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Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Tuesday 1 December 2015

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Scottish Parliament

Tuesday 1 December 2015

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

Time for Reflection

The Presiding Officer (Tricia Marwick): Good afternoon. The first item of business is time for reflection. Our time for reflection leader today is Father Jeremy Bath of SS John Cantius and Nicholas Catholic church in Broxburn.

Father Jeremy Bath (SS John Cantius and Nicholas Catholic Church, Broxburn): Presiding Officer, members of the Scottish Parliament, St Andrew's day has just ended for another year, and coincidentally the month of November has just ended a period of time when we traditionally remember our loved ones who have died, including the war dead. Now we have entered the Christian season of Advent, which ends with the celebration of Christmas.

There are some things in life that we wish would never end: the perfect summer's day or that winning round of golf, or the reunion at the bedside of someone you love who is dying. There are other times that we wish it was all over: the disastrous football match or the delayed flight home at the airport, or—dare I say it?—the boring meeting that is going nowhere.

Through it all, the human heart is restless, or yearning perhaps for that which is better than what is being perceived at that very moment. Perhaps we are even reluctant to take time for reflection because we believe that we have too much on our minds at present. How often do we allow ourselves merely to take time to think about nothing, and to be content just to be where we are? How hard it is for busy-minded people to be calm, still and open to the unexpected, or to just treasure life itself.

The short phrase that expresses the golden moments is "having the time of our lives". Now is the time for you as MSPs to debate the key issues that affect the nation of Scotland and beyond. I hope and pray that you are able to value this time together, and that it will not drag or fly by too quickly.

That reminds me of a brave lady I once met in St John's hospital in Livingston. I was giving her the last sacraments, and she said to me, "Thank you for taking the time to come and see me. I hope you get the chance to appreciate your life and the memorable moments before they come to an end."

Members of the Scottish Parliament, try today to be content just to live here and now. I will end with the words of St Ignatius, who said:

"Take, O Lord, and receive all my freedom, my memory, my understanding, and my whole will. All that I am, all that I have, you have given me and I give it back again to You, to be disposed of according to your good pleasure. Give me only Your love and Your grace: for this is sufficient for me. Amen."

Presiding Officer's Statement

14:03

The Presiding Officer (Tricia Marwick): Before we move to topical questions, I wish to make a short statement. Members will have received a letter this morning from the clerk and chief executive highlighting a technical problem that was identified last week with the software that is used to make the random draw for general and portfolio questions.

The problem occurred following a software upgrade that was implemented in March this year. It means that some members with names in the second half of the alphabet may not have been picked up for inclusion in some of the draws during the intervening period. The problem has occurred in up to 12 of the 27 weeks of business since the software was upgraded. As soon as it was identified, steps were taken to rectify the situation. A manual workaround was used for the draw this week, and new software is currently being developed and tested, and will be rolled out for next week's draw or as soon as possible afterwards. The new system will be subject to rigorous testing, and it will be possible to confirm which members' names are included in future draws.

The situation is clearly unacceptable, and apologies are made to those members who have been disadvantaged. Please be assured that all steps have been taken to avoid this problem occurring in the future. I recognise that members will be disappointed by these events and I deeply regret that. It is important to rebuild members' confidence so, in addition, I will be asking business managers whether they wish to send a representative to see for themselves the draw for next week's questions.

Topical Question Time

14:05

The Presiding Officer (Tricia Marwick): We move to topical questions, which are unaffected by random picking.

Primary Care Out-of-hours Services

1. Jenny Marra (North East Scotland) (Lab): To ask the Scottish Government what its response is to the report by the independent review of primary care out-of-hours services, "Pulling together: transforming urgent care for the people of Scotland". (S4T-01197)

The Cabinet Secretary for Health, Wellbeing and Sport (Shona Robison): The Scottish Government welcomes the report of the national review of out-of-hours services, which was published on 30 November. I thank Professor Ritchie for all his hard work in preparing such a wide-ranging and comprehensive report. Given the complex issues that are involved, we have asked all key delivery partners, including health and social care partnerships, to set out how they propose to deliver the recommendations locally. We will then use those local plans to inform a detailed national implementation plan, which we will publish in the spring of 2016. To ensure that we see action immediately, I have announced £1 million to begin testing the new urgent care hub model that is recommended in the report.

Jenny Marra: One of the recommendations involves effective workforce planning and calls for a national primary care workforce plan—something that I and many of my colleagues on the Labour benches have suggested before. Does the cabinet secretary now agree with Sir Lewis Ritchie that workforce planning should be taken forward urgently? What is her timescale for that?

Shona Robison: Workforce planning is and always has been fundamental, and of course we accept all the recommendations in the report. I set out in my initial answer that the detailed national implementation plan will bring together all the elements of the report and how they will be implemented by the Scottish Government, boards and partners, and I said that I would bring that forward in the spring of next year.

In the meantime, though, it is important that we get on with elements of the report. For example, the testing of the new urgent care hub model is important. We want to get on with identifying test sites for that, and we are going to do that immediately.

Jenny Marra: We very much welcome the £1 million of funding that has been put in place for

the testing of the pilot hub model, but the cabinet secretary will know that the out-of-hours service across the country is struggling, with reports of as few as two general practitioners covering whole regions, and real problems in Lanarkshire. The cabinet secretary says that in the spring she will bring forward information on how her Government will implement the recommendations, but what will she do now about the pressure on our out-of-hours service in Scotland?

Shona Robison: I would not have commissioned the out-of-hours report from Sir Lewis Ritchie had I thought that there were no challenges in the out-of-hours services. That is why I commissioned him to do the report. It is excellent and it sets us on the right path to transforming our out-of-hours services. There are short, medium and longer-term aspects to the report, as Sir Lewis lays out, but we will get on with the job of transforming the out-of-hours services.

In the meantime, of course, out-of-hours services form an integral part of the winter plans, and there is £10.7 million for those plans to ensure that there is resilience in all our services. That includes making sure that the out-of-hours services are robust over the winter. Then the transformation will begin, and the report that sets out how that will happen will be published in the spring, as I said.

John Scott (Ayr) (Con): The cabinet secretary will be aware of the different terms and conditions that different health boards are offering to general practitioners who provide out-of-hours services. She will know that, while some areas are able to provide GPs for their doctors-on-call services, other health boards, such as NHS Ayrshire and Arran, are moving towards providing them through the welcome services of advanced nurse practitioners. How does the cabinet secretary view that change in provision? What, if anything, is she doing about it?

Shona Robison: One of the proposals in the report is for a national GP performance list for Scotland. However, the member has highlighted an important issue, because boards often compete with each other for the same GPs. That is why the recommendation that there be a GP performance list, along with many others, will be so important in bringing together the out-of-hours services in a more coherent way that avoids having boards competing with one another. As we work through the recommendations, we will expect boards to look at their own local plans to ensure that they reflect the recommendations about those plans in the short term and then to get on with the job of implementing the recommendations. That will make a big difference to out-of-hours services

across Scotland, including in the member's locality.

Jim Hume (South Scotland) (LD): The review points out that people in remote and rural locations are more likely to report negatively about out-of-hours care and that there is concern among people living in those areas about the distance from access to out-of-hours care. With more than 100,000 patients being treated outwith their health board area in 2014, what assurances can the cabinet secretary give to people living in remote and rural areas that they will have the care that they need when and where they need it?

Shona Robison: Jim Hume talks about people being treated outwith their board area, but what he is referring to is the fact that many people are treated at centres such as the Golden Jubilee centre, which is a national resource. I am sure that he would not think that it was a bad thing for patients from across Scotland to go to that centre for excellent treatment.

Sir Lewis Ritchie spends a good deal of the report looking at the remote and rural challenges. As we move forward with the recommendations, I am keen to test how the new urgent care hub model will work both in urban and in remote and rural contexts. Without a doubt, there is a reliance in remote and rural areas on the local assets of the community, such as first responders, who have a very important role, as do the ambulance service and the primary care out-of-hours services. I am very keen that we test the new model in a remote and rural context for its application more widely.

Duncan McNeil (Greenock and Inverclyde) (Lab): I agree with the cabinet secretary that the report is worthy and that we need to make progress on it. The cabinet secretary has mentioned the GP contract for 2017 and the implementation plan for 2016. The report highlights that deprived communities are losing out now and could benefit now, so can beneficial elements of the report be rolled out and implemented prior to those dates in deprived neighbourhoods and communities, such as those in Inverclyde?

Shona Robison: Duncan McNeil will be aware that the publication of the report coincided with the publication of research commissioned by the Scottish Government that highlighted some of the issues that Duncan McNeil has referred to. He will also be aware that, within the existing GP contract, there is an element of funding for deprivation: the 100 deep-end practices receive a total of around £5.4 million. However, as he will know—and as I have said before in the chamber—we need to go further than that, and the new contract offers the opportunity to do so.

We will have a transition year for the new contract in 2016, with large elements of the quality and outcomes framework being dismantled to remove bureaucracy. If there is anything that we can move on earlier with regard to that or, indeed, aspects of Sir Lewis Ritchie's recommendations, I will certainly look at it. Perhaps for some of the modelling and testing, we can have a focus on testing in some of the more deprived communities to see how the model can work to best effect.

Elaine Smith (Coatbridge and Chryston) (Lab): Given the report and the research, does the cabinet secretary think that it would be appropriate for NHS Lanarkshire to go ahead with a plan to provide a centre just in South Lanarkshire and not to have a centre at all in the North Lanarkshire area?

Shona Robison: As I have said before—there is no change on this—we would expect NHS Lanarkshire to look at the report and apply what it says to its services. If the board moves to any permanent change in its out-of-hours provision—it is an interim service that it has at the moment—that issue would, of course, come to the Scottish Government, but I would expect NHS Lanarkshire and all the other boards to make sure that their services are in line with the report's recommendations, as I have said previously in this place.

Police Scotland (Interception of Communications Commissioner's Office Review)

2. Graeme Pearson (South Scotland) (Lab): To ask the Scottish Government what steps it will take in response to the recent report on Police Scotland by the Interception of Communications Commissioner's Office. (S4T-01191)

The Cabinet Secretary for Justice (Michael Matheson): On learning of the breaches in the summer, the Scottish Government contacted Police Scotland to seek reassurance that it would co-operate fully with the IOCCO investigation and that it would take any necessary actions that might result from it.

That reassurance was given and, since July, Police Scotland has been working on a robust action plan to ensure that there has been no repeat of those incidents and that they cannot happen again in the future. However, it is clear that Police Scotland's actions in accessing communications data have fallen short of the standard expected, and I welcome last week's announcement by the Scottish Police Authority that it would ask Her Majesty's inspectorate of constabulary in Scotland to review the robustness of the procedures around Police Scotland's counter-corruption practices.

I can reassure the chamber that that will be an independent, thorough and in-depth review. In order to provide assurance to the public and this Parliament, it will focus on operational effectiveness and efficiency, the independence of the internal investigation function, governance and accountability, and training and guidance for officers and staff. The review will be submitted to the Scottish Police Authority and laid in the Parliament in the spring, and I expect any HMICS recommendations for improvements to be implemented in full.

Any breach of the "Acquisition and Disclosure of Communications Data Code of Practice" is unacceptable. A free press is the cornerstone of a healthy democracy, and we are committed to protecting the privacy of all law-abiding members of the public, including journalists.

Graeme Pearson: In his statement on spying in September, the cabinet secretary told the chamber that he had "no idea" who the police in Scotland were spying on. That is unlike the First Minister, who knew about claims that the police had recklessly used illegal surveillance on repeated occasions almost five months ago. It appears that only the public and the Scottish Parliament were kept in the dark.

Was the cabinet secretary kept in the dark as well? If he was not, how does he explain his previous answer to the Parliament? Will he now take personal responsibility for ensuring that the numerous failures that there have been will not occur in the future on his watch?

Michael Matheson: As ever, the member has got a bit confused on these matters, because the response that I gave to Neil Findlay in September related to covert surveillance matters, which are entirely different from the issue that we are discussing and relate to historical matters as well, as the member will be aware.

In relation to his specific point about this matter, when we became aware of it in July of this year, we asked Police Scotland for assurances that it was complying with the investigation that IOCCO was undertaking. What is important is that we recognise that IOCCO is the independent judicially led body that is responsible for the oversight of this area of policing not just by Police Scotland but by all police forces across the UK and all public bodies that can exercise the powers in question.

What the investigation by IOCCO has demonstrated is that that oversight mechanism has identified failings in Police Scotland in making sure that it went through the proper process for undertaking such acquisition of communications data. IOCCO recognises that Police Scotland has put in place a robust process to ensure that this type of thing cannot happen again. A thorough

process has been gone through. I recognise that what Police Scotland did in breaching the code was unacceptable, but we now have an assurance from IOCCO that it has a procedure in place that can prevent that from happening again in the future. It will clearly continue to keep that under review as it reviews the way in which such procedures are used by Police Scotland and every other police force in the United Kingdom.

Graeme Pearson: I accept that IOCCO has done its job thoroughly. For years, in this Parliament, I have asked the cabinet secretary to ensure that proper governance, accountability and oversight are in place for the new national police force. However, that has been rebutted by the Government with some energy. Will he now accept that there is not sufficient governance in place and ensure that it occurs?

Michael Matheson: The member seems to be getting himself even more confused on the issue. The governance and oversight of this area of reserved legislation is with IOCCO, which was put in place by a Labour Government to ensure that the public bodies that had these powers were being held to account. That is exactly what IOCCO is there for.

I do not know whether the member is suggesting that we should get rid of IOCCO. If so, it is for the UK Government to get rid of IOCCO and replace it with something else. There is currently a proposal for a new investigative powers framework that could include the merging of the different inspection and oversight regimes that we have in the UK. However, the oversight mechanism for this is not peculiar to Police Scotland, which is the impression that the member would like to give; it has applied to all police forces in Scotland. It is a robust mechanism that has identified failings and has put measures in place.

Given the member's policing experience, I would not have thought that he would be as confused about the issue as he clearly is.

The Presiding Officer: Five members wish to ask a question of the cabinet secretary. I recognise that time is moving on, but I fully intend to take them all. I would be extremely grateful if members kept their questions as short as possible.

Roderick Campbell (North East Fife) (SNP): It is worth noting that the code of practice that was breached does not relate to the interception of communications nor to the acquisition or disclosure of the contents of communications. Therefore, it is more a technical breach. Notwithstanding that and the cabinet secretary's comments, how can the public be reassured that the HMICS review will be both vigorous and independent?

Michael Matheson: As the member correctly points out, the case is to do with communications data rather than the interception of communications, which has ministerial oversight and requires ministerial authorisation.

The Scottish Police Authority has asked HMICS to undertake a review of the practices that are being followed by Police Scotland's counter-corruption unit. As I have mentioned, that independent, thorough, in-depth review will look at operational effectiveness and efficiency, the independence of the internal investigation function, governance and accountability, and the training and guidance that is provided to staff. The review will be laid before the Parliament for all members to consider and I expect any recommendations to be fully implemented by Police Scotland.

Willie Rennie (Mid Scotland and Fife) (LD): What is still missing from the case is a proper explanation of who did this and why. We need a proper explanation to get the transparency that members of the public seek. Rather than reopen the investigation, Police Scotland tried to find the source of the leak, and I think that we need a proper explanation as to why that was allowed to happen. When does the cabinet secretary think that that explanation will come?

Michael Matheson: The breaches have been identified and IOCCO has written to the individuals who have been affected by them, informing them that they can now take the matter to the Investigatory Powers Tribunal. The tribunal will be responsible for looking at the extent of what the breaches implied for the individuals on whom they impacted and whether any recourse should be applied in those instances.

The member is right to say that it is important that the public—indeed, all of us—can have assurance about how the procedures have been implemented. IOCCO has accepted the action plan that has been taken forward by Police Scotland to prevent this from happening again and it will continue to have oversight of that. The Investigatory Powers Tribunal will now be responsible for deciding the extent of the breaches, how they applied to the individuals' circumstances and on any compensation or other matters that should be applied as a result of the breaches.

Margaret Mitchell (Central Scotland) (Con): I accept that the interception of communications is reserved. However, does the cabinet secretary share my despondency that the SPA, despite being responsible for the oversight of Police Scotland, has yet again been caught on the back foot and is reduced to admonishing Police Scotland after the fact and then asking HMICS to undertake an assurance review?

Michael Matheson: It is important to understand the process that investigatory powers legislation puts in place. The oversight function for the use of investigatory powers is a matter for IOCCO in this type of issue; it is not a matter for a third party such as the Scottish Police Authority.

When IOCCO identifies a breach in procedure, it is extremely important that the SPA considers what measures should be taken to address deficiencies. IOCCO confirmed that robust measures have been put in place to address the failings in Police Scotland in this instance.

What HMICS will now do, at the request of the SPA, is look at the wider issues to do with practice in the counter-corruption unit. That is exactly the area that is the SPA's responsibility, and in undertaking the assurance review HMICS will look at the wider issues. It will not take over IOCCO's oversight function, which involves reporting to the Prime Minister on issues for all forces in the United Kingdom.

Neil Findlay (Lothian) (Lab): Public concern is about a much wider issue than communications. The last time I asked the cabinet secretary whether undercover officers were spying on activists, he said:

"I have no idea."—[*Official Report*, 22 September 2015; c 4.]

Given the revelations in the *Sunday Herald* over the past two weekends, will the cabinet secretary instruct a full independent inquiry into the role of undercover policing in Scotland? If not, are Scots the only people in mainland UK who are to be denied information and justice on an extremely important issue?

Michael Matheson: That is a different matter altogether. Labour members might be a bit confused about the issue. As I made clear, issues to do with covert surveillance are not a matter in which Scottish Government ministers are involved. In addition, the issues that the member raised relate to matters that involved officers in the Metropolitan Police Service and their work.

As I said to the member, if he has clear evidence of officers in Police Scotland or any of the legacy forces not complying with the procedures for the use of covert surveillance, I will be more than happy to consider it. However, as yet I have not received concrete evidence from the member that sets out breaches in relation to specific officers in Police Scotland or the legacy forces.

John Finnie (Highlands and Islands) (Ind): The Scottish Police Authority is the disciplinary authority for chief officer rank in Scotland. I welcome the inquiry and I do not doubt the impartiality of HMICS. Will the cabinet secretary

tell us what status it will have in respect of discipline?

In relation to Police Scotland, the disciplinary authority for ranks below chief officer is the deputy chief constable. Does the cabinet secretary think that there is a conflict of interest in that regard if a misconduct or indeed a criminal inquiry is under way in relation to the matters that we are considering?

Michael Matheson: The member raised a number of interesting points, which are part of the reason for the HMICS review of how the counter-corruption unit has been operating in relation to accountability and oversight of mechanisms. The review could pick up on points that the member highlighted.

However, the matter will also go to the Investigatory Powers Tribunal, which will consider the extent of the impact on the individuals concerned—for those who choose to take the matter to the tribunal—and whether compensation should be provided to individuals. When that process has been completed, I expect the SPA and Police Scotland to consider whether further action is necessary. Given that a process is now in place and we know that one affected party has indicated a wish to take the matter to the IPT, we need to ensure that due process is completed and the issues fully investigated before further decisions are taken on disciplinary matters.

However, the member raised important points, which no doubt HMICS will consider in the course of its investigation.

Neil Findlay: On a point of order, Presiding Officer.

Under the standing orders, will the minister correct the record? More than a week ago, 10 members of this Parliament wrote to him to raise specific concerns about the activities of undercover police in Scotland. Perhaps the minister's civil servants have not advised him of that yet, but it has happened.

Secondly, any undercover operations in Scotland must be authorised by senior officers in the force area in which they are operating. I would have thought that the minister would have known that.

The Presiding Officer: As the member knows, that is not a point of order. What the minister says is entirely a matter for him.

John Mason (Glasgow Shettleston) (SNP): On a point of order, Presiding Officer. On 4 November, I wrote to you about the abuse of points of order by Neil Findlay and, on 18 November, you wrote back to me. It seems to me that if one member continues to abuse the system in this way, unless action is taken against that

member, it just encourages all other members to do the same.

The Presiding Officer: That is not a point of order.

Health (Tobacco, Nicotine etc and Care) (Scotland) Bill: Stage 1

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-15003, in the name of Maureen Watt, on the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill. Members who wish to take part in the debate should press their request-to-speak button now.

The Deputy Presiding Officer (John Scott): I call Maureen Watt. You have 14 minutes. You can start as soon as you are ready, Ms Watt.

14:31

The Minister for Public Health (Maureen Watt): I am delighted to open the stage 1 debate on the principles of the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill. I thank the Health and Sport Committee for its consideration of the bill and stage 1 report. I also thank the Finance Committee and the Delegated Powers and Law Reform Committee for their consideration of the bill. I am pleased that evidence was taken from such a wide range of organisations and individuals.

I welcome the opportunity to discuss the principles of the bill and the positive contribution that it will make to public health and the delivery of health and social care services in Scotland. The Health and Sport Committee made a number of detailed recommendations in its stage 1 report. I responded to those recommendations yesterday, but I will address some of the more significant points here today.

Our bill defines electronic cigarettes as nicotine vapour products—NVPs. The bill builds on the requirements of the European Union tobacco products directive, which must apply across the United Kingdom by 20 May 2016. The directive sets standards for the composition, labelling and marketing of devices and e-liquids.

On the basis of current evidence, NVPs are generally considered to be a less harmful alternative to tobacco. However, there is also consensus that the inhalation of those products is not risk free, particularly for young people and those with some medical conditions. Although emerging evidence suggests that NVPs could help smokers to quit tobacco, there is a lack of evidence about the short and long-term effects of vaping.

In the absence of long-term evidence, the committee heard a range of concerns about whether the products might normalise smoking behaviours and act as a gateway to nicotine addiction and/or smoking. Debates around those

concerns will continue, but we can all agree that there are certainly no benefits to be had from children playing at smoking.

The revised EU tobacco products directive will place restrictions on the cross-border advertising of e-cigarettes, for example, television and radio advertising. Our bill builds on the directive by making powers to prohibit domestic advertising on, for example, billboards, posters and leaflets. However, I do not intend to ban certain points-of-sale advertising of NVPs. It is important that smokers are able to access information, ask questions and receive consultation about which products might be right for them.

The committee asked the Scottish Government to consider whether the national health service should issue national guidance about the potential risks and benefits of using an NVP to quit smoking. The Scottish Government is working with NHS boards to establish a consistent approach to providing advice and support to individuals who want to stop smoking using NVPs.

The bill will introduce an age verification policy for the sale of NVPs and tobacco; it will also ban unauthorised sales by a person under the age of 18. The measures will strengthen the age restrictions associated with the sale of tobacco products and NVPs. Likewise, banning the sale of NVPs from vending machines reflects the fact that self-service vending machines cannot satisfactorily include a process for the vendor to verify age.

Any person who intends to sell NVPs will be required to register on our retailer register. That requirement has been in place for tobacco products since 2011, and it has proved a useful tool for trading standards officers in both supporting retailers and enforcing tobacco sales legislation. The approach that is taken in the bill provides consistency across tobacco and NVPs without placing undue burdens on retailers.

The committee highlighted concerns that extending the tobacco register to NVPs could mislead people to think that tobacco and NVPs have the same level of harm. That is not my intention. In implementing the legislation, the Scottish Government will explore opportunities to provide a clear separation between the products on the website where the register is publicly available.

The bill proposes an offence of smoking and knowingly permitting smoking in a perimeter around buildings on NHS hospital grounds. That is not about stigmatising smokers. Preventing ill health is a major challenge for our health services now and in the future. Tobacco remains the biggest cause of preventable disease and death in Scotland. The committee heard evidence that our NHS must show leadership in supporting and

promoting healthy behaviours, particularly around tackling smoking. The bill provides an enforcement tool to support existing smoke-free hospital grounds policies.

As an alternative, the committee suggested that the Scottish Government consider allowing NHS boards to set different perimeters in their own grounds. However, it is important to recognise that boards have been encouraged to set their own smoke-free grounds policies since the introduction of smoke-free legislation nearly a decade ago.

In developing our current tobacco control strategy, there was a clear ask of the Government to support a consistent approach across boards. In introducing legislation to support smoke-free policies, consistency is essential. It is important that we can communicate a simple and clear message about the requirements of the law. Setting perimeters with a different distance at each NHS hospital site could lead to confusion about what constitutes an offence. However, the Scottish Government will consult health boards in developing the details of the smoke-free perimeter.

Kevin Stewart (Aberdeen Central) (SNP): Can the minister give us an indication whether any patients who are smokers have signed themselves out of hospital early because they have been unable to smoke and whether that causes further problems down the line for those patients and the NHS?

Maureen Watt: I am not aware of that happening. If the member has evidence of that happening, I am happy to look into it. Obviously, I hope that patients would discuss their smoking with their doctors or consultants, perhaps even before they are due to have an operation. Patients who go into hospital are given help to quit as soon as they know what the situation is in the hospital grounds.

I move to the duty of candour. The provision of health and social care services is closely associated with risk, and unintended or unexpected events that result in harm sometimes happen. That does not mean that we should not be honest and open when harm occurs and that we should not seek to learn and improve from such incidents. Being candid promotes a learning culture and accountability for safer systems, better engages staff in improvement work, and engenders greater trust among patients and service users. When there has been harm, people want to be told honestly what happened, to be supported, to be informed of what will be done, and to know what actions will be taken to prevent what happened from happening again.

That is why we have included the duty of candour provisions in part 2 of the bill. There will

be a duty on organisations that provide health and social care services to follow a duty of candour procedure where there has been an incident of physical or psychological harm. That will provide a further dimension to the role of organisations to support continuous improvements in the quality and safety culture across Scotland's health and care services.

That is one of a series of actions that should form part of organisational focus on and commitment to learning and improvement. The duty of candour will apply to a wide range of health and care services across Scotland. Because it is an organisational duty, it will not apply to individuals who provide services.

It might be helpful if I explain the key steps of the duty that will be set out in the regulations that will be made using the powers in the bill. When an organisation becomes aware that there has been an adverse event resulting in harm, it must ensure that those affected are notified that it has happened. An account of the facts of what happened should be provided. Organisations must offer support to the person who has been harmed, and to the relatives and staff who have been involved with the event. Those who have been affected must be informed of the further steps to be taken to review the event and must be given the opportunity to have their questions considered by the review process. The organisation must also provide an apology and must confirm all the actions taken in a written record, the contents of which will inform the regular public reports of disclosable events and organisational response to them.

Jenny Marra (North East Scotland) (Lab): Will the minister give way?

Maureen Watt: I have to make progress. If the member wants to ask me a question during her speech, I will happily answer it when I am closing.

Key to this will be the organisational role to ensure that all staff who are asked to be involved in a duty of candour procedure have access to the relevant training, supervision and support before, during and after their involvement. All organisations will be required to report publicly on the number and nature of the events that have been disclosed to people and to confirm that the requirements of the organisational duty of candour have been met.

It is worth remembering that legislation forms only one part of the duty of candour. In addition, we will produce guidance and national training resources to assist organisations in the implementation of the duty. Many organisations already have procedures in place for handling complaints or responding to adverse or significant events, and we consider that, for most, the

additional administrative demands of the duty of candour should be minimal.

Part 3 of the bill creates offences of ill treatment and wilful neglect that will apply to health and social care workers and provider organisations. The offences will cover intentional acts or omissions and are not intended to catch instances of mistake. I know that neglect and ill treatment occur very rarely in our health and social care system, and the new offences will allow the criminal justice system to identify and deal with such cases effectively and appropriately when they arise.

Since around 1913, there has been a criminal offence of wilful neglect or ill treatment of patients in mental health care, and it is right that the deliberate neglect or ill treatment of anyone who receives health or social care should be dealt with in a similar way. The offences are intended to help to secure access to justice for those who suffer neglect or ill treatment. There are two offences in the bill, one of which covers health and social care workers while the other covers health and social care providers. The offences are not about catching people who are doing the best that they can in their job; they are about dealing with those situations in which someone wants to neglect or ill treat another who is in their care and sets out to do so.

I emphasise the difference between the offences in this part of the bill and the unintended or unexpected incidents that are covered by the duty of candour, to which I referred earlier. The ill treatment and wilful neglect offences are intended to capture very deliberate acts or omissions. The duty of candour is about increasing openness and transparency when something unexpected or unintended has happened.

The Scottish Government launched a consultation in September to explore the issues around extending the offence to children's health and social care services. We greatly value the input and expertise of our partners in child protection. Following their input, I confirm that I will not lodge an amendment to extend the offence, and the response to the consultation will be published on 3 December.

I look forward to the debate and ask Parliament to support the bill at stage 1 at decision time this evening.

I move,

That the Parliament agrees to the general principles of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill.

14:44

Duncan McNeil (Greenock and Inverclyde)

(Lab): At one time there were adverts to promote cigarettes showing Ronald Reagan giving them as Christmas gifts or Superman jumping out of a helicopter, but long gone are the days when cigarettes were so fashionable that around half of all adults in the United Kingdom were regular smokers. Decades on, attitudes have changed drastically, but cigarette smoking is still the world's leading cause of preventable poor health and premature death.

In Scotland, tobacco use is associated with more than 13,000 deaths and around 56,000 hospital admissions every year. A key aim of the bill is to tackle that further by making it an offence to smoke within part of designated no-smoking areas around buildings in hospital grounds. Those caught smoking will be liable on summary conviction to pay a fine of up to £1,000. At present, all NHS hospital grounds are no-smoking areas. The bill would not change that; but it proposes to enable no-smoking areas around hospital buildings to be enforced by local authority officers.

Currently, people who refuse to comply with rules on no-smoking areas in hospital grounds can only be asked to leave the grounds and move on. We all know from our casework and the objections and complaints that have arisen that that has caused our constituents a great deal of concern. Indeed, the *Greenock Telegraph* has run a campaign about the abuse of the no-smoking rule at Inverclyde Royal hospital.

Thankfully, most witnesses agreed that smoking immediately outside hospital entrances, exits and windows should be an offence. However, the committee had concerns about the feasibility of the Government's approach of setting the same distance of possibly 10m or 15m from every hospital building as the enforceable part of a larger no-smoking area. We recommended that the Government reviews that approach and instead allows each health board to propose its own legally enforceable perimeter, which would enable it to reflect the different grounds and types of hospital in each area.

Regrettably, the minister disagrees with the committee's recommendation, because the Government considers that if NHS grounds all have different enforceable areas, that could lead to patients inadvertently committing an offence. However, I seek the minister's view on whether the same issue could not arise under the Government's proposed approach. If the enforceable perimeter is indeed set at 10m or 15m, for some hospitals that could extend the area for the offence to all the hospital grounds, whereas for others only a small part of the grounds might

be covered. Indeed, the enforceable perimeter could be less than 10m or 15m if an exempted site such as a hospice is co-located within the hospital.

Another part of the bill introduces restrictions on the sale and advertising of nicotine and non-nicotine vapour products. None of us can have failed to notice the rapid increase in people using e-cigarettes, vaping pipes, hookah pens or whatever else they may be called—I have no experience of any of these things. We heard that currently 2.6 million people in the UK use NVPs. In our online survey we received many comments about the benefits of using NVPs to reduce or stop cigarette smoking. However, the research published to date appears to suggest that although NVPs can help with smoking cessation and are indeed much less harmful than tobacco cigarettes, they might not be completely harmless. We agree that more long-term research is needed.

We agree with the proposals in the bill to treat nicotine vaping products as an age-restricted product, which would include restricting their sale to over-18s.

One area of debate concerned the powers in the bill that enable ministers to introduce additional restrictions on advertising of NVPs, over and above those already in place at European Union and United Kingdom level. The Scottish Government has confirmed that it intends to use those powers to restrict advertising of NVPs to the point of sale only. Given that long-term evidence about the use of NVPs is still developing, we supported that precautionary approach. I also welcome the Scottish Government's acknowledgement of our concern that a possible unintended consequence of implementing further restrictions on advertising in Scotland could be to provide a competitive advantage to existing NVP retailers. We welcome the Government's intention to monitor the potential risk that NVPs might be made more attractive to children by using flavourings and point-of-sale advertising.

Part 2 of the bill focuses on the impact on people when mistakes arise in health and social care services. It proposes to give health, social care and social work organisations a duty of candour. It means that when a person experiences or could have experienced unintended or unexpected harm from their care, unrelated to their illness or condition, that organisation has a duty to tell them. Although many witnesses supported the duty of candour in the bill, we heard evidence that there was no need for the legislation, given that there are long-standing professional and ethical duties that require candour or disclosure of harm. While we recognise that those duties currently exist, the committee supported the inclusion of a duty of candour in the bill because it builds on existing good practice

and, more importantly, because the duty will apply to organisations.

The duty of candour procedure will be set out in regulations that will be subject to the negative procedure. Those regulations will play a significant part in ensuring that the duty of candour procedure is implemented effectively. Therefore, we believe that the provision should be changed to be subject to affirmative procedure. In its response to the committee report, the Government disagrees. Given that, I invite the minister to consider further how the Parliament might be given greater opportunity to scrutinise fully these significant regulations when they are introduced.

The final part of the bill proposes to create new offences of ill treatment and wilful neglect. One offence would apply to adult health and social care workers and the other would apply to adult health and social care providers. We heard concerns that the creation of those offences would work against the openness, honesty and candour that part 2 of the bill seeks to create. The minister clarified for us that that concern should not arise as the triggers for engaging the duty of candour—that is, unintended or unexpected harm—are separate and distinct from those that will trigger the offence of wilful neglect or ill treatment; that is, deliberate acts with a high level of intent. That said, we recognise that training and education for all health and care staff will be key to the successful implementation of the procedures for the duty of candour and the new offences.

This is a large, diverse bill and I have been unable to do justice to all the committee's recommendations in the time allowed. However, I place on record the committee's thanks to all those who provided written and oral evidence. We look forward to scrutinising amendments at stage 2.

14:54

Jenny Marra (North East Scotland) (Lab): I will begin by clarifying a question that I want to ask the minister, just so that she is clear from the outset, as I would very much like an answer in her closing remarks today. It concerns the duty of candour, which she mentioned. My question touches on a situation that has been brought to my attention, especially in the past six months, about care workers being disciplined at the Scottish Social Services Council. There are several such cases, and the number seems to be increasing. That is because, as the minister knows, more and more care workers are employed every day, because we have an ageing population. Currently, care workers who are disciplined by the SSSC are not entitled to any legal aid whatsoever and they often appear at tribunals completely unrepresented, as many of them are not members

of trade unions. They also have to pay their own travel expenses to the hearings. When I asked a parliamentary question on the matter, the Scottish Government said that it does not keep records of the number of disciplinary hearings. There is an overlap with the duty of candour and how it will impact on people's working rights and conditions, and I want to ask the minister whether, when the duty of candour and the provisions around wilful neglect come in, care workers will be entitled to legal aid when they are being disciplined by the SSSC. What is the overlap?

I welcome the bill and its wide-ranging provisions, and the steps that it takes to improve public health across a range of areas. Like the minister and the committee convener, I will start by addressing the issue of e-cigarettes. There has been an explosion in the use of e-cigarettes and nicotine vapour products in the last couple of years, and they have become a familiar sight in everyday life. I am sure that we all have family members and friends who have converted from cigarettes to e-cigarettes. Their popularity is undeniable and it can only be positive that people are looking for a less harmful way to smoke, or for a way to stop smoking.

The sudden and huge rise in their use demands this Parliament's attention, so that we can ensure that there is a legal and regulatory framework by which they can be sold and used that is in line with our approach to tobacco. The Government's proposals in the bill are sensible and measured, and they reflect the on-going development of the evidence base on NVPs. On that basis, we are happy to support them. I note the broad support that the proposals have gained from the respondents to the Health and Sport Committee, which Duncan McNeil mentioned. However, I agree with the Health and Sport Committee that we must continue to be alive to the opportunities that e-cigarettes present as a smoking cessation tool and I welcome the commitment of the Government and NHS Health Scotland to progressing that.

In a recent health debate, the minister told the Parliament that smoking has been reduced in Scotland by 3 per cent in the past year. I would be interested to know from her research and evidence what role e-cigarettes played in encouraging that fall. It would be in Parliament's interest to know whether the fall is due to market forces and the availability of e-cigarettes or is due to public health campaigns, if she has that information.

We know that there is a range of views about the safety of e-cigarettes and their effectiveness as a way to reduce harmful smoking. ASH Scotland has said that vaping is less harmful than smoking but that it is not harmless. Cancer

Research UK confirms that, although e-cigarettes can help people to cut down or quit smoking, the reality is that the full health effects are still unknown. However, I am also interested in the views of Public Health England, which cites emerging evidence that e-cigarette users have some of the highest successful quit rates. That takes us to the whole debate around making e-cigarettes available on prescription. I certainly believe that e-cigarettes represent a real opportunity to help move towards the smoke-free Scotland that this Parliament aspires to and which the minister recently spoke about.

The target of reducing smoking to below 5 per cent of the population by 2034 is ambitious. Like everyone else, I share that ambition, but we will not deliver it unless we take real action to deliver cultural change. While we gauge the evidence on the effectiveness of e-cigarettes in that pursuit, I welcome the cautious steps that the Scottish Government has taken to tighten up the legislation around their sale.

Perhaps the delayed but continuing work on the Scottish Government's refreshed cancer strategy, which is to be published next year—we do not know whether that will be before or after the election—will include a strong public health agenda that will reflect on how we can use e-cigarettes to further reduce harmful levels of smoking.

I also welcome the move to enforce the NHS's policy of no smoking outside hospitals. That is, I hope, another step towards changing smoking culture in Scotland.

On the care side of the bill, we generally support the aim of having a more transparent system that gives greater protection to patients. There is considerable support for the Government's approach of introducing a duty of candour and an offence of wilful neglect. I hope that that will allow healthcare workers and organisations to build on existing good practice and offer a uniform standard that gives patients and staff certainty. However, there is obvious concern among the professional bodies that represent health workers, such as the Royal College of Nursing, and we must engage with them through the bill's progress to reflect those worries and assuage them where possible.

For that reason, I am pleased that the Government has committed to involving health and social care staff in drawing up the procedures. As those procedures could have a significant impact on the working conditions and rights of nurses and care workers, I am slightly nervous that they are all being left to regulations rather than put in the bill, but it is the right approach to involve health and social care staff in drawing them up. It is important that we use the staff's

expertise to shape how we improve standards. I echo the committee convener's call for the regulations to go through the Parliament by affirmative procedure rather than the negative procedure for the reason that, as I outlined, they could affect the working conditions and rights of nursing staff and care workers.

I put on record our thanks to healthcare workers, who do some of the most difficult, physically and emotionally demanding jobs in our communities, allowing our elderly and vulnerable people to remain in their home or supporting them in a care environment. The vast majority of carers work to high standards. However, as in every walk of life or profession, there will always be people who fall below that level, and then care is compromised. It is right that we have a system of redress for people who suffer or are inconvenienced as a consequence of that, but we must also recognise that if we are to set higher standards for our care workers, we have a duty to support them properly through better pay and conditions and improved training and support.

Scottish Labour has already committed to paying a living wage to Scotland's care workers. We must also investigate how we can better train and support them, as we have continually rising expectations of their services and put trust in them to look after our vulnerable and elderly populations. In general, we must raise the esteem in which the job of carer is held. For too long, our social care system has been treated like a second tier of our health system. If we are to move towards a regulatory system that echoes the high standards in our NHS, we must acknowledge the duty to help care workers in their professional development and pay them a fair wage for the hard job that they do.

The Deputy Presiding Officer: I let the open debate speakers know that, at the moment, I will probably be able to give them all up to seven minutes.

15:04

Nanette Milne (North East Scotland) (Con): The Scottish Government bill that we are discussing today makes three very important proposals: the development of policies around tobacco, nicotine and smoking, in part 1, to further the Government's anti-smoking strategy; a proposed duty of candour, in part 2; and the introduction of new criminal offences of ill treatment and neglect, in part 3. Concerns were expressed by witnesses about all parts of the bill, and particularly about parts 2 and 3. However, by and large, there was support for the policy intent of the bill and for its general principles, which should allow members to approve it at stage 1, although I

have no doubt that significant amendments will come forward at the following stages.

As usual, the Health and Sport Committee clerks have done excellent work in assimilating the evidence that we received and in drafting the stage 1 report. However, this time, I am particularly grateful to them as I missed some of the evidence-taking sessions because of illness.

At this point, I want to put on record my increasing concerns about the pressures that are being put on Parliament, and particularly on members of the Health and Sport Committee, as we approach the end of the parliamentary session. The Government's response to the Health and Sport Committee's stage 1 report came into my inbox just before 5 pm yesterday, and it really has not been possible to give full and proper consideration to such a late and lengthy paper because, immediately preceding this debate, we had a full committee meeting in which we dealt with two other bills.

I know that, with six health bills to deal with before the dissolution of Parliament, time is of the essence but, in a unicameral Parliament and with no available time for post-legislative scrutiny, we need to give full consideration to primary legislation. Some of the pressure would be avoided if the Government could give us a little more time to consider its responses to our reports.

I am aware that I digress, Presiding Officer.

Maureen Watt: The member will of course know that, in many cases, the Government's response does not come out before the stage 1 debate and that the reply to the stage 1 report that we are discussing has in fact been very timely.

Nanette Milne: I accept the minister's explanation but, having sat all day yesterday waiting to get the response, I would probably have been better just to ignore the information that came in. I am just making a general point on an issue that I feel quite strongly about.

Part 1 was generally accepted by witnesses, as the proposed controls and restrictions on the sale of nicotine vapour products such as e-cigarettes more or less mirror the current statutory restrictions on the sale of tobacco products. On balance, I think that that is sensible because, although it is accepted that NVPs do not have the same harmful effects on health as tobacco, the evidence base on long-term harm is still developing. Therefore, a proportionate and balanced approach to their availability for sale seems wise, although they undoubtedly have a place as a smoking cessation tool, alongside trained support.

The committee was concerned, however, that, due to the current cost and complexity of

registering an NVP as a medicinal product, it is unlikely that many will be registered as such, which puts into question their use as smoking cessation aids. I hope that the industry will pursue that matter further with the Medicines and Healthcare Products Regulatory Agency.

It is prudent that retailers should have to register their intention to sell NVPs, although there might be some on-going disagreement about whether there should be separate registers for the two types of product, with one register that includes tobacco and NVP retailers, as the bill stipulates, or, indeed, one register that covers those who sell any age-restricted products, as tentatively suggested by the committee. The Government intends to provide a clear separation between NVPs and tobacco products on the website where the register is held. That is because, as I said, on current evidence, the former are considerably safer than tobacco. I think that that approach will be welcomed.

With regard to banning smoking in hospital grounds, it is right to introduce enforceable legislation because, although most if not all health boards already forbid smoking on their premises, and most people respect that, it is not a statutory requirement. As the bill progresses through Parliament, there is likely to be further debate on whether the enforceable ban on smoking should be a ban in an area that is defined by regulation as the same distance from hospital buildings for all hospital grounds, as proposed by the Government, or an area that is defined by each health board specifying its own legally enforceable perimeter, as suggested by the committee. There is also discussion to be had about possible exemptions, particularly for mental health patients.

As I said at the outset, the general principles in part 1 seem to be acceptable to most people who have engaged with the committee. Parts 2 and 3 are more controversial, with the Law Society of Scotland, the British Medical Association and the Royal College of Nursing among those who have expressed reservations. Those who are opposed to the duty of candour do not think that legislation is the way to create a culture of openness in the NHS and they emphasise that there are already requirements to be honest with patients about their treatment and any failings that occur. They feel that an apology for shortcomings is more meaningful if it is given spontaneously rather than as the result of a legally enforced duty.

Also, because harm in this context is not specifically defined, they feel that the duty is too broad and could encompass very minor events that it is not intended to cover.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): In relation to apologies, does the member welcome, as I do, section 23(2), which

makes it clear that the offering of an apology, a statement of sorrow or regret does not constitute an admission of guilt? That is a key point that may lead to an increase in the spontaneous or planned offering of true comfort to those who may have suffered as a result of a mistake.

Nanette Milne: I agree with the member on that. I would be very concerned if that was not stated in the bill.

A similar lack of definition is cited by opponents of the proposed new offences of wilful neglect and ill treatment levelled at healthcare professionals and organisations, although as those terms are already established in Scots law, I do not see that as a real problem.

The Law Society of Scotland supports the policy intent of part 3 but considers that the offences may be unnecessary, as such actions are covered under existing common law. The Law Society is also concerned that the introduction of the new offences may deter people from entering the social care professions and so recommends that if the legislation goes forward, the offences should state that actual injury, either physical or psychological, must be a prerequisite of any criminal action. That, it is felt, would be a reasonable way of creating a sensible distinction between cases of poor care and cases of criminal neglect. I expect to hear more on that from the Law Society at stage 2.

I am aware that in the time allocated to me, I have just skated over or ignored many of the important proposals in the bill, which no doubt will receive more detailed scrutiny at stages 2 and 3, assuming that the general principles of the bill are accepted by Parliament at decision time. We will support the bill at this stage, and I look forward to further discussions with stakeholders as it proceeds through the next stages of the parliamentary process.

The Deputy Presiding Officer: We now move to the open debate. We have a bit of time in hand, so members each have seven minutes or thereby.

15:12

Stewart Maxwell (West Scotland) (SNP): I am glad to be given the opportunity to speak in today's debate on the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill. As members are aware, the bill contains four main proposals: to introduce restrictions on the sale of nicotine vapour products, commonly known as e-cigarettes; to make it an offence to smoke in a designated area outside NHS hospital buildings; to create a legal requirement for health and social care organisations to inform people who have been harmed by their care or treatment; and to establish a new criminal offence of ill treatment or wilful neglect in health and social care settings.

I would like to say a few words on each of those points. E-cigarettes are a relatively new product and their use has grown very quickly indeed. When we were working on the original smoking ban in the Parliament back in 2005, there was certainly no discussion of e-cigarettes—they were basically an unknown product. E-cigarettes were only introduced to the United Kingdom in 2006. In 2010, only 3 per cent of adult smokers in Scotland had used an e-cigarette, but by early 2014, that figure had risen to some 17 per cent.

Due to the fact that e-cigarettes are a new product, there are no longitudinal studies to show the long-term impact of using them. Public Health England has reviewed the available evidence and has concluded that vaping is safer than smoking and that it seems to support smoking cessation, with those who use NVPs having a higher success rate at stopping smoking than those who do not.

However, that does not mean that vaping is safe. We must not forget that it takes a long time for the damage caused by smoking to become evident. A lot of men started smoking during world war one, when cigarettes were handed out as rations to soldiers, but deaths caused by lung cancer did not peak in men until the 1970s. Women in general did not take up smoking until world war two, around 20 years later, and deaths from lung cancer peaked and stabilised in women in the 1990s—20 years later than men. Almost exactly the same time period—about 50 years—elapsed between men starting to smoke and peak male lung cancer deaths and women starting to smoke and maximum deaths from lung cancer in women.

Given that information, I believe that the Scottish Government is wise to be cautious and to restrict and regulate the sale and marketing of e-cigarettes. I certainly support the recommendation to make it illegal to sell NVPs to those who are under the age of 18 and the recommendation on the power to prohibit the sale of NVPs in vending machines.

I am pleased that NVP retailers will require to be registered on the tobacco and nicotine vapour product retailer register, and that they must ask for proof of age before selling e-cigarettes to customers. It is vital, with such a new product, that we protect our children from any as yet unknown health problems that may appear over time. I agree with the committee that the Scottish Government should seriously consider asking the NHS to provide national guidance on the known risks and benefits of using NVPs to stop smoking, so that people who are trying to stop can make an informed choice about which types of smoking cessation products they wish to use.

I support the Government's proposal on the power to restrict advertising of NVPs to the point

of sale. That strikes a balance between allowing smokers some information about NVPs as a safer alternative to cigarettes while not—I would hope—attracting new non-smoking customers.

Paragraph 90 of the committee's report states:

"We support the precautionary approach adopted by the Scottish Government in relation to advertising of NVPs given the need to balance encouraging smokers to switch to NVPs as an aid to smoking cessation whilst also not attracting new 'never smoked' NVP users."

I am concerned about that area. We run the risk of having the process of denormalising smoking in our society stopped in its tracks by e-cigarettes, and there is a genuine risk that the new activity of vaping and using e-cigarettes could be seen as a route back into smoking. I am concerned that much of the television and other advertising glamorises e-cigarettes and their use in an attempt to attract younger, new non-smokers to take up e-cigarettes.

Kevin Stewart: Mr Maxwell quoted Public Health England, which in its review states that smoking prevalence has declined in adults and young people since e-cigarettes were introduced to the market. That shows the opposite of what Mr Maxwell says about glamorisation. Since the inception of e-cigarettes, the prevalence of smoking has reduced.

Stewart Maxwell: I disagree with the comments of my esteemed colleague from Aberdeen. We can see a pattern over the years in how tobacco companies have tried to get new markets using new products and advertising, and exactly the same process is being used today with e-cigarettes. Tobacco companies are buying up e-cigarette companies and producing their own e-cigarettes, and they are not doing that out of the goodness of their hearts to get people off tobacco. We should be extremely cautious about these new products, and we should be careful about seeing them as a panacea to stopping smoking. Tobacco companies and big tobacco are not on our side when it comes to e-cigarettes.

Although the NHS in Scotland has a smoke-free policy across all its grounds, there is no sanction that can be applied if someone refuses to comply. The bill proposes a designated no-smoking area around buildings in NHS hospital grounds, with a fine—as members have said—of up to £1,000, which can be applied to anyone who breaches the rule. That will mean that the areas where people congregate to smoke—such as the entrances to hospitals, which we all know are notoriously busy with smokers—will, I hope, become smoke free. People who are being admitted to hospital will not have to breathe in second-hand smoke as they are taken inside, and the measure will benefit visitors and NHS staff, so I certainly support it. I am aware that the measure will be welcomed by

the general public, as Government research that was commissioned in 2014 showed that 73 per cent of Scottish adults supported the proposal that smoking on hospital grounds should be stopped.

I turn briefly to the other two proposals in the bill, which place a duty of candour on health and social care organisations and establish a new criminal offence. As we know, the NHS in England has been hit by a number of scandals and as a consequence there have been a number of reviews into poor care and patient safety there. Those reviews recommended a need for honesty and candour with patients when things go wrong.

The Scottish Government has therefore decided to give a duty of candour to responsible persons. Without revealing personal details, I will say that my family has experienced a mistake that was caused by NHS staff. All we sought was an apology and an explanation—and honesty. At the time, however, the NHS was concerned only about whether we were going to sue. That is why it is important that we get a duty of candour into the structure.

Finally, I welcome the proposal to create a new offence of ill treatment and wilful neglect, as it will provide protection for some of the most vulnerable people in our society. In light of the fact that we have an ageing population, more of us are going to use care services, so the measure will ultimately benefit us all.

I will be delighted to support the bill at decision time.

15:20

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): We all support the Scottish Government's ambitious target to reduce smoking prevalence to 5 per cent by 2034, but the simple fact is that we are not making nearly fast enough progress.

To start with part 1 of the bill, I believe that e-cigarettes have an important role to play in hastening that progress. Nicotine replacement therapy has never been popular, and the evidence from Professor Linda Bauld, who has been researching tobacco control for nearly 20 years, and from Public Health England is that e-cigarettes are far more effective at getting people off traditional cigarettes than other methods such as nicotine replacement therapy are.

We need to look at the evidence. It seems that Stewart Maxwell has not looked at the evidence from Public Health England or Linda Bauld. I recommend that he starts by looking at the five-minute video from Linda Bauld that I put on my Twitter page today. We need to look at the

evidence and not foster scaremongering and myths.

I support the bill's proposals on age restrictions and the related proposals on vending machines. However, as Public Health England has made clear, there is absolutely no evidence that young people are becoming regular users of e-cigarettes, that e-cigarettes are a gateway to smoking or that they are starting to renormalise smoking. We have to challenge those all-too-common myths among the population, because they are a danger to people's health. Why do members think that organisations such as Cancer Research UK support e-cigarettes? The reason is that those organisations know that e-cigarettes can save lives.

I support the provisions in the bill on advertising. We do not want to glamorise e-cigarettes, but we want to have some advertising of them. I certainly support point-of-sale advertising, and we can have a debate—it will not be at stage 2, because the provisions will be in regulations—about whether we need to go a bit further than that. The Health and Sport Committee said:

“We recommend that the Scottish Government works with”

the Advertising Standards Authority

“to ensure harmonisation”.

The committee is clearly going beyond point-of-sale advertising.

Maureen Watt: Mr Chisholm will know that, for the NHS to recommend NVPs as a smoking cessation product, they would have to be licensed. E-cigarette companies have not asked for a licence. Why does he think that is?

Malcolm Chisholm: The committee will look into that issue and the complexities of the process. That certainly needs to be looked at.

The need for a register is widely accepted. The Health and Sport Committee said that there should be a register for all age-restricted products, whereas Linda Bauld thought that there should be separate registers. It is interesting that Cancer Research UK does not want e-cigarettes to be on the register at all because it is concerned to separate cigarettes from e-cigarettes.

The Independent Scientific Committee on Drugs has drawn on the work of experts from several countries and concluded that e-cigarettes are 95 per cent less harmful than normal cigarettes. Let us look at what the experts are saying.

Being particularly interested in health inequalities, I note that e-cigarettes also have an important role in reducing those. The people in society who smoke are disproportionately those

from more disadvantaged backgrounds. E-cigarettes can also help in that regard.

I move on to smoking in hospital grounds. I do not support the banning of e-cigarettes in hospital grounds, but I believe that normal cigarettes should be banned there, and I support the proposals in the bill. It is interesting that Action on Smoking and Health supports the Health and Sport Committee's recommendation that individual health boards should propose the legally enforceable perimeter. I am sure that that will be discussed more at stage 2.

As we have heard, under the proposed duty of candour, if a person experiences unintended harm, the organisation involved will have a duty to tell that person, support them, review the situation and apologise. In the committee, it was interesting to note who supports the proposed duty. We have heard about those who do not support it or who questioned it, but Unison and Marie Curie, for example, supported it because they said that it would drive culture change and support a culture of learning and improvement. The committee supported it in principle.

When some of us from the committee visited Ardgowan hospice in Greenock, the interesting point was made that some people might not want to know. That is why we should have an amendment that introduces the English arrangement whereby somebody is told that there is something to report but is given the right to say that they do not want to know. That is the way to proceed, rather than in a paternalistic way. People must be told that there is something to report, but they must have the right to say that they do not want to know. We should have an amendment to that effect at stage 2. We also need clear guidance on the triggers for the duty of candour and a programme of awareness raising, training and support.

An offence of ill treatment and wilful neglect has, interestingly, been in mental health legislation since 1913, but the issue has arisen more recently because of the Mid Staffordshire inquiry and the Francis report. We will be putting something into law that is already in English health legislation. The difference between the offence and the duty of candour is that the offence refers to something that is deliberate. The duty of candour is to do with unintended harm, but ill treatment and wilful neglect are in a completely different category. Some members have talked about their worries over the interaction between the new criminal offence and the duty of candour. However, the reality is that there should be no such interaction, because they will deal with quite different categories.

As with the duty of candour, it is important that we have guidance in particular on how the new

offence will sit alongside existing processes and procedures. Some members have made the point that there are already processes and procedures to prevent ill treatment and wilful neglect. The committee asked for further information on training, support and education in that regard.

Basically, the committee supports the bill, and I certainly do. To go back to where I started—on e-cigarettes—although there is quite a big difference between those who are more positive about e-cigarettes and those who are more cautious about them, it is interesting that most members support the bill's provisions on them, although there might be some argument about the details.

In general terms, I support the bill, including the provisions on e-cigarettes. However, we need to put out a clear message about the evidence on e-cigarettes and their potential to stop people smoking and reduce health inequalities.

15:27

Kenneth Gibson (Cunninghame North) (SNP): Since becoming an MSP, I have taken a keen interest in reducing the harm that smoking causes. In July 2001, I proposed a regulation of smoking bill, with the strong support of Dr Richard Simpson, Bill Aitken and Robert Brown. Subsequently, after 2003, the proposal was taken forward by Stewart Maxwell and, eventually, the Scottish Executive, which ultimately led to the smoking ban being implemented in 2006.

For many years, I have been a deputy convener of the cross-party group in the Scottish Parliament on tobacco and health, which is led energetically and enthusiastically by Willie Rennie and which aims to tackle the harm caused by tobacco use in Scotland, because it is an issue that has not gone away. We heard from the convener of the Health and Sport Committee how many people still become ill and die because of tobacco use.

Behaviours and attitudes in relation to tobacco and smoking have varied wildly over the years. Earlier today, I watched a programme on the BBC iPlayer entitled "Timeshift: the Smoking Years", which charted the history of tobacco use in the UK and explained the initial hostility to tobacco through to its widespread use and mass consumerism, class status, addiction, medical concerns and modern public smoking bans. It is clear that despite the long history of, and our familiarity with, the smoker, our attitudes to tobacco and smoking continue to evolve, along with our understanding of the drug, how it is marketed and its health and economic effects.

Despite overwhelming evidence that smoking directly causes heart disease, cancers and a host of other life-threatening illnesses, smoking remains the biggest cause of preventable death in

Scotland. We know that only young people taking up smoking allows the tobacco companies to continue to be able to market it, as older users either pass away or give up the habit.

I am pleased to say that, because of the smoking ban and other measures, the number of adults who identify as smokers continues to fall in Scotland and has dropped from 28 per cent of the population a decade ago to 22 per cent last year. That is heartening, and I understand that many smokers smoke less than they did before, which is undoubtedly because there are more restrictions on the places where they can smoke. That represents solid progress towards the ambition of the Scottish Government—and, I believe, everyone in the chamber—of establishing Scotland as a smoke-free nation by 2034. As Jenny Marra said, we hope that, under that ambitious target, less than 5 per cent of the population will smoke.

As we are aware, when Government intervention closes down certain avenues or restricts how tobacco products are sold and marketed, the ever-innovative tobacco industry reacts in creative ways to protect its margins. Tobacco companies are still pushing wholesale and unadulterated marketing in developing countries. They claim that they are interested only in getting people to switch brands rather than in encouraging younger people to smoke, but anyone who looks at what is happening overseas can see that that is fundamentally dishonest.

When advertising displays were banned, companies massively increased the variety of cigarettes that they sold, so that their brands took up entire shelves behind kiosks. When smoking in public was banned, some companies even tried to relaunch snuff as a product to be enjoyed socially. They were somewhat unsuccessful in their attempts, but my wife, who is an MP, tells me that snuff is still free to members of the House of Commons—I see that the minister is smiling, as her son is also a member of the Westminster Parliament.

In recent years, we have witnessed an increase in the use of nicotine vapour products, as many smokers understandably wish to switch to a potentially less harmful method of receiving the nicotine that they crave. Although I consider that NVPs cannot be worse than a cigarette that is packed with thousands of harmful chemicals, the science to ascertain how safe they are remains sketchy and incomplete. For that reason, it is incredibly important that we proceed cautiously, to ensure that a new generation of "smokers" is not created who assume that their new pursuit is completely benign. On that, I agree entirely with my colleague Stewart Maxwell.

Given that a majority of high school children have been exposed to NVP marketing, it is clear that we must protect them. For that reason, I am pleased that, following a public consultation, the Scottish Government has taken action to restrict the sale and advertising of such products. Prohibiting the sale of NVPs to anyone who is under the age of 18 and making it an offence to purchase NVPs on behalf of someone who is under 18 will help to limit the supply of such products to young children. That will lay down an important marker that such products might not be safe and that, for the time being, their sale must be considered alongside the sale of alcohol and tobacco.

As with cigarettes, I am glad that the Government has included measures to prevent the sale of NVPs from vending machines, which introduces another hurdle for people who seek to purchase NVPs when under the legal age. Further to that, those who wish to sell NVPs will have to register on the tobacco retailer register, as they would have to do to sell cigarettes. That will introduce accountability for shopkeepers and will help to weed out the less scrupulous who would happily sell to under-age customers.

As I mentioned, NVPs might be relatively safe, and they could prove to be useful tools in helping people to stop smoking completely, as I am sure colleagues would agree. However, until that can be proven conclusively, the Scottish Government is right to take an evidence-based and precautionary approach to the marketing of such products, which can ultimately lead to addiction.

As we heard from Malcolm Chisholm, Marie Curie, Unison, Action against Medical Accidents, Citizens Advice Scotland and others support legislation on the duty of candour to drive culture change and help to ensure that organisations shift towards learning, improvement and disclosure of harm. I echo what Stewart Maxwell said. I, too, have had such an experience. My son died as a direct result of medical neglect, and when one pursued an apology and measures to ensure that the same thing would not happen to anyone else, I am afraid that—appallingly—that was not forthcoming. I hope that the duty of candour will change the way in which health boards and others deal with such matters.

Along with the measures that are outlined in the tobacco control strategy, I believe that the bill will help to further reduce the number of smokers in Scotland and protect the health of our citizens, and that it will ultimately lead Scotland towards smoke-free status in the years ahead.

I very much look forward to Jackson Carlaw's closing speech for the Conservatives, because I received a ballot paper for the Conservative ranking for the West Scotland regional list just a

few short days ago, and a very good speech from him could possibly influence my vote.

The Deputy Presiding Officer: I am at a loss for words. I call Hanzala Malik, to be followed by Kevin Stewart.

15:34

Hanzala Malik (Glasgow) (Lab): Thank you, Presiding Officer, and good afternoon to you.

When speaking in today's stage 1 debate on the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill, which is an extensive bill covering many aspects of health and care, I will focus mainly on the sections that deal with tobacco and nicotine and the nicotine vapour products known as NVPs.

NVPs are a relatively new product and there appears to be a general consensus on two points: first, that the evidence base relating to the long-term harm of using NVPs is in its early stages; and, secondly, that they do not have a role to play in helping people to stop smoking. More evidence on the harm that may be caused by NVPs is needed, and I strongly support the Health and Sport Committee's call for more information from the Scottish Government on how to support research in that area. I also agree with the committee's recommendation that the Scottish Government consider that the national health service should provide national guidance on the risks and benefits of using NVPs to stop smoking.

We need to learn from the mistakes that society made with cigarettes. NVPs should not be treated the same as tobacco, as they are not as harmful, but we must ensure that the message that they are not as harmful does not confuse people into thinking that they are safe. We need to be careful not to allow the advertising of NVPs to confuse people. It should target existing smokers, not try to increase the number of people who use such products. In the early days of cigarettes, advertisements stated that they could be used as slimming aids and that, instead of eating between meals, people should have a cigarette in order to stay "fit not fat". Cigarettes can suppress the appetite, so the advertisement was not totally lying, but it was confusing and used images to make smoking look glamorous.

Members of my own family have had serious health problems as a result of smoking. When they began smoking, we did not know the risks to our health; as time went on, the evidence of the risks of tobacco grew but, by that time, it was hard for them to give up smoking. As I said, we should not repeat the mistakes of our past but take a cautious approach to products that still contain substances that we know to be harmful. To secure people's safety, there needs to be monitoring of the risks in

making NVPs attractive. The Scottish Government must ensure that people have the fullest and clearest information presented to them so that they can make a choice. I hope and believe that the bill goes some way towards ensuring that that is the case.

Constituents have written to me about the high incidence of smoking among people with mental health problems. I understand that the incidence of smoking is also falling at a slower rate among these people. We could see people moving from smoking to the long-term use of NVPs as an alternative. I know of one person who has been vaping for a number of years, who, at times of stress, has had two or even three NVPs sticking out of his mouth. Of course, that is his choice, but it draws attention to issues that have not been tested. I therefore wish the committee speed in researching the issues in a bid to protect our citizens.

We know for a fact that smoking has a detrimental effect on health. Many of our citizens have serious health problems as a result of smoking cigarettes. It is unfortunate that the research was not available when many people took up smoking. Now there is a new trend in our communities: people, particularly young people, are using NVPs. That is disturbing. It is crucial that we put in place legislation that protects young people, and it is essential that all people—regardless of their age—know the facts about using NVPs and the dangers that the products might cause in the short term and perhaps the long term.

I wish the committee every success with its deliberations. I hope that the minister will talk about the support that she can offer to the national health service in trying to find resources for further research.

15:41

Kevin Stewart (Aberdeen Central) (SNP): First, the confession: I was a smoker. I started smoking when I was 14, and not because of advertising or parental influence—my parents did not smoke. There might have been a bit of peer pressure, but I was never given to being influenced by that. However, I started smoking at the age of 14.

Over the years, I have given up many times, sometimes for long periods. On Christmas eve last year I bit the bullet and decided to quit the fags again. I decided to give up cigarettes because I was beginning to cough in the mornings and I felt that smoking was rather detrimental to my health.

I switched to electronic cigarettes. In my opinion, nicotine vapour products, as they are described in the bill, have—in the main—kept me

on the straight and narrow and away from cigarettes since Christmas eve. I have to admit that I still have cravings for cigarettes almost daily. Today's debate is not particularly helpful in that regard.

Although in the past I managed to quit by going cold turkey, I always ended up returning to cigarettes. There is little doubt in my mind that electronic cigarettes have helped me to quit my more than 20-a-day cigarette habit and cut down on my nicotine intake. I have to say that I feel much healthier than I did prior to 24 December last year.

I am not alone in that regard. In its systematic review of e-cigarette use, the Cochrane Collaboration found that almost one in 10 smokers who used e-cigarettes were able to quit smoking at up to one year and that around a third had cut down on their smoking. The trial data showed no adverse effects from short to medium-term use of e-cigarettes. I firmly believe that young people should be discouraged from smoking and vaping. However, adult vapers who are using e-cigarettes to quit or cut down on their smoking should not be demonised for their efforts.

A constituent wrote to me recently because he is scared of a possible vaping ban. He said:

"I used to smoke, but I haven't had a cigarette since 01/10/14"—

members should note how we all remember the day when we quit. He went on:

"I started with the white ecigs, now I am onto more complicated mods and tanks. I stopped smoking because I have angina and vaping seems okay, in the terms that I can breathe easier."

The bill's provisions on a minimum purchase age for NVPs of 18, prohibition of sales from vending machines, dealer registration and advertising restrictions do not bother me one iota. However, we have seen attempts in this Parliament to demonise those who are using electronic cigarettes, with some suggesting, based on scant evidence, that the devices are the alcopops of the nicotine world. Of course, this Parliament banned the use of e-cigarettes on the campus on the basis that it was following the precautionary principle. Could that be construed as demonising people for their efforts to try and quit smoking? I hope not.

I intend to support the bill at stage 1, but I would have grave concerns if any attempts were made at stage 2 to restrict vaping. I hope that colleagues will not try to use the bill to achieve other ends.

Some folk have suggested that e-cigarettes have renormalised smoking, but that runs counter to the review that I mentioned when I intervened on Stewart Maxwell. As I said, the review, which

was carried out by Public Health England, stated that smoking prevalence has declined in adults and young people since e-cigarettes were introduced to the market. I, along with everyone else in this chamber, want to see smoking prevalence continue to decline, but I have a fear that, if vapers are the next target, that decline will not be as rapid as we would wish. Indeed, we may well see some people moving back on to cigarettes if they have to do the things that smokers have to do.

I want to pick up some of the issues in the debate and offer my own experience. Some folk have indicated that the smoking ban has led to people cutting down on their smoking. My own experience was somewhat different. When I was a smoker, I had no problem about going outside or doing all the rest of the things that smokers have become quite used to doing. However, one thing that happened when I went outside was that I did not just have one cigarette—I ended up having two cigarettes in a row. That increased my nicotine intake and certainly added to my cigarette bill.

I have absolutely no problem with having a smoking ban on hospital grounds. However, there is a need to have somewhere on the grounds—well away from entrances and other people—for patients to be able to go and smoke, rather than to see them signing themselves out of hospital at a time when they require treatment. Of course, the other alternative would be to allow them to vape.

15:48

Jim Hume (South Scotland) (LD): We should congratulate all the Health and Sport Committee's members—and the clerks, of course—for all their hard work on the committee report. We are again looking at a bill that has the potential to help a lot of people to live healthier lives, with better guidance and better support.

Its three main provisions on NVPs—vaping—the duty of candour, and ill treatment and neglect could be beneficial in principle. However, we need to look at each one in depth and to distinguish what is beneficial and what could end up being undesirable and, perhaps, impractical.

I would like to point out a few of the issues where more evidence is required and where we need a better understanding of what the assumed policies aim to do. Some members have pointed out the move towards limiting sale and advertising of nicotine vapour products. Although the move towards restricting products that are harmful is welcome, a large amount of the evidence that was received—we have just heard some from Kevin Stewart—stated that they are less harmful than cigarettes. Of course, we also know that they are a good way of weaning people off smoking tobacco,

and there is little doubt that smoking tobacco is worse for a person than vaping. However, there are concerns.

Nicotine is a poison—it was formerly used as an insecticide—and it is an addictive chemical. It affects people's cardiovascular systems and can even lead to birth defects. That is all well documented. There are therefore concerns that there is some targeting of non-smokers. We hope, of course, that under-18s would be non-smokers. Therefore, I support the Government's proposals in that respect. We know that there has been targeting even at football matches, at which e-cigarettes have been given away.

I fully appreciate and support the view of Kevin Stewart and others that we need vaping to wean people off the more harmful smoking of tobacco, but vaping is probably not harmless—although I am afraid that we do not have enough evidence. Therefore, there is a very fine line between what the bill seeks to promote as a better alternative to smoking for those who already smoke and the unintentional consequences that it could have in promoting NVPs as being attractive to people who do not smoke or—as some witnesses put it—in glamorising products, in particular to people under 18.

Members will be aware of my member's bill that is going through Parliament, which aims to raise awareness of the damage that is caused to the respiratory systems of children by second-hand tobacco smoke. As we are not yet aware of the long-term impact on lungs from inhaling vapes, a wise health policy should prevent a larger-scale problem from occurring. Therefore, I support that approach. The measure to prohibit sales of NVPs to under-18s—under-18s only—is a reasonable step.

We know that there is a lack of robust research and evidence, so it is better to err on the side of safety in protecting young people. Stewart Maxwell's evidence on that and on the length of time that it takes for cancers to appear from when people start to smoke cigarettes was good enough. We also have to consider the growing vaping market and the word-of-mouth reputation that vaping products obtain among under-18s. The measure is therefore sensible, and is—of course—supported by numerous organisations, including Cancer Research UK.

I also support the provisions that build on the Lib Dem-Labour coalition legislation on smoking bans. Stewart Maxwell was very much involved in that legislation at the beginning. At that time, the British Medical Association's chairman said that that day would be remembered as

“the time Scotland took a bold and politically courageous step”.

The bill takes that further to protect areas around—of course—hospitals, health centres, general practices and other areas where health is promoted, and it will put Scotland closer to being the tobacco-free generation by 2034 that Malcolm Chisholm mentioned.

Another element of the bill is the duty of candour. Although I believe that that will provide better emotional support to patients, we must ensure that its use is balanced against its necessity. Let us look to the professional opinion of the BMA. I was informed that the measure could add administrative burdens, costs and responsibilities to health boards and general practices. The BMA pointed out that

“Any incident ... which occurs should be seen as an opportunity for improvement and learning”.

We know that doctors, nurses, consultants and every single medical and clinical member of staff want to help their patients and look to provide the best care to them. That is, after all, a basic element of the Hippocratic oath for new doctors as well as an element of the General Medical Council's standards and ethics guidance. Although I welcome the bill's raising of awareness of the duty of candour, we must seek further information on how it might affect the relationship between practitioners and patients.

Likewise, part 3 of the bill will introduce offences of wilful neglect and ill treatment by healthcare professionals and organisations. I reiterate that medical personnel do not seek to harm their patients, so I would tread very carefully on that point as it moves forward at the various stages of the bill. I ask the minister in her summing up to give specifications on that matter, given the current context in which practitioners work. We know that health boards and, as a consequence, doctors, nurses and accident and emergency departments are squeezed very tightly financially, and we recently saw health boards borrowing from the Scottish Government to break even. Departments are understaffed, staff are overworked and targets are pressing. I would be grateful if the minister would address my concerns that health professionals and care workers should not be unduly criminalised for any failings.

Our concerns are echoed by the BMA and its concerns focus on the concern that by imposing such sanctions we may still not be solving

“the serious failings in health care delivery in Scotland... and ... adding a criminal offence would not provide any additional protection for patients.”

I am pleased to see that we are advancing further in promoting patient care and health. If the bill is to achieve an optimal result, we need to look

at its provisions a little more closely and build upon it more constructively for the future.

15:55

John Mason (Glasgow Shettleston) (SNP): I welcome the progress that has been made on smoking by the Scottish Parliament, including members here present.

When it comes to smoking, we need to strike a balance between the health benefits for the public as a whole, including the smokers themselves, and allowing people the freedom to do themselves a bit of harm if they are determined to do so.

We have heard some personal stories here this afternoon, so I will mention the fact that my grandfather started smoking during the first world war and lived until he was 86. That encouraged my father to smoke heavily, which he did to the tune of 40 a day, but unfortunately it had a negative impact on his health and life.

I am slightly more relaxed about smoking. I allow people to smoke in my car if they want to. I was brought up with smoke in the house, the car and everywhere else, so I am reasonably relaxed about it. I tried it myself briefly in my teens and earned the nickname “Smokes” at school, although I think that was a little unfair because I really only tried one or two.

I accept that it is not always easy to strike the balance. On the one hand, we can be accused of being a nanny state and interfering in people's lives too much. On the other, we can be accused of standing on the sidelines while people destroy their lives and those of their children.

I will concentrate on part 1 of the bill—especially on tobacco and e-cigarettes. As other members have, I assume, I have received a fair amount of material from businesses telling me what a good thing e-cigarettes are. I have a number of friends and colleagues who also take that view. I am happy to accept that for some people who are trying to give up traditional cigarettes, e-cigarettes can be helpful. However, my main concern is about the other end of the spectrum, where e-cigarettes are clearly being used by unscrupulous companies as a way of enticing people to start smoking in the hope that they will become hooked and move on to tobacco products.

Members might know the Forge shopping centre at Parkhead, which is right beside my constituency office. I often go in there on my way to get lunch at a well-known sandwich shop. On the way, I pass various shops and stalls, one of which particularly struck me when it was set up. The stall is right in the middle of the thoroughfare and the shoppers have to cram in together to get past it. It has a larger-than-life 3D model of a cigarette; I guess

that it is about 20 times the size of a normal cigarette, and it looks exactly like a normal cigarette. That stall is advertising e-cigarettes but that huge model of the cigarette is there to glamorise and encourage smoking. The stall might not technically be advertising tobacco products, but in practice that is exactly what it is doing.

As I said, I am not arguing that e-cigarettes have no benefits, but I do argue that they are also being used as a thin veneer for advertising tobacco and traditional cigarettes. That is especially a concern because children are being targeted. The BMA also highlights that in its briefing for today's debate, which says:

"Concerns have been expressed by BMA members over the use of marketing methods to promote e-cigarettes which are likely to appeal to children, young people and non smokers ... The BMA is also concerned that e-cigarette marketing may have an adverse impact, reinforcing conventional cigarette smoking habits, as well as indirectly promoting smoking and increasing the likelihood of young people starting to smoke."

Overall, I find myself in agreement with the committee's recommendations, particularly with paragraph 90, which has already been quoted by Stewart Maxwell.

On smoking in hospital grounds, we on the Finance Committee spent a fair bit of time looking at the potential costs that are set out in the financial memorandum. In principle, I agree with the proposal in the bill, because if we want to continue to change the culture on smoking, where else would tackling smoking be a higher priority than in the grounds of the national health service? However, I take the point made in paragraph 117 of the stage 1 report that having a two-tier system might lead to less adherence to the rules in grounds beyond the legally enforceable limit, and that it might cause confusion as to where smoking is allowed and where it is not.

The financial memorandum sets out signage costs for all hospitals: time will tell whether they are sufficient.

When the ban on smoking in public places was introduced, I was a councillor at Glasgow City Council and I was concerned that a lot of enforcement activity would be required to stop smoking in pubs, restaurants and similar places. I have to say that I am delighted that I was proved wrong and that that legislation came into effect so smoothly.

I note that paragraph 124 of the stage 1 report states:

"The Scottish Government confirmed that it expected compliance by the public, patients and staff with the enforceable no-smoking areas to be as high as with previous smoke-free legislation".

I find that to be a little optimistic, because there is a bit of a difference between someone being inside a restaurant or a pub where there is a lot of public opinion right on top of them, and their standing outside, perhaps on their own, in hospital grounds.

The Finance Committee received submissions from local authorities and the Convention of Scottish Local Authorities expressing worry about the potential costs of the bill and whether the financial memorandum covers them adequately. In our report on the financial memorandum, we say:

"The lead committee may wish to seek further clarification of whether additional funding would be made available in the event that evidence indicates an increase in the cost of enforcement either in respect of the sale of NVPs or of smoking in hospital grounds."

I am glad to see that in paragraph 131 of the stage 1 report, the Health and Sport Committee takes that point up by saying:

"We therefore welcome the Government's commitment to consider any breakdown of costs provided by COSLA should there be a short term increase in enforcement costs."

Overall, this country has clearly made progress on smoking. We want to protect the ground that we have won, and to continue to make such progress despite attempts by the tobacco industry to undermine it. I very much welcome the bill, which I suspect will not be the last on this topic.

16:02

Dennis Robertson (Aberdeenshire West) (SNP): There has been a lot of focus on part 1 of the bill, and I make no apology for focusing a lot of my attention on it, too.

It is interesting to hear confessions from colleagues; that puts things into context for me. I take on board what John Mason said about striking a balance between health promotion and choice, but we have a long way to go if we are to achieve our objective of reducing smoking prevalence to 5 per cent or less by 2034. If we are attempting to make Scotland healthier, we need to take measures to do so.

Stewart Stevenson: Are we correct to use the word "choice"? Where addictions are concerned, it is precisely the case that choice is absent because that health issue denies people the choice to deprive themselves of the material to which they are addicted—in this case, nicotine.

Dennis Robertson: That is a very interesting approach. I believe that even when smoking becomes habitual, there is still an element of choice that can to some extent enable the person to move on from the addiction, with the appropriate treatments and so on, so I am not

quite sure that choice is not still available in such cases.

Malcolm Chisholm mentioned Professor Bauld from the University of Stirling, who has cited evidence that those who use NVPs to help them stop smoking are 60 per cent more likely to quit than those who do not. That is a substantial number. There is evidence of success with other products, such as patches and chewing gum, but if e-cigarettes can aid people to stop smoking and enable a high percentage to remain off cigarettes—as someone who was addicted from age 14 to last Christmas eve said—that says something very positive about them. However, because e-cigarettes are so new to us, we still do not know whether they will have a long-term effect. We need to keep that in mind and monitor the situation.

Stewart Maxwell made the important point that a lot of e-cigarettes are now being produced by tobacco companies. They may just be switching from tobacco to nicotine vapour products for profit but, as he suggested, there may be some alternative motive.

With regard to children's exposure, we know that there has been advertising of e-cigarettes and a great deal of exposure to their existence, which has led to their uptake. We need to be very guarded about that. I welcome the fact that we will legislate against advertising e-cigarettes, except at point of sale. That is incredibly important—there was a lot of discussion about that issue when the committee took evidence. I support point-of-sale advertising in community pharmacies, where people can take advice on the product. The minister suggested that NVPs are not a medicine as such because they are not licensed. That is correct. However, I sincerely hope that community pharmacies will be able to give appropriate advice on the use of NVPs as a product to help people to stop smoking.

The Government has taken other measures, and continues to do so—measures that are not in the bill—to encourage people to stop smoking. For example, in October the minister launched the take it right outside campaign, which was supported by the British Heart Foundation Scotland. James Cant, its director, said that opening a window does not protect children from second-hand smoke; people have got to take it right outside. I am sure that James Cant and many of us who are non-smokers would prefer it if people stopped smoking entirely, but if smokers can take it right outside, so much the better.

That brings me to hospitals. There was a lot of discussion in the committee about hospital campuses. As a result of structural issues, it may not be possible to apply a smoke-free area within 10m or 15m of buildings throughout a hospital

campus. The committee was a bit concerned about putting perimeters in the legislation. At the moment, there are, quite rightly, no-smoking policies in hospital grounds, including at medical centres. I believe that that is the best solution, with possible exemptions for hospices or in situations where there are proven mental health benefits.

I come to parts 2 and 3 of the bill. For me, the duty of candour is about openness and transparency. It is about enabling people to put up their hand and say, "I made a mistake." If an error has happened and someone does that, people are okay about it. The problem arises when mistakes are covered up. The duty of candour in the bill is appropriate and proportionate.

The wilful neglect provisions in part 3 are right and proper, in terms of legislation in this area.

Jenny Marra began her speech with a question about disciplinary aspects and the SSSC. Obviously, the bill is not yet in force but as someone who used to be a manager in the care sector and, on occasion, took people through a disciplinary procedure to the SSSC, I can say that that procedure is extremely rigorous and is there not to punish but to identify whether someone who has been taken forward by their management because of disciplinary action—

The Deputy Presiding Officer (Elaine Smith): Mr Robertson, could you conclude, please?

Dennis Robertson: I would be wary of trying to assign issues around the SSSC and disciplinary procedures to this bill.

16:11

James Kelly (Rutherglen) (Lab): I welcome the opportunity to take part in this stage 1 debate. I thank the committee, the clerks and everyone who gave evidence. We have had an interesting debate this afternoon. There have been some differences of opinion and people have brought their personal experiences to bear.

I have come to this issue relatively fresh, because I am not a member of the Health and Sport Committee. Coming into the debate, I had an open mind on e-cigarettes, or NVPs, as they are known, and I was quite persuaded by some of the points that Stewart Maxwell made with regard to the need for caution on the use of e-cigarettes and some of the promotional activities of the companies.

I then listened to my colleague Malcolm Chisholm, who I always listen to closely. He pointed out that it is important to consider the evidence. I looked through the stage 1 report and read some of the evidence. I noted that ASH Scotland said that 2.6 million people use e-cigarettes and that 1.1 million had done so as a

way of giving up smoking. The bottom line from that evidence was that 2.5 million people seem to be using e-cigarettes as a vehicle for coming off traditional tobacco products, which would seem to back up what Malcolm Chisholm was saying.

I agree with some of the cautionary comments that Stewart Maxwell and John Mason made with regard to some of the activities that companies use to promote e-cigarettes. I note the various arguments that members have made about how important e-cigarettes are in helping people to come off traditional tobacco products. Kevin Stewart, who has left the chamber, gave personal testimony in that regard. However, these are early days and we must be aware of the need for evidence.

Duncan McNeil: In his reading, did the member take note of the words of Professor John Britton of the UK centre for tobacco and alcohol studies, who told the committee that NVPs have the potential to save tens of thousands of lives, that the real enemy is tobacco and that nicotine is about as hazardous as caffeine?

James Kelly: I thank the member for that intervention and take on board that point.

I acknowledge the overall benefits of e-cigarettes in helping people to wean themselves off traditional tobacco products. However, to return to the provisions of the bill, why do we have to limit sales, need a register and have restrictions on vending machines? Ultimately, e-cigarettes are still tobacco products and it would be better for people's general health if they did not smoke e-cigarettes or traditional products.

I support the ban on smoking in designated areas at NHS grounds. Since the smoking ban was introduced throughout the country, it has always seemed quite odd to go to hospitals and see a lot of people outside smoking. I am not a smoker and I was taken by Kevin Stewart's comment that, when people go outside to smoke, they have not only one cigarette but two. I was not aware of that. People being able to smoke outside hospitals encourages that and militates against the overall aim of reducing reliance on tobacco.

There are some practical considerations to be taken into account. If there is a strict, designated no-smoking area where it is an offence to smoke and there are other areas where there is a no-smoking policy but it is not an offence to smoke, people will soon get wise to that and there might be some difficulties in implementing the ban.

I am interested in the fact that it will be down to individual health boards to decide the policy on whether NVPs can be smoked outside hospitals. To be honest, I am not totally comfortable with the idea that we are trying to stop people from smoking outside hospitals but we might allow them

to smoke e-cigarettes. I am not persuaded by that argument.

I turn to some of the other provisions in the bill. The duty of candour makes absolute sense. The points that members have made about being open and transparent are correct. I agree with what Kenny Gibson and Stewart Maxwell said. In some of the constituency cases that I get, there is almost a defensiveness from the NHS. If the NHS feels that there is a danger that it will be sued, it will not communicate with us properly. That is wrong. If something goes wrong in a situation in which people are vulnerable, we owe it to them to be open and transparent and to give an apology where that is appropriate.

The criminal offences that the bill introduces are also correct. Some people have said that there is a potential clash with the duty of candour, but the bill's provisions on ill treatment and wilful neglect are specific. The bill also places a particular onus on care providers, which is important.

There are other issues to be dealt with in the care sector, such as the training of care staff and appropriate payment for them. Many care staff are not on the living wage. Although that is not a matter for the bill, it needs to be addressed.

I support the general principles of the bill. The policy intent is right but there are some practical issues that will need to be considered at stages 2 and 3.

16:18

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I will nail my colours unambiguously to the mast, as I have done in previous debates on tobacco. In the 20th century, more people were killed by smoking tobacco than died in all the wars of that century. It is a vile trade that should not exist in the 21st century. However, those who are, to quote James VI 400 years ago,

"by custome ... piece and piece allured"

to depend upon tobacco for relief from the stresses of daily life are not the people we should attack in the debate, and I do not seek to do that. They are the victims, not the cause of our problem.

The bill that is before us addresses the advertising and promotion of nicotine vapour products. I welcome restrictions on those products because, although they are certainly known not to carry many of the chemicals that are present in cigarettes and that cause ill health and death, they have nonetheless not yet been shown to be entirely safe to be sold.

A report by the US surgeon general in 1989 identified 400 separate chemicals in cigarettes, at

least 40 of which were carcinogens and many of which were mutagens and developmental toxicants. At this stage, it simply is not clear whether we have the level of knowledge about vapour products to understand whether we have similar problems with the chemicals in them, either individually or in combination and, perhaps more critically, when subjected to heat. James Kelly quoted ASH. Another quote from ASH in the committee's report points out that butterscotch, with diacetyl, and cinnamon, when heated to high temperatures, can be another factor in creating harm. When we heat what might be innocuous chemicals, we can end up with something that is quite toxic.

However, if NVPs reduce harm and enable people to move away from the well-known and well-understood problems that are associated with nicotine addiction, that is fair enough and, for the time being, I am prepared to accept them.

I will talk a fair bit about the duty of candour provisions. I am going to get all techie about the way in which the bill is drafted, because there is considerable confusion about who "persons" are. The first words in relation to the duty of candour are:

"A responsible person must follow the duty of candour".

However, when one finds the definition of "responsible person", one discovers that the one thing that it is not is a person. The definition has six paragraphs, and it includes a health board,

"a person (other than an individual) who has entered into a contract"

and so on. However, none of the things in the definition is capable of being a real person. Therefore, it might be useful if a different term were used—"responsible entity" might be an alternative definition.

I am not just trying to pick at this for the sake of it. The point is that the word "person" is used for three other purposes in part 2. For example, section 21(2) says:

"This subsection applies to a person"

to whom something has happened. Then, section 21(3) suddenly switches and, instead of saying "person" it says "individual", when it is clearly talking about the person who is referred to in section 21(2).

Section 22, on the duty of candour procedure, sets out the actions that are to be taken by the responsible person, but we then get a "relevant person", who appears to be a real person who is an individual and not a "responsible person" who is not an individual. In section 22(2)(c), the responsible person has to

"offer and arrange a meeting with the relevant person",

which is highly confusing.

It gets even more confusing when we move down to section 22(2)(g), which states:

"the responsible person is to make available, or provide information about, support to persons"—

in the plural—

"affected by the incident".

However, it is not entirely clear who those persons, plural, might be. Are they individuals or responsible persons?

Even more confusingly, another provision mentions

"training to be undertaken by a responsible person",

but a responsible person is specifically defined not to be an individual, and how can an entity that is not an individual undertake training? I am not at all certain about that.

That was a little rant about that subject, but I will move on to what is perhaps the more significant issue of reporting and monitoring. Where there have been failures, a report has to be produced. Under section 24(3)(b), a report cannot

"contain any information which, in the responsible person's opinion"—

I wonder about that—

"is likely to identify any individual."

I am genuinely uncertain about how that can sensibly be done because we will probably be looking to describe in such reports a comparatively small number of incidents, and of a particular kind. I am very uncertain that it will be possible to produce a report—which must be published—that will not lead to it being possible for a person to be identified. In general, in statistical analysis across Government, we do not report where fewer than five people are involved to avoid that particular duty. By the way, the "responsible person"—even though the offences can cover an individual—is not included elsewhere.

In conclusion, I will go back to 2004, when the then First Minister issued a statement on tobacco—it was quite the best thing that he and his Administration ever did, unambiguously, and I continue to praise them to the hilt for that. During that 2004 debate, I quoted James VI, who said of tobacco that it was

"A custome lothsome to the eye, hatefull to the Nose, harmefull to the braine, dangerous to the Lungs, and in the blacke stinking fume thereof, nearest resembling the horrible Stigian smoke of the pit that is bottomlesse."—
[*Official Report*, 10 November 2004; c 11696.]

We have known that tobacco is an evil, poisonous material for 400 years. Why are we still debating the subject now?

16:26

Richard Lyle (Central Scotland) (SNP): Since we are all being honest, I will begin by saying that I am a smoker. I started when I was 12 and I still smoke. That is my choice.

I support the bill. The use of NVPs has grown significantly over the past decade. The health benefits and the health harms of NVPs are the subject of much debate but research evidence for either is currently limited. That presents an overwhelming social and moral case for continuing research and debate on the subject.

It is important to look at both sides of the debate. Although some argue that NVPs are an effective tool for quitting or cutting down on smoking—as my colleagues have already said—others are concerned that NVPs may be a gateway to smoking, particularly among young people. That has led to calls for greater regulation of NVPs.

Let me be clear: I support the use of NVPs but I also want to know what is in them. The Health (Tobacco, Nicotine etc and Care) (Scotland) Bill takes that uncertainty into account and adopts a somewhat precautionary approach to NVPs. The bill proposes a number of restrictions on the sale, advertising and promotion of NVPs, which include a minimum purchase age of 18; the power to prohibit their sale from vending machines; making it an offence to purchase an NVP on behalf of someone under 18—“proxy purchasing”; a requirement for NVP retailers to register on the tobacco and nicotine vapour product retailer register; a requirement that registered retailers should operate an age verification policy; and the power to restrict or prohibit domestic advertising and promotions.

In response to the Health and Sport Committee’s call for evidence, 61 per cent of respondents supported all the provisions relating to NVPs. Notably, there was almost universal support for restricting their sale to over-18s only. One of those supporters is the British Medical Association. In its briefing for the stage 1 debate, the BMA states:

“The BMA supports an age restriction for the purchase of e-cigarettes and their refills and agrees that they shouldn’t be sold to anyone under the age of 18 years, in line with current tobacco regulation.”

The BMA also supports the provision

“making ‘proxy purchase’ of nicotine vapour products an offence”.

One point that the BMA mentions in its briefing—and that I agree with—is the appeal of NVPs to children and young people. The BMA states:

“Doctors have expressed significant concern over the proliferation, promotion and increasing availability of nicotine vapour products in the form of e-cigarettes”,

as those products have the potential to increase the risk of children and young people using tobacco. According to the BMA,

“It is estimated that the number of 11-18 year olds in Great Britain who have ‘ever’ tried e-cigarettes increased from five per cent in 2013 to eight per cent in 2014, though ‘regular’ use ... has remained low.”

The provision to which there is most opposition is the plan to give ministers the power to restrict the domestic advertising and promotion of NVPs. Some respondents have argued that such a restriction is disproportionate to the harm that NVPs cause and could potentially undermine the public health benefit from using NVPs as a smoking cessation tool.

According to the BMA, analysis of the growing market for e-cigarettes has shown that marketing targets two distinct audiences: current smokers who want to use NVPs as a cessation tool, and children and young people and non-smokers. We must distinguish between the two audiences. On the one hand, we favour current smokers who want to use NVPs as a way to try to quit smoking. On the other hand, we cannot allow young people to be persuaded to use NVPs, especially if they are non-smokers. A review by the United States Senate in 2014 concluded that e-cigarette companies are employing the same marketing tactics that the tobacco industry first pioneered to attract young customers to their products.

Part 2 of the bill contains the duty of candour. At present, NHS boards are required to implement the document, “Learning from adverse events through reporting and review: A national framework for Scotland”, which sets out a national approach to identifying, reporting and reviewing adverse events and draws on best practice.

Following a number of reviews in England, there have been calls for greater candour among health and care organisations when things go wrong. As a consequence, the bill proposes to give health, social care and social work organisations a duty of candour. That would mean that, in the event that a person experiences or could have experienced unintended or unexpected harm from their care, the organisation would have a duty to tell that individual.

As Stewart Stevenson explained, the bill proposes to give a duty of candour to a “responsible person”, who is defined as an NHS board; anyone other than an individual who is contracted by an NHS board to provide a health service, such as a GP practice or community pharmacy; anyone other than an individual who is providing independent health care services; a local

authority; or anyone other than an individual who provides a care service or social work service.

In the event that a person in receipt of health, social care or social work services experiences an unintended or unexpected incident that, in the opinion of a registered health professional, results or could have resulted in death or harm, the responsible person will be required to implement the duty of candour procedure.

Those who support the measure—approximately 58.5 per cent of the respondents to the committee’s call for evidence—feel that a duty of candour would engender a culture of openness and learning. Meanwhile, critics argue that legislation is not the appropriate approach to create an open culture, and that the defined harms are very broad and could encompass very minor events, thereby resulting in a significant drain on resources. Organisations such as the Royal College of Nursing support the creation of a legal requirement in that respect.

I conclude by highlighting once again some of the bill’s key features. The bill aims to control the sale, advertising and promotion of nicotine vapour products such as e-cigarettes by implementing a minimum purchasing age of 18; by setting out the power to prohibit their sale from vending machines; and by making it an offence to purchase an NVP on behalf of someone under 18. We cannot allow young children to be influenced to start using NVPs. We can hope to educate them so that when they mature they can make the right decision.

The bill will make it an offence to smoke in a designated zone outside an NHS hospital site or an entrance. I welcome that, but I make a plea that boards should allow people in certain areas in their hospitals to smoke, as we need to educate steadily those people who smoke in order to eradicate the bad practice of smoking outside hospital doors.

16:33

Jackson Carlaw (West Scotland) (Con): At 2 o’clock this afternoon Father Jeremy Bath, in leading time for reflection, hoped that our afternoon would “not drag or fly by”. I assure him that it has not done the latter; as for the former, I will leave other members to decide.

I congratulate the minister; in particular, I congratulate Duncan McNeil on detailing to members in the chamber a comprehensive and interesting committee report on the bill. However, I have to say that I am overwhelmed by a lack of enthusiasm for the bill that we are considering, among the many measures that are brought before us. I wonder whether, if it all went away, the public good would be adversely affected. I am

unpersuaded at the moment, although on balance we will support the bill tonight. I hope that, as it goes through its various stages, some of the concerns that have been raised will be addressed.

I have a lot of sympathy with part 3 of the bill. We can all think of specific examples where wilful neglect has not been effectively dealt with. The Government’s proposals in that regard are to be welcomed, although there are questions surrounding them. Jenny Marra and others spoke about issues relating to the duty of candour with some conviction and credibility, but there is a lot more detail that needs to be teased out.

I will speak principally on the e-cigarettes element of the bill. When I say that I am unpersuaded, some members may realise that there is something of a division between Nanette Milne and me as we consider the debate, although it is not quite of Corbynista proportions. We are on the same path but not yet at the same destination, and there will be no need for a free vote—we will come to a unified position in due course.

Duncan McNeil went through the various devices that exist. My recollection of when we first debated the subject is that my primary concern was the health risks associated with the e-cigarette delivery devices. We knew that they had exploded in people’s hands and that some people had ingested formaldehyde and various other things. I know that responsibility for that lies elsewhere, and I hope that all the work that needs to be done is being done there. However, we have heard from manufacturers that some devices from very unregulated markets find their way to the United Kingdom, and the effect on people who use them is of huge concern.

Like Duncan McNeil, I still find the sight of people using vapour devices strange. Members of a certain vintage might remember that, in the 1960s, Christopher Lee as Fu Manchu used something that looked like one of these devices. I have always associated their use with a strange, cultish practice. Nonetheless, they have become more prevalent.

What concerns me about the mood of the debate is that we overstate the concerns. Malcolm Chisholm and Kevin—I have forgotten his surname.

Members: Stewart.

Jackson Carlaw: I apologise.

I support the points that Malcolm Chisholm and Kevin Stewart made about vending machines, sales to under-18s and the register, but I am a bit worried about the use during the debate of the term “the lack of evidence”. There seems to be an assumption that the evidence that is yet to come

and will be forthcoming is such that we should put a wall up in front of e-cigarettes.

I was concerned when I heard Stewart Maxwell's speech. We are not legislating on all sorts of habits that are more deadly and dangerous to public health than the use of e-cigarettes, on which we are legislating. That is not a reason not to be precautious, but—

Stewart Stevenson: Will the member take an intervention?

Jackson Carlaw: I will shortly.

I also heard Stewart Maxwell say that the manufacturers and sellers of these devices are the tobacco companies.

Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP): Exactly.

Jackson Carlaw: I have always felt that Christina McKelvie can see a conspiracy in a vase of flowers, but here is an inconvenient truth: the people who are buying up the companies that manufacture these devices are indeed the tobacco companies. There is a conundrum here. E-cigarettes may save the lives of tens of thousands of people, but people are dropping dead because of traditional tobacco smoke in their hundreds of thousands today. People are not dropping dead because of e-cigarettes.

Given that the harmful effects that Mr Maxwell thinks we should take precautions against may not transpire, I do not want us to create an atmosphere of hysteria around e-cigarettes or a tone that is potentially prejudicial. In the circumstances, our objective should be to promote them aggressively to smokers in order to get them off traditional tobacco, which will perhaps contribute to saving their lives. I am uncomfortable about the fact that that would benefit the profits of the tobacco companies that own the devices, but I would rather that they make their money from e-cigarettes than that they make it from traditional tobacco, which is undoubtedly, without argument, killing people.

Stewart Maxwell: As surprising as it might seem to the member, I actually agree with him. The point that I was trying to make—maybe I did not make it well enough—is that I have no problem with supporting the use of e-cigarettes as a cessation product for those who use tobacco and think that that is a good thing. My concern is about the long-term consequences, which have been mentioned, of the use of e-cigarettes and promoting their use to young people as a fashionable habit that they can take up.

The Deputy Presiding Officer: You are in your last minute, Mr Carlaw.

Jackson Carlaw: In that sense, I can say that Mr Maxwell and I are in agreement. I am just worried that we do not overegg the mood music around our discussion of those products to create a prejudice that actually makes people equate them with traditional tobacco.

That efficacious and delightful member of the Scottish National Party, Mr Gibson, told us earlier that he has in his possession the ballot paper for the Conservative ranking for the West of Scotland regional list. The rules that I drew up forbid any member from soliciting votes, so of course I cannot do that. Mr Gibson, like me, is of a certain age—both of us falling into corpulent middle age—and I say to him that there is still a place for people of our age in the Parliament. However, to take part in that ballot, he would of course have to sign a pledge of allegiance to truth, justice and the Conservative way, which I think is an obstacle that might be insurmountable for him.

The Conservatives will be supporting the bill tonight at decision time.

The Deputy Presiding Officer: I call Rhoda Grant—up to eight minutes, please.

16:41

Rhoda Grant (Highlands and Islands) (Lab): I welcome the bill and support its direction of travel. However, I echo Nanette Milne's comments about the minister's response to the committee's report not coming until late yesterday afternoon. I know that there have been occasions when the Government's response to a committee report has not arrived before the debate on that report, but we are pushing a lot of legislation through the Parliament, particularly in the Health and Sport Committee, and it is important that that legislation is well scrutinised. It is therefore important that when we get responses from the Government committee members are given time to consider them.

That also applies to the minister's announcement today that part 3 of the bill will not extend to children and that we will be given the reasons for that in a couple of days. We need all that information because as we push legislation through we have to ensure that it is good and fit for purpose, otherwise we all fail. Even when we support legislation, it is important that the Government gives us the information that we require.

I will turn the bill on its head as I address the comments that members have made, because I turn first to the provisions on ill treatment and wilful neglect. I echo Jenny Marra's comments about health and care workers, who do a tremendous job in very difficult situations—we must remember that when we talk about issues of ill treatment and

wilful neglect. We hear of an unfortunate but small number of cases in which patients have suffered ill treatment and wilful neglect. We need to deal with those, leave no chance of a recurrence and ensure that the people responsible are treated appropriately under the law.

There is a concern about the fact that the bill deals with both the duty of candour and ill treatment and wilful neglect. I reiterate the point that other speakers have made about that, which is that the issues are not connected in any way. The provisions on the duty of candour are to do with mistakes where no harm was intended, whereas the provisions on ill treatment and wilful neglect are to do with people wilfully neglecting a patient and taking almost premeditated steps to ensure that they are not looked after.

All too often, we pick up the newspaper and read stories of abysmal care homes. Those cases are often the result of a lack of trained staff, so the owner of the establishment needs to be prosecuted rather than the staff. It should not be the case that staff are found to be guilty of ill treatment and wilful neglect because they have not been trained properly, because of understaffing or because they have not received support; that should go back to the person who manages the training rather than fall on the staff themselves.

Maureen Watt: Ill treatment and wilful neglect are well-known offences. I reassure the member that part 3 of the bill is not about people not being able to do their job because of difficult circumstances; it is about the circumstances in which a person intentionally sets out to harm or ill treat somebody.

Rhoda Grant: My point about intention was that where a care home owner underfunds and understaffs a care home, leaving a member of staff unable to give adequate care to a patient, for example, it must be the care home owner who is held to account rather than the member of staff, who may have been trying to the best of their ability to cope in a bad situation.

Too often, we find serial offenders—people who hold multiple care home licences. When they are found to be wanting in one care home, we must ensure that all their licences are revoked. An amendment to that effect could be lodged at stage 2 or stage 3. That said, there is wonderful practice, which we must ensure is spread throughout the care home sector so that patients are well looked after.

I turn to the part of the bill that deals with the duty of candour, which is very different from the part of the bill on wilful neglect. I make the point that providing for a duty of candour is very complex. Stewart Stevenson talked at length

about the duty of candour procedure, and it is important that we get clarity on how that will operate. For example, when a GP is working on their own, who will provide the independent input? If someone other than the person who has been seen to have made the mistake apologises, will that break down the relationship between the clinician and their patient? Would it not be better for the person who has made the mistake to make the apology, if that is appropriate?

Candour is important, and I make a plea for it to run through all the interactions that health and care professionals have with patients and clients. Patients need to have a clear understanding that, if something happens to them, regardless of whether it has a serious impact, they will be told. I take on board what Malcolm Chisholm said about a patient's right not to know—that is up to the patient—but the fallback position should always be that a patient must be made aware when something has gone wrong, regardless of whether they have suffered an ill effect.

I turn to the ban on smoking in hospital grounds, which is another issue on which there has been a lot of debate and on which we still need clarity. The Scottish Government has suggested that the ban could apply between 10m and 15m of buildings, but there needs to be much more clarity. What would happen if the boundary of the hospital grounds was less than 10m or 15m away from the building? Would the area outside the boundary be covered by the ban?

I also want to bring to the Government's attention the part of the bill that talks about permitting people to smoke in hospital grounds. I would be pleased if the minister would put it on record that, if a member of staff takes a patient outside to smoke because they feel that that is in the patient's best interests and important to the patient's wellbeing, they will not be in breach of the provision in the bill and will not be disciplined for doing so. The first duty of a clinician or a nurse is to their patient's wellbeing, and the bill should not overturn that. It might be in only a very small number of cases in which being taken outside to smoke would be in the interests of the patient's wellbeing, but we must ensure that the position of staff in such circumstances is very clear.

I am running out of time, so I will move quickly on to NVPs. It has been made clear that using NVPs is 95 per cent safer than smoking, and that smokers are 60 per cent more likely to quit when they use NVPs. Those statistics cannot be ignored. I know that there is huge concern about us encouraging a new brand of nicotine addicts, but if NVPs help people to avoid the more harmful effects of smoking, we must consider how we can encourage smokers to take them up as an alternative to tobacco. At the same time, we must

take steps to ensure that young people and non-smokers are not encouraged to take up such products.

I reiterate our support for the bill, and I hope that it can be clarified and strengthened at stages 2 and 3.

16:49

Maureen Watt: I thank all members for what has been a very good and constructive debate on an important piece of proposed legislation. There are some issues that may need further consideration, but it is great to hear that there is support for the general principles of the bill.

Unlike Jackson Carlaw, who is underwhelmed by the bill, I believe that it is an important milestone. Measures to control tobacco, NVPs and smoking will play their part alongside the vast range of measures that will continue to be progressed by the Scottish Government to promote public health in Scotland. Part 1 also furthers the aims of the Scottish Government's tobacco control strategy to support longer, healthier lives and to tackle the significant inequalities in Scottish society.

I recognise that there is an on-going debate about the emerging evidence on the use of NVPs, which has been highlighted in the debate. NVPs are a relatively new product and the research is emerging all the time about the benefits or otherwise, who is using them and who is not. There is a role for NVPs but, at the moment, we do not know the extent of that role.

Research is emerging all the time, and long-term research is required. Nevertheless, we know that NVPs are used along with other cessation services that are playing a key role in the field, and the Scottish Government is working with NHS Scotland and NHS boards to develop a consistent approach on that. Last year, NHS Health Scotland issued a position statement on NVPs and it is renewing it to take account of the latest evidence.

Hanzala Malik highlighted the difference of opinion that exists between members. On the one hand, we have Kenny Gibson, Stewart Maxwell, Jim Hume and John Mason, who urge caution—

The Deputy Presiding Officer: Excuse me, minister. I ask members who are entering the chamber please to do so quietly.

Maureen Watt: Those members do not want to create a new generation of smokers through NVPs. On the other hand, Kevin Stewart advocates NVPs, as they have helped him to stop smoking, and Malcolm Chisholm also supports that position.

We do not want to demonise people who use e-cigarettes, and there is nothing in the bill to suggest that that is the case. The bill is an attempt to protect young people from taking up smoking and to prevent normalisation of the habit of smoking, but it also allows smokers to switch to e-cigarettes. That is the balanced approach that James Kelly highlighted, and it is welcomed by stakeholders including ASH Scotland. We need to reduce the visibility of NVPs and their appeal to young people and non-smokers while not reducing their potential benefits to existing cigarette smokers. I welcome the Health and Sport Committee's support for such an approach, and I know that many witnesses expressed their support for the proposals.

Putting restrictions on smoking outside hospitals on a statutory footing is an important step forward in tobacco control in Scotland. The Government has made it clear that we will consider all necessary actions to see a tobacco-free generation in Scotland by 2034. Continuing to denormalise smoking in society will help us to achieve that ambitious aim. There have been diverging views as to how smoke-free hospital grounds should be achieved, but most people agree that we should send a clear and consistent message that NHS Scotland is a health-promoting health service and that smoking on hospital grounds is not socially acceptable. There is also strong public support for the proposal.

Health boards have had policies on smoke-free grounds since 2006, but they have asked us to ensure consistency in the approach that is taken, which is not without its challenges. John Mason asked about enforcement. The local authorities already get £2.5 million to support the implementation of the existing smoke-free legislation. We asked COSLA to provide us with information if it thinks that the bill will put extra pressure on local authorities and to say how much extra money will be required, but so far we have had no reply.

As I have said, it is a question of striking a balance and implementing our public health policy on smoking while taking a fair approach to patients and visitors. I take Rhoda Grant's point about sensitivity towards patients. The bill relates to persistent offenders; we are not talking about mental health workers, and health boards recognise that point. I think that we know that smoking does not relieve stress—indeed, it can contribute to stress—which is why we must ensure that every patient is given the opportunity to take up smoking cessation services.

The duty of candour will promote accountability, safer systems and better engagement of staff in improvement efforts, and it will engender greater trust among patients and service users.

I thank Jenny Marra for making the point about disciplinary hearings, but the bill does not relate to professional regulations or the provision of legal aid in that regard. The focus is on an organisational duty of candour. With regard to the provisions on wilful neglect and criminal offences, I will ask my officials to consider her concerns and respond with the Government's position.

We are working with professional organisations to ensure that the provisions in the bill, including on staff training and support, take account of the experience and expertise of staff and focus on enhancing working conditions where there have been unintended consequences—

The Presiding Officer (Tricia Marwick): One moment, minister. There is far too much chatter around the chamber. I ask members please to respect the minister by listening to her.

Maureen Watt: Thank you, Presiding Officer.

We have been working with stakeholders to ensure that we focus on enhancing working conditions where there have been unintended or unexpected incidents that related to harm.

Jenny Marra: In advance of stage 2, will the minister be so kind as to look at the issue that I raised about how many care workers are unrepresented legally and have no access to legal aid at SSSC disciplinary hearings? Will she provide a response that includes the number of and arrangements for such cases?

Maureen Watt: I will consider what Jenny Marra said, but the issue that she raises has nothing to do with the bill, which provides for an organisational duty of candour and does not relate to individuals.

The legislative requirement to publish reports that describe learning and change through the application of the duty of candour procedure will positively contribute to transparent, open and engaged public services that are committed to continuous improvement.

On the use of the negative procedure for regulations, I point out that measures will be set out in great detail, and it is not unusual not to include such detail in a bill. As members know, stakeholders will be consulted and there will be detailed scrutiny.

On part 3, the offences of ill treatment and wilful neglect will enable the police and courts to address cases of deliberate neglect and ill treatment, which can happen in health and social care settings. Such instances are rare and are a breach of trust, so it is right that such behaviour is dealt with appropriately. We will work with partner organisations and stakeholders to publicise the offences among health and social care workers and providers as well as people who receive care.

I want to reiterate that that is intended to apply not to mistakes but to wilful or intentional acts. If we look at existing mental health legislation, there is no evidence that anyone is being unnecessarily criminalised. Action against Medical Accidents, which represents people directly affected by harm, supports that aspect of the bill.

The Presiding Officer: Will you close now, minister?

Maureen Watt: Yes, Presiding Officer. I ask the Parliament to support the bill.

Health (Tobacco, Nicotine etc and Care) (Scotland) Bill: Financial Resolution

17:00

The Presiding Officer (Tricia Marwick): The next item of business is consideration of S4M-14200, in the name of John Swinney, on the financial resolution for the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act.—[*John Swinney.*]

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

Decision Time

17:00

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-15003, in the name of Maureen Watt, on the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill.

The Presiding Officer: The next question is, that motion S4M-14200, in the name of John Swinney, on the financial resolution for the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act.

St Andrew's Day

The Deputy Presiding Officer (John Scott):

The final item of business is a members' business debate on motion S4M-14714, in the name of Michael Russell, on St Andrew's day. The debate will be concluded without any question being put.

Motion debated,

That the Parliament believes that it has long held the view that St Andrew's day should be celebrated as a full national holiday; notes the view that Scotland's national day should be used to send an inclusive message to the country, its neighbours and the world about the people and prospects of the ancient nation while giving an opportunity to showcase its modern achievements and take forward economic opportunities, and hopes that the day will also help draw attention to the contribution of Scots in many different countries across the globe and in many different fields of endeavour while expressing the desire for unity and celebration among the diversity of faiths, cultures and ethnic origins that it believes is the reality of the nation today.

17:02

Michael Russell (Argyll and Bute) (SNP): I am pleased to have the opportunity to speak about the continuing aspiration of many—though clearly not many Tories or Liberals—to secure St Andrew's day as a full public holiday for Scotland. I am grateful to MSPs across the chamber who have signed the motion—the topic has attracted support across the constitutional divide. Indeed, the issue attracts support around the world, and it was good to see Google celebrating St Andrew's day with a Google doodle complete with a saltire and a winking Nessie.

We have some way to go before we hear in this building "Happy St Andrew's day" greetings as much as we heard "Happy thanksgiving" greetings on every floor of the members block last Thursday, as our American interns took one of their national days overseas with good will and celebration. Yesterday, some people were a bit alienated when they saw that Facebook was using a Romanian flag to celebrate St Andrew's day. Of course, St Andrew is also the patron saint of Romania, which decided in 2012 to declare a full public holiday on 30 November. St Andrew is—I do not need to remind you of this, Presiding Officer—also the patron saint of fishmongers, gout, singers, sore throats, spinsters, maidens, old maids and women wishing to become mothers.

St Andrew has been the patron saint of Romania only since 1997, whereas Scotland can claim him as its saint as far back as 1320 with the declaration of Arbroath. Scotland's association with the saltire—the cross on which St Andrew was crucified—goes back even further, and probably to 832 AD and the battle at Athelstaneford, when the saltire appeared to the

Pictish king. The relics of St Andrew were brought by St Regulus to St Andrews, which he described as being at the very ends of the earth. The association has stuck.

St Andrew is also the patron saint of Russia, Greece, Cyprus, Poland, Ukraine, Bulgaria, the ecumenical patriarchate of Constantinople, San Andrés island, Colombia and Barbados. Barbados celebrates the day as a full public holiday. Some of the other places mark the day in different ways, usually because there are other public holidays around the same time. For example, in Russia, 27 November is a public holiday that is called naval infantry day, which marks the raising of the first naval regiment by Peter the Great.

Scotland needs to promote itself with vigour and unity. Public holidays do that if they are properly sold abroad. It is amazing that the first official St Patrick's day festival was held in Dublin as recently as 1996. Now that festival is worldwide, and it acts as a strong promoter of Irishness. A holiday is observed north and south of the border.

Compared with other countries, Scotland has very few national public holidays, but it has a strong tradition of local holidays, such as the Lanimers in Lanark, the braw lads in Galashiels, Samhain in Inverness and Victoria day in five locations, including Edinburgh. As that marks Queen Victoria's birthday, it is hardly of contemporary relevance.

Dennis Canavan first brought the issue of a national holiday on St Andrew's day to the Parliament. His St Andrew's Day Bank Holiday (Scotland) Act 2007 was approved unanimously and he deserves great credit for that. His aim was to have a national holiday on or around St Andrew's day so that the people of Scotland would have the opportunity to celebrate their patron saint, national identity, cultural diversity and membership of the international community. That was a good aim then and it is a good aim now.

Dennis Canavan went on to establish a St Andrew's day campaign committee, which still meets, with a distinguished membership including the Saltire Society, the St Andrew society, the Scottish Trades Union Congress, local government, churches, faith groups and a number of distinguished supporters including Lord Macfarlane of Bearsden, Sir Tom Farmer, Elaine C Smith and Craig Brown. That committee remains firmly of the view that, although the Parliament does not have the power to oblige all employers to give their employees a day off, it could and should do more to take forward the idea.

The Scottish Government and the Parliament mark the day as a holiday, but only a handful of local authorities do that. The campaign committee

wants the commitment to the holiday to be enshrined in all manifestos for the 2016 election, and it is fair to say that it wants action—I hope that the minister will reflect this in his closing remarks—to fulfil the pledge in the Scottish National Party manifesto of 2011 to assess the success of the 2014 St Andrew's day in that year of homecoming before making further proposals. I hope that those proposals are on their way. All the party leaders committed themselves to the day as one of

“national celebration for the people of Scotland”

in a declaration that was signed on 29 November 2011. We now need to make that happen.

The day would be good for us as friends, neighbours and fellow citizens. It would build a sense of solidarity among us. It could encourage cultural expression and it might give us a more rational and less materialistic alternative to black Friday and cyber Monday. It could also celebrate our internationalism—our links to other countries that mark the day and to other days that are celebrated at this time of year.

The debate will not end with a vote or a decision, but I hope that the message from it in support of Dennis Canavan and his St Andrew's day committee will be heard. That committee wants to see action, and so does Scotland. The committee has recommended not only a high-level commitment from the parties and politicians but a range of practical things, including a national event to switch on Christmas lights on St Andrew's day; the projection of a floodlit saltire on prominent Scottish landmarks; St Andrew's day concerts with the aim of broadcasting around the world and involving the diaspora; a national school competition; a St Andrew's day lecture; and more involvement of young people.

Community groups, schools and young people are increasingly coming together to celebrate the day. Political parties are doing that, too, of course. On Saturday night, I was at a St Andrew's night dinner in Oban that was organised by the Oban and Lorn branch of the SNP. More than 200 people attended. They listened to speeches and songs and raised money for an excellent cause: my re-election.

I hope that the day and the celebrations continue to spread. They would do so best if we gave a lead from the Parliament.

I have a final suggestion. I hope that the Government will think about including a school holiday in the national circular on the number of days that pupils have to attend school. A single day will not make much difference to a child's education, but it could make a lot of difference to that child's sense of community and positive

solidarity, and it could make a lot of difference to the future of the nation.

No matter what our constitutional stance is, we want for our country unity, purpose, generosity and a place in the world. Those are things that a national day can give us, so let us go about creating the national day that we need and want.

17:09

Anne McTaggart (Glasgow) (Lab): I thank Michael Russell for the opportunity to speak in the debate and congratulate him on getting this far.

As we all know, St Andrew's day is not just another day and it is not just another holiday. It is a special celebration of Scotland's rich history and culture and it is a chance to celebrate our heritage. We trace back our lineage and revive our traditional foods, dances and performances in an effort to remember the cultural values on which our nation was built. We reflect on how those traditions exist in society today and remind ourselves of our roots.

Every year on 30 November, we take the time to appreciate all that is great about Scotland. We showcase our food, our music and our dance and show the world that Scotland is proud of its heritage and its communities. In many cities across our country, St Andrew's day is celebrated with large parties, great musical entertainment, traditional ceilidh dancing and fundraisers for Mr Michael Russell. In my region—Glasgow—the entire city holds an annual celebration in George Square with a traditional Scotland-themed programme that includes live ceilidh bands, dancing and children's activities. St Andrew's day is an important moment for all our communities, large and small.

St Andrew has been known as the patron saint of Scotland since at least the ninth century and his crucifixion was the inspiration for our flag, which still flies high in Scotland today. The legend of the saltire dates as far back as 832 AD. As a revered saint in Scotland, St Andrew was the national symbol that Scotland needed to motivate the country as we became a nation many years ago and, in 2015, we celebrate the strength that St Andrew has inspired in us to this very day.

The saltire, which symbolises such inspiration, is rightly displayed in our towns and communities every year on 30 November. It is a show of great support for the nation. Even Google showed its support for St Andrew's day yesterday by displaying the St Andrew's flag on its home page.

St Andrew's day has impacted greatly on Scotland, but it is also essential to note that celebrations are held all around the world as Scots abroad observe the national holiday. St Andrew's

day allows Scots to share our heritage and culture with people all over the world.

When St Andrew's day is celebrated on a global scale, it should be recognised. As St Andrew's day becomes a representation of Scotland on the world scene, everyone should have the opportunity to participate in celebrations across the country that allow us to continue to show the world what a truly great nation we are.

17:13

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I congratulate Mike Russell on securing this debate celebrating our national identity.

The increase in the celebration of St Andrew's day is undoubtedly due in part to the Parliament reconvening 16 years ago, and not least to Dennis Canavan's act, which raised the profile of St Andrew's day—although not to anywhere near the status of St Patrick's day or Burns night. However, there have been improvements over the years.

St Andrew gave us the saltire in 832 AD at Athelstaneford. That was the birth of the flag, and Scotland came about. It was also used on the nation's coinage when it was introduced by David I in the 13th century. It has an ancient and honourable lineage, as has the Scottish nation.

Flags are the most powerful statements of nationhood: they are the beating heart of a nation. As the unexpected skirl of unseen bagpipes in a foreign land draws our curiosity, so the flag, wherever it is flown says, "Here is part of Scotland. There are Scottish people here."

Michael Russell has suggested that the saltire should be projected across public buildings, and he can start with Edinburgh castle. On St Andrew's day in our capital city, there is no saltire in a prominent position on the castle. As always, it defers to the union flag. Why not fly the saltire? There is the false argument that it is not flown because the castle is an Army garrison, but it is not—it ceased to be a garrison in 1920 and the Army is now there largely in a ceremonial capacity. If one were looking for a conspiracy, one might say that the garrison argument provides a fig leaf—or a flag leaf—for the supremacy of the union flag. However, when the Army wants to recruit our young men and women to fight in wars, it uses the saltire to do so. When the body bags come home, it is to "The Piper's Lament", and the weighted coffins are draped in the saltire. Yes—the union has its uses for the saltire.

Neither the Ministry of Defence nor Historic Scotland owns the castle. Under the terms of the Scotland Act 1998, the Government of Scotland owns it; our ministers own it. Historic Scotland is

simply a custodian and the Army is a tenant. I suggest that it is time that we enforced the terms of that tenancy. For the life of me I do not understand why this majority SNP Government, whose ministers own the castle, does not insist that the saltire flies there in pole position not just on 30 November but every day—and that it flies alone.

I therefore congratulate Scottish Borders Council, which flies the saltire and nothing but the saltire 365 days a year. Is not it extraordinary that Scotland, which is one of the most ancient nations in Europe—we have been a nation since the 11th century—does not really celebrate its nationhood on St Andrew's day? It is also extraordinary that although there are saltire societies in Boston and elsewhere in the world, our Saltire Society had to fight to fly Scotland's flag.

Symbols of nationhood such as our patron saint and the flag that is symbolic of his crucifixion have carried the hearts and hopes of Scots through good and bad, from the confrontations on football pitches to those on battle fields. How dare Alex Salmond wave the saltire for Andy Murray's victory? We should know our place! When Andy wins he is British, but when he loses he is Scottish. There is some truth in that.

Of course there is money to be made from tourism opportunities. To lead on from St Andrew's day to a winter festival would be no bad thing and I would welcome it. However, far more important for me is the symbolic reminder that we are the Scottish people, whether or not we were born here—many of us, including Mike Russell and me, were not—and that is what we should be proud of.

17:17

Cameron Buchanan (Lothian) (Con): It is that time of year again—time to celebrate St Andrew's day. I am pleased to have this opportunity to join in the many celebrations, even if I am the lone Tory here.

The story of St Andrew is well known to some, but my historical thunder has been stolen by Mike Russell, and I am just delighted that Stewart Stevenson is not here to add to that. However, it is worth raising awareness of the origins of our celebrations and the international influence of the saint himself.

That said, so much of St Andrew's day is about getting into the spirit—in both senses of the word—so I am very happy to have the chance to plug some of the special events that are held in my area to mark the day.

It is said that St Andrew became identified with Scotland when King Óengus of the Picts, with the support of the Scots, won a battle over King

Athelstan of Northumberland in 832 AD, which was fought in what is present-day East Lothian. Before the battle, King Óengus dreamed about St Andrew bearing his saltire cross and then, while fighting, he saw a cross of white clouds against a blue sky—hence the colours on the saltire. The Picts and the Scots went on to defeat the Northumbrians and the saltire became their flag and, of course, St Andrew became their saint.

Although we have our own story, as we have heard from others, the great man is also the patron saint in Greece, Russia, Romania and even as far afield as Barbados, which Mike Russell did not mention. I wonder whether there is scope for sharing celebration stories and ideas to add yet more vibrancy to our own festivities.

St Andrew is the patron saint of fishermen, which is particularly appropriate to us, given our long-established reputation as a seafaring nation, the eminence of our seafood and our status as one of the largest fishing nations in Europe. At the moment, it is difficult to mention fishing without making some comments about the European Union's policies, but I will leave that to one aside for today and focus instead on the celebrations here at home that some locals have got stuck into.

As part of this year's St Andrew's day celebrations, Historic Environment Scotland gave away tickets to some of our best heritage attractions including, in the Lothian region, Edinburgh castle, Craigmillar castle and Linlithgow palace—to be used over the weekend of 28 and 29 November. I hope that families, enthusiasts and all interested members of the public took advantage of that. People could also enjoy a free offering of music, comedy, dance and literature at St Andrew Square, including Dean Owens and the Whisky Hearts. Most importantly, I am sure that a huge array of private parties and celebrations have been held that bring family and friends together in their own way.

Accordingly, I hope that we all continue to share in the festivities around St Andrew's day. I share Mr Russell's enthusiasm for making it a school holiday, too. As with many celebrations, it is important to remember the day's origin, as well as to appreciate its wider connections. That said, the best thing that everyone can do is to enjoy the day in their own way: the more choices they have, the better.

17:20

The Minister for Parliamentary Business (Joe FitzPatrick): I am delighted to respond to what has been an interesting and informative debate, and I thank Michael Russell for bringing it to the chamber. I also thank him for his history and geography lesson on St Andrew's day. We will

have to look at the *Official Report* to see whether he mentioned Barbados; I thought that he did.

I thank Anne McTaggart, too, for talking about the inspiration and legend of the saltire. As Christine Grahame mentioned, the symbol of that flag flying is of great importance to the Scottish nation. I thank Cameron Buchanan for adding a plug for Scotland's seafood. Important talks are on-going and we are trying to ensure that we get the best deal for that industry, which is growing here in Scotland and worth more year on year. We all agree on its potential and hope that we can support it.

Eight years ago, the first Scottish National Party Government initiated the concept of Scotland's winter festivals to boost the national and international celebration of St Andrew's day, hogmanay and Burns night, and to showcase the many reasons why Scotland should be seen as a year-round visitor destination. Although those key cultural dates were always celebrated, the winter festival programme helps to harness their significant collective potential by showcasing, across the winter season, the exciting range of events and activities on offer that promote and celebrate our distinct traditions to the people of Scotland, to our visitors and to people from across the world who have an affinity for Scotland. Scotland's winter festivals celebrate and showcase our unique culture and creativity at home and across the globe; boost tourism and the visitor economy; engage communities; and enhance national pride.

Since their introduction, the winter festivals have gone from strength to strength. This year, the Cabinet Secretary for Culture, Europe and External Affairs announced a record £390,000 to support 21 key cultural events as part of the 2015-16 programme. Cameron Buchanan referred to that. Some of the fund—£75,000—is being used to expand the reach of events across Scotland. I am delighted that 15 local authority areas are now involved, with new programme activity taking place this year in Aberdeen, Dundee, East Ayrshire and Falkirk.

The celebration on and around St Andrew's day is a key element of the winter festivals, and those celebrations are growing year on year. This year, 10 events in Aberdeen, Argyll and Bute, Edinburgh, East Lothian, Dundee, Fife, Glasgow and Perth and Kinross have received £141,000 of funding support for their winter festivals. Through the St Andrew's day out programme, partners throughout the country offered free and discounted entry to attractions. As Mr Buchanan mentioned, that included Edinburgh castle.

Although data for 2015 is still being collected, to give members a sense of the growing impact of the celebration of our national day I will share

some information from 2014, when Edinburgh's St Andrew's day celebrations attracted more than 43,000 people. More than 12,000 people attended a new event to mark St Andrew's day in St Andrews itself. That year, 127 organisations signed up to be St Andrew's day out partners and offer free and discounted entry to their attractions. Historic Scotland received more than 37,000 applications for its annual ticket giveaway to mark St Andrew's day—an increase from 26,000 in 2013. Scotland-themed St Andrew's day materials were provided to 20 British embassies and to events held in Portugal, Estonia, Bangladesh, the USA and Canada. We can see how wide the reach is of our national day.

This day is also about Scotland. St Andrew's day and the winter festivals have provided a fantastic vehicle to enhance community engagement and empowerment. To that end, we were delighted to provide BEMIS Scotland with a funding contribution of £46,000 this year to help further engage Scotland's multicultural communities in the 2015 year of food and drink and the 2015-16 winter festivals. The programme has been a great success, delivering 65 events across the country and engaging thousands of people from multicultural communities, their friends and their neighbours. We will continue to work with BEMIS Scotland and other partners to explore how we can build on our achievements in 2015.

Michael Russell mentioned the St Andrew's day campaign committee, chaired by Dennis Canavan, which has been formed to explore opportunities to further boost the celebration of St Andrew's day. Over the past few months, the committee has worked with Scottish Government to help enhance the St Andrew's day celebration. As Michael Russell said, it has been keen on St Andrew's day being designated as a national holiday. Scottish Government officials have confirmed that the concept of a national holiday has no legal basis in the UK. The St Andrew's Day Bank Holiday (Scotland) Act 2007 modified the Banking and Financial Dealings Act 1971 to make St Andrew's day a bank holiday in Scotland—any holidays that might be regarded as “national” or “public” holidays are, in fact, bank holidays.

That being the case, the focus of our on-going activities has been to work collectively to further embed the tradition of the St Andrew's day celebration across the country and across the world, through events and promotional activities that build on our significant successes to date and engage people in the meaning of St Andrew's day.

The St Andrew's day campaign committee has come up with a number of ideas to help achieve that. For example, members might have been aware that attractions across Scotland were lit

blue last night to mark St Andrew's day. That idea was initiated by the committee and developed by the Scottish Government with support from organisations such as the Association of Scottish Visitor Attractions. We hope that that initiative grows, bringing St Andrew's day and Scotland's unique buildings and landscapes to a worldwide audience.

Another suggestion of the committee was an interfaith service to mark St Andrew's day. Again, we were delighted to support that with a £1,500 funding contribution to support an interfaith service that took place at Old Cathcart church in Glasgow on Sunday, led by Rev Neil Galbraith. An interfaith service for St Andrew's day helpfully complements the activity that is being led by BEMIS Scotland, and we will explore opportunities with partners to grow that model in future years.

From today's debate, it is clear that there is support to boost the celebration of St Andrew's day. We support that whole-heartedly and are working to help to boost the celebration on a number of fronts, as well playing our particular role in terms of international engagement. However, the responsibility for engagement in St Andrew's day does not rest with any one body, and the key to its success is partnership. I therefore encourage members to look to how their own constituencies and local partners can further add to the celebrations.

With the help of members of the Scottish Parliament, and in partnership with organisations and communities across the country, it is clear that we can grow the celebration of St Andrew's day, enhancing the wider celebration of the winter festivals and boosting our economy, our international profile and the engagement, cohesion and empowerment of our communities.

Meeting closed at 17:28.

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