

# **MEETING OF THE PARLIAMENT**

Wednesday 31 January 2007

Session 2

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# CONTENTS

Wednesday 31 January 2007

## Debates

Col.

<b>TIME FOR REFLECTION</b> .....	31661
<b>HEALTH BOARD ELECTIONS (SCOTLAND) BILL: STAGE 1</b> .....	31663
<i>Motion moved—[Bill Butler].</i>	
Bill Butler (Glasgow Anniesland) (Lab).....	31663
The Minister for Health and Community Care (Mr Andy Kerr) .....	31667
Shona Robison (Dundee East) (SNP) .....	31670
Mrs Nanette Milne (North East Scotland) (Con).....	31673
Euan Robson (Roxburgh and Berwickshire) (LD) .....	31676
Roseanna Cunningham (Perth) (SNP).....	31678
Gordon Jackson (Glasgow Govan) (Lab) .....	31680
Dr Jean Turner (Strathkelvin and Bearsden) (Ind) .....	31683
Ms Sandra White (Glasgow) (SNP).....	31684
Susan Deacon (Edinburgh East and Musselburgh) (Lab).....	31687
Dave Petrie (Highlands and Islands) (Con).....	31689
Mike Rumbles (West Aberdeenshire and Kincardine) (LD) .....	31691
Mr Duncan McNeil (Greenock and Inverclyde) (Lab).....	31693
Eleanor Scott (Highlands and Islands) (Green).....	31695
Carolyn Leckie (Central Scotland) (SSP) .....	31696
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD).....	31698
Mr David Davidson (North East Scotland) (Con).....	31701
Brian Adam (Aberdeen North) (SNP) .....	31703
The Deputy Minister for Health and Community Care (Lewis Macdonald) .....	31705
Bill Butler.....	31708
<b>TRIBUNALS, COURTS AND ENFORCEMENT BILL</b> .....	31712
<i>Motion moved—[Johann Lamont].</i>	
The Deputy Minister for Justice (Johann Lamont).....	31712
Stewart Stevenson (Banff and Buchan) (SNP) .....	31713
Mr David Davidson (North East Scotland) (Con).....	31714
Donald Gorrie (Central Scotland) (LD) .....	31714
Chris Ballance (South of Scotland) (Green) .....	31715
Mr Kenneth Macintosh (Eastwood) (Lab) .....	31715
Johann Lamont.....	31716
<b>PRESIDING OFFICER'S RULING</b> .....	31718
<b>BUSINESS MOTIONS</b> .....	31719
<i>Motions moved—[Ms Margaret Curran]—and agreed to.</i>	
Iain Smith (North East Fife) (LD) .....	31720
The Minister for Parliamentary Business (Ms Margaret Curran) .....	31721
<b>PARLIAMENTARY BUREAU MOTION</b> .....	31723
<i>Motion moved—[Ms Margaret Curran].</i>	
<b>DECISION TIME</b> .....	31724
<b>BATTLE OF PASSCHENDAELE (90TH ANNIVERSARY)</b> .....	31727
<i>Motion debated—[Murdo Fraser].</i>	
Murdo Fraser (Mid Scotland and Fife) (Con).....	31727
Dr Jean Turner (Strathkelvin and Bearsden) (Ind) .....	31730
Donald Gorrie (Central Scotland) (LD) .....	31732
Alasdair Morgan (South of Scotland) (SNP).....	31733
Euan Robson (Roxburgh and Berwickshire) (LD) .....	31734
Christine Grahame (South of Scotland) (SNP).....	31735
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD).....	31736
The Deputy Minister for Communities (Des McNulty) .....	31737

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## Scottish Parliament

*Wednesday 31 January 2007*

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

### Time for Reflection

**The Deputy Presiding Officer (Trish Godman):** Good afternoon. The first item of business is time for reflection, for which our leader today is the Rev Murdo Maclean, minister of Carmyle and Kenmuir Mount Vernon churches, Glasgow.

**Rev Murdo Maclean (Carmyle and Kenmuir Mount Vernon Churches, Glasgow):** I imagine that most of you will not be able to look at another haggis for quite a time. Many of you have probably been invited to one Burns supper after another. Is not it interesting the impact that Burns has had not only in Scotland, but around the world—so much so that 25 January has become one of the most important dates in our diaries?

Here is a trivial pursuit question for you. What other man's life has been celebrated on 25 January for centuries? A man who—dare I say it—has had a greater impact on Scotland and the world than even the great Burns. A man whose life and teaching lie behind the rise of democracy, the elevating of social justice, the spread of education and even the growth of many charities. The name of this man is Saul of Tarsus. You may know him as the apostle, Paul. His Christian birthday is celebrated on 25 January.

What explains the impact of a man who seems to have spent much of his life on the run, who was executed by Roman authorities, and whose list of publications can all fit into one very small paperback? Part of the answer can be found in something that he wrote in his great epistle to the Romans:

“God has done what the law could not do. By sending his own Son ... for sin, he condemned sin in the flesh, in order that the righteous requirement of the law might be fulfilled in us, who walk not according to the flesh but according to the Spirit.”

Those are timely words for us as we seek to be leaders in modern Scotland—in politics, education or in the church—particularly when many of us feel the strains and fragmentation of our society. Some urge more education; others urge more politics and law. The problem is that, as Paul says, education, politics and more law cannot transform the heart. I think that it was Churchill who said that the heart of the human problem is the problem of the human heart. Laws, rules, education,

governments, politics—they all have their place, and we should be profoundly grateful for them. However, there is something that they cannot do. Those keys are not the right shape to unlock the human heart.

To his surprise, Paul discovered the key when Christ met him on the Damascus road. Through Jesus Christ, God did what nothing else could do for Paul and transformed him from being a violent man and a blasphemer into a man full of grace and full of Christ.

In many ways I can say the same thing about myself. I look back 20 years and more to my boyhood in Easterhouse, in Glasgow. I am glad that it is possible for a boy in Scotland to have that background and end up with a university degree and be a Presbyterian minister. However, I think that it would be a mistake to attribute all that to my early education, because I disdained it, or to attribute it to the Government's efforts to maintain law and order, in which I had all too little interest as a youngster. No, the key was Christ and his gospel.

Actually, that has always been the key, I believe, to any greatness that our nation has enjoyed. We surely need that key more than ever today. Let us not lose it or, worse, throw it away—either as leaders of our people or as individuals.

## Health Board Elections (Scotland) Bill: Stage 1

**The Deputy Presiding Officer (Trish Godman):** The next item of business is a debate on motion S2M-5478, in the name of Bill Butler, that the Parliament agrees to the general principles of the Health Board Elections (Scotland) Bill.

14:35

**Bill Butler (Glasgow Anniesland) (Lab):** First, I wish to draw attention to my entry in the register of members' interests relating to the financial support given to me by Unison to aid the development of the Health Board Elections (Scotland) Bill that is before the Parliament today.

I wish to record my thanks to the 160 individuals and organisations who took part in the consultation on the bill proposal, and the various organisations that took part in the ad hoc bill steering group, such as Voluntary Health Scotland, the National Childbirth Trust, the Scottish Trades Union Congress, the Royal National Institute of the Blind Scotland, Capability Scotland and Help the Aged Scotland. Their contributions have been invaluable. There has also been support from the printed media, most notably from the *Evening Times* and *The Herald*, for which I am duly grateful.

I welcome the Health Committee's stage 1 report and the diligence of all its members in their detailed interrogation of the bill at stage 1. I am pleased that the committee recommends that Parliament should agree to the general principles of the bill and allow it to go forward to stage 2. However, I am very aware that the committee expressed several continuing concerns in three specific areas, and voiced its belief that changes should be considered in those areas if the bill is to proceed to stage 2. If I may, I will address those concerns and make an initial response to them.

To quote the committee report, the first issue is:

"The absence of any remuneration, loss of earnings or expenses for elected members discriminates against people with low earnings and favours candidates who are retired and well off."

When I appeared before the committee on 14 November, I acknowledged in response to a question from my colleague Helen Eadie that the lack of remuneration or compensation for loss of earnings was a gap, and that I would seek to bridge that gap at stage 2. That is still my intention. My suggestion will probably centre on introducing loss of earnings compensation capped at just over £7,000 per annum, which is the average for appointing members to health boards. Given that members will serve an average of three

days per calendar month, that would mean that people who earn up to £80,000 per annum could put themselves forward to serve. I hope that such a proposition would be at least a starting point for debate in the Health Committee at stage 2, and I thank the committee for pointing out that omission.

The second area in which I agree with the committee that more discussion is needed concerns the bill's proposal to have 14 constituencies mirroring the existing 14 area NHS board boundaries. I was struck by the apprehensions that were voiced by several colleagues on the committee, particularly Kate Maclean and Roseanna Cunningham, that such constituencies would not accurately reflect the diverse geographical areas that many national health service boards encompass. I am open to the suggestion on page 15 of the Health Committee's report that

"it would be fairer to sub-divide those board areas into a number of more representative electoral 'wards'. These smaller areas could for example reflect local authority boundaries or the rural:urban characteristics of particular board areas."

I am only too happy to discuss with the committee at stage 2 how such an amended geography could be effected. I have no problem with that notion in principle. My legal adviser, Mike Dailly of the Govan law centre, has been turning his mind to that very matter, among others, in anticipation of stage 2.

The third area of concern that was raised by the committee—the percentage of board members to be directly elected—might prove to be more challenging. I agree with the committee that there is a debate to be had on that, but I remain of the view that 50 per cent plus one, or a simple majority, would produce a reasonable blend of appointed members with their experience of the NHS and a directly elected element that would inject a welcome degree of direct accountability to the workings of the board. However, if the bill proceeds to stage 2, I stand ready and willing to enter into the debate on the matter in a spirit of collegiality.

I believe that there is strong support across Scottish society for the introduction of direct public elections to Scotland's NHS boards. I also believe that the case for greater democracy, accountability and transparency in the decision-making process for local health services is compelling. I continue to believe that the best way to achieve greater accountability and transparency is through the introduction of direct public elections.

The Health Board Elections (Scotland) Bill would significantly increase public involvement in local NHS services. It would involve people in the planning and delivery of health care services in their communities. The bill's main aim of

introducing more democracy into the operation of health boards does not mean—I emphasise this—that I believe that all board decisions are necessarily wrong and detrimental to local health services. That would be absurd.

**Mr David Davidson (North East Scotland) (Con):** Bill Butler said that he would be prepared to accept various amendments at stage 2, but what would he do if health boards as we know them were abolished? There has been talk of such a move. Also, what are his thoughts about the operation of the community health partnerships?

**Bill Butler:** I believe that the CHPs are not inimical to the reasonable reform that I have suggested. In response to David Davidson's first question, I point out that no such proposal is before us so the question is hypothetical.

The undeniable problem with the way in which boards currently operate and reach decisions lies as much in public perception as in the nature of the decisions. The anger that some people feel about certain decisions is, to an extent, generated by the manner in which those decisions are seen to be made. They are made in secret with little or no explanation, are often predetermined and often ignore the views of the community and the responses that have been made to the board's consultation processes. Many people believe that health boards' consultations are predetermined. That is not a happy situation.

**Margo MacDonald (Lothians) (Ind):** The member has pointed out the need for democracy, openness and accountability. Might they not be provided by a better system of accountability and report back on the part of health boards?

**Bill Butler:** The improvements that have taken place in public participation—I think that that is what the member alludes to—are to be welcomed. In fact, every witness who gave evidence to the Health Committee welcomed the reforms in public participation. However, I believe that we should go just a little further. The direct democratic accountability that would be introduced by the bill would be complementary to the public participation reforms that have rightly been introduced by the Executive.

There is no perfect method for consulting the public on major local health issues, so I do not believe that direct public elections would lead to everyone being happy with every NHS board decision. However, I contend that decisions that are made by health boards on which there is a large democratically elected element will have much more credibility than those that are made under the current system.

Accepting that decisions are legitimate is at the heart of representative democracy. Democracy is not always about getting our own way, but it is a

way of making decisions that takes serious account of people's opinions. Unfortunately, that does not happen with NHS boards at the moment. Direct public elections would allow the public a mechanism to influence service delivery in their area. If we are to address public apprehension—and, indeed, suspicion—there must be greater openness and transparency and there must be direct accountability. The bill, if enacted, would allow such an approach to thrive and prosper.

During the evidence-taking sessions, my ears were open but I did not hear a convincing explanation of why the make-up of regional NHS boards should not contain a strong element of direct democratic accountability. Introducing greater democracy would mean more than just structural change. Introducing electoral accountability would involve patients and communities and provide an opportunity for public debate and greater access to information. The bill would lead to a sea change in the culture of NHS boards. That is a positive reform that needs to be made.

The bill proposes a simple majority of 50 per cent plus one. I admit that some people whom I have consulted in recent months argued that a greater proportion of health board members—up to 100 per cent—should be directly elected. However, I feel that the blend of experience and direct accountability that is offered by the bill is just about right.

I emphasise that the bill supports the retention of local authority members on NHS boards. Unhappily, however, even with the inclusion of local authority members on each NHS board, which is progress, the feeling remains out there that the boards have failed to engage effectively with the communities that they serve. Some proposals that are made by NHS boards are not popular with the public, but will result in improvements to local health services.

I hope that my bill will succeed in making health boards work harder at explaining their proposals to the communities that they represent, engaging with the public more directly and explaining clearly and openly the pros and cons of any changes to local health services. Only when that greater level of direct accountability and transparency has been achieved will communities feel in any way reassured that health boards listen to their views. If the bill succeeds and direct elections become a reality, not every decision that is taken by an NHS board will be universally popular, but I hope that the elections will help to make health board decision making more open and relevant.

I move,

That the Parliament agrees to the general principles of the Health Board Elections (Scotland) Bill.

14:46

**The Minister for Health and Community Care**

**(Mr Andy Kerr):** It is perhaps no surprise to anyone in the chamber that the Executive is opposed to the bill. I will spend some time explaining the reasons for our position. The bill raises fundamental and important issues, and it is right that those issues should be clarified and that everyone here understands the points at issue.

It is worth reminding ourselves that the Health Committee looked at the proposals carefully and came up with a report that stopped well short of being a ringing endorsement. One has only to look at the conclusions in paragraphs 81 to 91 of the report to see that. It is clear that the committee recognised the bill's shortcomings and deficiencies. We need to take careful note of that.

There are five distinct reasons why we oppose the bill as it stands. Before I list them, however, I make an important point about our intentions. We see merit in considering further the concept of local democratic participation in our NHS. We believe that it needs to be approached in a considered manner that carefully tests all the complex issues involved, which were identified by the Health Committee in its report. Testing out those ideas through piloting the concepts is the right thing to do, rather than rushing in with proposals that have not been considered adequately and which might not be fit for purpose. That will allow us to undertake the dialogue and consultation that the issue deserves.

My objections to the bill are as follows. First, the bill would introduce major changes to the structure of the NHS by proposing that a majority of members be elected. That is not about a technical detail, as Bill Butler acknowledged. A majority of members means that there is a risk that ultimate control of the direction and actions of our national health service would lie with that majority.

To my mind, that would fundamentally alter the existing clear accountability of the NHS to ministers through its appointed boards, and subsequently to this Parliament. That would lead inevitably to competing mandates at national and local levels. It would create conflict that would detract from our core purpose of creating better health services and improving health in our communities.

**Brian Adam (Aberdeen North) (SNP):** Why does the minister think that it is perfectly acceptable for Edinburgh's man in Glasgow, for example, to be accountable to the public through the minister, but not to be accountable directly to the public? Councillors have their own mandate; why cannot health board representatives have their mandate too?

**Mr Kerr:** Because it is the national health service. Week after week in this chamber I hear from members about postcode prescribing, about boards not doing what they should do, about waiting times and about cancer targets. The resources for those boards are voted on by this Parliament. The bill would remove the centrality of the NHS and create a competing mandate. The bill does not address that point.

The bill's proposals would lead to uncertainty about who is responsible for monitoring and improving performance, for making hard decisions in the interests of patients and for planning tomorrow's health service.

There is a risk that the bill would have serious consequences for boards, patients and communities. The Health Committee recognised that. Its report refers to the New Zealand model of governance arrangements, which I agree is potentially relevant. The issues are complex and we would wish to give such a proposal careful consideration. However, it is not reflected in the bill and we are advised that amendments along those lines would be beyond the scope of the present bill. As I have made clear, we should not in any case seek to change NHS governance arrangements in a hurry and without proper consideration, dialogue and consultation. That is why we have shown our willingness to look further at piloting the concept.

My second reason for opposing the bill is that, as the Health Committee recognises in paragraph 85 of its report, it risks putting difficulties in the way of implementing the important national policies for which the Executive has a mandate and which the Parliament has already debated.

We need look no further than "Delivering for Health", the implementation of which represents a vital step in the NHS's progression. At the moment, we are deeply engaged in that work. With all respect to everyone who is directly involved, the task of working through those changes is difficult enough, without our making it even more difficult by electing boards in the manner proposed.

It is worth noting that the Health Committee has accepted that directly elected members on NHS boards might undermine the NHS's national element. As it stands, the bill risks fragmenting our national health service and will make it increasingly difficult to ensure that key national policies that are vital to our local communities are implemented. That undermines the vision that we all share for the NHS in Scotland of having equitable services that are available to everyone on the same basis throughout the country. It risks introducing an unacceptable postcode pattern of delivery; could cause real problems for initiatives to reduce health inequalities; and could mean that



services such as mental health that have a lower public profile and services for learning disabled people have less of a priority.

Simply electing people to a board would not remove the need for tough decisions to be taken. Such decisions would still have to be made, and public concern about them would not magically disappear with the introduction of direct health board elections. Boards would still need to inform their public; to persuade them that it is right to modernise services; to improve efficiency and effectiveness; and to ensure that services are safe and sustainable. I am worried that the proposal to elect a majority of board members runs the risk of increasing dangerous short-termism and self-interest in how NHS services are looked at, and might ultimately put patients at risk.

My third reason for opposing the bill is that it will do nothing to sustain and promote the improvements in NHS performance that we have witnessed over the past five years. For example, the service has managed to get on top of the long waits that used to dominate our debates about it. Moreover, the tremendous strides in providing more vital operations such as hip and knee replacements and cataract operations have been achieved through rigorous management and planning and by boards working together across boundaries. I do not believe that the bill would benefit patients and the public by improving performance further. On the contrary, the risk is that boards would be distracted from that task.

Fourthly, the proposed elections would cost money and time. The Health Committee has accepted that its costs would be well above the estimates that were provided by the bill's promoters and we must be very careful about diverting resources away from patient care.

Fifthly, the bill would not—to put it simply—do what it says on the tin. It would not promote effective public engagement and the involvement of patients and service users in our NHS, even though that is what those who support the bill seek to achieve. I make it very clear that we strongly support the effective engagement of the public and patients with NHS boards in planning and delivering services and that our track record in that respect is very strong.

**Bill Butler:** Does the minister agree that the estimated cost of £5 million, which is at the top end of the Executive's approximations, would be a drop in the ocean compared with the more than £10 billion that is spent on the NHS? Does democracy not have to cost something?

**Mr Kerr:** Yes, it does. However, the Electoral Reform Society does not believe in Mr Butler's approach to the elections, which could be even more expensive than has been estimated.

Furthermore, as far as the health budget is concerned, there is no such thing as a drop in the ocean. Every penny is—and should be—well spent in the interest of patients.

I remind members of the improvements that we have made. Senior local councillors now sit on all NHS boards, which have a statutory duty to involve the public. We have established the independent Scottish health council; community health partnerships have public partnership forums; and I personally hold NHS boards to account through annual reviews. Many other mechanisms make our NHS work for the benefit of patients, but not in a way that undermines the national element of our national health service.

These serious issues need serious debate. We are discussing 60 years of NHS history, not issues that we can rush through in the last few weeks of the parliamentary session. If we are thinking of making fundamental change, we should at least give ourselves time to do so properly and to consider the implications—which means being realistic and accepting that the proposed changes are fundamental and will have very serious consequences for our NHS.

I understand Bill Butler's points about his bill and about public engagement and involvement, and indeed share some of his concerns. However, as I, the British Medical Association, the Royal College of Nursing and many other witnesses to the Health Committee have argued, steps to improve public engagement need to be given time to bed in more effectively.

**The Deputy Presiding Officer:** You should be finishing now, minister.

**Mr Kerr:** The bill is emphatically not the answer to the concerns that have been expressed. Our opposition to the bill is long standing and principled and there are good reasons for it. Make no mistake—significant changes are being made and we want to involve stakeholders in implementing those changes, but we need to ensure that we get the process right. I believe that our approach gives us the best of both worlds. It allows us to progress some of the principles of the bill, but in a way that safeguards the future of our NHS. I commend that course of action to the Parliament.

14:55

**Shona Robison (Dundee East) (SNP):** I pay tribute to the work of Bill Butler and his bill team in developing the bill.

The Scottish National Party has supported the principle of direct elections to health boards for some time, not because of some notion that it is a panacea that would resolve entirely any local

disagreements about how health service changes are managed, but because we believe that it is the right thing to do. Supporting direct elections to health boards is about saying to Scotland's people—who are, after all, the consumers of health care—that we trust them to have a strong say in what happens to local health services.

That is important, given the significant disillusionment that exists and the belief that decisions in the health service are being taken by unelected and unaccountable people who have little regard for the views of the local population. Far too often, health boards make clear their preferred option at the start of a consultation process and do not deviate from it, even though the consultation process might throw up sensible alternative suggestions and options.

I believe that the proposal in the bill would help to restore some of the public's confidence in how our health service is managed and delivered. I remind those members who do not think that there is a problem with public perception of Bill Butler's evidence to the Health Committee last year. He said:

"according to a survey that the Executive commissioned in 2004, 73 per cent of the public feel that they have little or no influence over how the NHS is run",

which represents

"a rise in dissatisfaction of 16 percentage points over a survey in 2000."—[*Official Report, Health Committee*, 7 November 2006; c 3200.]

**Margo MacDonald:** I simply want us to get our statistics in order. Do we know what percentage of the public is satisfied that they are properly represented in the decisions that are taken in the Parliament?

**Shona Robison:** I am sure that there are a number of views about that and that many members of the public feel that they are not properly represented in the Parliament's decisions but, ultimately, it is for Margo MacDonald and other members to ensure that they are effective in representing the people whom they have been elected to represent.

The issue that we are debating is about the public having a voice at the top table where health service decisions are made. We must acknowledge that people feel disfranchised. If we had direct elections to health boards, difficult decisions would still have to be taken, but they would be taken in an open and transparent manner and local people would be involved at the heart of the process.

There are some areas of the bill that we would like to be changed at stage 2. For example, we agree with the recommendation of Fairshare Voting Reform that a single transferable vote

system would be a better way of running the proposed elections. The fact that Bill Butler mentioned the need to reflect the geographical balance in health board areas has reassured me that he is willing to take on board the committee's concerns on the issue at stage 2.

Cost has been an area of debate. Predictions of what the elections would cost range from Bill Butler's estimate of £1.2 million over four years to the Executive's estimate of £5 million over that period. I suspect that the actual figure would be between those two sums.

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** I am surprised by what the member has said, because it is my understanding that Bill Butler is not willing to discuss having a fair voting system and that we would be lumbered with the undemocratic system that he has proposed. Perhaps Bill Butler could clarify that later.

**Shona Robison:** Mr Rumbles knows how the Parliament works. It is a question of trying to persuade people of the merits of one's arguments at stage 2. That is all one can do. We know from experience that compromise is necessary so that the best elements of a bill can be progressed. We should not throw the baby out with the bath water.

I am aware of the opposition to the bill of some of the professional bodies, which fear that the adoption of direct elections to health boards would prevent changes from being made to the health service at local level and would politicise the NHS. However, we would be fooling ourselves if we pretended that politics do not already feature in the NHS. The professional bodies should have a little more faith in the ability of local people to make difficult decisions and to weigh up the competing demands and pressures that arise.

**Mr Duncan McNeil (Greenock and Inverclyde) (Lab):** Will the member give way on that point?

**Shona Robison:** I have taken two interventions and I need to make some progress. [*Interruption.*]

**The Deputy Presiding Officer:** The member is not taking an intervention.

**Shona Robison:** Surely the same arguments and concerns could be raised against involving the democratic process in the management of education or social work. Even so, I assume that the minister agrees that no one is suggesting that we do away with democratically elected local authorities.

The Minister for Health and Community Care's vehement opposition to the bill and its principles is disappointing. In commenting on the balance of opinion in the committee, he should have said that, at the end of the day, the committee came down in favour of the bill. If the Executive is now saying that it will take forward only legislation that

has the overwhelming support of committees, that sheds an interesting light on some of the decisions that it has made.

The minister said in evidence:

"The bill is ... unnecessary. It adds nothing to the programme. Indeed, it undermines the current clear and unambiguous lines of accountability from NHS boards to ministers".—[*Official Report, Health Committee*, 7 November 2006; c 3183.]

I disagree. The minister is taking a rather blinkered view of the matter, which portrays little trust in those who seek to serve as public representatives on elected health boards.

It is good that many of the minister's back benchers do not share that view. I refer to the 16 back benchers who supported Bill Butler's bill from the start. That is positive. I hope that the Tories may change their position in the way that Tory members of the Health Committee did. I hope that they will support the general principles of the bill. Tory members can argue their position on the percentage of elected members at stage 2.

I am very surprised about the continuing reluctance of members of the party of liberal democracy to allow people to have their say on this and other matters. Surely denying the public a say in the way that our health services are delivered is not a very liberal view for them to take. Despite the opposition of Liberal Democrat members, the 16 Labour back benchers who pledged their support for the bill mean that we should have a parliamentary majority in favour of the general principles of the bill.

**The Deputy Presiding Officer:** The member should be closing.

**Shona Robison:** Surely that option is preferable to that which the minister is taking in fudging the issue by calling for pilots. Clearly, he is diametrically opposed to the principles of the bill. We require a clear mandate from the Parliament, and I hope that the Parliament will give that today.

15:02

**Mrs Nanette Milne (North East Scotland) (Con):** I came to the stage 1 consideration of the bill with a completely open mind. I fully understand Bill Butler's reasons for introducing it. Over the past year or two, there has undoubtedly been a growing sense of dissatisfaction about the way in which health boards engage with the public on the provision of local health services.

I remember the extremely well-attended meeting in the chamber a couple of years ago, ahead of the publication of the Kerr report on the future of the NHS in Scotland—the public were well represented. I recall people's enthusiasm and optimism because, at last, they felt that they were

making a real and meaningful input to the future shape of their national health service.

Unfortunately, when it came to the reconfiguration of local health service provision in the wake of the Kerr recommendations, too many people in too many parts of Scotland felt that health boards were not consulting fully. They felt that boards were treating the subject of the consultation as a fait accompli, which meant that responses fell on deaf ears. That generated very strong feelings and major campaigns against proposals to close hospitals, accident and emergency departments and maternity services in various parts of Scotland. Despite those campaigns, most health board proposals gained ministerial approval in the end, which has left local residents and their representatives feeling very short changed.

**Mike Rumbles:** Will the member take an intervention?

**Mrs Milne:** No.

There have been exceptions, including the fight to retain the option of giving birth in community hospitals in Aboyne and Fraserburgh in Aberdeenshire. I suspect that Mr Rumbles may have wanted to refer to that. The fight was hard won in the teeth of opposition from the health board.

**Mr Kerr:** Is the member aware that, in all the major configurations—including the one that Lewis Macdonald conducted in Lanarkshire—major concessions were made in favour of the community? Is she also aware that major conditions were put on boards in respect of service change?

**Mrs Milne:** I hear what the minister is saying, but I am dealing with a point on Aberdeenshire. The outcome in that case was successful, but only because of a committed and articulate campaign by local people that was backed up by extremely robust representation from constituency MSPs such as Mike Rumbles who became involved in the campaign, as the minister well knows. Winning that battle took time, commitment and resources. I cannot help feeling that much of that could have been avoided if the health board had been aware of the strength of public feeling and merits of the case before it took its decision to recommend closure of the maternity units in question.

I have a great deal of sympathy with the general principles of the bill, as it would give directly elected members of the public a seat at the health board table when important changes are discussed and a direct input into the process before decisions are made. I know that health boards now have a duty to involve the public via the public partnership fora of the CHPs and that the Scottish health council must oversee the

quality of consultation in the NHS. I accept that those arrangements are new on the ground and are not yet fully tested, but many people in our communities feel that the approach is still very top down and they are extremely sceptical about the consultation process. Health boards are certainly accountable via the minister and Parliament, but the public often feel left out.

**Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** Will Nanette Milne give way?

**Mrs Milne:** No.

However, I accept the other side of the argument, which is that having a majority of directly elected health board members could lead to short-term decision making, single-issue candidates and, on occasion, distortion of priorities or delay in making difficult decisions. In some instances, that could lead to inequalities of care or an undermining of regional services planning.

**Mr Stone:** Will the member give way on that point?

**Mrs Milne:** I would like to carry on.

Because of that possibility, I am not happy with the bill's provision under which 50 per cent plus one board positions would be directly elected, thereby giving those members a majority on the board. Honour could be satisfied by the election of a smaller proportion of board members, which would give communities a direct voice without giving them absolute power over board decisions. To achieve that, we do not need to increase the size of health boards. Instead, I would like a proportion of the non-executive board members who are currently appointed by the minister to be replaced with directly elected members of the public.

Does Bill Butler find those proposals acceptable? I appreciate his willingness to enter into debate at stage 2, but I would like a clearer indication from him today of how he would respond to my proposals.

**Bill Butler:** I am of course willing to take part in discussion, which will involve all the Health Committee members and, if the bill gets to stage 3, all the members of the Parliament. To quote the committee's report,

"there is a debate to be had".

I hope that that gives Mrs Milne some comfort.

**Mrs Milne:** Not entirely.

I share the Health Committee's concerns about the size of the electoral wards that are proposed, although I welcome Bill Butler's earlier comments on that.

I agree that the absence of any remuneration would discriminate against people on low earnings

and dissuade them from standing for election. I look forward to hearing more details of Bill Butler's proposals on that, which he mentioned earlier.

The Conservative group is, by and large, willing to support the general principles of the bill at stage 1, but our continuing support beyond that depends on significant amendments being accepted. In particular, if our proposal to reduce the proportion of directly elected members to less than 50 per cent of board membership is not accepted at stage 2, we will withdraw our support for the bill.

15:08

**Euan Robson (Roxburgh and Berwickshire) (LD):** I congratulate the member in charge of the bill, Bill Butler, on the way in which he has progressed his proposal thus far. I appreciate the courtesy that he extended to me personally and to my Liberal Democrat parliamentary colleagues by coming to discuss the bill with us on two or more occasions. Today, we are asked to debate the general principles of the bill and it will be no surprise to Bill Butler, from reading the Health Committee report, that we intend to oppose the bill's further passage for reasons that I will set out. I emphasise that we oppose the bill because we disagree that it is the right way forward and not because we have any quarrel with Bill Butler or his backers—I hope that that is clear from what I have just said.

The Liberal Democrats want increased democratic input into the NHS. We are in favour of greater accountability and scrutiny of geographical health boards and we wish more effective consultation to be developed. On that point, part of the impetus for the bill has been the apparent inadequacy of several consultations, which has sometimes arisen from a lack of engagement, although on other occasions the consultation process has been exhaustive. The common thread is that consultations have not been considered to be genuine because they have been seen as exercises that were undertaken to give legitimacy to decisions that were made in advance.

In one way, the bill would indeed increase democratic input to the health service, though I doubt that it would bring about greater accountability or improved scrutiny. Under the bill's proposals, direct elections to the 14 geographical health boards would have a majority of health board members elected on a first-past-the-post system and on a non-party-political basis. However, members so elected could be single-issue advocates, or people with particular preoccupations, or people from certain pressure-group backgrounds. Such would be the size of the electoral areas, especially in rural parts of Scotland, that members might not be able to represent all the communities of the area in quite

the way that might be hoped for, and they might not be representative of those communities. However—and this is a key point—when elected, those people would become part of the decision-making process. They would be bound in and would be responsible not only for the decisions but for their implementation and, of course, for their outcomes. Would those members be accountable? In theory, yes; but in practice they might be remote figures, not well-known to the public, who might achieve their single-issue purpose and then retire. Under the bill, there would be no necessary individual or collective commitment to the longer term.

Would the public be convinced of the independence of directly elected members? I doubt it. There needs to be a separation between the scrutiny and the accountability role; they should not be incorporated together within the board.

How are those individuals to be equipped to scrutinise, in effect, their own decisions? The bill proposes a continuing role on NHS boards for professional staff at director level—which I think is appropriate—but it would mean that independent advice to help formulate an alternative view might not be readily available.

An alternative to the bill's proposals exists. It is to give a role to an appropriate committee of the relevant local authority to allow it to scrutinise health board proposals. Where more than one local authority covers a health board area, a joint committee would clearly be required.

**Shona Robison:** What support does the member have for that proposal? Who out there supports the idea?

**Margo MacDonald:** Me!

**Euan Robson:** Ms Robison has just heard an indication of support for the proposal from within the chamber.

The committee I was referring to would likely be based on social work services, in which there is an increasing need to co-ordinate activities with health care professionals. I believe that that is the way forward. The members of the committee, as councillors, will have been democratically elected; independent professional advice will be available to them; they would keep the board accountable; and they could be effective scrutineers. The members would work on major issues on which they were called in for discussion and debate, and they would then refer their conclusions back to the NHS board or the minister. That would ensure the integrity of the national health system as it presently exists.

**Mr Davidson:** Is the member on the brink of supporting some new Liberal Democrat pledge to

give responsibility for primary care to the local authorities?

**Euan Robson:** No; that question shows a fundamental misunderstanding.

I want to discuss the three subsidiary points mentioned by Bill Butler. First, I do not think that he really addressed—although he tried to—the issue of remuneration. Secondly, as he said, the 14 constituencies will have to be changed by the bill, if it progresses. Thirdly, the percentage of board members to be elected will clearly give rise to debate if the bill progresses.

Bill Butler did not mention the first-past-the-post system, nor did he understand clearly enough, I feel, that costs would be involved and that those costs would clearly come out of patient care.

**Bill Butler:** Will the member give way?

**Euan Robson:** No, I am in my last minute.

The issues that I have just mentioned are subsidiary to the main point, which is that there is a better way to achieve the objectives that Bill Butler has set out in his bill. Those objectives are shared, and the search for an alternative way of achieving them is shared by many of the professional witnesses who appeared before the Health Committee, including witnesses from the BMA and the RCN. Those witnesses made that point clear, and I repeat it this afternoon.

15:15

**Roseanna Cunningham (Perth) (SNP):** This is not the first time a committee convener has had to speak to a stage 1 report after everything has been said umpteen times. It is a very odd procedure indeed to have the stage 1 report presented after the horse has bolted. That is a deliberate mixing of metaphors. It is an issue that we must address.

I thank everybody involved in bringing the report together—the witnesses, the clerks and committee members—for all their work throughout the process, and of course Bill Butler for introducing the bill in the first place.

It is fair to say that all members of the Health Committee understood precisely why Bill Butler introduced the bill. Regardless of views about the general principles, or indeed about some of the specifics, we were absolutely clear about the general levels of voter discontent with health board decisions, which were often expressed vociferously in long-running campaigns. Many of those giving evidence acknowledged that problem regardless of their final position on the bill's proposals. Of those opposed to the bill, sympathy was expressed by, among others, the BMA, the RCN and the boards themselves. Hand in hand

with the issue of public discontent came the question of accountability, or, one should more correctly say, lack of accountability. Those currently part of the status quo do not accept that criticism; those not part of the status quo see the lack more clearly.

For a concise summary of the main reasons for the complaints about the current method of working, I direct members to paragraph 26 of the report, which I will not read out here. Suffice to say that none of those criticisms or comments will be at all unusual to the vast majority of us here today, nor are they unknown to the current establishment. The question is, what should the response be? For the committee's part, it felt that Bill Butler's proposals provided a useful starting point for a response, which is why we rejected the arguments of those opposed to the bill.

In a nutshell, we say that it is not enough to recognise the huge gulf in perception that exists, then effectively say that everyone else is out of step, bar the professionals. The Convention of Scottish Local Authorities offered a compromise of sorts by suggesting that the existing role of councillors on boards could be beefed up, but a degree of scepticism was expressed as to how effective that would be, given that it is not clear that the existing role of those councillors is to provide any sort of real democratic representation.

A more serious concern of those opposed to the bill is the worry that the NHS's role as a truly national service may be compromised by the addition of locally elected board members. It was said that that would lead to inconsistency of policy and programme implementation. Professor Stevely of NHS Ayrshire and Arran and Professor Arbuthnott at NHS Greater Glasgow and Clyde spoke in surprisingly negative and emotive terms about risk, about endangering the NHS and about interfering with the local delivery of services. The minister himself has talked about the risk of fragmentation; his comments today in that regard were profoundly negative. For those of us who have long had concerns about so-called postcode prescribing, and are already aware of considerable differences in service delivery from one board area to another, that argument seems rather odd.

More specific arguments were also canvassed. Those included concerns about voter turnout—though some of the comments about that and the level of turnout below which an election has no validity would seem to carry some more general warning regarding the continued validity of any election. In any case, Bill Butler himself was able to counter those arguments with his own statistics suggesting that, on single issues, the voters are considerably more engaged than we might think.

There were other, more technical, issues that concerned the committee and that were raised directly with Bill Butler. It is fair to say that the

committee was sceptical as to the usefulness of an electoral area where that encompassed the whole of a health board area. There are one or two areas where that might not be a problem, but for most of us there were concerns about heavily populated urban areas always being able to outvote the more widespread and sparsely populated rural areas. We were also surprised at the lack of any reference to remuneration in the bill, not because we think it a popular argument to make—far from it—but the truth is that people should not be put out of pocket if they are prepared to put themselves forward and get elected. The committee did not come to a view on the perfect proportion of directly elected members per board either. In our view, there is still a debate to be had about that. The proper place for that debate is at stage 2.

The committee—with one named exception—therefore took the view that it approved the general principles of the bill, for the following reasons: we have sympathy with the arguments about public involvement, consultations and decision making and agree that change is needed; and the NHS is already no stranger to politics, so the addition of non-party political members will not change that dramatically.

**Mr Kerr:** I refer Roseanna Cunningham to paragraph 85 of the committee's report:

"The Committee recognises concerns that the addition of directly elected members on NHS boards may undermine the national element of the NHS, and notes the New Zealand example as a possible mechanism for overcoming this potential problem."

That is outwith the scope of the bill and therefore not possible to deliver. That is a significant point.

**Roseanna Cunningham:** An interesting argument might be had at stage 2 about what is and is not within the scope of the bill.

There are ways around the concerns about departing from a national service—I was just coming on to that point when the minister intervened. It was also suggested that, because the proposed electoral system may lead to its own undemocratic representation, board areas should be subdivided to arrive at smaller electoral areas. There should also be a debate about the suitable proportion of directly elected members on any given board, and directly elected members should be paid or compensated for any expenses or loss of earnings that they might incur.

As all its concerns could be considered at stage 2, the Health Committee commends the bill to Parliament.

15:21

**Gordon Jackson (Glasgow Govan) (Lab):** It is difficult not to have real sympathy with the aims

and intentions of the bill. The policy memorandum speaks about democratising Scotland's health boards, the public influencing health service delivery within their local communities, locally generated legitimacy for the decision-making process, greater openness and transparency and increased public confidence and trust. It is difficult for anybody to say that they are against those without saying that they are against virtue itself—it is all good stuff.

On top of that, we have all, at times, been less than completely satisfied with the existing system and processes—I think the minister knows that. Some so-called consultations do not seem to have been genuine. There has been a feeling that health boards have been going through the motions formally without a genuine, meaningful dialogue and there is no doubt that there has been a lack of public confidence.

Despite all that, I remain against elections to health boards, not because the idea is without its plus points—few proposals contain nothing positive—and certainly not because I am somehow agin people having their say, as Shona Robison caricatures the bill's opponents as being. On the contrary, we want people to have their say. I oppose the proposal because I do not think that the end result would be an improvement in health care and health provision. In fact, I rather fear that it would be the opposite.

We have political accountability within the health service. Ultimately, that accountability rests with the minister and the Parliament. No really major decision is taken without the involvement of those accountable bodies.

**Bill Butler:** Does Gordon Jackson agree that the only part of the National Health Service (Scotland) Act 1978 that the bill seeks to change is the percentage of directly elected members of a health board and that, under the bill, the minister and Parliament would have all the powers that they have at present?

**Gordon Jackson:** I will come back to that point later, because it somewhat disingenuously avoids the conflict between the national and the local. I am not avoiding the point.

On top of the minister's and Parliament's responsibility, there is real input at council level, and I do not see how another elected layer would produce any more genuine accountability. On the other hand, there could be and, I think, would be an obvious downside to it. Decision making in the health service involves some serious, hard decisions that often cause a great deal of controversy and heat in a locality. I cannot think of anything—not even closing a school—that does that more than closing or changing a health facility. I will be blunter than politicians are

sometimes prepared to be: most of us have found that situation difficult. I say that because the debate is not always terribly rational. As a local politician, I have been torn between supporting a health board decision that I know in my head is correct or supporting the local community in demands that, deep down, I know are sometimes irrational. I suspect that other members have been in the same position, whether or not they admit it.

**Brian Adam:** Will the member give way?

**Gordon Jackson:** I do not have time. I am sorry.

In the back of people's minds—Jean Turner is in the chamber—is the fact that local politicians end their careers over hard decisions on health matters. That is because sincere and genuine local demands are not always rational.

**Jackie Baillie (Dumbarton) (Lab):** Will the member take an intervention on that point?

**Gordon Jackson:** No. I do not have time for that.

Recently, I sat with intelligent people on the south side of Glasgow who argued with me that every neighbourhood should have its full service hospital. No amount of talking to them about work patterns or consultancy numbers would change that—they wanted it and they must have it. The allegation is made time and again that if we close this or that facility, people will die, as if those in charge of the health service did not want the best care for people. The reality is that there is no statistical record that such hard decisions, which Andy Kerr takes from time to time, result in people dying.

I therefore ask myself how having locally elected health boards would help to make that decision-making process better.

**Carolyn Leckie (Central Scotland) (SSP):** Will the member take an intervention?

**Gordon Jackson:** No.

Even leaving aside all the questions whether the health board would be truly representative of the community or have a genuine mandate—which I think is doubtful—I come to the conclusion that it would make unpopular but correct decisions much more difficult to take. It would paralyse proper, correct decision making and would offer no real improvement.

Roseanna Cunningham referred to what Professor Stevely said about risk. The risk that he emphasised was the right risk, that there would be scenarios where there was conflict between the local agenda and the national agenda, the result of which would be a diminution in care at a local level.

I do not think that the bill helps. We have political accountability, but we have enough distance before the hard decisions are made. The balance is broadly right at the moment. Of course we could improve it—we could improve accountability and consultation—but the balance that we have is better than what is proposed and I for one see no advantage in changing it.

15:27

**Dr Jean Turner (Strathkelvin and Bearsden) (Ind):** I will not mention why I am here, but I congratulate Bill Butler on listening to the people and realising that there is still a gap out there. Although health boards have put in place many new processes to involve people in the decisions that they take, people still do not trust that the health boards will do that, or that they will be accountable for their actions.

I do not think that health boards really wanted any more change—nor did the RCN or the BMA. Anyone who has ever worked in the NHS will know why. Just when we got local health care co-operatives sorted out, they were changed to community health partnerships, which are not yet working fully enough to take on board the issues that we want them to take on board. If they do not work and public involvement does not work, what are we left with? What is wrong with having elected people on a health board, as long as there is the right kind of voting system?

**The Deputy Minister for Health and Community Care (Lewis Macdonald):** Does the member acknowledge that the decision to establish CHPs was taken by ministers, for which we are accountable to Parliament and to the electorate, and does she agree that that is an appropriate democratic form of accountability for making changes in the delivery of health services?

**Dr Turner:** I agree. I do not think that there is anything wrong with CHPs on paper. However, it was difficult to get LHCCs up and running and there is a difficulty with CHPs and with ensuring public involvement.

The minister talked about fragmentation. We have that at the moment. It is difficult for someone with an eating disorder to get a bed. People with chronic pain in the Highlands cannot even get Highland NHS Board to reply to letters from their consultants. Given the differences in provision throughout Scotland, I do not see that having elected members on health boards would make any difference. We are to depend on the Scottish health council, which comes under NHS Quality Improvement Scotland, to scrutinise the consultation processes that health boards undertake. What happens if they do not actually scrutinise those consultation processes properly?

We will still be left with people who do not trust the system.

I have an open mind on the subject and I would like to think that this Parliament has the courage to take the bill past stage 1, so that views can be aired. I do not have a view one way or the other. That is what debate is all about. I think that it is a good thing to listen to the people out there, because many people are cocooned from public opinion.

In the Health Committee, Bill Butler asked Robert Cumming of the Scottish health campaigns network:

“You will know that some of the bill’s opponents have said that direct elections would impede the modernisation of the national health service and that there would be no change or progress because of parochial interests. What is your opinion of that argument?”

Dr Cumming replied:

“I think that the complete reverse is true. More involvement from and consultation with the local community would progress matters better than people taking stances that are not fully understood. I take a diametrically opposite view to the opponents and suggest that elected health board members would improve modernisation because there would be much greater input from people and dialogue with the health boards.”—[*Official Report, Health Committee*, 31 October 2006; c 3168.]

We all know—if we listen to our constituents—that input from the people and that sort of dialogue is precisely what we do not have at the moment.

The bill might not be perfect at this stage, but it could be improved if it goes forward to stage 2. We owe it to the public to think about the issue and not take a stand on one side or the other at this point. That is what debate is all about.

A few weeks ago at Stobhill—the hospital that I was fighting for—we had a bit of a flu outbreak. We were taking in elective cases and we had people lying on trolleys—a 90-year-old man lay on a trolley for 13 hours. That is still happening. I cannot believe that we are not ashamed of the fact that we do not have enough beds, that people have to lie on trolleys and that we cannot organise the system to ensure that people can get beds. If there were elected members on the health board, they might try to bring that tragedy to an end.

15:32

**Ms Sandra White (Glasgow) (SNP):** I was shocked by the minister’s speech. Now that he has come back to his seat, I will tell him why. I thought that part of his speech was sheer scaremongering. To use words such as “dangerous” is quite inflammatory. I was disappointed in the choice of words that he used when making his points.



**Mr Kerr:** I refer the member to Professor George Alberti, the president of the Royal College of Physicians, who suggested to me that, in many cases, the best result for the patient can be secured by bypassing their local hospital and getting them to a specialist centre. That is exactly the strategy that is set out in "Delivering for Health". I understand that that strategy is opposed by many communities. However, at the heart of the strategy lies patients' best interests and their survivability.

**Ms White:** I take on board what the minister says but patients' best interests are what lies at the heart of this bill, which is why I think that the minister's speech was inflammatory. The minister talked about postcode prescribing and cancer strategies not being delivered. However, as Roseanna Cunningham and Jean Turner said, that is the situation at the moment. The Public Petitions Committee receives petitions almost every month on the issue of postcode prescribing. It exists under the present system, so the minister cannot use that as an excuse.

Like many others who have spoken, I agree with the principles of the bill, which will be an immensely positive step towards restoring people's faith in our health service. Everyone in the chamber knows that the state of the health service is one of the voters' main concerns. For too long, people have felt ignored in relation to decisions that will directly affect them. If one of the principal aims of Bill Butler's bill is to redress that situation, we should all support it, particularly at stage 1.

I remember campaigning on the Queen Mother's hospital and Yorkhill hospital—Gordon Jackson will probably remember that as well. I see that the minister is leaving us; he does not need to come back to hear the rest of my speech.

I remember being assured by the health board and the minister that the replacement facilities would be as good as, or even better than, those provided at the Queen Mother's hospital and Yorkhill hospital.

**Gordon Jackson:** I understand what the member says about public confidence and perception, but will she say how and why the proposal would result in better decisions being made?

**Ms White:** It would result in better decisions because board members would be directly elected and the public would have a say. Health boards would not be made up of placemen. That is the guiding light of the proposal.

I return to the situation with maternity services in Glasgow, although the same thing has happened throughout the country. We were assured that the service would be as good as or better than the one

that we had before, but the number of beds is already being cut because of financial constraints. Staff and the public have been alerted to that and they are concerned. During the health board's consultation, however, we were never told that that could happen. Where does that leave us?

It is easy to see why change is needed. One of the Executive's objections to the bill is that changes have been put in place to make the health service more transparent and responsive to what people want and that time is needed for those changes to bed down. That is ironic, given that the Executive objects to the bill.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** The member will appreciate that cross-border health care is an important issue in my constituency and in Euan Robson's constituency. We need to attract patients from the Lothians to the Borders to make health care in the Borders more sustainable. If the Lothians had a directly elected health board with a mandate to keep health care and the budget in the Lothians, that would work against the principle. Would the member defend that?

**Ms White:** I understand from what Bill Butler has said that we will examine the cross-border issue at stage 2. The situation is not as simple as Mr Purvis suggests. We have to examine the detail.

Another example of the problems with consultation—again, such problems have happened not only in Glasgow but throughout the country—is the centralisation of accident and emergency services. Jean Turner mentioned the ambulatory care and diagnostic units that are sprouting up all over the town. The downgrading of the great Victoria infirmary and Stobhill hospital to ambulatory care and diagnostic units will leave Glasgow with only two full accident and emergency departments. Regardless of what Gordon Jackson said, we have to look at that carefully. There will be trouble ahead if we have only two full A and E departments in the Glasgow area.

Many people took part—in good faith—in the consultation. The consultation process went on for a number of months and cost nearly £1 million, but all that happened was that the health board's original proposal went through. As Nanette Milne said, the health board saw it as a fait accompli. We can understand why people want directly elected health boards.

In his evidence to the Health Committee, the minister said:

"The bill is an attempt to address a concern, which I think that we share, through a mechanism that I am not sure will solve the problem." —[*Official Report, Health Committee, 7 November 2006; c 3189.*]

That sounds a bit of a conundrum to me. I am sure that members agree that to have doubt about whether something will work is, in itself, no reason not to try to make it work. I urge the Executive and the other parties to rethink their stance, to offer more constructive input and to support the bill. We have to consider all the details of the bill if we are a truly democratic Parliament. We should support it at stage 1 and continue to examine it. Let us listen to the concerns, consider the evidence and make up our minds at stage 2.

I ask members not to stop the bill at stage 1. It is a worthwhile bill. I certainly support it and I look forward to hearing further evidence on it. The people out there—the public—elected us to look after their interests, but we will not do that if we fail to support the bill at stage 1.

15:38

**Susan Deacon (Edinburgh East and Musselburgh) (Lab):** For the past couple of days, the chamber has rung with voices from across the world, talking about the need for us to embrace and accelerate the pace of change and recognising how important it is to innovate, to be creative, to be flexible and to modernise. As politicians, we cannot talk the language of change unless we are prepared to put it into practice. It strikes me as a sad irony that, now that Bill Gates and Gordon Brown have left the room, instead of talking about how we drive forward strategic change in the NHS in Scotland, we are talking yet again about how we tinker with structures.

The big question is how we drive forward strategic change, and it is a £10 billion question. This year, for the first time, the health budget in Scotland will reach £10 billion. As somebody who had a health budget of £4.5 billion, I say that £10 billion is serious money. Serious investment is going into the NHS in Scotland.

**Bill Butler:** Will the member take an intervention on that point?

**Susan Deacon:** Not right now.

I would support the bill if I thought for a moment that it would do anything to add value to the process of leading change, but I truly believe that it will not.

We can all agree that what the NHS in Scotland needs is first-class leadership, first-class management and first-class governance. I spent more time than most examining those issues in the early years of the Parliament; I got in about the guts of the history, culture and practice of the NHS in Scotland. That is why—on my watch—we began the process of dismantling the trusts, put in place unified health boards, put councillors and staff partnership representatives on to boards and

set in train the process of radical change in order to involve meaningfully the public and patients in decisions that affect them. I ask members to believe me when I say that, if I thought—either now or then—that any of those processes would be improved by the proposal in the bill, I would embrace it. However, I absolutely do not think that.

**Bill Butler:** Will the member give way?

**Susan Deacon:** I would like to make a bit more progress.

The other thing that any of us who have served in government can testify to is that change is hard. As others have acknowledged, it requires difficult and sometimes unpopular decisions to be taken.

If I may dust down another bit of ancient history, I recall from my time as the Minister for Health and Community Care that I had to deal with some real war zones in different parts of the country—there have been others since—over controversial change. I also recall having to deal with some pretty dysfunctional health systems. Some of the changes that have been made to structures helped to address some of those situations, but I can tell members that what really made the difference for the board areas that were turned around, both in respect of the services that they delivered and in respect of the cohesion and good stewardship of the health service in their area, was changes in people—changes in the leadership of those board areas.

It is wrong to single out anybody, but the Parliament—and I, as the minister—spent quite a bit of time looking at the development, if I may put it that way, and transformation of the NHS in Tayside. I cite the difference that individuals made, both in leading that board forward and in taking forward change. The kind of people who are needed are people who are leaders, who can cope with strategic change and who can connect with the public. Boards do not simply need one or two folk from a local area who have a particular interest, be it sectional, geographic or whatever, however well informed or well motivated they are; they need people who can connect with the entire population and harness modern technology and modern methods of engagement and communication to engage with the population, absorb what they hear and translate that into what it means for the way in which services need to be delivered in the future.

**Bill Butler:** Is Susan Deacon arguing that good leaders must be appointed? It seems to me that she is very close to arguing that democracy prevents change. Is she seriously asking us to believe that?

**Susan Deacon:** What I am arguing—I have argued the point passionately throughout my political and professional life—is that we need

leadership of the highest order, particularly in our public services. The structures and governance arrangements that we put in place will differ for different parts of public services in different parts of the public sector to suit the arrangements and the task in hand.

**Carolyn Leckie:** Will the member give way?

**Susan Deacon:** I cannot for the moment.

As I said, in the case of the health service, we need the highest possible standards of leadership and management, which will come from many different people: from clinical leadership and, yes—I dare to say it—from managers. It will also come from people who adopt a non-executive role and, incidentally, from people who have come through an elected process, because councillors sit around the board table. The challenge that they face is that of managing change.

It is not good enough that, time and again, politicians—not only politicians in this Parliament, but people who have gone before us—sign up to documents such as the Kerr report, health plans, white papers and the like, but when the chips are down and it comes to considering how they put in place the mechanics, the arrangements and the people to take forward change, they bottle out of some of the challenges.

We must move on from the bricks-and-mortar debate that we have had about our health service of late. We must move forward and have a vision of the health service for the future. Members may think that we can somehow fix and fudge the bill in a few weeks in the dying phase of this session of Parliament, but I suggest that that is not the way to run our health service, as it is too big and too important to us all. I urge members to reject the bill.

15:44

**Dave Petrie (Highlands and Islands) (Con):** We are broadly in favour of the bill, subject to the changes to which Nanette Milne referred being made at stage 2.

Let us make no mistake about why the bill was introduced. Local communities' dissatisfaction with the remoteness of health boards is growing. The bill was introduced as a result of a desire to make health boards reflect more accurately the wishes of local communities, which is a logical and commendable aim. One need look no further than the protracted indecision that has affected the hospitals in Oban and Fort William in my area to demonstrate the local problems that exist.

Let us consider what has been proposed. Fourteen health trust areas would become constituencies in which an absolute majority of the positions would be elected. As Nanette Milne said,

we have serious concerns about that, and the issue will be debated further. Elections would take place every four years and would be funded by trust budgets. Elected members would receive no remuneration for loss of earnings, which could obviously limit interest in the proposals.

Members of the Health Committee, except for Euan Robson, voted in favour of the bill. The arguments in its favour are that it would increase local accountability and reflect local needs better than they are currently reflected, and it could mean that wider points of view, backgrounds and experiences would be reflected on boards. Furthermore, elected representatives may enable more prudent management of the large budgets for which trusts are responsible.

**Mr Kerr:** Paragraph 90 of the Health Committee's stage 1 report on the bill states:

"The Committee is also concerned that the bill as drafted does little to promote and encourage fair and equitable public representation."

That is contrary to what the member has just said.

**Dave Petrie:** I cannot agree with that.

There are arguments against the bill. The national health service is centrally planned. Elected members could inhibit centrally planned initiatives and entrench a postcode-lottery system. Turnout for the elections would almost certainly be low, which would mean that it would be easy for special-interest or single-interest groups to gain influence and further their agendas.

The majority of trusts cover a mixture of urban and rural areas, in which there are different conditions. Because urban areas contain denser populations, there is a real danger that rural communities' needs and requirements could be overlooked. Elections every four years could lead to short-term planning and reactive policies, which could damage the system's fluidity. Rolling budgets over the four-year term should therefore be considered. Furthermore, the cost of the elections—which has been estimated at between £1.2 million and £2.4 million—would remove valuable resources from the front line and patient treatment. I call on the Executive to re-examine the bill's key areas and to lodge appropriate amendments at stage 2.

I hope that the bill will raise the Executive's awareness, which is urban based, of the financial and operational challenges that are involved in serving a wide urban, rural and island mix of areas. It is essential that rural areas are not neglected, as they have been by recent Executive legislation and policies.

As members have said, it is important to rationalise trust boundaries to reflect accurately urban and rural demands and aspirations. It is also

important that NHS budgets do not suffer, particularly at a time when they are very stretched. The financing of elections must reflect rural sparsity. We must not fall into the free personal care trap so that rural councils such as Argyll and Bute struggle to cope.

Refusing to remunerate board members would reduce the ability of elections to provide members from a wide range of backgrounds and with wide experiences. The costs involved in such an approach must be considered.

As I said, we broadly support the principle of local communities getting more involved and taking more action in the provision of public services. Our argument is that a system in which big government tells local people what to do and how to do it does not work. It is important that the new system does not disadvantage our rural areas, potential elected members on low incomes and already stretched health budgets. I look forward to re-examining the bill at stage 3 and hope that the Executive will take my suggestions on board.

15:49

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** We all know that public accountability has been a huge issue in the relationship between health boards and the people whom they serve. In my area, for instance, closing the maternity unit at Aboyne and centralising all births in Aberdeen has been proposed. The proposal was deeply unpopular, flawed and contrary to the interests of the people of Deeside, but there was no one on the board from our area to speak up against it. The board therefore unanimously voted to proceed with its closure proposals.

On such a major issue, nobody was willing to disagree with the line that was put forward by NHS Grampian staff. No one was willing to stand up and be counted on the issue; people had, effectively, bought into the decision. The people of Deeside felt that they had no voice in the board's decision-making process.

**Brian Adam:** Will the member give way?

**Mike Rumbles:** In a moment. Let me proceed.

Thankfully, an extremely well-run campaign was undertaken by the save Aboyne maternity unit group, which was supported by MSPs from all parties across the region. To return the compliment, I thank Nanette Milne, in particular, for her valued support. The board's decision had to be fought by MSPs all the way to the Minister for Health and Community Care. Thankfully, Andy Kerr made the right decision on the basis of the evidence that a birthing unit in Aboyne for planned

births for low-risk mothers is indeed required. Thank goodness, the board now seems to have accepted that. I place on record my personal thanks—and, more important, the thanks of the people of Deeside—to Andy Kerr for making the right decision on the basis of the evidence that was available to him.

**Brian Adam:** Given the fact that the Liberal Democrats' health spokesperson has today talked about the potential role of councils in undertaking scrutiny of such matters, can Mike Rumbles explain the fact that a councillor of that party who was serving on the board of NHS Grampian voted in favour of the board's decision and against his council's policy? How was that going to help?

**Mike Rumbles:** I say to Brian Adam that individuals who make those decisions must answer for themselves. I have been pleased to note that the whole campaign has not been party political, but has been about ensuring that we get the right decision. I am afraid that he is bringing party politics into this, which is to be regretted.

The fact that the issue had to be fought all the way to the minister is indicative of the fact that there is something wrong with the way in which our health boards are structured. They certainly do not represent the people whom they exist to serve. Contrary to what Sandra White said earlier, I was pleased to hear Andy Kerr say that we need to examine the whole issue carefully in order to get it right. I support the view that the minister expressed.

**Shona Robison:** Will the member give way on that point?

**Mike Rumbles:** In a moment.

I believe that the proposals in the bill could be termed the nuclear option—electing a majority of board members by an outdated and unrepresentative voting system. If the problem that Bill Butler identifies is the fact that the boards are unrepresentative of the people whom they are meant to serve, how can the solution be to elect people on an unrepresentative, winner-takes-all basis? That is just absurd. It is for that reason that I cannot possibly support the proposals in the form in which Bill Butler has laid them out. If he was trying to build consensus for his bill, he would not insist on electing people through the discredited system that he proposes.

Health boards need to be reformed, but I do not believe that this proposal is the right one. I do not want an undemocratic system in our health boards replaced by the winner-takes-all form of the democratic process. If we agreed to have locally elected representatives, what would happen if there was a dispute—disputes occur all the time—between them and the minister, who has to run the whole of the NHS, is directly responsible to the

people of Scotland in the Parliament and has shown himself to be responsible to MSPs across the party divide in this chamber? It would be a recipe for disputes and conflict to have two democratic mandates—one for local health boards and one for the Parliament.

It is for those reasons that the Liberal Democrats will not support Bill Butler's bill at decision time.

15:54

**Mr Duncan McNeil (Greenock and Inverclyde) (Lab):** As Roseanna Cunningham—who has left the chamber—said earlier, lots has been said and it is difficult to say any more. I apologise before I start for the fact that I will repeat some of the points that have been made today.

We all agree why we are here. Susan Deacon alluded to that earlier in her point about leadership, how it is used and whether it is used effectively. Such issues have brought us to this point and brought about Bill Butler's bill, which I supported initially because I felt, and still feel, that the imbalance between the medical profession and everyone else in our health boards is not only perceived but definite. However, I do not believe that it is right to go from that point to a point at which we treat the subject as if it were a numbers game and say that the more people there are in the room, the stronger their argument is. This is not a numbers game. We speak of trust, and we need there to be trust between those who provide the services and the communities that they serve, and the community needs to be able to trust the professionals who deliver those services. We will not reach a position of trust if we start out by saying, "We have a majority, irrespective of what anyone else says."

We have to congratulate Bill Butler and those who have supported his bill on the work that has been done. At this time, we all agree that the status quo is not an option. The committee heard in evidence that moves have been made because the Parliament is not completely unheard in the right circles. Moves have been made over the piece by councillors who have used more modern and serious ways of consulting their communities both at the point of crisis and to keep people up to date on an on-going basis. That is as important as anything.

We have moved on, but we now need to evaluate the risks and the benefits that the bill would bring.

**Brian Adam:** In his opening speech, the minister referred to a pilot scheme run along the lines that Bill Butler suggests. Does Mr McNeil support such a scheme? How would it work?

**Mr McNeil:** It would be a more sensible way of

proceeding. We have been asked to put the risks in the bill to one side and trust in the stage 2 process. If that does not work, we have been told that we can come back and see whether post-legislative scrutiny works. Hard questions have to be asked about the number of boards, who would be on them and whether we would be able to take people off them. Nanette Milne suggested that we should take the vote away from some people who are already on the boards. When we ask such questions, we are told to leave things up to the stage 2 process, to post-legislative scrutiny or to the minister, but we have a decision to make today about whether, with all the risks still in place, we should proceed. Of course, the committee recognised that. Its report said that it is unlikely that direct elections to health boards would change the political nature of health issues.

**Jackie Baillie:** Will the member take an intervention?

**Mr McNeil:** I am sorry, but I cannot. I have limited time; I did not get the time that others got.

The report also said:

"The Committee recognises concerns that the addition of directly elected members on NHS boards may undermine the national element of the NHS ... The Committee has concerns that the electoral system, and in particular the size of the electoral ward may result in undemocratic geographical representation ... Where this is the case the interests and needs of those living in different parts of the board area can be quite distinct."

The committee recognises that it is very difficult to balance the needs of the majority of people who live in the cities with those of people who live in outlying and rural areas. Many problems and antagonisms came about with the process of centralisation. The bill does not answer many of those questions. I believe that, as suggested by the minister, it is better to address the issues by testing the proposals in the bill rather than subjecting the health service to additional upheaval.

I believe that the issue is important, that trust is important and that we need to create a system that gives the public—not just two or three people—a greater say in the running of health services. I believe that what is important to the public whom we serve is the quality of the health service. Whatever decision we take as a result of the pilots, our focus must be on the objective of improving the quality and delivery of the health service. I believe that what people really want is those improvements rather than elections with dubious outcomes.

**The Deputy Presiding Officer (Murray Tosh):** I call Eleanor Scott, who is to be followed by Carolyn Leckie, both of whom have four minutes. I express my regrets to the three remaining members who have not been called to speak.

16:00

**Eleanor Scott (Highlands and Islands) (Green):** Like other members, I have a great deal of sympathy with the concerns that lie behind the proposals in the bill.

Many communities have lost trust in the local NHS that is meant to serve their needs. On previous occasions, Parliament has debated specific examples of that, including redesign of maternity services that communities have perceived as being a loss of provision, and the closure of accident and emergency departments that—whether closure was justified or not—definitely represented a loss of services. We are all aware of the widespread perception that health boards do not engage in real consultation but simply devise proposals that are presented to the public as faits accomplis. Those criticisms can be justified. It is clear that a democratic deficit exists in our NHS—the question is whether the bill represents the best way to correct it.

Of course, the present system of governance in our NHS is not the only possible system. Health is a local authority function in some countries; for example, in Norway primary care is the responsibility of local councils. That idea has, I think, some merit. The Scottish Parliament information centre briefing reminded me that such a set-up was considered in the UK in the 1960s. Although councils were dead keen, the medical profession in particular threw up its hands in horror—a bit like some members did today when Euan Robson suggested something along those lines—when the idea was proposed.

However, today we are considering what is on offer in the Health Board Elections (Scotland) Bill. I acknowledge that the current make-up of health boards is better, or at least broader, than it was 20 years ago at the height of the Thatcherite NHS. In my region, Highland NHS Board now has a chair, six executive members, five stakeholder members and 11 non-executive members. By contrast, in the 1980s the board had a chair who was appointed by ministers, six non-executive members who were appointed by the chair—all of them were, directly or indirectly, political appointees—and six executive members whose role was, I presume, to scrutinise themselves. The present system is at least better than that, but it is still in no way democratic.

It is often pointed out that democracy consists of more than putting a cross next to a name every few years. That leads me to my concerns about the bill—a bill that, on balance, I cautiously support. Will having direct elections for some seats on boards mean that boards will feel that they have done democracy and so do not need to consult further? Will the voting system result in fair representation of all sections of the community

and all geographical areas? I am concerned that, if we have one large multimember ward for the whole health board area, the sparsely populated rural areas could end up with no representation.

**Margo MacDonald:** Does Eleanor Scott have any information on whether a proportionately higher number of people would stand for elected health boards than stand for, for example, our community councils?

**Eleanor Scott:** I have no information on that. I actually have quite a lot of concerns about that because serving on a health board will be a lot more demanding than serving on a community council. However, at least the remuneration issue is being addressed. I am happy that Bill Butler is prepared to reconsider the size of the voting areas.

I have concerns about the voting system that is proposed in the bill. I very much agree with Fairshare Voting Reform Limited and others that the single transferable vote system would be much better. If the bill proceeds to stage 2, I hope that an amendment can be lodged to that effect.

If the bill were passed, would the people who put themselves up for election be truly representative? I note that in New Zealand, which has direct health board elections, women and Maori are underrepresented. Although elections could be non-party-political like those that take place for community councils, parties would not be prevented from trying to get their man into the post.

I am concerned about voter fatigue—we have rather a lot of elections in Scotland and, in recent years, turnout has been worryingly low. Would the health board elections be tagged on to the Scottish Parliament and council elections? If that happened, it is unlikely that local health issues would get much of an airing.

**Bill Butler:** Will the member give way?

**Eleanor Scott:** No. I am sorry, but I am in my last minute.

If the health board elections were held separately, there would be the risk of woefully low turnout.

The bill raises some questions that are still to be answered. However, with reservations, I will support the bill at stage 1.

16:04

**Carolyn Leckie (Central Scotland) (SSP):** I am happy to confirm that the Scottish Socialist Party whole-heartedly supports the general principles of Bill Butler's bill and we congratulate him on introducing it.

Like other members, we have reservations about the proposed voting system but, unlike Mike Rumbles, we do not think that it means, in principle, that we should vote against having more democracy rather than less. Mike Rumbles is not in the chamber, but I wonder whether the Lib Dems would have opposed the establishment of the Scottish Parliament if all its members were to have been elected through a first-past-the-post system—I think not—[*Interruption.*]

There is a serious matter at the heart of the debate. There are big debates to be had about the strategic direction of, and democratic accountability in, the national health service. I do not have time to deal with the many controversial issues about the health service's strategic direction, so I will concentrate on the bill.

People do not just feel disenfranchised; they feel patronised and treated with contempt. The Gordon-Jackson-knows-best attitude drives people up the wall because they are capable of understanding the issues if they are given the proper information. That is part of the problem.

**Mr Kerr:** Will the member give way?

**Carolyn Leckie:** I am sorry, I have only four minutes.

When consultations take place, information that would enable people to examine the issues objectively is not provided up front, alternatives are not presented and the issue is not placed in a context in which the politics, policy objectives or financial parameters could change—for example, if a private finance initiative is proposed.

Andy Kerr talked about “dangerous short-termism and self-interest”, in another display of the patronising attitude of politicians who describe what they think would automatically happen if we asked the people how to run the NHS. That was disgraceful.

**Mr Kerr:** Will the member give way on that point?

**Carolyn Leckie:** Sorry—I have only four minutes.

Mr Kerr talked about the Executive's mandate, but his comment drew attention precisely to where there is a democratic deficit: the Executive did not have a mandate for private finance initiatives, for the corporate takeover of general practitioner practices, or for the shutting of hospitals and centralisation of services. That is why there is a clash with communities and why communities feel disenfranchised, and it is why the minister is running scared of increasing democracy.

Mr Kerr said that the NHS could be undermined. However, the minister's policies, such as increasing use of the private sector, are doing exactly that. They are undermining the NHS.

**Jeremy Purvis:** Will the member give way?

**Carolyn Leckie:** Sorry—I have only four minutes and I have a lot to get through. I have already had to ditch quite a lot of my speech.

Fears have been expressed about politicisation of the NHS, but the NHS is political. If it was not for political campaigning, the NHS would never have been established because the professionals in the medical establishment did not want it. If it was not for the people on the ground, we would not have an NHS. We need more democracy, not less.

I have only one minute left, but I want to respond to some of Susan Deacon's remarks. I was concerned that she seemed to be arguing for professional managerialism rather than for democracy in the health service. By the way, who elected Bill Gates and why should we take counsel from him?

**Susan Deacon:** Will the member give way?

**Carolyn Leckie:** I am in my last minute.

I have a lot of respect for Susan Deacon, who was Minister for Health and Community Care when I was a trade union activist. However, I have to tell her that I met some of her appointees and I would not give them such shining, glowing reports. Susan Deacon argued that people with professional qualifications, professional backgrounds and a managerial perspective are more able to deliver strategic change. Well—I say that change has to be right in the first place and has to be progressive. My experience shows that the people who deliver and receive services are much more capable of identifying and delivering the changes that need to be made, but they are not trusted in that. That is why we need elections.

16:08

**Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** I thank Bill Butler for the characteristically diplomatic way in which he described the bill, which is close to his heart, as I think all members acknowledge. He gave a fair description of what the bill is about and, in fairness, drew attention to the Health Committee's concerns about remuneration, other constituencies and the number of board members who would be elected—he is holding out for 50 per cent plus one, or something of that nature.

Andy Kerr, the Minister for Health and Community Care, said that the Health Committee's report

“stopped well short of being a ringing endorsement”

of the bill. Other speeches have borne that out. However, he concedes that there is some merit in considering local democratic involvement. I think that all parties concede that point.

**Brian Adam:** Will the member give way?

**Mr Stone:** Not at this stage—I need to make progress.

The minister made it very clear that he will not countenance major changes to the NHS's structure. He also made a point that members have returned to again and again and which I endorse whole-heartedly: we are talking about a national health service, not a postcode health service. At the end of the day, our lives, our deaths and all matters relating to our health are very important to us and to our loved ones. I certainly agree with the crucial point that the elected members of this Parliament are responsible for that service.

It has also been suggested that the NHS is not working. On the contrary, considerable improvements have been made in delivery of the NHS services that matter to ordinary people. Are they getting better services? Is their health improving? The answer to both questions is, "Yes."

The minister also mentioned the cost and timing of the proposed elections. Every pound that is spent on such an election is a pound that is taken away from patient services.

**Shona Robison:** Given the member's comments, will he explain why he signed up to Bill Butler's bill in the first place?

**Mr Stone:** The member should know me well enough by now. I think that, in this Parliament, one very good principle is that one should sign a bill if one feels that there is merit in debating its principles.

**Shona Robison:** Oh, come on.

**Mr Stone:** No—someone who thought otherwise would very much lack a free mind. An argument about the bill has developed since it was introduced and, notwithstanding Bill Butler's honourable intentions, I see now that the bill has some very real flaws.

Shona Robison referred to the perception that the health service is not being well managed. That is not fair to people who, as Susan Deacon said, are some of the best managers whom we have. Ministers have worked very hard to ensure that such management has been put in place.

Nanette Milne's speech highlighted an interesting theme in the Conservatives' argument. She paid a generous compliment to my colleague Mike Rumbles's role in saving maternity services in Aberdeenshire; however, when she expressed concern about the bill's proposal for an elected health board membership of 50 per cent plus one, one could see a trend emerging in Conservative thought to which I will return in a moment.

Euan Robson outlined my party's alternative of separating service delivery from the service's decision-making structures. He again drew attention to the crucial fact that the cost of NHS board elections will have to be met by money that is meant for patient care.

Roseanna Cunningham provided a very fair description of the Health Committee's view and admitted not only that the Convention of Scottish Local Authorities had offered an alternative but that the boards, including the health board in my constituency, are against the bill as it stands. She also highlighted the issue of non-party-political members. From my experience of community councils and so-called independent local government in the Highlands, I do not know how such a position could be guaranteed. I have seen for myself how all sorts of strange single-mission people have come under the banner of so-called independence.

In making it clear that the issue is about service delivery to patients, not about messing around with the structures, Gordon Jackson and Susan Deacon gave two of the strongest speeches in the debate. I say that with all due respect to Bill Butler, to whom I will now give way.

**Bill Butler:** Is not the beauty of democracy that elections cannot be guaranteed in advance? After all, this is not Albania in the 1980s.

**Mr Stone:** That is a very good point, which I will take as the pretext for the next part of my speech.

Elections and elected representatives come and go—indeed, in a few weeks, I might well find to my horror that that is the case for me. However, as Mike Rumbles said with regard to the decision on maternity services in Aberdeenshire, geography does not come and go. He mentioned that none of the members on the health board comes from the area that has been affected by the decision. He certainly has a point. Personally, I think that it is a disgrace that, for many years, not one single health board member in the Highlands came from the counties of Caithness and Sutherland, although I should say that two new appointments, one from Inverness and the other from the Black Isle, have recently been made. However, the issue is not about electoral systems, but about how appointments are made and the boards' views of where their membership should come from. I concede that that question should be examined when people's involvement in decision making is reviewed.

That is why we had the stramash—to use a good Highland word—about maternity services in Aberdeenshire. It is why we had the near miss with maternity services in the far north and why my constituent Mr Gordon Murray, who lives in Sutherland, cannot get any pain management. We



need Highland NHS Board to include members from the vast county of Sutherland to give people like him some support at the centre of power.

The debate has certainly been worth our while. I have been deeply convinced by the merits of the minister's argument, but we must look to our hearts on this issue. The structures do not matter a tuppenny damn to the people out there who are on waiting lists for life-saving surgery—they want their health and their lives.

16:14

**Mr David Davidson (North East Scotland) (Con):** Bill Butler has been stoical in canvassing support for the bill. As he made clear, today's debate is about its general principles, not about the nuts and bolts of how his proposed system would work. I was pleased that in his opening speech he talked about changes that he would be willing to accept, such as on loss of earnings. He also said that he wants to re-examine the rural-urban split. People who come from rural areas know well that arrangements in such areas are different from those that prevail in the central belt, which are what ministers seem to be concerned about.

We have a little problem with the percentage of board members who would be directly elected under the bill. The arguments in today's debate have been about democracy, accountability and the public's influencing how health services are delivered. I do not doubt that the minister did fine work to influence Grampian NHS Board—although he said that he did not tell the board what to do—in its decision on maternity services. We do not knock the fact that he paid attention to the case that was made; in fact, we welcome it. Bill Butler said that he does not want to lose the experience of existing board members, but I am not sure that his proposal for 50 per cent plus one board members to be directly elected would achieve that.

The minister had quite a cheek when he came out with the classic line that we should not rush legislation through in the final few weeks of the session. What have we been doing for the past three months?

**Mr Kerr:** With due respect, that is not what I said. I asked whether we should undermine 60 years of our NHS, which was set up by Nye Bevan, who turned down the idea of directly elected health boards.

**Mr Davidson:** I take the minister's point, but the same argument applies—the Executive is hell bent on getting through legislation that is not well written.

The minister mentioned the conflicts between local and central decision making and the

uncertainty that would be created if the bill's proposals were adopted. I do not argue with the fact that the NHS is a national service. If the minister had said that he was going to abolish postcode access and postcode delivery when he took up the job of Minister for Health and Community Care, we might have taken a bit more notice. That is what he should have said. Many of us would have supported him for doing so.

**Mr Kerr rose—**

**Mr Davidson:** I will give way in a minute, minister.

The minister has taken a short-term approach. We are discussing the principle of allowing the public some input—whether on a geographic basis or otherwise—to health board decisions at local level.

Like Jamie Stone, Mike Rumbles is keen to have directly elected health boards, but apparently his support is conditional on the use of STV. If the proposal does not include the use of STV, the Liberals will not support it. However, that is just a technicality; we are debating the principles.

**Mike Rumbles:** Will the member take an intervention? It is a bit unfair to misrepresent our position.

**Mr Davidson:** It is not the first time the Liberals have changed their minds.

I think the Scottish National Party, too, favours adoption of an STV system. Shona Robison spoke about keeping politics out of the health service.

My colleague Nanette Milne laid out of our case for continued negotiation. We cannot support the proposal for 50 per cent plus one of board members to be directly elected, but if Bill Butler wants our support, we will certainly be prepared to consider at stage 2 what percentage would provide democracy and accountability while ensuring that we continue to have a properly and professionally managed health service.

Susan Deacon said that we need first-class leadership, but that must start on the front bench. She mentioned the example of the chairman of Tayside NHS Board, but all the health board chairmen are appointed by the minister. There is no democratic input to that process, which is a system of central management. The delivery systems on the ground are what need to be addressed.

**Susan Deacon:** Will the member acknowledge that the NHS is the only part of the public sector that has a direct line of accountability, through a Cabinet minister, to Parliament? Surely that is democracy.

**Mr Davidson:** I do not argue that there is no direct link or that the minister is not accountable to

Parliament, which is accountable to the people. However, we need to ensure that there are people on health boards who will fight local people's corner. Some of the people who have been appointed to health boards do that, but the situation is not uniform across the country.

**Mike Rumbles:** The whole point in all this is that the minister can, in effect, overrule unelected people. If we were to have both elected health boards and a minister responsible to Parliament, who would win the conflict?

**Mr Davidson:** I am not suggesting that there should be majority control—I have never said that about health boards. Elected members should not take over the ship, but there should be a percentage of influence by them. Bill Butler knows well that that is the position of the Conservative party. If the bill gets to stage 2, we have no intention of continuing to support it unless Bill Butler gives way on the numbers.

The debate is about democratisation. It is not about designing delivery from the centre, but about ensuring that people locally get a say on health boards and can influence delivery on the ground. On that basis, the Conservatives will support the general principles of the bill.

16:21

**Brian Adam (Aberdeen North) (SNP):** It has been an interesting and challenging afternoon. In saying that, I am paraphrasing Harold Wilson, as I did at the SNP conference in Dunoon more years ago than I care to remember, when I persuaded the SNP to adopt a policy that is similar to that which Bill Butler has brought before Parliament today. I am absolutely delighted that we will have the chance to vote on the proposal today. However, if Mr Butler is not successful in getting his bill through on this occasion, greater consensus may emerge in favour of its passage post election.

We have had some interesting debate around the tension between the local and the national. Gordon Jackson and Susan Deacon very firmly argued the case for the national perspective. Gordon Jackson posed the question whether elections to health boards would result in better decisions. The answer is that they would, because elected health boards would more closely reflect local views, which would inevitably lead to better decisions.

**Jeremy Purvis:** Will the member give way?

**Brian Adam:** No, thank you.

Susan Deacon said that we should have good leadership because that would drive forward change and develop our health service.

**Mr Stone:** Will the member give way?

**Brian Adam:** No, thank you. I want to develop my point.

What Susan Deacon said could be put in a different context: that of there being more central control. It is little wonder that the two professional bodies that are most closely engaged in the decision-making processes in the health service accept that point of view. One of the reasons for the disengagement between the public perception of and hopes for the health service, and delivery on the ground is that bodies such as the royal colleges, for example, continue to develop policies that lead to centralisation of services.

I am not aware of any public concern whatever about proposals to deliver more local services. It does not matter whether such decisions are made by health boards or ministers; the only thing that drives concern is a proposal to deliver more central services. By more truly reflecting local views, Bill Butler's proposal would help to deliver better decision-making processes and it would do so in a way that would be better than the appointment systems of the past or present.

**Mr Kerr:** The member makes an interesting point about centralisation. Will he simply ignore the weight of clinical evidence out there in our communities? Will he ignore the peer-reviewed research on the relationship between volume and outcomes—the evidence on the number of times that a surgeon or clinician undertakes an operation and the positive outcome for the patient? People do not dispute that evidence in terms of neurosciences, coronary heart disease, cancer or other illnesses. We must ensure that we make the right decisions on behalf of patients.

**Brian Adam:** Undoubtedly, a case can be made for some services—some highly specialised services—to be delivered in specialist centres, but that is not the case for all services. The general thrust of the evidence from the royal colleges tended to focus on the places where there are large numbers of consultants in such specialties. That reflects neither the situation in Scotland nor the evidence that was put before the Health Committee.

To a lesser extent, that point was made by one of the Liberal Democrat members—I think it was Mr Purvis—in relation to cross-border flows. He said that, with an elected element, boards will somehow decide, "It's oor budget; we're no spending it on you." I do not believe that the bill would in any way affect the commonsense approaches that have delivered agreements on managed clinical networks across boundaries. However, the bill would affect the attempt by those who already have power and influence to draw more power and influence to the centre. There are

what we could call political—although not party-political—debates within professions about, for example, whether Glasgow or Edinburgh will get a centre of influence or type of surgery. People get caught up in such debates already. An elected element would at least help to balance out those debates.

**Jeremy Purvis:** If the member is saying that decisions of local health boards with a majority of elected members will not ultimately be binding, that will not ultimately change the procedure. He also misses the point about cross-border care, which is that, under the bill, health boards would be mandated to provide care for the electorate in their areas and there would be no incentive for them to develop regional cross-border care, which is what all our constituents want.

**Brian Adam:** I disagree fundamentally with Mr Purvis's view. I believe that people who are elected to boards and who have an interest in health will display much more common sense and will aim to deliver health care for everybody as locally as possible.

I want the deputy minister, in his response to the debate, to spell out in more detail the proposals for a pilot, to which the minister referred earlier. If that is an attempt to fix and fudge, we deserve to know in advance of the vote tonight exactly what the pilot would deliver.

16:27

**The Deputy Minister for Health and Community Care (Lewis Macdonald):** We agree on two key issues: the importance of effective public engagement and involvement with NHS boards, and the importance of promoting patient focus and public involvement, as vital in delivering the largest single public service for which the Parliament and ministers are responsible. The NHS is making good progress on improving patient focus and public engagement, but that does not immunise health boards or ministers from public comment and criticism when major service changes are proposed. However, we must not pretend that changing the governance of the NHS will in any way end the need for major service change or the public criticism of some health board decisions. Health boards have tough decisions to make if they are to implement the "Delivering for Health" agenda, which this Parliament approved several months ago. To do that, they must be clear about to whom they are accountable and which policies they should implement.

The coalition of Opposition members who support Bill Butler's bill is bizarre, in that their reasons for doing so are mutually incompatible. Nanette Milne said that she wants only a minority

of board members to be elected, but that is not in the bill and Bill Butler has not said that he will accept it. Shona Robison said that her party supports the bill, subject to the board members being elected by the single transferable vote system, but that is not in the bill either and Bill Butler has not said that he will accept it. Eleanor Scott rightly worries about direct elections being seen as a substitute for proper consultation, about all interests not being properly represented and about the risk of woefully low turnouts, but the bill addresses none of those concerns. Jean Turner accepts that elected members on a health board would not necessarily make any difference to the issues that actually matter to patients, such as waiting times.

It is not enough to say that we can explore those issues at stage 2, because if Nanette Milne or Shona Robison get their way at stage 2, we will end up enacting a different bill from the one that Bill Butler introduced.

**Roseanna Cunningham:** Does the minister accept that, frequently in the Parliament, amendments are agreed to at stage 2 that make bills different, and that bills can become even more different at stage 3? The Executive lodges such amendments all the time.

**Lewis Macdonald:** I accept that point absolutely, but if members approved the general principles of the bill on the basis that board members would not be elected by STV, but then they were elected by STV, something would have been enacted that members did not intend. If we approved the principles of the bill on the basis that 51 per cent of board members would be directly elected, when in fact members wanted only a minority to be directly elected, something different from what members intended might be enacted. Those are key points.

Nanette Milne said that changes to health board proposals in cases such as that in Aberdeenshire were achieved after hard-won fights in the teeth of opposition from health boards. However, as Mike Rumbles said, changes were achieved when local people and local elected members of this Parliament convinced ministers that ministers should take a different approach. It is not only that health boards are accountable to ministers; their decisions on major changes to services are subject to being overturned or amended by ministers. That is not an exceptional power; it is an ordinary part of democratic accountability through MSPs to the Scottish people.

**Mrs Milne:** The minister has chosen to neglect the main thrust behind my remarks. If local people had been involved, and if the health board had been aware of the strength of feeling, much time would not have been wasted in arriving at a final decision. Elected members on the health board could have made all the difference.

**Lewis Macdonald:** As Brian Adam pointed out, on that health board were local elected members and leaders of local authorities. They had decisions to make and they will have made them as members of that board.

As has been said, whether someone is or is not an elected member will not of itself change the decisions that they make. However, what would change under the bill would be health boards' mandates. At the moment, those mandates come from this Parliament, from these elected members, and from the Scottish ministers who are accountable to this Parliament, which is as it should be.

**Jackie Baillie** *rose—*

**Shona Robison:** Will the minister take an intervention?

**Lewis Macdonald:** I am afraid that I do not have time to take further interventions.

Shona Robison made much of public concerns about people not being listened to in the NHS, but she was a little less forthcoming when Margo MacDonald asked her about her own accountability. As members of this Parliament, we are all part of the accountability of the Scottish NHS. It is part of what we are here to do. That is why we have held debates in this chamber on major service changes, why parties will go into the elections in May presenting different views on the way forward for the NHS locally and nationally, and why, as Gordon Jackson said, each of us is accountable to our own electorate for the stance that we take on health issues that matter to our local communities. That is as it should be.

**Shona Robison:** Will the minister take an intervention?

**Lewis Macdonald:** I am afraid that I do not have time.

We are clear that we want public engagement with and public involvement in the decisions that we make as ministers with responsibility for health and in the decisions that are made locally by health boards. We want that engagement to be more effective. As Eleanor Scott conceded, we have made a good start: there are senior local councillors on NHS boards, there is a statutory duty on all health boards to involve the public, and the Scottish health council has a duty to ensure that health board consultations meet a set national standard and that each community health partnership has a public partnership forum.

We believe that the concept of direct elections to NHS boards is worth exploring, but only in the context of continued good governance of the NHS in Scotland and the wider agenda of public service reform. Building on what has been said today, and in response to Brian Adam's request for further

information, we should seek to pilot that concept in a way that allows us to take into account the costs, implications and effects of changes, and the concerns that have been articulated by members of the Health Committee and other members this afternoon. That will allow us to examine further whether having a directly elected element on health boards can assist in increasing the accountability of the health service, while safeguarding the future of the NHS in Scotland and its accountability through the Scottish ministers to the Scottish Parliament and thereby to the Scottish people. We have to safeguard the coherence of a national health policy that is truly national and covers Scotland as a whole.

16:34

**Bill Butler:** This afternoon's debate has been detailed and, especially with the summing up from the deputy minister, passionate. It has allowed members to express a variety of views, which I welcome, as I welcome this opportunity to respond to what has been said.

I regret that the Executive seems to have set its face against what I argue is the reasonable, moderate reform in the bill, but I hope to persuade the minister, even at this late stage, that voting for the bill in principle will not produce the negative consequences that he fears and that he described in some detail. In fact, it strikes me as rather strange that both the minister in his introduction and the deputy minister in his summation—both detailed and cogent—mentioned the idea of pilot projects. As far as I am concerned, if the bill is agreed to at stage 1, the Executive can lodge amendments at stage 2 to introduce such pilot projects. I am told by my legal advisers that all the Executive will have to do is lodge amendments that affect the commencement date of the act.

**Brian Adam:** Have the ministers given the member a commitment that they will lodge such amendments, since neither of them has told us exactly how they intend to deal with the pilots?

**Bill Butler:** I cannot read ministers' minds, so I cannot properly say. The point about pilot projects is reasonable—the ministers raised it. Unless I am mistaken—I will give way if I am—the minister said that the Executive intends to introduce pilot projects in the next session of the Parliament. However, if the bill is agreed to at stage 1, there will still be time to lodge stage 2 amendments on pilots in the next two or three weeks. We will have to wait and see. I accept the minister's sincerity on that point.

**Margo MacDonald:** Would the member like pilots to incorporate the basic principle of majority decision taking by elected members on the board? It seems to me that that is the absolute basic requirement of the bill.

**Bill Butler:** Yes, I would, although, to reply to concerns expressed by Nanette Milne and the Conservatives, that is a debate for stage 2. However, there may be a technical problem, since changing the percentage of directly elected members in the bill might not be possible, because that percentage is the core element of the bill, and is, in fact, the only change to the 1978 act.

The ministers and others have concerns about the bill taking the national out of national health service. Such fears represent genuine apprehension, but such disaggregation would not happen, because the bill proposes to amend only the percentage of members under the 1978 act. All the powers of the Parliament and the ministerial team to set the framework and targets nationally would remain.

**Mr Kerr:** First, I think that the member has conceded that the condition that the Tories imposed could not be achieved by the bill, therefore I challenge the Tories on their position. Secondly, it is important to say that, in relation to scope, many committee members told me that we could correct some of the imbalance in national and local policy by using the New Zealand model. Will the member confirm that, like the Conservatives' position, that would also be impossible to incorporate within the bill?

**Bill Butler:** I do not know, because I am not legally trained. All I am giving is my opinion, which I am giving in good faith to Conservative members. It would be up to the convener of the Health Committee to take from the clerking team legal advice on amendments and to decide on them, and, if such an approach were to progress, it would be up to the Presiding Officer at stage 3 to decide.

**Mrs Milne:** The Conservatives were told by the Health Committee clerks that the legal advice was that what we were asking for was possible without wrecking the bill.

**Bill Butler:** I am grateful for that information. If it is the case, there will obviously still be a debate to be had. Whether I agree or not, Mike Rumbles—who is commenting from a sedentary position—will know that it would be up to the committee to decide at stage 2. I have tried to answer the questions that have been asked, but I cannot give a definitive answer because the matter is not within my power.

Many members, including the minister and Euan Robson, mentioned cost. Of course, a cost would be attached to the postal ballot. By the way, the postal ballot would, I hope, address the concern which some members expressed, about low turnout: the bill team reckons that postal ballots by and large, although not uniformly, attract a greater voter turnout. Costs range from those in the

financial memorandum, which estimates a cost of £1.2 million for a 30 per cent turnout and £2.4 million for a 60 per cent turnout, up to the Executive's estimate of £5 million. I think that the Association of Electoral Administrators estimates something in the middle. Life being what it is, the cost probably will be somewhere in the middle but, whatever it is, it is small. It is a drop in the ocean compared with the £10 billion that is rightly spent on the health needs of the people of Scotland, and it is not too much of a price to pay.

I am still waiting for information about the costs of the welcome public participation reforms that the Executive has put in train. I am sure that that information will come from the minister if we reach stage 2. Nobody gainsays those reforms or questions their cost, which is quite right, because they are good steps forward. One must take a proportionate view of cost.

I agree with Roseanna Cunningham that the problem is the lack of accountability. The problem is also the growing lack of trust among the public, which is not good. It can be corrosive and can undermine the confidence that the people whom we seek to represent have in our national health service. We must avoid that.

**Jackie Baillie:** I could not agree with Bill Butler more about the lack of trust. Does he acknowledge that the changes in services at the Vale of Leven district general hospital over the past several years have been based on decisions by clinicians, not ministers, and that that causes a problem with trust in what the Parliament does? There has been talk of communities not being rational, and leadership and governance have rightly been mentioned. Does Bill Butler think that it is rational for a health board to make people travel two and a half hours from the Vale of Leven to Paisley for a basic service?

**Bill Butler:** Trust is important, but I do not know enough about the specific issues that Jackie Baillie raises to be able to comment. Nonetheless, I take her word for it that they are real concerns in her constituency and I accept that she will do her utmost to represent her constituents' concerns.

It is not irrational to say to people that we trust them to participate in direct elections to health boards. Susan Deacon and Gordon Jackson may have been veering towards the view that to introduce a reasonable amount of direct accountability is to risk the national delivery of health services. I do not take that view, as I find it to be exaggerated. Susan Deacon is saying that it is nonsense. She is right and, if she is coming to that position now, I agree with her. It is dangerous, anti-democratic nonsense.

I do not want to end on a sour note. The debate has been wide ranging and good. I am grateful

that there is support for the bill throughout the Parliament—we will see how much in about 15 minutes' time, or perhaps a wee bit longer. That support echoes the call that can be heard throughout Scotland for a change in the structure and culture of health boards. Direct elections of themselves would not be a panacea, but they would encourage people in our communities to feel that what they thought about the development of their local health services mattered and that proper account would be taken of it. The bill is a rational, reasonable and moderate proposal, and I ask members to support it at decision time.

**Shona Robison:** On a point of order, Presiding Officer. Before we make a decision on this matter in 15 minutes' time, I seek your guidance. At the Health Committee meeting on 7 November 2006, the Minister for Health and Community Care and other members—Duncan McNeil in particular—confirmed that the pilot proposals are purely a matter for the Labour Party. Is it therefore appropriate that what amounts to nothing more than a possible Labour Party manifesto commitment should be put forward today by ministers on behalf of the Executive, particularly given that they will be in no position to implement it after the election?

**The Presiding Officer (Mr George Reid):** I think that that is essentially a political point, but, given that I have just come to the debate and have just taken the chair, I will reflect on it for a few minutes. In the meantime, we should get on with business.

**Roseanna Cunningham:** On a point of order, Presiding Officer. This relates directly to a matter of some debate, particularly in the closing speeches. I have now had clear advice from the clerks and should advise the minister that an amendment at stage 2 to reduce the percentage of directly elected members on a health board below 51 per cent would indeed be competent. That is perhaps more a point of information, but it is important in the context of the debate.

**The Presiding Officer:** Those points have been made. We will find out in due course.

**Mr Kerr:** We know that. What about New Zealand?

**The Presiding Officer:** Order. We will move on.

## Tribunals, Courts and Enforcement Bill

**The Presiding Officer (Mr George Reid):** The next item of business is a debate on motion S2M-5427, in the name of Cathy Jamieson, on the Tribunals, Courts and Enforcement Bill, which is United Kingdom legislation.

16:47

**The Deputy Minister for Justice (Johann Lamont):** Presiding Officer, I am conscious of the limited time available, so, with your permission, I will speak only briefly in my opening contribution. I hope to be able to respond to any issues that arise in the discussion that follows.

Two parts of the bill are within devolved competence: tribunal reform and immunity of works of art from seizure. On immunity, the provisions will protect our ability to attract loans from overseas of cultural objects and works of art for public exhibition. Increasingly, major cultural exhibitions rely on loans of works from abroad, so as to allow the public and tourists a significantly enhanced appreciation of culture and art. However, sometimes works of art have been seized while on international loan, for example because of disputes over ownership or debt. Museums and galleries are increasingly concerned about that risk.

Part 6 of the bill, on protecting cultural loans in carefully constrained circumstances, will bring the UK into line with many other countries. Scotland will be disadvantaged if the provisions are not applied here. I stress that we are acutely aware of the sensitive issue of the balance to be struck between the benefits of providing immunity and the rights of people who might legitimately claim ownership of the works of art concerned. We are aware of the particular concern to do with the significant issue of Holocaust spoliation.

The bill sets up the statutory framework for the new Tribunals Service covering reserved tribunals such as social security and taxation. The new Tribunals Service will create a more coherent and transparent tribunal system that is flexible enough to meet the differing needs of its users.

Ministers and the Justice 2 Committee have given detailed consideration to the proposals in the bill, which we consider are in Scotland's best interests.

I move,

That the Parliament agrees that the relevant provisions of the Tribunals, Courts and Enforcement Bill, introduced in the House of Lords on 16 November 2006, (a) relating to the establishment of a new Tribunals Service and an Administrative Justice and Tribunals Council and (b)

providing immunity from seizure for international works of art on loan to exhibitions in this country, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.

**The Presiding Officer:** A number of members want to speak. I will not get them all in unless remarks are kept closer to two, rather than three, minutes.

16:48

**Stewart Stevenson (Banff and Buchan) (SNP):** In a world of shifting boundaries—one thinks of the Balkans, Africa and the middle east—and with the overhang of history from the Holocaust, there are many circumstances in which the ownership of works of art might be open to legitimate question. In the House of Lords, Greville Janner said in relation to taking such disputed items into the UK:

“If it is stolen art, I do not want them to bring it here.”—*[Official Report, House of Lords, 29 November 2006; Vol 687, c 787.]*

We should not want such works here if they are a matter of debate.

Although this is not in the bill, some people propose that museums should be able to bring in works of art from abroad only if they sign up to a code of conduct under which they undertake to investigate the provenance of the works of art in question. That will be a subject for Scottish ministers if this legislative consent motion is agreed to and the House of Lords passes the bill in substantially the form in which it has been presented.

There are a number of amendments on today's order paper in the House of Lords relating to due diligence. However, they were not proceeded with on 12 December, when there was a debate on the matter. I hope that the House of Lords will take tent of what is said here.

There are other issues relating to the drafting of part 6 of the bill that suggest that it is not well drafted. For example, works of art can come in for a period of 12 months. However, if they leave the country for a day, another 12-month period can start. Given that, under due diligence and sequestration in Scotland, there is a specific reference that prohibits forfeiture, someone who is under due diligence in another country can keep popping a work of art in and out of Scotland for a day every 12 months, thereby avoiding their own country's laws. In addition, the bill absolutely excludes seizing works of art that are part of a criminal investigation even if they had on them fingerprints or blood that might be of use in that investigation.

I have concerns about the bill. I hope that we will be able to convey them to the House of Lords and that it will add them to its deliberations.

16:51

**Mr David Davidson (North East Scotland) (Con):** I welcome the minister's comments and the clarity that she attempted to give. We in the Conservative party welcome much of the content of the bill. A number of concerns have been raised with us on different sides of the argument about the enforcement powers that are contained in the bill and about the fact that much of the detail will be left to secondary legislation. That is a petty issue, but it is a fact of life that we have to have clarity.

The minister made comments about immunity and, quite rightly, Stewart Stevenson talked about the duties that are placed on people who exhibit and borrow works of art. Recently, I had a meeting with the Scottish Council of Jewish Communities. It does not seek dramatic changes to the bill but, understandably, it—and, perhaps other minority groups as well—would like us to ensure that the bill enables ministers to make a regulation that says that, when a work of art comes into the country, information about it is put on a public website, as part of a public notification system, so that people will know what is coming in and who is borrowing it. We look forward to an answer from the minister on that point.

16:52

**Donald Gorrie (Central Scotland) (LD):** The Scottish Council of Jewish Communities is, naturally, one of the groups that has studied this issue carefully because of the problems arising from the Nazis taking Jewish-owned art during the war. As has been said, the council is not in favour of our rejecting the motion, but it would like the ministers to pass on certain of its views to the ministers in London. First, the council says that the bill does not compel good practice. There is no mention in the bill of establishing the provenance of items that are brought into the country for an exhibition. The debate in the Justice 2 Committee alluded to some guidance, but the guidance, although it is good, is a voluntary code rather than a compulsory one. More could be done in the bill to make good conduct compulsory.

I understand that, in Switzerland, items that someone proposes to import into the country have to go on a list for three months and people have 30 days in which to register an objection if the description of the art indicates that they have some claim to it. After that, the object is safe from attachment by other people. That is a good system because we certainly do not want to prevent our museums from having good exhibitions but there

should be a thorough system of vetting the items before they come in so that we know that our hands are clean.

I hope that the minister will accept that we could pass on some of those views to ministers in London.

16:54

**Chris Ballance (South of Scotland) (Green):** I will be brief, but I think that it is important that the breadth of voices of those in the chamber who have worries about part 6 of the bill in particular is heard.

People who have had artworks stolen from them in traumatic circumstances, such as the Holocaust, have a right to have access to justice. However, the bill changes the situation, so that they will be actively prevented from doing that in certain circumstances in which artworks are temporarily on loan. I therefore add my party's concern to the other concerns that have been raised.

I ask the minister to report to Westminster in the strongest terms the concerns that have been raised in the Scottish Parliament, particularly in relation to part 6 of the bill.

**The Presiding Officer:** Order. A little more courtesy, please. There are too many private conversations going on.

16:55

**Mr Kenneth Macintosh (Eastwood) (Lab):** I echo the comments of colleagues from all parties. Although we support most of the reforms in the legislative consent motion, a particular issue that arises is the immunity from seizure that the bill will give to international works of art that are on loan to exhibitions in Scotland.

I understand why, in relation to certain spurious private actions—for example, actions to enforce unrelated debts—we might wish to protect the public's interest in viewing an exhibition. However, I do not believe that any member here or at Westminster would promote or elevate the exchange or sharing of cultural items above the restoration of property that was looted during one of the most horrific and grotesque periods of recent history. Frankly, I do not believe that any member of the public would want to view, on public display in Scotland, works of art that were robbed from families who were stripped of their rights, humiliated as individuals and systematically murdered under the Nazi regime.

I know that the Deputy Minister for Justice shares my abhorrence at that prospect, but does she recognise that there is concern that the

guidance on the provenance and ethical acceptability of items that are made available for exhibit abroad is not observed? The recently agreed guidance is welcome, but it is a voluntary code and there are genuine fears that it is not complied with.

Can the minister give us further assurance that the Tribunals, Courts and Enforcement Bill will not offer immunity or protection from seizure unless there is evidence that the ownership of a cultural item has been examined? Will she further undertake to make representations to our Westminster colleagues and her ministerial counterparts to ensure that the rights of the true owners of stolen works of art are protected?

16:57

**Johann Lamont:** This is a significant debate. I have to say that I disagree strongly with the contention from our friend from the Green party that some folk in the chamber would want to do something that was offensive to the Jewish community in relation to Holocaust spoliation. That is not what the LCM is about. There are concerns about the matter throughout the Parliament and no one would want to strike a balance on the issue that meant that we in Scotland brought in for exhibition items that were not ethically sound. It is on that basis that we sought to develop the guidance.

We are aware of and understand the concerns of those who have expressed reservations about the consequences of the bill. The Department for Culture, Media and Sport has proposed amendments to address the concerns that have been expressed about possible spoliation claims. The criteria for approval would focus on the ability of museums and galleries to demonstrate the satisfactory nature of their due diligence procedures in considerable detail. They would need to demonstrate that they had sought to establish the provenance of the items that they brought in. The regulations and the criteria for registration as a body that can seek immunity reinforce the guidance that is already in place.

I do not think that, in the main stream of our cultural life, there are bodies that wish to bring such items in. In fact, the bill will not affect any claims on objects in UK national collections or other museums, including Holocaust spoliation claims. The UK Government and UK national museums have been in the vanguard of international action on provenance research on the 1933 to 1945 Nazi era and response to Holocaust spoliation claims, so they are very aware of the issues.

Under the proposed amendments, immunity may be conditional on the publication by museums



of information about objects before they are exhibited. That relates to David Davidson's point. Museums might be required to provide a description that is sufficient to identify the object, to state the identity of the lending institution and to give the dates of the exhibition.

I acknowledge the concerns about drafting. The comments that were made in the chamber and in committee will, of course, form part of our commentary to the UK Government. I assure the Parliament that all the points that have been made will be brought to Westminster's attention. In relation to the concerns about drafting, however, members should note that the Subordinate Legislation Committee and the Justice 2 Committee explored the issues and supported the provisions.

We do not understate the strong concerns that Ken Macintosh highlighted and we will ensure that they are expressed, but we are clear that there are enough safeguards to ensure that we strike the right balance and that things that are ethically unsound are not exhibited. Museums and galleries will be expected to establish their procedures for checking on provenance and, in those circumstances, Scottish ministers can grant them the right to be part of that register.

This is a small measure that seeks to allow the kind of cultural exchange that we support. In no way does it do anything to allow items of Holocaust spoliation to be displayed in this country without any account being taken of that. I assure Parliament that the issues that have been raised will be pursued with Westminster, but I urge members to support the LCM as a means of protecting the interests of the museums and galleries in Scotland and the cultural life of the people of Scotland.

## Presiding Officer's Ruling

17:00

**The Presiding Officer (Mr George Reid):** I have reflected on the matter that Shona Robison raised on a point of order about 10 minutes ago. I confirm my initial view that the issue is political and therefore a matter for the Executive rather than for me.

I take this opportunity to clarify Roseanna Cunningham's point about the admissibility of amendments at stage 2. Decisions on admissibility at stage 2 are entirely a matter for the convener of the committee once amendments have been lodged. I hope that that clarifies matters.

**Margo MacDonald (Lothians) (Ind):** Further to that point of order, Presiding Officer. The motion is

"that the Parliament agrees to the general principles of the ... Bill."

The member in charge of the bill and others have confirmed that the fundamental principle is having directly elected members take decisions in health boards. It therefore seems somewhat incongruous that we could overturn that fundamental principle at stage 2.

**The Presiding Officer:** That is a matter to be debated at stage 2, Mrs MacDonald. It is a matter for the committee.

## Business Motions

17:01

**The Presiding Officer (Mr George Reid):** The next item of business is consideration of business motion S2M-5515, 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 February 2007

2.30 pm Time for Reflection

*followed by* Parliamentary Bureau Motions

*followed by* Executive Debate: Promotion of Tartan and Scotland's Tartan Industry

*followed by* Debate on the Local Government Finance (Scotland) Order 2007

*followed by* Business Motion

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business

Thursday 8 February 2007

9.15 am Parliamentary Bureau Motions

*followed by* Scottish National Party Business

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 Stage 3 Debate: Transport and Works (Scotland) Bill

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business

Wednesday 14 February 2007

2.30 pm Time for Reflection

*followed by* Parliamentary Bureau Motions

*followed by* Stage 3 Debate: Budget (Scotland) (No.4) Bill

*followed by* Executive Business

*followed by* Business Motion

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business

Thursday 15 February 2007

9.15 am Parliamentary Bureau Motions

*followed by*

Executive Business

11.40 am

General Question Time

12 noon

First Minister's Question Time

2.15 pm

Themed Question Time—  
Education, Tourism, Culture and Sport;

Finance and Public Services and Communities

2.55 pm

Stage 3 Debate: Adult Support and Protection (Scotland) Bill

*followed by*

Parliamentary Bureau Motions

5.00 pm

Decision Time

*followed by*  
*Curran.]*

Members' Business—[*Ms Margaret*

*Motion agreed to.*

**The Presiding Officer:** The next item of business is consideration of business motions S2M-5514 and S2M-5516, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, on timetabling of legislation.

*Motions moved,*

That the Parliament agrees that consideration of the Schools (Health Promotion and Nutrition) (Scotland) Bill at Stage 2 be completed by 23 February 2007.

That the Parliament agrees that consideration of the Prostitution (Public Places) (Scotland) Bill at Stage 2 be completed by 16 February 2007.—[*Ms Margaret Curran.*]

17:02

**Iain Smith (North East Fife) (LD):** I shall speak against the business motions as I wish to challenge what has become the automatic timetabling practice of this Parliament for stage 2 proceedings.

Standing orders make it clear that the Parliament may timetable any bill, but they do not say that it must timetable a bill. I understand and accept the case for establishing a timetable for stage 1, subject to there being sufficient flexibility if more time is required, so that committees and stakeholders have a clear indication of how long they have to consider the general principles of a bill, but I do not see that that applies at stage 2.

I also accept that there is a need to timetable stage 3 proceedings to allow proper management of that process, but at stage 2 a bill and all its provisions can be fully and properly scrutinised and there should be as much time as is needed to consider stage 2 amendments.

I do not think that there is evidence that any committees are deliberately delaying the progress of bills at stage 2. Committee clerks and the Executive generally discuss the matter and agree how many meetings are likely to be needed to deal with stage 2 amendments. I believe that that

is what informs the timetabling motions that come before the Parliament. In those circumstances, I cannot see why a timetabling motion for stage 2 is needed.

I accept that there has to be a backstop position to allow a timetable to be imposed if a committee or some members of it are deliberately obstructing the progress of a bill at stage 2, but a timetabling motion should not be used in each and every case. I ask the minister and the bureau to reconsider the practice of timetabling all stage 2s and seek an assurance that timetabling will not be used to restrict the proper scrutiny of amendments to bills at stage 2 during the current session, in the rush to complete the legislative programme before this session of Parliament comes to a conclusion.

17:04

**The Minister for Parliamentary Business (Ms Margaret Curran):** I thank Iain Smith for giving prior warning that he would raise this point, although if I had had a wee bit longer, we might have had more time to consider it.

I do not dismiss the issue: I am well aware of the concern across the Parliament about parliamentary time, particularly the concern that members on committees should be given sufficient time to discharge their duties. I will of course consider the issue, but I ask members not to vote against the business motion.

Members will appreciate that I have a difficult job trying to ensure that we get through our business. I am sure that I would be criticised for not managing the available time properly if we did not get through our business. Many factors must be balanced.

I reassure members that timetables are considered and recommended to the bureau in consultation with committees, committee conveners and bill teams to ensure that we maximise opportunities for members to discharge their duties. Such an approach is required to ensure that we get through bill timetables. We do not restrict the proper scrutiny of bills.

I appreciate the points that Iain Smith has made, but if a committee convener tells me that they need more time for stage 2 consideration of a bill, we will go to inordinate lengths—within reason—to ensure that we make that time available. I hope that I have addressed the points that have been made.

The Presiding Officer and all the business managers know that I have set up a group to consider the many issues that members have raised and to ensure that those issues have been addressed for the next session. I do not know

what I can do for this session, but I will do my best to address any points that have been raised.

**The Presiding Officer:** The question is, that motions S2M-5514 and S2M-5516, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, be agreed to.

*Motions agreed to.*

## Parliamentary Bureau Motion

17:05

**The Presiding Officer (Mr George Reid):** The next item of business is consideration of a Parliamentary Bureau motion. I ask Margaret Curran to move motion S2M-5511, on the referral of a Scottish statutory instrument.

*Motion moved,*

That the Parliament agrees that the Local Government Finance (Scotland) Order 2007 be considered by the Parliament.—[*Ms Margaret Curran.*]

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

## Decision Time

17:06

**The Presiding Officer (Mr George Reid):** There are three questions to be put as a result of today's business. The first question is, that motion S2M-5478, in the name of Bill Butler, that the Parliament agrees to the general principles of the Health Board Elections (Scotland) Bill, be agreed to. Are we agreed?

**Members:** No.

**The Presiding Officer:** There will be a division.

**For**

Adam, Brian (Aberdeen North) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)  
 Brownlee, Derek (South of Scotland) (Con)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Frances (West of Scotland) (SSP)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Fox, Colin (Lothians) (SSP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harper, Robin (Lothians) (Green)  
 Harvie, Patrick (Glasgow) (Green)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kane, Rosie (Glasgow) (SSP)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 Lochhead, Richard (Moray) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McGregor, Mr Jamie (Highlands and Islands) (Con)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 Milne, Mrs Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Neil, Alex (Central Scotland) (SNP)  
 Petrie, Dave (Highlands and Islands) (Con)  
 Robison, Shona (Dundee East) (SNP)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, John (Ayr) (Con)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinney, Mr John (North Tayside) (SNP)  
 Tosh, Murray (West of Scotland) (Con)  
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)  
 Watt, Ms Maureen (North East Scotland) (SNP)

Welsh, Mr Andrew (Angus) (SNP)  
White, Ms Sandra (Glasgow) (SNP)

#### AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)  
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)  
Baker, Richard (North East Scotland) (Lab)  
Barrie, Scott (Dunfermline West) (Lab)  
Boyack, Sarah (Edinburgh Central) (Lab)  
Brankin, Rhona (Midlothian) (Lab)  
Brown, Robert (Glasgow) (LD)  
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
Eadie, Helen (Dunfermline East) (Lab)  
Ferguson, Patricia (Glasgow Maryhill) (Lab)  
Finnie, Ross (West of Scotland) (LD)  
Gallie, Phil (South of Scotland) (Con)  
Gillon, Karen (Clydesdale) (Lab)  
Glen, Marlyn (North East Scotland) (Lab)  
Godman, Trish (West Renfrewshire) (Lab)  
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)  
Gorrie, Donald (Central Scotland) (LD)  
Henry, Hugh (Paisley South) (Lab)  
Home Robertson, John (East Lothian) (Lab)  
Hughes, Janis (Glasgow Rutherglen) (Lab)  
Jackson, Dr Sylvia (Stirling) (Lab)  
Jackson, Gordon (Glasgow Govan) (Lab)  
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
Kerr, Mr Andy (East Kilbride) (Lab)  
Lamont, Johann (Glasgow Pollok) (Lab)  
Livingstone, Marilyn (Kirkcaldy) (Lab)  
Lyon, George (Argyll and Bute) (LD)  
Macdonald, Lewis (Aberdeen Central) (Lab)  
MacDonald, Margo (Lothians) (Ind)  
Macintosh, Mr Kenneth (Eastwood) (Lab)  
Maclean, Kate (Dundee West) (Lab)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
Martin, Paul (Glasgow Springburn) (Lab)  
May, Christine (Central Fife) (Lab)  
McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
McCabe, Mr Tom (Hamilton South) (Lab)  
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
McMahon, Michael (Hamilton North and Bellshill) (Lab)  
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
McNeill, Pauline (Glasgow Kelvin) (Lab)  
McNulty, Des (Clydebank and Milngavie) (Lab)  
Monteith, Mr Brian (Mid Scotland and Fife) (Ind)  
Morrison, Mr Alasdair (Western Isles) (Lab)  
Muldoon, Bristow (Livingston) (Lab)  
Mulligan, Mrs Mary (Linlithgow) (Lab)  
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
Oldfather, Irene (Cunninghame South) (Lab)  
Peacock, Peter (Highlands and Islands) (Lab)  
Pringle, Mike (Edinburgh South) (LD)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Radcliffe, Nora (Gordon) (LD)  
Robson, Euan (Roxburgh and Berwickshire) (LD)  
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
Smith, Iain (North East Fife) (LD)  
Smith, Margaret (Edinburgh West) (LD)  
Stephen, Nicol (Aberdeen South) (LD)  
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
Swinburne, John (Central Scotland) (SSCUP)  
Wallace, Mr Jim (Orkney) (LD)  
Whitefield, Karen (Airdrie and Shotts) (Lab)  
Wilson, Allan (Cunninghame North) (Lab)

**The Presiding Officer:** The result of the division is: For 55, Against 64, Abstentions 0.

*Motion disagreed to.*

**The Presiding Officer:** The second question is, that motion S2M-5427, in the name of Cathy Jamieson, on the Tribunals, Courts and Enforcement Bill, which is United Kingdom legislation, be agreed to.

*Motion agreed to.*

That the Parliament agrees that the relevant provisions of the Tribunals, Courts and Enforcement Bill, introduced in the House of Lords on 16 November 2006, (a) relating to the establishment of a new Tribunals Service and an Administrative Justice and Tribunals Council and (b) providing immunity from seizure for international works of art on loan to exhibitions in this country, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.

**The Presiding Officer:** The third and final question is, that motion S2M-5511, in the name of Margaret Curran, on the referral of a Scottish statutory instrument, be agreed to.

*Motion agreed to.*

That the Parliament agrees that the Local Government Finance (Scotland) Order 2007 be considered by the Parliament.

## Battle of Passchendaele (90th Anniversary)

### **The Deputy Presiding Officer (Murray Tosh):**

The final item of business is a members' business debate on motion S2M-5290, in the name of Murdo Fraser, on the 90<sup>th</sup> anniversary of the battle of Passchendaele. The debate will be concluded without any question being put.

### *Motion debated,*

That the Parliament notes that 31 July 2007 will mark the 90th anniversary of the Battle of Passchendaele which was launched on 31 July 1917 and continued until the fall of Passchendaele village on 6 November 1917; notes that Passchendaele saw the biggest loss of life of any battle in the First World War with over half a million British, Commonwealth and German troops killed, wounded or missing; notes that the Memorial Museum Passchendaele 1917 is currently planning a number of events to commemorate the 90th anniversary of the battle, including unveiling a Celtic cross as a memorial to commemorate Scottish soldiers who took part in the battle; thanks all governments, organisations and individuals that have contributed towards commemorations planned and towards the memorial; welcomes the memorial as it will commemorate the Scottish regiments that played a pivotal role in the battle, which saw the Argyll and Sutherland Highlanders, the Black Watch, the Cameronians, the Gordon Highlanders, the Highland Light Infantry, the King's Own Scottish Borderers, the Queen's Own Cameron Highlanders, the Royal Scots, the Scots Guards and the Seaforth Highlanders in combat for the United Kingdom, fighting with dignity, skill and honour in treacherous conditions, and believes that the Scottish Executive should mark the 90th anniversary of the Battle of Passchendaele and contribute towards the commemorations.

17:10

### **Murdo Fraser (Mid Scotland and Fife) (Con):**

I thank the many members from different parties who have signed my motion and I thank those members who have stayed behind in the chamber for the debate.

I take the liberty of expressing thanks, on behalf of the Parliament, to the local authorities and communities of Passchendaele, Wytschaete and Messines, and to the Memorial Museum Passchendaele 1917, for their work and planning of year-long events in 2007 to commemorate the 90<sup>th</sup> anniversary of the battle of Passchendaele. I am sure that, during the debate, other members will join me in expressing our thanks to them.

It is appropriate also to record my thanks to Dr Jean Turner, who lodged a motion in the summer of 2006 that praised the work and effort of the people of the municipality of Zonnebeke, in Flanders, for raising funds to build a Celtic cross there to commemorate Scottish and Scotland-related soldiers who fought in the great war.

The battle of Passchendaele—also known as the third battle of Ypres—was launched on 31 July

1917 and continued until the fall of Passchendaele village on 10 November in the same year. The battle saw the greatest loss of life of any battle in the first world war. Almost 500,000 British, Commonwealth and German troops were killed, wounded or went missing. The whole of my allotted time this evening could be taken up describing the importance of the battle and the treacherous conditions in which the soldiers fought. It is hard for us, today, to explain or imagine what those men had to go through during the great war. However, I will concentrate on what is happening in Flanders in 2007 to mark the events of 90 years ago.

The Memorial Museum Passchendaele 1917, in conjunction with a number of local communities, organisations and Governments, is planning events to commemorate the 90<sup>th</sup> anniversary of the battle. As part of the commemorations, a monument will be erected as a memorial to all Scottish soldiers who took part in the battle—and, indeed, in the great war. As my motion sets out, several Scottish regiments played a pivotal role in the battle: they include the Argyll and Sutherland Highlanders, based in Stirling, and the Black Watch, based in Perth.

The Celtic cross is to commemorate not only Scottish soldiers, but also Commonwealth regiments and units that are linked to Scotland. For example, it will also be a memorial to the Canadian Seaforth Highlanders, who were based near Passchendaele, and the Nova Scotia Highlanders, who were on Passchendaele ridge. It is entirely fitting that the memorial is not just for Scots, but for soldiers of other nations, as it will symbolise the struggle that those men of different nations had to face together.

The unveiling of the Celtic cross at Passchendaele will be the climax of the Scottish memorial weekend of 25 and 26 August. A weekend of events and activities is planned specifically to commemorate the Scottish soldiers, such as a highland games, a tattoo and visits to the battlefields on which Scottish soldiers fought. The cross will be of Scottish granite and set on a plinth of original bunker stones. It is intended to be an impressive monument: it will be roughly 3m high and on a plinth that will also be roughly 3m high. It will be located at Frezenberg, which is strongly connected to the role that Scottish soldiers played during the battle. It was there that the Scottish 15<sup>th</sup> division launched an attack on 17 August 1917. Only weeks later, the Scottish 9<sup>th</sup> division took over that sector.

It is estimated that the cost of the memorial will be £21,000 and that the cost of the plinth will be £7,000. By September, around £14,000 had already been raised, primarily through the local communities where the memorial will stand. The

Flemish Government has also contributed to the cost of the cross, through a structural grant. In the motion that I lodged at the end of last year, I asked the Scottish Executive to mark the 90<sup>th</sup> anniversary of the battle of Passchendaele and to contribute to the commemorations. It is envisaged that the memorial will be a landmark for the 400,000 visitors who come to the front each year to view the battlefields of the great war.

I would be interested to learn whether the Executive intends to be represented at the Scottish memorial weekend and whether it will consider contributing to the commemorations. I am sure that the minister will agree that it is an excellent opportunity to emphasise the bond between Scotland and Flanders and to share in the links of our past. I understand that the Executive's office in Brussels has recently been in contact with the campaign. I would be interested to learn whether the Executive is aware of that contact and the outcome of that dialogue.

I hope that the Parliament will agree that it is time to express our gratitude to the people of Flanders for the work they are doing to commemorate Scotland's fallen. It is certainly a worthwhile project and I am honoured to have the opportunity this evening to congratulate them in this chamber. I have particularly to record my thanks to Erwin Ureel, the co-ordinator of the Scottish memorial in Flanders campaign.

Even during members' business, this Parliament does not often debate motions that have support from Conservative, Labour, Liberal Democrat, Scottish National Party, Green and independent MSPs. I hope that the Executive will recognise the work that has been carried out in Flanders and will contribute to the commemorations because this was a battle in which Scottish soldiers played a central role. We should not forget them, nor should we forget the horrors that they had to endure during the battle of Passchendaele.

I would like to end by repeating Lieutenant Colonel John McCrae's famous poem, "In Flanders Fields", which remains to this day one of the most memorable war poems ever written. It was written only a few kilometres from where the Scottish monument will stand. Although it was written some time before the battle of Passchendaele was fought, it encapsulates extremely well some of the horrors of the great war.

"In Flanders fields the poppies blow  
Between the crosses, row on row,  
That mark our place; and in the sky  
The larks, still bravely singing, fly  
Scarce heard amid the guns below.  
We are the Dead. Short days ago  
We lived, felt dawn, saw sunset glow,  
Loved and were loved, and now we lie  
In Flanders fields.

Take up our quarrel with the foe:  
To you from failing hands we throw  
The torch; be yours to hold it high.  
If ye break faith with us who die  
We shall not sleep,  
though poppies grow  
In Flanders fields."

17:17

**Dr Jean Turner (Strathkelvin and Bearsden)**  
**(Ind):** I thank Murdo Fraser for tonight's debate. I should explain how I got involved in the issue. Evelyn McKechnie, who is a great historian on the subject of the Somme, was working with me. She told me about the monument and I could not believe that no monument had been erected to Scottish soldiers in particular. My first step was to lodge a motion to highlight the work of the campaigners for a Scottish monument in Flanders. It was lodged in April last year and received wide cross-party support. Many dedicated people have been involved in the campaign, as Murdo Fraser has mentioned, and their work on the project has been outstanding.

I commend the excellent work carried out by Erwin Ureel from Flanders. He is coming to Scotland next month to conduct seminars in Glasgow on the monument campaign. He is also coming to the Parliament on 28 February for a lunch time meeting that I am hosting. I hope that many people here will find time to come to that occasion.

I would also like to thank the local authorities of Passchendaele, as Murdo Fraser has done so fully.

The Celtic cross monument is entirely neutral. It is neither pro-war nor anti-war, and the campaigners do not want to dictate how people should interpret it. The monument seeks to commemorate a nation and its immigrant people, and the campaigners would like it to be accepted by all Scots. This is not about taking a stance in discussions—and there have been many—about the great war and later wars. I know that the campaigners would appreciate it if the monument could be accepted by the whole spectrum of opinion, from service personnel to pacifists.

We are talking about remembering the sacrifice of Scottish soldiers, many of whom lied about their age. My grandfather did that, but he returned. Many of those men lie in unmarked graves in Flanders field. We could walk along the front line on the western front and every six paces, we could be walking on the body of an unknown soldier.

The monument idea initially came from the burial of Private John Robertson Thomson from Lochgelly in Fife. He was a Gordon Highlander who went missing in action on 4 October 1917 and was reburied in October 2004 after being

accidentally found in an unmarked grave on the battlefield in Flanders where so many thousands are still lying.

The 2<sup>nd</sup> Gordon Highlanders was one of many Scottish regiments that were involved in the horrific slaughter of Passchendaele. However, apart from monuments to the Liverpool Scottish and the London Scottish, no monument remembers the Scottish involvement on the Salient. Soon after Private Thomson's funeral, some Scottish Flemish people decided to organise a campaign to raise a long-overdue monument to the Scottish soldiers in the great war, whatever their regiment.

I was very grateful to have been able to help them in some small way and I am hopeful that they will reach their financial target so that, in August of this year, the monument can be unveiled halfway along the ridge at Frezenberg, in sight of the spires of Ypres and north of Passchendaele. I hope to attend the unveiling weekend and look forward to it immensely.

When I wrote to the First Minister to find out what support might be given to the monument, I was informed that the issue was a reserved matter as it came under the Ministry of Defence. I was surprised to learn that the Scottish Executive did not want to set any precedent, as I was aware that the United Kingdom Government had given £400,000 to the Somme Association in 2003 to purchase Thiepval wood—I hope that I have pronounced the name correctly—which is sacred to the memory of the 36<sup>th</sup> (Ulster) Division. When Thiepval wood came on the open market, the secretary of state, Paul Murphy, said that it was a golden opportunity and he was delighted to help. However, the Scottish Executive has been a wee bit slow in helping the project, although I am reliably informed that €8,000 might now be set aside to help with the unveiling weekend in Flanders this August. That is wonderful.

I cannot finish without mentioning Stobhill hospital, which is both dear to my heart and the main reason that I was elected to the Parliament. Immediately following the outbreak of the first world war, on 4 August 1914, Stobhill was requisitioned by the military authorities for the care of wounded servicemen. Patients were brought by rail directly to the hospital grounds. As early as September 1914, wounded soldiers were brought to Stobhill. As Stobhill Hospital was now devoted to military purposes, a temporary railway platform was erected in the grounds and trains from London were diverted from the main line at a point in the suburbs of the city so as to proceed direct to the hospital. So many soldiers came back with injuries from that horrific war that Stobhill had to run at full capacity to cope. I wish that our health

service could be given the same resources in peacetime as it has often been given in war.

I am fully supportive of the campaign and wish it every success. The monument in memory of the Scottish soldier will be a wonderful testament from the people of Flanders.

17:22

**Donald Gorrie (Central Scotland) (LD):** Murdo Fraser deserves credit for lodging the motion. He is quite right to concentrate on the excellent work that is being done to commemorate the events this year and to look forward as well as back.

Interest in the first world war has remained steady and, I think, grown in recent years not because people want to glorify it, but because they appreciate that it was the worst war. The conditions under which men fought day after day on both sides were quite incomprehensible to the ordinary person. The fact that the men kept going with such tenacity, loyal comradeship, discipline and good humour shows that the real hero of the war was mankind. It shows that human beings can rise to great heights of behaviour. Arguably, that happened in an unfortunate cause in that they were all killing each other, but their behaviour and the way in which they were loyally committed to their fellow human beings was quite extraordinary. I think that people accept that. That is why they are interested in the vestiges of the first world war and that is why such tourism continues and why people still read up books about it. Passchendaele is the most extreme example of that.

Haig's basic idea was that we needed to break through to capture the channel ports to prevent the German submarines from sinking all our ships. That was a good idea, as we were under extreme pressure from possible starvation. Unfortunately, however, he had not studied the drainage system or the weather forecast for the area, so his unfortunate troops had to fight in a permanent swamp in conditions that were worse than had ever been the case elsewhere. We are quite right to support those who want to commemorate those events.

The Scots made an above-average contribution to the war and all the Scottish regiments that are listed in the motion made a big contribution. It is unfortunate that Scots like my father, who fought in the Royal Artillery in the Ypres Salient and elsewhere, do not get a mention, but we cannot have everything. The commemorations are a good cause and I hope that the Executive will support them. Unfortunately I will not be able to attend, because I will be celebrating my golden wedding and it might be considered a bad thing if I was not present for that.



17:25

**Alasdair Morgan (South of Scotland) (SNP):** I congratulate Murdo Fraser on securing the debate.

Last summer, while I was staying near Lille in northern France, I went to Belgium to visit Ypres. The first place at which we stopped was the Tyne Cot cemetery, which I think is the largest war cemetery. The panels at the cemetery—I am not talking about the tombstones—commemorate about 35,000 missing soldiers, whose names could not be accommodated on the main memorial.

We moved on to Ypres and its glorious town centre, which has a street that is so wide that it is almost a square, and magnificent old buildings. It looks like a typical Belgian town, but it is all a reconstruction, because the entire city centre was destroyed in the period from 1915. Close to the town centre is the Menin gate memorial, which was built in a gap in Vauban's fortifications, from the 17<sup>th</sup> century wars, on one of the main roads to the Passchendaele battlefields. The Menin gate memorial is huge and holds the names of 55,000 men who were missing after the battles—the rest are commemorated at Tyne Cot. Despite the presence of tourists, the last post, which is sounded at 8 o'clock by the Ypres fire brigade, is truly moving and I defy anyone not to experience a lot of emotion when they hear it.

When we add to the casualties that were suffered at Passchendaele, or the third battle of Ypres, the casualties that were suffered at the first battle of Ypres, in 1914, which in effect destroyed the first British expeditionary force, we arrive at numbers of missing, wounded and dead that beggar comprehension. The conditions in which civilians and soldiers on both sides fought are beyond our comprehension.

South of the border between Belgium and France, near Arras, there is a Scottish memorial, although I am not sure which division it commemorates. Such are the changes over time that the memorial is now in the central reservation of a dual carriageway, so it is not the easiest place to visit, although I did achieve that feat.

There are a vast number of war cemeteries, which range from Tyne Cot, which has 12,000 tombstones, to cemeteries that have only a few graves. A few years ago, I visited the cemetery on the Sambre canal at Ors and came across the grave of Wilfred Owen, who was killed seven days before the armistice. I recommend a visit to one of the first world war cemeteries to any politician who thinks that he or she might ever be in charge of their country's troops, because I hope that their visit would make them think long and hard about the nature, purpose and consequences of war. I

never leave any of those places without having an overwhelming sense of the futility and waste of what happened during those five years.

17:28

**Euan Robson (Roxburgh and Berwickshire) (LD):** I add my congratulations to Murdo Fraser on having secured this debate on an important subject. He talked about the nature of the battle of Passchendaele and how it saw the greatest loss of life. He also mentioned the significant contribution that Scots soldiers made to the battle and I noted that the King's Own Scottish Borderers, from my part of the world, took part. The commander-in-chief, Earl Haig of Bemerseyde, is buried at Dryburgh Abbey, just inside my constituency.

Passchendaele was an ill-starred campaign, as has been said. It began at the end of July—it was supposed to have started slightly earlier, if I remember correctly—and it ended in November, after an unusually wet summer. The profound memory of those who survived was perhaps less of enemy fire than it was of mud. Many men lost their lives simply by falling into large mud pools and were never seen again. As Donald Gorrie said, the conditions were beyond belief. I hope that no one has to experience them ever again.

Some years ago, when I was conducting research on a different subject, I read in a Glasgow newspaper from 1918 a report about parents who had had four sons when the war started in 1914: one son was lost in 1915; one was lost on the Somme in 1916; another was lost at Passchendaele in 1917; and the last was lost in November 1918. The story is terribly sad, but I am sure that its events were reflected not only in many households throughout Scotland, but in households throughout other Commonwealth countries and in the households of those who were then described as "the enemy".

It is right and proper that we remember these things and that we tell our children what happened. We need to understand the mistakes of the past because, as the famous saying goes, those who forget the lessons of history are condemned to repeat it. As a result, it is particularly appropriate for us to join the commemorations that are associated with the memorial either directly by helping to buy the stone and erect it, or by taking part in the ceremonials that will mark its unveiling.

Although uncovering such memorials is immensely important, we must also, through education, remind future generations of earlier generations' mistakes, triumphs and sacrifices. If it is possible, even at this late stage, for the Scottish Executive—and, indeed, Parliament—to make a

contribution, such a move will be immensely appropriate.

17:32

**Christine Grahame (South of Scotland) (SNP):** I commend Murdo Fraser for lodging a very solemn and fitting motion and I endorse everything that he said. Passchendaele was known as the battle of the mud. Indeed, one soldier, Private Richard W Mercer said:

"Passchendaele was just a terrible, terrible place. We used to walk along these wooden duckboards—something like ladders laid on the ground. The Germans would concentrate on these things. If a man was hit and wounded and fell off he could easily drown in the mud and never be seen again. You just did not want to go off the duckboards."

As for the battle itself, by spring 1917, the British had placed 21 huge mines totalling 450 tons of the high explosive, ammonal. At zero hour—03:10 on 7 June 1917—after the most intense bombardment of the entire war, the allied mines were detonated, killing an estimated 10,000 German troops in moments. The explosion was said to have been audible as far as London and Dublin and was possibly the loudest man-made noise that had been made up to that point.

The battle spared no one. After three months of fighting, the Australian, New Zealand and United Kingdom casualties—wounded and killed—numbered 448,000 and the Germans suffered 260,000 dead or wounded. The Canadian corps finally took the village of Passchendaele on 6 November 1917.

As for what life in the trenches was like, I will quote Siegfried Sassoon's poem, "Suicide in the Trenches":

"I knew a simple soldier boy  
Who grinned at life in empty joy,  
Slept soundly through the lonesome dark,  
And whistled early with the lark.

In winter trenches, cowed and glum,  
With crumps and lice and lack of rum,  
He put a bullet through his brain.  
No one spoke of him again.

You smug-faced crowds with kindling eye  
Who cheer when soldier lads march by,  
Sneak home and pray you'll never know  
The hell where youth and laughter go."

I do not want to end on a sour note, but I do not think that we have learned the lessons of the past. I want to read another passage—again from Siegfried Sassoon—that could well have been written today. He said:

"I am making this statement as an act of wilful defiance of military authority, because I believe that the War is being deliberately prolonged by those who have the power to end it. I am a soldier, convinced that I am acting on behalf of soldiers. I believe that this War, on which I entered as a war of defence and liberation, has now become a war of

aggression and conquest. I believe that the purpose for which I and my fellow soldiers entered upon this war should have been so clearly stated as to have made it impossible to change them, and that, had this been done, the objects which actuated us would now be attainable by negotiation. I have seen and endured the sufferings of the troops, and I can no longer be a party to prolong these sufferings for ends which I believe to be evil and unjust. I am not protesting against the conduct of the war, but against the political errors and insincerities for which the fighting men are being sacrificed."

I am sorry, but I think that we could say that of some of the wars that we are engaged in today, such as the war in Iraq. I fully support the proposal that the minister should put funding towards a commemorative memorial to the men who died at Passchendaele, but the greatest commemoration to those men would be not to go into any more wars.

17:35

**Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** I take the opportunity to apologise to the Presiding Officer and the minister because I will have to leave after my speech to meet visitors who await me. I congratulate Murdo Fraser on securing the debate and on making what I thought was a very fine speech.

As many MSPs do, I lay a wreath every remembrance Sunday. As I did when I was a councillor, I go to the remembrance service in the parish church in my home town of Tain. Why do I do that, when I was born after the second war? My parents were in the second war, but the first world war is a long time ago. There are two reasons why I do so. The first is to do with my late father, who lost two uncles in the first war. Euan Robson mentioned a family that lost all four sons. There is not a family in the Highlands or in Scotland as a whole that was not touched by the first world war. My father lost Uncle Walter and Uncle Arthur, who both died bravely. He never forgot that. He would talk about them and about how it was said in the family that their death hastened the death of their father, who died of a broken heart shortly after the first world war. I have never forgotten that. When I go to Tain parish church, I think about such things and remember my late father for what he said.

Something else happened that brought home to me very directly and in a way that I cannot forget the effect that the first world war had on people's lives. When I was about 12 or 13, I was sent to stay with two elderly sisters in Tain because my parents had to go away. It was remembrance Sunday when they told me the story of how their brother, Ian Mackenzie, had been killed. He had fought with the Seaforth Highlanders right through the war, but was killed in its closing weeks just before the armistice on 11 November 1918. They talked of his brilliance. He was the son of the town clerk in Tain, who had gone all the way from a wee

Highland town to Balliol College in Oxford, where he had been one of the brightest of his generation. I am slightly ashamed to say that as they told me about him, the tears poured down their cheeks. To them, although it had happened many years earlier, his death was as yesterday—he was their beloved elder brother. As we all know, as we get older such events are as yesterday. I have never forgotten that.

I accept that members have different attitudes to Europe. In a way, that is why I and many others are so passionate about, if not the European Commission, other forms of links between European countries. We have experienced the longest period of peace in Europe's history. Some would say that Europe has the most sophisticated societies in the world, but they are also the most bloodthirsty, in that their citizens have been given to killing each other for many hundreds of years.

I will close on a lighter note. When my Great Uncle Walter's will was read in 1918, to my family's concern it transpired that he had left what little money he had to children in Canada. He had never married, but he had worked in Canada before the war, so I obviously have cousins there. I do not know them and they do not know me, but I wish that they knew how brave their grandfather had been.

As Euan Robson said, it is right that we remember such events and that we teach future generations about them. We would be insane to forget history. I again congratulate Murdo Fraser on his motion.

17:39

**The Deputy Minister for Communities (Des McNulty):** As we have heard, on 7 June 1917, under the fields of Flanders, the most powerful man-made explosion to that date was detonated, an event that triggered an equally powerful and destructive earthquake. The explosion was the beginning of the Flanders offensive that culminated five months later with the taking by Canadian troops of what little remained of the village of Passchendaele and the loss of more than a million soldiers' lives. We now live in an age of remotely-controlled, high-tech warfare devices, but the death and destruction that were inflicted by artillery, machine guns, rifles, bayonets and barbed wire 90 years ago was just as devastating.

By 6 November 1917, when troops eventually occupied the village, allied forces had advanced hardly five miles—there was a huge cost in human life for little apparent gain. Some 300,000 British and Commonwealth soldiers—more than a quarter of the troops deployed—lay dead, injured or missing. On the other side of the lines, almost as many German soldiers lay dead or seriously

injured. It is no coincidence that the Tyne Cot cemetery at Passchendaele, which Alasdair Morgan described, is the single largest British war cemetery anywhere in Europe. Indeed, of all those who died, it is estimated that two thirds, or 200,000 men, have no known grave.

Those of us who heard the poem by Lieutenant Colonel John McCrae, which Murdo Fraser read out tonight, or who have read the poems of Wilfred Owen and Siegfried Sassoon or Erich Maria Remarque's "All Quiet on the Western Front" will have learned an instinctive revulsion for trench warfare—the sending of young men over the top to be mown down by the enemy—with its almost certain death. Yet even now, some military historians claim that, despite the carnage on both sides, the Flanders offensive helped to turn the tide of the war. The claim is that it provided time for defenceless French troops to recuperate and reorganise, thereby preventing German forces from taking advantage of low-morale and near mutiny in the French ranks. Moreover, such was the loss of German equipment at the battle of Passchendaele that the German high command could not recover sufficiently to prevent Germany's ultimate defeat less than a year later.

I would like to think that whatever contribution Passchendaele made towards ultimate victory, its bigger significance lies in our determination to ensure that all wars that involve the mass destruction of participants and civilians should be avoided. The history of the past 90 years tells us that the

"war to end all wars"

did not halt subsequent wars. Surely the horror of Passchendaele has not lost its impact. As members have said, it must influence Governments and individuals to choose peace over the dreadful consequences of war.

The Executive believes that what happened in Passchendaele deserves to be remembered and appropriately commemorated—all the more so because of the significant role of Scottish soldiers. As the motion correctly recognises, some 10 Scottish regiments participated in the offensive. Indeed, the organisers of the commemorative events that are to be held later this year in Belgium rightfully acknowledge the important and significant endeavour of the Scottish units, noting in particular the valour of the ninth, 15<sup>th</sup> and 51<sup>st</sup> divisions.

In raising a magnificent Celtic cross on the Frezenberg in Flanders, as part of an entire weekend of events, the organisers are commemorating the bravery of Scottish troops not only in Flanders or at the battle of Passchendaele, but throughout the entire first world war. As Tom

Devine pointed out, Scottish soldiers suffered proportionately the heaviest battlefield casualties.

The organisers' efforts are to be highly commended. The Executive and, I am sure, the Parliament, supports them fully in that work. Indeed, as members have said, officials from the Executive's office in Brussels have been liaising closely with the organisers to assess how best and most appropriately the Executive can contribute to the commemorative events. As members will appreciate, veterans issues, including matters related to war memorials, are reserved to the Westminster Parliament. It has been a long-standing policy of successive Governments that the cost of erecting war memorials and associated projects are usually met not from public funds, but from private donations or public subscription.

However, in my view, it would be most inappropriate and disrespectful if the Executive were not to support the commemorations that are dedicated to the Scottish soldiers who gave the ultimate sacrifice some 90 or so years ago. Our soldiers fought alongside soldiers from other parts of the United Kingdom, the Commonwealth, France and the USA to defend our traditions, values and way of life.

Although we are unable to contribute directly towards the costs of the memorial itself, the Executive has demonstrated in the past that it is more than willing to contribute to the costs of commemorative events that recognise the courage, valour and sacrifice of Scots in conflict around the globe. In continuation of that commitment to commemorate and remember the valiant efforts of Scotland's armed forces, at home and abroad, past and present, I am happy to announce to Parliament this afternoon that the Executive will contribute the sum of £5,000 towards the overall costs of the commemorative events that are to be held in Zonnebeke as part of the Scottish weekend on 25 and 26 August. I hope that the Executive will also agree to be represented at the event that weekend, but I will not pre-empt the decision on that, which will of course be made following the election in May.

When we honour the fallen comrades of conflicts past, we should also acknowledge the contribution of Scottish servicemen and women who, even today, are putting their lives at risk in Afghanistan, Iraq and elsewhere. Our obligations to service personnel do not end when they hang up their uniforms, but continue when they have completed their time in the armed forces. Although the vast majority of servicemen and women return to civilian life successfully, some experience problems reintegrating into civilian society, sometimes as a direct consequence of their experience in conflict situations.

It is therefore important that veterans who need holistic care and support services can access them, in the same way as any other vulnerable group in society. The Executive will continue to support the work of organisations such as Veterans Scotland in seeking new and innovative ways in which to meet the needs and aspirations of Scotland's veteran communities. It is essential that we offer ex-service personnel the right opportunities for productive and sustained employment; that we improve their access to opportunities and services in health, education or training; and, crucially, that we sustain the support and assistance that veterans need to make the transition into civic society as smooth as possible.

The importance of the entire series of commemorative events in Flanders this summer should not be underestimated. In the municipality of Zonnebeke, there are no fewer than 13 memorials that are dedicated to various units that fought at Passchendaele, although none of them is currently dedicated to a Scottish unit or regiment. Therefore, once the Scottish monument is inaugurated, it will be the first in the area to honour our fellow countrymen who fought and died in the fields of Flanders during 1917.

In remembering our own, we must remember the fallen from elsewhere in the UK and from other countries, including Ireland, Australia, Canada and New Zealand, and the German soldiers who lost their lives in what was the single greatest slaughter of the first world war.

As members have said, we must renew our determination to avoid such carnage in the future. Scottish troops, in combination with service personnel from other parts of the UK and Europe, have worked together since 1945 to preserve the peace in Europe—a peace that has lasted. We must do our utmost to maintain that shared purpose and common commitment.

The Executive is happy to support fully Murdo Fraser's motion. I congratulate him on lodging it and on stimulating such a timely and thoughtful debate. I certainly hope that the events that take place later this year will be successful.

*Meeting closed at 17:47.*

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