



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# MEETING OF THE PARLIAMENT

Thursday 3 March 2016

Session 4

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# Scottish Parliament

Thursday 3 March 2016

*[The Presiding Officer opened the meeting at 11:40]*

## General Question Time

### Island Areas Ministerial Working Group

**1. Mike MacKenzie (Highlands and Islands) (SNP):** To ask the Scottish Government whether it will provide an update on the island areas ministerial working group. (S4O-05615)

**The Cabinet Secretary for Infrastructure, Investment and Cities (Keith Brown):** The final meeting in the current series of the island areas ministerial working group took place in Lerwick on 22 February. Over the last two and a half years the Scottish Government has formed a positive and constructive partnership with our island councils.

The “Empowering Scotland’s Island Communities” prospectus that was published by the ministerial group is the most comprehensive package for empowering Scotland’s island communities that has been put forward by any Government, and it confirms our commitment to subsidiarity. Many key prospectus commitments have already been delivered, including the appointment of a dedicated islands minister, the establishment of an islands transport forum, the completion of roll-out of the road equivalent tariff—RET—to all remaining routes in the Clyde and Hebrides ferry services network, and maintenance of the existing air discount scheme, with the additional benefit, which was not anticipated at the time of the prospectus’s publication, of the discount increasing from 40 per cent to 50 per cent at the start of 2016. Work continues on a number of other important workstreams.

**Mike MacKenzie:** Does the minister agree that the plans for a forthcoming islands bill offer a significant opportunity and hope for all Scotland’s island communities to end the regional disadvantage that they have suffered for generations?

**Keith Brown:** The establishment of the working group led by a minister with responsibility for the islands has demonstrated the Scottish Government’s strong commitment to tackling the challenges that Mike MacKenzie has highlighted. The work that the group has taken forward since 2013 has included a focus on listening to the islands councils and their communities and on working with them in partnership to identify opportunities to support economic growth, job

creation and the improvement of services and connectivity.

The Government’s consultation, which was undertaken towards the end of last year, sought views on provisions for a future islands bill. That consultation received more than 190 responses. All the views that were expressed will help to inform the development of a draft islands bill. That bill will be a key way of joining together the various workstreams of the ministerial group, and of channelling our focus to ensure that we provide real change for our island communities, with lasting benefits for generations to come.

**Tavish Scott (Shetland Islands) (LD):** The cabinet secretary will be aware that all the islands councils want full management powers over the sea bed to be devolved to the areas that are most affected—preferably, without delay. Does the Government support that position?

**Keith Brown:** A number of provisions are still the subject of discussion in relation to the Scotland Bill between the Scottish Government and not just the islands councils that were mentioned by Tavish Scott, but the United Kingdom Government. We have to await the conclusions before we can say that we will take on the further powers in order to devolve them, where possible, to island communities. The issue is still in question, to some extent. The process of transferring the Crown Estate’s assets to the Scottish Government has not been straightforward, and disagreement remains between the two Governments.

I am happy to keep Tavish Scott updated on progress or to ensure that Derek Mackay, the Minister for Transport and Islands, does so.

### Beverage Containers (Deposit Return Scheme)

**2. Jackson Carlaw (West Scotland) (Con):** To ask the Scottish Government when it will make a final decision on a deposit return scheme for beverage containers. (S4O-05616)

**The Cabinet Secretary for Rural Affairs, Food and Environment (Richard Lochhead):** I announced on 30 December the further work that would be undertaken following Zero Waste Scotland’s call for evidence, to consider the important issues that were raised in that call for evidence. Those issues include the implications for small stores, costs to retailers and changes in customer behaviour where a deposit return scheme has been in place.

**Jackson Carlaw:** Reports suggest that the proposed bottle tax could cost consumers £155 million a year. That is £65 per household, or, if I express it in terms of council tax bands A, B and C in East Renfrewshire, increases of 8.6 per

cent, 7.4 per cent and 6.5 per cent—a bit of raining on the jamboree parade yesterday.

Given that the vast majority of organisations that responded to the Zero Waste consultation were opposed to a DRS in Scotland, will the cabinet secretary—who is a man with a reputation for having a penchant for embracing lovely ideas—ensure that practical concerns that were expressed by wholesalers and others are at the centre of any final decision that is made on the proposal?

**Richard Lochhead:** Jackson Carlaw has just taken scaremongering to a whole new level in Parliament. The whole point of a deposit return scheme is that the customer pays the deposit and then gets it back on return to a store, or other location, of the bottle, or other item.

With regard to the way forward, we had a feasibility study carried out. Deposit return clearly works in other countries and is very effective in tackling litter and improving recycling rates. Of course, this is Scotland, and we have to ensure that any scheme in this country would be suitable for Scottish circumstances. That is why, before we take a final decision to determine how such a scheme could work in Scotland, we are taking further evidence and investigating issues that have arisen in concerns that the retail, packaging and other sectors have expressed. However, there is a lot of support for the proposal. It works in other countries: Jackson Carlaw should recognise that approaches that work in other countries can, in some cases, work in Scotland as well.

### Tourism (Aberdeenshire)

**3. Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** To ask the Scottish Government what support it is providing to tourism in Aberdeenshire. (S4O-05617)

**The Minister for Business, Energy and Tourism (Fergus Ewing):** We work closely with a range of public bodies—including VisitScotland, Scottish Enterprise, Scottish Natural Heritage, Skills Development Scotland and Historic Environment Scotland—and with industry to increase tourism throughout the country, including in Aberdeenshire.

**Stewart Stevenson:** I thank the minister for the substantial support that is being given to tourism delivery in Aberdeenshire. I invite him to join me in welcoming the formation of the Aberdeen and Aberdeenshire tourism company, which is consolidating what has been a fragmented approach to tourism in Aberdeenshire. With more than £1 million of initial funding, it looks set to deliver much more for Aberdeenshire in that important economic sector.

**Fergus Ewing:** In 2014, the total visitor spend in the Aberdeen city and Aberdeenshire region was £351 million, with 1.25 million trips, so there is plainly a great deal of success already. However, the establishment of the Aberdeen and Aberdeenshire tourism company represents an opportunity for even more success. I am delighted that there has been support from all parties, including Sir Ian Wood's Opportunity North East—ONE—initiative, to build on the success of tourism in Mr Stevenson's part of the world.

**Alex Johnstone (North East Scotland) (Con):** The minister will be fully aware of the potential impact of flooding during the winter on tourism in the Royal Deeside area in particular. Can he do anything to assist directly people whose businesses have been impacted? In particular, is any flexibility available to enable people who are unable to let holiday accommodation to make it available to people who have been displaced as a result of flooding without their being impacted by the changes in private rented tenure regulations?

**Fergus Ewing:** Mr Johnstone is entirely correct that the area, particularly Ballater, has been extremely badly hit. I have been in contact with some of the businesses there that have been most affected by the flooding. I am advised that there has been support for flood-hit businesses to a certain extent, but we are, of course, willing to consider what else can be done to support all businesses that have been affected badly, especially the caravan park in Ballater, with which I have been in contact. I am happy to consider that matter further and to meet Mr Johnstone, if he so wishes.

### Fracking

**4. Neil Findlay (Lothian) (Lab):** To ask the Scottish Government what its position is on fracking. (S4O-05618)

**The Minister for Business, Energy and Tourism (Fergus Ewing):** The Scottish Government is taking a precautionary and evidence-led approach to unconventional oil and gas, including hydraulic fracturing. In January 2015, we introduced a moratorium on unconventional oil and gas developments. In October last year, we announced details of an extensive programme of research into the potential impacts of that industry and the timetable for a full and comprehensive public consultation.

**Neil Findlay:** We know that a moratorium on fracking is in place and that the research will—conveniently and, I am sure, totally coincidentally—report after the election. As the minister is responsible for the policy, do the voters not deserve, in the spirit of new open and transparent politics, to know prior to the election what his position is on fracking? Come on,

minister. Go on—just tell us. You know you want to.

**Fergus Ewing:** Neil Findlay says that the spirit of openness and transparency is new, but as far as I am concerned, it is old; I have always been open and transparent, as members know. Consistent with the spirit of openness that I hope I have followed for the past 16 years as a member of the Parliament, I entirely support the Scottish Government policy of pursuing the matter on the basis of evidence. That is the approach that Scotland has bequeathed to the world through the great thinkers of the Scottish enlightenment. If it was good enough for them, it is good enough for me.

**Murdo Fraser (Mid Scotland and Fife) (Con):** Now that even the Liberal Democrats have seen sense on fracking, is it not time that the minister was true to his own instincts and joined the growing consensus that we should get on with fracking—in a properly controlled and regulated fashion, of course?

**Fergus Ewing:** I am absolutely determined that the people of Scotland should have the benefit of the most substantial corpus of evidence that has been produced in relation to how hydraulic fracturing may impact on Scotland. That is precisely why we have commissioned the most substantial series of pieces of research into all the relevant aspects.

I had thought that Mr Fraser was a reasonable chap.

**The Minister for Youth and Women's Employment (Annabelle Ewing):** Who told you that?

**Fergus Ewing:** Well, I did think so, but perhaps it was a mistake. Is Murdo Fraser, as a lawyer, like myself, not willing to look at the evidence first and to come to his conclusions afterwards? That is what we are committed to doing, and that is what we will do.

**John Wilson (Central Scotland) (Ind):** In the light of the openness and transparency that the minister has outlined, could he give us some transparency about the community organisations that are being consulted as part of the consultation exercise? After several attempts, I am still waiting for an answer from the minister on that.

**Fergus Ewing:** The process of consultation to which we have committed, that we have expounded and that we have explicitly stated in many public utterances, including parliamentary answers, is a full national consultation after the evidence. It will involve everybody. I would have thought that Mr Wilson would be deliriously happy about that.

## Cannabis Possession

### 5. Margaret Mitchell (Central Scotland) (Con):

To ask the Scottish Government what its position is on Professor Neil McKeganey's statement that Police Scotland's decision to issue on-the-spot recorded warnings for the possession of cannabis rather than report people to prosecutors is a "massive white flag to Scotland's drug problem." (S4O-05619)

**The Minister for Community Safety and Legal Affairs (Paul Wheelhouse):** Recorded police warnings allow police to deal more quickly and efficiently with a range of offences that already commonly result in non-court disposals. The types of crime covered by the scheme are a matter for the Lord Advocate as part of his independent role as head of the system of prosecution. Those offences will still appear in official statistics on recorded crime.

The system provides a mechanism that is timely and proportionate, it avoids the need for the preparation and submission of a standard police report and it enables the procurator fiscal and the court to focus on more serious crimes while giving police the range of powers that they need to respond quickly and appropriately to less serious offences. Those offences are still recorded as crimes.

As the member will be aware, the classification of drugs is currently reserved to Westminster. However, even should we gain responsibility for the issue, we have no plans to legalise or decriminalise drugs.

The Scottish Government and our partners place a high priority on the education of Scotland's young people on the dangers posed by drugs and continue to invest in treatment services and recovery services for those affected by drugs. We will always seek to disrupt and prosecute those who supply the drugs that destroy the lives of individuals.

**Margaret Mitchell:** The minister will be aware that, since March 2015, police in England and Wales have been using roadside drug testing kits to detect and deter those driving under the influence of drugs. Can he confirm that those kits will be made available for police to use in Scotland? If so, when? What has been the hold-up so far in introducing those kits?

**Paul Wheelhouse:** The use of such techniques is obviously an operational matter for Police Scotland and for the prosecuting authorities. I will happily write to the member on the position in Scotland but, as we are trying to set out today, we remain robust in our response to the prevalence of drugs in Scotland.

Thankfully, the prevalence of drugs is not at its highest level—it has been reducing over recent years. We will continue to focus on tackling the supply of drugs, which are destroying the lives of individuals, their families and communities.

**Roderick Campbell (North East Fife) (SNP):** Is the minister able to confirm whether there are targets for such warnings?

**Paul Wheelhouse:** I can confirm that there are no such targets. Police Scotland uses them to deal appropriately with matters as they arise. As I said in my original answer, the system allows the police to release resources to tackle the more serious offences that occur in our society.

**The Presiding Officer (Tricia Marwick):** Question 6 from Anne McTaggart has not been lodged. The member has provided me with an explanation.

#### Local Government Settlement 2016-17

**7. James Kelly (Rutherglen) (Lab):** To ask the Scottish Government what impact the 2016-17 local government settlement will have on communities. (S4O-05621)

**The Cabinet Secretary for Social Justice, Communities and Pensioners' Rights (Alex Neil):** The 2016-17 settlement funding package for local government, which was agreed by Parliament on 25 February, is firmly focused on the delivery of our joint priorities to deliver sustainable economic growth, protect front-line services and support the most vulnerable in our communities. Those shared priorities will improve outcomes for local people. We are protecting the council tax freeze for a ninth year, which will provide much-needed financial relief, particularly to vulnerable groups; we are investing £250 million in integrating health and social care services; and we are improving educational attainment by maintaining the pupil teacher ratio in Scotland's schools.

**James Kelly:** Does the cabinet secretary agree that, even in spite of yesterday's massive U-turn by the Scottish National Party on council tax, the effect of the coming year's local government settlement will mean millions of pounds of cuts in school, teacher and pupil support budgets, which will drive a stake into the heart of Scotland's communities and thwart efforts to promote investment in education?

**Alex Neil:** It will come as no surprise that I do not agree with the member. The overall impact on local authority expenditure budgets is a cut of less than 1 per cent. Any local authority that has to cut into its education expenditure as a result of a reduction of less than 1 per cent in its overall budget is not managing its money very well at all. When I look at a council such as North

Lanarkshire, and the amount of waste that is evident in some of the things that it does, I am absolutely sure that councils could save a lot of money and reinvest that in education as well.

#### Working Group on Consumer and Competition Policy for Scotland

**8. Graeme Dey (Angus South) (SNP):** To ask the Scottish Government how it will take forward the recommendations of the working group on consumer and competition policy for Scotland. (S4O-05622)

**The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney):** I established the independent working group for consumer and competition policy for Scotland to consider how new consumer and competition powers that are to be devolved to the Scottish Parliament under the new Scotland Bill could be put to best effect. The working group's report, which was published at the end of October last year, included 46 recommendations. We are considering those carefully and will issue our response shortly.

**Graeme Dey:** On the back of the report have come pleas for the Scottish Government to use the powers in the Scotland Bill around consumer advocacy and advice to contribute to tackling the menace of nuisance calls. How does the cabinet secretary think that those powers might best be deployed on that important issue, and will he work with Westminster on it?

**John Swinney:** The specific point that Mr Dey makes about nuisance calls concerns an issue that is reserved to the United Kingdom Parliament. That will not change as a consequence of the Scotland Bill. Therefore, it is important that we use the responsibilities that are transferring to us around consumer advocacy to support individuals who are troubled by the persistence of nuisance calls. A lot of good research has been undertaken on this subject by Which?, and we have co-operated with Which? in many respects around the design of consumer and competition policy in Scotland. We look forward to continuing that dialogue and working with the UK Government on that question.

#### North Glasgow Suburban Railway Line (Electrification)

**9. Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab):** To ask the Scottish Government when it will make a decision regarding the possible electrification of the north Glasgow suburban railway line. (S4O-05623)

**The Cabinet Secretary for Infrastructure, Investment and Cities (Keith Brown):** Electrification of the north Glasgow suburban

railway line will be considered as part of the Scottish Government's next high level output specification for control period 6, which is due in July 2017. The Scottish Government remains committed to a substantial rolling programme of electrification that will bring significant economic, social and environmental benefits, providing Scotland with a sustainable world-class transport system.

**Patricia Ferguson:** The cabinet secretary will be aware that passengers who travel on that line have recently suffered severe disruption from a number of causes, including the Edinburgh to Glasgow improvement project and the problems with the Forth road bridge. All that disruption is, perhaps, understandable, but they also now face 20 weeks of considerable disruption and substantially increased journey times during the period of works to the tunnels and other parts of the railway outside Queen Street station. Will the cabinet secretary consider making an early announcement about the electrification of the line, so that we can bring it into the same situation as the other suburban lines in Glasgow? It would be extremely helpful if he could do that.

**Keith Brown:** The Edinburgh to Glasgow improvement project, which is one of the causes of the disruption, is bringing substantial benefits to Glasgow. I think that I am right in saying that more electrification is happening in and around Glasgow than in any other part of the country. As for an early announcement, I think that the matter is best considered when all the different options are taken together. Other parts of Scotland are very interested in the roll-out of electrification to their areas, and we have to consider that against the resources that we expect to be available at the time. For that reason, I do not think that it would be right to bring the announcement forward. However, it is worth saying that there is a substantial amount of electrification in addition to EGIP, Airdrie to Bathgate and the Paisley corridor. As we said previously, there is a commitment to 100km a year of electrification beyond EGIP. It is in that context that we will consider an announcement about Maryhill.

**The Presiding Officer:** Thank you. Before we move to the next item of business, members will want to join me in welcoming to the gallery His Excellency Mr Simon Smits, the Ambassador of the Kingdom of the Netherlands. *[Applause.]*

## First Minister's Question Time

12:00

### Engagements

**1. Kezia Dugdale (Lothian) (Lab):** To ask the First Minister what engagements she has planned for the rest of the day. (S4F-03270)

**The First Minister (Nicola Sturgeon):** I have planned engagements to take forward the Government's programme for Scotland. That will include meeting pupils from Brunstane primary school later today to celebrate world book day.

**Kezia Dugdale:** For years, the Scottish National Party has promised to abolish the hated council tax—that promise was in its 2007 and 2011 manifestos. Thousands of leaflets were delivered, and billboard after billboard was plastered with the promise to scrap the unfair council tax. The only thing that the First Minister scrapped yesterday was the council tax freeze. She could have broken her promise on day 1, so why did it take her 10 years?

**The First Minister:** Since 2007, we have made sure that there have been eight years—soon to be nine years—of a council tax freeze that saves the average band D council tax payer £1,500. Labour has moaned about that every single step of the way.

Yesterday, we announced plans to make local tax fairer or, as Professor David Bell described it on the radio this morning, "certainly progressive". We also set out how, with the new tax powers, we will make the funding of council services more closely related to income in the future, which is something that Labour has opposed for many years.

We are doing this in a fair way. The council tax freeze will remain in place for the next year and, after that, council tax will be capped so that we cannot go back to the bad old days when Labour increased council tax by 60 per cent. The band reforms will mean that people in the highest bands will pay a bit more; there will be exemptions for those on lower incomes, including pensioners; three out of four households will not pay a single penny more; and low-income households with children will pay less. Out of all that, we will raise an additional £100 million a year for education.

Those are fair, balanced and reasonable proposals. That is probably why Labour opposes them.

**Kezia Dugdale:** Presiding Officer,

"We'll get rid, once and for all, of the unfair council tax."

Those are the words of the First Minister. Of course, voters should have known that when the First Minister said that she would get rid of the council tax, she really meant that she would keep it. The whole process has been a sham.

Here is the SNP's formula: condemn it; freeze it; order a big report; then go ahead and do it anyway. That is its approach not just to council tax. The SNP says that fracking is bad, and it has imposed a temporary freeze on that. A big report has been ordered, but all the signs are that the SNP will go ahead and do it anyway. Labour would not allow fracking in Scotland. Can the First Minister give the same guarantee?

**The First Minister:** Before we move on from local taxation, which I am still keen to talk about—*[Interruption.]*—unlike Labour, clearly.

**The Presiding Officer (Tricia Marwick):** Order. Let us hear the First Minister.

**The First Minister:** Let me give Labour a bit of what I hope will be helpful advice. Before Kezia Dugdale adopts her usual position of whingeing from the sidelines—in this case criticising the SNP's policy on local taxation—it might be a good idea if Labour had its own policy on local taxation.

Labour members talk about reports, and Iain Gray is sitting next to Kezia Dugdale right now. In 2009, Iain Gray, then the Labour leader, set up a commission to decide what Labour's policy on local taxation was going to be. The outcome of that commission has never been published, so we still do not know what Labour's position on local taxation is. Before Labour criticises our position, it should please have the good grace to come up with one of its own.

On the issue of fracking—

**Members:** Hooray!

**The Presiding Officer:** Order.

**The First Minister:** Kezia Dugdale has just heard the energy minister set out the Government's clear position. *[Interruption.]* Labour members do not like the answer, but perhaps they might want to listen. We will not allow fracking in Scotland because we will not take risks with our environment while there are still unanswered questions. That is why we have a moratorium in place.

**Kezia Dugdale:** The First Minister's back benchers do not like her answer on fracking, because all their leaflets say that they are going to oppose it. All across the country, SNP candidates are telling voters that there will be no fracking under the SNP; they are the same people who promised to scrap the council tax. People deserve the truth. We know where the Tories stand—they are for it. We know where the Lib Dems stand—

they voted for it at their conference. We know where the Greens stand—they are against it. I have said where I stand—Scottish Labour will go into the election with a very clear manifesto commitment to oppose fracking.

If Jim Ratcliffe of Ineos can get a straight answer, why cannot the people of Scotland? Fracking: yes or no, First Minister?

**The First Minister:** Let me put it simply: there will be no fracking in Scotland because there is a moratorium on fracking. That is what a moratorium means—it ain't allowed to happen. We will not take risks with our environment while there are so many unanswered questions. That is the responsible way to proceed.

Labour members stand up here, week after week, and say whatever they like about what they would do because, as we already know from Kezia Dugdale, they are going to come second in the election.

**Kezia Dugdale:** Jim Ratcliffe of Ineos says that he has had private assurances from the Government that the SNP is not against fracking. He says that the Government

"are being quite clear. What they've said to us is they're not against fracking."

What does he know that we do not?

Freedom of information requests show that her environment agency and the Department of Energy and Climate Change have agreed to stop minuting conversations on fracking. The Government has tendered for research into decommissioning on fracking. If the First Minister is not planning to frack, why is she preparing for the clean-up?

Can the First Minister tell us whether the SNP promise to stop fracking is a real promise or just an election pledge?

**The First Minister:** I know that Labour is desperate, and I know why, but that really takes the biscuit. For the avoidance of doubt, let me say again that there is a moratorium on fracking in Scotland. It is clear and simple: there is a moratorium on fracking. That means no fracking.

### Secretary of State for Scotland (Meetings)

**2. Ruth Davidson (Glasgow) (Con):** To ask the First Minister when she will next meet the Secretary of State for Scotland. (S4F-03267)

**The First Minister (Nicola Sturgeon):** No immediate plans.

**Ruth Davidson:** This morning, the Secretary of State for Defence announced extra funding that will help to support our naval base on the Clyde. I welcome that. The First Minister and I have an

honest disagreement about the decision to renew our nuclear deterrent and about its remaining an integral part of the United Kingdom's defence. However, it seems to me that all sides of the debate should be able to agree on one thing—that, if the subs go, the jobs go. Does the First Minister agree?

**The First Minister:** No, I support the continuation of Faslane as a naval base. However, I think that it should be a conventional naval base and I do not believe that we should be spending £167 billion—and rising—on nuclear weapons that we cannot afford and which are not the appropriate defence of our country. That money would be better spent on supporting jobs not just in our defence industries but across our public services.

**Ruth Davidson:** It seems that the First Minister is flying in the face of all the evidence, because the GMB union has said that it is “pie in the sky” to pretend that “highly paid, well skilled” defence jobs could be replaced. [*Interruption.*]

**The Presiding Officer:** Order—let us hear Ms Davidson.

**Ruth Davidson:** The Secretary of State for Defence says that

“Thousands of highly-skilled jobs would disappear.”

Even the local MSP, Jackie Baillie—Labour's lone ranger—admits this morning that

“No-one yet has come forward with a credible plan to replace those jobs”

and that

“the loss of that employment would devastate my local community.”

Perhaps the First Minister has in mind Jeremy Corbyn's new position, which is that we should build the subs, keep the jobs but just stick the missiles in a shed somewhere. I know that the First Minister linked arms with the Labour leader in London last week, but please tell me that she does not agree with him on that as well.

**The First Minister:** Actually, I did not link arms with Jeremy Corbyn, because for some unknown reason he refused to turn up until after I had left. I will leave that to him to explain.

When it gets to the point that Ruth Davidson has to call in aid Jackie Baillie, that should tell her that her arguments have got rather threadbare.

On the serious issue of defence jobs, Ruth Davidson should look at the numbers of defence personnel in Scotland and what has happened to those numbers under this Conservative Government. We have seen a haemorrhaging of conventional defence jobs. We have seen the closure of bases. We have seen our forces take a

hammering as a result of Tory austerity. The report that was done a year or so back on the question of whether Trident should be renewed set out clearly the price that conventional forces pay as a result of the obsession with Trident.

My position is clear: support our conventional forces and support Faslane as a naval base, but for goodness' sake let us not spend obscene amounts of money on obscene nuclear weapons when there is so much more that we could do with it.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** To ask the First Minister what steps the Scottish Government is taking to support the 107 workers in Greggs bakery in Loanhead in my constituency, whose jobs are under threat as a result of the company's decision to close that facility?

**The First Minister:** I was very concerned, as I know that the member would have been, to learn of the situation at the Greggs bakery in Loanhead. I know that this will be a very anxious time for the bakery's employees and their families.

I can advise the member that, as soon as the announcement was made, we immediately contacted the company to offer support for employees through our partnership action for continuing employment initiative. The Minister for Business, Energy and Tourism, Fergus Ewing, will be speaking to Greggs management later today, and to union representatives, to explore all possible options for supporting the Midlothian site and its workforce.

We will continue to engage and will monitor the situation closely. I will ask Fergus Ewing to update the member after his discussions later today.

### Cabinet (Meetings)

**3. Willie Rennie (Mid Scotland and Fife) (LD):** To ask the First Minister what issues will be discussed at the next meeting of the Cabinet. (S4F-03266)

**The First Minister (Nicola Sturgeon):** At its next meeting, the Cabinet will discuss matters of importance to the people of Scotland.

**Willie Rennie:** Last week, the First Minister cut hundreds of millions of pounds from education budgets. She told us that she had no choice and that her hands were tied, but that she would bring the cuts to an end as soon as she had the powers.

This week, she announced extra money for education. She did so without gaining one single additional power. The cruel twist for children is that they will not see a single penny until next year. The First Minister could have invested that money this year. Why did she not do that?

**The First Minister:** As Willie Rennie will presumably know, because he was here when John Swinney made the announcement on the budget last week, we are also doubling the education attainment fund, starting in the financial year about to begin.

As a result of the announcements made yesterday, from 2017 onwards we will invest an additional £100 million in education. That is welcome investment—I am sure that it will be welcomed by people across Scotland, even if not by Willie Rennie.

I know that the Liberals' position is that, having spent the past five years helping the Tories to cut our budget, they now want to spend the next five years hiking up the taxes of everyone who earns more than £11,000 a year. That is not my position. I will continue to argue for a fair and balanced approach that gets money into education.

**Willie Rennie:** The First Minister is wrong. Last week, she told us that she was going to cut education budgets, even though she said that education was her top priority. Massive cuts for one year could set back a child's chances for a lifetime.

Scotland used to have one of the best education systems in the world, but it has slipped down the international rankings. The situation is urgent. One penny on income tax would generate five times as much for education now than the First Minister's timid and tardy proposals would generate next year.

Even though the First Minister had all the powers, she still cut education budgets last week. Surely she can no longer boast that education is her top priority.

**The First Minister:** Willie Rennie is now just making things up as he goes along. Gross revenue expenditure on education has increased in each of the past three years. Council plans show that in this financial year councils are spending a further £150 million. Last week, the finance secretary announced the doubling of the attainment fund. Yesterday, I announced plans that will result in an extra £100 million every year for education.

I remind Willie Rennie that a penny increase on the basic rate of income tax would hit every single person in our country who earns more than £11,000 a year. I do not think that that is the right approach.

On the world rankings, our desire to see Scottish education as the best in the world is why we embarked on work around the national improvement framework. Willie Rennie has opposed us on that, every step of the way. Instead of moaning from the sidelines—he is becoming

almost as good as Kezia Dugdale is at doing that—he should maybe get behind some of our sensible policies to improve our education system.

### Modern Apprenticeships

**4. Richard Lyle (Central Scotland) (SNP):** To ask the First Minister what the Scottish Government has done to encourage people to access modern apprenticeships. (S4F-03268)

**The First Minister (Nicola Sturgeon):** As Richard Lyle said, the most recent—apologies. We are taking action—[*Interruption.*]

**The Presiding Officer:** Order.

**The First Minister:** We are taking action to ensure that we are supporting modern apprenticeships. We have a target, which we have met every year, of 25,000 modern apprenticeships, and the fair work secretary has announced that we are increasing the target to 26,000, on the way to ensuring that we reach 30,000 by 2020.

**Richard Lyle:** On Monday I met two modern apprentices, Paul Reid and Ross Menzies, during my visit to Ingen Technical Services, which is based in Tannochside, in Uddingston, in my region. Ingen has taken on eight modern apprentices at that site alone, and other apprentices are being taken on throughout Scotland.

Will the First Minister say how the modern apprenticeship programme has contributed to youth employment, which I note is at its highest level in a decade?

**The First Minister:** Modern apprenticeships are a key element of our approach to economic development and youth employment. They support young people into sustainable and rewarding careers, and they have had a big impact on our youth employment rates.

Youth employment in Scotland right now is at its highest October to December level and rate since 2006. Over the past year alone the youth employment rate increased by four percentage points, and there has been an increase of 19,000 in the number of young people in employment, taking the number to 368,000.

The youth employment strategy sets out our seven-year plan to increase youth employment, with a world-class vocational education system that builds on the modern apprenticeship programme that has been so successful.

**Alison McInnes (North East Scotland) (LD):** Part of the seven-year plan that the First Minister mentioned includes the equalities action plan. Will she update the Parliament on progress in that

regard, particularly in helping disabled young people into modern apprenticeships?

**The First Minister:** The “Equalities action plan for Modern Apprenticeships in Scotland” was published on 2 December and includes specific improvement targets for modern apprenticeship participation by black and minority ethnic people, care leavers and disabled people, and on gender balance. Improvement targets for each group have been included and must be achieved by 2021, and Skills Development Scotland will report on those annually.

Improving the balance of participants from underrepresented groups in the MA programme will not happen overnight, of course, but it is a change that we are determined to see happen.

**Murdo Fraser (Mid Scotland and Fife) (Con):** Will the First Minister say what plans the Scottish Government has for its share of the United Kingdom Government’s apprenticeship levy, when that comes to Scotland?

**The First Minister:** Well, if Murdo Fraser could get on to his colleagues in the Westminster Government and get them to give us the detail of the apprenticeship levy, we might be able to answer the question about what we plan to do with it. We have been pressing the Treasury and other ministers and officials in the UK Government to get that information, and we will continue to do so. When we know what the situation is, we will try to ensure that we use the levy as positively as possible, to enhance and build on the work that we are doing in the area.

**John Wilson (Central Scotland) (Ind):** An article in Third Force News by the Scottish children’s services coalition indicates that only 0.41 per cent of modern apprenticeship starts in 2014-15 had a self-declared disability. That is in stark contrast with the 8.6 per cent of the working population aged 16 to 24 who have a disability. Could the First Minister outline the work that is being undertaken with employers as part of the action plan to ensure that the 2021 target of increasing the number of modern apprenticeships for those with disabilities is achieved?

**The First Minister:** Work with employers is part of the action plan, because it is employers who we need to persuade of the benefits of making sure that we have a more diverse population in the MA programme. That is at the heart of the action plan.

I have spoken about the targets that have been set, which are challenging, and I have also said that they will not be reached overnight. However, progress is already being made following the publication of the action plan. We have already seen some improvement in the proportion of starts by people reporting a disability—three percentage points up on the same point last year—and we

have also seen a slight improvement in those who report as coming from a minority ethnic group.

There is a lot of work still to be done, but those figures are promising. The work that is set out in the equalities action plan gives me confidence that we will see further progress in the years to come.

**Ken Macintosh (Eastwood) (Lab):** If modern apprentices are so important to the First Minister, why is she cutting the SDS budget in real terms, and why in particular is she planning a 50 per cent cut in support for hospitality and retail apprentices until 2020?

**The First Minister:** I know that Ken Macintosh will know that we are meeting our targets on modern apprentices. We have a record number of 25,000 modern apprentices. Roseanna Cunningham announced just this week that that will increase next year to 26,000, and we have set a target to get that to 30,000 by 2020.

Instead of the constant and continual whingeing from the sidelines, cannot Labour just get behind us when we are making progress on such an important issue?

### Neurological Conditions (Young People)

**5. Rhoda Grant (Highlands and Islands) (Lab):** To ask the First Minister what the Scottish Government is doing to ensure that young people with neurological conditions receive appropriate care. (S4F-03274)

**The First Minister (Nicola Sturgeon):** National clinical standards for neurological health services were implemented in 2010. We have asked Healthcare Improvement Scotland to review how the quality of care for people with neurological conditions can be enhanced in all care settings. That assessment will reflect our national clinical strategy and health and social care integration, as well as evidence of good practice.

Furthermore, in 2016-17, we are investing £250 million through health and social care partnerships to protect and grow social care services. We are also investing £11.6 million to implement self-directed support. That will increase the availability of social care so that more people can stay at home to share their lives with their family and friends and do the things that give their lives meaning and value.

**Rhoda Grant:** The First Minister will be aware of this week’s Sue Ryder report, which highlighted that young people with neurological conditions are being placed in older people’s care homes because of a lack of specialist residential care. It also highlighted that health boards do not know how many people in their areas have neurological conditions or what those people’s needs are. It is difficult to see how health and social care

spending will impact on that. More than that, although health boards are supposed to have mandatory delivery plans for neurological services, only five boards have them.

**The Presiding Officer:** Could we have a question, please?

**Rhoda Grant:** What will the Scottish Government do? Will it show leadership? Will it deliver and drive forward a national strategy for people with neurological conditions?

**The First Minister:** I am aware of the Sue Ryder report, which makes a lot of important and legitimate points. Many of those points, including the point that Rhoda Grant highlighted about care settings for people who are under 65, are driving the work that I spoke about in my earlier answer: the review that Healthcare Improvement Scotland is undertaking of how the quality of care for people with neurological conditions can be enhanced in all care settings.

As I said, clinical standards are in place for neurological services. They were implemented in 2010, and the HIS review will allow us to ensure that they remain up to date.

The extra investment in social care is pertinent because, if we invest properly in social care, we can develop the services that enable people, wherever possible, to stay and be cared for in their own homes. That is an important part of the agenda.

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** What measures are there in our penal system—perhaps in our prisons—to identify and assist those who may be suffering from neurological conditions?

**The First Minister:** That raises a good point, and I am happy to ask the Cabinet Secretary for Justice to write to Christine Grahame with details of what we do in our prison system to deal with people who have neurological conditions and to reflect on whether we can and should be doing more.

For a number of different reasons, a number of people in our prison system need a lot of care and support—perhaps because some of the reasons why they have ended up in prison have been misunderstood or not properly dealt with in the first place. The category that we are discussing might well be one of those reasons, and I am happy to ask the justice secretary to write to Christine Grahame with further details.

**Roderick Campbell (North East Fife) (SNP):** One of the Sue Ryder report's recommendations referred to the need to develop and implement a method for collecting and presenting data on the prevalence of neurological conditions. Does the

First Minister agree that a comprehensive database is important?

**The First Minister:** Yes. That was one of the many recommendations from Sue Ryder that were extremely important and sensible. I can tell the chamber that Dr John Paul Leach was recently appointed as the new chair of the national advisory committee for neurological conditions. We will work with that group specifically to improve methods of collecting and presenting data on neurological conditions, because that is part of how we ensure that services are improved in the way that they need to be.

**Dave Thompson (Skye, Lochaber and Badenoch) (SNP):** Having suffered a bilateral subdural haematoma two and a half years ago, and being blessed with an excellent recovery after the fine work of Mr Kamel and his team at Aberdeen royal infirmary, I ask the First Minister to update us on the support that is provided for the ARI neurological department and for Raigmore hospital in Inverness, with which the ARI works closely in its treatment of such conditions, particularly in relation to young people.

**The First Minister:** I know that Aberdeen royal infirmary has identified local clinical leaders in the care of younger people, which is to be commended. I recognise the efforts of clinicians and support staff in neurosurgery and neurology across the country, who work together to ensure safe, effective and person-centred care in all hospitals and specialist centres.

It is through joint working, such as we see taking place between Aberdeen and Inverness, as well as through primary and community care, that people of all ages are supported by local clinical teams to address any rehabilitation or other support needs as they return home. Some of the work that has been done in Aberdeen is excellent, and I am sure that other areas around the country could usefully look to it.

**Dr Richard Simpson (Mid Scotland and Fife) (Lab):** Will the First Minister tell us whether the Neurological Alliance of Scotland, which is the group of organisations that represent patients, has in fact received money? The direct grant for those organisations was stopped, but their indirect grant through the Neurological Alliance was the subject of discussion. Will the First Minister confirm that they have been funded?

**The First Minister:** I am happy to look into the issue and write to the member with the detail.

**“Scottish Six”**

**6. Liz Smith (Mid Scotland and Fife) (Con):** To ask the First Minister what the Scottish Government's position is on the BBC's proposal to

introduce a “Scottish Six” news programme. (S4F-03269)

**The First Minister (Nicola Sturgeon):** I welcome the proposal—I think that it is a good idea. The United Kingdom has changed dramatically since devolution, but in some respects the BBC has still to catch up with those changes and deliver news programming that reflects the complexity, variety and richness of life in Scotland. We welcome proposals to introduce a dedicated news service for BBC Scotland, and I am sure that it will draw on the best of our journalistic talent to produce programmes of the highest standard.

**Liz Smith:** I am interested in the point that the First Minister just made—that the most important consideration is BBC Scotland’s ability to harness the best broadcasting talent so that it delivers the highest possible standards in reporting UK, international and Scottish news. Does she agree that such a service should be entirely free from Governments and politicians, some of whom in recent years have sought to influence what is broadcast on the BBC?

**The First Minister:** Yes. I am happy to agree with Liz Smith that the Conservative United Kingdom Government should really stop interfering in the BBC, as it does quite often.

On a serious note, I agree with the point. There is a really interesting debate here, but it is an exciting opportunity. I understand that there might be people in Scotland who, perfectly legitimately, think that a “Scottish Six” is maybe not required. However, I struggle to understand those who argue that somehow people in Scotland, and in BBC Scotland in particular, are not up to producing a dedicated news programme. With the journalistic talent that we have in Scotland, of course they are. A “Scottish Six” would be a great addition, and I support what is proposed.

**Mark McDonald (Aberdeen Donside) (SNP):** Does the First Minister agree that the establishment of a “Scottish Six” would provide great opportunities for individuals who are being trained in broadcasting and journalism, such as those at North East Scotland College in Aberdeen, and would offer them opportunities to retain their skills in Scotland rather than having to seek opportunities elsewhere, as is so often the case?

**The First Minister:** That is a really good point. We should all be in the business of creating more opportunities for those who want to pursue a career in journalism. We know how much difficulty some sections of the media are in, and that is a great regret to all of us. In particular, we know about the pressures on the newspaper industry and the announcements that there have been over the past years about redundancies and job losses

in that industry. To be frank, with anything that is about reversing that trend and creating more opportunities for bright young journalists to get on and pursue their careers in Scotland, we should all put party politics aside and unite behind it as a thoroughly great idea.

**The Presiding Officer:** Before I end First Minister’s questions, I thank all the party leaders for their brevity, the result of which was that an additional 10 back-bench members were able to ask the First Minister a question. I intend to circulate the video to the party leaders. I hope that they will watch it and that we will have a repeat next week.

## Families Affected by Murder and Culpable Homicide

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

The next item of business is a members' business debate on motion S4M-15486, in the name of Graeme Pearson, on support for families affected by murder and culpable homicide. The debate will be concluded without any question being put.

#### *Motion debated,*

That the Parliament recognises the work of organisations such as the Moira Fund and PETAL in supporting people who have experienced the deaths of family members through murder and culpable homicide; further recognises the work of family liaison officers, Victim Support Scotland and Victim Information and Advice in helping victims of crime; believes however that there can be gaps in provision as victims' families are passed from one organisation to another; considers that one-to-one support, such as that offered in England by Victim Support's Homicide Service has greatly improved the support available to families by providing help in dealing with official agencies, arranging funerals, liaising with court officials, arranging counselling and providing ongoing support, and notes the view that families affected by such crimes in South Scotland and across the country would greatly benefit if a similar dedicated support service was established in Scotland.

12:33

**Graeme Pearson (South Scotland) (Lab):** I am grateful to the Parliament for giving me the opportunity to speak to the motion in support of families who are affected by murder and culpable homicide. I thank colleagues from all parties in the Parliament who supported the motion, which gives us a worthwhile opportunity to vent some of the issues for those who are affected by homicide.

Those issues affect a surprising number of people across Scotland. This morning, before coming to the chamber, I checked the statistics and found that, in the 10 years from 2005 to 2015, there were 887 victims of murder and homicide across Scotland. Therefore, many families in Scotland have unfortunately had to face the trauma and upset of receiving police officers at their homes to tell them that they have lost a family member.

Many public agencies and staff have been involved in supporting those families—obviously, the police family liaison officers and Victim Support Scotland do that work—as do public agencies such as the social work services, local authorities and the victim information and advice service and so on. However, a great deal of work has been done on all our behalf by charity groups, particularly by Petal Support, which has been based at Hamilton for well over two decades, and more recently by the Moira Fund, which has done a great deal of work in supporting those families who face such difficulties.

Much has been said over previous years about too many agencies having to pass clients between them because of how the system works. The clients may first be involved with the police before then being passed on to the procurator fiscal service. The victim information and advice service and Victim Support Scotland may then be involved alongside police family liaison services.

The families, who are facing trauma and emotional demands, are ill-prepared to deal with the demands from officials for necessary responses on registering a death and dealing with insurance companies and so on.

In England and Wales, Victim Support created a homicide service. I must admit that, even having had more than three decades of experience in such work, it had passed me by how some families who are affected by homicide and in dire economic circumstances deal with funeral expenses at the time that they face the trauma. The truth is that, very often, they deal with the situation badly.

In some cases, families are lucky enough to have communities that gather together funds and pass them on in order that they can bury their loved ones with dignity. In other circumstances, extended family members collect together funds and provide support. In England and Wales, families who are in dire economic circumstances can approach the Moira Fund and other voluntary agencies. Although they are not in receipt of huge financial support from Governments, they find the means to gather together money to assist families as and when they require it.

It dawned on me that it should not be left to charities to try and find the money when members of our communities face such dire circumstances. It is not beyond our wit to come together and to find the means to help with arranging funerals and, in the short term, financing them to allow burials to be done with some dignity and covering people's travelling expenses when they are required to attend the necessary related activities.

In many circumstances, the families may well find that, in the longer-term, insurance companies come forward. In some circumstances and after some months, the families may even be able to save the money themselves in order to pay the many expenses that I am talking about.

My suggestion to Parliament is that, when a family faces the trauma of losing a loved one, worrying about the economic impacts should be the furthest thing from their minds. We should find a way of taking away the burden that they face.

Over the past year, I have spoken to people in Victim Support about the notion of extending its services. By no means am I saying that the numbers have been appropriately audited, but

Victim Support has estimated that in the past year 59 families might have been considered for support. Many families—thankfully—are financially secure and do not need the support. Therefore, no more than £1 million a year would be needed in order to offer the whole range of services that might be required for the number of families—fewer than 59 families to begin with—that we are talking about.

That would provide not only the things that I have spoken about, but the counselling that some families require during and after the court process; support during appeals processes, which is important because the families are often overlooked and forgotten; and support in the longer term when, after many years, families receive letters through the post to tell them that the people who were convicted of homicide or murder are going through parole processes.

Victim Support Scotland estimates that to cover that range of services would cost about £1 million. It is right for us as a Parliament to seek to provide that support, and I invite the minister to consider the implications and look to initiate a broader service.

I also invite the Government to think about unifying the victim support services. At present, we have Victim Support Scotland and a separate victim information and advice service. Unifying them would allow, without any additional allocation of budgets, seamless service provision for victims and their families.

I am grateful for the opportunity for members to express their views on this important subject.

**The Deputy Presiding Officer:** We turn to the open debate. I ask for speeches of four minutes, please.

12:41

**Christian Allard (North East Scotland) (SNP):** I thank Graeme Pearson for bringing the subject to the chamber for debate. I read his motion, although I did not sign it. In his speech, he only really talked about the motion at the end. I absolutely agree with what he said in the rest of his speech. I know that he has vast experience of the matter, and he opened our eyes to what families have to endure, and particularly the economic burden.

As I said, I very much agree with most of what Graeme Pearson said, but I am not so sure about the motion. In the Justice Committee, of which I am a member, we have done a lot of work over the years—for example, in our consideration of the Victims and Witnesses (Scotland) Bill in 2014 and, more recently, the Victims' Rights (Scotland) Regulations 2015—to improve the support that is

provided by various organisations within our justice system.

I agree that, for too long, victims have been treated as and made to feel like bystanders in the criminal justice system, but the recent changes that we all voted on in the Parliament will see more consideration given to the rights and needs of not only victims but witnesses of crime. It is important to realise that witnesses need support, too, and the Government's new legislation, which the Parliament voted for, will improve those people's experience in the system. The rights of victims and their families is always at the heart of everything that we do in the Justice Committee.

I am sure that the Minister for Community Safety and Legal Affairs will talk about the recent launch of the victims code for Scotland. The code is great news and it has been applauded by Victim Support Scotland. It is a move in the right direction, and I know that Victim Support Scotland is also delighted with the support for services for young victims and witnesses of crime. The victims code for Scotland sets out the rights of victims of crime and who to contact for help and advice. Those rights have been put in place through the Victims and Witnesses (Scotland) Act 2014 and the Victims' Rights (Scotland) Regulations 2015. People can find the code and the information that it contains online.

Susan Gallagher, acting chief executive of Victim Support Scotland said that the new code is an important step. She said:

"VSS warmly welcomes the introduction of the victims code. Victims and witnesses now have access to information which highlights what their legal rights are in the aftermath of crime. It is a huge step forward on the journey to ensuring victims have a role in the Criminal Justice System in Scotland."

We want to continue on the journey that we are on. I agree with a lot of what Victim Support Scotland said, and particularly its comment that

"There is still a long way to go before victims are at the heart of the Criminal Justice System but the code provides us that step closer."

It is a question of taking that first step.

I would like to talk about the many family liaison officers of Police Scotland who are doing a fantastic job. Family liaison officers have multiple roles and they must have the expertise and skills to manage those. We have to thank them for that. We also have many third sector organisations providing valuable support.

When we discussed the Community Justice (Scotland) Bill, we heard that the system is crowded and Graeme Pearson's motion talks about streamlining this patchwork of organisations. When I hear that, I always respond that the fantastic mosaic of third sector organisations

reflects the diversity of our rural and urban communities and enriches the quality of the support given to families across Scotland.

As we heard during the passage of the Victims and Witnesses (Scotland) Act 2014, the then cabinet secretary, Kenny MacAskill, decided not to opt for a victims commissioner. He said:

“Given the excellent work that is being done by our victim support organisations in Scotland”—[*Official Report*, 19 June 2013; c 21319.]

it would be an unnecessary extra level of expensive bureaucracy using resources that could be better spent. I am quite happy where we are.

In conclusion, let me be controversial. Apathy and a lack of feeling, emotion and interest is recognised by many as the most common reason why someone would commit the act of ending the life of another human being. It is that apathy that makes us stand today to speak up for the people who have experienced the death of a family member through murder and culpable homicide. We empathise with the victims and their family members because it could happen to us all.

My last thought is for the other family—the family that will suffer because one member of that family has committed such a crime. As a society, we need to reflect on this: we do not choose what members of our family do and we are likely to suffer the consequences of whatever has happened.

12:47

**Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab):** I add my thanks to Graeme Pearson for securing today’s debate on a very difficult, but important, subject. I, too, praise the work of the Moira Fund and Petal Support. The support that those organisations give to people affected by murder and culpable homicide is vital and should be supported.

Today I highlight just two of several cases that I have been involved in, to explain why the support from those two organisations is so important and why, in Scotland, we need a dedicated victim support homicide service that provides comprehensive support, not just in the immediate aftermath of a particular crime, but throughout the time that a victim’s family is engaged with the justice system.

In 2008, my constituent Giselle Ross waved goodbye to her two sons, six-year-old Paul and two-year-old Jay, as her former husband Ashok Kalyanjee took the boys to visit their grandmother. Ashok later took the boys to the Campsie Fells to a spot that he knew their mother loved. Once there, he put them in his car and stabbed them repeatedly. One of the boys witnessed what

happened to his brother before being attacked himself. Kalyanjee then telephoned Giselle and taunted her about the boys, before setting fire to his car with him and the two boys inside. He was found alive by police but his sons were dead.

Kalyanjee was examined by three psychiatrists and found to be sane and fit to plead. He eventually pled guilty. In delivering his verdict, Lord Brailsford apologised in court to the Ross family for the protracted process and the requirement to obtain so many reports before a verdict could be arrived at. It had taken some eight months to get to the point of conviction.

Of course, that was not the end of the matter—as though there ever could be an end for Giselle Ross—because Kalyanjee then had his lawyers ask for a review of his conviction on the ground of his mental state at the time of the incident. That application was refused in early 2012, but a further application for review was submitted later that year, and this time it was granted. After a number of harrowing court hearings, Kalyanjee’s bid to have his conviction quashed was rejected in May 2014.

The case did not end with the conviction of Ashok Kalyanjee; it continued for another five years while he used the justice system to argue his case, as he was entitled to do. However, one could be forgiven for thinking that he simply wanted to continue his vindictive campaign against his former wife, Giselle. The question is, what support was available to Giselle during all that time? The answer is, very little, and she is not alone in that.

I want to consider another, very different case in which it seems to me that the system could have done more to support a family. One evening, my constituent Charles Howe took his wife and young son out for a drive. Out of the blue, another driver swerved across the road and crashed head on into Mr Howe’s car. Mr Howe suffered facial injuries and a shattered knee, and his nine-year-old son had a broken arm and facial cuts. Mrs Howe, who was nine months pregnant, died of her injuries, as did her unborn son. The driver of the other vehicle—Goldie—suffered some injuries, but ran away from the scene and evaded arrest for some six months. Because of the illness of a witness, Goldie pled guilty to failing to report an accident and driving without insurance while disqualified, and was admonished on a charge of dangerous driving.

I do not intend to rail against those sentences or charges, although there is much to rail about; rather, I want to highlight an aspect of that case that has added to Mr Howe’s concerns in the 20 years since the deaths of his wife and son. His son, who was to be named Dylan, was recorded as having been stillborn in spite of the fact that he

died at nine months gestation, probably hours away from his natural birth, because of the incident that his family was involved in. It is fair to say that it has tortured Mr Howe in the 20 years since that his son did not have the recognition in law that Mr Howe feels that he should have had and that his birth and, most important, his death are summed up in the word “stillborn”. Could the minister consider that matter?

Surely we owe people such as Giselle Ross and Charles Howe more support than they currently get. If there are systems in other places that work better than ours, we should surely be brave enough to acknowledge that and follow their example.

12:52

**Annabel Goldie (West Scotland) (Con):** I, too, am very pleased to participate in this members’ business debate, and I, too, thank Graeme Pearson for securing parliamentary time for such an important and worthwhile topic.

Crime, from antisocial behaviour and housebreaking to the unimaginable horrors of child abuse, affects many thousands of families across Scotland each year. With the loss of a loved one by another’s hand, it exacts a tragic toll.

In 2014-15, 59 homicides were recorded. That means that 59 families suffered the trauma of bereavement with the added complexity and emotional difficulty of dealing with the criminal justice system, often for the first time. The work of organisations such as Victim Support Scotland is immeasurable and invaluable in that regard. They offer emotional support and impartially help families to understand and cope with a wide range of emotions at a fraught and especially overwhelming time. Such situations are compounded by the common but devastating trend in homicides—that most victims are killed by someone whom they know. The most recent figures show that, last year, 49 per cent of male victims were killed by an acquaintance and 43 per cent of female victims were killed by their partner.

For bereaved families, such betrayal is almost impossible to understand, so it is vital that they are supported in their grief. I think that we all agree that Patricia Ferguson spoke very movingly of families who find themselves in that awful position. Charities such as the Moira Fund and Victim Support Scotland are to be commended for the help that they provide. Petal—people experiencing trauma and loss—to which Graeme Pearson referred, also carries out excellent work. It harnesses the services of volunteers, sessional counsellors, holistic therapists and psychotherapists to provide free support, advice and counselling to those who need it most.

Without doubt, families that are affected by homicide also need practical support, guidance and navigation through the system. From the moment when a homicide is reported, to the point of conviction and beyond, as Patricia Ferguson strikingly illustrated, they come into contact with a number of official agencies—Police Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunals Service, the Scottish Prison Service, the Parole Board for Scotland and the Criminal Injuries Compensation Authority. They will also have to identify the body of the deceased, liaise with the procurator fiscal about the timing of the funeral arrangements—which may be delayed significantly if a suspect is not arrested expeditiously—and potentially co-ordinate with the police about the victim’s personal possessions, because they may be used as forensic evidence.

Families may also be exposed to the media; the media may follow the circumstances of the death and they may follow any subsequent court case. Media attention can mean intrusive and often unwelcome attention as the bereaved try to go about their day-to-day business. It can be very distressing, especially as family members may not be aware that anything that they say could also be prejudicial to an ensuing court case. All that can be intimidating and overwhelming.

The Scottish Government has prepared a very helpful document for bereaved families, which is to be commended, but it is a lengthy document and it is challenging to digest.

I agree with Graeme Pearson that there is a distinct risk of families being passed from one organisation to another leading to gaps and inconsistencies in provision. There would be merit in replicating the homicide service that is operated by Victim Support in England and Wales. It helps families not just to navigate the criminal justice system but helps by providing much-needed emotional support and practical services. When I looked at its website just a moment ago, it had links to—if I counted correctly—70 other specialist organisations.

I again thank Graeme Pearson for bringing Parliament’s attention to a very important issue. I urge the Scottish Government to look carefully at the homicide service that is available in England and Wales. We should seriously consider adopting that scheme, if it is practicable to do so.

12:56

**Roderick Campbell (North East Fife) (SNP):** I also congratulate Graeme Pearson on securing the debate. I add my support and praise for the list of organisations that he referred to in both his motion and his introductory remarks.

Graeme Pearson has mentioned the 887 victims over a period. I accept that culpable homicide and murder are terrible crimes; however, I welcome the fact that Scottish Government crime and justice statistics for 2014-15 show that between 2013-14 and 2014-15, there was a decrease—albeit by only one—from 60 such crimes to the 59 that Annabel Goldie referred to. That 59 is the lowest number of recorded homicide cases for a single 12-month period since 1976. However, it still means 59 grieving families and loved ones, which is 59 too many. Patricia Ferguson spoke movingly of the impacts on families. The crimes and the effects they have on people are devastating, so provision of services for families who are affected ought to be a high priority. I appreciate fully the point that Graeme Pearson made in his motion on one-to-one support for families who are coming to terms with the loss of a loved one in such tragic circumstances. For anyone who has not suffered such bereavement, the thought of having to go through the process is unimaginable.

The services that are provided by the likes of Petal and the Moira Fund are truly invaluable. We must not lose sight of the hard work that people in those organisations, and in organisations such as Victim Support Scotland, carry out every single day.

It is fitting that the debate is taking place immediately after victims' week 2016, at the beginning of which the Minister for Community Safety and Legal Affairs—who is sitting in front of me—unveiled the “Victims' Code for Scotland”. As he did so, he said that

“Anyone who has been a victim of crime should have confidence that they will receive the right support and advice through the criminal justice process”.

I sincerely hope that publication of the code and those words go some way towards ensuring that that is the case. However, I recognise that the code is by no means a magic bullet.

It is important that support organisations work together, where appropriate, to provide the support that victims and their families require. I sincerely hope that that would not result in, as Mr Pearson's motion describes it, people being “passed” around organisations.

I recognise that a significant amount of work to provide the support that families need at such a time takes place behind the scenes at third sector organisations. Not the least of that support is provided by Victim Support Scotland, which is the largest organisation in Scotland providing support and information services to victims and witnesses of crime, through its community-based victim services and court-based witness services. Every year its services support about 200,000 people who are affected by crime. However, I

acknowledge its calls for the development of a national support service to provide an enhanced personal response to families and loved ones who are bereaved by murder and culpable homicide. The effectiveness of the approach down south cannot be ignored, so I join others in calling on the Government to give some consideration to the lessons that can be learned from that approach.

Notwithstanding that, collaboration, communication and cohesion between existing organisations are vital. The Moira Fund, which has been referred to and which was created after the tragic murder of Moira Jones, is an extremely good example of a charity that provides grants to individuals who are referred through official organisations such as the police. I pay homage to the charities that care for families who have lost loved ones through homicide. The fact that the Moira Fund is backed by patrons such as the Rt Hon Elish Angiolini—who, as the then Lord Advocate of Scotland, led the prosecution at the trial of Moira's killer—is an indication of its importance.

Once again, I thank Graeme Pearson for bringing the debate to Parliament. I hope that the minister will respond to points that have been made.

**The Deputy Presiding Officer:** Before I invite the minister to respond to the debate, I advise members that this is Graeme Pearson's last member's debate and that his speech was possibly his last in Parliament, as he is stepping down.

13:01

**The Minister for Community Safety and Legal Affairs (Paul Wheelhouse):** I thank Graeme Pearson for raising this important issue. I had guessed—correctly, as it turns out—that Mr Pearson's speech would be his final one. I say with sincerity that I have genuinely enjoyed debates with him in the past. He has been an honourable member of the Parliament and has been a great credit to his party and the people whom he has served in South Scotland. I believe that it might also be my last opportunity to engage with Miss Goldie. Whatever our political differences, she has been a tremendous asset to the Parliament and is well respected across the chamber. I look forward to hearing all sorts of good things about both members as they leave Parliament.

We recognise the need for victims of crime to have access to the right information and support, and the need to improve the experience of people who pass through the criminal justice system. We have heard eloquently from members around the chamber—especially Patricia Ferguson, who told

us about emotional cases with which she has had to deal in her constituency—about the need for information and support, the need to improve the experience and the need to have throughcare throughout the justice system and not only at the point of prosecution. As Christian Allard stated, we have recently passed legislation—in particular, the Victims and Witnesses (Scotland) Act 2014 and the Victims' Rights (Scotland) Regulations 2015—in an attempt to improve the support that is provided by the various organisations in our justice system.

We accept that it can be traumatic for victims and their families to be passed between criminal justice agencies without receiving any information on how the justice system works. That is why we have introduced standards of service to ensure that victims know what to expect from each agency—not only Police Scotland and the Crown Office and Procurator Fiscal Service, but the Scottish Courts and Tribunals Service. We have encouraged criminal justice agencies to work closely with victim support organisations on creation of those standards, and to establish closer working relationships in order to ensure that the service that we provide is as joined up as possible. I hear clearly from Graeme Pearson and other members that we need to have a joined-up system and ensure that organisations collaborate, as Rod Campbell said.

We have introduced new rights to information so that victims can find out exactly what is happening with their cases. Those new measures provide additional support for victims and put their interests at the heart of improvements to our justice system. The legislative changes help us to comply with the European Union victims' rights directive, which helps to ensure that victims of crime can have the right kind of help, information and support wherever they are in the EU.

However, we recognise that victims may not even be aware of their rights or of what support is available to them. That is why on EU victims day we published the first "Victims' Code for Scotland". We appreciate that it is the first code and that it will evolve over time. We are specifically considering trying to make a child-friendly version of the code because the way that it is worded is mainly aimed at adults. There is a clear need to work with Children 1st and other organisations to ensure that there is a child-friendly version of the document. However, in simple, straightforward language, the code provides victims with information about their rights, who can help, and where to go for more information. The code can be easily accessed online, and it is available from criminal justice agencies. Since 22 February it has been available online in a variety of languages—Polish, Mandarin and Urdu to name but a few. I am pleased to say that we are currently

developing easy-read and child-friendly versions of the code.

The code will be made available to victims of crime when they come into contact with the police or other criminal justice agencies. It is intended to signpost victims to the help and support that they may need. We developed the code in discussion with agencies including the police, the courts and the Crown Office, and with victims groups including Victim Support Scotland, Scottish Women's Aid and Rape Crisis Scotland. We will continue to consult those organisations as the code is made available more widely in order that we ensure that it is providing the information that victims require.

We acknowledge the considerable support that is currently available from the police through family liaison officers—FLOs. Graeme Pearson referred to them first, I think, and he will have direct experience of working with them. Support is also available from the Crown Office and Procurator Fiscal Service's victim information and advice—VIA—service and from victim support organisations.

I recognise the point that was made by Graeme Pearson and other members that it appears that there are a lot of organisations. There is obviously a risk of people being passed from pillar to post, or feeling as though they are, so we have to manage that carefully.

At present, Police Scotland appoints family liaison officers when a serious crime has been committed and the police determine that an FLO would be beneficial to the family, which is an important point. FLOs contact victims or bereaved relatives during the early stages of the police investigation or very soon after the death, and are there to provide a link between the family and the senior investigating officer and inquiry team. The FLO identifies additional support for the family and provides practical assistance including managing media interest in the case, which can sometimes be intense, as members are aware. FLOs are also responsible for offering guidance on the investigation process to the family, and for providing advice and guidance throughout the police investigation.

FLOs liaise closely with the victim information and advice service at the Crown Office and Procurator Fiscal Service from very early on in the investigation, before handing the liaison role over to VIA if the investigation moves to prosecution. VIA, in turn, provides victims of crime with information about the criminal justice system, it provides assistance in cases in which a victim appears to be vulnerable, and it helps victims to get in touch with organisations that can offer the practical help and support to which members have been referring.

We recognise the importance of supporting victims of crime, which is why the Scottish Government provides funding of just over £4 million per year to victim support organisations.

We believe that support for people who have been bereaved by murder—which is why we are here today—is vital. This is why we provide grant funding to Petal, which offers specialist support, counselling services and practical advice relating to the criminal justice system and other matters.

The 2014 act is part of a larger piece of ongoing work to further improve the experience of, and increase support for, victims of crime in the justice system. I encourage individuals and agencies to seek continually new means of supporting victims of crime, and to be continually identifying where improvements can be made to existing provision. That is certainly my view. I assure members that that will continue to be the case beyond implementation of the legislation.

As members have pointed out, in its 2015 to 2019 manifesto, Victim Support Scotland called for development of a national support service to provide an enhanced personal response to families and loved ones who have been bereaved by murder. I hear the sentiment that is being expressed across the chamber, which is that that is something that members, regardless of party, wish to happen.

I very much welcome the commitment of Victim Support Scotland to improving support, but it is vital that we avoid duplication of services and that we ensure that resources are focused on helping those who are in need. For example, Petal already provides specialist support for bereaved families, and more general support is extensively available across Scotland, particularly through Victim Support Scotland and other organisations that have been mentioned this afternoon. For that reason, we have encouraged Victim Support Scotland and Petal to consider how they might work more closely together to support families in such cases.

I acknowledge the very good work that is going on in England. It certainly has some attraction to it. However, we need to design a system that will work within the landscape here, while trying to avoid duplication. It would not necessarily be a straight copy. We are open to further discussion on the topic and we recognise that we need to be fully aware of the needs of those who have suffered bereavement by murder or suicide, and that we need to support them appropriately.

The concerns that have been raised by Graeme Pearson today over, for example, victims feeling that they have to explain things again and again as they are passed from one justice agency to the next, are ones that I recognise. They point to a

need to understand better the requirements of victims. We need justice and victim support organisations to work together and to deliver a joined-up service.

Of course, legislation is not the end of the process; it is just the beginning. There is a constant process of improvement. Implementation will need to continue, and we will work in collaboration with our partners in the criminal justice system and the third sector to ensure that the provisions are implemented effectively. We will also continue to work to identify improvements that can be made on a non-legislative basis.

For too long, victims have been treated and made to feel like bystanders in the criminal justice system. Our recent changes will mean more consideration being given to the rights and needs of victims and witnesses of crime. It is my hope—one that is, I am sure, shared across the chamber—that the recent changes will improve people's experience of the system to which they turn to see justice served.

I thank Graeme Pearson again. I meant with all sincerity the points that I made earlier—he has been an excellent member. I wish him and Annabel Goldie great success in the future. I hope that he can take some comfort from the fact that we are considering the important issues that he raised today, and that he will take some satisfaction from any progress that is made as a result.

**The Deputy Presiding Officer:** I add my best wishes to Annabel Goldie and Graeme Pearson, who are standing down from Parliament.

13:10

*Meeting suspended.*

14:30

*On resuming—*

## Scottish Parliamentary Corporate Body Question Time

### Garden Lobby (Lighting)

**1. Dennis Robertson (Aberdeenshire West) (SNP):** To ask the Scottish Parliamentary Corporate Body whether it will consider improving the lighting in the garden lobby exhibition space to increase visibility and allow better photo opportunities. (S4O-05625)

**Linda Fabiani (Scottish Parliamentary Corporate Body):** I understand the difficulty in relation to photo opportunities to which Dennis Robertson refers. Back in 2012, consideration was given to installing additional lighting in that space but, because of the technical challenges and the significant cost, we did not pursue that option. As an alternative, we use specialised lighting attached to the display boards, which illuminates the various exhibitions. That lighting is not designed to add light to the general area and the corporate body has no plans to install additional lighting there.

**Dennis Robertson:** Given the significant cost and technical problems, I can fully understand that approach. Does the Parliament provide the additional lighting for the exhibition boards? Could any additional lighting be added? When organisations display their events and exhibitions here, they want to ensure that they can get out good-quality photographs on their social media.

**Linda Fabiani:** I understand the issue, and we supply additional lighting for the boards and so on.

There are technical challenges associated with installing any permanent lighting and, as I said, the cost of doing so would be prohibitive. Parliament staff are always willing to look at how services can be enhanced and I would hope that, following the raising of the subject in the chamber, we can look again not at the installation of permanent lighting but at other options that could perhaps be used to give a better experience for those who use that space.

### Food Waste

**2. John Wilson (Central Scotland) (Ind):** To ask the Scottish Parliamentary Corporate Body how it disposes of food that is left over from events and functions. (S4O-05594)

**Linda Fabiani (Scottish Parliamentary Corporate Body):** Our events and catering teams work closely with event organisers to provide guidance on food choices and, most important, the amount of food required. Any leftover food is put

into food waste bins, collected by our waste disposal contractor and taken away for composting. Obviously, that helps to reduce the amount of waste that we send to incineration.

**John Wilson:** According to Greener Scotland, every year 380,000 tonnes of food and drink is thrown away that did not have to be, costing the Scottish public more than £1 billion a year. The Parliament has the objective of being a zero-waste Parliament. Throwing out food does not seem to be in line with that ideal. Is it possible for the corporate body, in discussion with caterers and others, to consider, where possible, passing on leftover food from functions and events to the various food kitchens in Edinburgh that supply essential food to homeless individuals and others who demand to be fed?

**Linda Fabiani:** Those discussions go on all the time. Because the Parliament takes very seriously its responsibilities to try to reduce all waste, including food waste, we have detailed discussions with those who organise events. Furthermore, we are looking at installing a food-waste monitoring tool, so that we can understand a bit better how and where food is wasted. In that way, we will be able to have better and more informed discussion and take appropriate measures.

There are issues around what, on the surface, seems the worthy way of doing things that the member suggests. We have to remember that when one is catering for events, the food is unpackaged, prepared and served and is not temperature controlled, so we must be careful that we do not allow it to become a risk and unfit for human consumption. Sometimes, it has to be classed as waste.

That said, discussions are always continuing about how best to manage these things, and I am absolutely sure that, with their good management of this institution, SPCB staff will carry on that discussion, along with the corporate body that is elected after the elections in May.

**Mary Scanlon (Highlands and Islands) (Con):** Many of us would like to increase the amount of food and drink for disposal. I refer in particular to the coffee in committee rooms. On behalf of my colleague on the Public Audit Committee and the Education and Culture Committee, Colin Beattie, and colleagues from all parties across the Parliament, I ask whether the corporate body will ensure that new and continuing MSPs get a decent cup of coffee in committee in session 5.

**Linda Fabiani:** I guess that it is all a matter of taste. I quite like the coffee that we get in committees. In fact, I think that we are very lucky to get coffee in committees at all. These are hard times; we have austerity.

I have heard such comments over the past couple of years, and I know that Parliament staff have had coffee tastings for members for them to choose what they thought was the best coffee. I do not know what else we can do, to be perfectly honest. The fact that the coffee urns are often empty suggests that most people are quite happy with the coffee that is offered.

I am trying to think on my feet and come up with a solution. It is possible to get very good coffee bags, and we could probably supply some really hot water.

**Mike MacKenzie (Highlands and Islands) (SNP):** I share Mary Scanlon's concerns about the coffee and I compliment her on her efforts to improve its quality.

I have observed something that might help the corporate body. On odd occasions, I have been in committees that have met very early in the day, and on those occasions the coffee seems to taste much better. I suggest that part of the problem, at least, might be that, at times, coffee is left standing in vacuum flasks for quite a long time, which impinges on the quality of its flavour. If the corporate body can direct its activities in such a way as to seek to improve the quality of the coffee, perhaps it could look at minimising the time that it is in the vacuum flasks for.

**Linda Fabiani:** It is me again. [*Laughter.*]

I am going to pass the buck: perhaps the next corporate body could look at the issue. However, I suggest that people get a bit more healthy and drink more water.

**Dennis Robertson (Aberdeenshire West) (SNP):** I am sure that Linda Fabiani is not expecting this question, either. On the same topic of food waste, I wonder whether the SPCB has considered—it probably has—what happens in the mornings when breakfast is over. What is left goes into waste immediately. Can we not consider putting the bacon, sausages et cetera into rolls—I love cold bacon rolls—and selling them on later?

**Linda Fabiani:** Um—[*Laughter.*] I tell members what: there are folk in this establishment who are paid to look at such options. I am sure that they are listening avidly to this question time to see whether there is anything that they can do to improve the experience of MSPs, and that they will get back to Mr Robertson.

## Health (Tobacco, Nicotine etc and Care) (Scotland) Bill: Stage 3

14:39

**The Deputy Presiding Officer (John Scott):** The next item of business is stage 3 of the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill. Members should have the bill as amended at stage 2, the marshalled list of amendments and the groupings. The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds; thereafter, I will allow a voting period of one minute for the first division after a debate.

### Section 10—Tobacco and nicotine vapour product banning orders

**The Deputy Presiding Officer:** Amendment 1, in the name of the minister, is in a group on its own.

**The Minister for Public Health (Maureen Watt):** Amendment 1 is a technical amendment that is required as a result of an amendment to the bill at stage 2. The stage 2 amendment added to the relevant enforcement actions, which can count towards an application for a tobacco and nicotine vapour product banning order. The purpose of the amendment is to make it clear that it is not a requirement that at least one offence must have been committed under chapters 1 and 2 of the Tobacco and Primary Medical Services (Scotland) Act 2010 before a sheriff can be satisfied that a banning order can be issued. That will ensure that a banning order can be applied where three relevant enforcement actions pertain to convictions under section 92(1)(b) or (c) of the Trade Marks Act 1994.

I move amendment 1.

*Amendment 1 agreed to.*

### Section 22—Duty of candour procedure

**The Deputy Presiding Officer:** Amendment 3, in the name of Malcolm Chisholm, is grouped with amendment 4.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** Amendments 3 and 4 relate to the provisions in the bill that deal with the duty of candour. As most members will know, the duty will arise if a person experiences unintended harm. In that situation, the organisation involved will have a duty to tell the person, support them, review the situation in order to learn lessons and apologise.

I am a strong supporter of the duty of candour. However, when I visited Ardgowan hospice with

colleagues from the Health and Sport Committee as part of the palliative care inquiry back in September, we asked the clinicians about the bill, and about the duty of candour in particular. The consultant in palliative care and other staff at the hospice expressed the concern that there may be people who do not wish to be informed about the experience that has caused unintended harm. They were thinking of hospice situations, but there may be other situations in which the person does not want to know—it could be a relative, if the person in question is no longer alive.

That question was also raised during our stage 1 deliberations. Peter Walsh of Action against Medical Accidents was one of the people who gave evidence. He has a great deal of experience of how the duty of candour has operated in England, where it is already in law. He is a great supporter of the duty of candour, and I found what he said about one of the provisions in English legislation quite interesting. He said:

“The way that it has been dealt with in England is that there is a requirement to tell the patient or service user or their family that there is something to report and to discuss, and they can simply say, “Thanks, but I don’t want to know.” Let us say that mum or dad has passed away: the family can say, “We’re moving on and we don’t want to know another thing.” That is their absolute right, but it is not the right of any individual health professional or organisation to decide for them that they do not need the opportunity to know.”—[*Official Report, Health and Sport Committee*, 22 September 2015; c 9.]

That last point is very important because we are trying to get beyond the paternalistic culture that we used to have in the health service. The appropriate health professional may think, “Oh well, it’s not really in the interests of this person or their relatives to know this”, but that is not the way to deal with such matters. People have the right to know, so they must be asked. Amendments 3 and 4 are an attempt to deal with that point.

I lodged amendments at stage 2 and have now lodged them again in simpler form. I have also taken into account a concern that was raised by the minister in response to my previous amendments. A great deal of what will govern the duty of candour procedures will be in regulations. Section 22 is the critical part of the bill. I propose adding two bits to section 22. Section 22(2)(c) refers to

“a meeting with the relevant person”.

I propose that the regulations that govern that should include the words

“asking the relevant person whether the relevant person wishes to receive an account of the incident”.

14:45

One of the points that the minister made in the committee was that, of course, even when a

person or their relative expresses a wish not to know, it is still crucial that there be a review of the circumstances that led to the harm. I have therefore lodged amendment 4 to section 22(2)(i), which relates to reviewing the circumstances. I propose to insert the words

“even if the relevant person has advised that the relevant person does not wish to receive an account of the incident”.

The review will still have to go ahead so that lessons can be learned.

I accept that much will be in regulations, but when we pass legislation, there is always a general question about the extent to which we just take on trust what will be in regulations, and the extent to which we should flag up in primary legislation what must be in the regulations. My amendments 3 and 4 strike the right balance. I accept that we cannot work out all the details in the bill, but we should have the right to flag up certain really important dimensions of the regulations.

Obviously, I will listen with interest to what the minister says.

I move amendment 3.

**Nanette Milne (North East Scotland) (Con):** I support Malcolm Chisholm’s amendments, and I will be brief. From my experience in the health service, I am well aware that there are patients who certainly do not want to know the detail of what goes on even in their own treatment, or if there have been mistakes. I appreciate that, for the duty of candour, it is necessary for them to know that there has been something, but it should absolutely be their right not to have to hear the detail of the concern. Malcolm Chisholm’s amendments 3 and 4 support what I think on the issue.

**Rhoda Grant (Highlands and Islands) (Lab):** I, too, will be brief. At stage 2, I argued that the duty of candour should go through all health and social care processes, and that patients should be informed of their treatment and given all the available information. That is to make the treatment person centred. Malcolm Chisholm’s amendments 3 and 4 emphasise that the person must be in control of the information that they receive and of whether they get detail. It is about the person being at the very centre of the treatment so that they can either refuse to have information or have all the information about their care.

**Maureen Watt:** As other members do, I recognise that it may not always be in the best interests of the individual to be told about what has happened. In implementing the duty of candour, organisations will be required to consider that carefully and ensure that they do not have a one-

size-fits-all approach to disclosing information. Organisations will be required to check whether the affected person wants to be told about what went wrong, but regardless of that, the main aim is that organisations will be required to take steps to review incidents irrespective of whether the affected person wants to be told about what went wrong. The bill allowed that to be included in regulations, and the Scottish Government's duty of candour implementation advisory group will, of course, include that in implementing the bill.

Given Malcolm Chisholm's persistence on that point and, perhaps, as a parting gift from the Scottish Government, I am content to support amendments 3 and 4.

**Malcolm Chisholm:** I thank the minister very much for that, but I assure her that I am not parting yet. I have two and a half weeks' worth of speeches left.

*Amendment 3 agreed to.*

*Amendment 4 moved—[Malcolm Chisholm]—and agreed to.*

#### After section 28

**The Deputy Presiding Officer:** We move to group 3. Amendment 2, in the name of the minister, is the only amendment in the group.

**Maureen Watt:** Presiding Officer, I indicated at stage 2 that an amendment would be lodged at stage 3 in relation to the care-worker offence of ill-treatment or wilful neglect, which is set out in section 26 of the bill. Amendment 2 will add that offence to the list of offences in the Police (Scotland) Act 1997 that must always be disclosed in higher-level disclosures. I thank Mary Scanlon for the work that she has done on the amendment.

The serious nature of that offence and the breach of trust that is involved are such that the passage of time will not diminish the relevance of the information to a prospective employer or volunteer organisation. Amendment 2 will ensure that Disclosure Scotland will always disclose spent convictions for that offence.

Its inclusion on the list of offences that must always be disclosed means that no matter how old the conviction is, it will always be disclosed in a higher-level disclosure and will therefore be available to employers and volunteer organisations.

I move amendment 2.

**Mary Scanlon (Highlands and Islands) (Con):** I thank the minister for her response and for the very reasonable hearing that I got at stage 2. I am grateful that she has lodged amendment 2.

Amendment 2 was born out of contact with a constituent, Mrs Blan Bremner, whose mother, Mrs Doreen MacIntyre, died in a care home in Inverness. Mrs Bremner gave me permission to use her name and asked me what I could do in this session of Parliament to stop people who abuse, neglect and maltreat elderly people in care homes from simply walking out and getting another job. I am very grateful to the minister for lodging amendment 2.

Given that I am not on the committee and am not steeped in understanding of the bill, I want to ask for some clarity. At stage 2, the minister said:

"In addition—and more specifically in relation to the offences in part 3 of the bill—a court may, when convicting an individual, refer that individual to Disclosure Scotland if it thinks that it might be appropriate for the individual to be considered for listing." —[*Official Report, Health and Sport Committee*, 26 January 2016; c 16.]

I heard what she said today, but that response at stage 2 slightly bothers me, because it seems to bring a degree of uncertainty to say that the court, when convicting an individual, may refer to Disclosure Scotland only when the court thinks that it is appropriate for that person to be considered for listing. I know that Mrs Blan Bremner certainly would not like anyone to suffer in the way that her mother did. I want to make sure that the provision is watertight.

**Maureen Watt:** I will make sure that Mary Scanlon's point is clarified in the regulations and guidelines on the bill's implementation.

*Amendment 2 agreed to.*

**The Deputy Presiding Officer:** That concludes consideration of amendments.

## Health (Tobacco, Nicotine etc and Care) (Scotland) Bill

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

The next item of business is a debate on motion S4M-15801, in the name of Maureen Watt, on the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill. I call the minister, Maureen Watt, who has a generous 10 minutes.

14:53

**The Minister for Public Health (Maureen Watt):** I am delighted to open the debate on the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill. I thank the Finance Committee, the Delegated Powers and Law Reform Committee and particularly the Health and Sport Committee for their consideration and scrutiny of the bill as it progressed through the parliamentary process.

The bill is wide ranging. If passed, it will contribute to helping people live longer, healthier lives, to tackling significant inequalities in Scottish society and to improving the delivery of health and social care services.

Cross-party support for preventing the harm that tobacco use causes has seen Scotland remain a world leader on tobacco control. The Government has been clear that it will continue to encourage everyone, and particularly children and young people, to choose not to smoke. By so doing, we hope to create a tobacco-free generation of Scots by 2034. Creating the offences of smoking and of knowingly permitting smoking within a perimeter around buildings on national health service hospital grounds is an important step towards continuing to denormalise smoking behaviour and achieving our ambitious target.

As I have said before, the bill 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, and I am proud that the NHS has shown, and will continue to show, leadership in supporting and promoting healthy behaviours, particularly through tackling smoking.

For the first time in Scotland, the bill introduces controls that are specific to e-cigarettes, or nicotine vapour products—NVPs—as they are termed in the bill. There has been much debate among experts about the potential risk, and the potential benefits, of those new products. Such interesting and lively debate has also been evident during the Parliament's consideration of the bill, but I am pleased that we have not allowed the debate to become sensational.

The Scottish Government has worked closely with experts and stakeholders and listened to their views to achieve the right balance in regulating NVPs. I am pleased that we can all agree that non-medicinal NVPs should not be available to children under the age of 18 and that over-18s should be prevented from purchasing such products on their behalf. Agreement has also been widespread on the benefits that are associated with placing further age controls on the sale and purchase of tobacco products.

The requirement for persons who intend to sell NVPs to be on the register of tobacco and NVP retailers was the focus of much of the debate on part 1 of the bill. That was because of concerns that the requirement to have a single register would send the message that NVPs are just as harmful as tobacco products are.

However, it has been agreed that a single register is required to reduce the burden on retailers and enforcement officers. As I indicated in my response to the Health and Sport Committee, that issue is about how the register is presented. I have already committed to providing a separation between the products on the website where the register is held. That does not require a change to the legislation and will be managed during implementation.

There is nothing in the bill that demonises NVPs or NVP users, and I have been clear that any public health gains should not be hindered by unnecessary regulation. However, it has been agreed that there is no place for marketing of the products to children, young people or non-smokers. The detail of such a prohibition will be set out in regulations.

The bill places a duty of candour on health and social care organisations. Increasingly, it is recognised that openness and transparency are essential elements of health and social care systems. The duty of candour will apply to organisations that provide healthcare, social care and social work services. It will help to promote an open learning culture and accountability for safer systems. It will be a driver for staff engagement in improvement work and will engender greater trust among patients and service users.

The bill requires an organisation that becomes aware that there has been an adverse event resulting in harm to follow the duty of candour procedure. The procedure, which will be set out in regulations, will require organisations to take action to meet, apologise to and support the affected person. It will detail the requirements for recording and monitoring incidents and the provision of training and support to staff who carry out the procedure. The bill also requires all organisations to report publicly on the number and nature of the events that have been disclosed to

people and to confirm that the obligations of the organisational duty of candour have been met.

It is worth remembering that legislation forms only one part of the duty of candour. We will work with stakeholders to 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. Therefore, the additional administrative demands of the duty should be minimal for most.

Care, compassion and dignity are central to the vast majority of the health and social care that is delivered every day throughout Scotland. The bill's provisions on ill treatment or wilful neglect strengthen corporate accountability in health and social care and allow the criminal justice system to hold individuals and organisations to account when they are responsible for serious and deliberate neglect or ill treatment in providing care.

Those offences are not about catching people who are doing the best they can in a busy environment; they are about dealing with situations where someone intentionally sets out to neglect or ill treat a person who is in their care. When neglect or abuse has taken place, it is important that there is access to justice for victims of such neglect or abuse. The bill will help to achieve that.

The provision of communication equipment and the associated support that is required to use that equipment are key requirements of children and adults who have lost their voice or who have difficulty speaking. The bill places an explicit duty on Scottish ministers to provide or secure the provision of communication equipment and associated support. In addition, under the existing powers of the National Health Service (Scotland) Act 1978, Scottish ministers will issue directions to health boards in the near future to support the discharge of that duty. Those directions will be developed in consultation with a group of stakeholders and will contain the correct level of detail to address the operational issues that we know are a concern. The group will meet next week to start the development process.

Loss of voice has a huge impact on the affected individuals, and the bill will ensure that those who are in need have access to the appropriate equipment. Importantly, they will also have access to the support that they require to enable them to lead as independent a life as possible and to participate in society.

I move,

That the Parliament agrees that the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill be passed.

15:02

**Rhoda Grant (Highlands and Islands) (Lab):**

First, I thank the staff of the Health and Sport Committee, the legislation team and all the others who helped with the bill process, as well as all those who came to the committee to give evidence in person and who submitted evidence in writing, which helped us to scrutinise the bill.

The bill is a bit cobbled together. As a piece of proposed legislation, it covers many different areas and it has appeared to confuse some issues by linking them together as part of the same thing. That has been unhelpful.

Provisions to control nicotine vapour products and to stop smoking outside hospitals make a link between the two issues, and that has caused confusion, as did introducing a duty of candour in the same place as wilful neglect was being criminalised. That confused the issue at times by drawing links that simply are not there.

We are a long way from having the last word on nicotine vapour products. Evidence is sketchy with a new product, so legislation will change as more becomes known about NVPs. However, the evidence strongly suggests that they are much safer than cigarettes and that they could save lives as an alternative to smoking. Therefore, any negative suggestions in the bill that discourage people from moving from cigarettes to NVPs would not be helpful.

However, we cannot say that NVPs are safe, either. There is little legislation that covers the chemicals that are included in the various brands. NVPs do not all have the same chemicals in them, and it is therefore difficult to assess any harm and legislate for that. Neither is it clear what the health effects of some of the chemicals are. Some products contain nicotine, but that is not always the case. Although we encourage smokers to move to NVPs, it would be foolhardy to suggest that non-smokers should take up vaping.

In addressing smoking on hospital grounds, the bill has tended to cause confusion about the position of NVPs; it does not include NVPs at all in that respect. Many of the provisions on smoking in hospital grounds will be delivered through regulations, which will require to be scrutinised. It is difficult to imagine how the eventual legislation will work in practice, given the different locations that the regulations will cover.

It was clear to the committee that windows and doorways should always be clear of smoking. However, how that can be ensured when windows and doorways face a street is a different issue.

There were concerns about staff having to enforce the legislation and the possibility that, if they did not, they would find themselves at odds

with the law. There were also concerns that staff could commit an offence by assisting patients to get outside if they wanted to smoke. The minister assured us that that will not be the case and that the only staff who will enforce the legislation will be those who are employed specifically for that purpose, which means that there will be no conflict between policing the legislation and the needs of a patient or the duty of patient care.

The bill introduces a duty of candour for health, social care and social work organisations. That means that, if a patient or client is accidentally harmed by treatment, they need to be told about that. However, the bill legislates for that only when the harm is significant. There is a reporting procedure, as well as a procedure for an apology to be given.

I maintain that a duty of candour should run through all actions and errors, so that we have open and transparent services. People should be informed of all aspects of their treatment, as well as mistakes that might be made. That would build confidence in the service and lead to a patient-centred approach. Although it would be time consuming—indeed, impossible—to surround all that with a bureaucracy, it should be part of the information that patients can access at all times, unless they do not wish to have that information, as Malcolm Chisholm suggested when he spoke about his amendments earlier.

The bill deals with wilful neglect, which was sometimes confused in discussions with issues around the duty of candour, because people believed that the issues were on the same spectrum. That is absolutely not the case. The duty of candour is about informing patients of unintended consequences and genuine mistakes, whereas wilful neglect is just that: wilful and intentional neglect and mistreatment that comes about through direct malice towards a patient or client or because an owner or manager does not provide adequate resources to ensure a reasonable quality of care. When a carer cannot provide an acceptable level of care because they have not been given the time or resources, they are not liable, but their employer is. However, if they neglect or mistreat a service user, they will be personally responsible.

Most people who are in a caring profession are compassionate and provide selfless care—we all pay tribute to them—but a minority of people who choose to enter the profession do not really care about the treatment of vulnerable people. It is only right that they should feel the full force of the law, and I am really pleased that anyone who is convicted under the bill will have that conviction remain so that they will never be in a position to treat people in that way again.

At stage 2, the Government lodged an amendment that added a section on the provision of communication equipment. That was welcomed by everybody in the committee and beyond. The amendment was down to the work and dedication of Gordon Aikman, who has campaigned tirelessly for that measure and for better services across the board for people with disabilities. He is an amazing man who has achieved much in a short time.

We can only imagine what losing the ability to speak would be like. It would be devastating. Therefore, communication equipment is a lifeline that allows people to express wishes and continue to be part of their social network. How frustrating it must be to be able to listen, surrounded by people, but not to be able to contribute. When that contribution is about someone's life, circumstances and care, the feeling must be even worse. A right to communication equipment is therefore necessary and is a welcome addition to the bill.

We will support the bill tonight because it will make a difference to our constituents' lives.

15:09

**Nanette Milne (North East Scotland) (Con):**

This afternoon sees the completion of the fifth piece of legislation to be scrutinised by the Health and Sport Committee in the last few months of this parliamentary session. I echo the thanks that have already been expressed to all those who have contributed to our understanding of the bill's provisions and to those who have worked to make improvements to it as it has made its way through the parliamentary process. I feel particularly indebted to the committee clerks, who have shouldered a heavy workload recently, and to the witnesses who provided written and oral evidence as the committee scrutinised the bill in its early stages.

The Health (Tobacco, Nicotine etc and Care) (Scotland) Bill contains three important parts. As we know, part 1 progresses the Scottish Government's anti-smoking strategy by introducing policies on tobacco, nicotine and smoking; part 2 introduces a duty of candour to encourage a culture of openness within the NHS and social care services; and part 3 brings in a new offence of wilful neglect and ill treatment, which is aimed at health and social care professionals and providers of care.

When I was preparing for this short debate, I found the briefings from Action on Smoking and Health Scotland and the Royal College of Nursing very useful. Those briefings neatly sum up the general response to the provisions of the bill as it comes to the end of its parliamentary scrutiny.

Part 1, which deals with the regulation of electronic cigarettes and introduces a statutory ban on smoking within a designated distance from hospital buildings, is widely accepted and welcomed. ASH Scotland focuses on nicotine vapour products as a means of reducing the use of tobacco, which is a goal of everyone involved in public health. There is a growing body of anecdotal evidence that e-cigarettes have assisted people who were previously very heavy smokers to quit smoking when all other attempts have failed. Any potential harm from the use of NVPs will have to be monitored over time, but there seems to be little doubt that they are very much safer than tobacco products.

There are, however, concerns about people who use NVPs alongside tobacco, and particularly about attempts to recruit non-smokers into using nicotine via NVPs. That is why the bill's proposals on age restrictions, a ban on self-service sales through vending machines and requiring people who sell e-cigarettes to register and adopt age verification policies are seen as sensible and proportionate.

I think that the proposed restrictions on marketing—particularly promotions aimed at young people—will be useful in preventing vaping from becoming a gateway to smoking, which appears to be happening in some countries, although not yet in the UK.

The ban on smoking in designated parts of hospital grounds will give statutory backing to the current position held by most NHS boards, which have introduced smoke-free policies in hospital grounds. That ban is receiving a general welcome, although concerns have been expressed to me about patients in psychiatric hospitals who find it extremely difficult to give up smoking. However, I agree with the health boards' assertion that physical health is as important for people with a mental health problem as it is for other members of society. In that context, I find ASH Scotland's suggestion of testing the success of weaning such patients on to e-cigarettes to help them quit tobacco an interesting proposal. That approach could also be tested in the prison population, where heavy smoking is the norm.

I fully accept that NVPs are much safer than tobacco-based products but, as yet, there is no knowledge of any potentially harmful effects of vaping. Therefore, the evolving use of NVPs needs to be monitored over time, and I hope that, in a few years' time, the Parliament might find time to look at the effectiveness of the legislation in relation to public health.

Although some concerns have been expressed about the need to introduce a duty of candour, I think that there is a general acceptance that such a measure is needed to drive cultural change

within health and social care services. However, the RCN still has serious reservations about part 3 of the bill, which introduces an offence of ill treatment and wilful neglect. It feels that it might work against building the culture of transparency that we all want to see in our health and social care services if people feel that they could be under the threat of litigation, particularly when they are faced with the stresses of a shortage in workforce capacity.

The duty to provide or procure communication aids and other support for those who need such assistance is, of course, a very welcome addition to the bill, and I am more than happy to endorse it. As the minister said, communication is essential for human wellbeing, and the inability to communicate can be quite devastating for those who are affected. A friend of mine had a stroke, following which he could not understand what people were saying, but could not articulate a response. He was like that until his dying day, and it was very obvious that it was the most frustrating thing that he ever had to cope with in his life. Therefore, I feel very strongly about the matter.

I will go into a little more detail about the reservations that have been expressed about parts 2 and 3 in my closing remarks. Overall, I find the bill's provisions acceptable, and the Scottish Conservatives will support it at decision time.

15:15

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** The bill marks another staging post in the long journey towards improving public health in Scotland and our aim of limiting exposure to smoke and discouraging smoking behaviours. If the bill is passed, it will help to improve patient safety and the rights of patients by introducing the duty of candour or openness for care providers, which was debated and agreed earlier. It will help us to regulate the sale of NVPs or e-cigarettes, and it aims to reduce the exposure that youngsters may be getting to those products. It will also make ill treatment and wilful neglect in social care settings a criminal offence.

The overall aim of the bill is to have tobacco no more by 2034. A tobacco-free generation in Scotland, with the consequent benefits for public health and savings for the public purse, is a key prize to be won if we are successful. However, that will not be easy to achieve, because we are dealing with addiction and substantial vested interests. In addition, frankly, many people like cigarettes and do not intend to give them up. Nevertheless, we need such interventions to prevent people from taking up the habit, as they will probably get us to that tobacco-free Scotland eventually.

It is estimated that treating smoking-related illnesses costs the national health service in Scotland about £400 million every year, with about 33,500 admissions. Sadly, about 13,500 deaths each year are attributable directly to smoking. The scale of the problem that we face is shown in the fact that cigarette sales in the United Kingdom are worth around £13 billion a year, with a nice cheque for about £10 billion of that going to the Treasury in duty and VAT. Sales of e-cigarettes in the UK have been estimated to be worth about £127 million a year. Last year, nearly 33 billion cigarettes were released into the market in the UK, and we can estimate that about 3 billion of those were smoked by people in Scotland. Thankfully, however, the trend is coming down. In 1999, in Scotland, over 30 per cent of adults aged over 16 smoked, but that figure is now down to 23 per cent or thereabouts. That must give us all some encouragement.

As members have said, the bill is split into three parts. Part 1 contains provisions prohibiting the sale of e-cigarettes or NVPs to anyone under 18, and it will be an offence to purchase them for someone who is aged under 18. The bill will also prohibit their sale from vending machines, and retailers will have to register that they sell them, just as they register that they sell ordinary tobacco products. Part 2 deals with care settings and places a duty of candour on health and social care organisations to inform people that they have been harmed as a result of the care or treatment that they have received. In that context, I welcome Malcolm Chisholm's amendments, which the minister accepted earlier. Part 3 creates a criminal offence of ill treatment or wilful neglect in health and social care settings.

I will say a brief word about e-cigarettes. Constituents of mine and some colleagues in Parliament say that e-cigarettes have helped them to reduce their smoking habit, and the Scottish Government recognises that e-cigarettes may have a role to play in quitting smoking. There is limited data available to allow us to come to a conclusion one way or the other, although I am pretty sure that that data will emerge in due course.

The bill is another good step forward in helping to prevent younger people from getting hooked on smoking, and in helping to protect people in healthcare settings, as has been outlined. I think that we are winning the battle on smoking, but there is still a long way to go until we can finally extinguish cigarettes from Scottish culture once and for all. Although 2034 seems a long way off, if we get this right, we can look forward to a tobacco-free society in Scotland.

15:19

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** As Nanette Milne said, this is the fifth bill that the Health and Sport Committee has scrutinised recently—in the past five months, to be precise. I know that because I have been on the committee for only the past five months. Like Nanette Milne, I pay tribute to our clerks, who have been brilliant both with the bill and with all of our heavy workload. I also thank the people who drafted our amendments as well as those who gave such useful and important evidence to the committee at stage 1.

There are five elements in the bill. I can deal with the first two quite quickly. First, everyone supports the right to voice equipment when it is required, and I welcome that provision. Secondly, the specific provision on smoking, which creates a legal basis for having no smoking outside hospitals, has, at the end of the day, proved not be controversial, although there was a lot of discussion about it at stage 1. Although some of the detail of that will come in regulations, everyone welcomes the fact that the policy will be strengthened by being given a legal basis.

I touched on the duty of candour when I introduced my two amendments on the issue, describing, as others have done, the purpose of the duty. I thank the minister again for accepting my amendments. In the evidence received by the committee, Marie Curie, Unison and others strongly supported the legislation because they thought that it would help to drive culture change and ensure organisational shift towards a supportive culture of learning and improvement. That is certainly the intention of the duty of candour, and it is up to everyone to ensure that that intention is realised in practice. One of the committee's recommendations in its stage 1 report was that there needs to be a co-ordinated, planned and resourced programme of awareness raising, training and support for staff responsible for implementing the policy. That is crucial.

A crucial distinction, which was perhaps not always clear in the concerns that were expressed to the committee, is that, unlike the duty of candour, the ill treatment and wilful neglect offence is to do with deliberate actions. It is crucial that there is training, support and education for relevant staff and organisations so that people and organisations understand what the offence is and know, particularly in the case of organisations, what their roles and responsibilities are.

At the end of the day, perhaps the most contentious provisions turned out to be those on nicotine vapour products. However, I do not think that the tone of this debate will replicate the sometimes acrimonious tone of the debate at stage 1, when people who were pro-electronic

cigarettes were lined up against those who were against them. It is striking that, although there are widely varying views inside and outside the Parliament about the issue, all of us support what is in the bill.

I lodged an amendment at stage 2 just to ensure that we can distinguish between the e-cigarette part of the register and the tobacco part. When I met the minister, she reassured me that they will appear quite separately to the public on the website. That meets, at least in part, the concerns of many people who do not wish ordinary cigarettes and e-cigarettes to be conflated in any context. However, we all support a degree of advertising control and actions that prevent young people from accessing those products. Again, the detail of that will be laid out in regulations.

We got a great deal of useful evidence. I was particularly struck by the evidence of Professor Linda Bauld, who has done a great deal of work on e-cigarettes. Members may have heard her on “Good Morning Scotland” at 7.15 this morning. I have been very influenced by her views on the issue. She said in evidence to the committee that

“A recent study shows that people in the UK who stop smoking using electronic cigarettes are 60 per cent more likely to be successful ... than those who use willpower alone or who buy nicotine replacement therapy over the counter.”—[*Official Report, Health and Sport Committee*, 1 September 2015; c 11.]

We all want Scotland to reach its ambitious target of reducing smoking prevalence to 5 per cent by 2034; I am sure that we would like it to be even lower. I believe that e-cigarettes have a role to play in that. I support the provisions in the bill and hope that we will be spared the rather negative comments about e-cigarettes that we sometimes hear.

15:24

**Jim Hume (South Scotland) (LD):** As I mentioned back in December during the stage 1 debate, the Scottish Liberal Democrats welcome plans to help many people live healthier lives, with better guidance and better support, through better and bolder health initiatives.

I was glad to see the Scottish Government’s response to the Health and Sport Committee’s stage 1 report ahead of the debate and the commitments set out for increased spending on health research.

I return to the points that I raised at stage 1 about the importance of basing the bill’s provisions and the regulation of NVPs on substantial and robust evidence. Although more research is being carried out on NVPs’ effects on health, there are more issues that we have to consider, as many members said, such as the marketing and

messaging around NVPs. We must ensure that such products are presented as an alternative for people who want to quit smoking and not in a way that entices non-smokers to take them up.

I am encouraged by the commitments that the Scottish Government gave in its response to the stage 1 report. The Government said that NHS Health Scotland and the Scottish directors of public health are revising their position statements to reflect current evidence, and that consistency among national health service stopping-smoking services is a priority.

I remind members that the member’s bill that I introduced, the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill, which was passed in December, aims to protect children’s health. I would not like counterproductive measures to be brought in that introduced children to new ways of inhaling nicotine and other harmful substances. I hope that the measures in the bill will be taken forward productively.

At stage 1, I also voiced concern about the balance between the use and necessity of the duty of candour and the new responsibilities that the bill places on health and social care organisations. The imposition of a legal requirement must be accompanied by the right education and support for our hard-working NHS staff. The Royal College of Nursing has said that it is crucial that staff have the required knowledge and skills and that they receive adequate training and support on the duty of candour.

I welcome the application of the duty of candour provision to organisations rather than individuals. That will help to manage the risk better and will lead to more effective learning. However, the views of professional organisations such as the British Medical Association must be considered and taken into account, as always.

No practitioner wants their patients to be harmed or to receive a level of care that is not as good as the service that patients deserve to receive. However, there are instances of ill treatment and wilful neglect, and health and social care actors should recognise their responsibility and be held to account.

I was recently contacted by a constituent who was misdiagnosed with a minor infection—the problem was actually cancer. Despite repeated visits to the hospital, my constituent’s concerns were dismissed and insufficient checks were made of their medical history. That caused the cancer to develop into an incurable one. The person is now trying to buy as much time as they can to spend with their family, because of that mistreatment.

By going a step further and putting in place the right protections for not only staff but patients, we increase the humanity of our health service and

recognise that people need to be treated holistically and not in some medical silo.

We support the bill and look forward to voting for it at decision time.

15:28

**Nanette Milne:** I begin my closing remarks by returning to parts 2 and 3 of the bill. I grew up in a paternalistic NHS, at a time when patients expected and received little information about the treatment that they were given and accepted without question that health professionals, particularly doctors, knew best and did their best, even when things went wrong. No one would ever have thought that such people might apologise for a mistake, even if they admitted making one.

I am thankful that we live in a very different world, in which information is widely available. It is only right that patients are as involved as they wish to be in their treatment plans and progress, and it is only right that when something happens that has or could have been harmful to them patients have the right to know about it. Of course, not everyone wants to know the detail of the event that went wrong, which is also their right, but patients or their carers and families should be made aware that information is available to them.

A culture of openness, whereby health and care organisations and their staff feel able to admit mistakes and learn from them, and in which staff can inform service users or their carers and families when treatment has resulted in harm, can only lead to an improvement in patient safety. That, of course, is paramount in a well-run health and social care system.

For that to happen, staff must be supported to learn from mistakes and make improvements, so that errors are less likely to recur. Staff will require proper training in the knowledge and skills that they will need if they are to comply with a duty of candour in a more open climate in the service that employs them. In the past there has sometimes been a tendency within health and care organisations to cover up mistakes. It should be possible in this day and age to be open about those and to apologise to service users when they happen.

Of course, a duty of candour already exists for many health and care professionals, but it does not cover all professions and there can be resulting inconsistencies in the application of such a duty in health and care organisations. I hope that the bill will eliminate those inconsistencies and allow organisations to follow best practice and learn from incidents of unintended harm, with a resultant improvement in the care that they provide, so that such harm does not arise again.

The new offence of ill treatment and wilful neglect is intended to apply only to the most exceptional cases. We know that, sadly, such cases have been exposed. Even when the neglect or ill treatment is proved, however, the perpetrators have on occasion been able to find other employment within the care sector. That was highlighted by Mary Scanlon in an example that she gave at stage 2, and the minister's stage 3 amendment to deal with that was very welcome indeed.

The RCN still has serious reservations about the introduction of the new offence and genuinely feels that it could have the opposite effect to that which is intended in introducing a duty of candour, with the threat of criminal proceedings militating against the building of a culture of openness and transparency. Given the comments and concerns about parts 2 and 3 of the bill, it seems clear that the education, training and support of health and care professionals will be crucial in developing the desired culture of openness in our caring professions and organisations.

I hope that all aspects of the bill will produce the outcomes that are sought, but it will be very important to scrutinise them in a few years' time, so that the accumulating evidence on the uses of NVPs, the practical application of the duty of candour and the use of the new offence of wilful neglect and ill treatment can be revisited and assessed for their effectiveness.

We all accept the need for post-legislative scrutiny of the statutory provisions that we make in this Parliament and, where there are evolving situations, or reservations expressed by respected bodies such as the RCN, it is particularly important that the provisions are reviewed in the future. I hope that this will be undertaken by future members of the Parliament. As I said in my opening remarks, however, Conservative members are overall content with the bill as amended and will give it our support.

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

I should have said at the start of closing speeches that we have a few minutes in hand if members are inclined to take interventions or wish to take a little bit longer in their speeches. I call Rhoda Grant, who has six minutes or so.

15:33

**Rhoda Grant:** This has been a good debate. It is sometimes difficult to debate a bill that covers such a range of different issues. To sum it up, we all want and look forward to a tobacco-free society, as Willie Coffey said, and the bill will go some way towards that. We also look forward to a society in which there is better patient-centred care, and the bill will help with that.

The minister mentioned the single register for NVPs and tobacco products. That was one of the issues that got the committee thinking. There were certainly concerns from pharmacists about having to register as tobacco retailers if they were to use NVPs as part of their smoking cessation programmes. It was very clear that there should be no barriers to NVPs being used to help people to stop smoking. At the same time, we had to make sure that the protections were in place.

Malcolm Chisholm lodged amendments to resolve those issues. He received the reassurance from the minister that they would be dealt with quite separately, which gives comfort to organisations that would be selling NVPs for therapeutic reasons.

We have to be careful about the use of NVPs because, although they have undoubted health benefits as an alternative to smoking, they might cause health problems themselves. We heard about something called popcorn lung, which we did not go into. Some of the chemicals that are used in NVPs can cause other conditions that might create health problems of their own. It was therefore right and proper to put in age restrictions in relation to whom they could be sold and restrictions on vending machines.

A lot of members have spoken about the use of NVPs as an alternative to smoking, and Jim Hume commented that they should not be used as an access point to nicotine dependence. Some of the evidence that we received in committee suggested that some of the other chemicals that are used in cigarettes make them more addictive, and that nicotine in NVPs might therefore be less addictive than nicotine in cigarettes. We are talking about a developing industry, and those things can change. We would certainly never want those sorts of chemicals used in NVPs, especially if there are health problems, as that could make people more addicted to them.

Nanette Milne spoke about psychiatric patients smoking on hospital grounds. Real concerns were raised around that. If someone is not well, chemicals will have an impact, but we need to ensure that people in psychiatric hospitals are able to smoke if they really need to.

Mary Scanlon and I visited Newcraigs hospital and were delighted to hear that secure outside space was going to be provided to allow people to go outside. That is important for all psychiatric hospitals, as people might be less able to give up smoking when they are receiving treatment. We need to be sure and be clear about giving people those choices, especially when they are suffering from conditions that mean that it would be cruel and unfair to make them change their behaviour. They need our compassion in such a situation.

**Maureen Watt:** Rhoda Grant raises an interesting point that highlights the need for a person-centred approach and the provision of some leeway. Increasingly, however, the evidence shows that, if mental health patients and prisoners were encouraged to give up smoking, it would help their overall health, and those options should be available too.

**Rhoda Grant:** I was not suggesting for one moment that those options should not be available, because addictions of any kind have an impact on people's mental health and stopping smoking is obviously the desired outcome. The issue is how we get people to do that if they are not well. We need to show compassion as well as encouraging them to stop smoking.

There was a lot of discussion about the duty of candour, and I emphasise that aspect again as it is an important part of patient care. Patients should have the information that they need when they are receiving care. However, the duty of candour as set out in the bill can be quite bureaucratic, as it provides for a reporting system and a system for apologies. I hope that the guidance that is given on implementing the bill will ensure that such an apology is meaningful. If the process is mishandled, that could cause additional distress. People need to be quite clear that an apology is being given not just because it has to be but because it is actually meant.

Malcolm Chisholm pointed out that that part of the bill is not so much about punishment as about keeping patients informed, and learning from experience and improving the service that we give to people. Even when a patient does not want to exercise their rights under the duty of candour, Malcolm Chisholm's amendments allow for the circumstances surrounding the events to be examined so that staff can learn from the experience. That is really important, and the point was echoed by Nanette Milne, who spoke about the paternalistic NHS—which we have, I hope, seen the back of, although bits of it still exist here and there. It is important that we ensure that the NHS is patient centred rather than staff centred or led.

Nanette Milne highlighted the RCN's concerns about wilful neglect and its worry that bill would be a barrier to openness and whistleblowing. She rightly wants that aspect reviewed, and I echo that call, because it is important that we have a very open health service and there are no barriers to people reporting concerns to ensure that problems do not happen again. However, I stress that I very much support the inclusion of an offence of wilful neglect. Mary Scanlon spoke about one such case, and we have all had cases of wilful neglect of patients that have been sad and heartbreaking. When that happens in a palliative care setting, it is

even worse, because there is no way of going back and making something better, which can lead to families having real difficulty getting over their grief.

I want to touch on communication equipment, but I am not sure how much time I have, Presiding Officer.

**The Deputy Presiding Officer:** I can allow you the time to touch on that.

**Rhoda Grant:** Thank you.

At First Minister's question time, I raised with the First Minister the Sue Ryder report about the treatment of patients with neurological disorders. The provision on communication equipment is a step towards dealing with that matter, because a lot of people who have neurological disorders also have issues with communication. However, it is important that the provision in the bill should be only one part of that. We have to go back and examine closely how we provide care for those with neurological disorders and produce a strategy in the next session of Parliament to ensure that people, especially young people or people who have lost the ability to speak—such as the friend that Nanette Milne talked about—get the care and treatment that they want.

**The Deputy Presiding Officer:** I would be grateful if you would draw to a close now.

**Rhoda Grant:** I simply reiterate that we will support the bill at decision time.

15:41

**Maureen Watt:** I thank members for their contributions. I welcome the breadth of support that the bill has received throughout its parliamentary stages and the constructive nature of what members have said. In particular, I offer my thanks to the experts who gave their time to provide evidence to the Health and Sport Committee, almost all of whom advocated the bill as being proportionate and necessary. The bill offers us a real chance to progress our commitment to ensuring that people in Scotland live longer, healthier lives. I also thank the bill team for all their hard work in getting us to this point.

The bill is an important milestone and will play its part alongside the vast range of measures that the Scottish Government will continue to progress to reduce tobacco-related harm. It will also, for the first time, put on the statute book specific regulation of NVPs. Many members have mentioned the fact that, because NVPs are new, evidence on whether they are effective or are harmful is still emerging. We absolutely do not want to stigmatise people who use NVPs to come off tobacco-related products, which we know are

much more harmful, but it is amazing that we can put in place legislation on a new product, rather than play catch-up, as we have been doing with tobacco and alcohol products.

We are committed to preventing access to NVPs for young people under the age of 18. Alongside that, we wanted to consider what more could and should be done to control the sale and marketing of those new products. That is why we will ensure that there is no advertising of the products on billboards and posters. The products are now being advertised on television, but European Union legislation that must come into domestic United Kingdom law by 2016 will ensure that the products are no longer advertised on that medium. I am confident that the bill strikes the right balance in that respect and that we are contributing to giving children the best start in life by creating a society where they are supported to make healthy choices.

The bill will help to build further openness and transparency in our healthcare systems. It will allow patients and service users to know about what has gone wrong in the course of their treatment, should they wish. It will encourage apology, as well as learning and improvement, to prevent issues from happening again.

The idea raised by Nanette Milne and the RCN, in its briefing, that the offences will prevent a culture of transparency implies a pessimistic view of health and social care workers' attitudes. I do not share that view, as the offences are not aimed at instances of unintended or unexpected harm. I am sure that, as the law comes into force, any reservations will be dispelled.

Part 3 of the bill is about premeditated neglect or ill treatment. Rhoda Grant was right to point out that the duty of candour and wilful neglect are completely separate issues. The premeditated neglect or ill treatment of people receiving healthcare or social care is deplorable. Those that commit such crimes—organisations as well as individuals—need to be dealt with by the criminal justice system, and the bill will provide for specific action against them.

The provisions were borne out of incidences of that—thankfully not in Scotland, but in other parts of the UK. It is important that people know not only that they can expect respectful and compassionate care but that, in the small number of cases where there has been wilful neglect, people will be suitably punished.

Nanette Milne and others mentioned the use of tobacco by mental health patients and prisoners. It is up to health boards to implement strategies as part of their wider commitment to health improvement. Now that prisoner health is for

health boards, it should be easier to help prisoners to stop smoking.

Improvement in patient safety and in individuals' health goes right through the bill. Rhoda Grant said that the bill was all-encompassing. We have had catch-all bills before, but it is important that this bill is passed at decision time.

The addition to the bill of provisions on voice augmentation communication equipment is welcomed by everyone. This morning I visited the Euan MacDonald centre and met Euan, young Greta and Paul, who is in the gallery. I saw how the use of voice equipment enabled them to join in conversations with others. Because there is such a wide range of equipment now, the bill's sections have been left deliberately open so that people can have access to the right equipment at the right time.

Rhoda Grant mentioned last night's Sue Ryder event. Dee View Court is in my constituency and I visit often. I can see how, given at the right time, voice equipment would be useful for many patients there.

In approving this wide-ranging bill, Parliament will be contributing to a number of better outcomes for Scotland. It will build on our vision of a tobacco-free generation by 2034; protect non-smokers, particularly children and young people, from nicotine addiction by reducing access to and the marketing of the new products; improve the delivery of health and social care services; and ensure that nobody in Scotland dies without a voice.

I thank all members who have helped with the bill's passage. There were not that many amendments at stage 2 or, indeed, today at stage 3. I cannot guarantee that the same will be true for the Burial and Cremation (Scotland) Bill, which the Health and Sport Committee has to consider at stages 2 and 3.

I hope that Parliament will pass the bill unanimously at decision time.

**The Presiding Officer (Tricia Marwick):** Thank you, minister. That concludes the debate on the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill.

I say to members that it is likely that we will sit beyond 5.30 next Tuesday. That will, of course, be subject to the decision of the Parliamentary Bureau on Tuesday morning, but I thought that members would appreciate a heads-up on the matter.

## Motion without Notice

15:50

**The Presiding Officer (Tricia Marwick):** I am minded to accept a motion without notice from Joe FitzPatrick, on behalf of the Parliamentary Bureau, to bring forward decision time to now.

*Motion moved,*

That, under Rule 11.2.4, Decision Time be brought forward to 3.50 pm.—[*Joe FitzPatrick.*]

*Motion agreed to.*

## Decision Time

15:50

**The Presiding Officer (Tricia Marwick):** There is one question to be put as a result of today's business. The question is, that motion S4M-15801, 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 that the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill be passed.

**The Presiding Officer:** The Health (Tobacco, Nicotine etc and Care) (Scotland) Bill is passed. [Applause.]

*Meeting closed at 15:50.*



This is the final edition of the *Official Report* for this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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