MEETING OF THE PARLIAMENT

Wednesday 30 November 2005

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CONTENTS

Wednesday 30 November 2005

Debates

SCOTTISH MINISTERS AND DEPUTY MINISTERS

FIRST MINISTER—Right hon Jack McConnell MSP
DEPUTY FIRST MINISTER—Nicol Stephen MSP

Justice
MINISTER FOR JUSTICE—Cathy Jamieson MSP
DEPUTY MINISTER FOR JUSTICE—Hugh Henry MSP

Education and Young People
MINISTER FOR EDUCATION AND YOUNG PEOPLE—Peter Peacock MSP
DEPUTY MINISTER FOR EDUCATION AND YOUNG PEOPLE—Robert Brown MSP

Enterprise and Lifelong Learning
MINISTER FOR ENTERPRISE AND LIFELONG LEARNING—Nicol Stephen MSP
DEPUTY MINISTER FOR ENTERPRISE AND LIFELONG LEARNING—Allan Wilson MSP

Environment and Rural Development
MINISTER FOR ENVIRONMENT AND RURAL DEVELOPMENT—Ross Finnie MSP
DEPUTY MINISTER FOR ENVIRONMENT AND RURAL DEVELOPMENT—Rhona Brankin MSP

Finance and Public Service Reform
MINISTER FOR FINANCE AND PUBLIC SERVICE REFORM—Mr Tom McCabe MSP
DEPUTY MINISTER FOR FINANCE AND PUBLIC SERVICE REFORM—George Lyon MSP

Health and Community Care
MINISTER FOR HEALTH AND COMMUNITY CARE—Mr Andy Kerr MSP
DEPUTY MINISTER FOR HEALTH AND COMMUNITY CARE—Lewis Macdonald MSP

Parliamentary Business
MINISTER FOR PARLIAMENTARY BUSINESS—Ms Margaret Curran MSP
DEPUTY MINISTER FOR PARLIAMENTARY BUSINESS—George Lyon MSP

Communities
MINISTER FOR COMMUNITIES—Malcolm Chisholm MSP
DEPUTY MINISTER FOR COMMUNITIES—Johann Lamont MSP

Tourism, Culture and Sport
MINISTER FOR TOURISM, CULTURE AND SPORT—Patricia Ferguson MSP

Transport and Telecommunications
MINISTER FOR TRANSPORT AND TELECOMMUNICATIONS—Tavish Scott MSP

Law Officers
LORD ADVOCATE—Colin Boyd QC
SOLICITOR GENERAL FOR SCOTLAND—Mrs Elish Angiolini QC

PRESIDING OFFICERS

PRESIDING OFFICER—Right hon George Reid MSP
DEPUTY PRESIDING OFFICERS—Trish Godman MSP, Murray Tosh MSP

SCOTTISH PARLIAMENTARY CORPORATE BODY

PRESIDING OFFICER—Right hon George Reid MSP
MEMBERS—Mr Duncan McNeil MSP, Nora Radcliffe MSP, John Scott MSP, Mr Andrew Welsh MSP

PARLIAMENTARY BUREAU

PRESIDING OFFICER—Right hon George Reid MSP
MEMBERS—Bill Aitken MSP, Chris Ballance MSP, Ms Margaret Curran MSP, Carolyn Leckie MSP, Margo MacDonald MSP, Tricia Marwick MSP, George Lyon MSP

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Communities	Karen Whitefield	Euan Robson
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Equal Opportunities	Cathy Peattie	Nora Radcliffe
European and External Relations	Linda Fabiani	Irene Oldfather
Finance	Des McNulty	Mr John Swinney
Health	Roseanna Cunningham	Janis Hughes
Justice 1	Pauline McNeill	Stewart Stevenson
Justice 2	Miss Annabel Goldie	Bill Butler
Local Government and Transport	Bristow Muldoon	Bruce Crawford
Procedures	Donald Gorrie	Karen Gillon
Public Petitions	Michael McMahon	John Scott
Standards and Public Appointments	Brian Adam	Bill Butler
Subordinate Legislation	Dr Sylvia Jackson	Gordon Jackson

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Scottish Parliament

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

Time for Reflection

The Presiding Officer (Mr George Reid): Good afternoon. Our first item of business is time for reflection, and our leader today is the Rev Alastair Symington of Troon old parish church.

The Rev Alastair Symington (Troon Old Parish Church): I wonder why we have Andrew as our patron saint. Today is his day in Scotland, so I suppose we ought at least to ask about him. Christians first hear about him in the New Testament alongside the other disciples of Jesus. He was one of the main ones, although not quite up alongside Peter, James and John. In fact, he got left behind when those three went off to do various things with Jesus. He was up there with the top ones, but not always taken along.

So, okay, that suits us. We can see where that fits in. Every one of us in Scotland knows that we should be at the top table—from our football and rugby heroes to you people here in this great Parliament building. But others like to think that they are better. Well, let them. Andrew is our patron saint and we know that we are top dogs.

The next thing about Andrew is that he was able to be shut out at times by the other three without being envious. That is a great gift and one that we Scotsmen and women might have to think about. For perhaps at our worst moments we feel a wee bit green about what other people get and achieve and about how they are perceived. I do not think that we need to. Andrew, our patron saint, did not need to—reflective, I hope, of what is best in us. We have enormous gifts and we have given the world so much. Who needs to be envious of anyone?

Then, next, Andrew was a man who saw the work to be done rather than the place given to the worker. Lots of people are not like that. If they are not top dog, they cannot be bothered. James and John had a fight about who would be first in the kingdom of heaven, and Peter was always to the fore, too. But Andrew got on with it, and that is also pretty true of us Scots at our best.

I can think of other folk in this world who have to be the officer rather than the foot soldier. But the best Scottish people I have met in 34 years of working with the public have come from all walks of life and have been uniquely marked out as men and women who were doers. If that is so, it is another mark in us of our patron saint.

Finally, then, as a thought, Andrew was a man who found it easy to feel comfortable with his God. I hope that that is true still for us in this country of ours. We have a rich diversity in Scotland now, but in that diversity we all have a soul. As a minister of one of the faith groups in this land, I would pray that every one of us would allow that soul to respond in some way to God. Andrew did it—top man, no need to be envious, ready to get on with his work. He sounds like a Scotsman to me. So thank God that he is our patron saint.

Presiding Officer's Ruling

14:33

The Presiding Officer (Mr George Reid): On 24 November, Patrick Harvie raised a point of order at short notice under rule 7.3 with regard to a statement made by the First Minister during question time earlier that day. I have now had the opportunity to examine the matter in some detail, and I determine that what was said was part of the normal cut and thrust of political debate. I do not consider that there has been a breach in this instance.

Human Tissue (Scotland) Bill: Stage 1

The Presiding Officer (Mr George Reid): The next item of business is a debate on motion S2M-3627, in the name of Andy Kerr, on the general principles of the Human Tissue (Scotland) Bill.

14:34

The Deputy Minister for Health and Community Care (Lewis Macdonald): The Human Tissue (Scotland) Bill, as members will be aware, is the outcome of a process of engagement with the public and with health professionals over a number of years. It began in part as a response to concerns about previous practices to do with retention of organs at death and post-mortem examinations. The Executive promised new legislation to address the issues that those practices had raised. That remains one of the main aims of the bill.

The bill modernises existing legislation in a number of complex and sensitive areas: organ donation and transplantation from both the living and the dead; hospital post-mortem examinations; the use of tissue samples or organs that are no longer required for the procurator fiscal's purposes; and the donation of bodies for anatomical examination. The bill's provisions are fundamentally about bringing clarity to each of those processes, so that people will know what options are open to them and how they can express their wishes and have confidence that their wishes will be acted on.

The bill is rooted in a strong process of consultation and seeks to respond to the views that we have elicited both from health care professionals and from the general public, while recognising that views sometimes conflict and that there is then a need for a balanced judgment. In taking the bill forward, we have benefited from advice from two expert bodies: the review group on the retention of organs at post mortem and the Scottish transplant group. Both groups drew attention to the shortcomings of the existing legislation—the Human Tissue Act 1961—which governs both transplantation and hospital post mortems.

The key concern is that the 1961 act deals with transplantation and post mortems in essentially the same way. Both advisory groups recommended that they should be separated in any new legislation. Post mortems and transplants are very different procedures with very different histories, and they give rise to very different public perceptions. The structure of the bill allows us to reflect those differences in its constituent parts and to put in place provisions appropriate to such very different processes.

The bill starts out from the fundamental principle that when people express wishes about what should happen to their body after death, those wishes should be respected. When people do not formally record their wishes, the bill makes arrangements for identifying those closest to them in life who are therefore most likely to know what their wishes were. That principle is described in the bill as authorisation. It takes an active, deliberate choice to authorise something, which is quite different from the principle of consent underlying the 1961 act. Obtaining consent means establishing a lack of objection to transplantation or post mortem, or an absence of opposition to an act—almost a double negative—as the required grounds for positive action. By contrast, authorisation connotes a positive decision made by someone who is in a position to choose. I very much welcome the Health Committee's support for that concept.

I believe that the reason why families were so upset about previous post-mortem practice was not because they were innately suspicious of doctors or prejudiced against research; it was simply because they were not asked what they wanted to happen and therefore felt unable to protect a loved one after death. That feeling, for obvious reasons, was especially strong when a child had died.

The bill gives authorisation legal force and puts penalties in place for non-compliance with authorisation requirements, to ensure that proper authorisation is obtained and, once obtained, is adhered to in detail. That is why the bill has to go into a good deal of detail about the formalities associated with authorisation. Authorisation has to be given properly in each particular set of circumstances, so as to be beyond doubt. However, that does not mean creating a complex of bureaucratic hurdles to be crossed when a person knows what he or she wants to do.

We recognise that many people will have already used the national health service organ donor register to record their wishes. It is our intention that existing registrations on the register will be considered valid authorisations under the bill.

Stewart Stevenson (Banff and Buchan) (SNP): I recently moved from having a donor card to registering online and I found the process very simple and easy. However, has the minister considered extending the range of information that people can put in their registration so that it can include the use of their remains post mortem for educational purposes? A minority of people, including some of my family, have expressed that particular wish, but the registration process does not currently appear to support the ability to register such wishes.

Lewis Macdonald: The current registration process is simple and offers people the opportunity to indicate their wish that their organs be used for donation post death. We think that that is appropriate and that we should keep it simple and keep it that way. However, in this context, it is worth referring to the electronic health record that we expect people to have in future, which will give people the opportunity to express their wishes on a range of different subjects. Clearly, that is one area in which Mr Stevenson's inquiry could be addressed once the electronic health record is in place; it should be in place for everyone by 2010.

The bill focuses on the requirements for authorisation rather than the mechanism by which that authorisation is recorded. We fully support the continuing use of the organ donor register. We expect it to continue as one of the main vehicles for recording people's wishes for years to come.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I say to the minister that that is absolutely right. However, there was a bit of confusion in the committee about whether the bill would have to be amended at stage 2 to ensure that it reflects the Executive's wishes.

Lewis Macdonald: We intend to lodge appropriate amendments at stage 2 to ensure that full cognisance is taken of the register. I will come back to that point in the course of the afternoon.

We acknowledge that people might choose other means to record their wishes—I mentioned electronic health records a moment ago. We want there to be flexibility in the ways that people can choose to record their wishes, both now and in the future, and that is why we have not specified in the bill any particular means of recording a person's wishes.

In the post-mortem context, the authorisation requirements will be reflected in new standard forms. The bill's authorisation provisions will therefore be translated into a series of statements and tick boxes, along with provision for signing and witnessing. The forms will provide complete certainty about what has been authorised. In particular, they will give families a permanent record of what has been agreed. Similar arrangements will be made for the other contexts in which authorisation is required under the bill.

The formalities of authorisation for transplantation in part 1 of the bill are less demanding than those for post mortems in parts 2 and 3. That reflects the nature of transplantation, which is often life saving and often happens following the sudden and unexpected death of a donor. It also reflects the fact that there has been no significant public concern about the circumstances in which transplantation has taken place. As we know, that is not always the case with post mortems.

Part 1 deals with transplantation from the living, as well as after death. Adults who are capable of making their own decision can act freely as living donors of tissue if that is what they want to do. When they want to donate organs or parts of organs, their decision will be subject to independent scrutiny. We intend to use the powers under section 49 to enable the Human Tissue Authority to provide that scrutiny to ensure that no financial inducement is involved and that the donor has not been subject to any form of coercion.

When a person lacks the capacity to make decisions, there is even more need for protection. The bill therefore makes it clear that living children are excluded from any form of organ donation. That is a deliberate decision, based on the need to protect the child.

Stewart Stevenson: Is the minister satisfied that if organs are imported into Scotland for use in transplants, we will be able to ensure that financial inducements have not been part of the process of harvesting the organs that might be thus obtained?

Lewis Macdonald: That is certainly our intention, whether it is done in the context of this legislation or under more general criminal law, which continues to apply.

Children who are younger than 16 will be able to donate only regenerative tissue, which, in practice, means that they will be able to donate only bone marrow. When they wish to make such a donation, that process will be strictly supervised by the Human Tissue Authority. Again, I welcome the Health Committee's support for those proposals.

Roseanna Cunningham (Perth) (SNP): The minister will recall that the committee had some discussion about the problem of domino transplants in relation to children who are under 16. The irony is that under the proposed rules, a spare heart could not be authorised for onward use for a third party. Will the minister comment on that?

Lewis Macdonald: I will make my comment, but first I tell the member that we consulted separately on adults with incapacity, as the members of the committee are fully aware. The response to that consultation supports our overall aim of applying the principles of the Adults with Incapacity (Scotland) Act 2000 to the issues dealt with in the bill. That means treating adults with incapacity in the same way as any other adult so that when an adult expresses wishes before losing capacity, those wishes should be respected after death.

Roseanna Cunningham rightly raised the issue of domino transplants. We accept that children and adults with incapacity should be able to donate organs as part of a domino transplant procedure, subject to appropriate safeguards. Clearly, such circumstances arise only rarely. We want to protect the ability to make available for transplantation for a third party the healthy organ of a child or adult that is replaced as part of a wider transplantation. We will define the procedure and how it should be safeguarded in the bill as we progress.

We will lodge amendments at stage 2 in relation to adults with incapacity and the donation of regenerative tissue. Again, that will be subject to scrutiny by the Human Tissue Authority, and it is consistent with our approach to living children and donation.

Part 5 seeks to amend the Anatomy Act 1984, which provides a framework for the regulation of the donation of bodies for anatomical examination. We are taking the opportunity afforded by the bill to update some of the provisions in the 1984 act. As a consequence of extending the licensing arrangements for the public display of anatomical human remains, we recognise that there is a need to exempt bona fide museums. That point was discussed in committee. We will lodge an amendment at stage 2 to achieve that. The Health Committee was concerned about whether there was an arbitrary rule to safeguard the position in relation to remains that are more than 100 years old. In fact, the ability to exempt remains of some age from the licensing requirement is covered by the Anatomy Act 1984. Therefore, no separate provision will be required for remains that were in place prior to that act being brought into force in 1988. There will be no requirement for a distinct 100-year-old rule in relation to the commitments that I gave at committee, in which I know that members were interested.

Although the bill is about a number of things, I highlight two of our objectives in particular. First, it is about restoring public confidence in the post-mortem examination process. It recognises that post-mortem examinations positively benefit the health of the living. I hope that this new legislation will allow those who were distressed by the previous practice of organ retention at post mortem to move on, in the knowledge that the law is being changed to ensure that future post-mortem practices will be based on active authorisation, which will itself be based on the wishes of the individual or of his or her family.

Secondly, the bill is about modernising the legislative framework for transplants and organ donation. It builds on public support for transplants and allows the authorisation of organ donation in the context of strengthening the system of opting in. The bill is intended to boost organ donation rates, for the sake of all those who are waiting for the new lease of life that a new organ can bring.

Strengthening and modernising the existing system is the correct way to proceed. The lesson of Alder Hey is that we should not presume consent and that we should encourage authorisation. Clearly, that is the purpose and will be the effect of the bill. All those changes taken together can make a real difference.

I move,

That the Parliament agrees to the general principles of the Human Tissue (Scotland) Bill.

14:48

Shona Robison (Dundee East) (SNP): The Scottish National Party is pleased to support the general principles of the Human Tissue (Scotland) Bill. I put on record my thanks to the people who gave evidence to the Health Committee; given the complexity of the bill, their evidence was most helpful to committee members. I also thank the people who sat on the review groups, which were the starting point for the bill.

It is important to separate organ donation from organ retention, which all too often end up being lumped together. Given the complexity of the bill, I am pleased that the Executive took the decision not to include its provisions in the Smoking, Health and Social Care (Scotland) Bill, because the task that we would have faced would have been even more difficult than the one that we face today.

With regard to organ donation, it is crucial that the focus is placed on determining the wishes of the deceased person and ensuring that those wishes are respected. As the minister said, the concept of authorisation should ensure that, in cases in which they are registered in some way, a person’s wishes are respected and that, when no such wish is registered, there is a clear process for ascertaining any wishes and for seeking authorisation through the nearest-relative hierarchy. The minister put it well when he spoke about a positive decision in favour of, rather than an objection to, an act. We very much support that principle.

The Health Committee recommended that reference to the organ donor register be made in the bill. I recognise that the minister has agreed to amend the bill at stage 2 to ensure that those who are currently on the register will be deemed to have given authorisation under the new system. That is very welcome. The hope is that, by strengthening the opt-in system, there will be an increase in the number of organs being donated in Scotland. I know that members across the chamber favour a system of presumed consent, but I do not believe that that would be the right way to proceed, given the need to build public confidence in the system. That is an important consideration and I do not think that proposals for a system of presumed consent would do that. The new system should make it easier to ascertain the person’s wishes. As we know, most people want to donate their organs. Alongside the change in legislation, a public awareness campaign will be crucial to encourage more people to register their wishes and to discuss them with family members.

There was a fair amount of discussion in the Health Committee about parental authorisations for children. The bill provides that, in the case of the death of a child under the age of 12, it is up to the person who, immediately before the death, had parental rights and responsibilities and so can authorise organ donation, hospital post mortem or the use of samples that are no longer required for the procurator fiscal’s purposes. If there is a dispute between parents about the authorisation of a post mortem on the body of a child or about the donation of organs, the bill allows clinicians to proceed with the intervention.

The ministers will be aware of the evidence from Professor Sheila McLean of the review group on the retention of organs at post mortem, who said that, if there was a dispute between parents,

“a post-mortem should not go ahead”.—[*Official Report, Health Committee*, 8 September 2005; c 2105.]

When asked about that situation, the Deputy Minister for Health and Community Care said that

“clinicians, when faced with a position in which two parents took different views, might well take the safer option of not proceeding.”—[*Official Report, Health Committee*, 25 October 2005; c 2314.]

He also noted that the bill allows clinicians discretion in that respect.

Given the sensitivities around the issue, and in order to protect clinicians who might be caught in the middle of a very difficult situation, I support the Health Committee’s call for clear guidance on how disputes between parents should be handled. We need clarity on that. Further guidance on how the needs of looked-after children are to be considered in cases of a dispute between the responsible local authority and either parent would also be appreciated.

Concerns were expressed about the late withdrawal of authorisation for organ donation, which could obviously put the recipient at risk. Further consideration needs to be given to such situations. I welcome the minister’s commitment in that regard and his willingness to consider lodging an amendment at stage 2 to provide clarity on the matter.

The rules for living donation as outlined in the bill are sensible. They include a prohibition on live donation, with the exception of regenerative tissue, for those under the age of 16, the purpose of which is to protect against the possibility of coercion. I welcome the further clarification on domino transplants that the minister provided in his speech.

There are continuing concerns over what constitutes tissue and what is an organ. We had some discussion of that question in relation to the liver. I know that there has been clarification on that: a liver is to be treated as an organ, rather than as regenerative tissue. However, other parts of the body, such as skin—my colleague Roseanna Cunningham will go into the issue in more depth—could be regarded either as an organ or as regenerative tissue. The details need to be clarified so that there is no confusion.

Concerns about hospital post mortems arose from what can only be described as a breach of trust on the part of some people in the medical profession who failed to respect the rights of parents in situations in which clear authorisation to remove organs from deceased children was lacking. Having listened to harrowing accounts from parents in my constituency, I think that it is essential that the bill provides the required reassurance to parents and others who find themselves in such traumatic situations. It is fair to say that procedures have already changed in the wake of Alder Hey and other scandals, but it is crucial to frame such changes in legislation.

The concept of authorisation also applies to hospital post mortems and can be a complicated matter, given the different standards of authorisation required in each case. There is a risk of confusion, so public awareness and professional training will be essential. Clear and explicit procedures for authorisation are required and I back the committee’s recommendation that consideration be given to having a separate form in respect of children under the age of 12 years.

The penalties for a breach of the procedure are, quite rightly, severe. They must be, to restore public confidence and reassure the public that such scandals will not happen in future.

There has been some debate on the issue of post mortems that are carried out by the procurator fiscal. It would be difficult to apply the concept of authorisation to circumstances in which forensic procedures were required. However, improvements can be made to the way in which families are treated and kept informed. I am aware that the Crown Office and Procurator Fiscal Service has taken action on that.

The bill also deals with reform of the Anatomy Act 1984. There is a need to ensure that human body parts are not displayed for what would be regarded as purely entertainment purposes, but are treated with a degree of respect. However, people are concerned about the need to ensure that bona fide museums are not affected and are exempt from a licensing requirement. The minister’s clarification on that is welcome, as is the clarification on the 100-year cut-off date.

There is little that divides us on this issue; we all support the Executive’s intentions. However, we need to see from the minister a willingness at stage 2—of which we have had an indication today—to address some of the concerns that, having listened to the evidence, the Health Committee raised. I look forward to further discussions on those matters at stage 2.

14:57

Mrs Nanette Milne (North East Scotland) (Con): Together with my fellow members of the Health Committee and everyone who gave evidence to us, I welcome the bill and support its general principles, particularly the provision of separate legislation governing organ donation and the retention of organs and tissue at post mortem, as recommended by the Scottish transplant group and the review group on the retention of organs at post mortem.

It is crucial that the wishes of deceased people and their families are safeguarded in this day and age and that families in future are spared the distress suffered by others in the past when the organs of their loved ones were retained at post mortem without their knowledge or permission.

I welcome the new framework for organ donation and transplantation, post-mortem examinations and the associated removal, retention and use of body parts.

I agree with the Health Committee that there are areas in which the bill could be improved and in which action will have to be taken to support its effective implementation. I hope that the minister will respond positively to the committee’s recommendations.

I welcome the concept of authorisation for organ donation and transplantation and for hospital post-mortem examination, because an active decision by those concerned should better respect in death the wishes of the deceased. However, I share the concern of a number of witnesses that the requirements for authorisation in the bill differ depending on the activity being undertaken. As the British Medical Association has pointed out, it is absolutely essential that doctors are clear about the requirements. Setting different criteria means that there is a risk of confusion and inadvertent breaches of the law.

It is particularly important that there is a clear understanding of what is being authorised for hospital-based post-mortem examinations and that sound information is provided to all those involved in the process. The draft authorisation forms that the Executive has drawn up are sufficiently explicit to allow separate authorisation for the full range of procedures and purposes contained in the bill and the form for adults is quite straightforward. However, the form for post mortems involving babies or children is complex and needs to be simplified. I hope that the Executive will accept that and will draw up separate forms for those aged under 12 and those aged over 12, for the benefit of those who are being asked to give authorisation. It is also important that appropriate information, guidance and support are available for bereaved families who are facing the decision on whether to authorise procedures in respect of their deceased child. I trust that the Executive will ensure that that happens in practice.

On organ donation and transplantation, I commend the bill's intention to promote, support and develop programmes of transplantation. I also note that the director of Spain's national transplant organisation has said that the most important factor in identifying organ donors is not having an opt-out system but having a person in hospitals who is responsible for identifying possible donors. With the legislative changes that the bill proposes and appropriate public awareness-raising campaigns, I would hope that the rate of organ donation in this country would increase without the need for an opt-out policy such as exists in Spain and some other European countries.

The bill's intention is that, if an individual carries an organ donor card or is on the NHS organ donor register, that will be regarded as authorisation and relatives will not be able to veto their intentions. Self-authorisation can be written, verbal or electronic and I am pleased that work is being done to put in place the necessary safeguards to enable us to ensure that the registrations are authentic.

Committee witnesses have expressed concern about people who object to organ donation or hospital post-mortem examination and about the fact that there is no adequate means of ensuring that their wishes are respected. That also applies to people who are willing to donate some organs for transplantation but not others, such as corneas, which quite a lot of people are reluctant to donate.

I agree with the committee that the absence of fail-safe mechanisms to allow people to record their wishes, be they positive or negative, is a cause for concern that the Executive should consider. In particular, the bill should make reference to the NHS organ donation register, and consideration should be given to establishing a register of people who specifically do not wish to be organ donors.

On transplants involving live donors, it is important to safeguard against coercion, particularly with regard to vulnerable people, such as children and adults with incapacity. Therefore, I am in agreement with the bill's prohibition of living donation by children under the age of 16, except in relation to regenerative tissue. I also agree with the Scottish Council on Human Bioethics that the provision should apply to adults with incapacity who have never had capacity. I was pleased to hear that the Executive will take into consideration the prohibition's impact on domino transplants involving children under 16 because, as it stands, the bill could result in a healthy organ, such as a heart from a child who has received a heart and lung transplant, being wasted.

The bill's provision to allow mature children over the age of 12 to authorise organ donation for transplant after their death or to give advance authorisation for a hospital post-mortem examination was generally supported by witnesses, provided that the children are given adequate information and support when they make such decisions. I hope that the minister will commit the Executive to giving specific guidance and training to the relevant medical professionals on that sensitive issue.

It is extremely important that the public be made aware of any new systems that are put in place. There will have to be an adequate public awareness programme, coupled with professional training for those who are involved in the system. Such public awareness raising will have to be done on an on-going basis, even though that will be costly, with repeated campaigns over time to ensure that successive organisations understand the systems that are in place for organ donation and post-mortem examination. Such things can be forgotten as time passes.

On the updating of the Anatomy Act 1984, in respect of anatomical examination and the public display of anatomical specimens, the minister's commitment to amend the bill to take note of the concerns of bona fide museums is welcome. I hope that the Executive will acknowledge the need to collaborate with the museums and other relevant institutions to further clarify the practical implications of the bill.

There are some other concerns that I share with the committee, but suffice it to say that given that those that I have not mentioned, as well as those that I have, will be considered and, I hope, dealt with during the later stages, I am happy to accept the general principles of the bill on behalf of the Conservative party and to support the motion.

15:04

Euan Robson (Roxburgh and Berwickshire) (LD): I welcome this bill on behalf of the Liberal Democrats. It modernises and clarifies legislation in the areas of organ and tissue donation, transplantation and hospital post-mortem examination and deals with deficiencies in the law in the difficult area of the use of bodies and body parts.

As others have said, the bill is intended to repeal and replace the Human Tissue Act 1961, to amend the Anatomy Act 1984 and to amend and incorporate certain provisions of the Human Organ Transplants Act 1989. It is worth noting that, instead of three acts, there will be just one point of reference for people to consult. That alone is a considerable benefit.

I will say a few words about the three main areas, but first I acknowledge the work that was undertaken by the Scottish transplant group and the review group on the retention of organs at post mortem. The minister mentioned that work, which was indeed valuable. The Executive's policy for the bill develops the organ donation strategy for Scotland, which was published in 2002.

It is vital to recognise the figures that the BMA and others have set out. They show that, in the year ending March 2005, 52 Scots died while waiting for an organ transplant. That figure contrasts with the figures from studies that show that, even though the public overwhelmingly support organ donation, only 25 per cent of people in Scotland have signed the organ donor register. That is the highest percentage in the United Kingdom, yet some 700 people are still awaiting a transplant.

The Executive's policy memorandum clearly shows that the number of relatives who refuse organ donation in cases in which the deceased's wishes are unknown has risen in recent months, perhaps as a result of adverse publicity. There are two ways to increase the supply of organs—presumed consent and authorisation. It is immensely important that we increase the supply of organs and doing so must be one of the primary purposes of the bill.

Presumed consent is not the answer. I understand that a number of European countries operate on the basis of presumed consent, or versions of it, with people opting out rather than opting in. However, authorisation or self-authorisation is far preferable. The wishes of the deceased should be respected without a family right of veto. The reason why authorisation or self-authorisation is important is, as Shona Robison mentioned and as my colleague Mike Rumbles will mention in more detail later, that it will re-establish trust after some difficult experiences in recent years.

Brian Adam (Aberdeen North) (SNP): Does the member agree that, although we have problems with the trust between patients and medical staff, there is a danger that we will not have enough properly trained medical staff if we go too far down this route? Their competence might be called into question because there will be too few hospital post mortems—and a knock-on effect on forensic post mortems—so we will not have the pathologists to do the work.

Euan Robson: I will say something about pathology later in my remarks, but I entirely agree with the member. The point that he makes is another reason for increasing the supply of organs.

As Nanette Milne said, the Executive should will the means to achieve higher levels of self-authorisation. I welcome the minister's commitment to do that and I welcome his agreement that it is right to ensure that those who are currently on the NHS organ donor register should be recognised under the bill and should not have to reregister. Clarity was needed on that point but the minister provided it today.

I turn to the regime for tackling the trafficking of organs. The proposals are welcome and the fines seem to be appropriate for what is a particularly gruesome activity. I particularly welcome the references in section 17 to those who negotiate or initiate that activity, who will henceforth unequivocally be included in the legislation as committing an offence.

Does the minister envisage an appeals body or appeals to ministers when exceptions to regulations under section 15 apply? The Human Tissue Authority might be an appeals body—it is referred to—but it would help if he envisaged simply a reference to ministers or to a separate body.

I appreciate the work on hospital post mortems that the independent review group on the retention of organs at post mortem did. The bill provides appropriate parameters. I will not dwell on particular aspects of part 2, save to say that the policy aspiration has been fulfilled. Having been in this awful situation, I whole-heartedly endorse the aim of placing the sense of control in the hands of parents when the post mortem of a baby or child is considered. Such a time is difficult and stressful. The point about guidance when a dispute arises is valuable. At such a sensitive time, difficulties may exist between parents, so guidance for clinicians would help. I also endorse Mrs Milne's point about counselling and advice for bereaved parents.

I note that the committee had several concerns in relation to part 3, particularly about the need for improvements in the Procurator Fiscal Service, which are important, and for amendments on museums—I thank the minister for saying that he would lodge those. I was particularly struck by Professor Jeanne Bell's oral evidence to the committee on the training and research opportunities for pathologists. That relates to what Brian Adam said. It would be good to hear how the minister thinks that those difficulties could be clarified and how that work will be fully supported and enhanced in the light of the bill.

The bill is an important and substantial piece of legislation. I welcome it whole-heartedly and have no hesitation in commending its general principles to the Parliament.

15:13

Eleanor Scott (Highlands and Islands) (Green): First, I declare that I am still a member of the British Medical Association.

The Greens very much welcome the bill. I am grateful to the Health Committee for its stage 1 report—all however many pages of it—to all the people who gave evidence and contributed to the report's production, to the Scottish Parliament information centre for three useful briefing documents and to all the organisations and individuals who contacted members about the bill.

We support the bill's intention to give greater clarity to the law on hospital post mortems and to make clear the difference between consent to post mortem and consent to organ retention. The bill uses the term "authorisation", rather than "consent", given the difference between the situation that it deals with and the usual circumstances in which consent for medical procedures is sought. I agree with that helpful distinction.

It also helps that the bill sets out the hierarchy of people who can authorise procedures in terms of their relationship to the deceased person, but a few issues could arise in practice, such as when people who are in the same place in the hierarchy, such as children, have differing views. I hope that the position can be clarified, perhaps in regulations rather than in the bill. That will be crucial when parents have differing views about a deceased child. I support the committee's view that guidance is needed on such disputes, which will need sensitive handling.

One matter on which I am not quite convinced is the arbitrary threshold of 12 years of age for mature minors' ability to make decisions with regard to post mortems and organ donation. The threshold is rather out of line with the current situation in respect of consent for medical treatment. Having an arbitrary threshold that is defined by maturity is not helpful.

In general, I welcome the improvements that the bill will make to the current laws on organ donation, but I was a bit disappointed that the committee and the Executive remain unconvinced by the arguments for moving to presumed consent to organ donation after death. As we have heard, there are currently simply not enough donated organs to meet the needs of those who require transplants. We have seen from the BMA's briefings that between April 2004 and March 2005, 52 Scots died while on the list for transplants—Euan Robson mentioned that. The figure does not include those who died before they were put on to the list. We know that the incidence of renal disease, for example, is likely to increase with the increase in type 2 diabetes, so we can expect more people to require renal transplants, and we know that a large majority of people—90 per cent in a United Kingdom study—would want their organs to be used after their death, only a small proportion of whom get round to putting their name on the organ donor register.

Yesterday, I carried out a small straw poll among a group of 14 well-educated adults at our Green group meeting of members and staff. Of those 14 people—who have a high level of awareness—only two or three had got round to putting their name on the organ donor register. Many had organ donor cards, but did not know where they were—I include myself among those people; I was also one of those who had not got round to putting their name on the register. One person produced a rather dog-eared donor card from their pocket. All of them want their organs to be used after their death. I do not think that that group is atypical. Many people out there would like their organs—and perhaps those of their relatives—to be used, but have never got round to doing anything about it, although they have always intended to do so.

The time has come for a change from an opt-in system to an opt-out system. I support John Farquhar Munro's proposal for a member's bill on that. I realise that extensive publicity would be needed in advance of such a change, but extensive publicity will be needed for an opt-in system anyway if we are to come close to meeting the need for donated organs.

The system that the BMA has proposed, whereby relatives would be informed that the deceased had not opted out of organ donation but would be given the chance to object either because they know that the deceased was opposed to their organs being used or because distress would be caused to relatives, is a good enough safeguard.

Mike Rumbles: Is the member aware of the evidence that John Forsythe of the Scottish transplant group gave to the Health Committee?

The Health Committee’s report states that he

> “suggested that there is little evidence from international experience that changing to a presumed consent system produces a major change in levels of donation.”

That is really not the issue.

Eleanor Scott: It is difficult to extrapolate things from one country to another. There may be different levels of publicity in different countries, and different systems for requesting organ donation may pertain in hospitals. I am prepared to be convinced, but I think that changing to an opt-out system would be better than the current system in which there must be a specific request to use the deceased relative’s organs. I recognise the minister’s and the committee’s commitment to increasing organ donations, but we should reconsider the system.

I do not have much time to deal with the other parts of the bill, but I would like to say something about organ donation from living donors. I endorse the committee’s general support for the bill on that matter, but I have concerns about domino transplants—which Roseanna Cunningham mentioned—which could result in the waste of potentially life-saving organs. I was reassured by the minister’s response on that and on issues relating to adults with incapacity, which he also mentioned. However, I do not have enough time to go into such matters.

On changes to the Anatomy Act 1984, I welcome the minister’s commitment to work with museums and other institutions on the display of bodies and body parts. It is crucial that people who have a genuine educational purpose are not in any way put at a disadvantage by the proposed legislation.

Finally, I will pick up on an issue that Brian Adam raised. I am a bit concerned that pathology is liable to become the most punishable branch of medicine and about the effect that that might have on the supply of pathologists. I realise why the proposals have been brought into the bill and the intention behind them, and I understand the situations with which they are intended to deal, which should never occur again.

Brian Adam: Is not it true that, although the pathologist will be punished, the person who sought and received the authorisation will be someone completely different? Why should the pathologist be punished if the mix-up is someone else’s responsibility?

Eleanor Scott: There are many situations in which the buck stops with somebody who may not have carried out the act but who must, ultimately, bear the responsibility. There are anomalies. I want to ensure that there is a supply of pathologists to carry out forensic pathology, as Brian Adam said; I do not want pathology suddenly to become an unattractive medical career.

I support the principles of the bill on behalf of the Green party.

15:20

Janis Hughes (Glasgow Rutherglen) (Lab): One of the difficulties in speaking to a stage 1 report of which the committee was broadly supportive is the fact that other committee members have already said what I wanted to say.

Even at stage 1, the bill has not been an easy one to consider, although the Health Committee broadly supported the bill at the end of its deliberations. There are a host of sensitive issues to consider, and we are all aware of the need to respect conflicting opinions on the bill. I thank those who gave evidence to the committee at stage 1, especially those for whom that was an emotional experience. The Executive should be congratulated on producing the bill. Although the evidence that we took was wide-ranging in its content, much of it focused on organ donation, and that is mainly what I will speak about.

Most of us accept that the current shortage of organs necessitates the consideration of a new approach—members have already mentioned that. I worked in a renal unit for 11 years and saw at first hand the difficulties that are faced by those who suffer renal failure and the often heartbreaking wait for a suitable donor. Although it is heartening to see new advances in medicine allowing more living donor transplants to take place, that is not an option for many people. For many other people, life on the transplant waiting list is a long and arduous experience. Therefore, it is vital that the Executive does more to raise awareness of the importance of organ donation.

I congratulate the BBC on the work that it did recently in its donation campaign, which sought to highlight the chronic shortage of donors in the UK and some of the problems that are faced by those who are waiting for transplantation. The Executive has launched several high-profile campaigns that urge people to become donors, yet we continually hear that, although surveys show that 90 per cent of people support organ donation, many are not registered donors. As Eleanor Scott said, although it is easy to register as a donor, many people still have not taken that step.

As Shona Robison suggested, if we are to accept that presumed consent is not the right step to take at the moment, we must do more to turn the support for organ donation into action. Organisations such as the Driver and Vehicle Licensing Agency and the UK Passport Service routinely send out information on how to join the register, as do companies such as Boots, which includes the information on application forms for its advantage card. I would like that practice to be widened out. I hope that the Executive will work with organisations in the public and private sectors to ensure that the wider public realise how simple it is to register as a donor.

I welcome the important commitment that the minister gave at stage 1 to lodge an amendment at stage 2 to ensure that people who are currently registered on the NHS organ donor register will be treated as though they have expressed authorisation for the purposes of the bill. The requirement makes it all the more important that we encourage more people to register as potential donors.

During the stage 1 deliberations, one of my main concerns surrounded parental authorisation for post mortems on children. Shona Robison has detailed the potential problems that we identified. A host of difficulties could arise, so it is vital that the Executive ensures that there is clear and widely available guidance on how disputes between parents should be handled. As we heard from some of the clinicians who gave evidence to the committee, the position in the bill is not as clear as it could be. More guidance needs to be produced on the issue.

Similar problems are associated with adults who have left no specific expression of wishes. However, the bill establishes a clear nearest-relative hierarchy that is underpinned by the principle that the wishes of the deceased must remain paramount. Again, it is incumbent on the Executive to ensure that that hierarchy is fully explained to the public.

I fully support the bill’s provisions on authorisation powers for children who are aged 12 and over. If a child is considered capable of expressing their wishes, they should have the right to do so. As with other aspects of organ donation, and perhaps even more so in this case, we must ensure that children are given adequate information and support when making such decisions.

Passing the Human Tissue (Scotland) Bill was never going to be easy, but the Executive should be commended for introducing it. The move to a more positive authorisation system will increase the availability of organs for transplantation. The committee felt strongly that ministers must ensure that they promote information and awareness about the proposed new systems. Whether that information is on the donation of body parts for transplantation or post mortems, it is vital that we make the public aware of their rights and responsibilities and provide the necessary guidance, support and information.

The bill is positive, and it is imperative that the Executive continues to work to persuade people of the need to register as donors. I hope that the minister will take that point on board. I urge the Parliament to support the bill’s general principles.

15:26

Roseanna Cunningham (Perth) (SNP): I echo Janis Hughes’s frustration at the fact that often in these debates, by the time we speak, what we want to say has already been said.

I hope that members will take the stage 1 report as read. Rather than doing yet another Cook’s tour, I will focus on two major themes. The first concerns what the bill is not about. As has been said, it is not about presumed consent. At stage 1, I was struck by the evidence of Dr Calum MacKellar from the Scottish Council on Human Bioethics. We have heard a lot about Alder Hey today; Dr MacKellar highlighted that what had happened at Alder Hey was, if nothing else, a form of presumed consent gone badly wrong. In that and in subsequent high-profile cases, it was patently obvious that consent was a very emotive issue that could not simply be swept aside. Some people, including a minority of committee members and the BMA, would have preferred it if the Executive had opted for the presumed consent route. However, I note that the Royal College of Nursing does not share that view. I understand the logic of the proponents of presumed consent, but my view is that a moral imperative does not necessarily mandate a legal imperative, which is what we would be doing if we went down that road.

Proving a negative is notoriously more difficult than proving a positive. Even in the context of the bill, committee members discussed the possibility of setting up a non-donation register, as Nanette Milne mentioned. That would have been an absolute necessity with presumed consent. I carry an organ donor card. I want my organs to be used to help others in the event of my death—perhaps that declaration is a form of authorisation under the bill. I have made that known to those closest to me, who will be asked to make a decision if that time comes. I would absolutely hate it if I thought that they would be bound by that when my distress was over but theirs was just beginning.

At a time when many people tell us in various surveys that they have no objection to donation, the lack of people registering to donate is a big issue. The same people tell us that they do not object to increased taxes, but are not so keen to vote for them when it comes to the crunch. Perhaps we should be a little careful about distinguishing between what people tell us and what they really feel.

The capacity to authorise provoked an interesting debate. We need to keep firmly in mind the fact that there are two distinct issues: live donation and post-mortem donation. The bill defines a child as a person under the age of 16. A child cannot authorise live donation but, if they are over 12, they can authorise post-mortem donation. Sheila McLean of the review group suggested that the qualifying age for live donations should perhaps have been 12 rather than 16. Most committee members were instinctively opposed to that, principally because it was felt that young people might be pressured too easily, particularly in a closed and emotional family situation. As a result, we felt that the bill was right to protect those children.

Members have already referred to two specific issues that arose during our stage 1 consideration. Under section 15, it is an offence to remove

> "an organ, part of an organ, or any tissue which is not regenerative tissue, from the body of a living child intending that it be used for transplantation".

Given that live liver transplants are possible partly because of the organ's regenerative properties, one might have thought that the bill would have allowed for under-16s to donate a portion of their liver. As the public announcement came too late for the committee to take any evidence on the matter, I, on the committee's behalf, raised it with the minister, who clarified in writing that

> "Children under the age of 16 would simply not be eligible for consideration as donors".

Indeed, he has restated that position this afternoon.

In that instance, the distinction between organ and tissue is clearly important. However, the only reference to definitions of tissue and organ in the interpretation section of the bill is that

> "'tissue' includes bone marrow".

John Forsythe of the Scottish transplant group suggested that we would all be

> "comfortable with … a piece of skin … being transplanted".—[*Official Report*, *Health Committee*, 8 September 2005; c 2103.]

If so, such definitions and distinctions must be clarified. After all, because the skin is itself an organ, under the minister's interpretation, an under-16 could not provide skin for transplantation, however small the piece in question. I am not sure that that is really the intention.

Another anomaly arises in the context of domino transplants, which took some committee members a little time to sort out. In such situations, a heart-lung transplant from patient A to patient B results in a spare healthy heart from patient B being available for a possible onward transplant into patient C. The committee did not think that it made sense that, in such a rare situation, patient B could not authorise the use of the spare heart if he or she was under 16. The alternative is simply to put the heart in the bin, so I am glad that the minister has stated that he intends to sort out the matter at stage 2. Such a situation would have been astonishing.

The bill's implications are such that we will need a massive education and publicity drive to ensure that everyone is aware both of the changes that it will make and of what will not change. One of my local papers, the *Perthshire Advertiser*, has been running a responsible, public-spirited campaign to encourage people to carry an organ donor card. I applaud the paper for that and hope that its work bears fruit. However, everyone must be clear that organ donors who are already on the register do not have to re-authorise. I welcome the minister's clear statement of intent in that respect.

As one member has pointed out, concerns have been expressed about the additional distress that could be caused by the detail of the forms that parents who have just lost a child are required to fill in. The forms are complicated—indeed, they are probably a little too complicated to be presented to people at such a harrowing time. I hope that the minister will have another look at the issue and take on board the committee's other recommendations.

I thank all the committee members for their work at stage 1 and all the witnesses, including the minister, from whom we heard, particularly those who represented parents groups—they must have found it difficult to give evidence on such an emotive subject. My special thanks go to members of the clerking team, who have done sterling work throughout the process. I commend the bill to the Parliament.

15:33

Carolyn Leckie (Central Scotland) (SSP): We are debating an important and difficult issue and I believe that, given the tenor of the speeches so far, it has received the respect that it deserves.

The context for the bill and the debate is the history of certain not-very-good conduct by a minority of health organisations and professionals. Such conduct is not born of malevolence; it is a result of culture, time, resources, a certain patronising attitude and a lot of other issues that health professionals have acknowledged and are examining.

I am sure that, like me, many other members have personal experience of some of those mistakes, particularly with regard to stillbirths and neonatal deaths. Not so long ago, the issue was not just about the retention of organs—if a baby was stillborn or died just after birth, the hospital simply took full control not just of the organ parts but of the whole body. In some cases, it has taken years for parents to find out what happened to their child, whether it had been cremated or buried and, if buried, where that had happened.

My own family has experience of that—it is extremely traumatic. I do not think that the health professionals involved at the time meant anything bad by what they did; that was the culture of the time. However, the impact and the cost of such an experience can be traumatic for years to come and indeed in subsequent generations. There has been a vast improvement in the culture, but a lot still needs to be done to improve it.

I also have professional experience of dealing with difficult situations with stillbirths and miscarriages and I have been part of a team obtaining consent for post-mortem investigations. The process is difficult and time consuming and it is an emotionally difficult experience for staff. I would like to say a wee bit about that. Other members have mentioned the difficulty and complexity of forms for parents and relatives, but the situation is also difficult for staff, who have myriad complex and daunting forms to fill in following stillbirth or neonatal death or in other situations.

Resources for health professionals and health organisations are important, because staff should have the time to talk with relatives—more time to talk than the time that is required to fill in the forms. Unfortunately, that is not the case: staff are under tremendous pressure to get the forms filled in, which leaves them without enough time to counsel and support relatives and to obtain proper informed and supported consent. I ask the minister to consider those issues and to come back with some assurances about how staff will be supported, educated and properly resourced to carry out their duties in the improved culture that we certainly hope to see.

Our party supports the principle of an opt-out situation for organ donation, because of the shortage of organs. Let us not forget the many patients who are attached to renal dialysis machines, whose lives could be improved dramatically if more organs were available. We appreciate that the subject is difficult to broach and we believe that an opt-out could be introduced only with the consent of the population, as part of a drive to encourage awareness and participation and to turn the opinion poll findings into an express, proactive will on the part of the population to have an opt-out system.

I also argue that there would have to be an obligation on health authorities to demonstrate that people had been given the opportunity to opt out. Documenting that should be entirely possible within the new arrangements—using an electronic health record, for example. If there were an obligation on general practitioners or health professionals to obtain permission or to give people the opportunity to opt out when they came into contact with them—as they do throughout their lives—and if the GP or other professional had to document the fact that the patient had been given that opportunity, that would provide some safeguards on top of those that the BMA proposes for an opt-out system.

Evidence from countries with opt-out systems shows that rates of organ donation are higher there than they are here. In Belgium and the Czech Republic, there are rates of 20.8 and 20.5 per million of population, whereas the rate is only 12.3 per million of population in Britain. There is a gap and I hope that the bill is enough to get the rate of organ donation up, although I suspect that it is not. There was an opportunity to conduct a proper public consultation exercise about that issue. I hope that amendments to that effect will be considered, but there are obviously some caveats.

One caveat that concerns me is the need to ensure that people have equal access to opting out. That is where registration of the opportunity to opt out would come in. The BMA’s briefing cannot provide an analysis of the composition of people who have donated organs in countries such as Belgium and the Czech Republic. I am concerned that social class would be a factor in how many organ donations were made. It worries me that people from more privileged backgrounds who are more articulate and more assertive would be more likely to be proactive and opt out than those from poorer backgrounds. That issue must be examined to ensure that the processes are all tied up.

We should not fall out over the issue on a party-political basis. We are all here because we want to increase the number of organs that are available for donation, but the question is how to achieve that. We should definitely not rule out an opt-out system for the future. It is a shame that we are discussing whether to have an opt-in or opt-out scheme in the context of the poor history of the scandal at Alder Hey and all the other scandals that have been mentioned. The issues are not necessarily connected, but the fear of moving to an opt-out scheme is a manifestation of those poor experiences. I offer support for the general principles of the bill. I share some of the concerns that other members have raised, but I support the bill in general.

15:41

Mr David Davidson (North East Scotland) (Con): It is undoubtedly time for an update of the legislation, because the scandals of the past have caused great uncertainty. As Carolyn Leckie said, there are problems about getting access to organs for transplant.

I favour an opt-in scheme, so I am pleased that the bill provides for that. However, such a scheme must be promoted. Serious campaigns must be conducted to ensure that the system works. The opt-in system protects people's rights and it can be operated sensitively—such an approach can eliminate many of the stresses and strains that occur at a time of terminal illness or even immediately after someone's death. However, I am not convinced that the Executive has laid out fully where it wants to go with promotion.

On the other aspect of the bill, it is essential that we can conduct medical research, for which we need donations of organs and parts. If we are to have a boom in the number of medics and health professionals of all types, as is required in this country, they will have to be trained in an up-to-date manner—not everything can be simulated on a computer.

Education is also a concern to the public. It is important that people know that health professionals are being educated in a certain manner and that there is no secrecy about it. The issue comes down to the training of staff. Who deals with the service? Who is the interface with the possible donor or the family? Another issue in that respect is the calibration of equipment.

I whole-heartedly agree with the minister on commercial trading and exploitation. We should cover those in the same way as we trace where goods come from so that we can vouchsafe for them. I hope that the minister will be able to give further detail on that issue in his wind-up speech.

The wishes of the deceased are paramount. I am interested to see the fine print—which might be discussed at stage 2—on how the minister will deal with parental knowledge and rights and how he will promote donation schemes such as donor cards. As has been said, there are concerns about registration variations. Someone may wish to donate their eyes but nothing else or they may wish to donate only their heart. People need guidance on those issues while they are still alive and can make such decisions.

I have concerns about the fact that self-authorisation could be written but not necessarily signed—indeed, it could simply be oral. The minister has not yet dealt fully with what will happen if someone changes their mind and wishes to withdraw from the scheme.

I have real problems with the way in which the bill deals with children over the age of 12. How does one define a mature child? Where is the definition in law? The definition is a matter of opinion and the issue has not been addressed correctly. What checks and balances will there be? Who will be the witnesses? What qualifications will they have? Will they be independent? Will they give people confidence? The bill seeks to build confidence, but I do not yet see sufficient detail. How can somebody who may have been as bright as a button before becoming ill—be they 12 or 72—suddenly, when severely ill and possibly on medication, be able to give a clear and sensible view?

How does one define informed consent? What are the practicalities? Will a child of 13 have to be told what is going to happen to them and what will happen to their body parts afterwards? Is that considerate and sensitive care for people who are terminally ill? I have my doubts and I am not satisfied with the proposed measures.

On the question of electronic proof, I have not seen any fail-safes in place. We have hackers and all sorts of other things and the computer systems in the health service are certainly not that clever. We need to be doing something about that.

Other members have mentioned counsellors—those who counsel people in illness through such decisions, advising them on whether to sign a form, or on how to sign it, when they are under pressure. When people lose somebody because of a severe illness, or because an operation has gone wrong, is that the right time for them to make decisions?

As members will have gathered, I am not happy about various aspects, although I do not wish to be too discordant with the principles of the bill. Many people have contacted me over the past few years about these issues—I am sure that the same goes for all other members—but I do not yet see all the answers. I appreciate that the minister is arguing that we should agree to the principles today. However, more detail is required.

If we are to deal with the many issues that the bill does not address but that people have raised—I am sure that there are more to come—I hope that the stage 2 process will not be rushed. I hope that the Health Committee will have time to deal fully with the bill.

If we are to have an improved transplant service, we need to build public confidence and to encourage people to donate. We have to ensure that we can train our medics for the future. I hope that the minister will tell us how he will train counsellors and how he will put in place witness systems that people will see as being independent and as deserving the trust of the people. He has to do that fairly soon.

15:48

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Fifty-two Scots died last year while waiting for an organ transplant and almost 700 Scots are waiting on the transplant list. Those figures are a stark reminder to us all that, for every one of those people on the list and their families, a real tragedy could be averted if we could somehow increase the number of transplants taking place. Increasing the availability of transplants and saving lives is one of the bill's main aims. Everyone who has given evidence to the Health Committee for our stage 1 report has had that in mind. The focus has always been on how best to achieve that aim—how best to save lives.

I commend whole-heartedly the approach that Scottish Executive health ministers have taken on the issue. In the bill, their move away from consent for transplants towards a far more appropriate system of authorisation is entirely the right approach to what can be a difficult and emotive subject. It must be right that the wishes of the individual are respected and that we take the opportunity to ensure that their wishes are carried out.

Part of the problem with the current system of carrying a donor card is that it has no legal authority—the card and the organ donor register have no legal status. That often comes as a surprise to people, but it is the case. People may be entirely unaware of their deceased relative's wishes and have to be asked in difficult circumstances to give their consent to organ donation. That is not a good situation, to say the least. Everyone agrees that the current system must be reformed, which is what the bill is about.

The system of authorisation that the bill outlines is the right way to proceed. It is soundly based on an individual's clear wishes. If authorisation is given, there is no other hurdle to overcome. If the individual is not one of the 25 per cent of Scots who have already made clear their wish to donate, the nearest relative will be asked for authorisation in order to proceed. That will clearly be a huge improvement on the current system and it would lead to a dramatic improvement in transplant rates.

My one main concern about the bill is, as I outlined in committee, that we must ensure that the many names on the organ donor register are not lost in the proposed new system. That concern has been reflected by members from all parties. I am not satisfied—neither is the Health Committee—that the bill as it stands will ensure that everyone on the current register will be covered. The minister has recognised our concerns. Paragraph 97 of the committee's report says:

> "The Committee welcomes the Deputy Minister's commitment to amend the Bill at stage 2 to ensure that those who are currently included on the … Organ Donor Register will be treated as if they have expressed their authorisation in the context of the new system provided by the Bill."

I was pleased to hear the minister confirm today that he will lodge a suitable amendment at stage 2.

I want to spend a little time considering the only really controversial measure in this part of the bill. Most witnesses who gave evidence to the committee supported the Executive's approach, but the BMA in particular seemed to be intent on pursuing the idea of presumed consent—the opt-out approach—to which members have referred.

The whole basis of our national health service is informed consent and not presumed consent. In other words, it is not "Doctor knows best." According to Dr MacKellar of the Scottish Council on Human Bioethics, the system of presumed consent as advocated by the BMA would be a breach of the European Convention on Human Rights and Biomedicine.

Eleanor Scott: Does the member accept that presumed consent can also be informed consent if people are informed that they can opt out?

Mike Rumbles: No, that is not true. Presumed consent is not informed consent. We must be absolutely clear about what we are dealing with.

The BMA's argument that an opt-out system would increase donations is flawed—it would not do so. John Forsythe of the Scottish transplant group said in his evidence to the committee that the refusal rate—relatives refusing to consent to a transplant—was 30 per cent a few years ago but had increased to 46 per cent. He said:

> "We can only guess why the refusal rate has risen but, following the events at Alder Hey children's hospital and Bristol royal infirmary, there has been a slight loss of trust between those who deliver care and those who receive care. It is important that what we put in place does not damage that trust any further."—[*Official Report*, *Health Committee*, 8 September 2005; c 2111.]

Paragraph 133 of the committee's report—I hope that Eleanor Scott will read it—highlights John Forsythe's further comments:

> "There is little evidence from international experience that changing to a presumed consent system produces a major change in levels of donation. He indicated that colleagues in Spain, where an opt-out system is used, had advised him that what happens there is very similar to what is proposed in the Bill – that relatives are consulted to ascertain the views of the deceased."

I am afraid that the BMA has got it wrong. The bill is not, as it says, a missed opportunity—far from it. The minister knows that, whenever the Executive has got it wrong, I am never slow to point that out. However, on this issue, the health ministers have got it absolutely right. Authorisation is exactly the right way to proceed. I am convinced that the bill will be instrumental in saving lives, but it is important that it is coupled, as the minister suggested, with a major advertising campaign.

Everyone involved in the business of organ transplantation—not least those 700 patients on the waiting list and their families—should be delighted with what is a very good bill. I urge all members to support whole-heartedly the bill's general principles at decision time.

15:55

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I, too, welcome the bill's provisions on organ transplantation, and I support the measures that will increase the supply of organs for transplantation. I agree with much of the analysis that has been given in the chamber by Mike Rumbles, Roseanna Cunningham and the minister that a system of presumed consent would not deliver much of what we would like it to deliver. I agree with the position that we have reached on that.

I will concentrate my remarks not on transplantation, but on organ and tissue retention and post-mortem practice. As the minister pointed out, that was the reason for the genesis of the bill five years ago when I occupied the ministerial hot seat. In the two and a half years for which I held that post, I came across many cases of pain, loss and suffering and many contentious issues. There are few issues that are so indelibly etched not just on my memory, but on my consciousness.

The loss of a child is always a tragedy and the impact on a parent is immense. As is often said, it is not the natural order of things. The loss was much worse for those parents who discovered that organs and tissue samples had been removed from their children and retained, not just without their consent but without their knowledge.

It was said at the time, it has been said since and it merits repetition that we never had a Scottish Alder Hey; nothing on that scale happened in Scotland. The work that was put in train at that time uncovered practices throughout the country that we regard, in this day and age, as unacceptable. It was right that the medical profession apologised explicitly for that practice and its old-style paternalism. It was also right that politicians gave the commitment to work to change systems, culture and practices, and to embed those changes in legislation. I am pleased that, as others have acknowledged, there have been marked changes in systems, culture and practice during the past few years. I am particularly pleased that we are now putting in place the final piece of the jigsaw through legislative change. It is a promise kept.

I have not sat on the Health Committee for the past few years and I did not follow the detail of the bill as others have done. However, in the run-up to this stage 1 debate, I made it my business to acquaint myself with the terms of the discussion and much of the detail that the committee has considered. In looking into the organ retention aspect of the bill, I was struck that many people had described the issue as largely uncontroversial. I could not help but be slightly amused by that, because it was not always thus. I highlight that because we spend a great deal of time in politics, in the press and in the chamber, focusing on controversy and giving plaudits to those who fan the flames of controversy. We spend insufficient time applauding the efforts of those who have sought solutions and built consensus. The Human Tissue (Scotland) Bill is a tremendous example of an area in which a range of individuals and organisations have worked very hard to forge consensus. Today's stage 1 debate provides an opportunity for us to acknowledge that.

As others have done—but, again, this is quite personal—I pay tribute to Professor Sheila McLean, whom I charged with this task all those years ago. I often thought that she must have cursed me for doing that, but she and the other members of the review group did a tremendous job of work, not just in poring over the detail of the law, and of forms, practices and all that needed to be put in place, but in the inordinate amount of time that they spent face to face with people who had been affected. I know that that took its toll on those members of the group, and I acknowledge their efforts.

As others have done, I thank the many parents who engaged in those discussions. Many of them engaged actively and constructively with the process of seeking solutions and building consensus from a starting point that, if members remember, was anything but consensual and where there was much pain and hatred. We have come a long way. I pay tribute to the parents and wider families who engaged with the process.

I note the contributions that were made in the early stages by a range of organisations. It is unfair to single out any of those organisations, but one that has not been mentioned, and which Carolyn Leckie prompted me to mention, is the Stillbirth and Neonatal Death Society. As many members know, SANDS did a tremendous job in shaping our thinking during the early stages of the bill and, crucially, in changing practice in our hospitals and communities for handling stillbirths and neonatal deaths. SANDS deserves recognition.

Many professionals engaged with the process. In some respects, I echo some of Eleanor Scott's concerns regarding the work of pathologists, who make an immense contribution not only to maintaining the standard of treatment and care in our hospitals, but to pushing out the boundaries of our knowledge. It saddened me greatly that they were sometimes unfairly criticised and even vilified in the early days of the debate. I hope that from now we will move on and not only restore confidence in pathologists, but recognise their contribution.

The tragic irony was that the vast majority of parents who were caught up in the situation and who discovered that organs had been retained without their knowledge or consent said that if they had been asked they would have said yes, because they recognise more than most the importance of research into the conditions from which their children suffered. One of the reasons why I feel positive about the measures in the bill is that I hope that, from this point on, we not only restore the position of our research effort to what it was pre-Alder Hey, but strengthen it, because it matters so much for the future.

The bill's provisions on a new legal framework for post-mortem practice are to be welcomed. I agree that the move towards authorisation as opposed to informed consent is not only the right language to use, but the right concept and practice to use to deal with the removal and retention of organs and tissues. I am pleased that the bill makes provision for sensitive and sensible arrangements for the use and storage of tissue samples.

Of course, there are issues of detail to be addressed at stage 2—I look forward to that detail being developed—but we have before us a bill that sets us in the right direction. I pay tribute to all those who helped us with that important and sensitive but vital task, which I am sure will make a big difference in the future. We cannot change the experience that many parents had, but we can avoid it being the experience of others in the future.

16:03

Brian Adam (Aberdeen North) (SNP): Today, we are debating a committee's stage 1 report on a bill. It might be better in terms of our procedures, and potentially less contentious—although the bill is not particularly contentious—if the committee convener were to lead the debate on the committee's stage 1 report. I note that the convener of the Health Committee was the fourth or fifth committee member to speak today.

Lewis Macdonald: Far be it from me as a minister to comment on the Parliament's procedures, but while I recognise the importance of the convener's contribution, our mechanism is that ministers bring to the Parliament a bill that they have brought forward. Of course, the committee report informs the debate, but I believe that, technically, the debate is on the motion to approve the general principles of the bill.

Brian Adam: I am happy to recognise that the Executive will introduce most bills. However, if we are to examine the general principles of a bill, as we are doing today, and if we are to judge whether there has been adequate consultation on it, the committee's role at stage 1 might be given higher priority.

The challenge that the bill represents for the Executive has been elucidated by a number of members, including Susan Deacon, who highlighted the fact that the bill was precipitated by scandals south of the border, particularly at Alder Hey hospital. That led to a close examination of practices throughout the country. The temptation under such circumstances is to draft some harmonising legislation to allow problems north and south of the border to be dealt with. I am delighted that, on this occasion, the Executive has chosen not to go down the harmonisation route but to deal with the situation in our own way. We have our own practices and our own needs. Some aspects of the issue impinge on our law and our pathology practices, particularly when it comes to forensic pathology.

I wish to talk about what is not in the bill, probably as a consequence of the very sensible procedures that we have adopted. In the early stages, thought was given to the need for authorisation or consent, whichever of those words we eventually decide to use—authorisation sounds good to me—to be given for the use of ante-mortem material for any purpose. That purpose would have had to be specified every time that a person went to the doctor and had a blood specimen taken. Let us imagine that the patient in question says that they feel a bit tired and the doctor decides to check their thyroid function. The specimen is taken and arrives in the lab, where a thyroid function test is done. However, the machine is not working very well the next day and there is not much confidence about the commercial quality control material that has been brought in, so it is decided to go back to the patient's specimen and run the test again. However, this time the specimen has not been used for the purpose for which the patient gave it; the patient has not given their consent and no authorisation has been granted. The 1,500 people whose blood specimens are taken the day after might get rather dodgy results, because we have not reached the right point in the process.

I understand that that is the position that our colleagues south of the border might find themselves in as a result of the route that they decided to go down. I am delighted to find that the piece of nonsense that I have just described has been dropped. It was not just a question of whether specimens were used for quality control purposes; they might have ended up being used for teaching purposes or for research. We might want to do a prevalence study to ascertain the background rates of hepatitis B infection among the population of a particular area, and we might want to do that anonymously. However, unless consent or authorisation is given, and unless there is an explanation by the doctor, the nurse or the phlebotomist who took the specimen—if they had the authority to do so—we could find ourselves in a very difficult situation. I am delighted—as, indeed, are many people in the medical and associated professions—that we dropped all that nonsense. That is one of the reasons why the Human Tissue (Scotland) Bill is so much better than the Human Tissue Act 2004 that people south of the border have been presented with.

There are still some difficulties, but I hope that they will be teased out at stage 2 or stage 3. There are genuine concerns about the significant reduction that has taken place in the number of hospital post mortems. It may well be that post mortems took place in the past that were not strictly necessary for the purposes of filling out a death certificate. Nevertheless, as a result of work that is done in hospital post mortems, we are still finding new evidence about new disease processes and about better ways of administering medicine. We are still discovering how bodies work—the physiology, biochemistry and pathology of the human being. As we restrict that work, the opportunities for improvements in the general health of the population are also restricted.

In addition, there are significant implications for the training of general pathologists. If they do not have the opportunity to conduct post mortems while they are in training, we will not get adequately trained pathologists for the future, so the standard will drop. That has significant implications for the forensic pathology profession or sub-specialism. All forensic medicine north and south of the border is under review. Perhaps the minister’s colleagues in the Justice Department might consider that taking different routes north and south of the border might be appropriate. Traditionally, we north of the border have been light years ahead of general forensic medicine south of the border. We could end up with the lowest common denominator. If we insist on members of the Royal College of Pathologists conducting all the post mortems, we will not be able to train our own forensic pathologists for the future. I counsel the minister to take care on those grounds.

I am concerned that the individual who will be punished if there is any mistake is the pathologist, who has had no direct involvement in seeking consent. I hope that the minister will take that on board.

16:11

Helen Eadie (Dunfermline East) (Lab): I am grateful for the opportunity to speak in this important debate. During the Health Committee’s consideration of the bill, I have had to spend a considerable amount of time on the Edinburgh Tram (Line One) Bill Committee. It has caused me concern that I have not been able to participate as fully as I would have wanted to. If I say something that is out of line with what my committee colleagues have said, I apologise.

I join my Health Committee colleagues in expressing sincere sympathy for those whose trust was breached by professionals who failed to understand or respect the right of parents to authorise procedures relating to their children. The committee made that important acknowledgement early on.

In the past six years, there will have been moments when individual MSPs have felt that the legislation that they were passing was the most important of all. The part of the bill that deals with organ retention that can lead to transplantation is, for me, the most critical legislation that we have ever passed.

Mike Rumbles and Carolyn Leckie mentioned some of the statistics that were provided by the BMA. I will not repeat them all, but one figure that I think has not been mentioned is that between April 2004 and March 2005, 52 Scots died while they were waiting for an organ transplant; others have died without even reaching the waiting list. That is a salutary thought for us all.

I understand that organ donation has been in rapid decline in recent years and I believe that the bill will turn that round and make transplants easier. I have carried around my old and battered NHS organ donor register card for many years and I was extremely pleased to learn that the donor register is central to plans for implementation of the bill. I was also interested to learn from Professor McLean that one of the major differences between the legal regime in the bill and that in the previous act is that a relative will no longer be able to veto a donor’s wishes. The bill will mean that if someone has registered their wishes, the card that they carry will hold more weight in the future that it ever did in the past. The obligation under the bill will be to discover only whether the person has changed their mind. There will be no obligation to ask spouses and distant relatives whether they agree.

In common with other elected representatives, I have had to assist constituents who were grieving parents whose children had undergone hospital port mortems. Of course, that is an aspect of the Human Tissue (Scotland) Bill. As we all know, the bill has its origins in the distress that was caused to families by revelations in 2000—which have perhaps been understated today, except by Susan Deacon—about the way in which organs had been retained at post-mortem examinations without the families' knowledge or permission.

Professor Sheila McLean, who chaired the review group on the retention of organs at post mortem, has demonstrated real commitment. On behalf of the constituents whom I represent who have had involvement in this matter, I would like to thank Professor McLean and those who served with her on that group. In the time in which I have been an MSP, I have had no issues raised with me about transplantation but I have had to progress a number of cases for my constituents relating to hospital post-mortem examinations.

The stage 1 report quotes Lydia Reid:

> "Relatives are not frightened of detail; they are frightened of being shut out and of not being given knowledge … People in that dreadful stage are totally astounded and cannot believe that their relative is dead, particularly if that relative is a child. However, even though they are stunned and grieving, they respond far better to honesty and openness than to anything else. People should respect their intelligence and explain the situation."—[*Official Report*, *Health Committee*, 27 September 2005; c 2248.]

I think that that is what Professor Sheila McLean, the review group and others have tried to do in the bill. In that regard, there has been a recognition of the fundamental importance of parents' rights to make decisions in respect of their deceased children and to be able to access corresponding information. Again, that point was well made by Susan Deacon.

I know that the bill does not directly address the procurator fiscal's post-mortem process. However, I am aware that the review group has been pleased with the way in which the Crown Office has co-operated with it by taking account of its recommendations.

In the evidence that was taken by the Health Committee, it was made explicit that there are sound reasons for Scotland to legislate separately on this issue, although the Human Tissue Act 2004 is a recent piece of Westminster legislation. Professor McLean explained to us that there is a set of underpinning reasons why Scotland should legislate on its own. Professor McLean and Will Scott from the Scottish Executive advise that it is important that we separate transplantation from organ retention and removal, which the English report did not do. The other reason is that the Scottish review group had a much bigger remit than did its equivalent for Bristol and Alder Hey. Finally, the review group was invited to consider adults, thereby making it likely that the Scottish solutions would be different.

I welcome the fact that an important aspect of the bill is the adoption of the review group's suggestion that the tissue that is stored in the way of tissue blocks in studies should become part of the medical record and should, therefore, be available for future research or diagnostic work.

To be perfectly honest, I was not party to the internal deliberations of my committee, so I ask its members' forbearance with regard to what I am about to say. I have an open mind on the BMA's proposal that we should have presumed consent. As Roseanna Cunningham said, there is pain beyond that of the person who has died; there is the pain of the surviving relatives. However, I am sure that the BMA would say that we also need to think about those whose pain could be eased or relieved if they could have an organ transplant.

On the European convention on human rights, I hear the point that Mike Rumbles was making. However, we need to bear in mind the fact that the ECHR is not only about the rights of the individuals and that it must take wider society into account as well.

16:19

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): I, too, am in favour of the general principles of the bill.

We have come a long way. It is clear from what Susan Deacon said that involving people in the process and providing them with knowledge can help us to go further. Things fall apart when people are excluded. What happened south of the border was evidence of that. So far, nothing like that has happened north of the border but I remember certain comments about intra-uterine deaths and stillbirths. I know people who look back, more than 25 years later, and wonder about babies that did not live. It is poignant to think about those people.

Having said that, I am one of those dreadful people who have not signed up to the organ donor register. Personally, I would have gone along with the BMA's proposal that there should be an automatic opt-in system. However, I understand that the Government did not go down that route because we are trying to build people's confidence and trust and that is the most important thing. I just have to get my act together. Everybody in my family and everybody in the Parliament knows what I ought to do and what I want to do, but I have to get on with it.

I want to be assured that the options in the electronic system will include a definite no, as well as a definite yes. I also want to be assured that the electronic signature will be secure, so that people will be added to the organ donor register only if they sign up. It is always fairer to our families if we are clear about our desires because that frees them from the burden of decision that can arise at a later stage. We should not place that burden on our families.

I admit that, when I read the bill, the first thing that struck me was that it specified the age of 12 years for authorisation. Many people under 12 have inspired me by how they dealt with their major illness and pending death. I have concerns about this. I agree with Dr Adrian Margerison, who said:

> "My understanding of a 12 year old would be that if such a child had seriously considered and given consent for a post mortem then it would be extremely disrespectful and wrong for adults to act emotionally and say that the request needed to be ignored because we do not find it acceptable."

I am grateful to Jude Payne from the Scottish Parliament information centre, who compiled all the information on the complicated proposals on authorisation. The authorisation forms will make things easier, but they could be improved.

A mature child can self-authorise organ donation and transplantation in writing, but there is no requirement for the authorisation to be signed. Withdrawal of that authorisation must be in writing but, again, there is no requirement for it to be signed. A mature child can self-authorise a hospital post-mortem examination in writing, but it must be signed by the child and witnessed by two witnesses. Withdrawal of that authorisation must be provided in writing and it must be signed by the child. The provisions in the case of a fiscal's post mortem are the same. I am concerned about the child's self-authorisation of organ donation and transplantation because it does not have to be signed and there is no requirement for witnesses. I can see that parents might be concerned about who might be discussing the matter with them in the ward and so on. We should consider whether there is a better way to approach the authorisation. The bill refers to the "mature child", but some children of 12 are not mature. Some adults of 70 are not mature. It all depends on how one is prepared to take it on board.

I agree with many points that have been made. I, too, am concerned about pathologists. I think that I read in the bill that authorisation and consent may be passed on to the manager of a pathology department by telephone, with written consent to follow. If I misread the bill, I apologise, but given the technology that is available nowadays one ought to be able to scan the document into a computer and ensure that the pathologist has it in front of him so that there is no doubt. He will not want to go ahead with something that somebody else is not sure about in case they have made a mistake. That would be a criminal offence.

I want to see the authorisation form for the mature child—that is, a child aged between 12 and 16—but we do not have it yet.

I am pleased that we will consider domino transplants, which are important. I was struck by the approach of parents who had lost children and were concerned that everything should go the right way. They were keen on research and keen that things should be done correctly, as long as consent is obtained. We must be careful about the definitions of an organ, a tissue and a block. One person may mean something different from another, so the definitions must be clear.

We have come a long way in the bill. I agree with the recommendation on adults with incapacity. If somebody had capacity when they said that they would like to donate their organs, that should be accepted. We must accept that we will never obtain authorisation from people who have never had capacity.

I commend the bill. I congratulate everyone who was involved in producing it and I thank the Health Committee for making authorisation easier to follow. Without the little grid in the report, even I would have been lost.

16:26

Kate Maclean (Dundee West) (Lab): I preface my remarks by saying that I am one of the minority of Health Committee members who are in favour of presumed consent. Many of the difficult issues that were raised, some of which I will refer to later, would not arise under an opt-out system, but that is an idea whose time has not come, unless John Farquhar Munro is going to do something about that.

I welcome the bill. It was interesting to hear evidence on it in the committee. Many provisions in the bill needed to be looked at and reviewed. To an extent, we were pushed into the bill because of the much-publicised distress that surrounded the retention of organs and tissues at post mortem, particularly those of children and babies, which has been referred to. Another factor was the concern that professionals and the public expressed about the lack of organs for donation and the lack of clarity about authorisation. It is heartbreaking to see stories in the paper and pictures of young children who are waiting for organs. That has prompted the debate.

It was interesting that much of the discussion and many of the questions about post-mortem donations for transplant or scientific research or about simple post-mortem examinations with no organ or tissue retention concentrated on the feelings and wishes of surviving relatives and friends, rather than those of the person who died. We spent much time discussing those matters. The bill seeks to ensure that someone's wishes are carried out after their death, but I am not sure whether achieving that will be straightforward.

The minister's commitment to amend the bill at stage 2 to ensure that people who are currently on the NHS organ donor register will be treated as if they had given authorisation under the new system that the bill will establish is welcome. However, it was clear to me and, I think, to others that if there is any dubiety after someone dies or if those in the nearest-relative hierarchy disagree, organ donation might not proceed. That concerns me.

When the committee was taking evidence, I expressed concerns about the nearest-relative hierarchy for adults. It is rather narrow and dated and does not accurately reflect today's society, in which many people do not live in such structures and traditional family groupings. I do not know whether adults could record their chosen hierarchy for making decisions about such issues; I would welcome comments on that when the minister sums up.

The BMA made useful suggestions in its briefing about how those concerns could be addressed. In particular, it suggested that people could

> "opt to extend the role of their 'welfare attorney' (appointed under the Adults with Incapacity Act) to make decisions after their death".

We could usefully consider that.

I agree with the BMA about the nearest-relative hierarchy, but I totally disagree with it about living donations by mature minors, with the exception of domino transplants and regenerative tissue donations, which have been mentioned. I am relieved that the minister has ruled out amending the bill to allow living donation. I urge him and other members not to bow to pressure on that because the issue is important and people may not have thought about it.

In its briefing, the BMA stated:

> "The BMA believes that those who are able to give valid authorisation, including mature minors, should be able to be altruistic living donors of whole organs provided there are adequate safeguards in place to avoid the risk of coercion."

I do not think that it is possible to put in place

> "adequate safeguards … to avoid the risk of coercion."

There is an equally important issue. It would not be possible to put adequate safeguards in place for young people who choose not to donate organs, so that they avoid repercussions, or to safeguard them against any emotional reaction in the future. That has not been mentioned, although it was raised in committee. Nobody can imagine how a 12-year-old would feel—or how other people would make them feel—on attending the funeral of a sibling whose life could have been saved if they had donated a kidney. The state has a duty to protect young people against such problems. I agree with the BMA that no one, regardless of their age, should be coerced into making a living donation, but human nature being what it is, we cannot realistically legislate for that and we certainly cannot legislate for how people would feel afterwards.

I hope that the bill will clarify difficult issues and will ensure that, as far as possible, people's wishes about what will happen to their bodies after they have died are fulfilled. I hope that the bill will also protect vulnerable people, particularly minors, and urge members to support it.

16:31

Mary Scanlon (Highlands and Islands) (Con): Before the start of the debate, the Rev Alastair Symington mentioned that it is St Andrew's day and that St Andrew was always ready to get on with work and that he got the work done. I commend everybody who has worked hard to reach where we are with the Human Tissue (Scotland) Bill. Members in all parties recognise how difficult the bill's passage has been.

In his opening speech, the minister said that the bill will modernise the law in complex and sensitive areas that have raised concerns in the past. He also mentioned bringing clarity to a difficult issue.

Susan Deacon mentioned her experience as the Minister for Health and Community Care. I am aware that the issue has been on the agenda since the Parliament was set up in 1999 and, like her, I remember when it was highly controversial. In that light, I commend all those on the Health Committee and elsewhere who have sought consensual solutions.

In the past, people were not asked for consent. Obviously, that led to tragic and traumatic experiences for many families. I should say that Margaret Jamieson of the Labour group has done a huge amount of work on kidney donor cards, not only here and in her constituency, but in the cross-party short-life working group. That needs to be said.

I want to mention an issue that we should not forget, although it does not relate to the bill. The minister must also consider prevention—I think that Jean Turner mentioned that. It must be continually considered, particularly given the huge increase in the number of people with type 2 diabetes, for example. We should help to obtain early diagnosis of type 2 diabetes and control it to try to prevent kidney failure and other complex illnesses that can result.

I have just remembered what a friend of mine told me at the weekend. He went to the doctor and told the doctor that he was tired. As a result, he has been treated for depression for two years. However, he was still tired and it was discovered that he had diabetes. Rather than anti-depressants simply being handed out, a test should have been done. There is still quite a way to go in that respect.

Obviously, living donations—including donations of parts of organs—are welcome and I am delighted that the ministerial team and the Health Committee have agreed to an opt-in system rather than presumed consent and opt-out. I hear what the minister says about the bill increasing the number of donors. That should in itself be a self-correcting mechanism to reduce any requirement for presumed consent and opt-out.

In the past, although people gave their consent for organ donation, that could be overruled by relatives. That has caused a lot of anxiety and has been one of the main arguments for presumed consent. It was also the argument that was put forward by Richard Simpson in the previous session. The bill removes that right of veto and allows the deceased's wishes to stand. That is welcome, and I assume that it will increase the number of organs that are available for donation.

I have just looked at the draft authorisation forms for both adults and children, which were given to me by Nanette Milne. They are straightforward and clear. Authorisation can be given not only for the removal of specific organs, but for the way in which, after retention for detailed examination, the organs are to be disposed of or retained. The donor can also authorise the purposes for which the organs can be retained. I hope that that will be taken into account, so that there will be no undue delay in funeral arrangements. Authorisation is more likely to be given when the donor can state those requirements in detail and nothing is left to chance.

It is crucial that people understand that they can agree to a post mortem and disagree to organ retention. I did not understand that until I looked at the forms. People assume that, when they are faced with a form, they are faced with organ retention. It is important that people can disagree to organ retention but agree to a post mortem.

As other members have said, we must raise public awareness and ensure that there is more training for professional staff so that patients' families are aware of all the issues. I appreciate the difficulties that may arise in some instances because of the cause of death, especially if death occurs through an accident or suicide. The financial memorandum to the bill states that the initial cost of the training for hospital staff will be £100,000 to £150,000. I hope that that figure will be reviewed in the light of experience.

Several members have mentioned the definition of tissue. In the past, that was the main cause of concern because parents had agreed to tissue being taken from their children and found out later that that could mean major organs. It is important that we are all part of the awareness-raising campaign and that MSPs take every opportunity to let people know about the clear and precise provisions in the bill.

The financial memorandum states:

> "Very few hospital post-mortem examinations are currently being performed."

This afternoon, we are talking not just about organ retention. I hope that the bill will also encourage more post mortems to be carried out for, as Susan Deacon said, the benefit of medical science and to assist us in understanding diseases.

Members have mentioned the 52 people who died while they were waiting for a transplant. We should also remember that, in 2004, 111 kidney transplants were performed in Scotland, each of which saved the NHS around £25,000 a year in hospital haemodialysis costs—and that is not to mention the transformation in the patients' quality of life.

The Scottish Conservatives support the general principles of the bill and acknowledge that detailed consideration and scrutiny of the bill must still take place at stages 2 and 3.

16:39

Stewart Stevenson (Banff and Buchan) (SNP): It is worth stating the obvious: attitudes to this subject vary both within families and beyond. One side of my family has an entirely different attitude to this from the other. One of my relatives opted for medical research. The post-mortem cadaver went to four different locations for four different sets of students. That person's spouse expressed a similar wish later in life although, for a variety of reasons, we were unable to deliver on those wishes.

However, someone on the other side of my family, although being a recipient of organ donation—in this case a cornea, which is not quite what we are talking about—had an instinctive revulsion to their remains being used post mortem for the benefit of others. We have to recognise and understand people's views. In considering the subject further, we have to accommodate that diversity of views while ensuring that we educate people and talk to them before difficult decisions have to be made. We must also do that in the hope of persuading more people to support others post mortem.

All the Scottish National Party members have donor cards or have registered to say that our organs can be used post mortem. From the speeches of other members, it appears that that is broadly the case for them too. Curiously enough—and I hope that my party leader will forgive me for saying this—the one good argument for identification cards is that such information could be carried on them. It is a matter of regret that the Identity Cards Bill specifically excludes carrying medical information on ID cards. The minister might bring that up with colleagues south of the border the next time he is talking to them. That is not a commitment to supporting ID cards—

Carolyn Leckie: Will SNP MPs move an amendment to that effect?

Stewart Stevenson: I rather doubt it. I am expressing an entirely personal opinion, as indeed I said at the outset. I only expressed the view that it is passing strange that medical information is excluded.

It is important that we have mechanisms to allow us to understand people's views at a point when we can no longer ask them. Of course, family and loved ones have a role, but we must put the interests of the person who has died at the core.

Children are quite capable of making informed decisions on this matter. I am sure that, as the bill proceeds, that will continue to be debated. I am not certain that people with incapacities should automatically be ruled out. For example, people with a degree of mental incapacity or learning difficulties are on the electoral register and make decisions about which of us come here and go elsewhere. Are we to deny people with that sort of influence the right to say in an informed way what should happen to their body parts post mortem? Questions remain, as it is difficult to find the right dividing line.

There will be challenges in years to come that we are not ready to incorporate in the bill. As medical technology progresses, we will increasingly be able to retain all the bodily functions of life beyond the point of death. The blurring of that distinction between life and death already challenges the work that is done in intensive care units, where people are on life-support systems. That distinction will become even more challenging in future. Indeed, there will be even more debate over the question whether it is morally, ethically and societally proper to keep the body functioning in order to preserve organs against the possibility that they might be of value. At this stage, we cannot anticipate some future difficulties. Interestingly, when organ donations first began, no one could have conceived of the now relatively common beating-heart donation.

On organ trafficking, I have looked at section 17 and read what the committee report has to say on the subject. I am not certain of the bill's approach to the cost of providing organs—as distinct from the buying and selling of organs—particularly with regard to the substantial costs that are associated with the international movement of organs. Of course, need and the ability to donate recognise no international boundaries, and we do not want to do anything that might make things more difficult.

Several members referred to domino transplants. Again, as medical technology is likely to increase the opportunities for and the number of such transplants and to affect their character, we should be careful not to do anything in the bill that might make it difficult to carry them out in future. That said, we cannot foresee the future entirely.

In paragraphs 48, 84 and 98, the committee recommends that the Executive advertise the changes in the bill and inform the public, especially decision makers who might be asked for consent post mortem, of the implications. As members know, I am not a great advocate of Executive advertising, but perhaps just this once I might generously suggest that the Executive should advertise.

Before concluding, I take slight issue with the earlier suggestion that there is a social divide in this matter and that more articulate people are likely to donate organs. I happen to think that people of every social class and educational background are perfectly capable of making proper decisions on this matter and we do no one in our society any favours by denigrating that ability.

One thing that we can be certain of is that we are all born to die. The Parliament will do a noble thing if it creates an opportunity for the dead to contribute to the lives of those who follow them. However, we commit evil if we presume to know the views of the dead. As the bill progresses through Parliament, striking the correct balance will be the challenge for the Executive—and, indeed, for all of us.

16:48

Lewis Macdonald: First, let me acknowledge the quality of this afternoon's debate. I have a strong sense of a consensus in the chamber both on the bill's general principles and on the sensitivities that we are required to acknowledge and respect if the bill is to make appropriate progress. That bodes well for the later stages of the legislative process.

In the past, certain problems arose because the Human Tissue Act 1961 had fallen out of date. As a result, we have designed the bill and suggested improvements to ensure that it accommodates technological advances and changes in attitude.

I suppose that someone had to mention the bill's devolution aspects. As all the issues are devolved to the Scottish Parliament, the bill must be tailored to Scottish needs and the Scottish legal system. There is equivalent legislation in the Human Tissue Act 2004, which applies south of the border. Although the bill reflects Scottish circumstances, we have also worked hard at official level with colleagues in the Department of Health to ensure that the principles in both sets of legislation are the same and that there is, as far as possible, a consistent approach. We recognise that that is important both for members of the public and for health care professionals who will have to work with both pieces of legislation.

The first issue to address is that of authorisation as against presumed consent. Although the bill quite deliberately separates off the issues to do with organ donation for transplants and hospital post mortems, we must recognise the lessons from cases concerning consent for hospital post mortems and apply those lessons across the board. Health professionals cannot presume consent on the basis of silence and we cannot allow decisions of that kind to be made on the basis of apathy. We need to relate authorisation to the views of the person involved as far as we can.

It is not the case, as I think was at least implied in one speech, that that is simply a judgment to which we have come unilaterally. Carolyn Leckie asked whether we had sought wider views. Indeed, in July 2002, when the Scottish transplant group made its proposals to strengthen the existing system of opting in, we consulted on those proposals, and we consulted again on the transplantation consultation paper in June 2004. Responses to both consultations very much favoured the approach that is now enshrined in the bill.

There has been a clear consensus in the chamber on the need to raise public awareness of the issues that are dealt with in the bill, particularly in order to increase the numbers of those authorising organ donation. That is certainly something that we are happy to take on board. The best kind of authorisation is clearly self-authorisation, so we want to make people aware of the extended opportunities that the bill will give them to express their wishes about what should happen to their bodies after death.

The need for public awareness also applies to post-mortem examinations and we will consider how we can best go about making people more aware of the important benefits to medical science, and therefore to the treatment of others, that can arise from post-mortem examinations. That is something that a number of members have said. We acknowledge the need to provide guidance on that to health professionals and I support the Health Committee's recommendations in that respect.

Susan Deacon: Does the minister agree that the provision of bereavement support services in hospitals and elsewhere will play a vital part in developing the context and conditions in which people can be informed and made aware of the changes that are taking place? Has he had the opportunity to look at some of the work that the cross-party group on funerals and bereavement has done to inform the discussion?

Lewis Macdonald: I acknowledge the importance of all that work and the significance of transplant co-ordinators, who clearly have already been playing a key role. We need to consider whether there are lessons to be learned from that to ensure that families are as well informed as they can be about post mortems.

We have paid close attention to the views that were expressed both by members and by witnesses in the Health Committee's consideration of the bill at stage 1. As I indicated earlier, we will address some of those views in amendments at stage 2. In particular, I highlight the need to find an appropriate way to ensure that existing Scottish entries by adults in the organ donor register and other existing requests that were made verbally by adults will count as valid authorisations when the new legislation comes into effect. This may not be the right stage at which to explore in detail what approach should be taken to such amendments, but I think that we need to remove the requirement for existing written requests to be signed. We must also extend the scope of the provision so that it covers existing requests that have been expressed verbally.

We will also want to consider how to allow the nearest relative to give verbal authorisation for transplantation. That reflects the concerns that were expressed by the Scottish transplant co-ordinators network, which wants to safeguard the current arrangements whereby authorisation is often given by phone.

The Health Committee raised the difficult and important issue of what happens when a nearest relative wishes to withdraw authorisation for transplantation. I made it clear when I responded to the committee's concerns that we want to address the issue at stage 2. One of the options might be to introduce a cut-off point based on the risk to recipients, but there are obvious practical difficulties with that approach. Therefore, the best way forward might well be to introduce an amendment that ensures that, once authorisation for transplantation is given by the nearest relative, it cannot be withdrawn. We will want to work with the transplant co-ordinators to ensure that if we go down that road, that aspect of the legislation is fully explained to families and any additional safeguards that are required are put in place.

Some amendments may be made at stage 2 in relation to the nearest-relative hierarchy. Kate Maclean asked whether people could vary the hierarchy. The key point is that if a person is clear about their own wishes, that takes priority over the wishes of any other person who may have an interest. The hierarchy is designed to be broad and to reflect current circumstances but, of course, the wish of the individual takes precedence over all that.

Euan Robson asked about appeals under regulations that are made under section 15(4). We are working on how the appeals process will be taken forward. Although it is likely that the process requires to be included in regulations, it is likely to be a judicial process rather than one involving either the Human Tissue Authority or Scottish ministers.

Roseanna Cunningham asked about the donation of part of a liver by a living child and about issues relating to skin and other matters of that kind. The definition of “regenerative tissue” that is included in section 15(7) does not cover part of a liver, so the bill makes it clear that “regenerative tissue”, in the context of existing medical technology, means only bone marrow. The committee may want to consider the matter further at stage 2, but I think that we are clear as to how the bill will apply.

A number of members asked about appropriate authorisation forms for children. I am happy to consider the matter, but I welcome the support for the drafts that have been brought forward thus far. We want to ensure that the requirements on families in what are stressful and traumatic circumstances are proportionate and reasonable, but we also want to ensure that there is clear protection and guidance for health care professionals. It is important that we get the balance right.

Stewart Stevenson and one or two other members raised specific issues to do with imported organs for transplantation. It is important to be clear that that is possible only within the European Union. The other EU member countries with which such exchanges might occur have similar regimes to ours, which would equally prevent any payment for organs in those circumstances.

A couple of members raised the issue of whether pathologists would be unduly penalised if they undertook a hospital post mortem for which a failure to get proper authorisation might lie in the hands of others. It will be essential that a pathologist who voluntarily undertakes a hospital post-mortem examination has a copy of the authorisation form. That will be a requirement in order for the examination to go ahead. There is a defence under the bill that the person who undertook the activity “reasonably believed” that it was authorised.

David Davidson asked about the legal basis for consent being given at the age of 12. I refer him to the Age of Legal Capacity (Scotland) Act 1991. In relation to transplantation, the child of 12 or over is assumed under the bill to be competent and so to be able to make a decision as regards authorisation. For reasons that have been well rehearsed, there are different provisions in different parts of the bill, as is appropriate.

We will seek to amend some of the bill’s provisions at stage 2. I have already mentioned the amendment that we will introduce in relation to museums. In relation to a child’s bequest for anatomical examination, we will seek to amend the bill to require that authorisation is witnessed in writing by two adults who are able to confirm the child’s understanding of the bequest.

The bill covers specialised but very important and sensitive subjects. It is the first time that we have had this debate in the Scottish Parliament. As I say, I am heartened by the broad support for the bill from all parties. I am grateful to all whose work has helped us to reach this point. I believe that the bill encapsulates modern attitudes to the issues with which it deals and provides a proper legal basis for the open, proper and legitimate use of human tissue and organs, for the benefit of individuals, their families and the population as a whole. I commend the bill to Parliament.

Business Motion

17:01

The Presiding Officer (Mr George Reid): The next item of business is consideration of business motion S2M-3655, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, setting out a business programme.

Motion moved,

That the Parliament agrees the following programme of business—

Wednesday 7 December 2005

2.30 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Stage 1 Debate: Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Bill
followed by	Executive Debate: Violence Against Women
followed by	Business Motion
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members’ Business

Thursday 8 December 2005

9.15 am	Parliamentary Bureau Motions
followed by	Executive Debate: First Anniversary of the Criminal Justice Plan
11.40 am	General Question Time
12 noon	First Minister’s Question Time
2.15 pm	Themed Question Time— Health and Community Care; Environment and Rural Development
2.55 pm	Executive Debate: Future Arrangements for Health Services in the Argyll and Clyde Areas
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members’ Business

Wednesday 14 December 2005

2.30 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Executive Business
followed by	Business Motion
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members’ Business

Thursday 15 December 2005

9.15 am	Parliamentary Bureau Motions
followed by	Stage 3 Proceedings: Family Law (Scotland) Bill
11.40 am	General Question Time
12 noon	First Minister’s Question Time
2.15 pm	Themed Question Time— Enterprise, Transport and Lifelong Learning; Justice and Law Officers
2.55 pm	Conclusion of Stage 3 Proceedings: Family Law (Scotland) Bill
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members’ Business.—[*Ms Margaret Curran*.]

Motion agreed to.

Parliamentary Bureau Motion

17:01

The Presiding Officer (Mr George Reid): The next item of business is consideration of one Parliamentary Bureau motion.

Motion moved,

That the Parliament agrees that the draft Civil Partnership Act 2004 (Consequential Amendments) (Scotland) Order 2005 be approved.—[*Ms Margaret Curran*.]

Decision Time

17:02

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

The first question is, that motion S2M-3627, in the name of Andy Kerr, that the Parliament agrees to the general principles of the Human Tissue (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament agrees to the general principles of the Human Tissue (Scotland) Bill.

The Presiding Officer: The second and final question is, that motion S2M-3650, in the name of Margaret Curran, on approval of a Scottish statutory instrument, be agreed to.

Motion agreed to.

That the Parliament agrees that the draft Civil Partnership Act 2004 (Consequential Amendments) (Scotland) Order 2005 be approved.

Vertex Call Centre (Dingwall)

17:03

The Deputy Presiding Officer (Trish Godman): The final item of business today is a members' business debate on motion S2M-3473, in the name of Maureen Macmillan, on the outsourcing of rail call centre jobs from the Vertex call centre in Dingwall. The debate will be concluded without any question being put.

Motion debated,

That the Parliament notes with concern the issuing of the 90-day notices to the 200-plus workforce at the Vertex Call Centre in Dingwall; notes that the loss of these jobs will have a major impact on this small Highland town; further notes that these jobs have been put in jeopardy by the decision of TheTrainline, a company which has Virgin Trains as its major shareholder, to move the contract outwith the European Union, in spite of Virgin Trains being in receipt of substantial amounts of UK taxpayers' money; supports the campaign of the Transport Salaried Staff's Association on behalf of the call centre workers who are a highly skilled and loyal workforce, and believes that the Scottish Executive should consider what influence it can exert to reverse TheTrainline's decision or assist Vertex in finding a new contract.

17:04

Maureen Macmillan (Highlands and Islands) (Lab): I am glad to be able to speak tonight on behalf of the workforce at the Vertex call centre in Dingwall. Most members present in the chamber will know Dingwall well. However, for the record, I will say a few words about this ancient royal burgh, the county town of Ross and Cromarty.

As its name tells us, the burgh was founded by Viking settlers. It once boasted a royal castle as important as that of Edinburgh or Stirling. It is a traditional small town with many independent traders and excellent butchers, bakers, drapers, greengrocers and so on. It has good communications by road, rail and air. It has a population of between 4,000 and 5,000 people and it is situated a dozen or so miles from Inverness.

Closeness to Inverness presents a challenge to Dingwall and other small towns in the inner Moray firth area, which must strive to retain their unique identity. Local shops and businesses depend for their livelihood on people living and working in the town—I use the phrase "and working" advisedly. Evidence that the Environment and Rural Development Committee took on the viability of small towns such as Dingwall showed the need for thriving medium-sized businesses. People shop where they work. If Dingwall became merely a commuter town for Inverness—it is already some way towards becoming that—there is no doubt that local small businesses would struggle to survive. That is why it is so important that the 200-plus people who work at Vertex in Dingwall do not find themselves redundant when the Trainline contract ends next spring.

The call centre in Dingwall was built by Highlands and Islands Enterprise with public money and has been working on the Trainline contract since 1998—first with Cap Gemini, then with Vertex from 2001. There is capacity for 260 employees on a single shift and up to 500 on full shift work.

Vertex is an excellent employer that looks after its employees and pays them well. It is actively seeking new contracts for members of its workforce, whom it regards very highly indeed. The workforce is a cross-section of the community. Young mums come on shift when their children are at school; students at Inverness College work evenings; and those studying further away find vacation work at Vertex. People of all ages and backgrounds are employed there and the workforce is stable. Some have been there since the beginning and half of the staff have been there for more than two years, which is an excellent record in an industry that generally has quick staff turnover. Absence rates at Vertex are low and the staff are educated and well trained.

Why then did Vertex announce last February that the contract would end in spring 2006 and that the work would be outsourced to India? The answer is complicated. Trainline said that it needed to cut its costs substantially. Vertex could accommodate that only by sending the work to its centre in India. Why did Trainline have to cut its costs? It had to do so in response to a demand from the train operators to whom it provides a booking service. Most of Trainline's business is with Virgin Trains and it was principally Virgin Trains that asked Trainline to cut its costs; yet Virgin Trains owns 80 per cent of Trainline. Sir Richard Branson owns Virgin and his company Virgin Trains received £578 million in subsidies from the taxpayer in 2003-04. One has to question what is going on here. It may be perfectly legal, but it is certainly puzzling. Members should compare and contrast the situation with the actions of First ScotRail, which has recently sited its booking service in Fort William—there was no need for it to go elsewhere than Scotland.

There is an issue of social responsibility in respect of a company that is in receipt of huge amounts of taxpayers' money. Sir Richard Branson likes to be thought of as the people's entrepreneur, but that is not how the workforce at Vertex, Dingwall thinks of him. He has been invited by the Transport Salaried Staffs Association, the union that represents the workforce, to come and speak to the Vertex employees to explain face to face why they are losing their jobs. So far, he has not arrived in Dingwall.

Last February, when the contract decision was announced, it seemed that there would be no real problem in winning another contract. Vertex, Highlands and Islands Enterprise, the workforce and the trade union were all optimistic. However, we are now in December and there has been no good news. I know that Vertex continues to pursue contracts assiduously and that it still feels that it will win one, but I want to know what efforts the Government and Government agencies are making. I want to see the rescue of the Vertex call centre placed at the top of the Enterprise, Transport and Lifelong Learning Department's agenda. The 200-plus job loss is more than a small town should be asked to cope with. We need that employment in Dingwall. I do not want to see the workforce dispersed. Many of those presently employed part time would not find such suitable alternative employment locally.

I ask the Executive to do everything that it can to persuade Trainline to reverse its decision, even at this late stage. If that is not possible, the Executive must pull out all the stops to help Vertex to find a new, long-term, sustainable contract. As I said, the Vertex workforce is loyal, reliable, well educated and trained. It deserves a future.

17:10

Rob Gibson (Highlands and Islands) (SNP): I thank Maureen Macmillan for bringing this debate to the chamber. I believe that there is a strong case for the workforce in Dingwall to have a job after spring 2006 and that the Scottish Executive can help us to ensure that Dingwall and the surrounding area keeps those jobs.

Maureen Macmillan talked about a section of the population that is younger and not hugely qualified, although the people have some qualifications and might already have left the Highlands if the type of call centre job that Vertex offers was not available. The Vertex centre has allowed people to do work that will fit around a family. That is excellent when it is possible.

The call centre in Brora deals with health questions and Highland Council's call centre, which has opened at Alness Point, deals with questions about Highland Council's services. The latter has a public sector requirement and has a strong future. However, the commercial heart of the Vertex operation ought to be thriving. More people are using trains, and more people in different companies are using trains. It is up to us to argue that the kind of work that is done at the call centre should be done in Scotland.

Trying to protect call centre jobs in Scotland could be called economic patriotism, but it is about time that we told companies that if they receive public money, they should provide jobs here if at all possible. With the enterprise network's backing for the building of the premises, there has been a huge and varied public commitment.

I know that there has been development in Dingwall and that many people who work in the call centre have taken out mortgages in the hope of steady employment. That is how we start getting new families and homes into our area. Any threat to that caused by the uncertainties about Vertex must be quashed if at all possible.

Vertex also works in Nairn. The arguments that it makes about the high quality of the workforce there in dealing with accountancy are almost identical to the arguments that are made about Dingwall. It is entirely possible that a high degree of pressure could be put on Virgin to get it to rethink its decision.

Vertex says that it is chasing work, so I wonder why it did not chase the work from First ScotRail a few months ago. I am pleased that there is now a call centre in Fort William, but I wondered at the time whether Vertex might not have been chasing that work and whatever other work it could get from other firms that might want to provide train timetables.

In any case, the arguments are clear. Public money has been spent and we want value for that money and, above all, to retain the young and dynamic workforce in the Highlands. That is the central case for supporting the motion tonight, and I hope that the Government can respond positively.

17:13

John Farquhar Munro (Ross, Skye and Inverness West) (LD): I am delighted that we are debating Vertex in Parliament this evening, and I congratulate Maureen Macmillan on bringing the debate to the chamber.

Job losses in communities anywhere are not a welcome prospect, especially in the remote and rural areas of the country. It is an issue that we should all address with the utmost vigour, and we must try to apply as much united political pressure on a cross-party basis to secure and protect not only temporary employment but, more important, full-time, sustainable occupation without the constant fear of redundancy notices being regularly distributed to loyal employees, as we hear happens so much these days.

The situation that is before us concerns the 200-plus employees of Vertex at its Dingwall call centre. It is a well-established and respected outsourcing service provider with an extensive and influential international client base and has brought immense benefit to the local economy, particularly in the community of Dingwall, which has enjoyed the benefits that have accrued from the Vertex operation.

However, we live in a strange world. We live in an age of balance-sheet control. Vertex's clients are no exception, and are constantly looking for ways to increase profit margins. As a sad consequence, major clients will place their business with the most competitive supplier. If that happens to be in Dingwall, or any of our rural constituencies, we all rejoice. Unfortunately, we more regularly find ourselves facing situations such as that at Vertex in Dingwall, where staff and employers have entered a 90-day consultation period on the possibility of redundancies, which I hope will not require to be implemented.

I am assured that members of Vertex management are endeavouring to attract and secure new clients for their call centre services, and that they are being supported by Highlands and Islands Enterprise, Highland Council and other support agencies to secure and expand the facilities at the Dingwall site. I am encouraged by the fact that, as Mr Gibson said, some months ago a similar situation developed at the Alness call centre a few miles north of Dingwall, but it has survived and attracted new clients. As a result, it has been able to retain all its staff for the foreseeable future. That is good news, especially at this time of year. I am confident, therefore, that if we lend our united, cross-party support to Vertex's management and staff, we can achieve the same success for the company, the workforce and the community of Dingwall.

17:17

Mary Scanlon (Highlands and Islands) (Con): Like others, I thank Maureen Macmillan for raising the issue of call centre jobs in Scotland, particularly in the Highlands.

It is worth setting the debate in context. There are more than 300 call centres in Scotland, with a workforce of more than 60,000. Despite suggestions two years ago in *The Scotsman* and elsewhere that Scotland would lose 10,000 call centre jobs, the number of such jobs has continued to rise. As Maureen Macmillan said, many students at Inverness College, including ex-students of mine, work part time, full time and flexibly at companies such as Vertex. The Highlands compares favourably with the rest of Scotland in attracting call centre jobs, mainly because transport costs are not included, but also because of the clarity, warmth and reassuring nature of the lilting Highland voice.

It is important to state that the jobs are under threat due to a contract renegotiation with Vertex's client, Trainline. I spoke with Vertex this week, and I commend it for energetically looking for replacement jobs. We all hope that it will be successful. Trainline felt that the existing contract was not sustainable in the long term and wished to achieve greater operational flexibility while reducing costs.

As a responsible employer, Vertex must follow the consultation process. Indeed, it has set up an employee representative forum to work in partnership alongside the trade union, the Transport Salaried Staffs Association.

Vertex currently employs about 1,000 people in Scotland. One year ago, it relocated jobs on behalf of Vodaphone from Merseyside to its call centres in Edinburgh and Forres, creating 135 and 255 jobs respectively. The company's commitment to Scotland is not in question.

I would like the minister to examine two issues. First, why does Trainline need to go to India to achieve greater operational flexibility and reduce costs? What can be done to make Scotland a more competitive place to which employers can bring jobs? Secondly—this is an important point that has not quite been touched on by other members—when Scottish Enterprise is approached about call centre jobs, does it have a protocol according to which it will instantly notify Vertex so that it can bid for the work and keep the 214 permanent employees in Dingwall? Such communications are crucial. I know that Vertex is doing everything possible to keep the jobs in Dingwall, but it needs the support of enterprise companies throughout Scotland.

As Maureen Macmillan said, many Vertex employees are long serving. Some of them have been there from the start, eight years ago. The staff are highly professional and committed and have a modern approach to business. They have helped to set a trend for call centre jobs to come to the Highlands, taking advantage of a can-do attitude and approach. That contrasts with the average turnover of call centre staff in India, which I understand—according to an article in *The Scotsman*—is around 65 to 70 per cent.

Trainline highlighted cost as a factor for taking the jobs to India, so I hope that the minister will recognise and address the burdens of higher business rates and water charges and the greater extent of regulation that are faced by businesses in Scotland. I hope that he will consider creating a more business-friendly environment, that he will help to reduce red tape and that he can help to maintain the jobs in Dingwall and attract further jobs to Scotland.

17:22

Bristow Muldoon (Livingston) (Lab): I say "Well done" to Maureen Macmillan for bringing this issue for debate today. Her motion is very similar to one that I lodged back in February. I should declare an interest, in that I am a member of the Transport Salaried Staffs Association and have been since the days when I worked in the railway industry a number of years ago. We should fully acknowledge the key role that Maureen Macmillan and her husband, Michael, have been playing in the Highlands in raising issues about the work in Dingwall that is currently under threat.

I do not want to dwell on the impact on the local economy, because members who represent the Highlands will be able to do so far more ably than I can. The fundamental issue with the jobs that we are discussing this evening is that, effectively, they are supported by the public sector. They exist in order to support Britain's railway network, which is highly subsidised by the United Kingdom taxpayer. As such, the decision regarding the Dingwall call centre must be looked on differently from decisions concerning companies that operate fully in the private sector, without public support. As Maureen Macmillan pointed out, Virgin Trains receives about £578 million per annum of public support to provide rail services to the UK taxpayer. In my view, it is simply an accident of the way in which the franchise agreement was drawn up that the call centre work is not fully part of that franchise.

We should contrast the way in which Virgin proposes to carry out its work through the subsidiary Trainline with the way in which other rail operators are making decisions. Attention has already been drawn to the fact that First ScotRail has decided to set up a call centre in Scotland to support its activities, and one of my former employers, Great North Eastern Railway, continues to run a major call centre in the Newcastle area. If those major rail franchisees, which work under similar pressures to those that apply to Virgin Trains when it comes to their franchise arrangements with the UK Government—or with the Scottish Executive, in First ScotRail's case—can retain call centre work within the UK and thus retain the expertise that exists here, I can see absolutely no reason why Virgin should not be able to do the same.

Maureen Macmillan referred to Richard Branson and his image as the people's entrepreneur. If he wants to maintain his positive public image in the UK, he and his company should show greater loyalty to employees who have served that company well over many years.

17:25

Eleanor Scott (Highlands and Islands) (Green): I thank Maureen Macmillan for lodging the motion, whose sentiments I agree with. However, I hope that I am not going to sound negative, because some of what I have to say is a bit negative.

I should declare a past interest in that my son worked for Vertex for a year when he left Dingwall Academy. The job suited him very well because he could work in the evening and did not have to get up in the morning. He has since moved on.

I acknowledge the gap that the closure of the Vertex call centre will create in a place the size of Dingwall, given the number of jobs affected. I agree with the view that it is, to say the least, irksome that a company in receipt of public money can close the call centre. I am not sure what redress we have in such a situation—perhaps the minister will make that clear.

I have concerns about call centres in general. Mary Scanlon said that there are 300 call centres in Scotland and that the number of jobs in call centres is increasing. I think that call centres were rather seized on, particularly in the north, as a good thing that could provide employment. However, there is a degree of overprovision. The fact that call centres can operate anywhere has both strengths and weaknesses. It means that they can operate easily in the north of Scotland, but it also means that they can up sticks and go to India, as we have seen, or anywhere. It could be a case of Thurso today, Madras tomorrow. We have to acknowledge that worrying fact. We should not invest too much in call centres, because they might be here today, gone tomorrow.

There are examples of enterprise companies going overboard in seizing on call centres as a good thing and a possible employment prospect in our areas. I know of one call centre that was built in Golspie four years ago. It has 50 seats in it but has never been occupied—it is just sitting there. I know about it because it is next door to the premises of a community recycling group, which is strapped for space and which has been casting covetous glances at the premises occupied by the call centre. It is not allowed to use the premises, because the building houses a call centre, even though it has never been occupied.

There is overcapacity in the number of premises for call centres. To pick up on something that Mary Scanlon said, if call centre jobs were to come to the area, we would want existing establishments to have first go at them. We do not want to build one new centre while another is losing jobs. There is an issue about capacity and overreliance on an unstable sector to provide our jobs in the north.

There is anecdotal evidence from India that call centre jobs are not benefiting Indians, because they are being filled by backpacking westerners. That relates to what Mary Scanlon said about turnover.

Call centres are probably here to stay, even though some of us do not particularly enjoy getting the call centre response from someone who is clearly not in the area in question, such as when we try to book a train ticket to wherever and the person in the call centre clearly does not know where that is. Call centres are here to stay, but that does not necessarily mean that they will stay here.

I hope that Vertex can be successful in either keeping its existing jobs, which would be ideal—I agree with Maureen Macmillan that there is a skills base that it would be crazy to lose—or finding some other client, which would be the second-best option.

I get the feeling that perhaps the call centre boom has peaked. I am not convinced that call centres will be the answer to our employment problems in the north. They looked attractive, because they could be operated anywhere, but that means that they are liable to go at the drop of a hat. We cannot build our economy on the basis of people answering the phone.

I wish the Vertex people well. I hope that they can get new work or keep the jobs that they have, but I am not optimistic about the future of the industry. I am sorry to be so negative.

17:29

Jim Mather (Highlands and Islands) (SNP): I congratulate Maureen Macmillan on securing the debate. The significance of the contract is enormous in Dingwall. For all the reasons that she eloquently stated, I join her and John Farquhar Munro in their call for united, cross-party support, which is entirely appropriate.

The concept of social responsibility must be a reality in this Scotland of ours, rather than just rhetoric in corporate annual reports. Social responsibility should also be an important part of the future criteria for grant and franchise applications. However, it seems that we are being told that a major contract, which has been fulfilled reliably by a loyal, high-quality staff with low turnover, is not to be retained. We seem to have reached a position where we now have cause to pause and consider how we might do things better in the future. We need to consider how, in the longer term, we can make such jobs more robust and more rooted in place.

I am aware that HIE is working in the interim to find other call centre clients. It tells me that it has been successful and has people in the pipeline, and Vertex says that it has someone else in the background. If that is true—which I hope it is—we may be in for a better Christmas than would otherwise be the case. In the short term, we should encourage HIE and others to focus on companies that are likely to place a bigger emphasis on sales, so that we can get the best out of the trusted Scots accents and the quality that Scots employees can offer.

In the meantime, there is a strong case for Government to consider a proper civil service relocation policy for Scotland. We should capitalise on what we have seen happen in Ireland, where the relocation policy has involved volunteers at sub-departmental level. Such a policy in Scotland could be enormously beneficial not just for the receiving communities but, in the wider context, because it would balance opportunity and economic activity across Scotland and create further scope for growth in current hot spots. Such a plan is operational in Ireland and works significantly well.

At the moment, there is a strong case for asking for a feedback loop from HIE and the Executive to encourage the unions, employers and staff to work together to create a stronger business model that looks beyond the more simplistic call centre services. We perhaps need to drill down to see whether our call centres can provide a more detailed service that is more oriented towards the selling process. Many customers form their opinion about a company when they first pick up the phone and make that phone call. I know that the experience that people have of contacting call centres across the Highlands, especially the one in Dingwall, is by and large positive. We should trumpet that fact.

The challenge in Dingwall could be an opportunity from which we all learn. Tonight, we have solid cross-party support; we are united in encouraging all concerned to go the extra mile. Our focus is very much on ensuring that Vertex closes a deal that will guarantee those jobs. If such a deal is not forthcoming from the company’s own resources, we need to ensure that it leans on HIE, which is patently keen to go the extra mile and deliver for the Vertex staff. I thank Maureen Macmillan for raising the issue.

17:33

The Deputy Minister for Enterprise and Lifelong Learning (Allan Wilson): I join colleagues in congratulating Maureen Macmillan on securing tonight’s debate. Although the debate has touched on not just the Vertex call centre but call centre jobs more generally, and the local economy in Dingwall, I should stress at the outset that, as we are talking about people’s lives, our sympathies and concerns go to all the employees whose jobs are threatened by the current proposal.

I start by noting the call and contact centre industry’s importance to Scotland, which has been remarked on by several members. Over the past few years—contrary to some prophets of doom—the number of jobs in contact centres has continued to increase. The industry now accounts for 47,000 jobs in Scotland—I do not know where Mary Scanlon got her figure of 60,000. Across the board, employment in the call centre industry has increased by more than 4 per cent in the past four years. That has been helped by significant investments during this year by O2 and Dell, which announced the creation of, respectively, 1,500 and 850 contact centre jobs in Glasgow. Again, I suggest to Mary Scanlon that that is testimony to the favourable business environment that the Executive has created in Scotland.

As others have said, the contact centre industry is still relativity young and the market is competitive. Such an environment might produce casualties as well as success stories. Naturally, I am concerned about the 90-day notices that have been announced by Vertex and about the possible job losses for the staff in Dingwall. It is clear that it has been an unsettling time for all those who are affected, not least because the situation has been going on for so many months.

However, I know that the company has used that time to its advantage and that it has been working hard to obtain new contracts and secure the jobs. It has already managed to secure work for the 135 people who are affected in Edinburgh. Although I cannot say anything concrete at present, I understand that Vertex continues to seek replacement work for the Dingwall staff. The Scottish Executive’s development agencies, Highlands and Islands Enterprise and Ross and Cromarty Enterprise, have given the company every assistance, including support with training packages. We hope that those efforts will bear fruit and that the employment in Dingwall will be sustained.

In the worst-case scenario, if no contracts are forthcoming and the remaining Vertex staff have to be made redundant, public sector support mechanisms are available through local partnership action for continuing employment—or PACE—teams to help people back into work. Ross and Cromarty Enterprise and Jobcentre Plus are ready to work closely with Vertex and the staff on training and assistance in finding alternative employment. However, as I said, I hope that we will be able to announce soon that such assistance will not be needed.

I do not agree with the suggestion from Rob Gibson—and possibly from Jim Mather, although I am not sure whether he subscribes to the same view—that Scotland should seek to ring fence work for itself or for the United Kingdom. That is short-sighted and, inevitably, it amounts to protectionism. Rob Gibson can dress it up as economic patriotism if he likes, but it is protectionism by any other name. It is counterproductive because it would inevitably lead to more job losses and it would deter companies from investing in Scotland. We know that we cannot compete—and nor should we—against lower-wage economies on lower-value goods and services. That is not a sustainable position and it is not one that we want to get into.

To safeguard jobs for the long-term benefit of Scotland, we have to compete on the basis of our strengths and where we can add value. It is perfectly legitimate for the Royal Bank of Scotland to determine, for sound commercial and other reasons, that it wants to concentrate its call centre work in Scotland and it is perfectly legitimate for GNER or other companies to do the same. For the record, Vertex is contracted to carry out work for Trainline, which is owned by the travel companies Virgin and National Express. National Express owns about 14 per cent of Trainline. Members mentioned the £578 million subsidy from the Strategic Rail Authority to Virgin Trains in 2003-04, but none of that money went into supporting Trainline. Trainline is a wholly independent commercial venture that has received no Government support, either financially or in kind.

The Scottish Executive’s commitment to creating the right business environment to attract, retain and grow firms is fundamental to moving up the value chain. Scotland’s strength in the call and contact centre industry lies in the quality of our staff. More than 80 per cent of contact centres say that the main reasons why they remain in Scotland are labour availability and our skilled workforce. However, we must acknowledge that, as products and markets develop over time and the focus shifts to lower-cost and lower-value services, that might lead to some call and contact centre jobs being relocated outwith Scotland. That is why it is important that we focus on the high-quality, technologically advanced component of the industry.

Vertex continues to play a key role in the centre for business process outsourcing, which is based at Alness in Easter Ross. The centre is a collaboration between the HIE network, the University of Strathclyde, Vertex and the industry body the Call Centre Association. The centre is the UK’s first research unit on call and contact centres. It is interesting that the industry body locates its headquarters here in Scotland, in Glasgow. The centre is designed to analyse industry trends and anticipate developments with a view to making long-term employment in the UK, and in the Highlands and Islands in particular, as secure as possible. When that focus on developments is put together with the roll-out of broadband to every community in Scotland—which we promised, which will be delivered by the end of 2005 and into which we have put public sector investment of £16.5 million—call centre jobs offer a real and powerful opportunity to deliver sustainable rural employment.

In the past year, with the support of regional selective assistance, we have secured several contact and call centre operations for Scotland. As I said, Dell opened a centre in Glasgow that will create 850 jobs over three years. Huntswood CTC plans to create up to 355 jobs to provide outsourcing services to the financial services sector at its site in Bellshill. Other operations include 465 planned jobs at beCogent in—dare I say it—your constituency, Presiding Officer, in Erskine; 180 jobs at Excell Contact Centres in Paisley; and 250 jobs at MGt in Fife. The list goes on. That is how I believe fundamentally that the industry is developed. We are very much on the right lines.

Mary Scanlon: I will be a bit parochial. I realise that the list that the minister read out was not exhaustive, but all those facilities tended to be in the Scottish Enterprise area. I ask again whether Scottish Enterprise has a proper protocol to ensure that if it knows that a company wishes to establish a call centre in Scotland, that company knows that Vertex is looking for such a contract.

Allan Wilson: What Mary Scanlon says is fair enough. I quoted some examples, but I could easily quote others from the Ross and Cromarty Enterprise area, such as Cap Gemini in Inverness. That shows that our ability to attract business is not limited to the central belt and extends into more rural areas.

The debate has been interesting. I acknowledge the worries of Vertex staff and the whole Dingwall community. However, the local economy remains strong and we have in place specific measures to ameliorate the effects. I hope and am confident that the efforts that Vertex is making will bear fruit and that jobs will be secured in the Dingwall operation. Through local agencies, including Highlands and Islands Enterprise and Ross and Cromarty Enterprise, we stand ready to assist in any way that we can.

Meeting closed at 17:43.

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