MEETING OF THE PARLIAMENT

Wednesday 4 October 2000
(*Afternoon*)

Volume 8 No 9

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

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CONTENTS

Wednesday 4 October 2000

Debates

Scottish Parliament

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[THE PRESIDING OFFICER *opened the meeting at 14:30*]

Time for Reflection

The Presiding Officer (Sir David Steel): Good afternoon. It is a personal pleasure to welcome to lead our time for reflection, on the eve of his 90th birthday, the Very Reverend Dr David Steel, former moderator of the Church of Scotland.

Very Rev Dr David Steel (Church of Scotland): Thank you for the honour you do me by inviting me to lead time for reflection. In accepting your invitation I am breaking a resolution I made after my 80th birthday, which was to decline all ministerial speaking engagements unless—I added to myself—it was one that I was especially interested in. So here I am today, breaking that useful resolution and I am happy to do so.

From the beginning of my ministry I have carried a small Bible containing the New Testament and the book of Psalms from the Old Testament. My favourite is Psalm 23.

> The Lord *is* my shepherd; I shall not want.
> He maketh me to lie down in green pastures: he leadeth me beside the still waters.
> He restoreth my soul: he leadeth me in the paths of righteousness for his name's sake.
> Yea, though I walk through the valley of the shadow of death, I will fear no evil: for thou *art* with me; thy rod and thy staff they comfort me.

It ends with:

> Surely goodness and mercy shall follow me all the days of my life: and I will dwell in the house of the LORD for ever.

I have used that psalm more often than any other in the 40 years of my ministry. There is a confidence, a faith and a realism about the words. It faces the fact that life is not easy and that sooner or later we all have to pass through the valley of the shadow of death.

I want to conclude with a brief account of an unforgettable occasion when I quoted that psalm. I went to a hospital to visit a fine old man—a widower who lived alone and was now seriously ill. Before I entered the ward, I was told that he had just died. I went to his bedside and there was the old man's grandson who had been at his grandfather's side when he died. After some words of sympathy, I took out my Bible and began to read the 23rd psalm:

> "The Lord *is* my shepherd; I shall not want."

I thought I heard a faint sound that I recognised as the last four words. I realised that the man who was supposed to be dead was repeating the words, not after me but with me. I finished the psalm and called the doctor. After a short time he assured us that the old man was dead. The grandson said, "But he did follow you, word for word. I heard him." The doctor said, "It is astonishing but not utterly impossible that for a brief time the heart started to beat faintly, after he had been certified dead."

The old man never regained consciousness but he certainly experienced the "goodness and mercy" that the psalm says shall follow us all the days of our life until we

> "dwell in the house of the LORD for ever."

So may it be, in the mercy of God, for us. Let us pray.

> Lord, as we pray, we know that we are not worthy so we ask for your forgiveness for our sins. Help us, we pray, by your grace to do better, to be more honest, more loving, more faithful to you and more obedient to your will. Bless, we pray, the members of the Scottish Parliament, each and every one, that by your help and guidance they may truly serve the people of Scotland. This we pray through Jesus Christ our Lord.

The blessing of God, the Father, Son and Holy Spirit be with you all. Amen.

Integrated Administration and Control System Appeals Mechanism

The Presiding Officer (Sir David Steel): The first item of business is a statement by Ross Finnie, on the integrated administration and control system appeals mechanism. The minister will take questions at the end of his statement.

14:36

The Minister for Rural Affairs (Ross Finnie): Presiding Officer, I will make a statement on the new appeals procedure for farmers who are penalised in relation to European Union agricultural subsidy claims and in relation to payments under certain other schemes. The new procedure is a commitment under the Scottish Executive's programme for government and I am pleased to report on the implementation of that commitment. The following are the key elements.

The new procedure to accept appeals will be operational on 9 November. It will cover all the livestock and arable support regimes under the integrated administration and control system—known to those of us who love it as IACS. From 1 January 2001, it will also cover the main agri-environment and afforestation schemes that are operated by the department, as well as the sheep annual premium and the suckler cow premium quota arrangements. An information leaflet on the procedure will be issued to all producers later in October. The secondary legislation to implement those arrangements is currently before the Parliament.

I am also announcing appointments to the membership pool for the external advisory panel that forms the second stage of the appeals procedure. A consultation paper was issued in December last year and the proposals for a three-stage procedure were widely endorsed. The three stages comprise an in-house stage, an external panel stage and a judicial element, through the Scottish Land Court.

Since February, we have been working to bring the proposals to fruition. The new procedure will handle appeals against decisions that are made under the main EU schemes, based on IACS 2000, and in relation to the agri-environment and afforestation schemes on decisions that are made from 1 January 2001. Appellants may, as they wish, move through the three stages of the procedure, which reflect increasing levels of formality. The basic aim is to create an accessible system in which, where possible, cases will be resolved at the lowest possible level of formality.

The first appeal stage consists of an enhanced internal procedure, which has been deemed necessary. A formal, in-house panel, consisting of three officials who usually would not have been involved in the original decision, will consider cases. The panel will consider the appeal grounds, a report on the circumstances of the case from the area office or section involved, and the relevant legislation. The panel will normally meet at Pentland House, at which stage appellants can opt for an oral hearing if they so wish, in addition to their original intimation of appeal.

The second appeal stage involves a panel of two external members and the relevant scheme manager from the Scottish Executive rural affairs department. That panel will meet at different venues throughout the country, to make the procedure accessible to appellants. If they wish, appellants can opt for an oral hearing. The panel will review the earlier decision and advise me of its recommendations.

As I indicated, today I announced the pool of panel members. I was pleased with the response to the appointments advertisement. There was a strong candidate list and the 17 members who were chosen demonstrated a wide range of skills, expertise and experience. I am sure that they are well able to carry out this important job.

The final appeal stage is the judicial element through the Scottish Land Court. The court is independent from the Scottish Executive rural affairs department and operates according to legislative procedures. It will consider submissions from the appellant and from the department. The court will decide whether it requires an oral hearing, depending upon the nature of the case. Members will be aware that the chairman of the Scottish Land Court has the equivalent status of a Court of Session judge.

Appellants will have 60 calendar days from the date of a decision in which to move to the next stage of appeal. An aim of the early stages of the new procedure is to provide an affordable and accessible means by which farmers can have a decision scrutinised. There will be no charge for access to the in-house panel. A deposit of £100 will be required for access to the external advisory panel. That will be refunded if the decision is in the appellant's favour. The Scottish Land Court has an existing tariff of charges and the costs will be in accordance with that tariff—£100 per application, plus £125 for each day of oral hearing.

The legislation extending the jurisdiction of the Scottish Land Court, currently before the Parliament, specifies the types of appeal that will be considered. The coverage is wide and will consider matters of fact and of interpretation of the law. Specifically, it will include reductions in subsidy payments, exclusions from payments and

recovery of past payments.

That gives an overview of the main elements of the procedure. Those, together with further details, will be included in an information leaflet that will be issued to all producers later in October. A copy will be lodged in the Scottish Parliament information centre.

The new procedure is an example of the Executive's commitment to create an open and accountable system in which our farmer customers, and, more generally, the people of Scotland, can have confidence. The key aims of the appeal procedure are to provide clarity and transparency in the decision-making process, to address the criticism that is sometimes levelled at the department—that it acts as both judge and jury in EU subsidy disputes—and to provide appellants with a second opinion in cases where they feel that a wrong decision has been made under the EU rules.

I stress, however, that the procedure, of course, cannot change the EU rules—it will have to work within them. I think that producers well recognise that to qualify for subsidy and to avoid penalties or reductions in their claims, they must comply with the rules as set down, which are embodied in legislation. The new procedure cannot rewrite the legislation or the policy decisions taken in respect of the schemes. It can, however, identify problems of interpretation with the legislation. The Scottish Land Court can offer an interpretation of the law itself and can invite the European Court of Justice to give its view of the proper interpretation of Community law.

I am conscious that we have been criticised for too much bureaucracy in processing claims. However, we must remember that most of the current procedures arise from the burden of EU regulation, much of which does not allow SERAD staff to exercise even a modicum of discretion. Equally, I am obliged to ensure, on behalf of the taxpayer, that the sizeable amounts of public money—approaching £500 million a year—that are disbursed under the main agricultural support schemes are properly accounted for and properly audited.

None of that is to suggest that mistakes in the handling of claims will never be made—I would not make such a silly claim. However, I firmly believe that the appeal procedure that I am announcing today will allow such mistakes to be addressed, will provide an independent view of disputed cases and will provide greater clarity and transparency in the decision-making process.

The implementation of the appeal procedure marks another important step along the way to fulfilling my wish that the department should provide a first-class service to its producer customers. The process of improvement is continuing and more is to come, not least in the development of electronic systems, but the appeal procedure has a major part to play in making the department's service more transparent, demonstrably fair and, I hope, equitable.

I commend the arrangements to the Parliament.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I thank the minister for the advance copy of his statement. As this is my first outing, as it were, in my capacity as rural affairs spokesman, I say to the minister and to colleagues in other parties that I look forward to working constructively with all of them for the good of rural Scotland, although I will be critical from time to time.

I welcome the broad thrust of the proposals, which have been sought and campaigned for by members of all parties. The proposals are long overdue.

Does the minister not believe that it would have been better if the statutory instrument had been laid in draft? That would have allowed us an opportunity to improve it. Does he agree that the inclusion of the scheme manager in the second stage of the appeal process not only offends against the first principle of natural justice—nemo judex in causa sua—but breaches the European convention on human rights? Will legal aid be available should applicants go to the Scottish Land Court, which is the third stage? One would hope so, given the level of agricultural incomes.

Finally, I suggest to the minister that the main problem, which he recognises, is that many farmers and crofters believe that they are being punished and treated as criminals under a set of rules that do not allow for a punishment that fits the crime. In many cases, those rules lead to the loss of a whole year's livelihood as a result of a clerical error.

In his response, will the minister state specifically whether he accepts the suggestion that I made in relation to a constituent's case? That suggestion is that the critical document is the European Commission's document "Obvious errors in aid applications submitted under the integrated system". The minister does not need to apply that document, and he could amend it. If he did so, many of the people involved in the hardest cases would not find themselves punished so disproportionately.

Ross Finnie: I refer to Fergus Ewing's infelicitous phrase—his "first outing"—and congratulate him on his new appointment. I can safely say that the whole Parliament—even those members who are absent—looks forward to his constructive role. I express severe delight that he will be critical only from time to time. Rarely can

elevation to the front bench have so changed the character of a lifetime.

I will now deal with the serious questions that Fergus Ewing put to me. He mentioned laying an order in draft. I hope that he will accept that this is a technical, procedural measure that is designed to extend the jurisdiction of the Scottish Land Court. The cycle of the appeal procedure will include the point at which the powers that we are granting to the Land Court come into play. One either grants the Land Court extended jurisdiction or one does not. I hope that we have worded the instrument in such a way as to avoid placing inhibitions on the extent to which we have granted that jurisdiction.

In relation to the scheme manager, we are not necessarily talking about an official who has been personally connected to the scheme. Rather, we are talking about the person who manages the operation of the scheme. In so far as the composition of that panel is 2:1, the independent external advisers will be able to ensure the balance of natural justice.

Fergus Ewing's third point on access to the Land Court and the availability of people to attend it is well taken. He makes an important point about the disproportionate nature of many of the current penalties. I do not share his view that it is entirely within my powers to amend how the penalties are applied. I have been pressing the matter for some months at a UK level and we are in discussions with other EU member states which, I am glad to say, share our view that some the penalties are disproportionate to the so-called crimes that have been alleged. I will continue to press this matter. The sooner we get some rational, sensible view of applying the penalties in a way that is not disproportionate to the error in the application, the better. I accept that while the new procedure offers more justice in the system, it does not overcome the fundamental problem that I have covered.

Alex Johnstone (North-East Scotland) (Con): I welcome Fergus Ewing to the Opposition front bench and pay tribute to his predecessor in that position, Alasdair Morgan. He has been a tower of wisdom at times, and certainly a tower of strength in the Rural Affairs Committee. [*Applause.*] I do not usually get applause—it will put me off.

I welcome today's announcement. Virtually every party that stood for election last year included the appeal procedure in its manifesto, and it is a pleasure to see it appear in the form of a statutory instrument—the Agriculture Subsidies (Appeals) (Scotland) Regulations 2000—that will benefit the farmers who suffered as a result of previous decisions.

Many people have written to me and, I am sure, to other members, complaining about decisions that took place in the lead-up to the introduction of the scheme. I wish to be reassured as to exactly when appeals will be entertained and about whether we mean 60 days back from 9 November, or 60 days back from 3 October, when this instrument was laid before the Parliament.

The explanatory note attached to the regulations says:

"The process is designed to comply with the Human Rights Act requirements in relation to Article 6."

Incorporation of the ECHR took place in Scotland with effect from 1 July last year, with the coming into force of the Scotland Act 1998. There is uncertainty about the position of those who have had cause to make complaints, or who may have cause to do so, between 1 July last year and the date on which the scheme will effectively become open to application. Does the minister believe that there is any likelihood of legal appeals against refusal to accept applications made in that period?

Ross Finnie: I thank Alex Johnstone for his broad welcome of the new procedure. It was remiss of me not to say this earlier—so I now wish to associate myself with his remarks about Alasdair Morgan. I have spent the past few days wondering what on earth Alasdair Morgan said to deserve his translation to the Justice and Home Affairs Committee. It is condolences that we should extend to poor Alasdair, while at the same time thanking him for his contribution in rural affairs.

Let us be clear about the 60-days rule: people have 60 days from the point of introduction—from the effective date when appeals can be heard. There is no attempt to footer about and cause confusion. When 9 November arrives, people have 60 days in which to decide what they want to do about an appeal. The date on which the Scotland Act 1998 was passed does not make any difference. All it did was introduce the European convention on human rights into our legal framework.

The convention makes no provision for retrospection. A nation state is required—as are we in the Scottish Executive—to ensure that any legislation or subordinate legislation that is introduced complies with the ECHR, but the ECHR does not provide a right to retrospection. Therefore, we are perfectly entitled to introduce secondary legislation that says that the starting date is as stated—the IACS year 2000 will commence on 16 May. If a person has made an application that has been processed and that application gives the putative appellant a basis on which to appeal, that person has 60 days from 9 November to appeal.

Dr Elaine Murray (Dumfries) (Lab): I, too, welcome the introduction of the scheme. National

Farmers Union members in my constituency frequently raise with me the problems that they encounter and the bureaucracy that is involved in applying for a subsidy. One local farmer told me that he spends up to 22 hours a week on paperwork. Such complexity can lead to mistakes. Can the minister advise the chamber of any other measures that he is considering taking to deal with that? How is he consulting the industry on how such measures can be taken forward?

Ross Finnie: I am pleased by that warm welcome for the broad thrust of the proposals. The related and important issue of how we deal with the complexity of filling in an IACS form was addressed in the red tape review, particularly when it was conducted in Scotland. As members know, I accepted the 23 recommendations of that review and invited the farming industry group that took part in the review to continue in a new capacity to drive the changes forward. All the arrangements that we are making with a view to simplifying—such as we can—the forms and introducing electronic means of completion have been driven forward by that group. Therefore, there is a continuum of consultation.

Euan Robson (Roxburgh and Berwickshire) (LD): I extend my condolences to the minister for having to answer a question from a member of the Justice and Home Affairs Committee.

Will he be clear about any continuing disputes? Is he saying that matters that are currently being considered in his department can be referred to stage 1 of the new appeal process, or indeed to stage 2 of that process?

Ross Finnie: No. I am saying that the procedure that I am introducing today, which will enable appeals to be heard, applies in the first instance to IACS applications made in 2000.

Richard Lochhead (North-East Scotland) (SNP): My first question was stolen by Alex Johnstone and my replacement question by Elaine Murray but thankfully I have a couple of questions in reserve.

Ross Finnie: Do not feel obliged.

The Presiding Officer: As I have said many times before, it is not compulsory to ask a question.

Richard Lochhead: I welcome the minister's statement. Many aspects of IACS have been running sores for many years. I trust that speed and simplicity will be the guiding principles from now on.

As other members have said, the current system is a bureaucratic nightmare. I visited some farmers in Maud, in Banff and Buchan, recently and I could not believe the expense and the amount of paperwork involved. That is why I welcome the comment at the end of the minister's statement about the planned development of electronic systems. I ask for assurance that there will be no costs to the industry when we come to implement those systems. Will the minister elaborate on what stage the development is at?

Secondly, many people want next year's IACS payments brought forward, as has happened in previous years. That is especially the case in the north-east of Scotland, where the arable sector is suffering from poor harvests and high drying costs. I appeal on behalf of the industry for the minister to refer to that in his reply.

Ross Finnie: I am pleased to respond to Richard Lochhead's third and fourth choice questions. I do not disagree with his general tenor—that the system is a bureaucratic nightmare—but we must be clear about the effect of that. There are about 21,000 IACS producers in Scotland generating about 71,000 applications, some 95 to 96 per cent of which are processed without any cause for appeal or determination. Of the remaining 3,300 cases—the remaining 4.7 per cent—about 2 per cent are partial penalty claims and only about 1.4 per cent lead to full penalty. Not all of those would lead to appeals. Although I understand and share Mr Lochhead's concern, I would not wish the impression to be given that 50 or 60 per cent of all IACS claims result in a penalty or another process.

Mr Lochhead mentioned reducing and simplifying the system and the introduction of electronic systems. I hope that we will do that in a way that does not add to the cost burden, as that would be somewhat self-defeating. We may have to consider schemes that will allow people access to personal computers and software. Mr Lochhead will understand that that is important in some small areas. We will have to consider ways of sharing facilities and simplifying methods.

Before I answer the question on whether I am prepared to bring the IACS payment date forward, I would prefer to await the outcome of the current year's events. In the context of today's discussion, it is not unreasonable to hold that view at the moment.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): As the Liberal Democrat spokesman on rural affairs, I would like to add my voice to the welcome for Fergus Ewing.

The minister's announcement will be welcomed throughout the farming community in Scotland. There is no doubt that farmers who are in dispute over alleged inaccuracies in official returns and claims forms will be greatly helped by this robust appeals procedure. Does the minister recognise that not only does his announcement fulfil a key commitment in the programme for government, it

fulfils a key Liberal Democrat manifesto commitment that both he and I were sent to this Parliament to fulfil?

Ross Finnie: I recognise a tricky question when I hear it and you, Sir David, will understand my hesitation in responding. I like to gather my thoughts before I fall into any trap. Yes, Mike, it was a Liberal Democrat commitment and I am very pleased to have announced it. More important, I think that members on all sides share the concern about the department incurring opprobrium for apparently acting as judge and jury. The effective mechanism that we are putting in place today removes that concern and gives a much better, more independent and more transparent form of dealing with appeals.

Rhoda Grant (Highlands and Islands) (Lab): I too would like to welcome today's statement. Is the minister willing to give farmers and crofters access to officials prior to submitting their forms? If forms could be checked over by officials from within the department, clerical errors could be picked up, which could avoid the need to use the appeals system.

Ross Finnie: When the rural affairs officials who are out in offices round the country joined the department, they did so because they wanted to help the farmer/producer in every way possible. Unfortunately, as the volume of European legislation has risen, and as the European auditors have placed penalties upon us and reduced our level of discretion, that has had an effect on those officials: they have moved slightly towards a policing role rather than a helping role. I have made it clear—and I have heard no objections from within the department—that we want to move back to being the assister to the farming community.

However, if we were to have a discussion between officials and farmers on all 70,919 applications, there would be complaints that we had not processed them in time and that payments were being made late. There is a balance to be struck, and I am happy to consider that further. The real solution is not so much to allow people access to officials before submitting their forms as to try to make the forms more user-friendly and easier to complete. That is the task that we have to address, rather than considering assistance with the existing forms.

Alex Fergusson (South of Scotland) (Con): As a member who on more than one occasion has been critical of the department's relationship with its farming clients, I am delighted to welcome the minister's statement. I hope that it will lead to an improvement in that relationship. I particularly welcome the fact that the procedure will provide appellants with a second opinion in cases where they feel that a wrong decision has been made, and the fact that appeals can relate to reductions in subsidy payments, exclusions from payments and recoveries from past payments.

Was retrospection considered for the appeals procedure? I am unable to find a crumb of comfort in the statement for the many people who have contacted members and who feel that they have a just case that would almost certainly receive attention and possibly a positive outcome under the new appeals procedure.

Ross Finnie: I considered retrospection. We had a long and agonising discussion on that. This is a difficult issue on which I receive letters on tricky questions from Alex Fergusson, Fergus Ewing, Richard Lochhead and almost every member who is in the chamber this afternoon. I take those letters seriously. However, when introducing a new procedure one has to draw a line and set a starting date to avoid any confusion. My decision was not made easily, but I think that it will be prove to be the correct one in the longer run.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I thank the minister for the statement, which is most welcome. One hundred pounds is one thing to somebody who owns thousands of acres in East Lothian but quite another to a small crofter in Sutherland. Will the minister consider varying the charges in future? A lower charge for crofters might be appropriate as, after all, our way of life in the far north depends on crofting. Secondly, there is a perception that our officials are rather more zealous in enforcing rules than their colleagues in other EC countries. Will the minister examine the application of rules in Scotland as opposed to other EC states?

Ross Finnie: I am not an economist so I do not know whether a pound is worth more on a croft than it is elsewhere—that is an interesting concept.

We have set the deposit and the potential charge for the second stage of appeals at a level that will not recover the cost. The issue of differentials was difficult. I considered the nature of claims and the source of more persistent complaints. The more complicated cases involve larger areas, where the scope for error is very much greater. There was also the consideration that we did not want frivolous complaints. I am reasonably satisfied that a deposit and potential charge of £100 is not over-onerous.

Whether our officials apply the rules more zealously than do those in other countries was examined by the group that looked at the IACS review. Its report, which was lodged with me some months ago, concluded—much to its astonishment—that there was no tangible evidence of the rules being applied more zealously

in Scotland than elsewhere in the EU.

Mrs Margaret Ewing (Moray) (SNP): I will refrain from commenting on changing the lifelong characteristics of my husband, as that might take some time, but I will ask the minister a direct question. He has referred several times to the difficulties that are caused to the IACS scheme by European Union regulations. Has he spoken directly to the commissioner? If not, when will he do so? Is there any way in which the Parliament can influence the decisions that are taken in Europe?

Ross Finnie: I am obliged to Mrs Ewing for not extending the qualities of her husband as a matter for debate.

Mrs Ewing raises a serious question. I have had more discussions with officials on the matter. Our experience seems fairly typical. Sometimes we delude ourselves that commissioners are au fait with the details that give rise to such serious complaints. We have taken examples of the difficulties—many of which members will be familiar with—to officials and explained them. In response to Fergus Ewing's question, I said that the current discussions are taking place at official level. There are other European states that agree with the proposition that the disproportionate penalties arising from the regulations is a matter for concern. I wish we could have a little more impetus. The Parliament can have an influence on that.

We have made it clear that we regard tackling disproportionate penalties as a high priority. It brings the whole European Union into disrepute and I cannot think that the Commission would regard that as a sensible way in which to proceed.

Mr John Munro (Ross, Skye and Inverness West) (LD): I congratulate the minister on establishing the appeal procedure. It is a welcome initiative and long overdue. I empathise with the difficulties faced by crofters and farmers in complying with the regulations and filling in the forms. The forms kept changing and unless every i was dotted, every t was crossed and the tick was in the right box, the applicants were penalised. They were introduced to a new technology; they were required to identify fields with six-figure grid references; and they were required to convert acres to hectares. It was very complicated.

Although the legislation is welcome, there are anomalies—as with all legislation. There is a standard fee to be lodged by the appellant, irrespective of the cash value of the claim. I suggest that the minister consider introducing a graduated scale of fees to ensure that farmers and crofters of small concerns in disadvantaged areas are not discriminated against.

Ross Finnie: I thank John Farquhar Munro for his general welcome of the scheme. If it is of any comfort to him, I confess that I still think in feet and inches rather than hectares. Do you recall rods, poles and perches, Presiding Officer?

The Presiding Officer: Yes.

Ross Finnie: I thought so. That was a trick question—a Presiding Officer should not have to reply to that.

The evidence that we have is that, by far and away, smaller disputes and minor disallowances are resolved between the department and the claimant. Greater difficulties arise where there is a much more serious discrepancy, particularly with continuous flock records, in the amounts entered in the claim. It is difficult to generalise, but we are talking about greater sums of money and more substantial breaches of the regulations. I do not believe that the charging regime that we have introduced is in any way out of proportion to the overwhelming majority of appeals.

Carbeth Hutters

The Presiding Officer (Sir David Steel): The next item of business is a debate on motion S1M-1228, in the name of Gordon Jackson, on behalf of the Justice and Home Affairs Committee on consideration of a report on petition PE14 from the Carbeth Hutters Association.

15:14

Gordon Jackson (Glasgow Govan) (Lab): Looking around me, I can see that members consider that a debate on the Carbeth hutters is unlikely to set their pulses racing. In excitement, it might seem to rank alongside the ubiquitous shellfish with the bad memories. However, it is a matter of real importance.

Members might think that the MSP for Glasgow Govan would not know the first thing about this issue, but they would be wrong. I had hardly arrived in the constituency before I knew a great deal about it. Some of the people most affected by this apparently rural matter live in the heart of the city, and some of the most active members of the Carbeth Hutters Association live in central Govan.

In order that members may understand why that is, it is appropriate that I explain the background. Carbeth estate is located north of Glasgow, in the Drymen area. Individuals have leased or rented plots of ground, on which they have built what are essentially holiday homes. These are permanent and immovable structures, the so-called Carbeth huts. The tenants do not own the land and have built immovable structures—houses or huts—on land that is owned by someone else. A tenant can sell the hut to any other person, but the new tenant, even if that person is approved by the landlord, is in exactly the same position: of having built an immovable structure on someone else's property.

I would not recommend doing that; it is never a wise thing to do. However, the huts were built in a particular historical context. In the 1920s, the owner of the land was extremely sympathetic to the whole idea. If one examines the records, it is clear that he saw this as a social good—a facility for urban dwellers to enjoy the countryside. He wanted the hutters to be "looked after".

The years passed. Even though either the tenant or the landlord has the right to terminate the lease with 40 days' notice, the situation continued unchanged for many years, until the present estate owners increased the rent by a substantial amount. In response, the hutters—or at least a number of them—refused to pay the new rent. In response to that, the estate exercised its right to terminate their lease and took legal steps to evict the non-paying tenants. That case has been and, to my knowledge, still is going through the court. This was, and is, a very heated dispute. As is often the case with such disputes, it has generated more heat than light. Extremely serious allegations have been made on both sides.

The hutters claim that a sort of rural Rachmanism is going on. In their view, the rent increase is totally unreasonable and the estate simply wants them off the land. These are, in their language, the Carbeth clearances. If they are pushed off the land, they will lose their property—their summer home—which will become the property of the landowner. Because, by and large, the law is on his side, it should be changed.

The representatives of the estate say the opposite. They say that the rent is a reasonable increase, as the estate must be commercially viable, and that the increases are fair and appropriate in order to provide needed improvements and facilities. In the estate's view, the hutters simply want their holiday for nothing. They should pay the fair rent or they should leave. The estate's representatives tell us that if a tenant is evicted and the property is sold, the estate will return any profit to the tenant. That, they tell us, is the sign of their good faith. They argue that the law does not need to be changed and is perfectly clear and fair. They want to be conciliatory and, in any event, the change that has been proposed is unworkable in this situation.

I hope that that is a fair summary of the positions of the two sides in this dispute.

Christine Grahame (South of Scotland) (SNP): The member has spoken about tenants and tenancies. The difficulty is that these are not tenants or proprietors, but people without a contract of lease in the usual sense. We are not talking about rents; it is service charges. Is that correct?

Gordon Jackson: I do not want to get too technical. People are tenants in the sense that they lease the property; they pay a ground rent. It is argued that a service charge is in the proposed increase, but the legal problem is that they are leaseholders, or tenants, of the land and they have built property on someone else's land. That gives rise to the problem. I have given both sides of that argument.

Against that background, we as a committee make several comments. First, and importantly, this is not an issue about the so-called Carbeth hutters. There are two sides to that dispute. The role of this Parliament is not to adjudicate on that matter. The committee did not feel able to take a view on whether the proposed rent is reasonable. We took no position on that.

It is the broader principle that is important, not

just Carbeth or other sites of hutted property. A landowner can rent or lease a piece of ground. He can allow a house, a bungalow perhaps, to be built on it with the implied suggestion that it will not harm a tenant. It can be implied that the tenant will continue to enjoy possession of their property, including what they have built. However, as time passes, the landlord—or perhaps the successor—can force the tenant off the land. The landlord could for example, in this case, in the absence of any rent review procedure, increase the rent to, say, £2 million a week. Off the tenant would go, as he or she could not pay that. The landlord, in effect, confiscates the house.

We have therefore made some suggestions. We raise the possibility, and in general terms support the idea, of security of tenure in this type of situation. That was not our unanimous view. Phil Gallie, who is not in the chamber today, is on record in the report as dissenting from that.

One suggestion we received is that where a permanent structure has existed on the rented property for, say, four years or more, there should be security of tenure. Our suggestion is that the tenant in this situation should have protection of security, as happens in other rental situations.

We also suggest that a proposed rent increase should go to an independent rent tribunal if no agreement is reached. That would allow a fair rent to be fixed, bearing in mind the need for improvements and commercial viability. It would prevent extortionate rents being charged in order to make a tenant's position untenable. We say that as a general principle, without prejudice to what the motives are in this specific case.

We recognise, and we say so, that those suggestions are tentative and partially unformed. We realise that legal changes on this matter are not without difficulty. We face up to that in our report. For example, the four-year period that was suggested by some people may be arbitrary and it might not be the right answer.

We recognise that the independent rent review is not without some difficulty in this situation. However, we wonder about the argument from the Carbeth estate that an independent rent review would be impossible in this kind of situation. Other expert advice suggests otherwise and we might think that it would solve the problem from the estate's point of view. If all that the estate wants is for a fair and reasonable rent to be fixed, why not have an independent tribunal in place to fix it?

All that we want to do at this stage—and I hope that I have the mind of the committee on this—is to ask the Executive to consider this matter. We have made suggestions, and we would like the Executive to respond to those. This issue is not without difficulty. I am doing no despite to Angus MacKay in saying that the last time that we heard from the Executive it did not have much of a view on this matter. We want it to think about the issue. It may be a case for legislation. There is a problem, which our report highlights, and we are asking the Executive to tackle it.

As always, I will finish by thanking not only the members of the committee, but the staff who have given us tremendous help in what for us was a very technical area, about which most of us knew nothing. We thank them for their help.

I move,

That the Parliament notes the content and recommendations of the 3rd Report, 2000, of the Justice and Home Affairs Committee on petition PE14 from the Carbeth Hutters' Association.

15:25

Christine Grahame (South of Scotland) (SNP): That was useful background to what happened in the Justice and Home Affairs Committee, but it would be helpful to take a step back to the Public Petitions Committee, which I was on when this issue was presented to it, and to look at the public petition from the Carbeth hutters, which was brought to the committee on 21 September last year. It asked:

"that the Scottish Parliament, as part of the first Land Reform Bill, brings in legislation which will ensure that people who have owned property on rented land for at least four years, where that property cannot be removed without being destroyed, have secure tenancies and access to rent control, to ensure that rents cannot be arbitrarily increased above inflation without reason, and that such owners cannot be deprived of their property without fair cause."

That is what was addressed in the evidence that we heard in committee.

This issue is important, because the Parliament has taken it from the Public Petitions Committee to the Justice and Home Affairs Committee, which has heard evidence in great detail on three occasions and has received written submissions as well as oral evidence. Now this issue—which is at the heart of people's accessibility to this Parliament—has moved on to the parliamentary chamber. Sometimes it does us good for people to bypass politicians and to have a direct input into parliamentary procedures and legislation.

I have concerns about what happens next. So far so good, but this issue came to the Parliament in September last year. In the report from the Justice and Home Affairs Committee, which came out in November, we say on page 3:

"In summary, we believe that the transparency of an independent system of rent control and arbitration would benefit responsible landlords and their tenants and consequently we support the introduction of such a system."

That is what the Carbeth hutters were asking for.

On page 5 of our report we say:

"We would be grateful for the considered views of the Executive on this issue and, in particular, its opinion on whether its forthcoming Land Reform Bill offers a suitable opportunity to address this issue."

We are still waiting.

On 6 July a Scottish Executive official wrote to my colleague Mr Fergus Ewing and said:

"Mr MacKay has explained that the Executive intends to consult on both the principle and details of possible legislative proposals in this area. Any decision on legislation would only be taken after responses to the consultation had been considered."

The Executive also issued a press release along the same lines on the same day.

Since then, we have had the document "'Huts' and 'Hutters' in Scotland". I will address some of the issues in it. It is not a report following on from the work of the Justice and Home Affairs Committee, but a separate background report. My colleague Fergus Ewing is not taking part in this debate because he has an interest in the matter, but in his letter of 11 September to Angus MacKay he drew the minister's attention to the fact that he had had a meeting with the trustees of the Carbeth Charitable Trust, who also are members of the Carbeth Hutters Association, and who drew his attention to substantial defects in "'Huts' and 'Hutters' in Scotland".

Paragraph 4.12, when talking about access to sites, states:

"On the other, Carbeth, the site owner takes a very proactive approach to creation and maintenance of access roads and thinning or planting of trees as part of a long term development programme to benefit both the hut occupiers and his land holding as a whole."

That is disputed by the hutters. That is not how they describe the roads that they have to go on. It appears from Fergus Ewing's letter that they were not fully consulted. I understand that questionnaires were given out, but not all hutters got them.

Paragraph 17 of appendix A of "'Huts' and 'Hutters' in Scotland" states:

"It was recognised that any information available from occupiers was likely to be a mix of fact, recall and, possibly, supposition, particularly over past history of use, not just by current occupiers but, even more, when a tenancy/licence changed hands, whether by purchase or by handing down by inheritance, some huts being thought to have been owned by a number of generations of the same family".

It seems that the views of the hutters are already prejudged in that document, which gives me concern. We ought to be able to say that the process so far has been open and democratic, but the Executive document does not appear to fulfil that test.

We are concerned by the tone of "'Huts' and 'Hutters' in Scotland", because of the issues that I have raised and for other reasons. We are concerned that the consultation that the Justice and Home Affairs Committee was told about is not yet under way. We are also concerned that this worthy public petition has, to some extent, been posted missing in certain respects.

I hope that what the minister has to say will give us some indication that the Executive is taking the matter seriously in considering land reform, and I ask him to give us a timetable of when he will report back to the committee. I also want him to say whether he will meet the Carbeth hutters to respond to their views on the Executive document.

15:31

Mrs Lyndsay McIntosh (Central Scotland) (Con): It is some time now since the Justice and Home Affairs Committee first took evidence on the public petition that gave rise to the report that we are considering today. One could think of this debate in terms of freedom, but from two different perspectives: the freedom to enjoy spectacular scenery when the weather is fine and before the midge season; and the freedom to develop a family asset for future generations to enjoy.

On many occasions, constituents have contacted members of Parliament asking for assistance to overcome a bigger, richer or more articulate adversary in disputes that are similar to that between David and Goliath. That is what set this ball rolling. The Carbeth Hutters Association, which represents a small minority of the residents on the land, feels that its members have been wronged and aggrieved. They feel that—although I hesitate to use a phrase that has cult status on television—a Big Brother style of land ownership has been in operation on the land where they have built their property. Rightly or wrongly, that is their perception.

The evidence provided to the committee was insufficient for us to judge whether Carbeth rents are reasonable. I certainly found it difficult to make a judgment, there being, as far as we could establish, nothing to make a comparison with. How does one judge the value of a vista? How does one make a comparison between a rare tradition of hutting in a unique setting and, for example, investing in a time-share property? We are not comparing eggs with eggs, so we have to make a much broader judgment.

I feel that the evidence given by the estate and the representatives of the petitioners gave rise to more questions than answers—a most unsatisfactory situation. In an instance such as this, the onus of responsibility to prove the case surely lay on the well-financed and well-

represented estate. It is clear that any responsible landlord must have the ability in law to raise rent agreements substantially when circumstances warrant such an increase. The examples of such circumstances given to the Justice and Home Affairs Committee are where massive investment in infrastructure is required or where costs have increased significantly.

A system of arbitration was proposed to ensure that rent control is achieved by linking rent increases to improved provision of services for hutters. The committee's conclusion was that such an independent system would benefit both responsible landlords and their tenants, and that this Parliament should therefore support such a system.

Although I am still happy to continue to back that position, and hope that it can achieve the best result for all concerned, I have some reservations. Years of experience of life and on the bench have taught me that a fair number of Scots enjoy rebelling against authority; I have been known to rebel myself. On that basis, it is entirely possible that groups of hutters could combine to frustrate landlords from imposing increased rents without due cause. And what constitutes a due cause? A belief that such plans are unnecessary. As I said, the debate raises more questions than answers.

Increased security of tenure for hutters is a minefield of potential pitfalls for the Parliament to navigate and should be given the fullest possible scrutiny in the event of the Executive introducing legislative proposals, either in the form of a bill specific to this debate or as part of other legislation. That will create a very busy work load, certainly for the Justice and Home Affairs Committee.

At Carbeth, every tenant has a lease that states clearly the landlord's expectations, together with the termination details and settlement clauses. In short, no tenant should be penalised financially under the arrangements that are set out by the Carbeth estate, because the net profit from the sale, after the deduction of costs and arrears, is paid to the departing tenant. Unlike the early days of time-share or floating time sales, no attempt appears to have been made to misrepresent the case. I believe that to be an honourable position.

For the second time today, I am indebted to Gordon Jackson for mentioning my colleague Phil Gallie's position on such issues. Phil Gallie opposed the Justice and Home Affairs Committee's recommendation that we should ask the Executive to consider whether it might legislate to give hutters increased security of tenure. While I sympathise with and support the committee's recommendation, I appreciate that Phil Gallie, who is unable for obvious reasons to be present today, has concerns that we could all accept as reasonable. I repeat that there are more questions than answers.

The structures, built on the landlord's land by hutters, are much more than just holiday homes. I recognise the existence of the emotional attachment between hutter and hut, to which Carbeth tenants testified. However, I am concerned that we do not tie ourselves in knots and penalise landlords unjustly, because they too make a valuable contribution to the communities in which they operate. If we prevent landlords from operating effectively, their businesses, like any other, could fail and everyone would lose. Clearly, that is not what the Carbeth hutters want—all they want is the opportunity to enjoy their retreat as and when they please.

At this stage, there is no foolproof, commonsense solution to every aspect of the problem that was identified by the hutters. The evidence is too thin. Perhaps the Executive's research will shed light on the issue; I certainly hope so. In the meantime, I am sure that a period of quiet contemplation—and enjoyment of one of nature's gifts—would be greatly appreciated by those concerned.

15:37

Euan Robson (Roxburgh and Berwickshire) (LD): As a member of the Justice and Home Affairs Committee, I subscribe to the committee report and its recommendations. It is fair to say that the more evidence we heard on the matter, the more complex we understood the various issues to be. As Gordon Jackson said, we came to the proper conclusion that we could not make a judgment about the specific dispute between the landowner and the Carbeth Hutters Association, so we drew out the general principles and considered them.

We understood that there are other hut sites like Carbeth elsewhere in Scotland, but we did not find out how many and where. As paragraph 5 of our report says, we asked the Executive to investigate that and the minister may be able to advise us, in due course, of the extent of hutting elsewhere in Scotland, if that research has been completed.

The key questions were whether there is a requirement for a statutory system of rent control and arbitration for huts, and whether legislation for increased security of tenure should be introduced. In general, our answer to both questions was yes, but how to go about meeting those requirements was not readily apparent. Personally, I think that stand-alone legislation would be required, rather than extra sections being tacked on to a land reform bill, which I do not think would be appropriate.

First, we would need to define the properties or

huts that were to be covered. I am not clear that we know quite how to do that. I presume that a system of rent control and arbitration, and an appeal procedure, could be developed from other statutory examples, so perhaps that component of any bill would not be too difficult to develop. However, I am not at all clear how we would develop security of tenure in the specific circumstances of Carbeth.

Paragraph 23 of the committee report sets out the committee's reasoning on why it believed that the law should be developed to protect those who purchase or build "a complete fixed structure" on rented land. However, if one tries to inject security of tenure into that, what other circumstances would be implied in what one was attempting to do? The objective is clear—there should be some form of security of tenure—but achieving that might be particularly difficult.

First and foremost, before the Parliament proceeds, it must understand the extent of the problem across Scotland—as I rather think that the situation does not apply only to Carbeth—and, as a result, whether it is important to introduce legislation for the general problems that have been identified at Carbeth. Although I support the committee's recommendations, it will be difficult to achieve them and it would be helpful to know the extent of the problem before the Parliament can make progress.

15:40

The Deputy Minister for Justice (Angus MacKay): I welcome today's opportunity for a debate on the situation at Carbeth and the case for legislation to give greater protection for hutters. Although the events at Carbeth have generated good and substantial press copy, we need to stand back and take a calmer and more careful look at the issues involved.

The Scottish Executive—and before it the Scottish Office—has closely monitored developments at Carbeth. I am concerned by the increasingly rancorous nature of the dispute between the Carbeth hutters and the landowner and am very disappointed that, despite the efforts of many people, the parties have not been able to find a way to resolve their differences.

Some time ago, Scottish Office ministers asked officials to review the existing legislation to see if this could help to resolve the position. A number of possibilities were explored. For example, encouragement was given to Stirling Council to consider conservation area status for the Carbeth site, and I understand that that proposal is now being developed. However, conservation area status alone will not resolve the basic issue of site rents, which is the cause of the dispute at Carbeth. Furthermore, it was clear that the situation at Carbeth could not be easily dealt with through other legislative remedies such as measures related to housing tenancies or mobile homes.

Individuals and organisations raised the specific case of the Carbeth hutters as a land reform issue in their responses to the Land Policy Reform Group's first consultation. In its second consultation paper, the Land Reform Policy Group specifically sought views on the need for greater protection for those with property built on leased land. More than 120 responses commented on that suggestion, and although the views expressed varied considerably in strength of feeling, the responses were divided roughly equally among those in favour of legislation; those opposed to legislation; those who were undecided on the merits of legislation; and those who thought the question related to something other than the Carbeth issue.

Because of the rather inconclusive nature of that response, the group's third paper "Recommendations for Action", issued in January 1999, recommended that there should be further investigation of the issues. As part of that investigation and to inform any decisions, the Scottish Office commissioned research from an independent researcher to provide more information on the extent of hutting and hut sites in Scotland. That research was completed and published earlier this year, and I will return to its findings later.

The Executive has tried to assist the Justice and Home Affairs Committee with its inquiries and our officials have given evidence and information that I hope was helpful. Furthermore, we have noted that the committee restricted its inquiries to the situation at Carbeth and took evidence from the key parties involved in that dispute. However, if any prospective legislation is to avoid hybridity, it will clearly need to relate to all hutters and hut sites in Scotland and could not simply focus on Carbeth. I am glad that the committee has recognised this in its report.

Having taken evidence on the position at Carbeth, the Justice and Home Affairs Committee concluded that accurately defining the interests of hutters was complex. From the evidence that the committee received, it was not able to take a view on whether the rent charges of the Carbeth estate are reasonable. However, the committee agreed that, in principle, legislation was required to achieve two objectives: to create an independent system for determining the rent and to provide security of tenure. It also suggested that this legislation might form part of the proposed land reform bill.

We studied the committee report carefully before responding and, like the committee, we also

consider that the position throughout Scotland must be taken into account. The research findings seem to indicate that, in respect of the size of the site and the level of the rents, the position at Carbeth is fairly distinct from other hut sites elsewhere in Scotland. We asked the researcher to establish the number of hutters in Scotland; where they were; who they were in general terms; and the ownership of the sites on which the huts were built. As a result, 27 sites were identified on which there were numbers of huts, in addition to individual huts on isolated sites.

We now believe that there are in the region of 650 huts in Scotland, on sites from the Angus coast to the Solway coast, with a number of inland sites near the major conurbations. Approximately 80 per cent of hutters do not own the land on which their hut is situated. One site is council owned; the others are owned mainly by agricultural estates, farmers or other individuals. Most sites have fewer than 30 huts and operate in fairly informal ways, with rents averaging £5 a week. The majority of hutters are middle-aged to elderly people. Almost three in four huts have been acquired through purchase by the occupier, but some are still occupied by the original hutters.

Generally, huts do not have mains water, sewerage and electricity, and access from the nearest road is by farm track or occasionally through a field. Carbeth is the earliest site. Most started in the 1930s and, with the exception of one site where the landowner made land and materials available to families affected by the bombing of Clydebank, were the result of direct approaches to the landowner to build a hut on the land for holiday and weekend use.

Huts are liable for non-domestic rates, so the researcher sent a questionnaire to all hutters whose names and addresses could be identified from the valuation records.

Christine Grahame: As I was pressed for time I was not able to say so, but I understand that the position is that the assessors roll was out of date and many people were unfortunately omitted from the survey.

Angus MacKay: Over 450 anonymised response forms were sent out and more than a third—over 150—were returned. It may not have included every single person but it probably reflected a fairly broad view. There was no imbalance, because although we think there are 37 landowners concerned, 20 were identified and 15 were interviewed. It was not the case that all site owners had an opportunity to make an input when all hutters did not.

As a result of that methodology, in our view the research reflects the views of all the hutters who responded to the questionnaire. It is clear from the summary of the research that it is the informality of the hutting life that appeals to the majority of hutters.

Although notices to quit had been used to get rid of specific tenants on sites other than Carbeth, the research did not identify any comparable problems of conflict between hutters and site owners.

On legislation, we understand and sympathise with the points made by the committee but, as it recognised, any legislation is bound to be relatively complex and there is always the question of priorities for legislative time. It is worth noting that the committee did not feel able to make specific recommendations on the way in which legislative protection should be provided. We think it makes sense to consult in more detail on both the case for legislation and the nature of the provisions that might be required.

We are currently drafting a consultation paper on the principle of legislation that will be issued before Christmas. The paper will explain the background to the current situation and set out the detailed provisions that might be required to achieve the committee's objectives. It also suggests other possible measures that might be necessary if full statutory protection is to be provided.

Our initial view is that if the case for legislation is established, then we will need to create a form of statutory protection that is specific to hutters and hut sites. That would require a satisfactory definition of the category of property to be brought within the scope of legislation. We would then have to consider the mechanism by which hutters could appeal against rent levels and other charges set by site owners. Before we could do that, the principle or principles on which site rents should be set would need to be established. We would also need to arrive at a specification of grounds for eviction backed up by some form of appeals mechanism to deal with disputes.

In addition, we would need to consider other matters which go beyond the issues of rent levels and security of tenure, such as the assignation of leases to third parties, the compensation paid to hutters when they give up their leases and the rights of access to the hut site. As I said, a lot of work remains to be done.

The committee asked whether our forthcoming land reform bill offers a suitable opportunity to introduce provisions to assist hutters in Scotland. If we decide, in the light of our promised consultation on possible measures, that legislation is the best way forward, timing will have to be considered carefully. Given that consultation, I see no way that provisions on hutters could be drafted in time for inclusion in our draft land reform bill, which is due to be issued next February.

The Executive has given the commitment that a community right to buy, a crofting community right to buy and a right of responsible access will become law in the course of this Parliament. I am not prepared to put that commitment in jeopardy. Once the planned consultation is complete, we will report back to the Parliament on whether we think that legislation is the right way forward. If legislation is agreed on, we will consider the possible legislative options.

Mr Brian Monteith (Mid Scotland and Fife) (Con): Does the minister have anything to say on the possibility of retrospective legislation?

Angus MacKay: No—partly because I do not want to anticipate what will be contained in the consultation document and the responses to the consultation exercise. That issue is still live, and is a matter of concern for all the parties that are involved.

In conclusion, I emphasise that the Executive has not come to any firm view on the case for legislation. Taking into account the responses to the consultation, we will need to decide whether legislation in this area should be a priority for the next few years, given the many competing alternatives.

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): The minister said that the consultation document would be out before Christmas. Can he give us a date for the end of the consultation process?

Angus MacKay: I cannot give an end date for that process. However, I reassure Alasdair Morgan that we will seek to carry out the consultation as swiftly as possible, bearing in mind the requirement to give all interested parties a fair amount of time in which to issue comprehensive submissions in response to it.

When we consider the responses to the consultation and the conclusions that will be reached, we will also need to take account of issues such as retrospectivity and compliance with the European convention on human rights, which is another factor. We believe that the consultees in this exercise will have an important role to play in informing the shaping or drafting of any future decisions, should we decide to proceed with them.

I acknowledge that this matter is far from concluded but, as the committee and the wider debate have shown, the path ahead is neither simple nor straightforward.

The Deputy Presiding Officer (Mr George Reid): We now move to the open debate, in which four members currently want to speak.

15:52

Dorothy-Grace Elder (Glasgow) (SNP): The poor Carbeth hutters sought the simple life, but some types of landlord and, unfortunately, lawyers have taken it upon themselves to make life incredibly complicated. I remember having been involved in the early days of the campaign, long before this Parliament started up, when the Labour Government gave a solemn promise that, once the Scottish Parliament was in place, there would be speedy action and legislation specifically to protect the Carbeth hutters.

I do not regard this as a complicated matter—perhaps because I am not a lawyer. If, as the minister says, 80 per cent of hutters in Scotland do not own the land that their huts are on, perhaps there cannot be an umbrella law. Perhaps we need simple legislation to protect the Carbeth hutters, who are in an unusual position, as no other landlord is acting in this way.

Mr Monteith: Dorothy-Grace Elder says that there is a need for legislation in the specific case of the Carbeth hutters. Which Carbeth hutters is she talking about—those who are on rent strike or those who are quite happy with their lot?

Dorothy-Grace Elder: I do not know whether it can be specified which is which. I see the Conservative view coming through.

Support for the hutters was overwhelming throughout Scotland and came from all sections of society. When I was involved with the campaign, my mailbag was far larger than it was during the general election. One of the supporters was the Duke of Buccleuch, who is said to be Europe's biggest private landowner. He wrote to the hutters and to me, condemning utterly what he called the type of feudalism that was being practised at Carbeth. He also kindly sent the hutters a donation. When a man such as the duke intervenes in a humane way, Conservative members should have second thoughts. Indeed, I changed the habit of a lifetime and approached the Scottish Landowners Federation to ask whether it could intervene. It used its good offices to try to make the landlord see reason—he was not a member of the federation.

People have been talking today as if we were discussing time-share yuppie folks. I remind those people that time-share properties usually have flush toilets. The hutters are without flush toilets and have no electricity or proper roads. We should remember that we are talking about not only large rent increases, but the imposition of between £300 and £400 a year service charges. What services, when there are no flush toilets and no electricity?

I will remind the chamber of the precious heritage that the Carbeth hutters represent. Such small communities, where poor folks could escape

the cities, were set up in various parts of Europe from the 18th century—Rousseau created one outside Paris. The Carbeth huts were established after the first world war, reflecting the longing of men weary of the trenches to escape from the slums to the countryside. My family has letters from relatives who fought in that war; those letters tell how the men of Glasgow and the Highland Light Infantry spoke of taking to the hills after the war was over. One of the letters, written by one of my great-uncles when he was in the trenches in Flanders, says that

"some of the Glasgow men alongside us have never been near flowers before and there are plenty of flowers here. They are great fighting men but it is touching to see them press the poppies into their bibles because they come from terrible parts of Glasgow where no flowers grow. They talk about longing to get out of the city if any of us survive this war."

The writer of that letter did not survive and many of those Glasgow men lie buried under those poppies. Some, however, became the first Carbeth hutters. The landlord then was benevolent; he is the forebear of today's chap and I think that he would be ashamed at what members of his family are doing—although it is said that few businesses or ideologies ever survive the third generation.

I urge the minister to do the best that he can to help the hutters as they are pursued through the courts. Eighty eviction notices have been issued for a community that is made up of just 150 huts, and 17 cases have been pursued already. Hutters say that they have to pay the landlord's legal bills, which could top more than £20,000 by the end of this year. One pensioner of 72 has had his finances wiped out by the legal actions caused by that landlord.

There is a chilling aura of vindictiveness about the way in which the hutters have been treated. They do not deserve that. Three of the five people on the hutters association committee have had their huts destroyed in mysterious fires—in one case, a dog was burned alive. Is this the way in which the Scottish Parliament wants a beautiful dream of ordinary people to end? I think not. I urge the minister to think again and to speed up.

15:55

Dr Sylvia Jackson (Stirling) (Lab): I welcome Gordon Jackson's balanced account of the Carbeth issue. I am interested and involved in the matter as the Carbeth estate is in the Stirling constituency.

Angus MacKay talked about the discussions with Stirling Council. As he said, those discussions on conservation area status are on-going. Since the establishment of the Scottish Parliament, I have received representations from Mr Barns-Graham, the owner, and from the Carbeth Hutters Association. After the Carbeth hutters handed in their petition to the Scottish Parliament, the matter was taken up by the Justice and Home Affairs Committee, as has been explained. I attended some of the committee's evidence-taking sessions and I agreed totally with the conclusion reached by the majority of committee members to support statutory measures to give hutters increased security of tenure and access to rent control and arbitration. However, the Justice and Home Affairs Committee made the point in its report that care would be needed when drafting legislation not to affect other groups adversely.

While the work of the Justice and Home Affairs Committee was continuing, the Scottish Executive commissioned research to examine the extent and nature of hutting in Scotland. The research report gives a descriptive overview of hutters throughout Scotland, but details of the hutters' views are restricted because of the methodology used. Christine Grahame made good points about that.

Mr Monteith: Will the member give way?

Dr Jackson: I will carry on, as I do not think that I will be able to finish my speech if I give way.

For example, although information from the owners was collected through semi-structured interviews, data from the hutters were gathered via a fairly brief questionnaire, which was mainly confined to pre-coded questions.

As the Scottish Executive concluded in its response to the Justice and Home Affairs Committee report, the research showed that other hut sites do not have the same problems as Carbeth. Those problems centre on security of tenure, difficulties with landlords and rent.

Where does that leave the Carbeth issue? The Executive's response mentions other issues that relate to the legislative process. The legislation would have to be ECHR compliant, but should it be retrospective—as was said earlier—and would it be in the long-term interests of hutters?

That last point raises an important issue: who is the legislation for? Is it for the Carbeth hutters, or is it for hutters more generally? The research report tends to suggest that it would be for the former, or perhaps for the more general cases where hutters own their huts on rented or leased land. The Executive's response takes on board that question and suggests that a definition of the category of properties affected be considered in the proposed consultation.

Although the Executive response refers to the pressures of the present legislative programme, I am aware, as was the previous speaker, of the many court cases produced by the Carbeth dispute and the resulting financial hardship. There

have been 80 eviction notices and 17 court cases, but legal aid was made available only in the last case. If there is good reason for a consultation exercise, it should be conducted speedily so that hardships can be minimised in future. We badly need a resolution to the Carbeth issue.

16:02

Robin Harper (Lothians) (Green): Before moving on to a few matters of detail, I will reflect on the original impulses for hutting in the 1920s and 1930s.

Sustainable access to the land is a right. That right informed people in the 1920s and 1930s and it informs them now. More than that, it is a human need. People in cities, who are surrounded by concrete and glass, need to understand nature, to hear birdsong and to see a starlit sky.

The Black Environment Network—which is nothing to do with the black economy—found, in research conducted in Sheffield two years ago, that there were 12-year-olds who had never walked on grass and people who had not seen a cow for 20 years. That was in Britain. Such total lack of contact with the environment is a cause of spiritual poverty in our cities.

The hutting culture is an accepted way for people across southern Scotland to fulfil aspirations to get out of that bind. Figures suggest that there may be thousands of people who own huts, as well as other people who, through them, have access to huts. There are huts in the Borders, Fife, Angus and Dumfries and Galloway: simple, self-built, wooden dwellings, which have generally little or no adverse effect on their surroundings. Those huts must be protected.

Carbeth is not the only hutting community, but it is the biggest that still exists. We are at make-or-break point for hutting in Scotland. If Carbeth goes, there is every possibility that the other hutting communities will also go.

The hutters have filed into court one by one looking for justice, but they have yet to find it. All that they have received so far from the Executive is a sense of vagueness and delay. We ask the minister today whether he will come up with a definite timetable—we did not hear about one in his opening speech. All that the hutters have received from the courts is a bill for upwards of £20,000. As has been said, one hutter, an old-age pensioner, has been more or less bankrupted by the legal process. He took his case to the European Court of Human Rights—the minister may be aware of the case of Bill McQueen v UK, which is currently passing through its first stages.

The Human Rights Act 1998 has now come into force and it is the duty of this Parliament and of the Executive to ensure that legislation complies with it. Is the minister aware of the opinion of Professor Peter Scott, professor of law at Glasgow Caledonian University, that, under the act, this Parliament has a duty to curb existing human rights abuses and to introduce legislation to reform the law where it contravenes the European convention on human rights? It is the opinion of that leading legal academic that something needs to be done in favour of the hutters; it is also his opinion that, in failing to act as speedily as possible to protect the Carbeth hutters, the Executive and the Parliament may be in dereliction of a duty to protect human rights. Will the minister promise today to progress this matter as quickly as is humanly possible?

Angus MacKay: I undertook today to publish a consultation document before Christmas—within the next 60 to 70 days. I also indicated, in response to Mr Morgan's question, that the consultation process will only be as long as it needs to be to accommodate the requirements of fairness and allow people to make a detailed response. Short of that, how can I speed up the process between now—announcing a consultation document—and asking for responses to it? That process has to be gone through before we can have a debate about whether legislation is required and, if so, what that legislation should be.

Robin Harper: I absolutely take that point. However, the minister indicated that other legislation to be introduced over the next year—especially the legislation on land reform, which is to come before the Justice and Home Affairs Committee—must come first, which could delay any legislation to do with hutters.

In conclusion, the Justice and Home Affairs Committee has done excellent work on this issue and deserves congratulations.

16:07

Pauline McNeill (Glasgow Kelvin) (Lab): Petition PE14 is a success story. It demonstrates that it is possible to petition this Parliament effectively and that the committee structure can act to get the Executive to act, as I believe it will.

I thank the Executive for carrying out its research, which is commendable. If it was not for that research, we would not know that there are other hutters out there. The fact that it is the Carbeth hutters who have a dispute with their landlord now does not mean that other hutters will not be involved in similar disputes. That is why we must find a way to legislate on this issue—not just for Carbeth, but for hutters throughout Scotland.

I visited Carbeth because I have constituents who are based there. I have been up to the estate and to some of the huts. I have been made a cup

of tea by Tommy Kirkwood, although I would not say that the site is exactly my cup of tea, given that it has no running water or electricity. I am a city girl, and it was a bit alien to me.

However, an ideological point has to be made, although it was probably better made by Robin Harper. The Carbeth estate boasts breathtaking scenery, and if it were not for the family of Allan Barns-Graham, who originally bequeathed the use of the land to ordinary working people who had to live every day with the smog and pollution of the inner cities, those people would never have known the beauty of the open countryside. That is what is at stake if we do not do something to protect the hutting tradition.

With Sylvia Jackson, I went on a second visit to the Carbeth estate. We were invited by the landowner, Allan Barns-Graham, to hear his version of events. There is clearly conflicting information in the evidence from both sides. I must give cognisance to the fact that, as Dorothy-Grace Elder said, the Scottish Landowners Federation is whole-heartedly behind the Carbeth hutters. It is important to note what Robert Balfour, a vice-convener of the Scottish Landowners Federation, had to say. He said that the federation

"concluded that the original commitment that the Barns-Graham family had made—to provide for a social need by allowing the people of Govan to get into the countryside and build holiday accommodation—had been reneged on by the present owner, and that the level of rent and other burdens that he had imposed was unreasonable."—[*Official Report*, *Justice and Home Affairs Committee*, 23 November 1999; c 428.]

We can draw an analogy from existing law. The Unfair Contract Terms Act 1977, known as UCTA, protects people even when they enter into contracts freely, by ensuring that they still have some rights that cannot be taken away. We could apply that principle to the hutters. The lease contains draconian measures. The landlord can give 40 days' notice for any reason, and he need not give any reasons for evicting people. That cannot be right.

We have heard about the trouble at Carbeth, which must be resolved. There have been 80 eviction notices. Bill McQueen, a pensioner of 72, is now bankrupt. I have seen some of the huts that have been burned down. They are a matter of serious investigation.

Hutting is a traditional practice in Scotland. It is not on the increase and, to ensure that it does not decrease, we must take urgent action, because we should preserve the tradition. I do not think that Carbeth is unique.

Where should we go with legislation? If the Parliament is to legislate, it must do so for the right reasons. We must ensure that the legislation is consistent. There are two options: arbitration or rent controls. The upside to arbitration is that an independent arbiter takes the decision. The downside is that both parties must accept that decision. I agree with Euan Robson's argument that a land reform bill is not the place for such provisions, because they are meant to ensure fairness and equity and they do not fit neatly with the purpose of land reform legislation. Provisions to protect hutters should sit on their own.

I am not surprised that there is so much support for the Carbeth hutters. I came to the Parliament to argue for justice and for just laws—I will continue to do that. If the Parliament cannot find a way to protect the hutting tradition in Scotland, we have to question why we are here.

16:12

Mr Brian Monteith (Mid Scotland and Fife) (Con): I became interested in this issue when, as regional MSP for Mid Scotland and Fife, I was asked to visit Carbeth by the owner of the estate, Allan Barns-Graham.

Sadly, most of what I have heard today typifies one side of a polarised argument. I would like to give members the other side. Dorothy-Grace Elder is not in the chamber, unfortunately—maybe she is having a cup of tea—but she seemed to suggest that Allan Barns-Graham is some sort of ogre or hyphenated, upper-class, landowning brute, who is seeking to remove the hutters from his land. I have visited the huts and the land that they are on about five times and I can see little evidence to back up that suggestion.

I have heard Mr Gordon Jackson's considered view of the matter and I have heard the minister explain how we can reach some sort of conclusion on this. However, I believe that we must not only hear both sides but come to some conclusions on the evidence. For instance, there is great talk—Dorothy-Grace Elder mentioned this—of the Carbeth estate having made the huts available to help people returning from the war. Why is it then that there were only five huts by 1927? The truth seems to be that hutting became the practice because people used to camp on the land. There were problems with that, however, so there was a gradual introduction of more permanent accommodation, for which land rent was paid.

The evidence seems to show that the rental that was charged eventually became what one would normally call a peppercorn rent. On taking over the management of the estate, through inheritance, Allan Barns-Graham could have walked away—he was already a successful businessman—or tried to make a go of it. In order to make a go of it, he had to raise the rent to a level at which income could help to fund both the debt on the land and the borrowing for investment to improve the lot of

the hutters. If the estate was to be successful, not only would existing hutters want to remain on the land, but income would have to be used to expand the site to accommodate more people. That Mr Barns-Graham wanted to make a go of it was evidenced by the fact that he bought additional land with further huts.

Christine Grahame: It appears to me that Mr Monteith is giving supplementary evidence on behalf of Mr Allan Barns-Graham. If Mr Monteith considers the evidence that the Justice and Home Affairs Committee took, he will see that we heard from hutters who were not in dispute and from representatives of the Carbeth estate. Our approach was rounded. We took all views into account; we did not listen to just one side of the story. Moreover, Mr Monteith thinks that we restricted our report to the Carbeth estate. However, although we were dealing with a petition about the situation at Carbeth, we were aware of other hutters elsewhere.

Mr Monteith: I thought that Christine Grahame had thicker skin. I was not suggesting that the committee did not seek evidence from all parties; I was thinking about the general debate and, in particular, about some of the contributions to it—not least Dorothy-Grace Elder's. It can happen that, almost like some poor "Panorama" programme, evidence is gathered to justify conclusions, rather than to be analysed. I would contend that this Carbeth dispute is, in effect, the Grunwick of land reform. People wish to get something out of it; it has become a cause célèbre. If any legislation were to be passed as a result of what has happened at Carbeth, it would probably be bad legislation that would have a detrimental effect on other hutters throughout Scotland.

As has been pointed out, huts have been burned down, but huts have been burned down on both sides of the argument. Wardens' huts have been burned down, but what are wardens? Wardens are hutters—hutters who enforce some regulations within the estate. It is clear to me that the Executive is trying to take account of all sides and to weigh up the evidence. I think that the minister has struck the right balance. If legislation is needed, let it be based on the facts; let it be based on the impact on all hutters and not just those in Carbeth; and let it not reduce the availability of huts for hutters or the willingness of landowners to make their land available. Otherwise, the legislation will be nothing but a Pyrrhic victory for the Carbeth hutters and those who support them.

16:18

Ms Sandra White (Glasgow) (SNP): I am not a member of the Justice and Home Affairs Committee but I am a member of the Public Petitions Committee, which first received the petition from the Carbeth hutters. I would like to thank the Justice and Home Affairs Committee for going all the way with this one and for instigating this debate.

We have heard from various parties about the history of the hutters movement, not only in Scotland but throughout the United Kingdom; someone mentioned the hutters movements in France as well. We have heard concerns about what happened to hutters after the war. Robin Harper pointed out that the community at Carbeth is the biggest hutter community in Scotland. Those hutters are due a just hearing from this Parliament. I hope that, at the end of our deliberations, the result will also be just.

I do not think that the Executive's response to the Carbeth hutters' petition has been mentioned yet, but I have read it. We all know that, as Sylvia Jackson said, new legislation must be compatible with the European convention on human rights. The minister talked about the consultation period, but Sylvia Jackson and Christine Grahame pointed out—although Brian Monteith may not agree with this—that there did not seem to be as much consultation with the hutters as there was with the landlords. That should be clarified in a further report—or just now, if the minister wishes.

Angus MacKay: As I said, the consultancy conducting the research for the Executive tried to contact 450 hutters—forms were sent to 450 hutters to give them the opportunity to respond anonymously. The researcher also tried to contact 20 site owners. Fifteen took the opportunity to meet the researcher.

I know that concerns have been raised, for example by the Carbeth Hutters Association, which has requested a meeting with me. I do not think that such a meeting would be appropriate at this time, but I have suggested that representatives of the association meet my officials as soon as possible to express their concerns about the research. It may be that, once the consultation process is under way or concluded, we will reconsider the appropriateness of ministerial or other meetings.

Ms White: I am glad that there will be a meeting with the Carbeth hutters. The minister will note from the figures that there is a big gap between the numbers of landowners and hutters responding to the research. Perhaps as a percentage more hutters than landowners responded.

We have heard much of the history of the hutters and what they have been through. As Gordon Jackson and Pauline McNeill said, it is not just the Carbeth hutters who are affected, but I think that the Carbeth hutters are a special case.

The Carbeth site was set up in the 1920s to enable inner-city dwellers who did not have much money to get out of the smoke and grime of Glasgow and into the country. Ever since, the hutters have taken advantage of that opportunity.

Brian Monteith might disagree with me, but I think that the circumstances of this case and the suffering of the people who are involved make the Carbeth hutters a special case. Most of these people are working class and come from the cities. Generations have followed a tradition that has continued for more than 50 years. Families have been brought up there and have enjoyed the freedom of spending a weekend or a week there. They have paid for their huts and done an enormous amount of work on them. They own their huts and are very proud of them, but now they are being chased off the ground.

The minister has clarified what is happening with the consultation period. He said that, although the consultation document will be produced at Christmas, there will not be time to include measures in the land reform bill, which will be introduced in February. However, we have still not been told when he will comment on the consultation with a view to introducing legislation.

Angus MacKay: We will publish the consultation document before Christmas—we will try to do so as soon as possible. We will then make it clear what the consultation period will be. I think that today I have twice undertaken to keep that period as short as possible to allow a speedy return.

The difficulty is that the land reform bill will be a major piece of legislation, which will combine three significant strands. It would not be appropriate to risk further delay to that bill to accommodate the drafting of potential legislation on this subject. I do not say that that is technically impossible, but I think that it would be undesirable, as it would present an unjustifiable risk to land reform legislation.

Ms White: I thank the minister for that intervention, although I do not agree with him. I think that measures on this subject should be introduced into the land reform bill in February. If legislation cannot be drafted, is there anything else that the Parliament can do in the meantime to alleviate the plight of the hutters? Perhaps a moratorium is too much to ask for. The hutters face court injunctions, mass evictions and massive rent increases.

Robin Harper mentioned the ECHR. I am almost sure that the hutters have a good case to take to the European Court of Human Rights. I pay tribute to the tenacity of the hutters.

16:25

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): It is indicative of the intricacies of the work of the Justice and Home Affairs Committee that, on my first day as the committee convener, I have been involved in both leasehold casualties and the issue of the Carbeth hutters.

I welcome the response of most members to the committee's recommendations. I am not quite sure whether the Conservatives agree with the recommendations—if so, they got there by a rather circuitous route.

In its response to the committee report, the Scottish Executive said that

"the research has not identified any comparable problem with . . . other hut sites."

The research that the Executive alludes to is the document that various members have mentioned, which, of course, was not available to the committee during its deliberations. However, the committee recognised the fact that such disputes are rare. The committee report said:

"The fact that the land being offered for rent is on a hut site of long standing is likely to encourage individuals to accept terms of lease which they would not in other circumstances. In summary, hutters sign the Missives of Let in the expectation, built on historical precedent, that the landlord will not exercise his rights without due cause . . . The difficulty is that this assumption, which has underpinned the operation of hutting for decades, has no statutory basis – it relies almost exclusively on the good will of the landlord."

The research document makes the same point.

The committee sought to make no judgment on the specific causes of the Carbeth dispute or to apportion blame. However, it is clear that when the good will that is referred to broke down, the system had no mechanism or safety catch to allow the situation to be resolved. The point is not whether the landlord was oppressive or whether the hutters wanted something for nothing; the point is whether improvements to the legislative framework would prevent a recurrence of such a situation elsewhere in Scotland.

Having seen the problem, the committee recognised that the solution was not necessarily straightforward. Given that fact, and given the pressures on committee time and the lack of research back-up, it is not surprising that, as the Executive notes,

"the Committee did not set out detailed proposals."

The committee was concerned about being too prescriptive. Members had knowledge of a wide variety of hutting establishments—outlined in the research documents—and of the nature of other situations, such as static caravans that might inadvertently be caught up in some legislative change that was not intended for them. The

committee's concern is justified by the Scottish Executive's research document, which outlines the variety of applicable circumstances in different parts of Scotland.

The committee made two recommendations: rent control and arbitration, and increased security of tenure. The Executive has agreed to consult on those proposals. I understand why that cannot be an overnight exercise. However, it cannot be a process with no end point. It would benefit all parties in any future dispute if we were to reach a conclusion as soon as possible.

I understand why the proposals may not necessarily fit into the large land reform bill. However, I was a wee bit concerned when the Deputy Minister for Justice said that he did not want to promise to include those proposals in the bill because that might endanger the prospects of achieving land reform in the course of this Parliament. Barring accidents, this Parliament will not finish until May 2003. I hope that the minister's statement is no indication that the problem will not be resolved before May 2003. If the Scottish Parliament can do one thing, it can move quickly on such matters, which, if we were still run from Westminster, would not even see the light of day.

Register of Interests (Members' Staff)

The Deputy Presiding Officer (Patricia Ferguson): The next item of business is a debate on motion S1M-1217, in the name of Mr Mike Rumbles, on behalf of the Standards Committee, on the register of interests for members' staff. I ask members who wish to speak in the debate to press their request-to-speak buttons now. I call Mike Rumbles to speak to and move the motion.

16:30

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): On behalf of my colleagues on the Standards Committee, I am pleased to present our third report of this year, which proposes a register of interests for members' staff. This report supersedes that which was debated at a meeting of the Parliament on 16 March. The committee was informed by members' contributions to that debate and we agreed to conduct a consultation exercise. Written submissions were invited from members and their staff, as well as from the staff associations and trade unions representing members' staff. The committee considered in detail the responses that it received and agreed to make some adjustments to its original proposals.

Before I go into the refinements that we propose, I want to emphasise that the committee remains convinced of the need for a register of staff interests to be established, as envisaged in our code of conduct. The committee believes that the proposals contained in the new report re-emphasise its commitment to ensuring openness, transparency and probity in the business of Parliament. As well as enhancing the transparency of our democratic process, the proposals that I offer members today are intended to provide protection for MSPs and their staff against allegations of improper influence.

When Parliament last debated our proposals for a register, I said that the Standards Committee was a listening committee. The committee has listened to the views that have been expressed by those who responded to the consultation exercise. That is reflected in the refinements that we offer in our report. I will outline those changes briefly.

A number of written submissions argued that the register should not be published on the internet. The committee was persuaded of that. We propose, therefore, that the register be published in hard copy only and that it be held and made available for public inspection in the chamber office.

Some members were concerned that our

definitions of who was a member of staff lacked clarity. The new report proposes that the register will cover staff employed under the members' allowances scheme to assist MSPs

"with the carrying out of Parliamentary duties".

That includes staff employed on a full-time or part-time, temporary or permanent basis, and staff employed through an agency or on a contract for services. It also covers unpaid staff who are carrying out similar work to paid staff employed under the members' allowances scheme. However, the register will not cover staff employed or carrying out work on an unpaid basis for 20 or fewer working days in any calendar year, or individuals carrying out solely party political work.

I refer now to registrable interests and the £50 threshold for gifts. The interests that are to be registered include the receipt of gifts, benefits and hospitality. Some respondents to the consultation exercise expressed the view that by requiring details of gifts, benefits or hospitality of a value greater than £50, the committee was opting for a threshold that was too low in comparison with the requirements that apply to members. The committee considered that in some depth, but we remain of the view that the £50 level is appropriate because it applies only to gifts and hospitality that MSPs' staff receive directly in relation to their work. Members, by contrast, are governed by statutory rules and must declare all gifts and hospitality to the value of more than £250, regardless of their source. Failure to do that could result in criminal proceedings against members. Members of staff will not be subject to those sanctions.

In the previous debate, some members expressed concern at the requirement for them to return details of their staff to the clerks within seven days. That may have been based on a misunderstanding. MSPs are required simply to provide the names and contact details of their staff within seven days of being contacted by the clerks. Staff will then be asked by the clerks to provide details of their registrable interests within 20 working days. I do not think that that will impose too heavy a burden on either MSPs or their staff.

Our proposals for a register of staff interests represent a further step in our commitment to build a Parliament with the highest standards of probity—a Parliament that the Scottish people can trust and have confidence in. The principles of transparency and openness underpin our recommendations. In the past few months, the committee has listened to the views of others, and we will continue to do so. We see the new arrangements as evolutionary, and we are committed to reviewing and, where necessary, to proposing amendments to them.

I move,

That the Parliament agrees to the establishment of a Register of Members' Staff Interests as set out in the appendices to the Standards Committee 3rd Report, 2000, and agrees that the provisions contained in those appendices shall apply to all MSPs as of 23 October 2000, that the provisions shall form an annexe to the code of conduct for Members and that the annexe shall be published for sale in hard copy and made available on the Parliament's website.

16:35

Des McNulty (Clydebank and Milngavie) (Lab): I do not have a great deal to add to what Mike Rumbles said on the substance of the motion.

The committee has taken on board several points that were made in the course of debate. We have also taken advice from members through the questionnaire and have had contacts with members' staff. I hope that we have responded positively to the concerns that were identified. We have not agreed with all of them, but we have taken all the points that were made seriously, considered them closely and produced recommendations, which we are putting to the chamber today.

A balance must be struck between confidentiality and openness. It is sometimes difficult to establish the correct balance. Perhaps in future we will consider the recommendations again and produce further revisions.

We have established a consistent principle that members of Parliament are the people who are answerable to the Standards Committee and accountable to the public. We have minimised the requirements on members' staff and streamlined the process so that the burden of responsibility is not too onerous.

We have also taken account of concerns that information on members' staff would be available through electronic media. The arrangements that are proposed for access to information on members' staff deal with some of the more serious concerns that members and members' staff had about confidentiality issues that were related to the electronic accessibility of information.

The validity of measures of this kind is proved by practice. We will have to put the procedures in place and see how they work. I hope that we have taken account of legitimate concerns that were expressed by members and their staff and have come up with proposals that we see as workable and in line with the principles that we have laid down in the code of conduct and through the other recommendations of the Standards Committee. This register will, I hope, do what the Parliament requires in relation to transparency, accountability and fairness. Those are the important principles

that the Standards Committee is there to safeguard.

16:38

Colin Campbell (West of Scotland) (SNP): The public are suspicious of politicians. They are suspicious of politicians because they think that we can be bought or are on the make.

Sometimes I am not wild about politicians either, but I do not think that we can be bought and I do not think that, by and large, we are on the make. It is important that we have the Standards Committee and a set of rules and regulations to which we must adhere because, among other reasons, it will convince the public that we are open to scrutiny, that our business is being conducted transparently and that they have the right to see what is going on in Parliament.

We are required to be meticulous in our accounting, as I am sure members know. That is right for public scrutiny. The downside is that my back pocket is full of railway receipts that will have to be written up in the not-too-distant future.

It is equally sound that our staff should be bound by the same principles as we are. It is highly likely that every member in the Parliament is clean, but one could foresee—if one were using one's imagination—that an MSP might be clean in every respect, but their assistant could do dirty deeds for them outwith the rules and regulations. If the rules and regulations did not exist, it would be easier for them to do that. That is highly unlikely. However, it is consistent that the same principles that apply to MSPs should also be applied to our staff.

Pauline McNeill (Glasgow Kelvin) (Lab): I am waiting for someone from the Standards Committee to address the duty that is now placed on MSPs in relation to declaration. I do not know whether Colin Campbell can address that issue, but I am pleased that so many concerns have been taken on board, particularly those of the staff trade unions. I am a bit uncomfortable with the duty that is to be placed on MSPs if a declaration is not made. After all, my reading of the report is that we could be dragged in front of the Standards Committee if a declaration is not made.

Colin Campbell: I am not on the Standards Committee, but I know that my colleague Tricia Marwick will sweep up the more detailed aspects of the issue.

It is important that MSPs' assistants are subject to the same principles of behaviour as we are. The question has been raised that unelected members of staff should not be put under the same scrutiny as we are, but the report makes it clear

"that the public interest in securing disclosure is the over-riding consideration."

I agree with that and, for the record, so does my assistant.

While everything that can be done is being done to establish a watertight code, which we will endorse today, it will not necessarily be the definitive set of rules and regulations. There might be ways of infringing them that no one has yet imagined, and the provisions might have to be updated in the light of experience, as Mike Rumbles said. That is a reasonable proposition. The business of standards is an on-going process and must be one of constant improvement and constant attempts to increase transparency.

I thank the committee for its work, which I hope everyone will endorse.

16:41

Lord James Douglas-Hamilton (Lothians) (Con): I support what Colin Campbell said. This measure increases public confidence in the Parliament in general. The committee's work in developing the Parliament's code of conduct, together with its experience of investigating the so-called lobbygate allegations, convinced the committee of the need for the interests of MSPs' staff to be disclosed, be they paid or unpaid, or in a position where they have the potential to influence members. The committee's proposals will enhance the transparency of the Parliament, and above all give confidence to the public, as well as providing a safeguard for staff against allegations of undue influence, which is important.

The principle behind the register has been accepted by the Parliament. The principle of a register of interests was not always accepted. I remember Enoch Powell in the House of Commons refusing to sign the register, but the principle is now well established, and the public expect it.

The debate in March revealed cross-party support for the committee's proposals, but there were concerns that there had not been consultation. As Mike Rumbles said, the committee rightly conducted a consultation exercise to make certain that we would get this right. Members and their staff, staff associations and trade unions were fully in the picture.

More than three months have elapsed since the publication of the revised report. The committee considered the comments that were made and the results of the consultation exercise in detail, and the revised report addresses a number of issues. We agreed to adopt the definition that is used in the members' allowances scheme, with which all MSPs will be familiar. It makes certain that individuals working on a strictly party political basis, for example on canvassing, will be excluded from the proposals. The register will include the

following: staff employed on a full-time or part-time, temporary or permanent basis, and through an agency or on a contract for services. It will also include unpaid staff. The register will not cover staff employed or carrying out work on an unpaid basis for 20 or fewer working days in any one calendar year. We looked again at the inclusion of unpaid staff in the proposals, but came to the conclusion that they also had the potential to influence members.

As for the £50 threshold on gifts, that attracted considerable comment, with some members arguing that the threshold was set too low in comparison with the £250 threshold for MSPs. In the first instance I expressed that view, but that was not a fair comparison. The requirement on staff will be for them to register gifts or hospitality that are received only in connection with their parliamentary duties. MSPs have to register all gifts in excess of £250 regardless of source, and as Mike Rumbles said, failure to do so could result in criminal proceedings. Such sanctions would not apply to staff. Naturally, the £50 limit will have to be upgraded to take account of inflation, and the committee—and this is important—has agreed to review the arrangements in due course.

There is considerable merit in having a register, as it provides greater clarity about which members of staff are covered by the proposals. The report reviews how the register will be published and, in response to staff concerns, recommends that it should not be available on the internet. It addresses some of the confusion that surrounded the £50 threshold on gifts and hospitality that must be registered. The proposals for making the register available to the public attracted considerable interest and comment. There was particular concern about the internet, and the committee responded to those concerns by recommending that the register be made available only in hard copy and should be held in the chamber office.

I commend the report to Parliament. Approving it today can do nothing but good.

16:46

Tricia Marwick (Mid Scotland and Fife) (SNP): On behalf of my colleagues on the Standards Committee, I thank members for contributing to the debate, although I am sorry that there were not more contributions. I shall address Pauline McNeill's point later in my speech.

The report that we recommend to Parliament today is another building block for the Parliament. The proposals of the Standards Committee are aimed at further enhancing the transparency and openness of our proceedings and at increasing public confidence in our work. Although the report places an onus on members to ensure that their staff comply with the registration requirements, our proposals should not be seen as a burden on staff or on MSPs. As Mike Rumbles said in his opening remarks, the report is also intended to provide protection for members and their staff from allegations of undue influence.

The Standards Committee report represents the culmination of a lengthy process in which we sought the views of those in the Parliament who will be directly affected by our proposals. The committee was keen to get it right and I believe that, with the help of those who responded to the consultation exercise, we have done that. I particularly want to thank the staff associations and trade unions that contributed to the process. Although we have not taken on board all their concerns, we have certainly considered them very carefully. I think that the committee has got the balance right, for the staff and for MSPs.

If staff still have concerns, members of the committee have made it clear that they are more than willing to talk to them if they are still not clear about the burdens that they feel may have been placed upon them. It is important that staff do not feel that they are singled out in a way that employees in other industries or workplaces are not. We want to ensure that we have happy staff, who understand why those burdens might have been placed upon them.

We have clarified who is covered by the proposals by using the definition of parliamentary duties set out in the members' allowances scheme, with which we are all familiar. In the previous debate, Richard Simpson raised that problem, because he wanted greater clarity about who was covered—we were asked about volunteers, people who came into the office or folk who put posters up on lampposts. By pinning it down to the duties of the parliamentary allowances scheme, we are all much clearer about which staff or volunteers are covered by the report. I am sure that Richard will agree that we have clarified that point for him and for other members.

We also reviewed how the register will be published, taking on board concerns that it should not be on the internet. That is something that concerned an awful lot of staff. The committee considered that carefully and concluded that the staff were right and that it would be unfair to place all those details on the internet. However, we have taken the view, all along, that a public document would be required. That document will be available for inspection in the chamber office.

We have also set out the rationale behind the requirement to register gifts or hospitality with a value in excess of £50.

If any member feels moved to make an

intervention, I would be more than happy to accept. [*Laughter.*]

When we debated the subject in March, some members felt that we had moved a bit too quickly and that MSPs and their staff had not had sufficient time—

Pauline McNeill: I will offer to intervene.

Tricia Marwick: Thank you.

Pauline McNeill: I would like someone to get to the point that, for me, is the meat of the matter.

The Standards Committee must at least explain to Parliament what the implications are for MSPs in relation to the new requirement for staff to register interests. I am all in favour of that requirement and I accept entirely the reasons for its introduction. I also applaud the concessions that have been made. However, the obligation that the new requirement will place on MSPs remains an issue that the Parliament needs to know about. I want to know why I might end up in front of Mike Rumbles if my staff do not register their interests; I am not too comfortable with that.

Perhaps Tricia Marwick will explain why the Standards Committee thought it appropriate to include that burden.

Tricia Marwick: The reason is quite simple: the Standards Committee is responsible for the behaviour only of MSPs. During the lobbygate inquiry last year, when we were interviewing members' staff, we realised that, at the end of the day, we had no sanction over them.

If we truly want to be open and accountable, we must put the burden on somebody. If we cannot put the burden on the staff, we must be able to say to MSPs that they employ staff and that those staff work on an MSP's behalf in their constituency office; they also work on the MSP's behalf, and sometimes instead of the MSP, in the Parliament itself. Those members of staff are in contact with a great number of people and there is a possibility that they could be under undue influence.

The Standards Committee can take no sanctions whatever against staff. The sole reason for placing the burden on MSPs is that MSPs do the employing. We are responsible for the behaviour of our staff and everything that they do in carrying out their duties on our behalf.

The committee decided that it was not fair to put all the details on the internet, but a copy of the register of interests will be placed in the chamber office.

As I was saying before Pauline McNeill's very welcome intervention, members felt in March that we had moved a bit too quickly. We realised that perhaps we had not got it quite right the first time, so we embarked on the consultation exercise, which attracted a fair amount of comment, both from members and from the staff associations. We tried to allow the maximum period after publication of the report for members to come back to us with comments. The report has now been published for four months and no one has expressed any concerns either to the Standards Committee clerks or to committee members. As a result, we feel that we have got it right this time.

As Mike Rumbles said, the proposals are evolutionary; they are not set in stone. Perhaps we will need to adjust the requirements, and the convener and members of the Standards Committee have made the commitment that they will be more than happy to consider the matter again, if people think that that would be desirable.

The case for the disclosure of the interests of members' staff is powerful; in March, there was cross-party support for that principle and for the establishment of a register. MSPs' staff have the potential to exert influence over members and, indirectly, over the Parliament and the conduct of its business.

The committee's experience in mounting the lobbygate inquiry and its work on developing the code of conduct have convinced us that it is right that appropriate information about staff interests should be disclosed and made publicly available.

The £50 threshold on gifts and hospitality has attracted some concern, when compared with the requirements that apply to MSPs. In preparing the report, the committee closely examined the issue.

Rhoda Grant (Highlands and Islands) (Lab): On the matter of gifts and hospitality, members of staff very often stay with relatives, friends or party members when visiting areas on MSP business. If that needs to be registered as hospitality in the register of staff members' interests, people might be dissuaded from offering such a service, which saves the taxpayer money.

Tricia Marwick: Although the member will need to seek detailed guidance from the committee clerks on that point, I do not consider that to be hospitality and, as such, it does not need to be registered.

In preparing the report, the committee explored the whole issue of costs and hospitality and we remain convinced that gifts or hospitality to members' staff of a value of more than £50, which are connected in any way with the Parliament's work, are a matter of legitimate public interest. As other committee members have pointed out, the £250 threshold on gifts and hospitality for MSPs not only covers all such gifts and hospitality; it is a statutory responsibility imposed on us by the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999. As Karen Gillon and I have said on many occasions,

any gifts costing more than £250 that our husbands might be moved by generosity to give us must be registered. Jackie Baillie raises her eyebrows at me; however, it is entirely true that she has to register those gifts. Who knows—she might get lucky.

Any breach of those rules by an MSP could lead to a criminal prosecution. However, under our proposals, no such sanctions will apply to members' staff. Tokens of gratitude such as flowers, chocolate, whisky and modest hospitality will not come within the rules. Furthermore, our proposals will not prevent staff from accepting gifts and hospitality in connection with their work that are in excess of £50, providing that they enter receipts in the register itself.

As for the publication of the register, there will inevitably be a conflict between individual privacy and public access to information of legitimate public interest. The committee does not approach that dilemma lightly, which is why we have listened to the concerns of MSPs and their staff and have decided against publishing the register on the internet. Nevertheless, it is important that, in the interests of transparency and openness, the register is available in hard copy.

The Presiding Officer (Sir David Steel): Can you wind up now, please?

Tricia Marwick: I commend the report to the Parliament. I am sure that, after this lengthy interlude, members will vote to agree the register of staff members' interests.

The Presiding Officer: It is not often that the chair is grateful to a member for overrunning; however, it has suited us very well on this occasion.

There are no Parliamentary Bureau motions today, and we will come to decision time in a minute. There are two questions to put to the chamber. The first is on motion S1M-1228, in the name of Gordon Jackson, on behalf of the Justice and Home Affairs Committee:

That the Parliament notes the content and recommendations of the 3rd Report, 2000, of the Justice and Home Affairs Committee on petition PE14 from the Carbeth Hutters' Association.

The second question is on motion S1M-1217, in the name of Mike Rumbles, on behalf of the Standards Committee:

That the Parliament agrees to the establishment of a Register of Members' Staff Interests as set out in the appendices to the Standards Committee 3rd Report, 2000, and agrees that the provisions contained in those appendices shall apply to all MSPs as of 23 October 2000, that the provisions shall form an annexe to the code of conduct for Members and that the annexe shall be published for sale in hard copy and made available on the Parliament's website.

Decision time is in about 10 seconds' time. Nicol Stephen criticised me for having the vote early the last time; I see that he is in his seat and ready to put his card in, as is Mr McLeish.

Decision Time

17:00

The Presiding Officer (Sir David Steel): The first question is, that motion S1M-1228, in the name of Gordon Jackson, be agreed to. Are we all agreed?

Motion agreed to.

That the Parliament notes the content and recommendations of the 3rd Report, 2000, of the Justice and Home Affairs Committee on petition PE14 from the Carbeth Hutters' Association.

The Presiding Officer: The second question is, that motion S1M-1217, in the name of Mike Rumbles, be agreed to. Are we all agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Baillie, Jackie (Dumbarton) (Lab)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Galbraith, Mr Sam (Strathkelvin and Bearsden) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Gray, Iain (Edinburgh Pentlands) (Lab)
Harper, Robin (Lothians) (Green)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McLeish, Henry (Central Fife) (Lab)
McLeod, Fiona (West of Scotland) (SNP)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, Mr John (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Radcliffe, Nora (Gordon) (LD)
Reid, Mr George (Mid Scotland and Fife) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)

AGAINST

Henry, Hugh (Paisley South) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)

ABSTENTIONS

Barrie, Scott (Dunfermline West) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Presiding Officer: The result of the division is: For 67, Against 2, Abstentions 7.

Motion agreed to.

That the Parliament agrees to the establishment of a Register of Members' Staff Interests as set out in the appendices to the Standards Committee 3rd Report, 2000, and agrees that the provisions contained in those appendices shall apply to all MSPs as of 23 October 2000, that the provisions shall form an annexe to the code of conduct for Members and that the annexe shall be published for sale in hard copy and made available on the Parliament's website.

Local Health Councils

The Presiding Officer (Sir David Steel): The members' business debate today is on motion S1M-1140, in the name of Patricia Ferguson, on the 25th anniversary of the establishment of local health councils.

Motion debated,

That the Parliament notes that the year 2000 marks the 25th anniversary of the establishment of Scotland's local health councils, congratulates the staff and lay members who have served the public through these councils during that time and recognises the important role that the councils have played in giving the patient an effective voice in the decision making processes of the NHS.

17:01

Patricia Ferguson (Glasgow Maryhill) (Lab): As members are aware, the motion congratulates members and staff of local health councils who have served the public over the past 25 years. Some of them are in the gallery for the debate. On this anniversary it is pertinent not only to look back at the history of local health councils but to record our hopes and aspirations for their future.

When I joined the NHS in 1976—it was that long ago—it was reeling from the major reorganisation that began in 1974. Little did we know that it would be the first of many reorganisations during the 1970s and 1980s. The main change brought about by the 1974 reorganisation was to shift some services from direct, democratic control by elected local authorities to health boards accountable to the secretary of state. That was rightly viewed by some as a reduction in democracy. To counter that, Bruce Millan, then a minister at the Scottish Office, said it would be

"important to have an organisation which is a good deal closer to the community than a health board can be".

Local health councils were established with the stated objective of representing in the NHS the interests of the public.

Since 1975, local health councils have carried out that function; they have provided the patient with a voice in the NHS and ensured that patients are listened to rather than talked at. They have helped to guide patients through the NHS maze to find where they want to be—through the layers of government, politicians, civil servants, health authority members, managers, professional groups, trade unions, universities, the media, local authorities and patient groups. They have helped patients with difficulties they have encountered.

In 1991, local health councils were restructured: their number was reduced but their remit was enhanced. That restructuring was largely successful, as a review of local health councils carried out by Jim Eckford in 1995 found. Mr Eckford also recognised that the NHS has changed radically since the 1991 reforms. He pointed to an increased need for and emphasis on public participation in strategy and service delivery.

The Government's 1997 white paper "Designed to Care" increased that emphasis, stating:

"every aspect of the planning and delivery of services should be designed from the perspective of patients."

I am aware that the Executive is considering its health plan and that what is being called the patients project is a great part of that. Susan Deacon has said that the patients project will change and improve the way in which the NHS communicates with and supports patients. I support that view.

It is also hoped that regulation of public consultation in the health service will be improved. That hope will be echoed by those who are involved with the Stobhill secure unit campaign—especially my colleague Paul Martin. There is a role in such consultation for the health councils. Dr Simpson, the reporter for the Health and Community Care Committee, has highlighted the role that is played by the Greater Glasgow health council in that regard. That is the kind of role that I would like local health councils to take on. They have been reformed at least once since their inception, which marks them out from community health councils in England and Wales, which have remained largely unchanged since 1974.

The proposals in the health plan for England and Wales have three fundamental flaws in regard to community health councils. They do not provide for independent bodies; they do not give a statutory obligation to those bodies; and they perpetuate a major flaw, as those health councils will still be funded through bodies that they will then monitor on behalf of the patient.

In looking to the future, I ask the minister to ensure that local health councils in Scotland continue; that they have a strengthened role, especially in consultation; and that they remain independent financially and in the choice of their members. I hope that the minister will find a uniquely Scottish solution to this Scottish question.

17:07

Shona Robison (North-East Scotland) (SNP): I commend Patricia Ferguson for securing this important debate to mark the 25th anniversary of the establishment of Scotland's local health councils.

I pay tribute to the work of Tayside health council, which has been very vocal on a number of local health issues. It is a good example of why

health councils are so important. It has been involved in discussions surrounding the concerns about the increase in parking charges at Ninewells hospital and has been on record raising the concerns of patients.

As I was going through the televisual system to find out what Tayside health council had said, I was overwhelmed by the amount of publicity it has had and the comments it has made. It has been involved in addressing concerns about the financial difficulties in Tayside and has had several meetings with the health board and the health trust to put forward vociferously the views of patients.

I had a slight concern about the delay in Tayside health council's funding. It does a lot of important work and often represents patients in the press. If it does not receive regular funding, or if its funding is delayed, the work that it can carry out is hampered. I hope that the Deputy Minister for Community Care can reassure us that there will be no delay next year in awarding funding to health councils.

It is obvious that delay jeopardises health councils' work and that they cannot plan when they do not know how much money they will have from one month to the next. Given the good work of health councils, any moves to diminish their role would be of great concern. As Patricia Ferguson said, we are looking for some reassurances on that front. The convener of the Scottish Association of Health Councils said that

"Health Councils recognise the need for modernisation but we don't want the baby thrown out with the bath water! Health Councils, like all organisations have strengths and weaknesses."

I seek reassurances on that this evening.

Like Patricia Ferguson, I am aware of worries about proposals for health councils in England—they concern funding, their statutory footing and their independence. I hope that we will have Scottish solutions to Scottish problems in relation to our health councils.

17:11

Mr David Davidson (North-East Scotland) (Con): I welcome the debate and congratulate Patricia Ferguson on bringing this issue, which is important in an evolving Scotland, to the chamber. I offer my wholehearted support and that of my colleagues to the work of local health councils.

I ought to declare an interest, as my wife was a member of a health council until we moved house in the summer and was a member of the Scottish Association of Health Councils. I therefore have first-hand knowledge of the work they do and of the opportunities that we face in this Parliament for securing their future.

I support what Shona Robison and Patricia Ferguson said about finance. It would be helpful if the minister could clarify the ideas of the Executive—not necessarily what will happen in practice.

Sometimes, I feel that health councils are an unsung hero. Many members of the public seem to be unaware of the important role they play as keepers of the public conscience on the work that is done for people who are sick. Something needs to be done on recruitment to ensure that capable people come forward who can take on this unpaid role and give this vital task the time it requires. I remind members that it is important that we have an apolitical approach to the membership of these bodies. We need a broad range of experience. It is important that one group or another does not have undue influence over community health councils—or local health councils in Scotland. There must be a broad range of opinion.

One issue that needs to be discussed is that the health councils do not have the right to turn up and view a facility. I agree that people should not be allowed to walk into an accident and emergency department or a surgery, but there must be a debate about how health councils can gain access, without notice, to see many of the activities in the health service.

Another issue that we need to sort out is health councils' relationship with health boards. Some health boards are good, but many have a statutory meeting only once or twice a year when only a few members turn up.

We need to have a debate on the opportunities for involving health councils in the local design of health care. They have proved their worth and it is incumbent on this Parliament to ensure that they get an opportunity to develop further. I wish them every success for the future and I hope that the chamber agrees with me.

17:13

Nora Radcliffe (Gordon) (LD): I echo what others have said before me and thank Patricia Ferguson for introducing this debate. It is good that we have an opportunity to commend the excellent work that is done by local health councils and the people who volunteer to serve on them and who make them work. They do a notional three days a week, but they spend an enormous number of hours doing background reading and going on monitoring visits.

I would like to say a few nice things about my local health council in Grampian. It works extremely well with the local health board and the health trusts. Some of the good work it does, with its increasing emphasis on involving people in consultation, has been exemplary. Currently, there

is a debate about maternity provision in the north-east. We have two centres—at Insch and Huntly—neither of which is viable on its own, and the health council has been facilitating meetings with people in both communities to try to draw together a sensible solution. It would have been difficult for the statutory organisations—the health board or the heath trust—to undertake that sort of initiative. The health council's work on the consultation was excellent.

In Grampian, we are fortunate to have a healthy supply of good calibre applicants, with a balanced representation of geographical areas and genders. Before the health council was reorganised, it was based on the old district council area but, with roughly the same number of members, it now has an area about four times its original size, which covers the whole Grampian Health Board area. The element of very local representation has been weakened. That could be addressed and improved upon.

We should provide health councils with better funding to allow them to provide better services. Anyone who phones a health council may get through to an answering machine that says, "Please write a letter as there is nobody here to take your call." That is regrettable, as direct, personal contact makes the work of health councils much better and encourages people to use them.

We are lucky to have health councils and I hope that we keep them and improve them.

17:16

Malcolm Chisholm (Edinburgh North and Leith) (Lab): We should all be grateful to Patricia Ferguson for raising this important subject.

This debate is an opportunity to look back and to pay tribute to everything health councils have done to help create a health service that is responsive to the needs and wishes of patients, to facilitate public involvement and to scrutinise, monitor and hold to account.

The debate is also an opportunity to look forward and to consider the future agenda for public and patient involvement. I think I am right to say that everyone agrees that health councils must be modernised. We must concentrate on their functions rather than on their form but, as Shona Robison said, we do not need to throw the baby out with the bath water, which has been done in England, unfortunately.

We agree that the functions that I have outlined cannot be concentrated in health councils alone. There is an exciting new agenda based on the patients project. We want to do things in a different and more radical way. It is essential that there is a statutory and independent element in the new regime that we are about to create. That is particularly important for the patient's voice, whether in complaints, advocacy or, more generally, for evidence-based work in giving, and finding out, the patient's view.

There is a danger that the rhetoric of patient involvement will not be matched by the reality. I believe that health councils have a continuing and vital role to play in ensuring that our hopes and expectations are fulfilled.

17:18

Robin Harper (Lothians) (Green): I speak from the experience of being a member of Lothian health council in the early 1990s. I was thoroughly impressed by the dedication of my colleagues on that council in performing a variety of jobs: monitoring performance through observer groups in hospitals; conducting surveys of user views; assisting and commenting on future plans; advising patients on their rights; solving conflicts; assisting complaints procedures; and attending meetings of the health and hospital boards.

Those jobs involve a huge volume of work. During the recess, I cleared out some cupboards and took away three sackfuls of documents left over from my time on the health council. I remember the then chair of that health council, who had been retired for a couple of years, remarking to me, "Robin, this is not a retirement task; this is a full-time job." It certainly was for him.

There may be a case for reviewing the system and providing more support to the chairs of health councils. They get good support from their permanent staff, but the situation merits further review.

I underline how pleased I am to have heard all other members who have spoken in this short debate refer to the necessity of incorporating statutory rights into the new ideas that may come through the Executive. Health councils need legislative support to ensure that they are able to continue to provide the excellent work that they have provided in the past 25 years.

17:20

Euan Robson (Roxburgh and Berwickshire) (LD): I add my congratulations to those that have already been given to Patricia Ferguson in securing this debate, which is very welcome. I also welcome Mr John Taylor, the chairman of Borders local health council, who I believe is attending this debate. Borders local health council's annual report reflects on the diverse nature of its work, which it undertakes from modest means.

My colleague Ian Jenkins and I have visited the

health council, and we are aware of the extent of what it does—we are grateful for all that it achieves. Its annual report shows that the council continues to prioritise engagement with as wide a section of the public as possible. Recently, that was graphically demonstrated by its initiative to carry out a series of discussion groups throughout the Borders, to hear directly from individuals about what they think of local health services—the good as well as the not-so-good points.

Health councils' role in hearing from and supporting individuals in the health service is extremely important. They often lend support to people when they are at their most vulnerable. They have contributed to ensuring that health services are patient centred.

I served on a consumer body for many years. Local health councils are, in a sense, consumer bodies. It is of fundamental importance that local health councils retain their independence. That must be guaranteed. If their position is defined on a statutory basis, well and good, but that does not necessarily have to mean that they lose their independence.

I add my congratulations to health councils on their 25th anniversary and wish them well for the future.

The Deputy Presiding Officer (Mr George Reid): I thank members for keeping their speeches tight, so ensuring that all members who wished to speak were called.

17:22

The Deputy Minister for Community Care (Iain Gray): I am grateful for the opportunity to record both Susan Deacon's and my thanks and appreciation for the support that the health council movement has given to patients and the national health service over the past 25 years. That was formally recognised recently, when Susan Deacon hosted a reception in Bute House for past and present council members and their staff, but it is also fitting that this motion offers us the opportunity to mark in the chamber the significant contribution of the individuals who make up the health council movement.

Health councils were created more than 25 years ago to ensure that the views and wishes of the public and of patients were heard by the NHS in Scotland. While their work in the wards and committee rooms of the NHS has often been central to the development of the health service, it has often—as Mr Davidson was right to point out—gone largely unnoticed by the public and patients who benefit from it.

If anyone here doubts the influence of these lay volunteers, they need only consider the impetus that the health council movement has given to the concept of patient-centred care. Local health councils and their national association have long advocated such a commonsense concept, and the success of their campaign has resulted in a significantly increased demand for their services. They have not complained at that, however; they have simply got on with the job.

I will return shortly to the issue of work load, but I will first pause to underline the commitment and dedication—and, as Mr Harper pointed out, the cupboard space—of the 250 or so individuals who do an immense amount of work at any one time. The benefits and improvements that have flowed from health councils' partnership with the NHS and the people it serves can never be fully measured and, on behalf of the Executive, I am happy to salute the efforts of this small band of volunteers who, in the best traditions of public service, give so freely of their time and talents for the benefit of us all.

However, as Malcolm Chisholm was correct to say, anniversaries are not simply a time for congratulations; they also offer a chance for reflection on achievement, on successes and on failures and, most important, lessons for the future.

Twenty-five years of health council effort has taught us the value of listening and learning from patient experience. It has taught us the value of partnership—councils have forged strong links between people and communities and the NHS bodies that serve them. It has also taught us the value of progress, through renewal and modernisation. The health council movement has, like the NHS, which it serves, changed beyond recognition in its lifetime.

The Executive shares with the health council movement a commitment to listening to and learning from direct patient experience. The programme for government pledges to

"strengthen the patient's voice and . . . work to ensure that patients, and their carers and families, get the response and support they need through every stage of their care."

Our partners in the health council movement strongly support that commitment, which encapsulates a change in culture for which they have long argued.

A change in culture is required whereby the NHS learns to listen to and act on the direct experience of patients and carers. The message is clear. Patients and carers want a seamless approach to the delivery of care and to receive the care that they need quickly and with confidence. Only a culture of partnership can provide that.

Partnership working is at the heart of our plans to modernise the NHS in Scotland. It is a different way of developing and implementing health and

social care, which will enable us to harness the ideas, enthusiasm and commitment of the staff who deliver the services and the patients and public who use them.

As several members said, involving users in the redesign and reconfiguration of services offers the best prospects of soundly based decisions that achieve sustainable improvements. A partnership with patients is at the heart of the health council movement. Patients are a part of developing the vision of the patients project, to which Patricia Ferguson referred. It is a project that will ensure that boards and trusts become and remain more patient centred and publicly accountable. It will involve more members of the public in the health service, in different ways, so that they will become more skilful and knowledgeable, as will the service professionals with whom they are involved.

When Susan Deacon met the Scottish Association of Health Councils last year, it supported that vision but felt that the challenge and work load associated with such a step change in the culture of the NHS presented the movement with some key questions about its future direction and development. In spite of the fact that, as Patricia Ferguson pointed out, health councils have gone through two major reorganisations since 1975, they agreed to do so again and to examine the need for and role of the health council movement against the background of the wider public involvement agenda. Funding has been provided for a development officer to support health councils further in that work.

With the decision to develop a Scottish health plan, we are keen to build on the unique public involvement experience of health councils and their staff. We have therefore commissioned the Scottish Association of Health Councils and the chief officers group to submit papers addressing the strengths and weaknesses identified in current patient and public involvement arrangements.

The chair of Greater Glasgow health council has agreed to be a member of a group to consider what the plan might say on policy development and public involvement. Two health council chief officers have been seconded from their posts to provide full-time support to the development of the plan. The involvement of the movement in developments is central. The abolition of community health councils that is outlined in the English NHS plan is of no direct relevance to the process in Scotland; indeed, our solution will be a Scottish one.

We remain committed to ensuring that the public and patients are fully involved in the design and delivery of our health services. We can achieve that only by drawing on the experience of the health council movement, which we are celebrating tonight. I know that members will join me in congratulating health councils on 25 years of hard work supporting the development of a truly patient-centred NHS.

Meeting closed at 17:29.

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ISBN 0 338 000003 ISSN 1467-0178