

# **MEETING OF THE PARLIAMENT**

Wednesday 18 June 2008

Session 3

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## Scottish Parliament

*Wednesday 18 June 2008*

[THE PRESIDING OFFICER *opened the meeting at 14:00*]

### Time for Reflection

**The Presiding Officer (Alex Fergusson):**

Good afternoon. Our first item of business, as always on a Wednesday afternoon, is time for reflection. Our time for reflection leader today is Elizabeth Duffy, who is the young adult development officer for the Roman Catholic diocese of Motherwell.

**Elizabeth Duffy (Roman Catholic Diocese of Motherwell):** Good afternoon. I was reflecting recently on the journey that life takes us on—the many joys as well as disappointments, and the many pilgrimages that people take during their life in honour of God. I have been on a few pilgrim walks over the past three years. One was a 100-mile walk from Lancashire to Yorkshire with a group of young people, and another was a 110km walk across the north of Spain, on the famous way of St James, with a small group of young adults.

The experience of physically walking to a place can be daunting. At times, there may be moments of doubt or feelings of wanting to give up. There can be times of sadness as well as of joy, sharing with the people we meet along the way. Those moments will be with us for a lifetime. The image of a journey encapsulates for me everything about faith. There are moments of sharing, of joy and of hope, but also times of great sadness or despair. One thing that strikes me about a pilgrimage is that the journey has as much significance as the final destination.

There are many forms of pilgrimage. I will be taking 22 young people from my diocese to world youth day in Sydney next month. We will be there with 150 other young Catholics from Scotland, as well as 30 young people from the Church of Scotland, to gather with 500,000 other young people from across the globe to celebrate our faith in Christ. Each person there will have a unique and personal experience, but that experience will be moulded by others who are present. One of the ways that we meet God in this world is in meeting others. Those moments of sharing, and meeting strangers along the way, are moments when Christ is present.

It is on the journey that you are able to open your heart fully to Christ, offer up everything that is troubling or challenging you and give thanks to God for all that is good. The journey allows you to recognise the important things in life—especially

when carrying your rucksack and realising the things you do not really need in life—and to let go of the excess baggage and move forward to the future.

Throughout history, there are stories of great pilgrimage and journey that enabled the pilgrim to become closer to God. As someone once told me, a pilgrim does not mind the little interruptions by strangers on the path. Pilgrimage can be a way of life. It is living and sharing the moments we experience, comforted in the knowledge that God is always with us as we journey through life.

I wish you every blessing on your journey.

## Business Motion

14:03

**The Presiding Officer (Alex Fergusson):** The next item of business is consideration of business motion S3M-2194, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a revised business programme for today.

*Motion moved,*

That the Parliament agrees the following revision to the programme of business for Wednesday 18 June 2008—

after

*followed by* Financial Resolution: Creative Scotland Bill

delete

*followed by* Legislative Consent Motion: Energy Bill – UK Legislation

*followed by* Business Motion

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business

and insert

*followed by* Ministerial Statement: Clostridium Difficile Cases at the Vale of Leven Hospital

*followed by* Legislative Consent Motion: Energy Bill – UK Legislation

*followed by* Business Motion

*followed by* Parliamentary Bureau Motions

5.30 pm Decision Time

*followed by* Members' Business—[Bruce Crawford.]

*Motion agreed to.*

## Ministerial Code

**The Presiding Officer (Alex Fergusson):** The next item of business is a statement by Alex Salmond on the ministerial code. The First Minister will take questions at the end of his 15-minute statement, so there should be no interventions or interruptions during it.

14:04

**The First Minister (Alex Salmond):** I am delighted to be able to inform Parliament of the new and, I believe, stronger ministerial code that comes into force from today. Colleagues in the chamber will be well aware that I have spent considerable time—just over a year, in fact—working with the civil servants of the Scottish Government on a thorough review of the 2003 code. The aim of that work has been to improve and clarify the code wherever possible. The review is now complete and I am happy to be able to present to the chamber the new code and the improvements that it will bring in guiding ministerial accountability and conduct.

I assure all colleagues present that “blah”—the answer from Jim Mather to a recent parliamentary question from Annabel Goldie—was a genuine mistake. It was inadvertent and was not a pilot for our new approach to parliamentary accountability. [Interruption.] Mr Swinney is saying that I should not rule out such an approach at this stage.

I am confident that the new code will do justice to and further strengthen the high standards of conduct and accountability that the Scottish Government pursues and which the Scottish Parliament demands.

My ministers and I believe without reservation in the potential of Scotland's Government and Parliament to improve the lives of our people. We understand how important it is that the people of Scotland have full trust and confidence in their political institutions. We understand how important it is that they have confidence in not only the decisions that Scottish ministers take but the manner in which ministers take those decisions.

From day one of this Administration, we have sought to build trust and confidence in the Scottish Government with this Parliament and with the public. I do not expect members of the Opposition to use today's statement to praise the ministers for their hard work in building trust in the Government. However, we have some independent evidence that the public is responding favourably to those efforts. The Scottish social attitudes survey, which was published just last month, showed that 71 per cent of people trusted their Government to act in Scotland's interests. A year ago, that figure was only 51 per cent. Of course, that view might not be

shared by everyone, but it should be at least of interest to everyone in the chamber.

The Government understands that public trust is not simply won for all time and that trust must continually be earned and sustained. That is why we are committed to maintaining the highest standards of ministerial conduct and parliamentary accountability.

This is the 59<sup>th</sup> ministerial statement since May—far more than in any year since 1999. In the first half of this year alone, we have answered more than 7,000 parliamentary questions—already close to the same number answered in the record full year of 2002. Although the same members of the Parliament account for a huge percentage of those parliamentary questions, I still think that the figure is of substantial significance and is one in which we can perhaps take collective satisfaction. That is why the Scottish Government has just launched Scotland performs, the first national performance framework of public accountability in Scotland.

Let me recall for colleagues the purpose of ministerial codes and their place in the broader framework of public accountability. All ministerial codes, including this one, are strict codes of conduct, which members of the Government must observe. However, their scope and purpose are, of necessity, clearly defined. The ministerial code is not, as some have tried to portray it, an all-purpose complaints mechanism that should be used for each and every accusation that is levelled against Scottish ministers. Presiding Officer, I know that you—perhaps above all others in the chamber—are well aware of that fact. However, it is a point about which some other colleagues need the occasional reminder.

It is of course entirely legitimate for complaints about ministerial behaviour to be brought to my attention where such complaints bear close scrutiny. However, members of this Parliament also hold Scottish ministers to account—and indeed appoint them—under the Parliament's powers under the Scotland Act 1998. Through its committees and question times, this Parliament exercises the vital role of parliamentary scrutiny.

Parliamentary accountability is a vital aspect of the ministerial code, but it is only one responsibility among several sets of Scottish ministers' responsibilities under the code. It is of course appropriate for each First Minister to review and revise the code to ensure that it remains a strong and clear guide to the conduct of Scottish ministers. However, much of the new code draws heavily on my predecessors' codes, which reflects the fact that, at a fundamental level, the standards of behaviour that ministers must observe are enduring and must always remain high.

I have said that much of the substance of the ministerial code remains unchanged. However, let me be clear that there are significant changes to the code that reflect our desire for new and better governance in Scotland. The changes that I have made all help to ensure that the expectations on Scottish ministers are clear and objective and that the code is easily accessible to members of the public and members of this chamber.

I turn to an issue to which I have given considerable thought. Many in this chamber have argued for the need for independent advice, particularly following the United Kingdom Prime Minister's initiative in that direction. However, it should be noted that that particular innovation has recently been criticised by one of Westminster's parliamentary select committees. We—that is, the Prime Minister and I—are wrestling with the notion that the guardians of public accountability must always be the Prime Minister, in the case of Westminster, or the First Minister, in the case of this Parliament. The issue of how advice can be truly independent, especially when the adviser has been appointed by a Prime Minister or a First Minister, has proved to be a ticklish problem to solve—indeed, for some time, I thought that it was an impossible problem to solve.

However, I think that I have a solution that will provide some satisfaction. For the first time, there will be a panel of past Presiding Officers to guide the First Minister on the application of the code. I am delighted to announce that Lord Steel and George Reid have agreed to serve as members of that panel of independent advisers. Their integrity is beyond reproach, and their knowledge of ministerial and parliamentary procedures is unrivalled. Further, they are undoubtedly independent. I ask members to show their appreciation to Lord Steel and George Reid for continuing their outstanding service to Scotland by taking on this new role and for doing so for no payment whatsoever. *[Applause.]*

I now turn to the other main reforms contained in the new ministerial code. First, the code tightens the rules on the handling of ministers' private interests. I have agreed with the permanent secretary to the Scottish Government, Sir John Elvidge, that he will play a more authoritative role in determining the course of action that ministers should follow.

Secondly, the code provides clearer guidance to ministers on representing the interests of their constituents and on handling sensitive matters such as planning applications and the granting of energy consents.

Thirdly, the code sets out how Scottish ministers will work more openly and constructively with the Parliament, with the support of parliamentary liaison officers.

Finally, the new ministerial code introduces clearer guidance on the handling of ministerial gifts. Crucially, the Scottish Government will henceforth publish a quarterly and timeous list of gifts received over the threshold of £140. Further, for the first time, such provisions on registration will now also apply to hospitality as well as gifts.

Those are the key new provisions of my ministerial code. The changes are, in my view, all changes for the better and ensure that the ministerial code is clear and effective and promotes good governance. With the support of Lord Steel and George Reid—for the first time, providing independent expert advice to the First Minister—the code will mark a real advance in terms of impartiality and the quality of scrutiny.

I said at the outset that this Government embraces the challenge of building and maintaining public trust in the Scottish Government. That is the job that we are doing and which we are committed to continuing to do.

**The Presiding Officer:** The First Minister will now take questions on the issues raised in his statement. We have a little over 30 minutes for questions.

**Ms Wendy Alexander (Paisley North) (Lab):** It was too much to expect that the Scottish National Party would uphold its previous calls for a bill on ministerial accountability but, in that context, I welcome the fact that the ministerial code has finally arrived. I also welcome the progress that has been made in certain areas and, in particular, the role for your distinguished predecessors, Presiding Officer.

However, the devil is in the detail. The issue is not who the advisers are but how they come to investigate a matter. Although the credentials of the former Presiding Officers are beyond reproach, it seems that the only way in which they can advise on a matter is if the First Minister, and the First Minister alone, chooses to call on their services. Can the First Minister explain why he has stopped short of giving this Parliament the power to refer matters of concern about ministerial conduct to the independent advisers?

Secondly, I raise—with all delicacy—the issue of the conduct of the most important minister of all: the First Minister. The statement appears to leave unanswered the question of what happens when a complaint pertains to the First Minister himself. Such a situation is not entirely unknown. Does he intend, under the new code, to remain his own judge and jury, or does the code allow for a situation in which he could refer himself for investigation by the independent advisers?

Thirdly, I am aware that there are different approaches in different places. However, in this place a little over a year ago, the First Minister

came to power suggesting that we should have a new politics and promising that he would persuade Parliament of the wisdom of his choices. Given those commitments, I invite him to reflect on the following. It is important that his plans command the confidence of the whole Parliament. If we are to have full confidence in the plans, is he willing to allow Parliament to consider them; to talk to the independent panel about its future role; to debate the matter; and perhaps to come back in the autumn when there has been an opportunity for Parliament to comment, or does he intend the statement to be his final word on the matter?

**The First Minister:** I welcome Wendy Alexander's welcome for the new ministerial code. I observe that in eight years of Labour-Liberal governance, she did not think of making any substantive improvements to the ministerial code whatsoever.

The ministerial code is the ministerial code—it is not the code for members of Parliament. The final decision on a ministerial code lies with the Prime Minister in the Westminster Parliament and with the First Minister in this Parliament. That is the line of accountability. I am elected by the Scottish people and appointed by the Parliament. Ministers are accountable to the Parliament—and to me, for their positions.

I am surprised that Wendy Alexander does not appreciate that point, because I am following exactly the points that the Prime Minister made in introducing his revisions to the ministerial code in London. I am following not only the advice of the Prime Minister, but the advice of Jackie Baillie, who is sitting on Wendy Alexander's left.

Jackie Baillie said, in a parliamentary question to Bruce Crawford on 21 November, that she wanted an "independent adviser" to

"adopt the approach taken by Prime Minister, Gordon Brown MP".

On 3 December, just to reinforce the point, she asked whether we

"will adopt the approach taken by Prime Minister, Gordon Brown MP".—[*Official Report, Written Answers*, 3 December 2007; S3W-6786.]

Just in case we did not understand the point that she was making, on 20 December, just before Christmas, she asked whether we were going to adopt a new code

"similar to the approach taken by Prime Minister, Gordon Brown MP".—[*Official Report, Written Answers*, 20 December; S3W-7756.]

In the circumstances, Wendy Alexander should perhaps have consulted Jackie Baillie before criticising the line of accountability, about which the Prime Minister and I share the same view.



In relation to the Parliament's wish to interview past Presiding Officers, that is of course a matter for the Parliamentary Bureau and the committees of the Parliament. I understand the processes in this place, but I am certain that Sir David Steel and George Reid would be willing and able to provide the Parliament or its committees with any information or discussion that they wished for.

**Annabel Goldie (West of Scotland) (Con):** I have to say that, to me, the statement is not so much "Blah" as "Eh?" I note the First Minister's intention to appoint a panel of former Presiding Officers to advise him on the application of the ministerial code, but that is the first Achilles heel in his proposals. Although those distinguished gentlemen may bring with them the wisdom of Solomon, the judgment is that of Salmond. He is still the gamekeeper. The second Achilles heel is that the gamekeeper who enforces the code turns out to be the poacher who wrote it.

If the framework to regulate ministers is to have any credibility, not just in the chamber but throughout Scotland, both the code and the process to arbitrate on breaches of that code must be separated from the First Minister. That is all the more pressing in a Parliament of minorities.

Does the First Minister accept that there should be a truly independent commissioner who is appointed by the Parliament, that the ministerial code should be approved by the Parliament, and that the commissioner should report their findings not just to the First Minister but to the Parliament?

**The First Minister:** I am interested in a party leader who proclaims her wish to avoid more bureaucratic institutions in Scotland but who, in effect, calls for a ministerial tsar in addition to all our other tsars.

There are great advantages in asking our two former Presiding Officers. The advantages are obvious. They were not elected to their position with the role in mind, therefore they are beyond reproach in terms of their independence. We can contrast that with the situation south of the border, where Sir Philip Mawer, distinguished gentlemen though he is, was appointed by the Prime Minister and, I understand, is paid for the purpose.

Secondly, I do not think that Annabel Goldie fully appreciates the point of substance—my view on which I share with the Prime Minister—on the line of ministerial accountability. Ministers are appointed by the First Minister to hold the confidence of the First Minister. The First Minister is elected by the Parliament. Ministerial appointments go before the Parliament as well. Ministers—and the First Minister, for that matter—go before parliamentary committees and answer parliamentary questions. That is the line of accountability. It arrives in the ministerial code

from the Prime Minister south of the border and the First Minister in the Scottish Parliament.

That position has been common ground between the parties in the Parliament. The Liberals and the Labour Party certainly showed no enthusiasm for changing it when they were the Administration. I am a bit puzzled about whether there is a new Conservative policy or whether the Conservatives accept the line of parliamentary accountability that has been widely accepted in just about every Parliament that I can think of.

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** I remind the First Minister that I have consistently raised the issue of independent oversight of the ministerial code with him and his predecessors since the establishment of the Scottish Parliament. I also need to point out that on 28 February the Parliament decided on a vote of 81 to 47 that

"the best way of ensuring independent oversight is for the Parliament to appoint a person independent of government to investigate alleged breaches of the Scottish Ministerial Code."

The key words are "independent of government". The First Minister voted against that, but he lost the vote. In his statement, he is once again ignoring the will of Parliament.

In the February debate on Government accountability, I pointed out that not one of the complaints to the First Minister about breaches of the code had been actioned. With the new code, the First Minister will not be under any obligation to refer complaints on. He will still be the gatekeeper, and I doubt that David Steel or George Reid will have anything to do.

**Tricia Marwick (Central Fife) (SNP):** Question.

**Mike Rumbles:** Everyone—apart from the SNP, apparently—recognises that the situation cannot be allowed to continue. As with complaints against MSPs, all complaints must be referred to an independent person who will adjudicate on them.

**Alex Neil (Central Scotland) (SNP):** Is there a question?

**Mike Rumbles:** Then and only then should the results of any independent investigation be published and reported back to the First Minister for his decision.

**Members:** Question.

**Mike Rumbles:** Presiding Officer, it is up to the First Minister to take action on that. Could I ask him—

**Members:** Hooray!

**Mike Rumbles:** That is interesting, because I am sure that the First Minister will not answer the question properly.

Does the First Minister recognise that the will of the Parliament and the people of Scotland is to have an independent gatekeeper to adjudicate on complaints under the code? Does he recognise that the Parliament will not put up with anything less than that?

**The First Minister:** I have no doubt that, from the back benches, Mr Rumbles constantly stimulated his front-bench colleagues to adopt a measure of independence in relation to the ministerial code. Is it not remarkable that he had a total lack of success with his colleagues but has had at least a measure of success with the new ministerial code that has been introduced by the SNP?

It was not the nature of Mr Rumbles's question that caused some disquiet in the chamber. I gently suggest to him that what caused disquiet was concern about whether he was ever going to get to the question at all.

**The Presiding Officer:** We come to questions from back-bench members. An enormous number of members would like to ask questions and I would like to call as many as possible. I therefore ask that both questions and answers be kept brief and to the point.

**Brian Adam (Aberdeen North) (SNP):** Does the First Minister see any scope for a further layer of bureaucracy to deal with these matters? Indeed, who would make any such independent tsar accountable? Is it not true that, ultimately, any First Minister has to have the confidence of the Parliament and that, if people are not satisfied with his or her actions, that can be dealt with by the Parliament on a motion of no confidence?

**The First Minister:** That is exactly the line of accountability that any First Minister and any ministerial team would have.

I say to Labour members that the issue is not so much that their new attitude contrasts with Jackie Baillie's attitude before Christmas or with the party's attitude through eight years of Labour Government in the Scottish Parliament, but that it contrasts dramatically with the current attitude of the Prime Minister in London. I should perhaps congratulate Labour Party MSPs on finally rebelling against Prime Minister Brown, but the rest of the folk in Scotland will want to examine the inconsistencies between past and present and between what Labour says in Scotland and what it does in London.

**Jackie Baillie (Dumbarton) (Lab):** I am delighted that the First Minister listens to everything that I say. Let me capture his attention a little longer and enlighten him: when ministers breached the code in the previous Administrations, they came before the Parliament to apologise for their actions.

We waited 14 months for the new code, and there is much to be welcomed. I am pleased that the First Minister has followed Gordon Brown's example, but it is true that he has not done so willingly. While he dithered, the Parliament moved on, and unlike the First Minister, I have respect for what Parliament believes. The Parliament resolved that it, rather than the First Minister, should appoint someone to oversee the ministerial code. There is a question of trust and, frankly, the Scottish National Party Government does not have a blemish-free record: let us consider Trump, Aviemore, Beaulieu to Denny, class sizes and lots more beside.

**The Presiding Officer:** Question, please.

**Jackie Baillie:** Section 1.4 of the new ministerial code states that an investigation will be carried out when the First Minister deems it appropriate. What circumstances are appropriate? Would any issue on the list that I just gave be deemed appropriate, and if so, which one?

**The First Minister:** I congratulate Jackie Baillie on finding a contorted explanation for why her three parliamentary questions no longer represent the attitude to which she subscribes. She says that that is because she believes in the decisions of the Parliament. What a pity, therefore, that she did not put that into practice in her career as a minister, and that the conversion to the line of ministerial accountability has occurred only in the past few weeks.

Jackie Baillie acknowledged that she was prepared to welcome the improvements that are undoubtedly in the code. I hope that she acknowledges the distinction between what I have done in asking the past Presiding Officers to be independent advisers and what has been done in London. I thought that the key difficulty was the nature of the appointment. Unlike Jackie Baillie, I think that there is a ministerial line of accountability in a ministerial code—it is absolute. However, it has proven possible—I hope to everybody's satisfaction—to appoint people who are genuinely independent.

On the subject matters of the complaints that have come before me under the ministerial code, I can point out two things to Jackie Baillie. First, she should be congratulated on making the only complaint about my conduct that has come to me out of the eight that have been made—it was indeed about the Trump issue. Secondly, however, the Trump issue was then investigated by a parliamentary committee and came to a debate in this Parliament. Members may have a range of opinions about the issue, but that was certainly a line of parliamentary accountability.

Lastly, let me say gently to Labour members that if we have past Presiding Officers—

**Duncan McNeil (Greenock and Inverclyde)**

**(Lab):** On a point of order, Presiding Officer. As convener of the Local Government and Communities Committee, I make it clear that our inquiry's remit did not cover the ministerial code. The First Minister should not say what is untrue.

**The Presiding Officer:** That was not a point of order, but the point has been made.

**The First Minister:** That was not a point of order, or even accurate. I said that the committee investigated not the ministerial code but the Trump issue. If the committee's convener is saying that he did not investigate that, he should explain himself to his committee and to the people of Scotland.

Jackie Baillie needs to explain why what she did in government is different from what she says now and why what she said in parliamentary questions before Christmas is dramatically different from what she says now. Far be it from me to suggest that party politics has crept into her attitude.

**Tricia Marwick:** I welcome the First Minister's commitment to strengthening and improving the ministerial code. Does he recall that, in 1999, Donald Dewar—the then First Minister—asserted that the Parliament had no right to investigate lobbygate and the conduct of his Labour ministers because he had personally investigated the issue under the ministerial code? Does the First Minister agree that it is hypocritical of Ms Alexander and Ms Baillie to demand improvements now when, in power, they blocked any independent involvement whatever in the ministerial code and even tried to block the Parliament from fulfilling its responsibilities?

**The First Minister:** Like any self-respecting Parliament, the Parliament is well able to undertake its responsibilities. I am unfamiliar with the comments to which Tricia Marwick referred but, knowing Donald Dewar's attitude to parliamentary accountability, I am certain that he knew exactly from where the First Minister's responsibility and parliamentary accountability flowed. However, in that context, it is possible to introduce in the code an element of independent oversight and advice, as the Prime Minister suggested south of the border. We have done that in a way that will satisfy many, by asking to be involved people whose ability and integrity are beyond reproach and whose independence even Labour front benchers would not seriously dispute.

**Michael McMahon (Hamilton North and Bellshill) (Lab):** The First Minister may think that his ministers have answered 7,000 questions in six months, but I ask him to answer at least one question this afternoon. I agree with the comment in his statement that

"Parliamentary accountability is a vital aspect of the

ministerial code"

and I welcome his commitment that the independent panel should respond to or even appear before parliamentary committees. However, does he seriously believe that Parliament can have any confidence if it has no responsibility whatever for deciding who should form the independent panel?

**The First Minister:** I would have hoped that ex-Presiding Officers who were elected by the Parliament would command cross-party confidence in their impartiality and be held in respect.

I said that we had given 7,000 parliamentary answers in six months but, for total accuracy under the ministerial code, I am told that the Government has provided 7,157 parliamentary answers, which is substantially ahead of anything in the past.

Michael McMahon implies that, in the eight years before this Government took office, the ministerial code—without the enhancements that I announced today—was somehow satisfactory and that Parliament had confidence in it. All of a sudden, he disputes that confidence. Most people might conclude that he does that because, in the previous eight years, he was sitting in the Government seats, whereas now he sits in the Opposition seats.

**David McLetchie (Edinburgh Pentlands) (Con):** I put it to the First Minister that, in relation to his conduct vis-à-vis the Menie estate planning application, the new, enhanced, improved and so-called stronger code is not new, enhanced or stronger but an ex post facto vindication of totally inappropriate conduct—the facilitating of meetings between developers and senior planning officials at a crucial stage of the application process.

Will he confirm that, under the new code, arranging meetings involving relevant persons is now—amazingly—explicitly approved, and that that was not explicitly stated in the old code? Will he also confirm that the prohibition on ministers

"meeting the developer or objectors to discuss the proposal, but not meeting all parties with an interest in the decision",

which was applied to all ministers under the old code, now applies—mysteriously—only to the minister with responsibility for planning?

**The First Minister:** David McLetchie should re-examine the code. If he does so, he will find that his second question displays the misunderstanding that there has been among a number of MSPs. He quoted from a section of the old code that was headed "Planning Cases: The Planning Minister". That section should be taken to apply to the minister with responsibility for

planning—I know that Robert Brown at least appreciates that, because I remember him nodding when I made the same point in a committee meeting; indeed, one of the few times when he nodded was when I made that point.

On constituency interests and considering planning and other matters, the new, improved code nominates three types of minister for the sake of clarity and to put the matter beyond dispute. One type is the planning minister or any other minister who acts in a planning capacity and is involved in planning decisions. There are strict prohibitions on what they can and cannot do.

Secondly, there are other ministers who were allowed to do a range of things under the previous code, including going to public inquiries and representing their constituents. To answer David McLetchie's first question, if they are not prohibited from making public statements or engaging in activities, it does not seem unreasonable that such engagement should include arranging meetings—that is part of the normal parliamentary process.

The new code introduces for the first time a special prohibition on the third category of minister—the First Minister. One of the lessons that I learned from the process—those who think that I do not learn lessons had better listen carefully—is that the First Minister should come into a special category, because any public statement that the First Minister makes could be interpreted as being the view of the whole Government. Therefore, the new code requires the First Minister to exercise particular care in making public utterances on constituency planning cases that might be seen by people who are less fair minded than David McLetchie to indicate some instruction to other ministers.

**Robert Brown (Glasgow) (LD):** Perhaps what has been said indicates the need for a debate on the code, which Wendy Alexander called for earlier.

I return to the process in which the First Minister is prosecutor, judge and jury, or sometimes the accused person. I genuinely welcome the establishment of the independent panel and the strengthened emphasis on the code of conduct for MSPs in section 1.3 of the revised ministerial code, but is that intended to give Parliament more standing than it currently has in policing the ministerial code?

Given that the challenges that have been made to ministerial conduct in the current session in particular have often been to do with the accuracy of vital information, usually in controversial circumstances, I offer a suggestion about the gatekeeper. A screening cross-party group of senior MSPs could weed out cases of substance

for referral to the independent panel, which would enhance the vital independence of the process and give the First Minister protection against allegations of partiality in his decisions. Will the First Minister consider such a mechanism to deal with the gatekeeper aspect of this important matter?

**The First Minister:** I am touched by Robert Brown's concern for my welfare, which he has shown throughout his parliamentary career.

I understand that, south of the border, the Prime Minister said that Sir Philip Mawer would not investigate cases involving the Prime Minister, because of the line of accountability. I may be wrong about that, because there is a lack of clarity about the matter. Let me put things this way: I see no reason why I could not ask the independent advisers, whom I believe and Robert Brown acknowledges are genuinely independent and above reproach, to investigate the circumstances of any alleged breach of the ministerial code, regardless of the minister involved.

**Michael Matheson (Falkirk West) (SNP):** The First Minister will be aware that, in the past eight years, not only has there been no independent element to the ministerial code, but no statement has been made on it in the chamber, although given the questions that the Opposition has asked today, people may be forgiven for thinking otherwise. That has denied Parliament an opportunity to scrutinise the content and operation of the code.

I ask the First Minister to ensure that any future revisions or reviews of and changes to the ministerial code result in a full statement to the Parliament, so that we can continue the good practice that has been established today—that Parliament should be given an opportunity to scrutinise such issues.

**The First Minister:** Yes, I can do that. I note what the member says about there not having been any statement in the chamber for the past eight years. I heard Robert Brown, from a sedentary position, say that there had been nothing to investigate. Unfortunately, that was not the view of the people of Scotland, who came to the conclusion that there was a great deal to investigate and judge on. A whole range of issues required investigation—some of which are now being suggested by other members behind Robert Brown, again from a sedentary position.

However, occasionally we must allow for the possibility that some alleged breaches of the ministerial code are based less on substance than on press releases. I will give an example of that, although it might be invidious, as Mr McAveety is in the chamber. Mr McAveety made a complaint about the Minister for Communities and Sport,

Stewart Maxwell, under the ministerial code, but it was about something on which the minister had already made a statement and issued an apology to Parliament the previous day. That is what the ministerial code prescribes ministers should do if they inadvertently give Parliament the wrong information or incomplete information. If we have reached the stage at which, even when a minister follows the ministerial code and makes a statement to Parliament—which is generally acknowledged in both Parliaments of which I have been a member as an acceptable end to any matter—someone is prepared to lodge a complaint under the ministerial code, that lends evidence to those of us who suggest that not every complaint has the gravity and import that some members suggest.

**Richard Baker (North East Scotland) (Lab):**

The key question is whether it should simply be the First Minister who makes that judgment.

Does the First Minister accept that, under the previous Administration, complaints against ministers were taken very seriously and that the incident to which he has just referred is not the routine experience in the Parliament? Will he clarify what he deems to be the appropriate criteria according to which he would refer complaints to the proposed new panel?

**The First Minister:** Matters of substance and import.

I note the remarkable suggestion that all complaints were treated seriously by previous First Ministers. I am sure that they were, but they were treated in that way by First Ministers who had the line of accountability to the Parliament. I know that Richard Baker pursues parliamentary questions and other issues with great diligence. As he has not lodged a single complaint under the ministerial code, I must conclude that he is pretty happy with the way things are going in the Parliament.

**Patrick Harvie (Glasgow) (Green):** I am sure that Parliament itself will decide, in the fullness of time, whether it is happy with the way things are going under the ministerial code and whether it needs to debate again whether the resolution that Parliament agreed to is being implemented or whether the Parliament needs to address the issue.

Although the advice that will be made available to the First Minister under his proposal might be less than what some of us had hoped for, will it be made public, so that people will not have to wait until after the fact to submit a freedom of information request for it? Furthermore, will it be open to third parties to trigger such advice?

**The First Minister:** The findings of the independent panel will be made public, so the answer to that question is yes. The ministerial

code is quite a long document, but it says that those findings will be made public. If matters are referred to the independent panel, it would be impossible for it not to publish the findings. So the answer to Patrick Harvie's question is yes. I hope that that provides him with even more satisfaction that the proposal represents a substantive improvement on what has gone before.

**The Presiding Officer:** We are starting to get very tight for time, so I ask for brief questions and answers.

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

Will the First Minister ask the independent advisers to reconsider decisions, such as that which has been taken regarding the development at Aviemore, where I—along with other members—was used to cover prior ministerial activity? When members are concerned that they may have been used in that way, will they be able to ask the independent advisers to investigate and report to the First Minister, in order that they can be confident that the matter will be investigated properly?

**The First Minister:** What puzzles me about Rhoda Grant's question is that the list of complaints that have been made under the ministerial code does not include one from her on the Aviemore issue. I presume that, if she felt that there had been a breach of the code, she would have complained.

**Mike Rumbles:** What would have been the point of that?

**The First Minister:** A number of other members are assiduous complainers under the ministerial code—as they have every right to be—but it is a fair answer to the question for Rhoda Grant to explain that apparent absence of forethought.

**Ross Finnie (West of Scotland) (LD):** The First Minister has referred to the fact that the code repeats the provision of the earlier code that ministers must

“give accurate and truthful information to the Parliament, correcting any inadvertent error at the earliest opportunity.”

Does he agree that the proper inference to be drawn from that is that ministers' statements in the Parliament are to be distinguished from those that are made in a public place where, in the normal hurly-burly of political exchange, allegations of being economical with the truth might be tolerated, and that, accordingly, in the Parliament, truth is absolute? That being the case, will he point to a reference in his statement or a provision in the revised code that says that that high standard will be applied without exception?

**The First Minister:** There is a paragraph on parliamentary accountability that Mr Finnie can look at. It is effectively the same as the

paragraphs that were in the previous codes and makes exactly the point that he makes. Ministers—and other members—have a duty of accuracy. That particular parliamentary duty is well understood, I think. Of course, debating points are also made in the Parliament, and the code provides that ministers should not intentionally mislead Parliament. I have already given an illustration of an instance in which a minister quickly came to the conclusion that he had perhaps done so and made an apology to the Parliament, which is as it should be.

I accept Ross Finnie's general proposition, with the proviso that it should not be confused with the hurly-burly of points made in debate. Ministers have a particular duty of accuracy to Parliament, and that is provided for in the code.

**James Kelly (Glasgow Rutherglen) (Lab):** The First Minister will be aware that reservations were raised in the Parliament last September on the issue of Stewart Stevenson owning shares in Scottish Power while also having responsibility for energy matters. Will the First Minister outline how the provisions of section 11 of the revised code, which deals with ministers' private interests, will be applied to ensure that such conflicts of interest do not arise in the future?

**The First Minister:** I am glad that James Kelly has asked that question because, as I am sure he will understand as he reads it, he has put his finger on a substantial enhancement to the ministerial code. Under the previous codes, ministers were not obliged to write formally to the permanent secretary about their private affairs, nor was there a timetable in which they should do so; under the new code, they are obliged to do so within 30 days. Under the previous code, they were obliged only to consider the permanent secretary's advice on the matter; under the new code, they have to adhere to it. Therefore, on ministers' private affairs, there is a substantial enhancement to the code compared with anything that has gone before. That is exactly as it should be, and I am sure that, after James Kelly has had the opportunity to read it, he will welcome it as well.

**The Presiding Officer:** I am afraid that we must move on to the next item of business. I am sorry to the two members whom I was unable to call, but the next debate is already oversubscribed.

## Creative Scotland Bill: Stage 1

**The Presiding Officer (Alex Fergusson):** The next item of business is a debate on motion S3M-2028, in the name of Linda Fabby—I mean Linda Fabiani—on the Creative Scotland Bill.

14:50

**The Minister for Europe, External Affairs and Culture (Linda Fabiani):** That was terribly nice of you, Presiding Officer.

I am glad to be here this afternoon to ask the Parliament to agree to the general principles of the Creative Scotland Bill. I reiterate why the Government is promoting the bill, and promoting it now. In Scotland we have a dynamic, successful and internationally renowned cultural life. Our artists, writers, film makers, musicians and practitioners of all kinds are celebrated across the world. Our festivals, including the Edinburgh international film festival, which begins tonight, are world class in every sense of the word.

In every part of Scotland, communities celebrate their identity through culture. Local authorities, volunteers and many others bring enjoyment and fulfilment through cultural activities. Our creative enterprises are breaking into new markets across the world. They now support 60,000 jobs and contribute over £4 billion to the wealth of Scotland. Because of those successes and our ambitions for the future, we think that the time is right for the bill.

We want Scotland to be recognised as Europe's most creative nation—a nation that attracts and retains talent and in which the arts and our creative community are supported and celebrated and their contribution to the economy is maximised. It would not have been sufficient for us to pursue our aims through a reform of one or other of the existing bodies, or through a merger. Make do and mend will not do for our ambitions—we want a new body with modern functions and new objectives. We want creative Scotland to inspire an excellence that is the leading, confident edge of an aspirant nation.

I turn to the bill and to what creative Scotland will do, how it will innovate and with whom it will work in partnership. I record my thanks to the Education, Lifelong Learning and Culture Committee, the Finance Committee and the Subordinate Legislation Committee for their consideration of the bill. In my comments, I will try to offer the clarification that colleagues have sought.

Creative Scotland will be our national development body for the arts and culture, working with partners to support the creative industries. Its remit will encompass all the present functions and

activities of the Scottish Arts Council and Scottish Screen, including the promotion of the arts, culture, film and screen. We envisage four roles for creative Scotland. First, it will promote an increasingly wide understanding, appreciation and enjoyment of the arts and culture. Secondly, it will identify, support and develop talent and excellence in the arts and culture. Thirdly, it will seek to realise all the benefits of the arts and culture. Fourthly, it will work with partners to support the creative industries.

Creative Scotland will promote the enjoyment of the arts and culture. Much good work is already under way in that area. Scottish Screen has promoted and invested in the innovative use of digital technologies to make cinema accessible to audiences across Scotland. The Scottish Arts Council has supported groundbreaking work; creative Scotland will build on those successes and will work closely with local authorities and the voluntary sector.

Local authorities have the primary responsibility for making available adequate provision of cultural activities in their area, but creative Scotland and the Scottish Government will add value through the dissemination of good practice from across Scotland and other countries and the provision of financial support for the excellent work of creative organisations. The acting chief executive of the Scottish Arts Council is working with the Scottish Government and representatives of local government to develop guidance notes for community planning partnerships that aim to widen access to culture locally. Creative Scotland will build on and widen those links.

Creative Scotland will continue to make capital investments in Scotland's cultural infrastructure and will work closely with the voluntary sector. It will build on the work that is under way to promote wider cultural access through volunteering and partner organisations in the third sector.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** To what provisions in the local authority single outcome agreements that are due to be completed by the end of this month will the Government be able to point as evidence that it has contributed to local arts development?

**Linda Fabiani:** Culture is embedded in everything that the Government stands for. Local authorities already have statutory responsibility for the promotion of culture and arts in their areas. That will be enhanced by the work that we will do in partnership with local authorities through the single outcome agreements.

I expect creative Scotland's role in relation to creative talent and excellence to be the body's special contribution to Scotland's success. As I said in my statement to Parliament last year,

creative Scotland will be free to take risks in identifying, supporting and developing talent and excellence in the arts and culture. The choice of individuals, groups or organisations that creative Scotland supports will be entirely a matter for its artistic and cultural judgement. The bill gives statutory protection to the arms-length principle, while, as the lead committee concluded, retaining an appropriate degree of accountability that allows the public interest to be safeguarded.

Creative Scotland will add to the range of funding sources that is available to artists and creative practitioners. As well as grants, it will develop a wider portfolio of funding methods, including loans and other investments. It will play a critical role in supporting Scotland's creative industries.

When I gave evidence to the committee, I had just received the report of the creative industries working group. I have now considered that report and confirm that the Government has accepted each of its recommendations, which envisage exactly the ambitious and creative partnership working that will be crucial to creative Scotland's success. That partnership will be represented in a creative industries forum convened by creative Scotland. The forum will act as a catalyst, bringing together the public bodies that are involved in supporting the creative industries to ensure that services are effectively co-ordinated, and to share intelligence in a way that will stimulate innovation. Its first task will be to develop a route map for creative entrepreneurs that shows how to access services easily and make the best of them. I am pleased to say that all the national bodies that are involved are committed to the forum, and I will extend an invitation to the Convention of Scottish Local Authorities to take part, too.

Creative Scotland will continue to evolve complementary specialist advice and information services for creative enterprises. In order for it to do that, I can confirm today that the resources that are devoted to that purpose by Scottish Enterprise will, from the beginning of the next financial year, transfer to creative Scotland. I hope that what I have said has helped colleagues to better understand the role that we envisage for creative Scotland.

Although I have offered some of the greater detail that was sought by the committee, I should be clear that the Government believes strongly that the legislation that establishes the new body should not be loaded down with limiting prescriptive operational details.

**Ken Macintosh (Eastwood) (Lab):** Will the minister take an intervention?

**Linda Fabiani:** No. I have to get on.

The legislation is intended to provide a framework within which creative Scotland can work with partners to fulfil its potential and give creativity in Scotland the support and inspiration that it demands. The arts, culture and the creative industries in Scotland will be best served if the Parliament sets creative Scotland ambitious objectives, while giving it freedom to tackle those objectives as creatively as possible.

The creative Scotland transition team is working with the Government and many other partners to devise new approaches to supporting practitioners and organisations, encouraging participation and realising the benefits of the arts and culture. I look forward to those streams of inventive work coming to fruition. When they do, I assure the Parliament that creative Scotland will have the Government's support to realise its ambitions.

In closing, I announce that, if the Parliament approves its establishment, the Government will make new money available to creative Scotland to pursue new ideas. The Government has already confirmed that creative Scotland will inherit the annual £50 million grant in aid that is awarded to the Scottish Arts Council and Scottish Screen. However, we will also make available to creative Scotland over its first two years an extra £5 million. We will make that new money available in a creative Scotland innovation fund. As ideas emerge and are agreed for new ways for creative Scotland to pursue its ambitions, the Government will make available resources from the fund to invest in Scotland's creativity and success.

**Ken Macintosh:** On a point of clarification, Presiding Officer.

**Linda Fabiani:** I am just about finished, Presiding Officer.

**The Presiding Officer:** You have a full minute left.

**Ken Macintosh:** On a point of clarification, minister. I welcome the extra £5 million, but the minister said that the creative industries budget will be transferred from Scottish Enterprise to the new body. How much money is involved in that? Is it over and above the £50 million and over and above the additional £5 million?

**Linda Fabiani:** I can clarify that it is separate. I will probably come back to that point, because I imagine that there will be questions in the course of the debate.

Creative Scotland will get the boost that it needs at its establishment to realise our ambitions. It will nurture and celebrate new streams of talent, inspire creativity, and play its role in the success and happiness of a healthier and wealthier Scotland. For all those possibilities and many

more that are yet undiscovered, I commend the bill to the Parliament.

I move,

That the Parliament agrees to the general principles of the Creative Scotland Bill.

15:01

**Karen Whitefield (Airdrie and Shotts) (Lab):** I welcome the opportunity to speak in this debate on behalf of the Education, Lifelong Learning and Culture Committee. I thank those who helped the committee to scrutinise the bill effectively, particularly all those who gave written and oral evidence to the committee. They provided a broad perspective on the bill and acted as an excellent catalyst for committee members to examine a concept as nebulous and hard to pin down as culture. I thank, too, the committee clerks for their hard work and commitment in preparing our stage 1 report. Finally, I thank the members of the Subordinate Legislation Committee and the Finance Committee for their reports on the bill.

From the outset, let me say that the whole committee and I welcomed the broad thrust of the bill. Scotland has a proud cultural heritage and it is important that we do all we can to ensure that our cultural life remains vital, vibrant and challenging. The amalgamation of the Scottish Arts Council and Scottish Screen into creative Scotland is eminently sensible and should provide opportunities for a more seamless approach to supporting the arts.

Getting a grip on what we mean by the word "culture" is slightly more difficult; indeed, our report acknowledges that. Recently, I heard Andrew Marr say that there is what we do to provide ourselves with shelter and food, and the rest is what we could describe as culture. I have some sympathy with that view. However, others have loftier and more aspirational views of culture. Karl Kraus, the Austrian satirist, said:

"Culture is the tacit agreement to let the means of subsistence disappear behind the purpose of existence. Civilisation is the subordination of the latter to the former."

I am sure that we could have debated the definition of culture forever. However, I am glad that the Scottish Government decided that it was best to avoid being overly prescriptive about a definition. Some who gave evidence felt that that was a shortcoming in the bill, but, on balance, the committee agreed with that approach. We do not want to deliver a piece of legislation that, now or at some point in the future, provides a barrier to the development of the arts or Scottish culture. However, the committee feels that interpretation of terms such as "the arts" and "culture" is significant for how creative Scotland delivers its functions.



Having started on a positive note, I must turn to some of the quite serious concerns on which the majority of the committee agreed. Indeed, other committees raised those concerns in their consideration of the bill. The concerns fall into a number of categories, including financial considerations; partnership working and the sharing and division of responsibilities; and the role of education, higher education and local authorities. However, those varied concerns can be summed up under the general comment that the bill lacks the detail that we on the committee and the people in the world of arts and culture expected to see.

The most striking example of that was the financial memorandum that accompanied the bill, which was so poorly researched and lacking in detail that the Finance Committee commented that it was

“the weakest that has been produced in the current parliamentary session.”

Therefore, I welcome the minister's announcement that additional funding will be provided. Linda Fabiani has listened to the committees of the Parliament and in particular to the Finance Committee's concerns. The Finance Committee and the Education, Lifelong Learning and Culture Committee expressed serious concern that, although the range of work that the new body would be asked to do would be wider than the range of work that is currently undertaken by the Scottish Arts Council and Scottish Screen, there would be no commensurate increase in funding. Such concerns were reiterated by many witnesses who gave evidence to the Education, Lifelong Learning and Culture Committee. I am pleased that the minister has reflected on the matter, although a number of questions remain and we will need to tease out the detail on how the £5 million will be spent.

It is unfortunate that there was also a lack of clarity about financial support to creative Scotland in the context of its role of supporting creative industries. The minister mentioned that issue. In evidence to the committee, Dr Richard Holloway, the chair of the joint board of the Scottish Arts Council and Scottish Screen, said that he anticipated that money would be transferred to creative Scotland. However, Adrian Gillespie, from Scottish Enterprise, told the committee:

“I do not expect our discussions to result in budget transfer, because that is not what we are talking about.”

When the minister gave evidence to the committee, she said that the issue was

“currently being discussed as we move forward.”—[*Official Report, Education, Lifelong Learning and Culture Committee*, 14 May 2008; c 1005, 1030.]

The committee set out its position clearly on the matter in its stage 1 report. We said that we were concerned about

“contradictory evidence received on the transfer of resources”,

and that

“Creative Scotland is being asked to do more with a diminishing budget”.

I hope that the minister will ensure that the committee's concerns are fully addressed.

Problems to do with the relationship between creative Scotland and enterprise agencies are not all directly related to finance. The committee had serious concerns about the lack of clarity about those bodies' relative roles and functions. In particular, we were not satisfied that it is sufficiently clear which will be the lead agency for the creative industries. We sought clarification on what is meant by the assertion that creative Scotland will have a “leading advocacy role” in relation to the creative industries.

The committee expressed similar concern about the potential for overlap between the work of local authorities and the work of creative Scotland. It is important that the bill and its accompanying documents set out a framework for productive partnership working between creative Scotland and our local authorities. It is important to acknowledge that our schools play a major part in introducing all Scotland's children and young people to the arts.

We must also acknowledge the wide-ranging and innovative community arts services that local authorities offer. For example, in Airdrie in my constituency the @Home project provides local young people with recording and rehearsal facilities as well as a ready-made venue for bands that have reached a sufficient standard. Similar projects exist throughout Scotland. We must ensure that creative Scotland plays its part in supporting and nurturing such projects, from which artists can emerge. For that reason, in its report the committee asked the minister to explain how she envisages the development of the relationship between creative Scotland and local government and—this is important—to say what resources will be provided to enable local authorities to play a full role in supporting the arts and culture in their areas.

The voluntary sector is another big player in Scotland's cultural life. Throughout Scotland, voluntary groups support the arts at all levels, from amateur arts clubs to professional theatre production companies.

**The Presiding Officer:** You have one minute left.

**Karen Whitefield:** However, the bill was vague about the relationship between creative Scotland and the voluntary sector. We seek clarification on the matter.

The committee listened to the concerns that Scottish universities and further education establishments expressed. Universities Scotland thought that there was a lack of recognition of the key role that universities play in supporting arts and culture. In giving evidence for Universities Scotland, David Caldwell said:

"If we are to make the bill work, we need to develop a better understanding of the contributions that various institutions—including, but not only, the universities—can make to the work of creative Scotland"—[*Official Report, Education, Lifelong Learning and Culture Committee*, 7 May 2008; c 977.]

The committee welcomes the broad thrust of the Creative Scotland Bill. We have endorsed the principle and benefit of establishing a single national cultural body. However, we have serious concerns about the ability of the bill, as it is currently drafted, to deliver the aspirations that I am sure all members share.

Scotland has a proud heritage. In people such as Charles Rennie Mackintosh, we have an example of how arts can affect our culture and how our culture affects our arts. Scotland has produced artists of the highest quality. I am thinking of painters such as Joan Eardley and Steven Campbell; actors such as Gordon Jackson and Deborah Kerr; and musicians such as Evelyn Glennie and Craig Armstrong.

I am sure that we all want Scotland to continue to be a place that nurtures great artists and in which the arts continue to live and breathe in our communities. The bill provides an important opportunity to achieve that goal. For that reason, we must get it right.

**The Presiding Officer:** We are tight for time in the debate. I ask members to stick to their time if at all possible.

15:11

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** This is a rather unusual stage 1 debate, given that most of the objections to and concerns about the bill relate to what is missing from it and not what it contains. It is for that reason that the Labour Party supports the general principles of the bill, but with serious reservations and concerns.

I will not go over all the excellent proposals in the draft culture (Scotland) bill that was binned on 7 November, but will stick instead to the lack of clarity and detail about creative Scotland. Like the Finance Committee, I question the financial provisions that fail to match the extended remit of

this new national body. Many of the anxieties around creative Scotland are underpinned by that. [*Interruption.*]

**The Presiding Officer:** Order.

**Malcolm Chisholm:** Of course, I welcome the minister's announcement on the extra money. She has recognised that her previously held view was not sustainable. As the financial memorandum makes it clear, the combined budgets of the Scottish Arts Council and Scottish Screen were set to decline in cash terms by £3 million over the next three years. We welcome the extra £5 million, although, in real terms, the budget probably remains a stand-still budget. In addition, we have the problem that the estimated £1 million for transitional costs may not be enough and, on top of that, the issue of efficiency savings.

It is therefore no wonder either that people in the arts community are worried or that the central question on the bill has been, "How on earth can a body with such an extended remit possibly flourish on a budget that is not increasing in real terms?" Those concerns are compounded by fears about local authority budgets. Local authorities are now guided by targets and indicators, but without a single target or indicator that relates to the arts.

Those anxieties about funding underlie the many demands for a definition of culture and, particularly, of the arts. For example, the Scottish Storytelling Centre has called for a definition of the arts that includes literature. It did so partly because it fears that support for literature will disappear in a difficult funding situation. When Scottish Language Dictionaries suggested a definition that includes language, it did so partly because support for the Scots language has already been cut significantly in a tight financial situation that is about to get tighter.

The debate on definitions needs to continue on its own terms throughout the passage of the bill. We need to recognise that inclusive definitions, such as those that the Scottish Storytelling Centre and Scottish Language Dictionaries suggested, rule nothing out but guarantee that central strands of the arts would be properly supported by creative Scotland.

It is perhaps unfortunate that no proper consultation was undertaken on the bill. At the very least, attention could have been paid to the conclusions of the consultation process on the draft culture (Scotland) bill. As the report on that consultation said, with reference to creative Scotland:

"The majority of respondents felt whilst agreeing to the new body, that its role and responsibilities should be more clearly defined in the Bill, and that Creative Scotland would have to work closely with cultural agencies, local authorities and other cultural partners."

One has to wonder whether anyone in the Scottish Government read that.

The issue of role, responsibilities and relationships becomes particularly problematic when we come to the creative industries. Given that that is the central new feature in the remit for creative Scotland, one might think that it is worthy of some clarity and thought. As members know, we get a reference at the end of section 2 of the bill to

“supporting activities which involve the application of creative skills to the development of products and processes.”

As Scottish Enterprise tactfully put it, that is “open to interpretation”.

Legislation should not be open to interpretation. There must be clarification, either today or at a subsequent stage. Progress so far has not been encouraging, and simply talking about a forum does not answer the question. From listening to the minister’s explanation today, I am tempted to paraphrase Byron talking about Coleridge

Explaining creative Scotland to the nation  
I wish she would explain her explanation.

Progress has not been encouraging, because of a combination of confusion and unwillingness to answer questions. When Rob Gibson asked the minister in committee which elements of support for the creative industries creative Scotland should deal with and what proportion of its budget should be used for that, he was told that that was a matter for creative Scotland to discuss. When Mary Mulligan asked whether creative Scotland would be the lead strategic organisation that deals with the creative industries, as indicated by the transition team, the policy memorandum and the recent working group report, the minister said that we should get away from the view that somebody must take the lead. When asked whether there would be a transfer of budgets from Scottish Enterprise to creative Scotland—something that is not on the agenda, according to Scottish Enterprise—the minister told us that that is still being discussed. We note what the minister said on that today, but we must know before the end of the debate how much money she is talking about and the purpose for which the money is to be used.

In the midst of all that confusion, the minister’s usual formulation is that creative Scotland will be the lead advocate for the creative industries, although she did not use that phrase today. It is far from clear what that means in practice, quite apart from the fact that the key word in the bill about the creative industries is “supporting”. Clarification of what “supporting” means is central to progress and, if support is not what is intended, that word should be deleted from the bill. Another

requirement is clarification of the relationship between creative Scotland and the other creative industry players, namely Scottish Enterprise, Highlands and Islands Enterprise and the local authorities. Clarification on the transferred money, the issue of who will lead and the relationship between the players should be given in the winding-up speech, please.

The relationship with local authorities extends well beyond the creative industries, although their new business gateway function is important. Local authorities also have a crucial role in supporting arts activity in communities and schools. It is strange that the bill is silent on that central partnership. The policy memorandum talks of creative Scotland working

“in partnership with a wide variety of interested organisations.”

Perhaps that should be put in the bill as a general statement, followed by the specific example of local authorities.

Specific duties might be added, such as a duty to assist local authorities in the development of local cultural plans or to co-operate with education authorities to ensure that cultural components are incorporated in the curriculum. Local authorities are central to the delivery of arts and culture, as recognised by the sections on local authorities in the draft culture (Scotland) bill. I know that the minister did not like those sections, which were underpinned by the concept of entitlements, but that does not mean that a different formulation should not be considered. I have raised concerns about local authority funding and the absence of a target or indicator for the arts. In that situation, the minister must explain what leverage, if any, she has over local authorities that simply decide that the arts and culture are not for them. Perhaps creative Scotland should have a role in that. We certainly need clarity on the issue, as on so many other issues. Another such issue is further and higher education but, as the clock is ticking, I shall leave that and simply recommend the committee’s recommendation in that regard.

I want to talk in more detail about the key partnership with the voluntary sector. Like the minister, I was fortunate to be a speaker at the Voluntary Arts Scotland conference a couple of days ago. Many points were raised about creative Scotland, its funding and its relationship to bodies such as Voluntary Arts Scotland. The committee report refers to the important need for creative Scotland to recognise Voluntary Arts Scotland’s role in developing and disseminating good practice advice to the voluntary cultural sector. The report also mentions the need to ensure that the new body does not get involved in more duplication. Voluntary Arts Scotland’s suggestion that it should deliver that remit on creative Scotland’s behalf should be considered seriously.

On the arm's-length principle in general, like the committee, I am satisfied with the balance that is struck in the bill. I merely add that that balance was precisely what the previous Administration intended in its draft culture (Scotland) bill, so the minister was hardly justified in trumpeting a great change of direction in that regard in her statement to Parliament on 7 November last year. However, although the arm's-length principle is correct for the artistic judgments of creative Scotland, it is emphatically inappropriate for the proposed legislation. We do not know whether legislation is necessary, although I will not go into the minister's contradictory statements in the committee about that.

As Donald Smith put it in giving evidence to the committee:

"The relationship between democracy and culture is extremely strong in Scotland, so Parliament should do a job and give the new body a remit."—[*Official Report, Education, Lifelong Learning and Culture Committee*, 7 May 2008; c 957.]

In a sense, that is what the whole debate will be about—today and at the next two stages of the bill. We must establish clarity in the remit of creative Scotland, and we must not be led astray by the arm's-length belief that it is nothing to do with us. That seemed to be what the minister was suggesting on various occasions at the committee, when she almost made a virtue out of not knowing the answer.

Finally, negative capability—being in a state of uncertainty and doubt—is very beneficial for the creative process, but it is highly damaging in a piece of parliamentary legislation. We shall support the general principles of the bill today, but with the proviso that more clarity and less uncertainty will be required next time round.

15:20

**Ted Brocklebank (Mid Scotland and Fife)**  
**(Con):** Future generations will look back on the early years of the 21<sup>st</sup> century as a golden time in Scotland's creative and cultural history. In virtually every aspect of the arts, there is quality and depth. What is more, our writers, actors, musicians, directors and—yes—pop stars are winning acclaim around the globe. Our distinguished Scottish orchestras and opera and ballet companies have all won worldwide reputations. The planet's most successful author, J K Rowling, honed her writing skills in an Edinburgh tea room; and the world's most popular artist, in terms of prints sold, is a former miner from Methil in Fife—Jack Vettriano. As the minister has acknowledged, it is a welcome fact that Edinburgh hosts the world's premier arts festival.

Of course, self-praise is no great honour, and I cringe at the "Wha's like us?" hysteria so often

whipped up by sections of the media whenever Scotland achieves some minor sporting success. But having said that—and with the lingering regret that our greatest Gaelic poet, Sorley MacLean, missed out on the Nobel prize for literature that he richly deserved—I rejoice that the nation is riding so high in the world's cultural esteem.

Could we do better? Of course we could, which is why we welcome the Creative Scotland Bill that we are considering today. It is not the direct role of Government to shape the arts and culture of a nation, but it is certainly the role of Government to create the climate in which the arts can flourish. To that extent, the Conservatives welcome the aspirations of the bill, although we remain concerned that, in a number of important respects, it lacks clarity and still requires considerable revision.

Conservatives have always striven to uphold a healthy creative sector in Scotland, and we want to see a governing body that is fit for purpose in a rapidly changing artistic world. In my television days, we talked about broadcasting, safe in the assumption that everybody knew what we meant. Nowadays, of course, with the rapid development of the games industry and a plethora of means of delivery, we have to talk about audiovisual content on whatever platform is appropriate. In that changing arts world, it makes sense to devise an overall creative body, combining the Scottish Arts Council and Scottish Screen, with the necessary additional powers for the development and support of the creative industries across the spectrum.

We agreed with the present Government's decision to drop its predecessor's plans to give ministers powers of direction over galleries and museums and to enlist local authorities to deliver so-called cultural entitlements. Ministers and councillors should be kept as far away from influencing artistic content as possible.

However, we firmly support the decision to fund our five great performing companies directly from the Government, provided that they continue to meet agreed criteria for national status. We welcome the minister's repeated assurances that it is not the intention of her Government to become involved in artistic decision making. However, the phraseology in the bill still appears to leave some doubt, as Equity and others have pointed out. The actual wording will bear closer scrutiny at future stages.

Equally, like others, we were concerned about the bill's financial memorandum. According to the report of the Finance Committee, the financial memorandum was

"the weakest that has been produced in the current parliamentary session."

The committee was referring to the funding during

the transitional period until the new amalgamated body has been set up, but fears have also been expressed that the new creative Scotland is being asked to do more work with a diminishing budget.

We welcome the transfer of Scottish Enterprise's £50 million cultural budget to creative Scotland, and we look forward to more details of additional funding. However, our main concern until this afternoon was the apparent confusion over whether creative Scotland or Scottish Enterprise is to be the lead agency for arts funding. As we have heard, the minister seemed only to make matters worse at the committee when she claimed that creative Scotland would have the leading advocacy role. I hope that, following today's announcement, she can confirm that creative Scotland will indeed take the lead. Will she confirm that creative Scotland will have the final say on how much money will go to each project or artistic organisation, and that it will not have powers only of recommendation?

Last week, the Education, Lifelong Learning and Culture Committee heard from Blair Jenkins of the Scottish Broadcasting Commission. He gave evidence on public and private sector production funding for the television industry, a model that is dear to my heart and which works successfully in Ireland, Canada and elsewhere. It would be of particular interest to Scotland's beleaguered independent television sector. Until today, we had no clear indication from the minister on where producers of TV shows or other arts projects should go to make their pitch. Are we now to assume that cultural entrepreneurs will make their first pitch to creative Scotland and that the new body will be able to deliver on any promises given?

The universities and local authorities have expressed confusion about their role in promoting the arts under the bill. The minister was right to pay tribute to the role of local authorities. It is disappointing that at stage 1 they appear still to be unclear about how they will fit into Scotland's new arts structure.

We will support the aspirations of the bill, but we will watch with interest how our various concerns are dealt with and will consider the extent to which the minister makes the roles of Scottish Enterprise and creative Scotland absolutely clear—I hope that she will do that before the end of the debate—before we give any commitments beyond stage 1.

15:26

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** I refer members to my entry in the register of members' interests, which shows that I am a member of a small theatre company board.

With culture and creativity, we capture imagination; give individuals confidence; entertain and empower people; and encourage equality and entrepreneurialism. All those aspects have shaped modern society in Scotland. We have a proud record in this area and we will have a fantastic future.

However, this debate is not about the general principles of culture; it is about whether the bill that the Government has introduced will be a mechanism for developing creativity, the arts and culture in Scotland. The conclusion in paragraph 141 of the Education, Lifelong Learning and Culture Committee's stage 1 report on the bill was:

"The Committee is concerned that the measures included in the bill do not match the rhetoric from the Scottish Government."

The Minister for Europe, External Affairs and Culture said to the committee on 14 May:

"we are establishing a new body with new functions, extensive powers and new approaches."

She went on to say that the bill was introduced to

"put a stop to the uncertainty and speculation and place the creative sector on a firm footing."

Therefore, it is with a degree of unhappiness that I say that, even by the stage of the stage 1 debate, there is still uncertainty and speculation and the financing of the sector is not on a firm footing. With creative understatement, the minister then said:

"I appreciate that that approach is unusual and has caused some frustrations for the committee and colleagues in the Finance Committee."—[*Official Report, Education, Lifelong Learning and Culture Committee*, 14 May 2008; c 1010-11.]

When the minister made her statement to Parliament last year, she pointed to the many aspects of the previous culture bill that she thought could be delivered without legislation. She said that a bill would be unnecessary and that she would introduce a bill only in the areas in which legislation was necessary. The committee was a bit surprised that legislation was not required to establish creative Scotland, but the Government said that the bill was introduced to allow detailed parliamentary scrutiny to take place. I see that the Minister for Parliamentary Business is in the chamber. He might think that a dangerous precedent has been set: the Government will have to introduce a bill on every occasion to allow debate about and scrutiny of Government policies.

There is a lack of clarity about creative Scotland's remit, responsibilities and functions. Creative Scotland's transition board stated categorically that it is intended to be the lead development agency for the creative industries. The "Public Support for Creative Industries Report", which the Government has now accepted, states in paragraph 1.3 in its appendix

that creative Scotland

“will be the lead agency for the arts and creative enterprises in Scotland”.

However, the minister said on 14 May:

“It is not proposed that creative Scotland will take on the role or activities of the business gateway or Scottish Enterprise. That would just muddy the landscape”,

although, within minutes of that, the Government had said:

“we also propose that creative Scotland will build on and evolve existing good practice—in the cultural enterprise office, for example—in providing complementary tailored services for creative entrepreneurs in the first stages of business development.”—[*Official Report, Education, Lifelong Learning and Culture Committee*, 14 May 2008; c 1029 and 1012.]

The minister stated clearly today that that will include provision to provide loans for business enterprises, although we still do not know how that will be delivered, or, indeed, what priority the new organisation will give to business support—as opposed to acting as a grant-making organisation for arts bodies—as there must be some form of financial assistance and there will be a cost in creative Scotland providing such services.

Unfortunately, there has been wholesale confusion over the funds and the budget that will be available to the organisation. Indeed, we have had more news in that regard today. At stage 1, when the committee was scrutinising the proposals, the Government had ample opportunity to come forward with further information about the budget, yet the Government brings forward new information during the stage 1 debate in the chamber.

Scottish Enterprise was perfectly clear that no transfer of funds was to occur. On 21 May, the chief executive of Scottish Enterprise told the Economy, Energy and Tourism Committee that “no transfer” has been made or is planned to be made to creative Scotland for the creative industries. That is in the *Official Report* of this Parliament. The business plan for the enterprise networks had been signed off by ministers.

As of today, we know that the business plan that was presented to Parliament was flawed. The question of where the funds are coming from is serious.

The SNP manifesto promised to transfer the budgets for the creative industries in Scotland from Scottish Enterprise to creative Scotland. However, when Ken Macintosh asked the minister whether that was the case, the minister said:

“It will serve no one any good to start talking about manifestos at this point.”—[*Official Report, Education, Lifelong Learning and Culture Committee*, 14 May 2008; c 1032.]

The Scottish Parliament information centre tells us that the combined budget for the Scottish Arts Council and Scottish Screen will fall, in real terms, from £50 million this year to £45.5 million over the spending review period. Therefore, the increase in budget that we have heard about—and we are not sure whether it is to be annualised over the spending review period—will only bring it back to roughly the level that it is at just now. Indeed, if we subtract the set-up costs for creative Scotland, the budget for arts development and creativity will be in a negative situation. Further, we will also have created confusion around the roles and remits of the organisations that are going to get support.

We have a shared ambition in this Parliament for our creative industries, but we think that this bill is deficient. The Finance Committee issued a damning report on it. The Government must do much more work to ensure that the measures in the bill match its rhetoric. Unfortunately, we and the creative sector in Scotland are still waiting for that to be done.

15:32

**Ian McKee (Lothians) (SNP):** The late and unlamented Hermann Göring gets the credit for the remark,

“Whenever I hear the word, ‘culture’, I reach for my revolver.”

Although it is certain that he was not the originator of the phrase—I leave it to those in the chamber who are better versed in the history of fascist dictatorships than I am to tell us who came up with it—there is no doubt that it has a certain resonance among some elements of our society, as is borne witness by the letters that we all receive complaining about subsidies being given to operas or classical music while folk are living in inadequate housing.

As Karen Whitefield asked, what is culture, and does it deserve support? There has been criticism that the Creative Scotland Bill, the principles of which are supported by the majority of the bodies and people who responded to the earlier consultation process, contains no definition of culture—most other bills concerning other subjects are required to define their terms. However, as Richard Holloway, the chair of the joint board of the Scottish Arts Council and Scottish Screen, said to the Education, Lifelong Learning and Culture Committee on 30 April this year, if we define the word “culture” too precisely, “we limit the future”.

My case is that culture is human creativity. It distinguishes us from animals and has no distinct bounds. It is akin to the soul of a community, whether that community is a family, a town or a nation. Culture is not only opera, music, the visual

arts or film; as Ted Brocklebank says, it is all of those things and much more. The job of Government is not to define, mould or pick winners; it is to create the circumstances in which culture can flourish.

The bill rightly maintains the arm's-length relationship between Government and the body that awards grants or provides advice.

**Robin Harper (Lothians) (Green):** The Scottish Book Trust asks how we can legislate for something that we do not care to define. It points out that the United Nations Educational, Scientific and Cultural Organisation has a definition of culture that is recognised around the world. Why can the Government not accept that definition? If it wants to take Richard Holloway's concerns, for which I have absolute respect—

**The Deputy Presiding Officer (Alasdair Morgan):** Your intervention is a bit long, Mr Harper.

**Robin Harper:** This is the point. Would not the Government be able to get round the problem by simply saying at the end of any definition of culture that culture includes that but is not limited to it?

**Ian McKee:** I accept Robin Harper's point, but I cannot entirely agree with it. I agree with Richard Holloway, and with other members in the chamber, that the moment that one starts to define culture, one is on very restrictive ground, which can cause problems in the future.

It is not the function of politicians to interfere with the output of creative Scotland or to direct policy priorities, as that would, in the words of the Scottish Artists Union,

"render any notion of artistic freedom ... meaningless".

Those of us who have recently received anguished letters from those who were unfortunate enough to be denied support from the Scottish Arts Council this year might be tempted to rebel against that concept but, although we all have views on the merits of different cases and it must take the wisdom of Solomon to judge competing claims, it is surely right that such decisions are made by a body that has been established for that purpose, rather than by politicians, who are by definition more likely to be swayed by political rather than artistic considerations. Distributing grants to worthy projects is only one part of creative Scotland's envisaged function, and creative Scotland, like any other human institution, can get it wrong and make the wrong decision.

Culture is like a plant: the more fertile the soil, the quicker it will grow and the healthier it will be. I welcome the function by which the body will support and develop talent wherever it is. The current review into the ways in which that can best

be effected is deeply welcome. I am only disappointed that this country's lack of independence—or even fiscal autonomy—means that we cannot use the powers that a country such as Ireland has to introduce a tax exemption scheme for young artists at the outset of their careers. Let us hope that time will remedy that disadvantage.

**Malcolm Chisholm:** The manifesto of Ian McKee's party dealt with that problem by promising grants to artists in lieu of tax relief. Will that still happen, or is it another broken promise?

**Ian McKee:** I am disappointed that Malcolm Chisholm, whom I normally regard as being extremely wise and full of foresight, is quibbling about the ways in which the Scottish National Party is trying to get round the objections that his own unionist Government in Westminster has made.

My other concern is that in linking Scottish Screen with the Scottish Arts Council we do not minimise the importance of the film and screen industries. I look forward to receiving reassurance from the minister on that point. I have said that culture needs fertile ground on which to thrive. The ground can be made more fertile by stratagems such as tax breaks, studio subsidies, the provision of facilities and suchlike. However, the main driver for cultural diversity and development lies in the confidence, sense of wellbeing and identity of the people themselves—and that might have little to do with money.

Countries all over Europe that have achieved independence and control over their own affairs and destiny have experienced a cultural renaissance. For years, we in Scotland have lived in the shadow of dependence and with the feeling that our future is determined for us by others. Now is the time to move forward into a new generation.

15:38

**Mr Frank McAveety (Glasgow Shettleston) (Lab):** I have been a reluctant participant in debates about culture since an interesting but occasionally turbulent period as the then Minister for Tourism, Culture and Sport in Scotland. In today's discussion, we need to amplify exactly where we were in the previous Executive and to express our disappointment at the failure of ambition that is contained in today's contribution and in the opportunities for culture in the future, which the Parliament must address.

I remind Ian McKee that even in periods when there were forms of government that were not independent in Scotland, we had substantial periods of what would be called cultural renaissance. During the period leading up to the commitment to a devolved Parliament, many in the

artistic community were key contributors to the debate about whether it was in Scotland's interest to have a devolved Government.

I think that Jennie Lee put it appropriately years ago when she was Minister for the Arts under Harold Wilson.

**Ian McKee:** Will the member take an intervention?

**Mr McAveety:** If the member is going to quote Jennie Lee to me, I will be delighted to hear it.

**Ian McKee:** I refer to the member's point about the cultural renaissance before devolution. Is it not the case that people expected a lot more of devolution than actually arrived? They expected some form of home rule and independence.

**Mr McAveety:** That is probably true, but the individuals in the cultural sector who were involved in the debate around the constitutional convention were taking part in it. Funnily enough, the SNP was not. I hate to remind members of that, but it is a matter of historical fact.

Jennie Lee said that what is needed is more money and a period of silence. I would probably agree with that, even though it is not a view that would normally be associated with me.

It is wrong to claim that there was a commitment to having powers of direction in the former Executive's bill. That claim was made in some of the press releases, but it is not the reality of the legislation.

On the argument about the new mythology whereby people say, "We do not want politicians to be involved in debates around arts and culture," I do not know where those people have been. The reality of life is that politicians and representatives have as much right as anyone else to be involved in debates about cultural direction and the future of Scotland.

I know that Ted Brocklebank is a representative of what was historically termed the petite bourgeoisie. Without the petite bourgeoisie, members of which were in municipal government, much of the major cultural infrastructure of late Victorian Glasgow would not have been built. There was a political commitment to create things such as the Kelvingrove gallery and a number of other institutions. However, there was a failure to engage citizens more widely in the debate. Many of the principles that were contained in our commitment to cultural entitlements have been lost in the Creative Scotland Bill. We wanted to find ways in which to engage with many more citizens throughout Scotland. That aspiration is hard to define but it is an important aspiration to aim for.

I got some criticism when I was a minister. I remember reading my Sunday papers with great

joy once when *Scotland on Sunday* described me as a "philistine". I looked that word up in the dictionary and I could not see it anywhere under F. The reality is that terms are used to define people and put them in a box. What we are trying to do through the bill, I hope, is to create a much better fabric that enables the artist to flourish more effectively in Scotland.

There are profound issues in the bill and my colleagues will touch on those. I welcome some of the ways in which the minister has tried to address them so far and I hope that she will continue to do so.

When Jack McConnell said what he said in his St Andrew's day speech in 2003, the commitment was to a belief that, wherever someone is in Scotland, they have the opportunity to make a contribution. In present-day Scotland, we have a huge disparity of spending by local government, and opportunities depend on the accident of where someone lives or the geography of their consumption of culture. I hope that the outcome agreements will address that. Some local authorities spend 30 to 40 times more than others. That is a matter for the Scottish Government and all parliamentarians to address through constructive engagement and dialogue. I do not care how we address it as long as we do so. It is about leadership and about equity and fairness in access to culture.

We build on the strengths of local government and the voluntary sector. Last night, I had a remarkable experience at the young enterprise awards. I met some primary school students who are in their own rock band. They gave a fantastic performance. Through cultural engagement, those youngsters are more rounded citizens and are more likely to make a positive contribution. I say to the minister that that should be our ambition as parliamentarians. I regret that such ambition is not present in the bill, but there is still time to remedy that.

15:44

**Rob Gibson (Highlands and Islands) (SNP):** It is important for us to know where we have come from to reach this point. I sat through the committee debates, listened to the arguments put and questions asked, and felt the strongly negative sense from some that somehow it is impossible to pin down the issues and that the SNP Government is failing. I suppose that that attitude could be summed up by the comment:

"The overwhelming judgement is of a weak document that hasn't been put together with any enthusiasm or determination. It just looks as if it was born to fail."

However, that was James Boyle talking about the Labour-Lib Dem draft culture (Scotland) bill, from which we have escaped—thank goodness.



When Linda Fabiani introduced the Creative Scotland Bill, she said:

"The establishment of Creative Scotland will cultivate and support the best of Scottish arts and culture and maximise the potential of Scotland's creative sector ... Creative Scotland will have a vital role in promoting artistic excellence. It will help our artists, practitioners and creative businesses to rise to new levels of aspiration, ambition and achievement".

When I look at the bill before us, I see enabling legislation that can take us to new heights. I see not only the potential for advocacy and creative Scotland being the lead body but hard evidence that the agencies that will work with it will be happy to do so and are already working in partnership.

Highlands and Islands Enterprise and Scottish Enterprise said clearly that they were happy with the situation, and I am delighted that the minister has accepted all of the statements from the creative industries working group report and will create the creative industries forum, which will include all such agencies and answer the question about who takes which decisions. The route map that the forum will draw up will show how each agency works.

I have already seen local examples of people applying through the gateway. If people in my part of Scotland approached HIE, it would know where they should go. I am sure that, if we were fair, we would agree that that would happen in Scottish Enterprise areas too. That is why we should have confidence that the right framework has been put in place in the bill. The bill is not inadequate but will point the way clearly.

The comment that COSLA should be involved is relevant, although its involvement must be carefully managed. It is all very well saying that COSLA should have a place on the creative Scotland board, as COSLA first argued, but there would be a conflict of interests. Other committee members recognised that too. However, a special place for COSLA in the creative industries forum is important because it also has a part to play in the route map.

Considering how the single outcome agreements are being developed, I hope that the Government will make it clear how an audit trail can be built up to show how local authorities work. If some authorities have been deficient in providing for culture, we should know who was in charge and what they were doing for the past eight years. Perhaps we can all work together now and ensure that we can do something to even up the efforts across the country.

It was interesting to see what happened on the question of the relevance of voluntary arts, as well as the professional sector, during our stage 1 discussion of the bill. The Scottish Arts Council,

having started a flexible funding exercise in 2006, reached some conclusions about whether certain bodies should receive funding. It invited applicants to demonstrate how their work strove to be new and innovative. The danger is that creative Scotland will prefer innovation over the work that the voluntary sector does all the time to maintain people's access to the arts, which is not necessarily innovative but is continuous.

There must be some means by which creative Scotland can balance up the definition that it uses to ensure that it does not just favour innovation but allows for the work done by bedrock organisations such as Voluntary Arts Scotland and the Scots Language Resource Centre Association Ltd. Indeed, Scottish Language Dictionaries, which was mentioned by Malcolm Chisholm, was directly funded.

A debate is taking place about how creative Scotland will work. It will work in partnership and I believe that it will identify other sources of funding, as the minister said. Some language elements that have been funded through the Arts Council might not be funded through creative Scotland. We must ask whether creative Scotland will be able to measure the traditional arts in a fashion that is acceptable to us, but that is a debate for another day.

I welcome the bill. Some issues might need to be ironed out, but the bill is not a failure—it is the route to success for our arts in Scotland.

15:50

**Patricia Ferguson (Glasgow Maryhill) (Lab):**

On St Andrew's day in 2003, the then First Minister, Jack McConnell, made a much-lauded speech in which he set out the approach to culture that his coalition Government would take. He recognised the partnership that had to exist if culture was to flourish in our country and he acknowledged that culture should be placed firmly at the heart of government—that it should influence decisions and add value to all portfolios. He also made a plea to our country:

"Let's agree first the importance and the centrality of cultural activity to all aspects of our lives, why it's important and how it can be used to revitalise us individually and as a national community.

Then let's see what structures are needed to make that happen".

That was the approach that the previous Administration took. We can contrast that with the SNP Government's actions to strip from the bill everything about culture and aspiration and to leave only the bare bones of the cultural support mechanism for us to debate.

I say to Rob Gibson that James Boyle is a remarkable man for whom I have much respect

and who is entitled to his view, as are we all. However, if James criticised the previous Administration's bill, what must he think about the current bill, which adds nothing to the debate? All it does is remove issues.

**Rob Gibson:** I believe that James Boyle was a member of the working group that created the new bill, so I presume that he was party to seeing it as being a better approach than the previous one.

**Patricia Ferguson:** I am afraid that I must repeat that the bill contains nothing new. All we have is a bill that has been denuded in the past year.

Our ambition was and is to build on the United Nations definition of culture and to ensure that all citizens, particularly our young people, have the opportunity and the entitlement to access, enjoy, learn from and contribute to their culture, and to do so in a way that local communities think is right. However, the opportunity to which our nation could aspire just 15 months ago has been taken from it by a Government that has also reduced the money that is available to be spent on supporting and encouraging the arts, and which has instructed the Scottish Arts Council soon to cease its support for cultural co-ordinators. I say to Mr Gibson that cultural co-ordinators were part of a range of measures to help to balance local authority provision. The SNP Government is the first since devolution to accept a cut in funding for culture—so much for aspiration for our country.

How will young people access the arts and culture? Will we leave it to chance? What of those who have talent but who never have the opportunity to put their talents to the test? It was hoped that what was described as an escalator approach would be taken, which would give young people the opportunity before, during and after school to develop their talents. However, the steps that underpinned that approach are gradually being removed. First, cultural co-ordinators were affected. Now, problems appear to have been identified in some areas—I accept that the evidence is anecdotal—with funding of the youth music initiative, because of the new way in which local government funding operates. If we lose those two valuable parts of the support for our young people to access culture, we will lose a great deal. Any Government would be ashamed of that.

As I have said, the Government has produced no new ideas in the past year. It has done nothing to show us that it cares about culture or to demonstrate a commitment to helping the arts to flourish. Many of the SNP's manifesto commitments have even been dropped along the way.

I sincerely hope that the minister will, in closing,

say that she will amend the bill at stage 2, that she will propose clear parameters within which creative Scotland will work, and that she will detail the relationships that creative Scotland should build with local authorities, universities, performing companies, the national collections and, of course, the voluntary sector. I hope that she will describe the steps that she is taking to ensure the continuation of the youth music initiative under the new agreement with local government, and that she will clarify once and for all creative Scotland's role in relation to the creative industries. I had hoped that the minister would do that in her speech, but I say with regret that she did not. I understand what she said about the creative industries, but will she say exactly what the creative industries forum's responsibilities will be? Who exactly will take that work forward? What does the word "advocacy" mean in that context?

On 10 June, Highlands and Islands Enterprise wrote to me at the request of the minister. Its letter stated:

"with HIE's Operating Plan now approved, we are currently in the process of allocating our sectoral budgets. For financial year 2008/09 we expect the budget allocated to our Creative Industries team to be similar to last year, c £600,000. Creative businesses will obviously still be eligible to apply for business support ... I would add that these figures relate to support for business, and do not include the support we provide for 'non-commercial' arts".

If HIE thinks that it will receive the same budget this year, where will the funding changes be?

As others have said, members who vote in favour of the bill will do so with real disappointment that there has been a missed opportunity, and with frustration, which we share with the cultural sector and the people of Scotland. I hope that the minister will address at stage 2 all the issues that I have raised and will not leave us in what seems to be the pickle of stage 1.

15:57

**Jamie McGrigor (Highlands and Islands)**  
(Con): I welcome the opportunity to speak in this stage 1 debate, which marks an important milestone for Scotland's cultural sector. We agree with the bill's main aims and welcome the extra £5 million, but I want to raise several concerns about our publishing industry that have been raised with me.

I am sure that the minister agrees that publishing is synonymous with Edinburgh. The importance of publishing to Edinburgh—its importance goes back to the time of the Nelson reading rooms and further—is beyond question. Edinburgh is Europe's first city of literature, and the Edinburgh book festival is becoming huge—750 authors will be involved in it this year. Therefore, I ask the minister why our publishing

industry in Edinburgh is riven by dissent and dissatisfaction. Why are large numbers of Scotland's best known and most important publishers, including Edinburgh University Press, resigning from Publishing Scotland? Surely that speaks volumes about the publishing industry's opinion of that body's effectiveness.

Publishing Scotland is our publishers' representative and development body. It receives a significant part of its funding from the SAC—soon to be creative Scotland—but serious concerns have been expressed to me about its effectiveness, performance, whether the Scottish taxpayer gets value for money from it and whether the best books are seeing the light of day. Furthermore, its website, [booksfromscotland.com](http://booksfromscotland.com), has underperformed for the past two years to the extent that its income is only £15,000 a year, which is a fifth of its target income. A previous direct sales scheme that Publishing Scotland ran was also a failure, to the tune of £70,000. Publishing is a business that either makes or loses money, but the loss of sectors must be reined in. I ask the minister whether, to safeguard the interests of the taxpayer, a proper analysis and investigation should be carried out if grants have been given to projects that have failed.

A major publisher has summed up its concerns about the publishing industry in one paragraph. The publisher stated:

"Assuming the state wishes to fund writing and publishing in Scotland, is this best served by a position where 2/3 of the grant support given to the publishing sector is given to a trade association, namely Publishing Scotland, representing a minority of Scottish publishing output, and the remaining 1/3 is mediated on a book by book basis by a small committee late in the publishing process with a series of artificial restrictions on what can be given to whom? Equally is Scottish writing best served by a system whereby the far larger funds available to writers are divvied up by a similar small grouping without any regard for either the publishability of those writers or indeed even as to whether they will write anything at all!"

The Scottish publisher's lot is not a happy one at the moment.

However, I am happy to read that the minister said, in committee:

"We need the legislation to allow parliamentary scrutiny and to send out the message that what we are doing here is extremely important, in that we are transforming the development of arts and culture in Scotland."—[*Official Report, Education, Lifelong Learning and Culture Committee*, 14 May 2008; c 1028.]

On the bright side, it seems that the change from the SAC to creative Scotland presents a good opportunity for the minister to get together with the publishing industry and the key players to produce a better framework for the support of publishing than currently exists. They must look at the publishing conveyor belt. At present, the SAC

publishing grant fund is added to the process near the end of the operation, or is sometimes not added at all, which is the crucial point. A publisher decides to publish; the book goes to the manuscript level, which the SAC insists on; it then goes to the SAC for support, at which point it may well be turned down even after so much has already been spent on it. That process needs to be changed, and fast.

I am glad that the policy memorandum to the bill states that creative Scotland will

"support activities which involve the application of creative skills".

The main difference between the SAC and the new creative Scotland appears to be the addition of a role in the development and support of the creative industries. Surely it should be mainly publishers who influence what is published, not the high heid yins in the SAC or creative Scotland, however good their credentials may be.

This debate is about the best way in which to support the creative industries in Scotland. Publishing is a key creative industry, and the minister has the perfect opportunity to correct the faults of the past and to create a golden future for our talented literary sector.

16:02

**Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** I draw the chamber's attention to my entry in the register of members' interests: I, too, am on the board of a small theatre company.

It is a great pleasure to take part in the debate, especially as some nine years ago the minister and I—as newly elected members to the first Scottish Parliament, in 1999—took part in a pastiche of "Take the High Road". We have never quite forgotten that, and there is a poetic symmetry in the fact that we are debating the arts together today.

Dr McKee mentioned Göring's famous quote about culture. In my case, the word culture was, until quite advanced years, synonymous with the production of yogurt and cheese. I have learned a lot since then.

I would like to take the high road north to my constituency and echo some of the comments that have been made by Frank McAveety and Rob Gibson. What interests me at stage 1—and what will interest me as the bill proceeds through Parliament—is the acid test of how creative Scotland will deliver in an area such as my constituency. Also, once creative Scotland is in place, I will be interested to see how the Scottish Government intends to audit the working of the organisation.

I thank the minister for name-checking the Subordinate Legislation Committee, which does not happen with great frequency. I, too, pay tribute where it is due. There has been a reassurance from the Scottish Government about the arm's-length nature of the way in which ministers will operate. I welcome that both as an individual member and as the convener of the Subordinate Legislation Committee.

In my constituency, there is a small arts centre near Wick called the Lyth arts centre. In April, it received the unwelcome news from the SAC that its bid for funding of £25,000 a year for 2009-10 and 2010-11 had been rejected, as SAC's funding was to be discontinued. That was bad news. I have not written to the minister asking her to intervene, in the spirit that that is not how we should go about things: we cannot ask ministers to intervene on every issue. Nevertheless, I draw members' attention to something that I feel we are in danger of losing. The hope is that creative Scotland may do things slightly differently. In terms of music—classical, folk and jazz—theatre, exhibition space and film, the Lyth arts centre provides a service—albeit on a small scale—that is very much valued by people in my constituency. The centre also helps enormously in other ways, in the broadest sense of the arts and culture, both on an international scale and a local scale.

Northlands Creative Glass, which is based in Lybster, is highly successful in producing artistic and beautiful pieces of glass work. It has incoming master glass blowers and artists who have based their work in the Lyth arts centre, so the centre is an exhibition space for the best of artists from outwith the area. At the more local level, it also provided an exhibition space for my constituent Catherine MacLeod of Thrumster—who makes the most beautiful furniture—at the start of her career to show what she could do. Therefore, the centre has played an extraordinarily important role in supporting artists from outwith the area and providing the seedcorn for our own artists.

I have written to the minister bringing the matter to her attention, not asking her to intervene. I ask her to consider what the SAC's spend in Caithness and Sutherland is. It is a pretty dusty answer, because it has not been a lot for a long time, and two lots of £25,000 is—

**The Deputy Presiding Officer:** The member should relate that to the general principles of the Creative Scotland Bill.

**Jamie Stone:** I do, Presiding Officer, because, as I said in my opening remarks, as the bill goes through stages 2 and 3 and when it becomes an act, I wish to see an element of fairness to ensure that it delivers local access to the arts no matter where one lives—as Frank McAveety said—no access to the arts 100 miles and more away in

Inverness. That is the nature of the problem. However, I accept your steering me back to where I should be.

I draw the minister's attention to the fact that Highland Council has published its own consultant's report into arts delivery. That is pertinent.

The Subordinate Legislation Committee will continue to monitor the bill as it proceeds through to stages 2 and 3. Good work has been done, relevant questions have been posed about how the bill will impact on the arts and the debate has been thought provoking.

16:07

**Alasdair Allan (Western Isles) (SNP):** Some years ago, I attended a conference on Scottish culture at the University of Aberdeen at which an eminent politician made an astonishing statement of her view of culture, a remark that lives with me still. She said:

"We should be careful about giving people in Scotland too much culture. My constituents, for instance, are not really familiar with books and libraries and so on."

Good manners prevent me from saying who that politician was. She is not here, and I know that no members present would dream of making such a condescending remark about their own constituents. I hope that we have come some way since such expressions of hostility to the idea of Scottish culture were routine and respectable, so the Scottish Government's proposals on culture in the bill are to be welcomed.

Every bonfire needs some kindling. The merger between Scottish Screen and the Scottish Arts Council will not only help to declutter our public landscape but will, more importantly, further support Scotland's vibrant and dynamic cultural community. Creative Scotland will build on the work that Scottish Screen and the Scottish Arts Council have already done and will have the freedom to support any form of creative expression. By working in partnership with other bodies, it will play a key part in our aim to promote Scotland's rich cultural heritage—an aim that all members share—by giving artists the chance to express themselves in every form of the arts. Such partnership working will not only be the case with national organisations but will, I hope, permeate down to the local level so that communities throughout Scotland can work towards shared goals.

We have seen the benefits when national Government works with, instead of against, local government in the new relationship between the Parliament, Government and COSLA, and perhaps there is something to be learned from that single-outcome-agreement approach that would

be useful for our relationship with arts funding bodies. A couple of members have mentioned funding for Scotland's languages; one thing that emerges from the debate is that language maintenance is slightly distinct from artistic endeavours that happen to be in one of Scotland's languages. Perhaps there are things that we can learn about structures to help focus our attention on those languages.

Such successes can come about only when all sides are listened to and given the responsibilities they deserve. To effect change and move Scotland to a new cultural level, every side has to be inspired. That is why there should be no ministerial interference in day-to-day cultural or arts decisions—even in China, the days when symphonies were written by committee have long since passed. It was apparent from the consultation on the draft culture (Scotland) bill that that was something that the cultural community wanted to make clear. By listening to the community as a whole and to community-based organisations, while leaving responsibility artistically in the hands of creative Scotland, we hope once more to work in partnership with and inspire the cultural community to achieve the positive results that we all want.

Although the artistic and economic benefits of cultural activity go hand in hand, one slight concern I had with the previous draft bill was the overreliance on arguing for the economic benefits of art and culture. Before we even consider the vast array of physical, mental, social and spiritual benefits that arise from participation in the arts, we should ultimately celebrate the arts because they teach us something.

The Government clearly has a vision for the arts in Scotland, in which the Government works closely with creative Scotland but safeguards its artistic autonomy. For those who oppose or are suspicious of the bill, I wish only that they could be inspired to share that vision, particularly given that it took others eight years to get round to even drafting a bill, which we have done in our first year of Government.

There may be some people out there who still long for political interference in the arts or, worse still, who subscribe to the view of Scottish culture that is favoured by the unnamed politician whom I mentioned at the start. For someone like that, Gaelic has a phrase: "B' fheàrr leam ann an Hiort i." I could see her far enough—or, in fact, more specifically, as far as St Kilda. Happily though, there is no need for us to wish for that. The politician I am thinking of is further away than St Kilda these days; she is in Australia, and Scotland's cultural politics have moved on. I support the principles of the bill.

16:11

**Cathy Peattie (Falkirk East) (Lab):** I have always been a bit apprehensive when people talk about creative industries. It is not quite an oxymoron, but there is a lurking question: can culture be manufactured? Perhaps it can if we are talking about the process of selectively reshaping and packaging culture to suit marketing objectives, but in that case it would no longer be our culture. Our culture combines history and tradition with our current diversity of activity and perspective.

Creative Scotland's primary purpose should be to nurture, spread and use our culture to enrich the lives of people at home and abroad. Although the economic benefits of selling our culture to the world are clear, they should not be the main *raison d'être* for creative Scotland. We should give the world access to the true depth of our culture, rather than to a simplistic parody of what it means to be Scottish.

Likewise, skills development is essential and creative Scotland must dovetail with the work of the sector skills councils and so on, but we must not lose sight of the spontaneity of our grass roots culture—traditional and contemporary—which enthuses many and provides a launch pad for new talent.

I had some criticisms of the Cultural Commission's report when it appeared, more because of what was not in it than because of what was in it. Unfortunately, the Creative Scotland Bill loses many of the good points that were in the draft culture (Scotland) bill and has replaced them, if it has done so at all, with vagaries. The bill is a pale shadow of its former self.

The policy memorandum claims that the bill will not have an adverse impact on equal opportunities and seeks to create wider access. However, I see nothing about how to ensure that artists, performers and the public have equal access and entitlement to participate in the cultural life of our nation, regardless of disability. It is true that the bill refers to encouraging

"as many people as possible to access and participate in the arts and culture, and increasing the diversity",

but little is on offer in practical terms to ensure that it happens. Why should we take that on trust? If creative Scotland is anything like the Scottish Arts Council, trust will be in short supply.

On diversity, the policy memorandum dismisses the idea that the board of creative Scotland should include representatives of any sector or group on the ground that the Scottish Arts Council board provides a good example of diversity

"with its mix of experienced practitioners, those with a business background and ... experience of overseeing significant national organisations."

Quite. I see nothing in the bill that indicates that creative Scotland will adopt a friendlier and more supportive attitude to our traditional arts and Scots literature than the Scottish Arts Council.

Of course, the SAC has recently been doing a great job of shafting Scottish traditional arts and language organisations, particularly those with a strong voluntary aspect. There is nothing quite like encouraging wider participation, and the SAC's actions have been nothing like encouraging. If we are having problems getting funding under the current regime, how much harder will it be when it is struggling to create a new body with diminishing resources? I would like to be written into the bill a clear commitment to support, promote and nurture our traditional arts and Scottish literature. If we do not do that, who will?

I am sure that all aspects of our arts and culture would benefit from greater clarity. As the Scottish Book Trust submission said:

"unless the Bill defines what it means by culture as it relates to artistic form, activity, and language, Creative Scotland will be dealing with a moving target open to infinite interpretation and argument. The imprecision in defining core functions increases the chance of ad hoc stances, especially since the intention is to exclude matters of cultural judgement from ministerial direction ... leaving the door open to personalised judgements."

To put it another way, artists might be free to determine their creative direction, but if they want funding they will have to dance to creative Scotland's preferences and prejudices.

That brings us back to the wonderful example of the SAC and the traditional and voluntary arts and the Scots language. I welcome the minister's statement, but I ask her to listen to the debate and strengthen what I see as being a pale shadow of legislation. I look forward to stage 2 amendments that will make the bill worth while for traditional arts and the Scots language in Scotland.

16:16

**Aileen Campbell (South of Scotland) (SNP):**

As everyone else has said today, it gives me great pleasure to speak in today's debate. After a lot of patient waiting and talk, we finally have the opportunity to discuss the formation of creative Scotland. As Pauline McLean, the BBC's arts correspondent said, when reminiscing about Jack McConnell's St Andrew's day 2003 speech,

"Fast forward four years and three months, three culture ministers, and a change in government, and we're only just at the start of the culture bill's ... journey through parliament."

So, at long last, after much debate and consultation, the prospect of creative Scotland seems to be in sight.

There is much to be pleased about in the bill. It is a short bill that is designed to establish creative Scotland and allow it to operate in the best interests of our country. I am a member of the Education, Lifelong Learning and Culture Committee, which was the lead committee scrutinising the bill and which had the pleasure of listening to the thoughts and concerns of Scotland's cultural community.

Most of those who responded, regardless of whether they represented a local authority or were from the arts world, were happy, on the whole. They were breathing a sigh of relief that there is to be no more prevarication and that the new Government is taking action and heeding the advice that was presented to the Scottish Executive by arts organisations in response to the previous incarnation of the bill.

I will not pretend that there was no criticism of the bill. It would have been strange if no concerns or issues requiring further examination had been raised. After all, this is the stage 1 debate. However, I hope that any concerns will be put to good use and not used to score political points. We all need to look at the bill and realise its potential for allowing creativity to flourish, as well as allowing our artists to explore their media. That requires us in Parliament to trust those in the cultural and creative world to know what is best and how to make creative Scotland work well. It also means adopting an arm's-length approach to culture and the arts. The fact that the minister has listened to those appeals shows that the new Government trusts our artists and has no interest in micro-managing our country.

It is not just me who realises that the Government is listening. In its written submission to the Education, Lifelong Learning and Culture Committee, the Federation of Scottish Theatre said that it was

"heartened by the Scottish Ministers' implicit acknowledgement of their trust in the skills and expertise the Chair and Board of Creative Scotland bring to the execution of their responsibilities".

Simon Woods of the Royal Scottish National Orchestra said that the Government is

"interested in doing things that genuinely provide a better cultural life for the people of Scotland".

John Leighton of the National Galleries of Scotland said:

"We have seen an open and forward-looking approach which we welcome."

Even Ruth Wishart, in a fair and balanced piece in *The Herald*, said that there is

"a genuine desire in all the sectors to make Creative Scotland work ... what cultural and creative Scotland on the ground longs for is a working template for the new order that it can understand and respect."

She acknowledged that there were tensions with the bill but warned that, if we sabotage this opportunity with creative Scotland,

“then we’ll be well and truly stuffed.”

We have a chance to make a difference. I recently attended an event that was addressed by Seona Reid, of the Glasgow School of Art. She spoke passionately about the need for a leader for Scotland’s creative industries and she explored the economic potential of the sector. I acknowledge that we should not place a disproportionate emphasis on economic arguments, but I am persuaded by her view that Scotland should aim to be a creative hub because all the right ingredients are there.

We have creative cities, one of which is the UNESCO city of literature, as Jamie McGrigor said earlier. Glasgow boasts a popular musical heritage stretching from bands on Postcard Records in the 1980s to modern-day indie heroes such as Belle and Sebastian and Franz Ferdinand. We have amazing, world-renowned art schools and incredibly talented people. I have always been amazed by the resourcefulness of that group of people, many of whom are young, with a huge passion for and interest in the future of the arts in Scotland. Friends and contemporaries of mine have gone on to do impressive and important work. For example, Hannah Robinson, director of the Mary Mary gallery, has come a long way since first opening up her Dennistoun flat as a gallery space. Many others have managed and continue to manage to work successfully in their chosen fields.

We must do more to celebrate and encourage more cultural and arts opportunities for people and we must try to attract more people across the world to realise Scotland’s potential. That is why I am heartened by the bill, which will enable creative Scotland to get going and streamline and cut bureaucracy. I was impressed by Anne Bonnar, who gave evidence to the committee. She has the bit between her teeth and she told us that she will never sit on her hands but understands and recognises the importance of this new entity for Scotland and beyond.

The bill is simple, clear, to the point and honest. The minister has taken on board the points raised in previous consultations and acted on them. Art for art’s sake is given appropriate attention, and we have before us a bill that enshrines an arm’s-length approach to the arts. It does not seek to stifle the arts and what they will be in the future, because it is not prescriptive in its use of definitions.

We should be confident that the passing of the bill will mark a new beginning for creativity in Scotland. We should also be confident in the

abilities of our artists, practitioners and creative businesses to make creative Scotland work. I support the principles of the bill.

16:22

**James Kelly (Glasgow Rutherglen) (Lab):** I welcome the opportunity to take part in the debate and I acknowledge the previous Executive’s work on the arts and culture. Obviously, I support the principle of the bill to establish creative Scotland, which takes forward the initiatives of Patricia Ferguson, the previous Minister for Tourism, Culture and Sport. The bill will provide us with one organisation, which will strengthen the arts and culture in Scotland and provide a stronger platform from which to move forward.

There is a view in certain areas of the media that the arts and culture are all about lavish shows and grand performances that are attended by the great and the good. I do not subscribe to that view. On Saturday, I had the honour of attending my local gala day in Rutherglen—Landemer day—at which there were many community representatives and bands performing on Rutherglen Main Street. One such band was the Stonelaw high school soul band The Elements, which put on an excellent performance. The role for creative Scotland is to reach out into such communities and younger groups, build that talent and ensure that it flourishes and makes a contribution to Scotland as the 21<sup>st</sup> century progresses.

Some in the chamber have criticised the Creative Scotland Bill as being vague and unclear. As a member of the Finance Committee, I will concentrate on what I see as some of the bill’s financial shortcomings. I note that the minister announced the commitment of an extra £5 million. Essentially, that will replace the £5 million cut in real terms that was announced when the budget was set for the new body. What sort of message was sent out about the establishment of creative Scotland when it was clear that it would have to do its work with a cut of £5 million in real terms? That was not a great start.

We need to monitor how the £5 million is released and spent. Members expressed concern about the additional workload that creative Scotland will take on. Even though creative Scotland will have the extra money that the minister pledged, the body will have to do more work from a reduced financial base, which is of concern.

The Finance Committee said that the financial memorandum was

“the weakest that has been produced in the current parliamentary session.”

That was the unanimous view of committee members, including Scottish National Party

members. Members of the Finance Committee expected the financial memorandum to provide detail about the costs involved in the implementation of the bill. We had serious concerns about creative Scotland's set-up costs. A figure of £700,000 was provided in the financial memorandum, according to which,

"work is at an early stage and a detailed estimate of one-off costs is not yet available."

When the committee asked a Government official about the matter, he explained that the figure represented a "shared judgment" between the people who were involved in discussions. I do not know what a "shared judgment" is, but when such sums of money are involved we need detailed costings, which have been built up from an accurate cost base and accurately reflect the cost of the bill's implementation.

The figure of £700,000 over two financial years was not even accurate, because the official admitted that spend would be greater in 2008-09 than it would be in 2009-10. In addition, there was to be no meeting to discuss the budget until September. If we are serious about drawing up costings and budgets, the issue must be considered before September.

I am concerned that incompetence is beginning to seep into the workings of the Government. The Law Society of Scotland had to point out that the first draft of the Public Health etc (Scotland) Bill was legally incompetent; *The Sunday Times* reported last Sunday that officials had had to alert the Government to an overspend on the budget; and the Creative Scotland Bill suffers from financial illiteracy.

The minister is responsible for the bill and must step up to the mark at stage 2, because the documents that were drafted at stage 1 were not up to the job.

16:28

**Iain Smith (North East Fife) (LD):** I declare an interest. I am a friend of the Byre theatre in St Andrews and the Dundee Rep theatre in Dundee—it was wise planning to situate the Dundee Rep in Dundee. I take the opportunity to congratulate the Dundee Rep on its recent success at the critics' awards for theatre in Scotland, at which it won four awards for its production "Peer Gynt", which yet again demonstrates that the theatre and its unique ensemble provide some of the best theatre arts in Scotland. The Rep has received a number of awards over the years and I congratulate it on its success.

Another production that received an award at CATS was a touring production that also appeared at Dundee Rep: "The Wall", by Borderline Theatre

Company, which won the award for best ensemble. It is sad that Borderline has lost its grant from the Scottish Arts Council. I hope that it will survive despite that.

Cathy Peattie mentioned the funding cuts that the Scottish Arts Council has made to some traditional arts organisations. It has cut the grant to the Traditional Music and Song Association of Scotland, an organisation that produces, among other things, an annual arts festival in Auchtermuchty in my constituency. I hope that the TMSA finds the funding that it needs to continue to provide that valuable work.

It is important to be clear that not all of the Scottish Arts Council's decisions are being taken for artistic reasons; many are the result of its having insufficient money to provide the support that it wants to make to artists and arts organisations. It is sometimes not in the position to reward the innovation and quality that it sees in arts companies or to ensure the protection of our heritage in the traditional arts. The money has not always been there for the SAC to do that. I am not saying that the money that the previous Executive gave was adequate. There is no doubt that more funding is required. I am sure that the arts community would welcome more funding from any source. It is important to recognise that support for the arts is not necessarily equal to the money that is needed.

If creative Scotland is to work, it is important that it receives an adequate level of funding. The budgetary issues that were raised in the committees' reports on the setting up of creative Scotland are extremely important. I am concerned that the funding line for creative Scotland over the next few years shows a significant cut in real terms. Over the period from 2008 to 2011, its funding will reduce from £50 million to £48.04 million in cash terms. Even if we add in the £5 million over two years to which the minister referred in her opening remarks, there is still a real cut in cash terms between the current financial year and the end of the current spending round period. We also have to note the Government's estimate that approximately £1 million a year for two years will be needed for the costs of the merger of the Scottish Arts Council and Scottish Screen into creative Scotland. That money has to be found from within the allocation. The result of all of that is a further £1 million cut in the money that the Government is making available to support the arts in Scotland. Serious questions remain to be asked about the funding of creative Scotland.

We need more clarity on the exact role that is being transferred from Scottish Enterprise and Highlands and Islands Enterprise to creative Scotland. It is important therefore that, prior to the



commencement of stage 2, the Education, Lifelong Learning and Culture Committee should consider taking supplementary evidence from the minister, the enterprise companies and the acting chair of creative Scotland to clarify the funding implications of today's announcement. In her speech, the minister announced important changes to what the Government has said to date. Many members have mentioned that. It is kind of strange to have a stage 1 debate that appears to be more like a stage 0.5 debate. Thus far, we do not have the clarity on the bill that we would expect to have by the time we reached the stage 1 debate.

A number of issues were raised in the debate, one of which is whether there is a need for the bill. I accept the need for clarity. The arts community is screaming for clarity on the way forward. The merger of Scottish Screen and the Scottish Arts Council needs to happen, and happen quickly. However, a question remains over whether new legislation is required to do that.

The issue of definitions was raised. Ian McKee's definition of culture was perhaps a little wide in including all forms of human endeavour. I am not entirely sure that I would include the Iraq war in any definition of culture. We have to be clear that there are definitions of culture out there. We need to look at them. It may be appropriate to consider putting some of them into the bill to make clear what we are talking about.

Another extremely important issue is the purpose of creative Scotland and the clarity of its structures, which as yet have not been fully clarified. It remains unclear who will take the lead on developing the creative industries in Scotland. I hope that that can be clarified, perhaps again by way of the Education, Lifelong Learning and Culture Committee taking supplementary evidence before stage 2. Given that our creative industries are an important part of our economy, it is extremely important for us to know who has that lead. At the moment, it is unclear whether that role will fall to creative Scotland, which does not necessarily have the expertise in the area, or to Scottish Enterprise. Someone needs to take the lead and the minister has to make clear who it will be. As it stands, the bill does not give that clarity.

16:34

**Elizabeth Smith (Mid Scotland and Fife)**  
**(Con):** From what has been said this afternoon, it is clear that the most important objective must be to ensure that the Parliament sends out the right message to the cultural and artistic world in Scotland as it faces up to a testing set of circumstances, particularly in an economic climate that is getting increasingly difficult. Whether we are talking about a single artist or a major

international company, that world is a crucial part of our national heritage and our future social and economic infrastructure, so we have a duty to protect it and to enhance its interests.

Some of the most interesting sessions in the Education, Lifelong Learning and Culture Committee were those in which we debated the terms "arts", "culture" and "creativity". As Ian McKee rightly said, defining those terms is not an easy task, but Malcolm Chisholm in his eloquent speech and Robin Harper made the important point that we must have parameters as we debate the bill. Dr Donald Smith of the Scottish Storytelling Centre told the committee:

"if we do not begin with a workable definition, all the rest becomes difficult."

He said that that might affect the accountability for delivering the remit. That is a lesson to learn. It is not easy to give definitions but, as Malcolm Chisholm said, we should not shy away from that important task.

That issue precipitated debate in the committee about whether legislation is necessary. At times, the minister was not entirely convincing in speaking about why the bill is required to provide the new body, creative Scotland, with its functions. Those functions will be more diverse than the combined Scottish Arts Council and Scottish Screen functions, but the funding will be fairly tight. However, on the basis that the committee has agreed to accept the minister's assertion that a legislative requirement exists, the key focus of the debate must be to ensure that we make the bill as good as possible and worthy of the time that it has been given. We must live up to our name as a committee—Dr Smith described it as having done

"an effective job in bringing all the issues to the surface."—  
[*Official Report, Education, Lifelong Learning and Culture Committee*, 7 May 2008; c 947, 948.]

It is now Parliament's job to deal with those issues head on.

I hope that the minister means what she says when she states that we must end the doubt and confusion over whether creative Scotland or Scottish Enterprise will be the lead body. As Jeremy Purvis said, we have had a raft of contradictory statements on that, so we are not convinced. I reiterate the point that many other members have made that we need clarification on that before stage 2. That debate may reflect the conflict between the objectives of fostering artistic excellence and ensuring economic viability. Those two objectives do not always go together, but it is extremely important that ministers resolve that issue before we move on. Heather Jack, of the Scottish Government's Europe, external affairs and culture directorate told us:

"there must be value ... in having a more coherent approach between the bodies".—[*Official Report, Education, Lifelong Learning and Culture Committee*, 30 April 2008; c 897.]

As Ted Brocklebank rightly said, into that debate must come the role of our universities and local authorities, which are often in the front line in supporting artists who are starting out on their professional careers.

A second challenge that we face concerns the desire to retain the arm's-length approach by ministers to cultural and artistic direction. The bill properly aspires to ensure that ministers do not interfere in creative Scotland's funding allocation process or in the judgments that affect the overall artistic direction of our national companies. Those judgments must always be reserved for those who have specific knowledge and experience in the relevant areas. We must be mindful of the need to ensure that the bill does not undermine that independence in any way. We need a little clarification of some of the language in the bill in that respect.

Scotland is blessed with immense talent in our artistic, creative and cultural industries and I have no doubt about the Government's passion—or that of any political party in the Parliament—for developing that further. However, serious thinking needs to be done before stage 2, especially about how to provide clarity of purpose, how to infuse real ambition, at home and abroad, and how to provide the sector with much greater economic support than it currently enjoys.

16:39

**Ken Macintosh (Eastwood) (Lab):** Members have raised a number of concerns about the Creative Scotland Bill, most of which can be traced back to two particular issues.

First, the legislative proposals have been pared back so much that there is genuine alarm that almost nothing is left in the bill. As Patricia Ferguson suggested, the danger is that we have stripped all the ambition from the bill and left simply a framework and good wishes.

Secondly, the establishment of creative Scotland is so lacking in definition and clarity—a point that every single speaker from the Opposition parties has raised—that it is unclear what or whether the bill will add to the development of arts and culture in Scotland.

It is no secret that the Education, Lifelong Learning and Culture Committee came perilously close to recommending the rejection of the bill. Only the shared commitment of all the committee members—and all members in this chamber—to Scotland's creative community of writers, artists, actors, film makers and musicians persuaded us

that the bill could provide the cultural boost that we all want.

I do not doubt the minister's good intentions for creative Scotland. However, enthusiasm and good will are not enough. The Scottish Government's inability to give straight answers to the committee's many questions on the role and purpose of creative Scotland was, to be frank, not good enough.

The key difference between creative Scotland and the two agencies that it will replace lies in the development of its economic remit. The new body is to have some sort of role in supporting cultural enterprises and in promoting the creative industries—but what exactly is that role to be? That is a pretty basic, straightforward question, but the Government seems entirely incapable of answering it. The problem with not answering the question is that—as emerged from evidence heard by the Education, Lifelong Learning and Culture Committee—both creative Scotland and Scottish Enterprise believe that they have responsibility for the creative industries. That recipe for confusion does not instil confidence in the new set-up, but undermines it from the start.

Faced with the repeated question from the committee on which body would have lead responsibility for the creative industries—and following the contradictory claims and responses given by different witnesses—at the committee's very last evidence session on the bill the minister produced a paper that described creative Scotland as

"the leading public body in advocating for the creative industries."

What on earth does that mean? Is creative Scotland the lead agency, or is it not? Asked again by the committee, the minister replied:

"Why cannot we all work together?"

Then she added:

"There is no particular need to say that this or that person is in charge."

Bearing in mind the quotations given earlier by Jeremy Purvis, I would say that, if Ms Fabiani were a new age motivational guru, I would be encouraged by such a response. However, it is not a response that a member of the Education, Lifelong Learning and Culture Committee expects from a minister. It was gently pointed out to the minister that, at the very least, the agencies would need to know what their roles were, before they could work together. However, when asked again who had responsibility for the strategy on creative industries, the minister said:

"At the heart of the approach is what is best for the creative industries, not arguments about who is responsible for this or that, where the money lies and so on."

I will repeat that:

“not arguments about who is responsible for this or that, where the money lies and so on.”—[*Official Report, Education, Lifelong Learning and Culture Committee*, 14 May 2008; c 1012, 1027-1029.]

Not only do I fundamentally disagree with that statement, I have never heard a minister present such an argument to a committee. It is Parliament's job, when scrutinising legislation, to know specifically where responsibility lies. It is Parliament's job, and the minister's duty, to be responsible and accountable for the public purse.

The lack of clarity over roles and responsibilities extends far beyond the relationship with Scottish Enterprise. What is to be the relationship between creative Scotland and the local authorities? That point was raised by my colleague Malcolm Chisholm earlier. With no funding, and no outcome indicators, the new agency may have no leverage with local authorities. Is the relationship simply to be one of encouragement?

The minister talks of partnership working, but we have to consider the experience so far. The funding for the cultural co-ordinator's programme is to be cut, which does not exactly fill us with confidence.

I turn to the voluntary sector. Who would have believed that an SNP Administration would be happy to preside over cuts to Scottish language projects and to Scotland's traditional music and arts groups? That point was made forcefully by Cathy Peattie.

I rarely agree with Mr Rob Gibson, but I agree with him on this point: more than anyone, it is people in the voluntary sector and our local councils who do much to encourage greater participation in the arts and wider access to it. However, Mr Gibson and I will disagree on one point in that I believe that the bill offers little by way of comfort; instead, it threatens to force limited funds to stretch further, extending to new priorities that have yet to be defined. Even if we put the issue of resources to one side for a moment, the minister needs to clarify how creative Scotland will avoid duplication of effort with Voluntary Arts Scotland.

To give another example—Mr Brocklebank referred to this—it is clear from the emerging findings of the Scottish Broadcasting Commission that we could do so much more here in Scotland to offer the education and training needed to develop and expand that creative industry. The lead agency for developing skills in the broadcasting industries is Skillset, on behalf of the sector skills councils. Whether because of the muddying of creative Scotland's economic development role or some other factor, the transition team has made little attempt so far to

develop or explore that relationship and, dare I say it, clarify where the lead responsibility lies. There is already an excellent relationship between Scottish Screen and Skillset, which can be developed and built on.

Resources, or lack of them, can of course be hugely influential in the outcome of any policy or legislative development. The portents regarding the Creative Scotland Bill are not good. Commentators from every side have expressed concern that the new body is expected to do more with less. The bill's financial memorandum was savaged by the Finance Committee in a way that I can scarcely remember happening before. Lack of clarity follows us at every step.

I am both encouraged and intrigued by the minister's announcement on funding. First, she threw away the line that perhaps the SNP would not break an election promise and that it might transfer the creative industries budget from Scottish Enterprise to creative Scotland. I am intrigued by that, because, at the Education, Lifelong Learning and Culture Committee, the minister first said that the matter was “currently being discussed.” Minutes later, she reinterpreted what she meant by saying:

“There are no firm plans about transferring money ... there is nothing on the table.”—[*Official Report, Education, Lifelong Learning and Culture Committee*, 14 May 2008; c 1030.]

Now the matter is back on the table, despite evidence to the contrary by Scottish Enterprise officials. So far, the minister has not said exactly how much the budget is. I could not find a reference to this at a glance, but I seem to remember that Scottish Enterprise officials suggested that the figure would be £2.3 million. Will the minister confirm whether that figure is correct?

I am neither cynical nor suspicious by nature, but, like other members, I will be looking at the small print in today's funding announcement before stage 2. As Iain Smith pointed out, the £5 million funding seems to be £2.5 million each year for two years.

The presentation of the bill to Parliament has been a mass of contradictions and confusion. There is insufficient funding. The relationship with the agencies that are most involved with the creative sector is unclear. There is no clarity of purpose for creative Scotland itself. The minister can detect for herself that, despite those deficiencies, there is genuine political support in the Parliament—there is certainly support from the Labour Party—for making a success of creative Scotland. Many issues have to be clarified at stage 2; the minister would do well to address at least some of them in her summing up.

16:47

**Linda Fabiani:** I thank the members who have contributed to the debate. A number of specific points were raised. I will not mention every individual who made a point, but I will try in the short time available to address all the general themes.

We are legislating to establish creative Scotland, because it will be a new body with new functions. We could have dissolved the Scottish Arts Council through the Privy Council but, with the agreement of the Privy Council, we decided to take the opportunity to combine the abolition of the Scottish Arts Council with the legislation to establish creative Scotland.

Ted Brocklebank and others raised the issue of the ministerial power of direction. We listened to what consultees said in their responses to the draft culture (Scotland) bill and the Creative Scotland Bill says that creative Scotland will have an arm's-length relationship with Government. For the first time, legislation will state that the Scottish ministers may not give creative Scotland any direction as to who or which cultural practices it can or cannot fund. I have heard Labour members say that that was always the case, but that position has never been stated in legislation before. It is now clearly established. I find it quite amusing that one Labour member after another said that there had always been a hands-off approach and then condemned me for not interfering in the Scottish Arts Council's decisions on flexible funding. They should all have been as sensible as Jamie Stone was on that point.

Ted Brocklebank was concerned about the power of direction. However, the power that is available to ministers is to ensure the good governance and financial propriety of creative Scotland, which is fully in line with the approach to all non-departmental public bodies.

Some members mentioned that our approach should not be solely concerned with economic benefits and Cathy Peattie said that there was too much of an economic emphasis in the bill. However, we amended the draft culture (Scotland) bill in order to remove its emphasis on the economic benefits of arts and culture. The relevant section of the Creative Scotland Bill now tasks creative Scotland with pursuing a range of benefits without attaching priority to any one in particular.

Various members mentioned the financial memorandum. As I explained to the Education, Lifelong Learning and Culture Committee and the Finance Committee, we introduced the bill before the budget for the transformation of the two organisations was settled because we wanted to establish the new organisation as soon as possible. As Aileen Campbell noted, the 2003

speech by the then First Minister was inspiring, but it was followed by consultation after consultation, a commission and then a draft bill. We felt that we owed it to the sector to get on with creating creative Scotland, because that was what the overwhelming majority of respondents wanted.

James Kelly mentioned the estimates. We are working to improve them and will offer the remaining detail before stage 2, after the detailed transition planning has been done.

**Jeremy Purvis:** I would like the minister to be specific with regard to certain financial issues and the transfer of funds from Scottish Enterprise.

**Linda Fabiani:** I am coming to that.

**Jeremy Purvis:** I am glad that the minister will be able to respond to my question.

Scottish Enterprise told the Education, Lifelong Learning and Culture Committee that the administrative funding of £100,000 is being transferred for the cultural enterprise office. However, the Government's policy was clear. Its manifesto said that it would transfer the budgets for the creative industries from Scottish Enterprise to creative Scotland. Scottish Enterprise said that those budgets came to more than £2.5 million. What is it that is being transferred from Scottish Enterprise to creative Scotland?

**Linda Fabiani:** Quite clearly, what is being transferred is the £100,000 for the cultural enterprise office, which is there to help people find the right way forward—using the route map that will be drawn by the creative industries forum—and to ensure that they get the best advice. At the heart of this process are creators and artists who must get good advice.

**Ken Macintosh:** Will the minister give way?

**Malcolm Chisholm:** Will the minister give way?

**Linda Fabiani:** No, I have given up enough time already; I have quite a lot to get through.

People are asking for clarification of creative Scotland's role in relation to the creative industries. As well as being the lead advocate for the creative industries, creative Scotland will support creative enterprises in the first stages of their business development. It will do that through the creative industries forum. The way forward must involve those with the necessary expertise working together to ensure that the best route map possible is provided for creative businesses. It should not duplicate effort and it must ensure an integrated package of support.

**Malcolm Chisholm:** On a point of order, Presiding Officer. I believe that there is a discrepancy between what the minister said in her opening speech and what she is saying now. Earlier, everyone in the chamber assumed that a

new announcement was being made about the transfer of money, but we are now being told that the money that is being transferred is the £100,000 that was announced weeks ago.

**The Presiding Officer (Alex Fergusson):** I can only ask the minister to respond to that.

**Linda Fabiani:** I will repeat what I said in my opening speech:

"Creative Scotland will continue to evolve complementary specialist advice and information services for creative enterprises. In order for it to do that, I can confirm today that the resources that are devoted to that purpose by Scottish Enterprise will, from the beginning of the next financial year, transfer to creative Scotland."

The cultural enterprise office will provide those services, the budget for which comes to £100,000. That budget has been provided by Government since 2004. In addition, I announced the creative Scotland innovation fund, for which £5 million will be given to creative Scotland in its first two years, in addition to the already announced grant in aid. That shows that this Government is committed to making a success of creative Scotland and to investing in Scotland's culture.

Members have asked what creative Scotland's relationship will be with the voluntary sector. The Scottish Arts Council has already begun a review of its overall relationship with the voluntary sector, and creative Scotland will build on that work.

**Patricia Ferguson:** Will the minister give way?

**Linda Fabiani:** No, I would like to address other points that were made.

Members asked for clarification of creative Scotland's role in working with the further and higher education sector. We continue to recognise the importance of the role of culture in schools and in the delivery of the curriculum for excellence. That was reflected in the expressive arts guidelines for the school curriculum, which were published in draft form recently.

Creative Scotland will have an important strategic role to play in working with local authorities in the spirit of the concordat and the single outcome agreements. It will facilitate the development of appropriate networks and help build connections between the public and private sectors. I am talking regularly with those who are involved in local authorities and in the voluntary arts to ensure that all voices are heard.

**Ted Brocklebank:** I ask the minister to answer a very simple question, which I posed in my speech. As a cultural entrepreneur, if I want to propose a particular artistic project, where do I take that project, and who gives the authorisation for the money? Is creative Scotland authorised to do that, or does it have to go through another body?

**Linda Fabiani:** Mr Brocklebank has hit the nail on the head. That is what we have to achieve. It has been achieved in some measure by Highlands and Islands Enterprise, but we must ensure that the service is uniform for people throughout the country. Through the creative industries forum, we will reach that point. People will know exactly where to go and it will be well signposted.

**Ken Macintosh:** On a point of order, Presiding Officer. Is it in order for you to check exactly the minister's form of words in her opening statement today and in her closing remarks? The minister has come within a hair's breadth of misleading Parliament. She certainly led members in the chamber to believe that she was making a fresh announcement about the SNP's manifesto commitment to transferring budgets, and yet she made it clear at committee—on that specific point—that that was not going to happen. Between her opening and closing speeches, the minister has managed to blow the good will of the chamber by trying to mislead us. I ask her for further clarification, and possibly an apology, on that point.

**The Presiding Officer:** That is not strictly a point of order for me, but I will check the *Official Report*. I hope that you understand that I will have to do so, minister.

**Linda Fabiani:** Yes. I will close by addressing some of the points that Jamie McGrigor made. He had the courtesy to speak to me earlier and I know that there is concern in the publishing sector. I will undertake to meet Jamie McGrigor and representatives from publishers in Edinburgh, as he asked, along with representatives from the Scottish Arts Council. I will give the same courtesy to Publishing Scotland.

The bill offers the kind of opportunity that does not come along often. We have to seize it with both hands, which is why I encourage every member to support the bill.

## Creative Scotland Bill: Financial Resolution

**The Presiding Officer (Alex Fergusson):** The next item of business is consideration of motion S3M-1776, in the name of John Swinney, on the financial resolution to the Creative Scotland Bill.

*Motion moved,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Creative Scotland Bill, agrees to any increase in expenditure of a kind referred to in paragraph 3(b)(iii) of Rule 9.12 of the Parliament's Standing Orders arising in consequence of the Act.—[*Linda Fabiani.*]

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

**Iain Smith (North East Fife) (LD):** Is it in order for a member to speak against the financial resolution? I know that it is unusual.

**The Presiding Officer:** I will take a moment to deliberate on that.

If you wish to speak against the resolution, it is in order to give you a brief period—perhaps up to two minutes—to state your reasons.

16:58

**Iain Smith (North East Fife) (LD):** Thank you, Presiding Officer. I will be brief.

I speak against the financial resolution on the ground that we have had further confusion this afternoon in relation to the financial consequences of this particular bill. It is difficult to see how the Parliament can agree to the financial resolution when there is such a lack of clarity about what is being proposed.

We heard a speech from the minister at the beginning of the debate that appeared to suggest that all the money for the creative industries and the enterprise companies was being transferred to creative Scotland. At the end of the debate, she made it clear that that was not the case. There was also some confusion about the additional money that she announced in the debate. As a consequence, it is difficult for Parliament to decide on the financial resolution at this stage. I therefore wish to move against the financial resolution.

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

## Clostridium Difficile (Vale of Leven Hospital)

**The Presiding Officer (Alex Fergusson):** The next item of business is a statement by Nicola Sturgeon on *Clostridium difficile* cases at the Vale of Leven hospital. The cabinet secretary will take questions at the end of her statement and there should therefore be no interventions or interruptions during it.

16:59

**The Deputy First Minister and Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon):** I begin by conveying my sincere condolences to the families of all those who have died at the Vale of Leven hospital as a result of *C. difficile*. I hope that my statement will assure them—and the other patients who contracted *C. difficile* at the Vale of Leven in the past six months—that the Government takes the issue extremely seriously.

I am deeply concerned that the 54 cases that occurred between December 2007 and 1 June 2008 and the 16 deaths that are included in that figure came to light only as a result of a retrospective investigation by the health board. That raises serious questions about the robustness of both the surveillance systems and the infection control procedures that are in operation at the hospital.

I will outline later in my statement the action that Greater Glasgow and Clyde NHS Board has taken to address those deficiencies and the further action that I propose to take. First, however, I will set out the timeline of events since NHS Greater Glasgow and Clyde became aware of cases of the 027 strain of *C. difficile*.

On 2 May, the national reference laboratory alerted the Vale of Leven hospital to two cases of *C. difficile*, which were identified as the 027 strain. On 21 May, the infection control team became aware that, since August 2007, a total of six cases of the 027 strain had been identified from recent and historical samples across the Clyde area and that three of those had a common link to the Vale of Leven. At its meeting that day, the incident review team set in train a range of actions to improve infection control. Health Protection Scotland and the Scottish Government were informed of the situation and I was subsequently briefed by officials.

On 22 May, NHS Greater Glasgow and Clyde issued a press release confirming its investigation of the three linked cases of 027 and confirming that one of the patients involved had died in March. On 28 May, the infection control team met

again to ensure that action to improve infection control at the Vale of Leven was being taken forward. On 6 June, a local Dumbarton newspaper advised me that it intended to report a possible five deaths from *C difficile* at the Vale of Leven. As I outlined, the infection control team was implementing a range of actions at that time. A review of lab data to establish the number of *C difficile* cases was also under way.

On 10 June, the Scottish Government was advised by NHS Greater Glasgow and Clyde that, in addition to the other actions that it was taking, a full look-back review had been conducted. That review had identified a total of 54 cases of *C difficile* infection from December 2007, including eight deaths where *C difficile* was the main cause of death and another eight cases where it was a secondary cause. The outbreak control team met on 10 June. NHS Greater Glasgow and Clyde updated the public by press release on 11 June. I received an interim report on the situation from NHS Greater Glasgow and Clyde on 13 June and a further report on 17 June.

The reports that I have received from NHS Greater Glasgow and Clyde give serious cause for concern. They suggest that the surveillance systems that were in place at the hospital were inadequate and did not alert the board to the number and pattern of cases. They also make it clear that a physical examination of the hospital by the infection control team identified serious infection control issues. It found that throughout the hospital, in both clinical and patient toilet areas, there was a lack of dedicated hand hygiene basins; many commodes were not fit for use and required to be replaced; personal protective equipment such as gloves and aprons was not readily available; and bed spacing throughout the hospital fell short of health and safety recommendations. The infection control team was also informed that those issues had been raised by staff over a number of years.

The reports also set out a range of actions that the board is taking to address those issues. The actions include stepping up local surveillance systems and infection control procedures throughout the hospital to bring them into line with current NHS Greater Glasgow and Clyde standards; a concerted drive to improve hand hygiene compliance, led by the board's hand hygiene co-ordinator and top-level medical and nursing staff; the opening of an additional ward to improve bed spacing and access to hand-washing facilities; an urgent review of the use of antibiotics that are known to reduce the body's natural defences against *C difficile*; staff training to highlight awareness of infection control interventions; and a commitment by NHS Greater Glasgow and Clyde to refurbish and upgrade the facilities at the hospital. The board has also invited

Health Protection Scotland to review the hospital's infection control procedures to ensure that they meet national standards.

Although I am pleased that those steps have now been taken and pleased to have the board's commitment to the refurbishment and upgrade of facilities at the hospital, it is nevertheless my view that the case for an independent review is overwhelming. The public need to know why the surveillance systems and infection control procedures did not work as they should have done. They are also entitled to assurances that the actions being taken are adequately addressing the key problem areas and do not fall short in any way.

It is also vital to have a thorough investigation to ensure that any good practice recommendations are picked up by other health boards and adopted nationally so that we can reassure patients in other parts of the country that their safety is being protected as fully as possible.

I can therefore announce today that an independent review will be held. It will examine all the circumstances surrounding the 54 *C difficile* cases, review the adequacy of the surveillance systems and infection control measures that were in place at the Vale of Leven, and review the adequacy of facilities, procedures and systems that are now in place at the hospital.

The review will be led by Professor Cairns Smith, professor of public health at the University of Aberdeen. He will be assisted by Professor Mary Henry, nurse director of NHS National Services Scotland, and Dr Gabby Phillips, a consultant medical microbiologist at Tayside NHS Board. I have asked for a full report and recommendations to be finalised—and made public—by the end of July.

The review is, of course, without prejudice to the statutory responsibilities of the Lord Advocate under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

The situation at the Vale of Leven raises wider questions about the surveillance of *C difficile* throughout the national health service. A series of further actions is therefore being taken. First, all infection control managers are being asked to review their own *C difficile* data over the past six months and to report their findings back to Health Protection Scotland and to the Scottish Government as soon as possible.

Secondly, my officials have contacted all other boards to check on their local surveillance systems to ensure that they are fit for purpose. It is vital that the systems can detect any increase and that we consider linking up surveillance data with data on deaths. Thirdly, Health Protection Scotland, in collaboration with my officials, is

preparing new national guidance on C difficile, which will stipulate clear requirements for local surveillance monitoring and ensure consistency of approach. Taken with the results of the review, those further actions will allow us to determine how procedures could and must be improved across Scotland.

I am sure that all members will share my view that the position at the Vale of Leven is deeply concerning. Like all members, I expect the highest standards of surveillance, infection control and care to prevail everywhere in our NHS, and I hope that my statement shows that we are willing to face up to the challenges in delivering those high standards.

The safety of our patients is and must be paramount. A thorough review will take place over the coming weeks to identify the circumstances that led to the situation at the Vale of Leven, and I am determined to ensure that the lessons learned from the exercise will help us to drive C difficile infection rates down and reduce the risks to patients.

**The Presiding Officer:** The cabinet secretary will now take questions on the issues that were raised in her statement. We have about 20 minutes for questions, after which we move to the next item of business.

**Margaret Curran (Glasgow Baillieston) (Lab):** I begin by thanking the minister for agreeing to our request for a statement to Parliament. It has revealed serious findings, and it is concerning that they are only beginning to come to light.

On behalf of my party, I also express condolences to all the families involved. We now know the scale of the outbreak: 54 cases and 17 deaths directly connected to C difficile—possibly the most serious outbreak in the United Kingdom. In the interests of the families involved and the need to restore wider public confidence, a robust inquiry, independent of Government, must be of the highest priority.

The cabinet secretary first claimed that she was told about the C difficile outbreak on 10 June. She then had to admit that she actually knew on 6 June. Today, we learn that the minister was briefed on 21 May about six cases and four deaths at the hospital in question. When she was briefed on 21 May, what questions did she ask and what actions did she instruct?

Why did the cabinet secretary take from 21 May until 18 June to advise Parliament, express condolences and determine appropriate action? Those questions are of the highest importance, given the lives that have been lost and the scale and depth of the problems in the hospital.

Did the cabinet secretary or her department receive representations about the need to improve guidance and procedures on C difficile between January and June? In that period, improvements took place in England and I understand that representations were made about the need to improve procedures and guidance.

**Nicola Sturgeon:** I acknowledge Margaret Curran's welcome for my statement and for the independent review. I confirm that I was briefed on 21 May on the investigation that NHS Greater Glasgow and Clyde had undertaken into the three cases that had a link to the Vale of Leven hospital. That was what I told the BBC on Sunday. At that time, I was aware of one death. Indeed, in its press release of 22 May, NHS Greater Glasgow and Clyde confirmed that one of those patients died in March. I have always been open about the situation and I hope that Margaret Curran accepts that.

Margaret Curran suggests that I have somehow tried to cover up my knowledge. It is interesting that the revelation on which she bases her claim is a quotation from me in a newspaper. Telling a newspaper something is a rather strange way of covering something up. At no point have I said that last Tuesday was the first time that I knew of a problem with C difficile at the Vale of Leven hospital. I have consistently made it clear that I knew about the problem on 21 May. However, last Tuesday was the date on which the Scottish Government became aware of the findings of the look-back exercise, which confirmed the number of cases and the number of deaths in the past six months.

The Scottish Government takes seriously any representations that are made to it. If Margaret Curran has a particular representation that she wants to draw to my attention, I will be more than happy to confirm with her what action the Scottish Government took.

I agree absolutely that all members of the Parliament have a duty to ask questions. I am happy to have given the statement and to answer questions. However, it is important that we as a Parliament and I as health secretary focus clearly on the key issues: why the deaths were not picked up in the early months of this year and what happened—or, as the case may be, did not happen—in the months or perhaps years before those deaths to ensure adequate surveillance and infection control procedures at the Vale of Leven. Those issues concern me most and are the reasons why I have established an independent review that will examine all the circumstances.

**Mary Scanlon (Highlands and Islands) (Con):** Scottish Conservatives echo the condolences that the health secretary expressed to the relatives of those who have died. I thank her for the advance



copy of her statement. Jackson Carlaw and I were shocked by the findings, which are much more serious than we expected.

Were the findings and recommendations of inquiries into *C difficile* outbreaks in England and Wales distributed to all NHS boards in Scotland? If so, what action was taken as a result?

Given the previous Executive's and the current Government's policies on and priority for infection control, why did the outbreak happen?

How soon will patients know that the local surveillance systems in their NHS board areas are fit for purpose? A serious confidence issue is involved.

We welcome the new guidance that Health Protection Scotland is preparing, but how can we be assured that future surveillance systems and infection control procedures will be adhered to, monitored and audited and that accountability will be provided for?

**Nicola Sturgeon:** I share Mary Scanlon's shock at the findings that I have outlined to Parliament. I was certainly shocked when I read the reports that NHS Greater Glasgow and Clyde submitted to me, which is why I became absolutely convinced that it was necessary, in the interests of public confidence, to have a full independent review of all the circumstances surrounding the situation. I hope that all members will welcome the fact that there will be an independent review.

Mary Scanlon asked about the Maidstone report. As she will be aware, that report identified a number of issues to do with leadership, clinical governance, prioritising infection control, and optimising clinical care and the use of antibiotics. Those issues have been closely covered in the work of the health care associated infection task force, which, of course, has been in existence since 2003. Some of the more critical issues relating to organisational structures that are raised in the Maidstone report do not directly apply to Scotland because of our different organisational set-up, but Scottish Government health department officials have mentioned the report on a number of occasions to health boards and key NHS staff groups, and there is wide appreciation of the importance of prudent prescribing, strict hygiene, environmental cleaning, isolation and the cohorting of cases. Indeed, there is wide appreciation of the conclusions of that report. It is important that such awareness continues to be closely monitored.

On the seriousness with which the Government treats infection control, I hope that all members accept that I have made it clear in my time as Cabinet Secretary for Health and Wellbeing that I take infection control seriously. Over the next three years, the Government will invest record

sums of money to fight the battle against infection. We are updating the cleaning specification to make it much tougher for hospitals, and we want improved hand hygiene compliance in hospitals. However, as Mary Scanlon said, we must ensure that policies are delivered on the ground, which is why there is now regular monitoring of, and reporting on, such issues. We must ensure that measures are robust.

I agree with what has been said about accountability.

**The Presiding Officer:** I must ask you to be brief, minister.

**Nicola Sturgeon:** I think that I have answered Mary Scanlon's final question.

**The Presiding Officer:** Thank you. I am grateful to you. We are very tight for time.

**Ross Finnie (West of Scotland) (LD):** I, too, thank the cabinet secretary for the advance copy of her statement. The Liberal Democrats associate ourselves with her condolences to the families that have been affected.

First, I have a point of clarification. In your statement, you referred to seeking advice and assurances from infection control managers about their systems. Given the time that you have known about the incidents that we are discussing, can you confirm that there are no other *C difficile* cases or clusters of *C difficile* cases in any other hospital in Scotland?

Secondly, you said that the independent review will examine all the circumstances surrounding the cases in question, which is proper. We accept that. However, do you accept that members are extremely alarmed about the unhelpfulness of Greater Glasgow and Clyde NHS Board's statement, which said that leading microbiologists had said that there was nothing to be worried about, because greater surveillance had meant that there were more *C difficile* cases in Scotland? The board has made no attempt to examine the seriousness of the matter. Will the review consider the board's implication that we should be comforted by its procedures? Its approach has been unhelpful.

Finally, will the cabinet secretary find it necessary to associate the report's findings with the health care associated infection task force's delivery plan? It seems to me that the outcomes of the inquiry will have implications for that plan.

**The Presiding Officer:** Our time is so tight that I do not even have enough time to chide members properly for using the word "you".

**Nicola Sturgeon:** Ross Finnie asked about our request to infection control managers to look back at cases. We have asked them to provide, as soon

as possible, information for the past six months. Obviously, I will update members if anything arises from that exercise that they require to know.

As Ross Finnie and other members appreciate, there will be C difficile cases in health board areas and hospitals around the country at any given time. Those cases will be investigated as and when they arise.

Ross Finnie mentioned Greater Glasgow and Clyde NHS Board's press statement, on which I agree with him. I do not think that we can be comforted by the action that the board claims to have taken, which is why I decided to set up an independent review. In the interests of public confidence, members of the public need to be assured that action that that board says it has taken has been taken and has been effective.

Finally, Ross Finnie is absolutely correct to say that the outcome of the independent review and any recommendations that flow from it will require to be aligned with the HAI task force delivery plan.

**Gil Paterson (West of Scotland) (SNP):** If action had been taken by the health board in January and February, when the problem with C difficile began, it is possible that the outbreak would have been contained. What actions are being taken to ensure that there is a quicker response to C difficile outbreaks by health boards throughout Scotland? The cabinet secretary will know that, in the past, services at the Vale of Leven hospital have been cut. I hope that the health board does not use the problem with C difficile as an excuse for further removals.

**Nicola Sturgeon:** I have set up an independent review because we need to examine closely the events and circumstances in January, February and the early months of this year. First, we need to understand why the surveillance system did not operate as it should. Secondly, we need to know why the infection control procedures that we all expect to be in place did not operate as they should. That independent review is necessary and will answer Gil Paterson's questions.

On his question regarding cuts at the Vale of Leven hospital, I am keen not to conflate different issues. There have been no service cuts at the Vale of Leven hospital since I became Cabinet Secretary for Health and Wellbeing. A number of proposals are either on the table or under consideration by NHS Greater Glasgow and Clyde. They will go through the due process and the decisions on them will be mine to make in due course.

**Jackie Baillie (Dumbarton) (Lab):** I associate myself with Gil Paterson's remarks.

As the constituency MSP, I welcome the minister's statement and her announcement of an

independent inquiry. It is important for the relatives of those who have died to get answers.

Is the minister aware of whether Health Protection Scotland advised the Scottish Government of the case of C difficile at the Vale of Leven hospital before 2 May? Similarly, is she aware whether further information was provided on separate occasions in May, before 21 May, about cases of C difficile at the Vale of Leven hospital?

The minister gave the clear impression that she was first aware of the extent of the problem on 10 June. Indeed, her spin doctor was going around emphasising that point. We now know that the *Dumbarton and Vale of Leven Reporter* told her about the five deaths on 6 June. More seriously, on 21 May, was the minister briefed about the multiple deaths? Her Government certainly knew about them. Six people contracted C difficile, of whom four died and two were hospitalised. We must have answers. If the minister did not know, why did she not?

**Nicola Sturgeon:** I have made clear to Jackie Baillie what I was briefed about on 21 May. I take the information that I give to the Parliament incredibly seriously, and I hope that she appreciates that the information that I have given in my statement has been given in absolute good faith.

In its press release of 22 May, NHS Greater Glasgow and Clyde indicated that one patient had died from C difficile. I was briefed after the infection control team meeting on 21 May about the number of cases that had come to the attention of NHS Greater Glasgow and Clyde. The key point was the link to the Vale of Leven hospital, which had been established in the three cases. It was that fact, rather than any unconnected cases from before, that prompted the investigation by the infection control team. That is the key point in the series of events.

Jackie Baillie seems to claim that I tried to give the impression that I found out about the extent of the problem only on 10 June. I listened to the interview that she gave to the BBC before I gave mine. I do not know whether she was able to stay to listen to mine. Had she done so, she would have heard me say clearly on that programme that I had been briefed on the issues on 21 May. The other point of fact that Jackie Baillie and Labour appear to be relying on is a quote that I gave to the *Dumbarton and Vale of Leven Reporter* on 6 June. With the greatest respect, if I were trying to cover something up, I would not give the facts to the *Dumbarton and Vale of Leven Reporter* or, indeed, any other newspaper.

**The Presiding Officer:** I really must insist that questions are extremely short and to the point.

**Stuart McMillan (West of Scotland) (SNP):**

The problems with hand hygiene and general hygiene at the Vale of Leven hospital that the cabinet secretary outlined in her statement are of serious concern. What action is being taken to address those important hygiene issues in hospitals, not only in NHS Greater Glasgow and Clyde but throughout Scotland?

**Nicola Sturgeon:** Hand hygiene is critical. One of the many things that has shocked me about the reports that I have received so far from NHS Greater Glasgow and Clyde is the lack of adequate hand hygiene facilities in the hospital. It is essential that action is taken to rectify that.

Hand hygiene is important throughout the NHS in the fight against not only *C difficile* but other hospital infections, which is why I have indicated that we intend to increase the required compliance with hand hygiene procedures to 90 per cent for all hospitals and NHS boards. However, I expect it to increase even further from that figure, because I want all hospitals to record 100 per cent compliance with hand hygiene protocols.

**Dr Richard Simpson (Mid Scotland and Fife)**

**(Lab):** The reporting system that was put in place in October 2006 was updated in 2007. It requires cases to be notified to Health Protection Scotland, which in turn notifies the Government through a file note, as it did in this case. Does the cabinet secretary agree that the remit for the independent review that she proposed in her statement is insufficiently wide, in that it does not cover notification from the Vale of Leven hospital to the Greater Glasgow and Clyde Health Board infection control committee or Health Protection Scotland? Indeed, it also does not cover any triggers for informing the Government of what action has been taken or could be taken. I give notice to the cabinet secretary that, if she is unable to extend the remit, I will raise the matter in the Health and Sport Committee and seek an investigation of the failures of the reporting systems up the line.

When did the cabinet secretary know about the five deaths that were mentioned in the *Dumbarton and Vale of Leven Reporter*?

**Nicola Sturgeon:** I can answer that last question first. The *Dumbarton and Vale of Leven Reporter* informed me on 6 June that it intended to report five deaths. Obviously, NHS Greater Glasgow and Clyde confirmed the number of cases and deaths on 10 June after its look-back exercise.

On Richard Simpson's substantive point, I made clear in my statement that I wanted the review to examine all the circumstances of the 54 cases. I am more than happy to consider the points that he has made and can think of no reason why the review could not or should not consider them all. I

am more than happy to confirm that to him in writing, if he wishes.

**Jackson Carlaw (West of Scotland) (Con):**

Does the cabinet secretary accept that her statement is the most awkward and appalling one that she has had to make in the past 12 months? Notwithstanding what she has said about hospital infection control, does not what she has unveiled today already demonstrate the most basic lack of ability to implement the most obvious precautions? Does she not feel that Greater Glasgow and Clyde health board has let her and the people down badly? What assurances does she have that similar situations do not exist in other hospitals that are under the board's control?

**Nicola Sturgeon:** The facts that I have outlined to the Parliament this afternoon are appalling: I am appalled by them and I have no doubt that every member of the Parliament is equally appalled by them. They reveal failures on the part of NHS Greater Glasgow and Clyde to ensure the adequate operation of procedures, including basic infection control procedures. However, any way in which I am let down is as nothing compared with the fact that patients and their relatives were let down, and I want to take action to ensure that that does not happen again.

**Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):**

In her statement, the minister said that she was asking all infection control managers throughout the country to review their *C difficile* data for the past six months. Would she consider it prudent to invite them to review their local surveillance systems and infection control procedures at the same time?

**Nicola Sturgeon:** I agree, and I think that I said in my statement—I apologise if I did not—that all boards have been asked to review their local surveillance systems as well. We have had some initial responses from boards that suggest to me that we require further guidance to ensure that consistent requirements are in place, which is why I made the comments that I made in my statement.

**The Presiding Officer:** That brings us to the end of the statement and questions on *Clostridium difficile* cases at the Vale of Leven hospital. I apologise to members whom I was unable to call.

## Points of Order

17:29

**The Minister for Parliamentary Business (Bruce Crawford):** On a point of order, Presiding Officer. During the debate, it became clear that members across the chamber were seeking more clarity on issues to do with the financial resolution on the Creative Scotland Bill. In that light, I ask that we may withdraw the motion on the financial resolution so that we can bring it back to the Parliament next week and allow clarity to be provided.

**The Presiding Officer (Alex Fergusson):** The minister has requested permission to withdraw the motion. I have to put it to Parliament—

**Ken Macintosh (Eastwood) (Lab):** On a point of order, Presiding Officer. Can I clarify whether, if the motion on the financial resolution were to be moved and members were to vote it down, the Creative Scotland Bill would fall?

**The Presiding Officer:** I can clarify the position. The motion on the financial resolution has already been moved. Were it to be voted down, standing orders are clear that the bill would fall.

**Jackie Baillie (Dumbarton) (Lab):** On a point of order, Presiding Officer. Given that the motion on the financial resolution has been moved, is it not up to the Parliament whether the minister can withdraw it?

**The Presiding Officer:** If members stop making points of order, I will get round to my next question, which is to ask for Parliament's approval for the minister's request to withdraw the motion on the financial resolution. Is that agreed?

**Michael McMahon (Hamilton North and Bellshill) (Lab):** On a point of order, Presiding Officer. We need some clarity on the process that has allowed us to arrive at this point. This is the second time that the Government, when it has faced defeat in a vote in this Parliament, has asked to withdraw its motion rather than allow Parliament to take its decision. The Government surely cannot be allowed to deploy that tactic to avoid facing the shambles that it has brought before the Parliament.

Secondly, the financial memorandum was criticised in the committee report. The Parliament has raised the issue through its committees a number of times, even to the point of advising the minister and the Government that it had concerns over the financial resolution. Why is it that, when it comes to a vote being taken on the financial memorandum at decision time, the motion is being withdrawn? That surely cannot be an acceptable

way for Parliament to make decisions on such matters.

**The Presiding Officer:** I will take a point of order from Bruce Crawford before I return to Mr McMahon.

**Bruce Crawford:** I am clear from my discussions and from what I heard of the tenor of the debate that no one wants the bill to fall this afternoon and that members are prepared to see it go to stage 2. If we do not withdraw the financial resolution this afternoon, the bill will fall. I think that the Parliament would like to see the bill proceed and would like to give it a chance by having the other information brought before it next week. That is a fair way to proceed and it is nothing to do with the issues outlined by the Opposition.

**Michael McMahon:** On a point of order, Presiding Officer. In the circumstances in which the matter has been brought to the Parliament, would it not be better that we do not vote on the motion on stage 1 of the bill, or on the motion on the financial resolution, and that we bring them back next week for the vote?

**The Presiding Officer:** The Government has not at this point sought leave to withdraw the motion on stage 1 of the bill and I am clear that it does not seek to do so.

**Ken Macintosh:** On a point of order, Presiding Officer. I am conscious, as the Presiding Officer will be, that many members are not aware of the proceedings this afternoon that led us to the current situation. I ask the Presiding Officer to rule on whether the Minister for Parliamentary Business should bring us an explanation this evening of why he is withdrawing the financial resolution.

There were concerns about the financial memorandum before today's debate, but this afternoon the Minister for Europe, External Affairs and Culture attempted to pull the wool over the eyes of many members in the chamber. In her opening speech, she led members to believe that the budget for the creative industries would be transferred from Scottish Enterprise to creative Scotland. In her summing-up speech, she then clarified—if I may use that word—that no such budget would be transferred and that she was referring to a decision that was taken months ago to transfer the budget for the cultural enterprise office.

The Minister for Parliamentary Business has not explained that every Opposition member was outraged at the attempt to mislead us, because in so stating the case, there is no doubt that the Minister for Europe, External Affairs and Culture bought the good will of this side of the chamber in supporting the financial resolution. There is an

obligation on the Minister for Parliamentary Business to explain the context rather than pretend that the situation has been fabricated for political reasons or that it is somehow normal procedure for the Parliament.

**The Presiding Officer:** As I am sure the member is aware, that is not a point of order for me; it is a debating point. The minister has requested, and given his reason for requesting, to withdraw the motion, and he is quite entitled to do so. The decision is for Parliament to take, and members can choose to oppose.

**Iain Smith (North East Fife) (LD):** On a point of order, Presiding Officer. As the member who created this evening's stushie by moving against the financial resolution, I seek clarification that, despite the minister's suggestion that the financial resolution should be brought back to the Parliament next week, it is for the Parliamentary Bureau to determine when the financial resolution should be timetabled for debate. The bureau could refer it to the relevant committee, or committees, if members wished to take further evidence on the financial memorandum before it came back before the Parliament.

**The Presiding Officer:** You are absolutely correct. It is for the Parliamentary Bureau to timetable any such motion.

I will now put the question to Parliament—

**Karen Whitefield (Airdrie and Shotts) (Lab):** On a point of order, Presiding Officer. As the convener of the Education, Lifelong Learning and Culture Committee, I ask the Government to consider this shambles very carefully. No one in the chamber wanted this situation to arise. There is considerable good will on the establishment of a national cultural agency for Scotland, but I ask the Government—

**The Presiding Officer:** Have you a point of order?

**Karen Whitefield:** The point of order is that the Parliament should be given the opportunity to do the right thing and consider the bill and the financial resolution on the same day, and that both decisions should be taken at a later date when agreed by the Parliamentary Bureau. That is the right thing to do.

**The Presiding Officer:** Both motions have been moved, and the Government has requested to withdraw one of them. Therefore, the question I put to the chamber is whether it approves the withdrawal of the motion.

Jackie Baillie has a further point of order.

**Jackie Baillie:** It is not a point of order; it is a motion without notice. I ask that the financial memorandum be withdrawn and that the

Parliamentary Bureau timetables the motions for next week's business.

**The Presiding Officer:** Members will have to excuse me for deliberating carefully. These are serious issues. My problem is that both motions have been moved. The Government has sought permission to withdraw one of them. The position is that I must put that question to the chamber.

I do not accept the request for a motion without notice, because the matter has been fully deliberated on in the parliamentary chamber.

**Johann Lamont (Glasgow Pollok) (Lab):** On a point of order, Presiding Officer. The Minister for Parliamentary Business predicated his argument for withdrawing the motion on the basis that the financial memorandum needs to be further clarified. Clearly, if there was a debate, it did not reach a satisfactory conclusion on which members could decide. How is it possible for a serious member of Parliament to vote on a bill without willing the means for its delivery through the financial resolution?

**The Presiding Officer:** That has to be a judgment for members when they cast their vote.

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** On a point of order, Presiding Officer.

**The Presiding Officer:** I seek order from other members, please. These are serious issues.

**Malcolm Chisholm:** We strongly support the setting up of creative Scotland, but I ask the Minister for Parliamentary Business to withdraw both motions in the interests of establishing creative Scotland as quickly as possible. If he does not do so, he will jeopardise the quick creation of creative Scotland.

**The Presiding Officer:** Again, that was not a point of order. I am looking at the Minister for Parliamentary Business but he is not choosing to accede to that request. He is quite entitled to do that.

The question is, that Parliament agrees to the withdrawal of the motion on the financial resolution. Are we agreed?

**Members:** No.

**The Presiding Officer:** That is not agreed. The question will therefore be put at decision time.

## Energy Bill

17:39

**The Presiding Officer (Alex Fergusson):** The next item of business is consideration of motion S3M-2101, in the name of Jim Mather, on the Energy Bill, which is United Kingdom legislation.

*Motion moved,*

That the Parliament agrees that the relevant provisions of the UK Energy Bill in Part 1, Chapter 3 (Storage of Carbon Dioxide), introduced to the House of Commons on 10 January 2008, should, insofar as they relate to matters within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers, be considered by the UK Parliament.—[*Jim Mather.*]

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

## Business Motions

17:39

**The Presiding Officer (Alex Fergusson):** The next item of business is consideration of business motion S3M-2193, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, on a meeting of the Parliament.

*Motion moved,*

That the Parliament agrees that—

(a) “09:00” be substituted for “09:15” in Rule 2.2.3 to allow the meeting of the Parliament on Thursday 26 June to begin at 9.00 am; and

(b) Rule 5.6.1(c) be suspended for the purposes of Members’ Business on Thursday 26 June.—[*Bruce Crawford.*]

*Motion agreed to.*

**The Presiding Officer:** The next item of business is consideration of business motion S3M-2192, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a business programme.

*Motion moved,*

That the Parliament agrees the following programme of business—

Wednesday 25 June 2008

2.00 pm Time for Reflection

*followed by* Parliamentary Bureau Motions

*followed by* Ministerial Statement: Housing

*followed by* Scottish Government Debate: Alcohol Misuse

*followed by* Business Motion

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members’ Business

Thursday 26 June 2008

9.00 am Parliamentary Bureau Motions

*followed by* Scottish Parliamentary Pension Scheme Committee Debate: 1st Report 2008, Scottish Parliamentary Pension Scheme

*followed by* Rural Affairs and Environment Committee Debate: 2nd Report 2008, Flooding and Flood Management

11.40 am General Question Time

12 noon First Minister’s Question Time

*followed by* Members’ Business

2.15 pm Themed Question Time  
Health and Wellbeing

*followed by* Parliamentary Bureau Motions

2.55 pm Decision Time

Wednesday 3 September 2008

2.30 pm Time for Reflection  
*followed by* Parliamentary Bureau Motions  
*followed by* Scottish Government Debate  
*followed by* Business Motion  
*followed by* Parliamentary Bureau Motions  
 5.00 pm Decision Time  
*followed by* Members' Business

Thursday 4 September 2008

9.15 am Parliamentary Bureau Motions  
*followed by* Scottish Government Business  
 11.40 am General Question Time  
 12 noon First Minister's Question Time  
 2.15 pm Themed Question Time  
 Rural Affairs and the Environment;  
 Justice and Law Officers  
 2.55 pm Scottish Government Business  
*followed by* Parliamentary Bureau Motions  
 5.00 pm Decision Time  
*followed by* Members' Business—[*Bruce Crawford.*]

*Motion agreed to.*

## Parliamentary Bureau Motions

17:40

**The Presiding Officer (Alex Fergusson):** The next item of business is consideration of four Parliamentary Bureau motions. I ask Bruce Crawford to move motions S3M-2195 to 2198, on the approval of Scottish statutory instruments.

*Motions moved,*

That the Parliament agrees that the draft Protection of Children (Scotland) Act 2003 (Amendment of the Definition of Child Care Position) Order 2008 be approved.

That the Parliament agrees that the draft Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2008 be approved.

That the Parliament agrees that the draft Further and Higher Education (Scotland) Act 1992 Modification Order 2008 be approved.

That the Parliament agrees that the draft Human Tissue (Scotland) Act 2006 (Consequential Amendment) Order 2008 be approved.—[*Bruce Crawford.*]

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

## Decision Time

17:40

**The Presiding Officer (Alex Fergusson):** The first question is, that motion S3M-2028, in the name of Linda Fabiani, on the Creative Scotland Bill—

**Dr Richard Simpson (Mid Scotland and Fife) (Lab):** On a point of order, Presiding Officer. I crave your indulgence and request that the vote on whether we are voting on the financial resolution should be taken first, because the procedures following will depend on that.

**The Presiding Officer:** Standing orders are quite clear: questions must be put in the order in which motions are moved. I have no flexibility in that matter.

**Dr Simpson:** I am sorry, but I am not asking you to conduct a vote on the financial resolution. I am asking you to conduct a vote on whether permission has been given for the motion to be withdrawn. That was proposed by the Minister for Parliamentary Business, and we objected to the motion being withdrawn. You must hold a vote on that, please, before you proceed.

**Members:** Oh!

**The Presiding Officer:** As a matter of fact, I must not do that, Dr Simpson. When I put the question on the financial resolution, if one member objects, then a vote has to be taken. I can call the divisions only in the order in which the motions were moved.

Therefore, the first question is, that motion S3M-2028, in the name of Linda Fabiani, on the Creative Scotland Bill, be agreed to. Are we agreed?

*Motion agreed to.*

That the Parliament agrees to the general principles of the Creative Scotland Bill.

**The Presiding Officer:** The next question is, that motion S3M-1776, in the name of John Swinney, on the financial resolution to the Creative Scotland Bill, be agreed to. Are we agreed?

**Members:** No.

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

**Tricia Marwick (Central Fife) (SNP):** On a point of order, Presiding Officer. The question that you should put is whether the financial resolution should be withdrawn. That was what the minister moved.

**The Presiding Officer:** No, I am clear that Parliament has not given permission for the motion to be withdrawn. Therefore, I put the

question to members. [*Interruption.*] Order. Mr McMahon, order, please.

**The Minister for Parliamentary Business (Bruce Crawford):** On a point of order, Presiding Officer. I seek your guidance because earlier today I spoke to your business team, and was informed by them at that stage that, if and when I sought to withdraw the motion on the financial resolution, it would be up to Parliament to decide whether the resolution was to be withdrawn. In these circumstances, the Parliament has not yet had the opportunity to vote on that matter. Therefore, should not the Parliament be provided with that opportunity before we proceed any further?

**The Presiding Officer:** For the benefit of all members, let me quote rule 8.3.6:

“After a motion is moved, it may be withdrawn by the member who moved it at any time before the question is put unless any member objects to it being withdrawn.”

I have had objections to the motion being withdrawn, therefore I must put the question to members.

The question is, that motion S3M-1776, in the name of John Swinney, on the financial resolution to the Creative Scotland Bill, be agreed to. Are we agreed?

**Members:** No.

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

### FOR

Adam, Brian (Aberdeen North) (SNP)  
 Ahmad, Bashir (Glasgow) (SNP)  
 Allan, Alasdair (Western Isles) (SNP)  
 Brown, Keith (Ochil) (SNP)  
 Campbell, Aileen (South of Scotland) (SNP)  
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)  
 Constance, Angela (Livingston) (SNP)  
 Crawford, Bruce (Stirling) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Don, Nigel (North East Scotland) (SNP)  
 Doris, Bob (Glasgow) (SNP)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harper, Robin (Lothians) (Green)  
 Harvie, Christopher (Mid Scotland and Fife) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Central Scotland) (SNP)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Adam (South of Scotland) (SNP)  
 Kidd, Bill (Glasgow) (SNP)  
 Lochhead, Richard (Moray) (SNP)  
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)  
 MacDonald, Margo (Lothians) (Ind)  
 Marwick, Tricia (Central Fife) (SNP)  
 Mather, Jim (Argyll and Bute) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West of Scotland) (SNP)  
 McKee, Ian (Lothians) (SNP)



McKelvie, Christina (Central Scotland) (SNP)  
 McMillan, Stuart (West of Scotland) (SNP)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Neil, Alex (Central Scotland) (SNP)  
 Paterson, Gil (West of Scotland) (SNP)  
 Robison, Shona (Dundee East) (SNP)  
 Russell, Michael (South of Scotland) (SNP)  
 Salmond, Alex (Gordon) (SNP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow Govan) (SNP)  
 Swinney, John (North Tayside) (SNP)  
 Thompson, Dave (Highlands and Islands) (SNP)  
 Watt, Maureen (North East Scotland) (SNP)  
 Welsh, Andrew (Angus) (SNP)  
 White, Sandra (Glasgow) (SNP)  
 Wilson, Bill (West of Scotland) (SNP)  
 Wilson, John (Central Scotland) (SNP)

#### AGAINST

Aitken, Bill (Glasgow) (Con)  
 Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Gavin (Lothians) (Con)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Carlaw, Jackson (West of Scotland) (Con)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Margaret (Glasgow Baillieston) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gillon, Karen (Clydesdale) (Lab)  
 Gordon, Charlie (Glasgow Cathcart) (Lab)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (East Lothian) (Lab)  
 Henry, Hugh (Paisley South) (Lab)  
 Hume, Jim (South of Scotland) (LD)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kelly, James (Glasgow Rutherglen) (Lab)  
 Kerr, Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lamont, John (Roxburgh and Berwickshire) (Con)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McArthur, Liam (Orkney) (LD)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Tom (Hamilton South) (Lab)  
 McConnell, Jack (Motherwell and Wishaw) (Lab)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Milne, Nanette (North East Scotland) (Con)  
 Mulligan, Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Elaine (Dumfries) (Lab)  
 O'Donnell, Hugh (Central Scotland) (LD)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Park, John (Mid Scotland and Fife) (Lab)

Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stewart, David (Highlands and Islands) (Lab)  
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Tolson, Jim (Dunfermline West) (LD)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**The Presiding Officer:** The result of the division is: For 49, Against 68, Abstentions 0.

*Motion disagreed to.*

**The Presiding Officer:** Standing orders are quite clear; the Creative Scotland Bill therefore falls.—[*Interruption.*] Order.

The next question is, that motion S3M-2101, in the name of Jim Mather, on the Energy Bill, United Kingdom legislation, be agreed to.

*Motion agreed to.*

That the Parliament agrees that the relevant provisions of the UK Energy Bill in Part 1, Chapter 3 (Storage of Carbon Dioxide), introduced to the House of Commons on 10 January 2008, should, insofar as they relate to matters within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers, be considered by the UK Parliament.

**The Presiding Officer:** The next question is, that motions S3M-2195 to S3M-2198 inclusive, in the name of Bruce Crawford, on the approval of Scottish statutory instruments, be agreed to.

*Motions agreed to.*

That the Parliament agrees that the draft Protection of Children (Scotland) Act 2003 (Amendment of the Definition of Child Care Position) Order 2008 be approved.

That the Parliament agrees that the draft Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2008 be approved.

That the Parliament agrees that the draft Further and Higher Education (Scotland) Act 1992 Modification Order 2008 be approved.

That the Parliament agrees that the draft Human Tissue (Scotland) Act 2006 (Consequential Amendment) Order 2008 be approved.

## Tenancy Deposit Protection Scheme

**The Deputy Presiding Officer (Alasdair Morgan):** The final item of business is a members' business debate on motion S3M-1865, in the name of Claire Baker, on a tenancy deposit protection scheme for Scotland. The debate will be concluded without any question being put.

### *Motion debated,*

That the Parliament is concerned that the withholding of deposits unreasonably continues to be a problem for tenants in the private rented sector; notes that the private rented sector provides over 230,000 homes to households in Scotland, some 8% of all households, including families, students, migrant workers and young professionals; further notes that many tenants, on leaving a tenancy, rely on the return of their deposit to pay the upfront deposit and rent for their new property and that withholding a deposit unfairly can lead to hardship, debt and ultimately homelessness; highlights recent research by St Andrews University Students' Association that found that 24% of students there have had unjustified deductions made from their deposits and 28% have faced unreasonable delays of more than 28 days in returning their deposits; acknowledges the successful introduction of the tenancy deposit protection scheme in operation in England and Wales which ensures protection for both landlords and tenants, and believes that powers already on statute in the Housing (Scotland) Act 2006 could be used to further a deposit protection scheme for Scotland, building on landlord registration and accreditation initiatives already in place.

17:47

**Claire Baker (Mid Scotland and Fife) (Lab):** I am delighted to speak on tenancy deposit schemes in my maiden members' business debate. It is always a pleasure to be involved in a debate about a matter on which a solution can be found. I am sure that members will join me in welcoming to the gallery representatives from the National Union of Students and students from the University of Edinburgh, the University of St Andrews, the University of Stirling, and Heriot-Watt University—I am sure that they have already had an entertaining time.

I became aware of the inadequacy of the current arrangements when students from the University of St Andrews contacted me after losing their deposits because their letting agency had gone bust. I wrote to the Minister for Communities and Sport, who gave the only possible reply, which was that students could pursue the problem through the registration scheme or the small claims court. Neither option was suitable and it was clear that the tenants would never get their deposits back. If a custodial tenancy deposit scheme had been in place, their money would have been safe.

The need for such a scheme is growing. The private rented sector has grown to more than 10

per cent of housing and accounts for more than 230,000 households in Scotland. The sector offers flexibility that meets the needs of students, young professionals, migrant workers and many families. However, it is unfortunate that there is almost acceptance of a poor system in relation to deposits, in which vulnerable tenants, in particular tenants who rent from unaccredited landlords, suffer.

As tenants commonly have to pay deposits up front, unfair deductions or delays in returning deposits can cause debt, threaten tenancies and even lead to homelessness in the worst-case scenario. A tenancy deposit scheme would protect tenants from unfair deductions to deposits and from delays in repayment and could offer dispute resolution services.

In England and Wales, three mandatory tenancy deposit schemes have been in place for more than a year and have been acknowledged to be a success. More than a million tenancies are covered and disputes between tenants and landlords have been reduced to a minimum. In addition, the schemes are entirely self-financing. In a custodial scheme, in which deposits are held by a third party rather than by the landlord, a proportion of the interest from deposits is used to cover the scheme's running costs. There are no fees for landlords and tenants receive a proportion of the interest on their deposit. That is an improvement on the current arrangements for many tenants.

As we know, Parliament is keen on international comparisons. I am pleased to report that similar schemes exist in Ireland, Belgium, France, New Zealand, Australia and Canada.

Having met the National Landlords Association and the Scottish Association of Landlords, I appreciate their reservations about the introduction of such a scheme in Scotland. However, I firmly believe that a custodial scheme that would pay for itself would have many benefits for landlords as well as for tenants. In Ireland, landlords protested that the sector would collapse if such a scheme were to be introduced, but in fact the sector has flourished since its introduction. In England and Wales, the National Landlords Association runs one of the schemes.

In Scotland, with registration and accreditation, the sector is showing itself to be forward looking and keen to meet high standards. I believe that a tenancy deposit scheme could only help to enhance that reputation. It is clear that there are inconsistencies at present in the handling of deposits, and that there is a lack of clarity and understanding of the issue among landlords and tenants. The Scottish Government should act now to use the powers that were left for it on statute.

Although the minister has pushed forward with landlord registration and accreditation, there has been less drive on a deposit protection scheme, albeit that it is also a measure in the Housing (Scotland) Act 2006. Looking back to the passage of the act, it is clear that concerns were expressed that registration and accreditation would not, of themselves, tackle the problems of tenancy deposit dispute. At the time of the passage of the act, there was strong cross-party support. My fellow Fife MSP, Tricia Marwick—with whom, I admit, I do not agree on many occasions—lodged an amendment on the issue. At committee stage, she said

“Good landlords will be perfectly happy with a scheme that will separate them from rip-off merchants.”—[*Official Report, Communities Committee*, 5 October 2005; c 2504.]

Strong stuff indeed. It is therefore a pity that SNP back benchers have not been as vocal on the issue when their party is in government as when it was in opposition, albeit that some SNP back benchers continue to support the proposal. The political argument has been won. The measure was included in the 2006 act because Parliament recognised the need for such a scheme. We should now be pushing ahead and introducing a scheme.

A circular that the former Scottish Executive released in August 2006 said that

“the provisional estimate is that arrangements”

for a deposit protection scheme

“could be operational by mid-2008.”

Even allowing for civil service caveats, the intention was clearly that a scheme would be in place by this summer. A tenancy deposit scheme should have been in the ministerial in-tray, but we have instead seen delay in the progression of such a scheme in Scotland. Only now—a whole year since the election—is the private rented sector tenant survey finally under way.

While the Government has lingered, events have overtaken it. The total deposits that are held by private sector landlords have reached unprecedented levels. Shelter Scotland estimates that the amount is about £50 million. However, using the latest Scottish household survey research, the figure could be closer to £80 million. Schemes in England and Wales have been up and running for a year. The Scottish Government can now draw upon that experience, as it can on the research and evaluation that took place before those schemes were introduced.

Recently, the National Union of Students conducted research that found that 33 per cent of students reported unfair delays or deductions from deposits at the end of their tenancies. At the moment many tenants, including students who are

going to university in the autumn, are looking for accommodation. It is only fair that those tenants, including students and their parents, have similar protection to that which is offered to tenants, including students, in the rest of the United Kingdom.

A tenancy deposit scheme that is combined with an arbitration service has something to offer to both tenants and landlords. The powers are in place—they are ready and waiting to be used. In the meantime, up to £80 million is being held in the private rented sector without regulation on how it is handled, when it is returned, or who receives the interest from the sums involved, the total of which is vast.

As a first step, a voluntary scheme would at least provide some protection. I welcome a commitment from the minister that he will explore the possibility of providing voluntary access to the existing schemes in England and Wales, before he puts in place a mandatory scheme. That said, the evidence on voluntary schemes is not particularly positive. Although good landlords would join, the vulnerable tenant would still be left exposed. I hope that the minister will take the opportunity of the debate to put on record his agreement in principle to the tenancy deposit scheme and to commit to consulting over the summer to shape what a future scheme or schemes would look like.

A tenancy deposit scheme would be an improvement to the private sector in Scotland. It would not need legislation. It would make a positive impact quickly and deliver a huge benefit for tenants and landlords without disproportionate cost to the Government, tenants or landlords. There is no reason to hold off any longer from providing this valuable security to tenants.

17:54

**Robert Brown (Glasgow) (LD):** I apologise, Presiding Officer, as I may have to leave before the end of the debate. The debate is important and is on an issue on which several members, particularly those with university constituencies, have been active. I congratulate Claire Baker on obtaining it.

To an extent, the Scottish Government has dragged its feet on the issue. As I suggested in my recent exchange with the minister during oral question time, I have a sense that, if anything, the Government is going backwards on the issue. The Housing (Scotland) Act 2006 enables arrangements for a tenancy deposit scheme to be promulgated by a statutory instrument. However, the question that the Government is asking is not how or when but whether such a scheme should be introduced.

It is not as if there is no experience elsewhere. Claire Baker told us about the experience in England and Wales and abroad, where, by all accounts, such schemes have worked well. In some ways, the issue is not a technical matter about landlord and tenant law, but is more about the broader consumer law that deals with an imbalance between the rights of the parties to a contract. As Claire Baker touched on, that situation is not dealt with satisfactorily by small claims or other court procedures. In other areas of power imbalance, such as banking or insurance, the problem has led to the establishment of an ombudsman or a similar facility. However, the issue of tenancy deposits is much simpler.

The requirement for a deposit is not unreasonable and is acknowledged in legislation. Landlords and tenants have characters ranging from saints to scoundrels and everything in between. People leave flats in a mess and have been known to trash them. When that happens, landlords are entitled to receive the costs of putting it right. However, that is not the norm and we know from experience that some landlords routinely retain deposits or overstate the cost of renovation. Good landlords do not do that. When it happens, it is not compensation, but fraud. That is sometimes combined with problems of absentee or unknown landlords, or of landlords acting through a man-of-straw agency.

A mechanism through which the deposit is held or insured independently and an independent arbitration facility are reasonable and desirable. The Citizens Advice Scotland briefing that has been prepared for the debate details a case in which a landlord held back a deposit of £850 for professional cleaning, when the flat was cleaner than it was when the tenancy began. Members will know of similar situations. Another unpleasant feature is the exploitation of young people. Many tenants are young people—students and others—some aged 17 or 18, and are away from home for the first time. Far from being the sophisticated adults that they believe themselves to be, they are often fairly naive and sometimes ignorant of their rights and of where to go for help. Some landlords rely on that and exploit it, which I find distasteful in the extreme.

The present situation is a contributor to hardship, debt and homelessness problems for young people and others who are in pressing housing need. Those problems will become worse as the mortgage and credit crunches bite. We have an acknowledged problem and a solution with legislative provision in place, with a comparator south of the border, but still the Government fiddles at the edges and is manifestly reluctant to commit to proper action. I hope that I do not do the Government an injustice when I say that it appears to be looking for lesser solutions. It

is time for the Government to make progress by giving an agreement in principle. I hope that today, or in the near future, the minister will give a commitment in principle to introducing a tenancy deposit scheme. Such a scheme is overdue and will be a significant contributor to a fairer housing regime for many tenants in Scotland.

17:58

**Stuart McMillan (West of Scotland) (SNP):** I thank Claire Baker for bringing the debate to the Parliament. The issue is important to many people and this is an important time to conduct the debate, given that the housing market is forcing people to rent, often for longer than anticipated. With that being the norm, there have been reports in the media that many landlords are seizing on the opportunity and increasing rental prices, with tenants' deposits increasing in line with that. As the motion correctly intimates, many people rely on receiving their deposits to secure or pay for future rented accommodation. Debt in Scotland is bad enough without that added burden. According to Citizens Advice Scotland, 1.7 million people had debt problems in 2006-07.

The motion suggests that we should use the Housing (Scotland) Act 2006 to introduce a tenancy deposit protection scheme similar to those in England and Wales. As the act was introduced by the previous Administration, I must ask what I think is a legitimate question about why that Administration did not introduce such a scheme at the time. During the stage 2 debate on the Housing (Scotland) Bill in October 2005, the then Deputy Minister for Communities, Johann Lamont, stated:

"Any ... tenancy deposit scheme ... must be considered in the context of the number of other developments that are under way".

She went on to say:

"We will not introduce any scheme whose cost we consider disproportionate."—[*Official Report, Communities Committee*, 5 October 2005; c 2501-2.]

Tonight, however, Claire Baker is adamant that the current Administration should introduce such measures without consultation.

Although I agree that tenants' rights and landlords' rights should be protected, I do not know whether the model that is used in England and Wales is the answer.

**Claire Baker:** Will the member take an intervention?

**Stuart McMillan:** May I just make some progress first? Thank you.

The scheme in England and Wales has been in operation for only one year, and no formal evaluation has yet been carried out. Furthermore,

not every landlord in England and Wales has signed up to the scheme. My information is that two thirds have signed up.

**Claire Baker:** I believe that enough research—by the NUS, Shelter and other organisations—has been carried out to allow the Government to make progress.

A circular was issued when we were in Government, suggesting that a scheme would be in place by mid-2008. I believe that the intention was to carry out the research and have something in place by now. My concern is that the Government could be moving a bit quicker.

**Stuart McMillan:** I am sure that, if what Ms Baker says were the case, the Government would look into it, but I am not sure that it is the case. I am sure that the minister will respond to Ms Baker's point when he winds up the debate.

What safeguards are in place to ensure that the agencies that act as arbitrators do not have a conflict of interests? One scheme that is run by My Deposits Ltd—which previously traded under the name of Tenancy Deposit Solutions Ltd—is sponsored by the National Landlords Association. That leaves cases open to the possibility of decisions in favour of landlords. Would not it make more sense for more stringent landlord regulation to be introduced before forcing a new deposit scheme into practice?

Students and recent graduates are named specifically in the motion as being most at risk of falling foul of the lack of protection for tenants. I acknowledge that student debt has reached £2 billion, but I also note that that is the legacy that Labour left behind, due to its record on student finance. Individual debt is declining under the SNP—from £11,416 under Labour in 2006, to £10,947 under the SNP in 2007. The state that the United Kingdom Government has got the economy into—as well as the credit crunch from the United States—also contributes to the high levels of debt in Scotland.

Perhaps the Labour Party should concentrate on safeguarding the country's financial services before trying to pass on to the SNP Government problems that Labour could have dealt with. The SNP Government is committed to helping the people of Scotland.

18:02

**Jamie McGrigor (Highlands and Islands) (Con):** I, too, must apologise for having to leave before the end of the debate.

I congratulate Claire Baker on securing tonight's debate. Scottish Conservatives fully acknowledge that many tenants rely on the return of their deposit in order to pay the up-front deposit on their

new property. We also acknowledge that delays in the return of deposits can lead to difficulty and hardship. Claire Baker is correct to say in her motion that Scottish ministers have the power, under the Housing (Scotland) Act 2006 to introduce a tenancy deposit scheme if they wish to do so. However, it seems to us premature of ministers to embark on such a course without having sound evidence for so doing. We should await the outcome of the Government's surveys of private tenants and landlords. Particular issues relating to students' deposits certainly need to be tackled.

Having consulted a number of private sector landlords and landlords organisations in preparation for tonight's debate, I would like to raise a few points. If a property is managed properly, if an inventory is made up and if tenants are given a chance to comment on the inventory at the commencement of a lease, the number of difficulties at the end of the lease will be reduced. The motion refers to the "successful introduction" of tenancy protection in England and Wales, but one landlords organisation put it to me that the Westminster Government made a complete mess of the introduction of that scheme. If ministers here intend to go ahead with such a scheme, they should try to learn from what happened in England and Wales.

Despite what I have said about the introduction of the scheme in England and Wales, I understand that its operation has since proceeded relatively smoothly. Indeed, the latest figures show that less than 2 per cent of tenancies have ended with a dispute over the deposit.

A more general concern is over the need for politicians fully to comprehend the impact of extra regulations on the private sector. Scottish Conservatives are well aware of that impact, and we will not support regulations that will have a negative impact on costs and on business. Scottish landlords and agents are still trying to deal with the complexities of the landlord registration scheme and the regulations on hard-wired smoke detectors, and energy performance certificates are looming in January. Ministers should always exhaust all other options, such as the raising of awareness of good practice, before resorting to the imposition of regulations. Regulations must be proportionate.

The landlord accreditation scheme, which has been developed by the Scottish Association of Landlords and the Scottish Rural Property and Business Association, has the potential to drive up standards and to be a really positive thing for the rented sector. The Royal Institution of Chartered Surveyors operates a voluntary deposit scheme, too.

**Robert Brown:** That is fine for the good landlords. Does the member have a remedy for the bad landlords, which is where the issue arises?

**Jamie McGrigor:** I will come to that in my conclusion.

I acknowledge the concerns that lie behind Claire Baker's motion, but ministers should tread with caution before burdening private individuals and companies with further regulations. I accept that there are a few bad apples in every barrel, but if we take a broad-brush approach, we could easily upset the running of good businesses, too. I look to the minister to assure me that he will proceed in an evidence-based way, in line with the scale and nature of the problem.

18:05

**Dr Richard Simpson (Mid Scotland and Fife) (Lab):** I congratulate Claire Baker on securing this important debate. I was president of the Scottish Union of Students almost 40 years ago and failure to return deposits was an issue even then. The issue is not new, but it now requires to be resolved.

We know that about 10 per cent of households are in the private rented sector and that roughly 70 per cent of tenants in that sector have to pay a deposit. As Claire Baker said, it is estimated that between £50 million and £80 million is now being held in deposits. The Housing (Scotland) Act 2006 allows the introduction of a deposit protection scheme. It is important that we now move forward.

The evidence from NUS Scotland that 33 per cent of students reported unfair deductions from their deposits or delays in their return is borne out by anecdotal evidence of which I am aware. Some 15 years ago, a member of my family was a resident in privately rented accommodation. At the end of one year, their £800 deposit was withheld in its entirety, until I intervened and threatened to take the gentleman concerned to court over the issue, at which point he said in exasperation, "But I've always kept the deposit." I hope that not many landlords still have that attitude today. As Robert Brown said, legislation is required to deal with the issue, because some landlords do not play fair.

The evidence from the NUS shows that in many cases there were unfair delays in the return of deposits as landlords held on to the money unnecessarily. Many of the students concerned will require to move on into other privately rented accommodation, for which they will have to pay another deposit. They cannot afford to delay their move.

Research by the University of St Andrews students association reports that about a quarter

of students there experienced unjustifiable deductions or delays.

The minister could say that deposits should be returned with speed and that disputes about deductions could go to a form of mediation. I am sure that good landlords would welcome that, because there are occasions on which such disputes arise in the natural course of things, and it is only reasonable that a form of mediation should be available.

I think that Robert Brown said that we need to strike a balance between those who are engaged in the private rented sector, which is an important part of housing provision, and those who rent. At the moment, I suggest that we have not struck that balance.

We already have a scheme in England and Wales, which, with the caveats that Jamie McGrigor has expressed about its introduction, seems to be working extremely well. I can see absolutely no reason why Scotland should be any different in that respect. We have the opportunity to learn from England. We should grasp the nettle and the Government should introduce a scheme with considerable rapidity.

18:09

**Jim Tolson (Dunfermline West) (LD):** I congratulate Claire Baker on securing this debate on a tenant deposit protection scheme, which I am sure that most of us would agree is an important subject. My colleague Robert Brown has quite rightly outlined the plight of many university students. However, as the Liberal Democrat housing spokesperson, I am all too aware that it is not only students who are increasingly facing these problems but many people on low and moderate incomes who privately rent their homes.

I am not suggesting that all private landlords are unscrupulous or are likely to withhold deposits unfairly—far from it—but, as in many walks of life, it is the few who flout the rules who give the whole a bad image. I am sure that we could all think of examples of that.

I am grateful to the Association of Residential Letting Agents for clarifying the point about the bad apple in the barrel. However, despite outlining the benefits of a compulsory deposit scheme from the perspective of its members, it wrongly chastises all local authorities for their handling of the landlord accreditation and registration scheme, which was introduced by the previous Executive.

I have spoken directly with many constituents and with staff here in the Scottish Parliament who have had their deposits unfairly withheld and have had charges made for items far in excess of the reasonable replacement cost. That might not

prevent people on a modest income from putting down a deposit on another property, but, for far too many people on a low income, that could mean the difference between continuing to have a roof over their head or not.

The deposits that are held on an individual tenancy can be several hundred pounds, and the impact of the loss of that money when a tenant moves can be catastrophic for many. According to Shelter Scotland, an estimated £50 million is currently held in deposits by private landlords in Scotland. If the figures from Citizens Advice Scotland are accurate, that figure is closer to £75 million.

Currently, the only route by which tenants who have had their deposits unfairly withheld can seek redress is through the small claims court. However, even that form of justice is totally impractical for people who are moving out of the area when they leave their tenancy—for example, people who are moving to another job, or students who have reached the end of a term or a course.

After many years of giving landlords an opportunity voluntarily to adopt more professional standards with regard to the service that they provide to their tenants, the previous Scottish Executive rightly introduced a compulsory landlord accreditation and registration scheme. That shows that, in some instances, we can reach a point at which only compulsion can provide the protection that individuals and families need.

For whatever reason, in the past few years there seems to have been a significant rise in complaints about many private landlords withholding deposits unfairly, and it is now clear that legislative action similar to that which was taken by the previous Executive in relation to the landlord accreditation and registration scheme is required.

The Liberal Democrats believe that the minister must follow the lead of other countries and introduce a compulsory tenant deposit scheme, which could be done under existing housing legislation. Further, if the Government is to salvage any credibility with Scotland's students, the minister must move to implement the best scheme possible—one that not only protects our students and low-paid residents in rented accommodation, but provides landlords with a clear settlement where, at the moment, no such clarity exists.

18:13

**Johann Lamont (Glasgow Pollok) (Lab):** I congratulate Claire Baker on securing the debate. In doing so, I reflect on the frustrations of falling on hard times, since the words that were quoted earlier were said when I was in a position to make

decisions rather than only urge the minister to do so.

It is important to congratulate groups such as Shelter, the NUS and Citizens Advice Scotland that persist in highlighting a range of issues that they want us to take up—I am grateful for the written and verbal briefings that were provided today. I also congratulate the constituents who continue to bring cases to us.

As Jim Tolson said, the problem with deposits affects not only students. The problem is largely invisible, but it can cause great difficulties for vulnerable members of our communities. It is right that the Government should respond to it in the context of communities issues.

In a previous life, I was a schoolteacher, and I am always looking for object lessons. The proposal in the Housing (Scotland) Act 2006 for a mandatory deposit scheme was an object lesson in how the Parliament can work effectively. We hear a lot of talk about consensus. There is a huge amount of rewriting of the history of this Parliament, but we built consensus around a number of significant issues. The proposal was not originally included in the legislation as introduced to Parliament. It was the work of committees and members of all parties, supported by groups outside the Parliament, that put it on the political agenda.

Members of all parties reflected on the scheme, and Christine Grahame, Tricia Marwick, Lib Dems and Labour members—I cannot remember the Tory position—all pursued the matter with me as the then Deputy Minister for Communities. They raised it with me not to gain party advantage, but because they believed that it needed to be done. At stage 2, the decision was taken that the proposal as it had emerged was to be supported. Nobody claimed victory or said that there were U-turns, but a little bit of political business was done to ensure that we could take it forward. Acting in that way was important, because it gave a message about the importance of the Parliament's walls being breached by those who really understood how policy should be developed.

I hope that SNP back benchers will recognise their role in challenging their own front bench members. If I were still the minister, and if I were operating at the pace of the current Minister for Communities and Sport, I would not wait to be chided by the Opposition to act—Labour's own back benchers have a record of doing that. It has been said that we need research and consultation, but there is concern about the pace. I understand that the working group that was set up has met only once since May. I understand the need for research, but there must be action.

The argument has been made that we already have landlord accreditation and registration, but we cannot be in a position where the argument is that if everything cannot be done, nothing can be done. Mr Maxwell has my permission to disregard the commitments that I have made and to act more quickly. Stuart McMillan identified problems with the scheme down south—in that case, other options should be consulted on. We need a driver and a commitment.

The private sector has an important role to play, particularly in times of credit crunch, in meeting housing needs and homelessness targets. The landlord sector needs to be open and transparent, and we want the sector itself to recognise the damage that has been done to its reputation. Good landlords have nothing to fear.

I urge the minister to recognise that simple steps should be taken, such as bringing forward a timetable and committing to a mandatory scheme. We will ensure that there is consensus in the Parliament in dealing with consultation in parliamentary committees and in our communities. That will give students and families confidence as they make decisions about their accommodation ahead of the academic year. The important small step of building consensus in the Parliament will make a difference in our communities. I urge the minister to make the commitment tonight.

18:17

**Mike Pringle (Edinburgh South) (LD):** I congratulate Claire Baker on securing this worthwhile debate.

As several members have remarked, everyone has an anecdote about someone whose rent deposit was withheld. Other members, like me, may have dealt with individual cases in their constituencies.

We have heard about the landlord accreditation scheme. I was recently approached by a group of students who were with an accredited landlord who refused to repay their deposit. It took a letter from me—sadly—to resolve the situation, but why did I have to write? My own constituency has a large student population, and commonly it is students—who often already are burdened financially by the costs accrued from attending university—who are hardest hit by the unjust retention of a deposit.

I recently wrote to all the Scottish universities, and almost certainly to most of those who are represented in the public gallery today and to other stakeholders, regarding the issue. Of course, they all had stories to tell. Opinion was unanimous: the unjustified withholding of tenants' rent deposits is a serious problem.

I am sure that many of the members who are in the chamber will have taken the time to consider the NUS report "Brick by Brick: the state of student housing in Scotland 2007", many of the figures in which are truly startling: 25 percent of students surveyed reported the unfair withholding of their deposits. That amounts to hundreds of thousands of pounds every year, and if repeated across the entire rental sector it could run into millions.

The 2001 survey that led to the introduction of a mandatory scheme in England stated that 21 per cent of private tenants across the sector had had a deposit withheld unfairly. There is no reason whatsoever to believe that the figure is any different in Scotland. Indeed, as the private rental sector has expanded significantly since 2001, the problems might be even more widespread. Richard Simpson talked about the situation 40 years ago—I bet it is much greater now.

There are several well-documented problems with the current system, and neither landlord nor tenant is adequately protected. Currently, the only recourse for tenants if there is a dispute over the withholding of a rent deposit—if they do not have an MSP—is the small claims court, where the average fee for the recovery of a £750 deposit is around £44. If the landlord disputes the claim, a hearing is required, which can be daunting, particularly for young people, students and the vulnerable. It can take months to get a judgment and appeals can cost hundreds of pounds. The average Scottish student can ill afford to spend that time and money. It is also worth noting that delays might cause particular problems for students from other parts of the United Kingdom and overseas, who might have to return home and simply do not have the time to fight a court case to get their deposit back.

In the past, the main barrier to the introduction of a mandatory scheme in Scotland was the lack of a dedicated body of figures to support the widespread anecdotal evidence. Now, however, with the release of the NUS report, we finally have a solid basis on which to build the case for a scheme. The current situation is unnecessary and unsustainable, and the benefits of the scheme in England are self-evident. I hope that the Scottish Government will use the Housing (Scotland) Act 2006 to introduce a mandatory tenancy deposit scheme. I hope that the minister will give us some positive guidance on whether he will do that in the near future.

18:21

**The Minister for Communities and Sport (Stewart Maxwell):** I congratulate Claire Baker on securing the debate.



I listened carefully to the debate and appreciate members' concerns about the impact that unfairly withheld tenancy deposits can have on tenants in the private rented sector. Members asked me when the Scottish Government will use the provisions in the Housing (Scotland) Act 2006 and require landlords to sign up to a mandatory deposit protection scheme. However, it is by no means clear that such a scheme would be the most cost-effective or efficient way of dealing with the problem of unfairly withheld deposits in Scotland. The Scottish Government is considering the matter.

Much has been said this evening about the number of tenants, and particularly students, who face problems with unfairly withheld deposits. I am aware of the research that a number of organisations have carried out in the area, including the NUS "Brick by Brick" report. It is worth pointing out that the NUS research asked students whether any of their deposit had been withheld rather than whether it had been unfairly withheld. That distinction is important and it underlines the need for a balanced approach that is underpinned by robust evidence.

Members mentioned the success of the mandatory schemes in England and Wales. The Scottish Government is interested in the impact of those schemes, but we believe that the right course of action is to assess the outcome of any formal evaluation of the schemes. There has been no formal evaluation to date and the Scottish Government will not draw conclusions based on headline figures without a more detailed understanding of whether the schemes have an impact on the number of deposits that are unfairly withheld.

It is also the case that there are considerably more landlords and agents in England and Wales to support the costs of a mandatory scheme. The schemes in England and Wales are self-financing. They rely on income from the interest that is accrued against the deposits that are held in the custodial scheme or from the fees that landlords and agents pay to join the insurance-based schemes. Clearly, there are risks to the Government in relation to whether a custodial scheme in Scotland could become self-financing.

The two insurance-based schemes in England and Wales charge fees that range from £58 to £1,600 for landlords and agents. We need to take into account the fees that landlords in Scotland already pay as part of the mandatory landlord registration scheme and for the licensing of houses in multiple occupation. We would be concerned to ensure that the costs were not passed on to tenants.

**Johann Lamont:** I am concerned that the minister suggested that the Government is

inhibited by the timescale for the evaluation of the schemes in England and Wales. Is it not possible for the Government to consult on a series of options? That would give the proposal momentum and drive it forward. The minister seems to be posing difficulties without offering solutions.

**Stewart Maxwell:** I will come to many other points, but the fact is that the scheme in England has not been formally evaluated. Many members said that it is a shining example that we should follow, but without a formal evaluation it is a bit early to say that.

The sustainability and financing of the proposed mandatory scheme in Scotland need to be assessed carefully in the light of the evidence on the extent to which there is a problem with unfairly withheld tenancy deposits in Scotland. The previous Administration shared that view. When Johann Lamont, in her role as Deputy Minister for Communities, gave evidence during the passage of the Housing (Scotland) Bill, she said:

"We will not introduce any scheme whose cost we consider disproportionate."—[*Official Report, Communities Committee*, 5 October 2005; c 2502.]

Housing issues in Scotland are different from those in the rest of the United Kingdom, so we need to look for the right solution for Scotland. Members will be aware that a number of initiatives are under way in Scotland with the aim of increasing standards in private rented accommodation. Those include landlord registration and the repairing standard, neither of which exists in England and Wales.

All landlords in Scotland letting to three or more unrelated people require an HMO licence. In addition, our new national landlord accreditation scheme gives us an opportunity to promote good practice across the board in relation to tenancy management in general and not just tenancy deposits. In particular, landlord registration allows local authorities to take account of any evidence that landlords or letting agents have unfairly withheld their tenants' deposits. I encourage any tenants who experience problems with their landlord to contact the relevant local authority landlord registration team. Local authorities have a range of powers to take action when they are concerned about a landlord's practice.

The recently launched national voluntary landlord accreditation scheme will also help to drive up standards by promoting best practice in private letting and by providing training, advice and support for landlords, including training on tenancy deposit management. Over time, those initiatives should help to tackle any landlords or letting agents who are found to have unfairly withheld their tenants' deposit. It is that holistic approach to improving standards in private renting

in the round—not just in tenancy deposits—that will make a difference in Scotland.

The Government is taking steps to gather evidence on the scale and nature of unfairly withheld deposits. We are working with a stakeholder group that is currently examining the issue in more detail. The group includes members from the NUS, Shelter, the Convention of Scottish Local Authorities, private landlords and others. The group agreed that it was important to develop an evidence base on the scale and nature of unfairly withheld tenancy deposits in Scotland.

**Johann Lamont:** I may have the wrong information, so will the minister clarify when the group last met and when it will meet again?

**Stewart Maxwell:** The group last met in June last year. A meeting was offered to the group in September, but its members decided that they could deal with the issues at hand through e-mail correspondence rather than a meeting. The correspondence was about the nature of the questions for the surveys. The findings from the surveys will be available later this year and will prevent the introduction of any scheme whose costs we consider disproportionate to the extent of the problem.

I will try to cover some points that were raised by members. Jim Tolson said that there was no clarity on tenancy deposit management in Scotland. I must disagree: national core standards are clear, and Landlord Accreditation Scotland will work to promote them through training, advice and guidance.

Johann Lamont asked about the timetable. As I have already said, the survey findings will be available later this year. The working group will consider them and take a view on the basis of the evidence.

Claire Baker covered a number of points in her remarks. I do not think that she was right that there is acceptance of a poor system. The purpose of landlord registration is to drive up standards and tackle poor practice. She also spoke about the previous Executive committing to introduce a scheme by 2008. That is not true. The previous Executive said that it wanted to examine the extent of the problem and that it would perhaps consult in summer 2008.

Claire Baker also said that, during the passage of the 2006 act, concerns were expressed about landlord registration not tackling the problem of withheld tenancy deposits. The Deputy Minister for Communities at the time advised the Communities Committee that the Executive would want to consider the impact of registration and other initiatives as part of its approach.

**Johann Lamont:** Will the minister give way?

**The Deputy Presiding Officer:** The minister is just winding up.

**Stewart Maxwell:** Jamie McGrigor said that there was only a 2 per cent dispute rate in England. That is true, but only two thirds of landlords have joined the scheme. I suggest that the good landlords have joined the scheme and that it is the fact that the bad landlords have not joined that has resulted in a low dispute rate.

It is clear that we do not have the full evidence that would allow us to proceed at the moment. The Government's approach is right for Scotland. We are collecting evidence on the scale and nature of unfairly withheld tenancy deposits in Scotland. We are also considering the viability of other options for improving deposit management, including existing good practice and the impact of initiatives such as landlord registration and the national voluntary accreditation scheme. That is the correct approach to take, and I believe that the stakeholder group that is considering the issue should examine all options suggested by members before making recommendations.

*Meeting closed at 18:29.*

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