moved—[Nanette Milne].

The Deputy Presiding Officer: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)

McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

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

The Deputy Presiding Officer: The result of the division is: For 45, Against 62, Abstentions 0.

Amendment 37 disagreed to.

After section 42A

The Deputy Presiding Officer: Group 11 is on recorded matter. Amendment 38, in the name of Dr Richard Simpson, is the only amendment in the group.

Dr Simpson: Amendment 38 was proposed by the Law Society of Scotland, with which I have had discussions. The amendment would add a new section to part 1 of the bill and ensure that recorded matters under section 64 of the Mental Health (Care and Treatment) (Scotland) Act 2003 are included in the orders that the tribunal may make when confirming the determination or varying a compulsion order in respect of a patient, interim extensions of orders under sections 149 or 158 of that act, and orders that are made under section 193 of that act. It would also amend the meaning of "modify" in relation to both relevant compulsion orders and compulsion and restriction orders under that act to include instances where recorded matters are specified.

The Law Society of Scotland has indicated the reason for the amendment. The 2003 act sets out the definition of "recorded matter". The tribunal can specify a recorded matter when making a compulsory treatment order and when reviewing a compulsory treatment order. In essence, a recorded matter is regarded as an essential element of the patient's care and treatment. If a recorded matter is not provided, the registered medical officer must refer the matter to the tribunal under section 96. That reflects the Millan principle of reciprocity.

Recorded matters are a means of ensuring that patients get the essential elements of the care and treatment that they require, and can be used to secure care and treatment that might not otherwise be provided, which is a significant benefit to some patients. However, recorded matters can currently be specified only in compulsory treatment cases; they cannot be specified in cases in which the patient is under a compulsion order or a compulsion order and a restriction order. The Law Society of Scotland's view is that such patients would benefit from the inclusion of recorded matter provisions.

Compulsory treatment orders are civil orders, whereas compulsion orders and compulsion and restriction orders are criminal justice orders.

All patients should have the right to obtain the essential treatment that they require, regardless of their route into the mental health care and treatment scheme.

I move amendment 38.

Jamie Hepburn: I thank Richard Simpson for lodging amendment 38.

As I noted at stage 2, I am confident that the existing provisions work well for patients who are subject to compulsion orders or to compulsion orders with restriction orders. Although I am not opposed in principle to introducing recorded matters to such orders, I am not convinced that that should be done in a way that is different from how the system works for compulsory treatment orders. Amendment 38 would lead to a different mechanism for compulsion orders or compulsion orders with restriction orders. I am concerned that there could be confusion from operating two similar but different systems, and that it would add unnecessary complexity.

Amendment 38 would also omit an equivalent provision to section 96 of the 2003 act to provide for allowing the responsible medical officer to make a reference to the tribunal where a recorded matter is not being complied with. That requires the responsible medical officer to consult relevant parties, such as the mental health officer, to find out why a recorded matter is not being provided and to bring that to the attention of the tribunal. That means that the responsible medical officer will submit the original and most up-to-date care plans to the tribunal, and it allows the tribunal to take the views of the patient and others, and to make a decision whether to vary the recorded matters or other compulsory matters in the order, including on an interim basis. Amendment 38 therefore omits to extend an important part of the existing recorded matters provisions for compulsory treatment orders to the other orders, which ensures that any recorded matter that is not being provided is brought promptly to the attention of the tribunal and allows the tribunal to revise the order accordingly if needed.

On that basis, I urge Dr Simpson not to press amendment 38.

Dr Simpson: It is important that the approach is extended to people who are under compulsion orders and compulsion and restriction orders, and amendment 38 would do that. I heard what the minister said—he disagrees with that—but the Law Society of Scotland, which has its own experts in that regard, has looked at the matter very carefully. Therefore, I wish to press the amendment.

The Deputy Presiding Officer (Elaine Smith): The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)

Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

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

Amendment 38 disagreed to.

17:15

The Deputy Presiding Officer: Group 12 is on definition of compulsion orders. Amendment 22, in the name of the minister, is the only amendment in the group.

Jamie Hepburn: The 2003 act contains a range of provisions relating to compulsion orders, which are a disposal that is open to the criminal courts under the Criminal Procedure (Scotland) Act 1995 in respect of a person with a mental disorder, following a trial or an examination of facts in connection with an offence punishable by imprisonment.

Section 329 of the 2003 act defines "compulsion order" as

"an order made under section 57A(2) of the 1995 Act"

Section 307 of the 1995 act defines it as an order having the meaning given in section 57A of the 1995 act. Although the definitions deliver a similar result, they are expressed in different terms.

It is worth recapping that a compulsion order can be made in three situations: when the person has been convicted of the offence; when the person has been acquitted of the offence on the ground of lack of criminal responsibility by reason of mental disorder; or when the person is unfit for trial and has been found at an examination of facts to have committed the acts constituting the offence.

As well as containing provisions on what a compulsion order is and what measures it can authorise, section 57A of the 1995 act makes provision allowing the court to make a compulsion order following a conviction. Section 57(2)(a) of the 1995 act makes provision allowing the court to make a compulsion order following an acquittal or an examination of facts, and subsection (4) of that section applies subsections (2) to (16) of section 57A for the purposes of an order.

It is understood in practice that orders that are made under either section 57(2)(a) or 57A(2) are covered by the current definitions. However, the user of the legislation is required to read section 57(2)(a) through the prism of the application of much of section 57A to section 57(2)(a), by virtue of section 57(4), in order to arrive at that understanding.

I hope that it is clear why we believe that it would aid users of the legislation if we were to recast the definitions and provide a clear, accessible and consistent definition across the 1995 act and the 2003 act. The best way of achieving that would be to refer, in both the 1995 act and the 2003 act, specifically to an order made under either section 57(2)(a) or 57A(2) of the 1995 act. Amendment 22 provides for such clarification, and makes a consequential change to section 1(6) of the 2003 act.

I move amendment 22.

Amendment 22 agreed to.

The Deputy Presiding Officer: Group 13 is on referrals to the High Court. Amendment 40, in the name of Dr Richard Simpson, is the only amendment in the group.

Dr Simpson: The first piece of legislation that was passed by our Parliament in 1999, and with which I was personally involved, sought to tackle

the situation arising from an appeal made by Noel Ruddle under the European convention on human rights against his detention in the state hospital following serious offences.

The Mental Health (Public Safety and Appeals) (Scotland) Act 1999 introduced the serious harm test, under which patients who were convicted on indictment or complaint and subject to special restrictions by the court could be subject to indefinite hospital detention if a mental disorder was present and they were considered to pose a risk of serious harm to the public, irrespective of the appropriateness of the order or the treatability of the subject.

The provisions in the 1999 act were subsequently extended in the Mental Health (Care and Treatment) (Scotland) Act 2003 to apply to all restricted patients in Scotland, who numbered about 250. Because of those provisions, a small number of patients have become stuck in the forensic mental health system. They have been reclassified, in terms of diagnosis, as having no diagnosis, as being personality disordered or as having a learning disability.

The minister had two arguments against a similar amendment—amendment 113—that I lodged at stage 2. His first argument was that the 2003 act covered personality disorder—of course, that is correct—and that in some way the forensic psychiatrists who backed my amendment were seeking to change that. However, that view is quite wrong. They are not seeking to change the incorporation of personality disorder into the 2003 act. That would indeed be a fundamental change, but that is not the intention of amendment 40, nor will it, as drafted, deliver such a change.

The minister's second argument was that an amendment to the Criminal Procedure (Scotland) Act 1995 to extend the time period for an interim compulsion order from six months to 12 months ensures that a full and rigorous assessment of the offender's mental disorder is undertaken before the final disposal is made. I concur.

However, the minister went on to say:

"It is very unlikely that an offender would be misdiagnosed in those circumstances, making it much less likely"—

not unlikely—

"now that a patient would receive a hospital disposal from the court that would create the scenario that Dr Simpson describes."—[*Official Report, Health and Sport Committee*, 26 May 2015; c 28.]

Again, the minister is correct—the numbers will be small. Most psychoses, if severe and enduring, will be evident within a year. However, for every patient who at the time of the offence had an acute psychosis due to, for example, drug or alcohol misuse that did not resolve until the year had expired, and the disposal was then found to be inappropriate because the diagnosis might be one of personality disorder or learning disability only, the nature of which would be better managed in a prison, without the amendment, we would continue to confine patients unnecessarily—and, in the context of austerity, very expensively—in a mental hospital rather than a prison.

Can that happen? Yes it can. The appeal mechanism is cumbersome, and scarce resource was employed in the case of Alexander Reid. In his case, the court of criminal appeal recognised that the change of diagnostic category could be considered as new evidence, and it allowed a fresh disposal. That allowed him to transfer to prison, which is what he wanted. However, the process for raising his appeal took several years.

There is an alternative approach to the problem that is raised by cases such as that of Noel Ruddle. There should be a mechanism by which the appropriateness of the sentence can be reconsidered for the—admittedly—very small number of patients whose diagnostic category has changed and whose detention in a psychiatric hospital is consequently inappropriate.

Not to act would mean continued substantial excess cost, which I am told amounts to £200,000 a year per patient, as well as inappropriate detention, against which patients would seek redress in the same manner as Mr Reid successfully did.

The whole approach in Scotland to personality disordered offenders was considered by a working group on services for people with personality disorder, chaired by Professor Thomson, which reported as long ago as 2005. The report recommended that the Scottish Government consider whether a mechanism should be created to refer such cases to the Scottish Criminal Cases Review Commission for consideration.

That view was rearticulated in 2011, when the forensic network gave evidence to the commission on women offenders, chaired by the Rt Hon Dame Elish Angiolini. Amendment 40 revises my stage 2 amendment 113 to make the group to whom that mechanism would apply more clear—that is, it would apply only to those with a compulsion order and a restriction order.

The faculty of forensic psychiatry's view is that offenders with personality disorder or learning disability only are far better supported and managed in the prison system than in the mental health system.

I move amendment 40.

Jamie Hepburn: Amendment 40 is similar to an amendment—amendment 113—lodged by Dr Simpson at stage 2. The only difference is that Dr

Simpson now proposes that the provisions should apply only to patients subject to both a compulsion order and a restriction order, whereas the stage 2 version would also have applied to patients subject to only a compulsion order.

I resisted that proposal at stage 2, and remain of the view, notwithstanding the narrowing of the provision to apply to a smaller patient subset, that this is a major issue and, given the implications for the criminal justice system, not one that we can sensibly consider without thorough consultation, particularly in light of the potential additional risks to the public.

Let me run through the reasons for my view in more detail. The amendment proposes new powers for the tribunal and the courts that would revisit the original sentencing and disposal decision. It also opens up what can be complex competing clinical opinions about diagnosis.

I understand that the approach is designed to address concerns among some psychiatrists that patients who are diagnosed—or, indeed, misdiagnosed—as having a mental illness or learning disability and who are made the subject of a compulsion order and a restriction order on that basis may later be diagnosed as having a personality disorder only. Had the court had full medical evidence based on that diagnosis, the result may have been a prison sentence rather than a mental health disposal. However, once the patient is in the hospital system, they cannot be released because they continue to satisfy the test for a compulsion order and a restriction order, due to the risk of serious harm that they pose.

The proposal would result in a significant shift in how mentally disordered persons are dealt with by the criminal justice system and, indeed, by the health service after conviction. The position in the 2003 act is that many patients who meet the conditions for a mental health disposal and require to be detained may most appropriately be detained in hospital rather than in prison.

As Dr Simpson mentioned, an amendment to the Criminal Procedure (Scotland) Act 1995 extended the time period for an interim compulsion order from six months to 12 months to ensure that a full and rigorous assessment of an offender's mental disorder is undertaken before the final disposal is made. In those circumstances, it is very unlikely that an offender would be misdiagnosed, so it is now much less likely that a patient would receive a hospital disposal from the court that would create the scenario that Dr Simpson seeks to address.

All patients who are subject to compulsion orders and restriction orders have the right to apply to the tribunal and to ask for the orders to be reviewed periodically. In addition, there is already a means for patients to have their cases considered on appeal. The same appeal route is used for offenders who receive a prison sentence but argue that they should have received a hospital disposal.

As I said at stage 2, the amendment is well intentioned. However, it concerns a major issue and has significant implications for the criminal justice system. We should not consider it without thorough consultation.

I urge Dr Simpson not to press his amendment; if he does, I strongly urge members not to vote for it.

Dr Simpson: The amendment says:

"the Tribunal may refer the matter to the High Court."

There is no compulsion on the tribunal to do so, but that means that it would consider the matter. That is an appropriate locus for an appeal against the previous diagnosis to be argued out, with experts appearing before the tribunal.

The minister says on the one hand that amendment 40 would be a major change to criminal procedure and, on the other hand, that it is very unlikely that the scenario would arise because of the change to the 1995 act. Those two points seem to be quite illogical—in fact, they are completely opposed to each other—so I fail to see why he opposes my proposed measure, which would simplify matters and could reduce costs in relation to the small number of patients concerned. I am told that it might apply to no more than half a dozen patients. Even if that is the case, £1.2 million is still being spent inappropriately on detaining people in the state hospital when they would be better managed in the prison system.

The faculty of forensic psychiatry and the Scottish Prison Service have had extensive discussions since the 2005 report. Both sides believe that offenders with personality disorder, absent another severe and enduring mental illness, should be managed in the prison system. The patients concerned believe that as well, but they have no easy mechanism to follow that up at the moment. The amendment would provide that mechanism. It has been carefully thought out and, therefore, should be agreed to, saving us money and improving the situation for that limited number of patients.

I press amendment 40.

The Deputy Presiding Officer: The question is, that amendment 40 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

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

The Deputy Presiding Officer: The result of the division is: For 49, Against 59, Abstentions 0.

Amendment 40 disagreed to.

17:30

The Deputy Presiding Officer: Group 14 is on review of criminal behaviour. Amendment 39, in the name of Richard Simpson, is the only amendment in the group.

Dr Simpson: Out of the 137 homicides committed by those with mental illness in the past 10 years in Scotland, only two appear to have been the subject of published reports by the Mental Welfare Commission, and few seem to have been the subject of adverse incident reviews by health boards. In England, over the same period, there were 576 homicides, 321 of which were the subject of reviews. Those English reviews suggest that 25 to 35 per cent of homicides could have been prevented if different actions had been taken.

It is important that we recognise and put on record the fact that cases of murder, culpable homicide or, indeed, violence by persons who are suffering from a mental illness are rare. However, the intention of amendment 39 is to amend the Criminal Procedure (Scotland) Act 1995 in order to provide in primary legislation clarity, consistency and accountability with regard to reviewing, reporting and taking appropriate action, where lessons can be learned, with regard to an offence as specified in proposed new section 63A(16) of the 1995 act that involves a person with a mental illness who is known to mental health services. The provision would apply to

"murder ... culpable homicide"

and

"such other offence as the Scottish Ministers may by regulations prescribe."

The amendment has three purposes: to ensure that we learn lessons so that in future, those with mental health problems can, as far as possible, be protected and prevented from committing such offences; to assure the families of the victims, and the victims, if they survive, that all that can be done to prevent a recurrence will be done; and to ensure that the public can have confidence in the NHS.

At present, we have a dysfunctional system of reporting and review. It involves decisions by multiple organisations—if, that is, they choose to act. Elements of the process include the procurator fiscal, the UK confidential inquiry reports into homicide and suicide, health boards and the Mental Welfare Commission. The commission can act if it believes that there is a deficiency of care, but how can it know that if the case has not been reported to it? Other organisations that might or might not have a role include Health Improvement Scotland and, indeed, the Health and Safety Executive. The minister can also order a review.

The issue was brought to my attention because of concerns that were expressed by the Hundred Families organisation, which draws together information and provides mutual support for families who are affected by such offences. My purpose in moving the amendment is to ensure that, under proposed new sections 63A(2)(a) and 63A(2)(b), the procurator fiscal informs the health board and the Mental Welfare Commission if a person with a mental health problem is charged.

At stage 2, the minister expressed concerns in relation to individuals who might be found not guilty or found to be incapable of pleading. However, the experience of Hundred Families is that, in almost every case, there is no attempt to hide, and the offence is almost always admitted. As members will see, my amendment, which I have adjusted to take account of the minister's concerns, says that the perpetrator has the opportunity to give permission and, if that permission is not given, the minister should proceed only if they feel that it is in the public interest to do so.

The proposal is not about guilt or innocence—that is a matter for the justice system—but about learning lessons and preventing future incidents. If a person with a severe mental illness is involved in an incident and is known to mental health services, usually from contact within the past six months, the health board would be obliged to make inquiries under proposed new sections 63A(3)(a), 63A(3)(b) and 63A(3)(c); it would also be obliged to prepare and publish a report and an action plan.

The minister also expressed a concern that the confidentiality of the patient would be infringed. I have addressed that by ensuring that, unless the person consents or publication is in the public interest, which is the alternative course of action, the patient's name should be redacted. The same restriction applies to mental welfare reports, which I believe should be placed before Parliament in a collation of health board reports. Those affected by these rare offences have a right to know that all that can be done will be done to prevent a recurrence.

I am aware of two further concerns about my proposal, the first of which relates to the length of time mental health services should have been involved to require them to conduct an inquiry. Instead of having a fixed time limit—or indeed no time limit—I have in the amendment, if it is agreed to, allowed the minister to determine the matter in regulations. Secondly, there is a concern that a review by the board would cut across the justice process. I believe that that is nonsense, because this is not about whether the offence was committed or what legal action was appropriate but about a review of the care and treatment of the person charged.

Finally, although I very much welcome the on-going discussions between the Mental Welfare Commission, Health Improvement Scotland and the health boards, will the outcome of their discussions be enshrined in primary legislation or regulations? It will not. For more than a decade, we have had a permissive system that has not been good, and enough time has passed for the law to be made clear.

I move amendment 39.

Jamie Hepburn: I thank Richard Simpson for his continuing work on the issue. Indeed, I know that he has been working closely with victims organisations in particular.

Although amendment 39 is similar to one that Dr Simpson lodged at stage 2, I note that he has sought to address in it some of the problems in the previous amendment. Notably, he has addressed concerns relating to confidentiality and has restricted the scope of the provisions to people who have been treated in the six months before being charged with an offence.

However, I still have fundamental concerns about a review being triggered upon a person being charged with an offence prior to any conviction. I am concerned that that would cut across the prosecution system, the independence of which is guaranteed by the Scotland Act 1998, and the requirement for a fair trial. I cannot accept investigations that run parallel to what the fiscal and the police are doing, especially if they involve the publication of findings that could interfere with that process. I do not believe that that is a nonsense—it is a serious concern.

I agree that a more streamlined process is needed to ensure that lessons are learned and shared across the system and to provide comfort and reassurance to families in these tragic cases. Members will be aware of the briefing covering the issue that the Mental Welfare Commission has produced for this stage of our consideration of the bill.

Under section 11 of the 2003 act, the commission already has a power to investigate cases of deficiency of care and, under that power, has from time to time investigated homicides by patients. The commission has proposed that, working with Healthcare Improvement Scotland, it should build on existing systems to ensure that all cases are reviewed appropriately. In doing so, it would consult key stakeholders such as the faculty of forensic psychiatry of the Royal College of Psychiatrists and, of course, Hundred Families. The commission has noted that it will be able to share an outline proposal with interested parties in the summer.

In light of the work that is already under way and my significant concerns about amendment 39, I urge Dr Simpson not to press it.

Dr Simpson: On the point about the triggering of a review on a person being charged cutting across the justice process, it is perfectly possible for the review to be undertaken and the report to be put together but for the report itself not to be published until the fiscal or the court determines the outcome. If the process is undertaken privately, it will not lead to the process being interfered with or to court cases proceeding in the way that concerns have been raised about. On that basis, I reject the minister's concerns about the matter.

I welcome the fact that the minister is proceeding with discussions with the various interested bodies to sort out a system that everyone, including the Mental Welfare Commission, accepts is dysfunctional, but I simply do not believe that we have regulators in Scotland with sufficient teeth to ensure that all cases are properly investigated. There is no great evidence to suggest that that has occurred under the current permissive system. Without regulation—which, of course, the minister will determine, subject to the Parliament's approval—I am not confident that, even with the best will in the world and new protocols being determined, we will not be sitting here in five or six years' time, debating exactly the same topic in exactly the same way.

I press amendment 39.

The Deputy Presiding Officer: The question is, that amendment 39 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

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

The Deputy Presiding Officer: The result of the division is: For 50, Against 59, Abstentions 0.

Amendment 39 disagreed to.

Section 44—Right to information: compulsion order

The Deputy Presiding Officer: Group 15 is on a victim notification scheme. Amendment 41, in the name of the minister, is grouped with amendments 42 to 48.

Jamie Hepburn: The amendments are all to part 3 of the bill, which introduces a statutory notification and representation scheme for victims of offenders who are mentally disordered and as a result subject to certain orders. The intention is to develop a scheme that resembles as closely as possible the scheme that is available to victims under the Criminal Justice (Scotland) Act 2003.

Amendments 42, 43, 45 and 47 make provision for providing information to victims when a tribunal has made a decision to revoke a patient's restriction order but the decision is successfully appealed and overturned.

Victims can choose to join the victim notification scheme. A victim can also opt into the victim representation scheme to make representations to the Mental Health Tribunal. To opt into the representation scheme, the victim must also opt into the notification scheme. If a victim has opted into the notification scheme but not the representation scheme, he or she will receive a notification only when the restricted patient's position changes and that change is covered by the scheme.

Matters are, however, complicated by the possibility of an appeal against the tribunal's revocation of a compulsion order or restriction order. They are further complicated by the fact that, under section 323 of the Mental Health (Care and Treatment) (Scotland) Act 2003, the court can make an order to render the tribunal's decision to revoke the order ineffectual until an appeal against it has been finally determined. The amendments provide for a range of scenarios in those circumstances.

When a victim has chosen not to join the representation scheme, and the tribunal's decision is appealed and the court makes an order under section 323 to suspend the decision of the tribunal pending determination of the appeal, the victim will be notified only if and when the order is revoked. That will happen once the appeal process is complete and the outcome is that the order is revoked. That is on the basis that there has not been a material change to the patient's position

and that the compulsion order or restriction order remains in place until the order is revoked at the end of the appeal process.

When a victim has chosen not to join the representation scheme, and the tribunal's decision is appealed but the court does not make a section 323 order to suspend the decision pending the determination of the appeal, the victim will be notified and kept informed of the appeal's progress. That is on the basis that there has been a material change to the patient's position—that is, that the restriction order or compulsion order has been revoked.

When a victim has chosen to join the representation scheme, the bill provides that the victim will be told of the outcome of the tribunal's decision. If that decision is appealed, the victim will get information that the decision has been appealed and information on the progress and outcome of that appeal, whether or not the court makes a section 323 order.

The bill provides for ministers to give a victim an opportunity to make representations about varying conditions that are imposed on a patient in a way that may affect the victim or members of the victim's family. Amendments 41, 44, 46 and 48 are intended to ensure that the provisions are workable in practice.

At stage 2, I lodged an amendment on the sort of information that may be provided to a victim about a patient, which covered conditions that restrict the things that the patient may do after his or her conditional discharge. I indicated that, in practice, that will commonly involve restrictions on where the patient can go and persons with whom the patient may have contact.

Having considered further how that would work in practice, I recognise that there could be circumstances in which the officials operating the scheme might not know which conditions could affect the victim or a member of the victim's family. If ministers failed to seek the victim's representations in those circumstances, they would unwittingly be in breach of their statutory duty. The amendments take account of that but still ensure the rights of victims to make representations on specific conditions.

I move amendment 41.

Amendment 41 agreed to.

Amendments 42 to 45 moved—[Jamie Hepburn]—and agreed to.

Section 45—Right to make representations

Amendments 46 and 47 moved—[Jamie Hepburn]—and agreed to.

Section 47—Associated definitions

Amendment 48 moved—[Jamie Hepburn]—and agreed to.

Section 50—Commencement

Amendment 23 moved—[Jamie Hepburn]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.

Mental Health (Scotland) Bill

The Deputy Presiding Officer (Elaine Smith): The next item of business is a debate on motion S4M-13599, in the name of Jamie Hepburn, on the Mental Health (Scotland) Bill. I ask members who are leaving the chamber to do so quickly and quietly.

17:45

The Minister for Sport, Health Improvement and Mental Health (Jamie Hepburn): The Mental Health (Scotland) Bill's overarching objective is to help people with a mental disorder to access effective treatment quickly and easily. It does so by improving the operation of the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Criminal Procedure (Scotland) Act 1995, which provide fundamental protections and safeguards to people with a mental disorder. The bill also introduces a victim notification scheme for victims of mentally disordered offenders in a way that respects the rights of both victims and vulnerable offenders.

I am grateful for the detailed and thorough scrutiny that the Health and Sport Committee gave the bill at stages 1 and 2, which has helped to ensure that we get it right and continue to maximise the protections and safeguards. The bill has been significantly improved during its parliamentary passage as a result, and I thank the committee members, as well as members who are not on the committee but have engaged with the process, for the work that they have done.

I will take a few moments to set out key aspects of the bill. The 2003 act brought in important protections including advance statements, which help to involve patients in decision making about their treatment by allowing service users to state how they would like to be treated if they become unwell. The bill strengthens the position of advance statements, gives service users greater confidence that their wishes will be taken into account in their treatment and ensures that the Mental Welfare Commission for Scotland has a better picture of the use of advance statements.

I am pleased that the Parliament supported Bob Doris's amendment 28, which will help service users to access support in taking up the opportunity to make a statement. We want advance statements to be used far more widely, and that was a common theme in the committee's scrutiny of the bill. Taking those provisions together, the bill should increase the use of advance statements and, through that, help more service users to have greater involvement in decisions about their treatment when they are unwell.

Many service users have found the role of the named person, which the 2003 act introduced, to be an important protection, as it gives someone they know a role to act independently to protect their interests. However, I listened to the significant concerns about the fact that service users do not always want a named person, particularly as that person will see confidential information about the patient's medical treatment.

The bill means that a service user will have a named person only if they want one. That is an important step in promoting service users' rights. Through stage 2 amendments, we ensured that protections are in place for vulnerable service users who do not have the capacity to decide whether to appeal an order or certificate, while ensuring that that does not impact on their privacy or autonomy.

The bill fulfils the intention behind introducing the excessive security appeal provisions in the 2003 act and the Millan recommendations by extending the right of appeal against being detained in conditions of excessive security to those who are detained in medium-secure units. The intention was to give patients in high-secure units and medium-secure units a right to appeal against detention in conditions of excessive security. We now need to ensure that the scheme that was provided for in 2003 can operate effectively in the present secure estate. Amendments that we debated today will ensure that we do that by extending the right to patients in medium-secure units as quickly as possible. I look forward to discussing that further when the committee and the Parliament consider draft regulations after the recess.

Those are just some of the key changes through the bill that will make the 2003 act work more effectively and enhance the experience of, and protections for, service users.

There has been widespread support for the introduction of the victim notification scheme for victims of mentally disordered offenders. The intention is that the scheme will respect the rights of both victims and vulnerable offenders and will closely resemble the scheme that is already available to victims under the Criminal Justice (Scotland) Act 2003. The scheme will be of huge benefit to victims who were not previously covered by the criminal justice scheme and it will provide them with greater reassurance when offenders begin the process of discharge from treatment.

We have also recognised that mentally disordered offenders may be vulnerable—that perspective was expressed by the committee during its consideration of the bill at its earlier stages—and we have taken that into account. I am grateful to the victims' rights working group, which included representatives of Victim Support and

Hundred Families, for its assistance in getting the balance right.

The bill amends the Mental Health (Care and Treatment) (Scotland) Act 2003, and I am aware that some members would have liked wider issues to be included. The bill is not a full stop at the end of a process, and I am happy to put on record my commitment to certain further steps. I have heard the concerns that a number of people and organisations have raised about the inclusion of learning disability and autism spectrum disorders under the definition in the 2003 act. I thank Jackie Baillie and Richard Simpson for the discussions that we have had on that. We have also debated the issue extensively at stage 3.

The 2003 act provides people with learning disabilities and autism spectrum disorders with protections, safeguards and—importantly—access to care and treatment, and it is essential that, in anything that we seek to do, we ensure that those protections continue. I have committed to reviewing the inclusion of learning disability and autism under the definition of mental disorder in the 2003 act. It is important that that review is genuinely participative and is commenced with an open mind about the outcome and process. As I set out earlier, we have started to discuss with stakeholders how we can undertake that engagement. I hope that the review further demonstrates our serious intent.

A number of committee members also raised issues about the role that psychologists play under the 2003 act, following consideration of the issue by the British Psychological Society, which I thank for its positive engagement. I also thank Dr Milne for raising the issue again today. It is important that we debate such issues. I have made the point before—I make it again—that I am sympathetic to the proposal in Dr Milne's amendment 33 but that I was not convinced by the provisions in the amendment. It is important that we have widespread consultation on the matter and, as I said, I am committed to looking at the issue alongside the wider review of learning disabilities and autism spectrum disorders. That is a serious commitment.

Amendments were lodged at stages 2 and 3 on the investigation of the deaths of patients who were in hospital for the treatment of mental illness and on the reporting of homicides by those who are being treated for a mental health condition. Although I did not believe that a legislative approach was appropriate, I was happy to accept amendment 36 at stage 3. Further work is necessary, and my officials have already started to explore with the Mental Welfare Commission how we can bring together a working group to develop a streamlined and effective approach to reviewing deaths in detention.

In relation to the reporting of homicides by those who are being treated for a mental health condition, the Mental Welfare Commission will work with Healthcare Improvement Scotland and the Government to produce proposals that build on current practice, to ensure that all cases are reviewed appropriately. In doing that, they will consult key stakeholders such as the forensic division of the Royal College of Psychiatrists and organisations such as Hundred Families.

I will ensure that the Health and Sport Committee is informed of developments on both those issues, and I will always be happy to consider the committee's perspective in any work that we undertake.

The bill is part of the wider work that the Government is undertaking to improve mental health services, including funding. I announced in May this year an additional £85 million for mental health over five years, beyond the £15 million over three years that was announced in November 2014 for the mental health innovation fund. That is £100 million in total.

We will work with NHS Scotland and its partners to get the maximum benefit from the investment. We will focus on further improvement to child and adolescent mental health services to bring down waiting times; improved access to services and in particular psychological therapies; and better responses to mental health issues in community and primary care settings, including promoting wellbeing through physical activity and, crucially, improved patient rights. I will be happy to keep Parliament up to date with progress on those matters.

The bill further enhances the ability of people with a mental disorder to access effective treatment quickly and easily, while maintaining and enhancing protections and safeguards.

I move,

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

17:55

Jenny Marra (North East Scotland) (Lab): I welcome the final stage of the Mental Health (Scotland) Bill. I thank the members who moved amendments this afternoon and who put all that work into considering the detail of the bill—specifically the minister and my colleagues Richard Simpson and Jackie Baillie.

We recognise that the bill is an important step in tackling one of the greatest public health challenges of our time. We can reflect today on the progress that we have made as a country in removing the stigma attributed to mental health problems and addressing the complex and varied

need for support that the many people who are affected have. In acknowledging the rise in awareness of mental health problems and the growing confidence that people now have in coming forward to access help, we also recognise that we still have much to do to ensure that a proper preventative agenda is in place and that we support people to overcome or better manage mental health issues.

The bill brings to an end a long and often technical process, which implements much of the comprehensive and detailed work of Professor Jim McManus and his review team on how we help people to access quick and effective treatment for mental health issues. The amount of work—which builds on Bruce Millan's review of some years ago—that has gone into the bill and the level of engagement on the detail from outside groups prove what a serious and important issue this is for our Parliament and Scotland.

I think that every member in the chamber shares my experience of dealing with a vast amount of constituency casework on mental health issues, access to mental health services and the effect of mental health issues on our communities and on families—every family in Scotland, I think.

I commend the Government for the early approach that it took to the passage of the bill by listening and responding to concerns that were raised at stage 1. I believe that we have improved the bill, which will be passed today with our support. However, there are areas in which we could have gone further, particularly on the definition of mental disorder and on patients' rights.

As we know, the Millan review in 2001 recommended that there should be an expert review at an early date of the position of learning disability within mental health law. That was echoed by the McManus review, which said in 2009 that it was time that a review was done. That is supported by a number of groups, including Inclusion Scotland and Enable Scotland. Inclusion Scotland said:

"We believe that evidence presented to the Health and Sport Committee raises serious questions on whether the safeguards in the 2003 Act, particularly on the role of Mental Health Officers and the right to advocacy, are working as intended, and on whether mental health legislation is compatible with ... ECHR.

Inclusion Scotland therefore believes that the time is right for a more comprehensive review of mental health legislation in Scotland to ensure compliance with human rights obligations and to provide specific legislation to meet the needs of people with learning disabilities or Autistic Spectrum Disorders."

Enable pointed out that

"14 years after a review was first recommended in Millan, people with learning disabilities are still waiting for a review to take place.

The case for a review was made very ably today in this chamber by my colleagues Richard Simpson and Jackie Baillie. Jackie Baillie's amendment 1 would have instigated a major review of mental health services, putting rights first.

Jamie Hepburn: Will the member take an intervention?

Jenny Marra: I would like to make progress first, thank you.

A major review would have explored whether learning disability and autism should be considered mental disorders. It would have scrutinised the human rights implications of a patient's right to refuse treatment. It would have allowed us to have a proper look at advocacy services and allowed transparent investigations into deaths in mental health units or under community treatment orders.

With both reviews calling for that change, many of the mental health charities and other organisations supporting it, and a well-argued amendment by my colleagues, this was an opportunity to make that change, which is needed. Although we are disappointed that the Government failed to support that approach today, there is enough in the bill in its current form for us to support the Government and welcome the passage of the bill.

Jamie Hepburn: Ms Marra suggests that we have rejected the approach that will see a review of the inclusion of learning disability and autism within the scope of the 2003 act. That is fundamentally not the case. I have committed repeatedly now to that review. We will undertake that review. I presume that the member will welcome that fact.

Jenny Marra: I thank the minister for that assurance but it is my understanding that Jackie Baillie's amendment was rejected by the Government. Will the minister clarify that?

Jamie Hepburn: The debate was around the specifics of the amendment. We had the detailed debate. I am happy to go over it again in closing. Rejecting the amendment was not about rejecting the principle of having a review—I have committed to the Government undertaking that review; we will have that review. There were just some concerns about the specifics of Ms Baillie's amendment.

Jenny Marra: When the minister sums up, I hope that he might put a timeframe on that review and make a commitment to that.

We welcome many of the well-thought-out steps that will be implemented as a result of the bill with regard to advance statements and advocacy. However, we cannot leave the chamber today with the sense of a job done. In Scotland, a quarter of people will experience a diagnosable mental health problem at some point in their lives. The varied and complex nature of mental health and the slow and invisible way in which a mental health problem can take hold of people's lives mean that we have to stay vigilant and continually look forward to improve support for mental health.

Scotland has long been regarded as a world leader in its support for mental health, and the Parliament is rightly proud of that. However, if that is to continue, we must keep building on it and ensure that we are offering person-centred, rights-based support.

18:02

Nanette Milne (North East Scotland) (Con): I add my thanks to the Health and Sport Committee clerks, the bill team, and the many witnesses and stakeholders who have been so helpful throughout the parliamentary process of the bill.

The Mental Health (Care and Treatment) (Scotland) Act 2003 was a very important piece of legislation, which sought to minimise interference in people's liberty and maximise the involvement of people with mental health issues in their treatment, giving them the right to express their views about their care and treatment, the right to independent advocacy, the right to submit an advance statement about how they wish to be treated when they become ill, and the right to choose a named person to act on their behalf when necessary.

Twelve years on from that act, and following the McManus review in 2009, it became clear that some aspects of the 2003 act were not working as well as intended. The current bill aims to improve and bring additional clarity to the act so that patients indeed benefit from the intended minimum interference and maximum involvement with their treatment.

The principles of this amending bill were generally welcomed at stage 1, but it was recognised that significant amendments would be needed to ensure that the policy intention became effective, and there were serious concerns in certain policy areas. Amendments at stages 2 and 3 have served to allay a number of the concerns that were expressed to the Health and Sport Committee by witnesses and stakeholders, but some remain unresolved.

The minister has made it very clear that he sees the current bill as a light-touch review of the 2003 act and that he does not intend to accept more fundamental changes without further detailed consultation and review.

Among the amendments to be welcomed is the one that removes the initial proposal to extend the period of short-term detention from five to 10 days—an issue of concern that was raised by the Law Society—and the Mental Welfare Commission for Scotland is pleased to see the limit of a suspension of detention kept at 200 days and not extended to 300 days as originally proposed.

The tightening of the bill to ensure that a named person is identified only when the patient wants one, the requirement for health boards to publicise the support that they offer to make or withdraw an advance statement and to respond to requests about such support from the Mental Welfare Commission, the right of appeal for named persons in cases of cross-border transfer, and the steps taken to gather information about the provision of advocacy services so that they may become more readily available to people who wish to use them are all very welcome improvements to the bill as originally proposed.

However, concerns remain, particularly—as we heard a lot this afternoon—around people with learning disability and those on the autistic spectrum, who are currently included within mental health legislation because they have those lifelong conditions, whether or not they are also mentally ill. There are differences of opinion among experts as to whether that is right, but there is strong feeling among those affected that current mental health legislation is inappropriate, and that learning disability should be defined as an intellectual impairment rather than a mental disorder. A strong plea has been made for a wholesale review of mental health and incapacity legislation.

Such a review was proposed by the Millan committee as far back as 2001 and it was again recommended by McManus in 2009, so there is understandable frustration that it has not yet been achieved. The minister's clear commitment to a comprehensive, participative review of the inclusion of learning disability and autism in mental health legislation is very welcome, and I can understand why he does not want to commit to a timescale that might curb the scale of the review. Nevertheless, there is a degree of urgency about this, and I am sorry that the minister did not accept Jackie Baillie's stage 3 amendment to ensure that it would be done within three years.

Jamie Hepburn: I understand where Nanette Milne is coming from and I understand the frustrations that exist out there—that is one of the reasons why we have committed to undertake the review. She spoke about urgency and the necessity of getting on with the task, and in that

regard I can say—as I have already pointed out—that officials are in dialogue with some stakeholders on the process. We are beginning the process. I hope that that gives a signal of our intent.

Nanette Milne: I understand and fully accept the intent, but we would really like to know when the process will end, rather than that it has begun.

There are unresolved issues around the use of psychoactive substances. The minister has agreed to consider them during the promised review, which is welcome.

This amending bill, which intends to clarify and improve the implementation of the 2003 act in the interests of the patients who are affected by it, is timely and welcome, but I expect that more changes will be required after further review has taken place. Significant advances have already been made in helping patients with mental health problems, but that is still work in progress, and continuing scrutiny of current legislation must be on-going, with an open mind regarding further changes as and when required.

I have confined my remarks to some of the proposals in part 1 and have chosen not to elaborate on parts 2 and 3, on criminal cases and victims' rights. I merely add that the legislative changes proposed in parts 2 and 3 are welcome, and we are supportive of them. All in all we are comfortable with the amending bill, which we will support at decision time this evening.

18:08

Bob Doris (Glasgow) (SNP): I welcome the Mental Health (Scotland) Bill as amended at stage 2 and stage 3, which I very much hope and believe will be passed this evening. The bill is specific and focused and will deliver in a number of significant, although in some regards incremental, ways to benefit the people of Scotland.

I am pleased that members agreed to my amendment to place a duty on health boards to publicise any support that they offer in the making and withdrawing of advance statements and to require them to provide information to the Mental Welfare Commission in meeting that duty. I very much hope that that will drive change, boosting the awareness, numbers and use of advance statements and ensuring that the wishes of those with mental health disorders regarding their treatment and their lives are respected where they can be.

I am pleased that we have extended rights in other areas, such as the rights of victims of crime to a victim notification scheme. It is fitting and correct that we have done that.

This bill has also been a listening process. As I said, the Scottish Government listened to my case about advance statements at stage 3, and it backed a variety of other amendments, including some at stage 2. One of my amendments was about restricting the amount of invasive treatments that a cross-border absconding patient could receive as emergency treatment should they arrive in Scotland. The Government moved to protect the rights of those vulnerable, if at times challenging, individuals, and it was fit and proper that that was done.

The issue of learning disabilities in the bill has been shaped by the whole Parliament. A Government that listens will accept some—quite a lot, but not necessarily all—amendments that are lodged, which is right. There seems to be an undercurrent that if the Government does not accept all the amendments on learning disabilities it is somehow not listening, but that is simply not the case. I look forward to receiving more information about a review of learning disabilities, and I hope that we will have a rights-based approach to treating people with learning disabilities and those living with autism.

I hope that we can give cognisance to how aspects such as the implementation of self-directed support by local authorities, particularly in Glasgow, has negatively impacted on those with learning disabilities in the city that I represent, and I hope that that can be reflected in how we take the measure forward. We need service provision for those who are living with learning disabilities. Some fine learning disability centres in Glasgow were gateways that enabled vulnerable adults to engage and interact with the wider community, but many of those people have been left without the required support because their right to that facility was withdrawn by the local authority. In considering how we treat and respect those who live with learning disabilities, we must look at the role of local authorities and ensure that they fulfil their obligations regarding the rights of those people—certainly the people who I represent in Glasgow feel that many of their rights have been withdrawn. I look forward to supporting the bill, which will improve the lot of those who live with mental health challenges in Scotland.

18:12

Rhoda Grant (Highlands and Islands) (Lab): This bill is welcome and the changes that it makes to the law will make a positive difference to the lives of individuals. However, it is clear that much more needs to be done. We must give mental health the same focus and consideration as physical health. There is still a huge amount of misunderstanding and stigma surrounding mental

health, and through the laws we make we need to tackle that.

Like other members I was disappointed that amendment 1, in the name of Jackie Baillie, was not accepted. It is clear that mental health legislation covers people who are not mentally ill but who have learning difficulties or other conditions such as autism. Those people need additional support, but their condition is not a mental illness, albeit that at times they may be predisposed to mental illness due to their isolation from wider society. We need laws that not only support and protect such people but go further to integrate them into society—perhaps we need laws to change societal attitudes and structures so that people do not face the barriers and attitudes that prevent them from playing their full part.

When I spoke to constituents about the bill, they told me about the lack of services available for people who have personality disorders. Those people do not receive crisis mental health support and they are often left for the police to deal with. Sadly, one constituent told me that that was not necessarily such a bad thing, given that the police often showed more compassion than those providing mental health services. Although I acknowledge the compassion that the police exercise when dealing with vulnerable people, that should not be the only help available for those with personality disorders who have become psychotic. There must be a better way of providing them with emergency mental health support through the health service.

There is also a lack of support for carers, especially when the cared-for person comes out of hospital. We all know that that transition is a time of the greatest risk of suicide, yet carers are often ignorant of that risk and how they can best support their loved ones. That is not right. Carers should have the information and support that they need to help recovery, especially during the early stages, when the risk is greatest.

That issue was raised with me recently by carers of people who had suffered brain injury. I reiterate that mental health services deal with illness rather than injury or disability. Carers are left to care for their loved ones, not knowing how the condition will progress, whether it will improve and what, if anything, they can do to enhance recovery. There must be a better way of supporting people in that situation.

We need to reassess what is covered by our mental health services and where the gaps are with regard to disabilities and brain injuries. We need to ensure that services are available to all and are compassionate and caring. I hope that the Government reviews the current legislation and renews it in order to make it fit for its intended purpose and to ensure that emergency provision is available for all.

I welcome the bill but hope that we will deal with the issues of mental health impairments and brain injuries before too long. Carers and patients cannot afford to wait much longer.

18:16

Jim Hume (South Scotland) (LD): I am pleased to see the Mental Health (Scotland) Bill at this final stage. I am hopeful about the positive changes that the bill will make to the Mental Health (Care and Treatment) (Scotland) Act 2003. As I noted earlier, the bill must aim to protect the vulnerable while extending their rights. Like others, though, I believe that if it had been amended today in certain areas, it would have been so much better.

Throughout the passage of the bill, we have heard concerns that patients are not its focus; that patients' rights are compromised for the sake of administrative ease; that issues of patient privacy are not taken as seriously as they should be; and that mental health officers and staff are expected to undertake an overwhelming number of tasks despite overstretched resources and a reduced workforce. Like other members, however, I was pleased that there was wide outreach to key stakeholders and organisations. The British Psychological Society, Inclusion Scotland, Autism Rights, the Scottish Association for Mental Health and many others helped to improve key components of the bill. We are very grateful to all of those organisations.

I was pleased that a number of amendments to the bill sought to address some of its shortfalls. There was Dr Simpson's amendment on psychotropic substances and the minister's move to safeguard patients' rights by extending notification of detention to a patient's guardian or welfare attorney. Jackie Baillie urged ministers to review the meaning of "mental disorder" within a specified period. I was disappointed that that amendment was not passed. By successfully amending the bill, we would have created a stronger bill, which would have addressed a number of those shortfalls. Much hard work still lies ahead, including addressing the rights of those with learning disabilities.

Although the bill aimed to help people with a mental disorder to access effective treatment quickly and efficiently, I remain concerned about the state of our mental health system in Scotland. We can legislate, and we can try to protect the vulnerable and ensure that everyone's rights are protected, but we cannot ignore the condition that the mental health system is in. Services are severely underfunded and staff are overworked, all

against a background of a growing number of people of all ages asking for help and support.

Most important is the fact that mental health is not yet enshrined in law as being of equal importance to physical health. That is a provision that is lacking from the wider legislative framework in Scotland. I am pleased that steps are being taken by Parliament to address mental health but remain worried about how much longer we will have to wait until serious action is taken to remove the disparity.

Jamie Hepburn: I praise the member for his consistency in raising that issue. I will not rehearse again the fact that there is already equality in law. Jim Hume suggests that there was a need to legislate. We had a legislative vehicle—we had the Mental Health (Scotland) Bill—but I am not aware of Mr Hume having introduced an amendment to that effect.

Jim Hume: We looked into that but realised that the structure of the bill was such that we could not introduce an amendment seeking parity of status between mental health and physical health.

We know that mental health problems do not affect just a small and invisible group of people; they affect one in four Scots at some point in their lives. Children and adolescents are being admitted to hospitals in growing numbers due to self-harm and eating disorders, and people are taking more and more days off work because of underlying causes such as depression and anxiety, which are conditions that our society continues to stigmatise.

I am hopeful that we are taking the right steps today to help our fellow citizens get better access to treatment while ensuring that their rights are protected. I hope to see further action taken in law and in practice to create a mental health system in Scotland that sets a standard to be followed and is fit for the future. We shall, of course, support the motion on the bill at decision time today.

18:20

Mark McDonald (Aberdeen Donside) (SNP): The bill is a very important piece of legislation, but it is close to me personally for a number of reasons. I have experience of close family members who have gone through periods of mental ill health, some of whom continue to go through such periods. I therefore have a very strong interest in mental health. Aside from that, I am also interested in learning disability and the autistic spectrum, so I will address that issue first.

There is often a feeling that in politics we invent division where division does not exist. Amendment 1, in the name of Jackie Baillie, was rejected, but the intention behind it and what it sought to do were broadly supported; indeed, they were supported by the Scottish National Party in the Parliament, which is why the minister has committed repeatedly to undertake a review. However, I rejected amendment 1 because I felt that it had technical elements that might have constrained the process at a later stage.

One thing that might be helpful—I am interested to know whether the minister might be open to this at a later stage—is to have an early, wide-ranging stakeholder event that could look at, for example, terms of reference for the review and other matters that require to be considered. That could be an opportunity to demonstrate good faith to those on different sides of the chamber who have expressed doubt about the Scottish Government's commitment to the matter and could be a helpful approach. I wonder whether the minister could address that in his closing remarks.

To respond to Jim Hume's comments, I think that another difficulty that we often face in politics is that we overstate the effect of certain situations on sections of our society and our health service. There is no doubt that mental health services face pressures, but all our health services face pressures. It is the nature of the health service that it will face pressures, because it is a demand-led service and people will seek out support and help from it as they require it.

If we look back to mental health services prior to the SNP Government coming into being, we see that there has been a remarkable improvement in the funding that is allocated to them and in the driving down of waiting times for treatment. I would not disagree for a second that there is more to be done; indeed, the minister has said repeatedly that there is more to be done on waiting times for mental health treatment. However, I think that anyone who looked at the situation that the SNP Government inherited and compared it with where we have got to would be hard pressed to say that no progress had been made. That is not to say that there is not more to be done, though. That is why it is welcome that the minister has on more than one occasion announced funding allocations specifically to drive improvement in mental health services.

Funding is not the only answer in this area, however. Funding for mental health services is important, but it often focuses on dealing with problems as they arise. We cannot prevent all mental health conditions from arising and we know that mental health problems can affect anybody in society at any time, but we can look at where in society there are more occurrences of certain mental health problems and see whether they are linked to societal pressures. In particular, I would welcome an opportunity for us to consider—perhaps not in the Parliament but elsewhere—the great pressures that young people in society now

face as a result of their interactions with one another through social media. The impact that those can have on young people's mental health merits further examination at some stage.

I welcome the bill and I hope that it receives unanimous support at decision time.

18:25

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I, too, welcome the bill. As ever at stage 3, we have to decide whether the glass is half empty or half full. On one hand, we certainly welcome the fact that several amendments that were lodged at stage 2 and 3 were accepted, but on the other we are disappointed that the Government rejected some good amendments today. I should say to the minister that the glass is quite small compared to that for the original bill in 2003. I note that the minister has had 48 amendments to deal with at stage 3 today whereas, in 2003, there were 756 amendments at stage 3 and 1,367 at stage 2.

Jamie Hepburn: Does Malcolm Chisholm agree that that speaks to my collaborative and open approach at stage 2?

Malcolm Chisholm: I think that we were collaborative in 2003, as well.

Clearly, the bill is an amending bill, so in due course there might well be a need for a wider review, not only of the learning disability issue—I hope that that review will proceed without delay—but, in the longer run, of how the mental health legislation interacts with the Adults with Incapacity (Scotland) Act 2000, given the different and overlapping functions and the different definitions of incapacity.

Obviously, the discussion is set against the backdrop of the principles of the 2003 act, including those on reciprocity and the least restrictive alternative. All the things that we have discussed today relate to what was set up in the 2003 act—for example, the Mental Health Tribunal for Scotland, the named person and advocacy rights. On the progress that has been made, it is good that changes were made at stage 2. The proposal in the bill to extend short-term detention from five days to 10 days was reversed, and the proposal for a default named person was also rejected at committee.

Today, we have made progress on suspension of detention and—through two Richard Simpson amendments—on statistical information and the review of deaths in detention. On advocacy, we have had perhaps one of the most welcome advances today, and all credit to the minister for that. We have also had Bob Doris's amendment about health boards publicising support for people to make advance statements. However, we in the Labour Party are disappointed that there is not a stronger duty to promote advance statements. We are also disappointed with the limited progress on levels of security, although I will not rerun that debate now.

I am very disappointed that there was no movement on psychologists. At one point—perhaps it was in committee—the minister invoked the fact that it is not appropriate to deal with that issue in an amending bill, but the proposal was for a very discreet change, particularly given that it was to be done through regulations. It was unfortunate that the minister completely rejected that opportunity.

Some recommendations in the McManus review have not been taken up, although we welcome the fact that many of them have been. The 2010 Equal Opportunities Committee report on McManus is worth looking at, as it focuses very much on the equality issues in McManus and the original legislation. Equality was one of the 10 Millan principles, but there are still concerns about equality issues for some groups in relation to the legislation; for example, we know that there is still an issue about young people in adult beds. McManus and the Equal Opportunities Committee also highlighted the duties of local authorities under sections 25 to 31 of the 2003 act to promote the wellbeing and social development of all persons in their area who have or have had mental disorders. That is outwith the scope of the amending bill, but we should not forget those wider aspects of mental health.

My final point is made just to remind us of that. I welcome all the progress that has been made on mental health, but we have all seen the horrifying story on today's front pages about a postnatal depression tragedy that arose in my area because a service was not available for the woman in question.

We know that there is a lot still to do, but we welcome the progress that has been made on mental health in general and in the bill.

18:30

Mary Scanlon (Highlands and Islands) (Con): I, too, commend the members of the Health and Sport Committee for their sterling work on the bill, and give credit for all the progress that is contained in it. I appreciate that it is a step in the right direction, but we would be failing in our duty to mental health if we did not put on record how much more there is to do.

In amendment 1, Jackie Baillie asked for a review. It is reasonable that the minister said that he would conduct a review, but we were promised the Sandra Grant review of mental health services

in 2004. We thought that we were being very reasonable in giving that review 10 years to be completed, but 2014 came and went, and we are still waiting for it. I know that it is supposed to come later this year, but the Government needs a prod in the right direction.

In preparing for the debate, I looked at my closing speech on the Mental Health (Care and Treatment) (Scotland) Bill in March 2003, which was made in the week before dissolution of Parliament. I said that it was with "a sigh of relief" rather than a sense of pride that I contemplated the passing of the bill, given the huge number of amendments that had been lodged. I said at the time—I think that others said it, as well—that the legislation would be effective only if health boards and local authorities gave it the priority that it deserved.

I looked up what the Mental Health (Scotland) Bill's policy memorandum says about local authorities. Paragraph 168 states:

"The Scottish Government does not consider that the measures in the Bill have any disproportionate effect on local government."

The policy memorandum also states:

"Mental health officers are affected by the terms of the Bill".

It seems that the Scottish Government has not been listening to the many calls that have been made. I give credit to Jim Hume and many other members who have highlighted the drastic shortage of mental health officers across Scotland and the increased workload that Parliament has imposed on them. At Highland Council last week, it was stated that mental health officer reports that are legally required within three weeks under the Adults with Incapacity (Scotland) Act 2000 are taking three years. That patient group's being unlikely to complain is not a good reason for not providing sufficient staff to ensure that support is given. I do not disagree with the abolition of ring-fenced funding for local authorities, but the Scottish Government should at the very least ensure that local authorities fulfil their statutory obligations in line with the bill that we will pass today and with previous acts of Parliament.

It is worth considering why mental health should be a priority. According to an Audit Scotland report, up to 75 per cent of people who use illegal drugs have a mental health issue. Up to 50 per cent of people with alcohol problems have a mental health issue—that is often called self-medication. Seven in every 10 prisoners are identified as having mental health problems, one in every three visits to a general practitioner is to do with a mental health issue, and about 9 per cent of our population are on anti-depressants.

The bill deals with access to treatment. The first Millan principle is:

"People with mental disorder should, wherever possible, retain the same rights and entitlements as those with other health needs."

If those people have the same entitlements as others, why do only eight health boards meet the child and adolescent mental health services target of 90 per cent being seen within 18 weeks? In NHS Tayside, only 35 per cent of children are seen within 18 weeks, and there is a median wait of 49 weeks. That is not good enough. In March this year, 4,200 children waited to start treatment in a CAMH service, which is not good enough. If that was not bad enough, I was absolutely shocked to read that 17,530 people are on the waiting list for psychological therapies. That figure is up by 1,500 since the minister took office.

The Government needs to look at how positive mental health can influence physical health. We do not need more legislation; we simply need better understanding, more empathy and better working together. It need not cost more money.

18:35

Dr Richard Simpson (Mid Scotland and Fife) (Lab): The bill is modest but, as Mark McDonald and Jenny Marra said, it is important. It is based on the McManus report but, as Malcolm Chisholm reminded us, there was a massive number of amendments to the 2003 bill—the number of amendments today was fairly modest, thank goodness—but even then not all the McManus proposals were included.

I welcome the fact that the Government carefully considered the evidence, the stage 1 report and the stage 2 debates. As a result, I can commend the Government for acknowledging concerns, which has led it to withdraw some of the original proposals, such as the proposed 10-day extension to tribunal hearings, the length of time to appeal against transfer, and the proposed possible extension by 100 days of the community treatment order suspension period.

I also particularly welcome the victim notification scheme and some of other measures in the bill that will undoubtedly help the mental healthcare and treatment of people in Scotland. I regret that the nurse's power to detain was not left as it was. I still do not understand where all that came from or what consultation was done on it. It is fine to tighten up the rules, but existing cases were not being reported to the Mental Welfare Commission in the first place, so that is what needs to be tightened up rather than the rules and whether detention should be for two or three hours.

I also regret that many of my, Jackie Baillie's and Nanette Milne's amendments were rejected.

They were lodged after careful consideration of the evidence that had been presented and after discussions with and support from a number of organisations. Notwithstanding their rejection, I hope that many of them will be part of the wider review that the Government has already instructed civil servants to start thinking about. I welcome the sense of urgency that the minister is lending to the issue. I hope that he will be able to continue to apply that pressure.

Learning disability, or intellectual impairment, and autism spectrum disorder will need to be addressed. Mark McDonald called for a wider stakeholder conference to look at the remit for the review. I hope that the minister will consider that and I hope that it will not be some sort of internal review that leads to a bill, but that there will be a full-blown commission of the same sort as the Millan commission. Millan and McManus recommended that all the acts—the Criminal Procedure (Scotland) Act 1995, the Adults with Incapacity (Scotland) Act 2000, the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Protection of Vulnerable Groups (Scotland) Act 2007—be considered. As the minister has said, that will be complex and will require a commission that is of good standing and which can command broad support. If we begin with the sort of conference that Mark McDonald suggested, we might be able to set an appropriate remit.

There are serious concerns about a range of issues. The right to refuse treatment is fundamental, but it is not applied to people who have mental health problems except under specific conditions. It does not apply if they give an advance statement; that was rejected today.

The use of psychoactive medicines is still far too widespread. The fact that antidepressants were being used in increasing amounts was appropriate because GPs were learning to prescribe appropriate doses for longer periods. However, the amounts that are being prescribed have gone on rising and it is becoming a matter for concern, although the particular target on that has been dropped.

There is the vexed question of the difference in application between a seriously impaired decision-making ability under the 2003 act and the definition of incapacity under the 2000 act. That needs to be addressed. Use of physical restraint has been addressed in respect of children, but it needs to be looked at again for adults because it might be being used inappropriately in one or two situations. The number of people who have been adversely affected by the issues that I have mentioned might be small, but one is too many. The guardians of good care and treatment should have more powers.

The Mental Welfare Commission in its many helpful reports draws attention to too many occasions on which it has not been able to get the information that it requires. The acceptance of amendments 25, 35 and 36 will undoubtedly help in that regard, but Scotland must have regulators that have teeth. If we continue to have regulators—the Healthcare Environment Inspectorate and, on occasion, the Mental Welfare Commission—covering only small areas, that will not be enough. We need to look again at HIS, the Care Inspectorate, and the Mental Welfare Commission. We decided not to integrate them during the previous reform, which was the correct decision at the time, but there are now issues that may need to be looked at.

I agree and disagree with Mark McDonald's comments on mental health. I agree that there has been progress in care plans for patients who have severe and enduring mental illness. However, on child and adolescent mental health, although there was progress on the issue of admissions to adult wards, which was welcomed by the Mental Welfare Commission, the situation has gone backwards since 2009, as Malcolm Chisholm reminded us.

Mary Scanlon listed a number of issues, including the number of MHOs, which has reduced, and local authorities' ability to deal with mental health. She also listed a number of other areas of concern with which I agree, particularly in relation to prisoners, in respect of whom far more must be done.

Rhoda Grant drew attention to personality disorders, which are still not being managed effectively in Scotland, as well as to intellectual impairment that is associated with brain damage.

I thank all those who gave evidence, and the many organisations that helped me to formulate the amendments and gave support on issues that were raised. I also thank the Parliament's legislation team, whose drafting and responses to the changes that I sought were always patient and often creative.

The debates have been of value if only to inform the review. We have made progress since 1999, but we must keep moving forward and acknowledge the changes that have been made, in particular in neurodevelopmental science, but also in the culture. We must change things, but Labour will fully support the bill tonight.

18:41

Jamie Hepburn: I thank members for their speeches. I will try and cover as much ground as I can.

Although the bill has a relatively narrow focus, many of its provisions will make a difference for service users. Jenny Marra was right to talk about the constituents who approach us about many mental health-related issues. It is always important to have them in mind as we progress this work.

The bill has, at its heart, the aim of protecting service users' rights and interests and of ensuring that the system under the Mental Health (Care and Treatment) (Scotland) Act 2003 works as effectively as possible. As I have said before, I am grateful to members and stakeholders for working with the Government to get the provisions exactly right. It has been a collaborative process. We have been able to work with the Health and Sport Committee very effectively to ensure that the bill is as good as it possibly can be.

The bill is only part of the Government's wider programme to improve mental health services. Rhoda Grant is right to say that more must be done. She and other members can be assured that my focus will always be on that. Nonetheless, it is important that those who need compulsory treatment under the act are able to access treatment quickly and to have their rights and interests protected. The bill will play a key role in doing that.

Jenny Marra raised concerns about the bill's compatibility with the ECHR. I take seriously the responsibility to have due regard to human rights. It is essential from a human perspective; it is also a legal requirement. The bill is underpinned by various processes of appeal and rights to express a view. I believe that the bill is compatible with the ECHR. I am unaware of any ruling that says the 2003 act and this bill are not compatible with it. I assure her that I will always listen and respond to serious concerns.

Various members have raised the review of the inclusion of learning disability and autism spectrum disorder in the scope of the 2003 act. I recognise the disappointment that the review has not taken place sooner. Let me be clear: I made the commitment to that review in the Government's response to the committee's stage 1 report. That commitment was made in advance of amendments at stages 2 and 3. It is a serious commitment.

Work has tentatively begun to engage stakeholders. I hope that that is an indication of our serious intent. Bob Doris asked whether the approach would be rights based. He can be assured that I absolutely commit to that being the process that we will follow.

I say to Mark McDonald—and to Dr Simpson, who latched on to his suggestion—that I am absolutely open to an early stakeholder event to help move the process forward. I will ensure that Scottish Government officials move forward on that basis.

There is no disagreement across the chamber on the need for a review. The Government was not able to accept the amendment on that—amendment 1—that was debated earlier not because of the principle but because of some of the mechanisms. It contained a hard timescale, which is not necessarily helpful to ensuring that we have the fullest review possible.

More substantially, amendment 1 provided for the removal of learning disabilities from the definition of mental health disorder by way of regulations if the review concluded that that had to be done. I am not convinced that that is the best way forward because it would summarily remove all the protections and rights that people with learning disabilities have under the 2003 act without replacing them. I do not think that any of us would want to proceed on that basis. The point that was made about the need for scrutiny of any measures that might be introduced is valid, and I am not convinced that that could readily be done by introducing regulations.

Let me be clear: the review will be participative and we have not yet determined exactly how it will be conducted. We want to involve stakeholders in shaping it. I am committed to beginning it as soon as possible, and I do not want to put an artificial timescale on its conclusion. The timescale that was set out in amendment 1 might be possible. I make my commitment: I want the review to be concluded as soon as possible but it is important that we do not curtail it, especially in light of the fact that I have also committed to the review covering the use of psychotropic substances and the inclusion of psychologists in the scope of the legislation.

Jim Hume and Mary Scanlon referred to the burdens that the Parliament places on mental health officers through its legislation. I recognise the invaluable contribution that mental health officers make to improving the lives of mental health patients, their friends and their families. I said earlier that the Government has announced an additional £85 million of investment over the next five years but, taking the investment that was announced in May and November last year, our additional investment in mental health services is £100 million.

The Scottish Government has also undertaken a scoping exercise to gather evidence on the capacity of the mental health officer workforce. That includes data provided in Mental Welfare Commission reports and the Scottish Social Services Council's most recent workforce data report on mental health officers in Scotland. We will consider the draft report of that work in due course.

Mary Scanlon: I gave the example that Highland Council, which should, under the Adults with Incapacity (Scotland) Act 2000, provide a report by a mental health officer in three weeks, cannot do that in three years. How will the £150 million—I think that that is what the minister said—impact on the workforce planning? Does that mean that more mental health officers are coming through the system?

Jamie Hepburn: It is important to clarify that it is £100 million, not £150 million, although that is still a substantial sum of money, as I am sure Mary Scanlon agrees. There is a range of ways that the additional money can be used to improve systems, including what Ms Scanlon suggests.

Malcolm Chisholm raised the need for further promotion of advance statements. The Mental Welfare Commission is currently undertaking a project to promote them, and the provisions in amendment 28, which Bob Doris moved, will complement that work. As I said to Mr Chisholm in our debate on amendments, I have also suggested that the working group on the code of practice consider further whether the guidance that it has could help to promote their use. It is essential that advance statements be used more widely, and I am serious about us working to that end.

I have heard general support for the bill from across the chamber. That is very welcome. I have also heard some disappointment that some amendments were not accepted. I understand that. The amendments were all proposed earnestly, but they were not necessarily an effective way forward.

I also recognise that, beyond the bill, there is more to do. The bill is only part of the work. Members can be reassured of my commitment to doing everything that the Scottish Government can do to ensure a better sense of mental wellbeing throughout Scotland.

I commend the bill to the Parliament.

Business Motions

18:50

The Presiding Officer (Tricia Marwick): The next item of business is consideration of business motion S4M-13608, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a business programme.

Motion moved,

That the Parliament agrees the following programme of business—

Tuesday 1 September 2015	
2.00 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Topical Questions (if selected)
followed by	Scottish Government Business
followed by	Business Motions
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Wednesday 2 September 2015	
2.00 pm	Parliamentary Bureau Motions
2.00 pm	Portfolio Questions Fair Work, Skills and Training; Social Justice, Communities and Pensioners' Rights
followed by	Scottish Government Business
followed by	Business Motions
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Thursday 3 September 2015	
11.40 am	Parliamentary Bureau Motions
11.40 am	General Questions
12.00 pm	First Minister's Questions
followed by	Members' Business
2.30 pm	Parliamentary Bureau Motions
followed by	Scottish Government Business
followed by	Business Motions
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
Tuesday 8 September 2015	
2.00 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Topical Questions (if selected)
followed by	Scottish Government Business
followed by	Business Motions

followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Wednesday 9 September 2015	
2.00 pm	Parliamentary Bureau Motions
followed by	Portfolio Questions Finance, Constitution and Economy
followed by	Scottish Government Business
followed by	Business Motions
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Thursday 10 September 2015	
11.40 am	Parliamentary Bureau Motions
11.40 am	General Questions
12.00 pm	First Minister's Questions
followed by	Members' Business
2.30 pm	Parliamentary Bureau Motions
followed by	Scottish Government Business
followed by	Business Motions
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time—[*Joe FitzPatrick*.]

Motion agreed to.

The Presiding Officer: The next item of business is consideration of business motion S4M-13607, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a business programme for the Harbours (Scotland) Bill.

Motion moved,

That the Parliament agrees that consideration of the Harbours (Scotland) Bill at stage 1 be completed by 2 October 2015.—[*Joe FitzPatrick*.]

Motion agreed to.

Parliamentary Bureau Motion

18:51

The Presiding Officer (Tricia Marwick): The next item of business is consideration of a Parliamentary Bureau motion. I ask Joe FitzPatrick to move motion S4M-13609, on the designation of a lead committee.

Motion moved,

That the Parliament agrees that the Delegated Powers and Law Reform Committee be designated as the lead committee in consideration of the Succession (Scotland) Bill at stage 1.—[*Joe FitzPatrick*.]

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

Motion without Notice

18:51

The Presiding Officer (Tricia Marwick): I am minded to accept a motion without notice to bring forward decision time to now.

Motion moved,

That the Parliament agrees, under Rule 11.2.4 of Standing Orders, that Decision Time be brought forward to 6.51 pm.—[*Joe FitzPatrick.*]

Motion agreed to.

Decision Time

18:51

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

The first question is, that motion S4M-13599, in the name of Jamie Hepburn, on the Mental Health (Scotland) Bill, be agreed to.

Motion agreed to,

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

The Presiding Officer: The next question is, that motion S4M-13609, in the name of Joe FitzPatrick, on the designation of a lead committee, be agreed to.

Motion agreed to,

That the Parliament agrees that the Delegated Powers and Law Reform Committee be designated as the lead committee in consideration of the Succession (Scotland) Bill at stage 1.

Barrett's Oesophagus

The Deputy Presiding Officer (Elaine Smith): The final item of business is a members' business debate on motion S4M-12968, in the name of Patricia Ferguson, on Barrett's oesophagus. The debate will be concluded without any question being put.

Motion debated,

That the Parliament understands that the incidence of oesophageal adenocarcinoma in Scotland has doubled in the last 10 years; further understands that Scotland has the unenviable distinction of being the country with the most cases; believes that early detection improves prognosis and survival rates; considers that it is vital that, in Glasgow Maryhill and Springburn and across Scotland, awareness of this type of cancer is raised in tandem with awareness of Barrett's oesophagus, which is a treatable precancerous condition; believes that, if it is dealt with correctly, oesophageal cancer can then be prevented from developing; notes that the NHS in England records Barrett's oesophagus as a quality performance indicator (QPI) to allow diagnostic progress to be monitored, and notes the view that a QPI should be established in Scotland.

18:53

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): I thank members across the chamber who have supported the motion that we are debating this evening.

I want to speak about the experiences of two men that I hope will help to highlight why this short debate is so important. A few years ago, a friend of mine, Dave Scott, who then worked with my husband, former MSP Bill Butler, became ill. Dave did not talk much about it, but it was obvious that something was seriously wrong. Over what seemed like a very short period of time, Dave lost weight—a lot of weight. He lost half of his body weight and seemed literally to be wasting away. Through most of that time, Dave continued to work, so the change was obvious to us all.

The worst thing was that Dave did not know what was wrong. He could not swallow properly, he could not sleep and he had bouts of heartburn, but he was treated for back pain and stress. Eventually, after a year, he was diagnosed with a condition called Barrett's oesophagus. I must admit that I had never heard of it and Dave, being a typical young man, did not dwell on it or talk about it much. However, it took 16 months of procedures and recuperation to get Dave back to normal. He is well, as members will know, and he has learned to live with his condition, but it is something that has to be regularly monitored.

Some months after hearing about Dave Scott's diagnosis, I accidentally tuned into a Radio 4 programme about Barrett's oesophagus. Remembering that this was the condition that Dave had suffered, I continued to listen to the programme. It was only then that I fully understood the nature of the condition that he had had and the fact that it could be a precursor to oesophageal cancer. The radio programme focused on the fact that people with regular problems with reflux or indigestion had a higher disposition to Barrett's and that 30 per cent of those with Barrett's in the United Kingdom go on to develop cancer if no intervention takes place.

Earlier this year, I was contacted by a constituent, Mr Daniel McGrory, who had himself suffered from oesophageal cancer and wanted to raise awareness of it, particularly its growing incidence. Above all—and most crucially—he wanted to highlight the lack of awareness of the fact that Barrett's oesophagus can be a warning or sign of more serious problems ahead. It is because of Mr McGrory and Dave Scott that we are debating this motion, and I welcome to the chamber the two of them and two of Mr McGrory's friends, who, like him, have suffered this particular cancer.

Adenocarcinoma of the oesophagus has increased globally, but particularly in the UK. In Scotland, it has doubled in the past 10 years and now has an incidence rate—

The Minister for Public Health (Maureen Watt): Will the member give way?

Patricia Ferguson: I am happy to.

Maureen Watt: I thank Patricia Ferguson for bringing the motion to the chamber, but I note that Public Health and Intelligence has confirmed that over the past 10 years world age-standardised incidence rates of oesophageal adenocarcinoma have increased from 4.1 per 100,000 to 4.4 per 100,000. The figure has not really doubled in the past 10 years.

Patricia Ferguson: It is very interesting that the minister should say that, because I would challenge her figure. My understanding is that the incidence is now 16.9 per 100,000 and clinicians have told me that it is the fifth most common cancer in Scotland and the third most common cause of cancer deaths. Scotland now has the unenviable record of being the global leader for incidence of the disease.

When Mr McGrory first had difficulty swallowing, he thought little of it and delayed going to his GP for four months because his symptoms at first seemed relatively minor. He was lucky; with the skill of his surgeon, major surgery and chemotherapy, he has made very good progress. Like most cancers, adenocarcinoma is best treated early; more important, it has a recognisable precursor—Barrett's oesophagus. However, according to the charity Ochre, many

people with this particular cancer are diagnosed too late for effective intervention.

Barrett's is the type of condition that creeps up on people. General practitioners often struggle to spot the warning signs, and over-the-counter indigestion tablets mask the symptoms. In Dave Scott's case, the patient was in good faith prescribed Ibuprofen for what both he and his doctor thought was a muscular problem. However, the reality is that Ibuprofen can aggravate Barrett's, making the prognosis more difficult.

What do I want to achieve from this debate? I want to ask the minister to consider three things. Whether we agree on the statistics, I believe that we should make Barrett's—or if not Barrett's, then high-grade dysplasia—a condition that merits consideration as a quality performance indicator in the health service. I would also like to see a campaign to raise awareness of Barrett's and the fact that heartburn can be a sign of more serious problems, which is something that I am sure most people do not appreciate. Finally, I hope that the Scottish Government can alert those who sell over-the-counter remedies to the issue and suggest that, as with headache tablets, they recommend to people who are buying more than one packet of an indigestion remedy that they consult their GP.

If Scotland has the unenviable reputation of leading in the incidence of these conditions, we should also lead the way in the campaign against them. There is no doubt that people are dying needlessly just because they do not know the signs of oesophageal cancer. Diagnosing Barrett's oesophagus can prevent oesophageal cancer from developing, as well as avoiding the need for major invasive surgery at great cost to the national health service and with great disruption to the lives of people and their families.

I have made three straightforward requests of the minister in this debate. I hope that she will consider those in her response, and that she will agree that the time has come for Scotland to act on these conditions.

19:00

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I thank the Presiding Officer for letting me speak first, and I apologise to members for having to leave afterwards.

I congratulate Patricia Ferguson on bringing to the chamber a debate on such an important area of medicine. It is not straightforward—in fact, it is a difficult area, and there has been much debate about Barrett's oesophagus over many years. Some gastroenterologists are still sceptical about the value of having GPs refer patients with persistent heartburn for endoscopy, partly because the risks of Barrett's oesophagus have previously been regarded as low.

The risks are low when there is no dysplasia—alteration of the cells—present. However, the trouble is that one does not know until the endoscopy or biopsy has been done what the situation is. It may require an indefinite follow-up, as there may be something that the doctors are not sure about. There may be very mild dysplasia, or no dysplasia at all: just the presence of Barrett's oesophagus. When low-grade dysplasia is present, there is a significant increase in risk, with a 5.3 per cent risk of oesophageal cancer developing within one to eight years. With high-grade dysplasia, there is a 50 per cent of adenocarcinoma developing in one to eight years.

I declare a personal interest in the debate, as it concerns the cancer from which I suffered. I did not suffer from Barrett's oesophagus—it was just straightforward oesophageal cancer. I was very lucky.

First, having been a doctor, I was aware of the fact that one should not have difficulty in swallowing, even at my age, and even if one eats rapidly, as I always did as a junior doctor, which unfortunately led me to learn very bad habits. Difficulty in swallowing is not something that one should experience, and we should send a clear message, and carry out a great deal of public education, about the fact that, if someone experiences difficulty in swallowing on more than one occasion, they should consult their doctor. They would, one hopes, then be lucky enough to have that recognised by their GP as a cardinal symptom requiring immediate referral.

I was seen within a week; I was diagnosed with an endoscopy after one week; and I was then subjected to six weeks of tests before I could enter treatment. Once one enters treatment for oesophageal cancer, tests are undertaken to see that there has been no spread, either local or distant, and no seeding into the abdomen. The doctor also wants to know how far through the thickness of the gullet—the food pipe—the cancer has spread. Only once someone has passed those five tests will they be subject to pre-operative chemotherapy, major surgery—as I was—and post-operative chemotherapy, none of which is a particularly pleasant experience. Nevertheless, it means that those who go through that treatment, because they have passed all the tests, have a much higher survival rate.

Overall, however, because of late diagnosis, and because we are not following up people with Barrett's oesophagus appropriately, nor tackling people with chronic heartburn to diagnose Barrett's, the five-year survival rate for oesophageal cancer is only 15 per cent. The rate compares roughly to that for lung cancer, being

among the worst survival rates for cancer. Breast cancer, on the other hand, now has a 90 per cent plus survival rate, because we have tackled it and are dealing with it extremely well.

I agree strongly with Patricia Ferguson that we need more publicity for these conditions. We need to ensure, given the immense pressure on endoscopy service, that we have an adequate number of endoscopists.

I will finish on this note. In 1990, I went to the States because I was doing a giant research project with the Mayo Clinic, and I was fortunate to see some of the work that it was doing. It did not restrict endoscopy to trained doctors and gastroenterologists. It had trained technical nurses who did the endoscopies. We need that in this country. We have it in some places. In that regard, I mention Dr Gordon Birnie in Fife. When I came back, I suggested to the health boards in Fife and Forth Valley that they take up that practice. Forth Valley declined, but Fife took it up, and it has a series of nurse endoscopists.

I am sure that the minister will tell us that an endoscopy service is run in Fife that gives its services out to other boards, but all boards should have technical endoscopists. We will need many more of them if the problem is to be tackled. I thank Patricia Ferguson again for giving me the opportunity to discuss the issue, and I apologise for my early departure.

19:05

Bob Doris (Glasgow) (SNP): I congratulate Patricia Ferguson on securing this evening's debate and for drawing attention to the condition. I had heard of it, but that was as far as it went. I knew that it existed, but beyond that I could not have told people anything else.

I found the information in the 2014 booklet that the Barrett's Oesophagus Campaign made available to members before the debate enlightening, but also challenging in public health terms.

I had no idea until earlier today that Dave Scott suffers from Barrett's oesophagus. I welcome him to the chamber. It is good to see him, and good to see him looking well. I do not know Mr McGrory, but I hope that things are going well for him as well. I am grateful to them for lending their weight to drawing attention to the situation, and I commend them both for doing so.

To think that suffering from persistent heartburn could be a sign of something far more sinister lurking in terms of health is worrying indeed. I am not sure whether I would have thought that anything was untoward if I was getting persistent heartburn. I suspect that a lot of men of a certain age, particularly in west central Scotland, would just shrug it off, thinking that it is a lifestyle choice issue and the result of having one curry too many or too much of a night out the night before. [*Interruption*.] I see Hanzala Malik responding to that in relation to his lifestyle.

Hanzala Malik (Glasgow) (Lab): Please don't blame the curries for that. Thank you.

Bob Doris: I say to Mr Malik that I have not had my dinner yet, so I thank him for mentioning curries. The serious point is that a lot of us will just shrug it off and think that there is nothing untoward. We have had a bit of levity, but the serious point that we all want to make is that people should not shrug off the symptoms or ignore the signs.

It can reasonably be agreed that, given that Barrett's oesophagus is a pre-cancerous condition, its early detection and diagnosis fit in well with the Scottish Government's detect cancer early initiatives and strategies, which have been highly successful. I want to illustrate briefly some of those successes in order to make a more general point. With the detect cancer early initiative, which is backed up with £30 million of Government funding, nearly 25 per cent of breast, bowel and lung cancers in 2012-13 were detected at the very earliest opportunity, enabling action to be taken and the best survival and full recovery rates where possible. That is vital.

I do not know where the early detection of Barrett's oesophagus fits into all of that. I do not know whether the detect cancer early initiative fits into the strategy on that. I merely put on the record that, given some of the information that we have today, there could be clever ways of having a strategy that picks up some of that and the public funding that already exists. Public funding is under pressure, so we have to prioritise, and I genuinely do not know whether Barrett's oesophagus is the right priority for the detect cancer early initiative, but surely we should at least check to see whether it is.

Likewise, I do not know whether a quality performance indicator on Barrett's oesophagus would drive change. It might. The motion does not say that it would, but it says that we should consider it. Of course we should consider it, but the important thing is to find the best way to get the outcomes that we all want. If there are five different options, we should test each of them and work out what the best option is to drive the change that we all want.

The final thing that I would like to say is about getting the message out there. We have talked about increasing the availability of information and awareness, and I think that the community pharmacies might have a significant role to play in

that when people with minor injuries and ailments pitch up at the chemist's asking for something for heartburn. It is about getting the key information to the key professionals at key times, as the people who suffer from the condition are more likely to listen to and interact with them.

I know that I am stretching your patience, Presiding Officer, but the final final thing that I want to say is that there might be a health inequality issue if the condition befalls men more than women—I have no idea whether that is the case—or people of certain ages. We need the data and the information to decide the best way to target resources.

I thank Patricia Ferguson for bringing the matter for debate in the Parliament, and I am keen to work collegiately across the parties to see whether we can drive change in this area.

19:10

Nanette Milne (North East Scotland) (Con): I, too, thank Patricia Ferguson for lodging the motion and for bringing the subject to the chamber this evening.

Having spent some years doing fact-finding research mainly in gynaecological cancers, I am aware of the increasing incidence of many cancers, but I was not aware of the prevalence of oesophageal adenocarcinoma and the growing number of people suffering from it in Scotland, nor of the fact that we are the country with the most cases of it. Indeed, at the time when I was working, that increased incidence was not foreseen.

In general, the number of people who are diagnosed with one or another form of cancer is rising year after year in the UK. That can in part be explained by an ever-aging population and increased life expectancy, but that is not the only cause of the greater number of people who are being diagnosed with this unwelcome and life-threatening illness.

When we look at the specific case of the pre-cancerous condition Barrett's oesophagus, we learn that a combination of factors is thought to increase susceptibility to the condition and the ensuing oesophageal cancer. Those factors include smoking, poor diet, physical inactivity, obesity, excessive alcohol drinking and eating spicy foods. However, that cannot be the whole story, because I know several people who have undergone treatment for oesophageal cancer—some successfully and some not—whose lifestyles have included none of those contributory factors. Barrett's oesophagus need not inevitably lead to oesophageal cancer. As the motion states, we need to ensure that it is diagnosed early so that it does not progress to full-blown cancer.

In preparing for the debate, I came across a very moving account of a young lady who was aged only 19 and was one of the youngest people in the UK to be diagnosed with Barrett's oesophagus. Her story started in February 2010, when she sat down as normal for her breakfast cereal but found it incredibly painful to swallow. Afterwards, she found it increasingly difficult to eat and her weight dropped from 13 stone to 7 stone. She was told by her GP that she was either anorexic or bulimic, but neither diagnosis was correct. Her GP recommended counselling, but it was only after she woke one morning gasping for air and was rushed to the accident and emergency department that she was finally told that she had Barrett's oesophagus.

That was two years after she experienced the first symptoms, by which time a large, cancerous tumour was blocking her oesophagus. She then had to go through a prolonged period of chemotherapy. Thankfully, she has now fully recovered, but I go back to my initial point that early diagnosis and detection must be a priority when we are dealing with the condition. We therefore need a better understanding of Barrett's oesophagus and must train those in the medical profession to recognise that it can be life threatening if it is not discovered early.

Heartburn is a common symptom that is usually ignored by us or treated with antacids or other remedies that are readily available from local pharmacies. However, the charity Ochre, which exists to promote awareness of oesophageal cancer, stresses that people should understand that heartburn is not okay—certainly, when it occurs frequently—and that they should find out what is causing it by making a doctor's appointment, not a trip to the chemist.

Ochre is working with partners across the UK and Ireland to take action against heartburn, and it has agreed to fund specialist research at Queen's University Belfast to look at biomarkers associated with oesophageal cancer risk and at early diagnosis using data from the UK Biobank. It is hoped that that will lead to a better understanding of the causes of the cancer.

In members' business debates, we tend not to be critical of different parties or of the Scottish Government. However, the replies that were given by Nicola Sturgeon, when she was health secretary, to five questions regarding Barrett's oesophagus were less than satisfactory. There is no central information about the number of people in Scotland who have the condition, and there has been no specific action plan to raise awareness of Barrett's oesophagus among the general public. Perhaps the minister could address those points in responding to this evening's important debate. There is clearly a need to know the incidence of

Barrett's oesophagus in Scotland and to follow up those who have it so that an early diagnosis can be made if it appears to be leading to the development of a malignancy.

Once again, I thank Patricia Ferguson for lodging the motion.

19:14

Elaine Murray (Dumfriesshire) (Lab): I congratulate Patricia Ferguson on bringing this issue to the attention of Parliament and on highlighting the issue of oesophageal cancer in Scotland—a condition for which mortality is higher in Scotland than in the other nations of the UK—and the relationship between Barrett's oesophagus and the development of some oesophageal cancers in some patients.

Only two weeks ago I highlighted the plight of my constituent Brian Houliston, who suffers from oesophageal cancer and secondary liver cancer. At that time, he had been refused national health service treatment for selective internal radiation therapy, the second part of a treatment recommended to him by a Harley Street specialist, which can be accessed in England and Wales, where trials of a combined course of a specialist chemotherapy and SIRT are being researched.

The good news in Brian's case is that the Saturday after his case was raised in Parliament he received a letter advising him that NHS Dumfries and Galloway had considered his appeal and agreed to fund his SIRT, as long as it was administered as part of the trials being undertaken in England, contributing to research on the development of these cancers. I was delighted to receive a copy of the letter from Brian and his wife Sheona, and I wish him all the best in his treatment.

One of the important things that Brian told me when he came over to Holyrood to hear my question to the Cabinet Secretary for Health, Wellbeing and Sport was that he did not have any symptoms with his oesophageal cancer and it was the secondary cancer that had alerted him to a health problem.

The success in Brian's case shows that we sometimes do achieve success in here. I think maybe we all sometimes wonder whether we are really doing anything, but there are also times when we feel that we achieve some success for our constituents. In Brian's case, I know that the treatment will probably not save his life, but it will probably mean that he has a bit more time with his family, which is important.

Oesophageal cancer can be asymptomatic until it has seriously progressed and is possibly untreatable, which is why the recognition of the connection of some oesophageal cancers with the condition Barrett's oesophagus is so important.

Until Patricia Ferguson lodged the motion, I was unaware of the condition Barrett's oesophagus, where, as she has advised us, there is a change to the cells in the affected area of the oesophagus, which can be caused by things like heartburn.

I was well aware that there is a link between gastro-oesophageal reflux disease and oesophageal cancer, because I have suffered from GORD from a long time and I had looked it up. In my case, there is a genetic component, because my children also have a tendency towards it. I have to say that three pregnancies in five years, getting older and fatter and the sort of lifestyle that we have in here, where we eat while working and at a huge rate of knots, made it considerably worse. However, I have never attended a GP about it—I just live off Gaviscon and other such things.

Two of my children were less scared and went to see their doctor, and they were prescribed Omeprazole. My daughter says that it makes her feel as if she has flu, so she does not take it. My children were a bit braver than I am.

One of the interesting things is that, when I eventually decided that being the same weight as I was when I was nine months pregnant was a bit shocking and went on a diet, I found that the gastro-oesophageal reflux disease got a bit better. I do not know whether that was because of loss of weight or whether it was because I was not eating as many carbs and fats, which my daughter reckons are partly responsible for the heartburn condition. Having had that for so many years, it is still possible that I could have Barrett's oesophagus.

Now that I have been alerted to the condition by Patricia Ferguson's motion—and knowing of Dr Simpson's terrible experience as someone who suffered from oesophageal cancer—I guess that I should desist from my normal practice of GP avoidance. Bob Doris said that men avoid going to the doctor; I am afraid that Scottish women are not always all that good at it either. I probably ought to get it checked out. I hope that my saying that I will resolve to do that will make others think that they ought to go to the doctor and get themselves checked out. I hope that I am brave enough to go and see my doctor about it.

19:19

The Minister for Public Health (Maureen Watt): I thank Patricia Ferguson for lodging the motion and bringing both oesophageal adenocarcinoma and Barrett's oesophagus to the attention of this Parliament. I acknowledge Dave Scott and Mr McGrory and their friends and family

in the public gallery, and I thank members for their contributions, especially Elaine Murray's personal testimony about the need to get checked.

I am sure that everyone in the chamber will agree that we must do everything that we can to reduce the numbers of people who develop cancer and to give those who do develop the disease the best chance of surviving to live a full and healthy life after treatment. However, I feel that the two factual inaccuracies in the motion should be noted for the record.

First, the motion suggests:

"the incidence of oesophageal adenocarcinoma in Scotland has doubled in the last 10 years".

As I have said, that is not correct. NHS Public Health and Intelligence has confirmed that, between 2003 and 2013, world age standardised incidence rates of oesophageal adenocarcinoma in Scotland have increased from 4.1 per 100,000 to 4.4 per 100,000. That does not represent a doubling of the rate of incidence. Although rates of adenocarcinoma increased quite steeply in the early 1990s, rates have plateaued more recently, which is an encouraging trend. I would be happy to make that data available to Patricia Ferguson if that would be helpful.

The motion also asks the Parliament to note

"that the NHS in England records Barrett's oesophagus as a quality performance indicator (QPI) to allow diagnostic progress to be monitored".

That is also not correct. England does not record Barrett's oesophagus as a QPI. In fact, England does not have a direct equivalent to our QPIs. However, it is true that Scotland, along with the rest of the United Kingdom, had a generally higher rate of incidence than many comparable countries.

Although it is important to correct those inaccuracies, I nevertheless agree with the essential point made in the motion that we need to reduce the numbers of people who develop oesophageal cancer, and increase the number of people who survive it.

Hanzala Malik: I wonder whether the minister would consider Dr Richard Simpson's suggestion that we allow nurses and other health professionals to be trained so as to reach the conclusion that we want to reach. It would be a softer expenditure, but it could yield a very good result.

Maureen Watt: I thank Hanzala Malik for his intervention. The points that Patricia Ferguson made in introducing the motion and that Dr Richard Simpson made in his contribution about increasing awareness throughout the medical profession are worth considering—especially the point that Patricia Ferguson made about raising awareness among pharmacists. If people are repeatedly coming in for heartburn remedies, pharmacists should be pointing out to them that they should seek a further investigation.

If we are to reduce the number of people who develop cancer, changing our lifestyle choices is essential. There is clear evidence that smoking, diet and obesity are significant risk factors for both Barrett's and oesophageal adenocarcinoma, as well as for many other conditions, and we are working hard to raise awareness of those links.

As members know, it is the Scottish Government's aim to reduce smoking prevalence to 5 per cent of the population by 2034, making Scotland one of the first countries in the world to set such an ambitious target. Our tobacco control strategy focuses on supporting the introduction of standardised packaging and education programmes to prevent young people from starting to smoke, on reducing the health inequalities inherent in smoking, on improving smoking cessation services, and on supporting pregnant women to quit.

We are also working to address obesity in Scotland, making it easier for people to become more active, to eat less and to eat better. Our obesity framework sets out both national and local governments' respective long-term commitments to tackling overweight and obesity.

I absolutely agree with the motion

"that early detection improves prognosis and survival rates"

for many cancers. Since February 2012, we have invested £39 million in the detect cancer early programme, which aims to raise awareness of the symptoms and signs of cancer. The main message is that people should visit their GP if they experience any unusual or persistent changes in their body or health. We have revised our guidelines for GPs to help them refer people to specialists where that is appropriate. Investigations that then take place will help to identify pre-cancerous conditions such as Barrett's oesophagus, as well as cancer.

It is worth noting that oesophageal cancer represents 3 per cent of cancers and thankfully not everyone who has Barrett's oesophagus will develop oesophageal adenocarcinoma.

Patricia Ferguson: Although I understand that there is a great focus on detecting cancer early, it is clear that even we who debate these issues are not always familiar with things such as Barrett's oesophagus. The incidence of Barrett's oesophagus progressing to become oesophageal cancer in Scotland is five times higher than it is in a relatively similar-sized country such as Denmark, so is it not time to do something specific about Barrett's?

Maureen Watt: I was going to say that Cancer Research UK estimates that only one in every 860 people with Barrett's will go on to develop oesophageal adenocarcinoma each year, but I recognise the effects of a diagnosis of Barrett's oesophagus and I agree that we must do all that we can to detect and treat the condition effectively.

As I said earlier, medical professions should be aware of the condition and how to treat it properly. Raising awareness among all medical professionals is absolutely vital. When Barrett's is diagnosed, I expect clinicians to be aware of the relevant National Institute for Health and Care Excellence and other professional guidelines on monitoring and, if necessary, treating the condition.

The motion mentions QPIs. We have developed cancer QPIs to drive forward improvement in cancer care in Scotland. Our performance against those indicators is measured and reported publicly on a three-year basis. The first QPI report for oesophago-gastric cancers was published in February 2015 and showed that the service in Scotland is generally good, although there is always room for improvement.

The clinical specialist group that developed the QPI carefully considered whether a measure should be included for Barrett's oesophagus, but it concluded that such a measure would not be appropriate at this time. However, QPIs are continuously reviewed against evolving evidence and clinical practice, and the need for and practicality of such a measure will be monitored by the review group.

I emphasise that we recognise the importance of awareness and early detection in improving cancer survival rates, and we will continue to focus our efforts on those areas. I congratulate the charity Ochre and I thank Patricia Ferguson again for raising awareness of the condition.

Meeting closed at 19:28.

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