



OFFICIAL REPORT
AITHISG OIFIGEIL

Meeting of the Parliament (Hybrid)

Tuesday 15 December 2020

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

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Tuesday 15 December 2020

CONTENTS

	Col.
TIME FOR REFLECTION	1
BUSINESS MOTION	3
<i>Motion moved—[Miles Briggs]—and agreed to.</i>	
TOPICAL QUESTION TIME	4
Brexit Negotiations (Update)	4
Drug-related Deaths	5
Policing (Financial Sustainability)	8
COVID-19	12
<i>Statement—[First Minister].</i>	
The First Minister (Nicola Sturgeon)	12
POINTS OF ORDER	32
DRUG-RELATED DEATHS	33
<i>Statement—[Joe FitzPatrick].</i>	
The Minister for Public Health, Sport and Wellbeing (Joe FitzPatrick)	33
HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL: STAGE 1	48
<i>Motion moved—[Humza Yousaf].</i>	
The Cabinet Secretary for Justice (Humza Yousaf)	48
Adam Tomkins (Glasgow) (Con)	54
Liam Kerr (North East Scotland) (Con)	58
Rhoda Grant (Highlands and Islands) (Lab)	62
John Finnie (Highlands and Islands) (Green)	65
Liam McArthur (Orkney Islands) (LD)	67
Rona Mackay (Strathkelvin and Bearsden) (SNP)	70
Ruth Maguire (Cunninghame South) (SNP)	73
Margaret Mitchell (Central Scotland) (Con)	75
Fulton MacGregor (Coatbridge and Chryston) (SNP)	77
James Kelly (Glasgow) (Lab)	79
Annabelle Ewing (Cowdenbeath) (SNP)	81
Liz Smith (Mid Scotland and Fife) (Con)	83
John Mason (Glasgow Shettleston) (SNP)	85
Alex Rowley (Mid Scotland and Fife) (Lab)	88
Richard Lyle (Uddingston and Bellshill) (SNP)	89
Shona Robison (Dundee City East) (SNP)	91
Rhoda Grant	93
Donald Cameron (Highlands and Islands) (Con)	95
Humza Yousaf	97
HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL: FINANCIAL RESOLUTION	103
<i>Motion moved—[Ben Macpherson].</i>	
DECISION TIME	104
NO-TAKE ZONES	109
<i>Motion debated—[Kenneth Gibson].</i>	
Kenneth Gibson (Cunninghame North) (SNP)	109
Claudia Beamish (South Scotland) (Lab)	113
Joan McAlpine (South Scotland) (SNP)	114
Peter Chapman (North East Scotland) (Con)	116
John Finnie (Highlands and Islands) (Green)	117
The Minister for Energy, Connectivity and the Islands (Paul Wheelhouse)	118

Scottish Parliament

Tuesday 15 December 2020

[The Presiding Officer opened the meeting at 14:00]

Time for Reflection

The Presiding Officer (Ken Macintosh): Good afternoon, colleagues. We begin business today with time for reflection. Our time for reflection leader is Alan Bellshaw, who is the community mission facilitator for the Salvation Army in Fauldhouse. Good afternoon, Mr Bellshaw.

Alan Bellshaw (Community Mission Facilitator, Salvation Army, Fauldhouse): Thank you, Presiding Officer.

When I was a boy in my hometown of Rothesay, we often spent time down at the harbour watching the boats come and go—especially the fishing boats, either as they were preparing to go out to sea or when they brought in their catch.

When there was a low tide or the tide was right out in the inner harbour, we used to watch as the fishermen cleaned the exteriors of their boats, and we wondered what they were doing. Then we noticed the barnacles that they were removing.

You may not have spent any time looking at or thinking about barnacles, but they are interesting creatures. A type of crustacean, they survive by attaching themselves to any solid surface, whether that be a rock, a wall, a fishing boat or a liner. They are almost immovable.

However, barnacles have a dark side. Removing them from the hulls of ships has a cost. As they accumulate on a ship's hull, the ship will travel more slowly in the water, burning potentially 40 to 45 per cent more fuel as a result. A cost has to be paid because of these creatures. For the fisherman, the barnacles contribute little but cost them a lot by causing unnecessary drag.

Christians believe that, rather than dragging others back, we are to be encouragers. In scripture, we read of a man named Joseph. So remarkable was his lifestyle that the disciples renamed him Barnabas, which means “son of encouragement”. Encouragers are givers. They build people up. They urge people to better and higher things. They express faith in people—they believe the best, see the best and draw out the best. That is who Barnabas was. He simply enjoyed the hidden reward that belongs to those who have built up the lives of others.

I do not believe that God is looking for barnacles—those who drag other people down.

Rather, he is looking for Barnabases—those who can be called sons or daughters of encouragement, who will be contributors to society and will build people up.

In this season of goodwill to all and, with all that we are facing in our country, never has it been more important to be a people who choose joy. The challenge for us all is this: will we be barnacles that drag people down, or Barnabases who build people up?

Business Motion

14:03

The Presiding Officer (Ken Macintosh): The next item of business is consideration of business motion S5M-23705, in the name of Graeme Dey, on behalf of the Parliamentary Bureau, setting out changes to this week's business.

Motion moved,

That the Parliament agrees to the following revisions to the programme of business on—

(a) Tuesday 15 December 2020—

delete

followed by Ministerial Statement: Managing Scotland's Fisheries in the Future

and insert

followed by Ministerial Statement: Drug Deaths

(b) Wednesday 16 December 2020—

after

2.00 pm Portfolio Questions:
Justice and the Law Officers;
Constitution, Europe and External Affairs

insert

followed by Ministerial Statement: BiFab Update

followed by Ministerial Statement: Supporting EU, EEA and Swiss citizens to Stay in Scotland

delete

followed by Scottish Government Business

delete

5.10 pm Decision Time

and insert

4.50 pm Decision Time

(c) Thursday 17 December 2020—

delete

followed by Ministerial Statement: Supporting EU, EEA and Swiss Citizens to Stay in Scotland

delete

6.05 pm Decision Time

and insert

5.05 pm Decision Time—[*Miles Briggs*]

Motion agreed to.

Topical Question Time

14:03

Brexit Negotiations (Update)

1. **Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** To ask the Scottish Government whether it will provide an update on the United Kingdom Government's Brexit negotiations and their potential impact on Scotland. (S5T-02593)

The Presiding Officer (Ken Macintosh): I call the Cabinet Secretary for the Constitution, Europe and External Affairs, Michael Russell, who joins us remotely.

The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell): Our understanding is that negotiations are continuing between the United Kingdom Government and the European Union, with significant differences remaining in relation to the level playing field and fisheries. Throughout the Brexit process, we have sought meaningful engagement in order to ensure that Scotland's interests are protected, but, unfortunately, that has not been forthcoming.

That remains the case even at this endgame stage, in which we are largely unsighted on process and on progress, or any lack thereof. Engagement with the UK Government, especially at ministerial level, tells us little beyond what we already know from the media. We have had no ministerial engagement since the last joint ministerial committee, which was on 3 December.

By the Prime Minister's own admission, the chances of a no-deal outcome are increasing. That would be absolutely catastrophic for Scotland and must be avoided, but I should make clear that even if a deal can still be secured, it will be a very low deal, which will represent an extremely hard Brexit. It will, for example, take Scotland out of the single market and customs union, and it will end freedom of movement, hitting jobs and living standards hard. Our modelling of the basic trade agreement of the type that the United Kingdom Government wants to negotiate finds that, by 2030, Scottish gross domestic product is estimated to be 6.1 per cent lower than if we continue European Union membership. That equates to a loss of £1,600 per person in Scotland. Of course, the impact of no deal would be even worse.

Stewart Stevenson: Like the cabinet secretary, I am appalled that, since 1 December, the Scottish ministers have not been engaged in the endgame of a very difficult set of negotiations—they were made difficult by the Tory Government.

I understand that agreement on participation in the Erasmus+ scheme post-Brexit has failed to be reached. Can the cabinet secretary tell us about the prospective impact on students, at a time when we are told that we will have to build new relationships and trade with countries across the world?

Michael Russell: The Scottish Government has always been clear that full association with Erasmus+ is in the best interests of Scotland. Wales and Scotland have argued on every occasion that if the UK Government decides not to proceed with Erasmus, Wales and Scotland should proceed with the scheme. It supports not only our universities and colleges but school sports and youth and community groups with mobility exchanges with other countries in Europe. Taking part is a transformational experience, and Scotland has done very well out of the scheme. It would be mad not to proceed with it, but if that is the UK Government's decision it would be madder still to try to prevent Scotland and Wales from taking part.

Stewart Stevenson: In 1931, my mother was the beneficiary of a scheme that took her to study in France. It looks as though today's generation will not be as fortunate as my mother was, 90 years ago.

With only a few days to go before the end of the transition period, we are being left in the dark. Does the cabinet secretary share my concern about the serious effect that that will have on students' and communities' futures?

Michael Russell: I understand that. One of my predecessors as president of the Scottish National Party, Winnie Ewing, was a prime mover in Erasmus as it was getting under way in its previous incarnations. We really need to get clarity on this, and let us hope that that clarity means that Erasmus will continue.

To damage the opportunities of our learners and young people, to threaten to diminish their life experiences and to undermine our institutions' ability to secure the funding that is needed to support their ambitions would be mad. Institutions that take part in Erasmus need time to prepare, and the situation has already been deeply damaging to them. I hope that the UK Government is listening on this issue, although it seems to be listening on nothing else.

Drug-related Deaths

2. Monica Lennon (Central Scotland) (Lab): To ask the Scottish Government what action it is taking in response to the National Records of Scotland publication, "Drug-related deaths in Scotland in 2019", in order to prevent further drug-related deaths. (S5T-02588)

The Minister for Public Health, Sport and Wellbeing (Joe FitzPatrick): First, I convey my condolences to the families, friends and loved ones of the 1,264 people who have lost their lives. Each death is an untimely tragedy.

The drug deaths situation that we face is a public health emergency, and tackling it remains a priority for me and for the Government. The drug deaths task force recently published its forward plan, which sets out the longer-term interventions that we are putting in place to tackle the problem. I will provide a further update to the Parliament in my statement this afternoon.

Monica Lennon: On behalf of Scottish Labour, I express sorrow for all the lives that have been lost and send our condolences to the bereaved. Today, we remember the people behind the statistics. They died because they were failed by decision makers and failed by the system.

The minister's response was far from good enough. Time and time again, the Scottish Government was warned—by dozens of organisations—that it must properly fund treatment and recovery services, but it delivered real-terms cuts. Calls for bold and urgent action have not been acted on.

How can the minister say in his press release today that the Scottish Government is doing everything in its power, when residential rehab beds are lying empty? How can he say that he is doing all he can, when he has snubbed volunteers running an overdose prevention centre in Glasgow? Last year's figures revealed that Scotland's drug death rate was the highest in the world; even more people have died since then. Does he accept responsibility for that devastating increase?

Joe FitzPatrick: I am the minister with responsibility, so yes, I accept responsibility for the actions that I am taking. In the past two years, we have taken considerable action to improve the service. The suggestion that I am not listening to wider stakeholders is not based on fact. Since being appointed to my post, I have taken great care to listen to people across Scotland with lived and living experience and to those who are on the front line in this public health emergency.

The member implied a cut in funding, but the fact is that, since 2015-16, there has been a 27 per cent increase in funding, up to £95.3 million now. Every year since I have been in post, I have been pleased that the Government has announced an increase in the budget for this area of work. Last year, there was an additional increase to support the work of the task force.

As the member says, every single one of those deaths is a tragedy, and we need to continue to look at how we can work differently to turn the

numbers around and avoid such unnecessary deaths.

Monica Lennon: I know from family experience that the first step towards recovery from addiction is to recognise and admit that there is a problem. However, what we are hearing from the public health minister still sounds to me like denial. The figures today reveal a dreadful record of what has occurred on Joe FitzPatrick's watch. There is still no radical plan, no urgency, no humility and no ambition for reversing the trend any time soon. The public needs to have confidence in the public health minister to lead us out of this human rights tragedy. The shocking statistics and his woeful response give us none.

The minister may have tried his best, but it is not good enough. I am sorry to say it, but I believe that his time is up. Will he please do the decent thing, resign, and make way for fresh leadership?

Joe FitzPatrick: I thank the member for her comments. I have heard her views. Fortunately, I have great confidence that, across Scotland, many of the people who work at the front end of this public health emergency take a different view and continue to work really hard to turn this around. It is easy to call names and personalise; I am disappointed that it has come from Monica Lennon. While I expect it from others on the Labour benches, I do not generally expect it from her.

The figures are a tragedy. I will leave it there.

Shona Robison (Dundee City East) (SNP): My thoughts are with the families and loved ones affected—this will be a really tough day for them in particular.

In Dundee, 56 of the 72 recorded deaths have been attributed to the use of street Valium—that is almost four out of five drug-related deaths in the city. Clearly, the increasing use of benzodiazepines is one of the primary causes of drug deaths in Dundee. Can the minister say what action has been taken to tackle the manufacture and distribution of benzodiazepines, alongside the general issue of stopping the increased use of street Valium?

Joe FitzPatrick: We think that a key reason behind the numbers is the availability of those drugs and their extremely low price, coupled with the unknown content and potency of the substances used to make the tablets. I will shortly make a statement to the chamber in which I will set out a bit more detail on the specific actions that we are taking on that matter.

Miles Briggs (Lothian) (Con): Today is another sad day for Scotland, but the facts speak for themselves. Over the past 13 years, £47 million has been cut from drug and alcohol partnerships

and more than 300 rehab beds across Scotland have been lost. We are asking ourselves how we have got to this point.

The Parliament is increasingly losing confidence in the Government's drug deaths task force. Will the minister agree to an urgent cross-party summit on the issue? We have to do something about it, because another year with another 6 per cent rise is totally unacceptable.

Joe FitzPatrick: I regularly meet members from all parties who want to engage on the matter. The truth is that some of the figures that Mr Briggs mentions do not stand up to proper analysis. In relation to rehab beds, I urge members to look at the work of the rehab working group led by Dr David McCartney, which is a robust piece of work that is helping us to consider, as we said in our strategy, how to improve access to rehabilitation.

The Presiding Officer: A number of members have indicated that they wish to ask a question now, but they are all due to ask a question on the drugs deaths ministerial statement later, so they will get their chance then.

Policing (Financial Sustainability)

3. **Liam McArthur (Orkney Islands) (LD):** To ask the Scottish Government what its response is to the Auditor General's report stating that policing in Scotland is "not financially sustainable". (S5T-02591)

The Cabinet Secretary for Justice (Humza Yousaf): Scotland is well served by its police service, and the service's key role in keeping communities safe has been highlighted by the Covid-19 pandemic. All members will acknowledge that.

There is much in the Auditor General's report that is to be welcomed. It recognises the improvements and progress across organisational leadership, capacity, governance, financial planning and management, and that the Scottish Police Authority has built on the progress that was highlighted in last year's report.

Despite the constraints on Scotland's public services from a decade of United Kingdom Government austerity, our investment in policing this year has increased by £60 million, to more than £1.2 billion. We have also given the SPA an additional £8.2 million to mitigate the impacts of Covid-19 on the policing budget.

Future policing requirements will be considered as part of the budget process. We will continue to support the SPA to address the findings of the report, and we will work closely with the SPA and Police Scotland to consider options to address the challenge of financial sustainability.

Liam McArthur: The cabinet secretary is right that Scotland is well served by its police officers and staff, but Audit Scotland's latest report leaves the SPA's aim of achieving financial balance by 2020-21 in tatters. To make matters worse, Audit Scotland warns that without significant action the deficit is set to increase. Dealing with Brexit, Euro 2020 and COP26—the 26th United Nations climate change conference of the parties—all while policing a pandemic means that next year could be the busiest ever for Scotland's police force.

The challenges are new, but the financial problems are not. There have been bailouts ever since Police Scotland's inception, so at what point does a bailout just become the budget?

Humza Yousaf: I will refresh Liam McArthur's memory on a couple of things. One is that outcomes are hugely important to people; of course we will continue discussions on the finances of Police Scotland, but the outcome from Police Scotland's hard work and endeavour is a fall in crime over the past decade, including a fall in violent crime, which has almost halved.

There have been other positive outcomes; for example, sexual offences, including rape, have been investigated to a consistent level and in a consistent way across Scotland, which was not the case prior to Police Scotland's inception. Those are not my words—that is what many stakeholders who are experts on the issue say. The outcomes from Police Scotland are indisputable, and have been positive right across the board.

I hear what Liam McArthur says about funding. I have no doubt that the Cabinet Secretary for Finance will engage with the Liberal Democrats in good faith when it comes to the budget process, so the points that Liam McArthur makes about finances can be taken up during it.

Liam McArthur: The cabinet secretary will be aware that one of the areas of exponential growth in pressure on Police Scotland is in relation to mental health. Officers often spend entire shifts accompanying vulnerable people at accident and emergency departments. Although they are not best equipped for that role, police are being left to pick up the pieces from Scotland's mental health crisis. Because 85 per cent of revenue expenditure is on staffing, that use of time puts huge pressure on police resources.

The cabinet secretary will be aware that Scottish Liberal Democrats have long campaigned for more mental health professionals to be based in A and E departments and police stations, but roll-out so far has been sluggish. Of the 800 new workers who were promised by the Scottish Government, police stations have had only an additional 12.

When will police stations have their fair share of those workers to help with that burden?

Humza Yousaf: I do not accept Liam McArthur's characterisation of the work as "sluggish". He knows that our "Mental Health Strategy 2017-2027" outlines our commitment to funding 800 additional mental health workers in key settings by 2021-22. We are making good progress and are on course to deliver that commitment; as of July, 485 whole-time equivalent mental health posts had been recruited. I am certain that the figure will now be higher. We are at 60 per cent of the target and there is still time to go.

As for the numbers who are recruited for police stations, although we have committed to providing funding for 800 additional mental health workers—to which action 15 of the "Mental Health Strategy 2017-2027" commits us—workforce planning is conducted by integration authorities according to their population's needs. If Liam McArthur thinks that more mental health workers should be in X, Y or Z custody setting, he should make that known to the relevant local integration authorities, and we can take up that conversation.

Progress on action 15—to recruit mental health workers—has been positive. There is still a way to go to meet the commitment in 2021-22, but I am certain that more such workers will be recruited to police custody settings.

Liam Kerr (North East Scotland) (Con): Audit Scotland's report said that Police Scotland has had to rely on existing resources to finance change. The Angiolini report noted that budgetary constraints prevented procurement of body-worn cameras. Will the Scottish National Party commit to providing funding to roll out those cameras?

Humza Yousaf: We increased Police Scotland's funding by £60 million in the previous budget, which was £10 million more than the Conservatives asked for. On body-worn cameras, decisions on spending of capital funding that we provide are, ultimately, operational decisions for the chief constable. If he makes it clear in budget discussions that he would like money for body-worn cameras or any other initiative, that will be considered.

The chief constable, the interim chair of the SPA and I have met the finance secretary twice, and we plan to meet again in the new year, so the budget discussions are well under way. Discussions will also continue with the Conservatives, and if they believe that funding for body-worn cameras should be part of the financial settlement, we will engage in good faith.

Rhoda Grant (Highlands and Islands) (Lab): Like Audit Scotland reports of the past, the current report highlights the lack of workforce planning.

Police Scotland faced a cut of 750 officers last year, but they were saved by an 11th hour reprieve because of Brexit. Will the force face that cut in officers in the coming year? If so, will the officer numbers be sustainable?

Humza Yousaf: I am not sure that I accept the characterisation of the situation as a last-minute “reprieve”. It was always the case that the Government said that it would cover a budget deficit, which allowed the chief constable to make the operational decision to maintain additional police numbers at more than 1,000.

It is important to note that, while the Government has been in power, more than 1,000 additional police officers have been recruited. Because of the funding that we have provided and the assurances about the budget deficit, which we have a long-term plan to reduce, Police Scotland has been able to maintain the 1,000 additional officers. As I said, the budget discussions for 2021-22 continue, but I see no reason why officer numbers would be reduced, particularly given the pressures that there will be on policing in the next 12 months.

Rona Mackay (Strathkelvin and Bearsden) (SNP): The Auditor General’s report shows that progress has been made despite a decade of UK austerity, but there is uncertainty because of the coronavirus, and Brexit has hampered efforts. What additional policing costs have been incurred because of the risks that are associated with European Union withdrawal?

Humza Yousaf: Police Scotland has devoted significant resource and time to managing operational impacts on policing and the wider justice system from Brexit. The Scottish Government continues to work closely with the SPA and Police Scotland on planning for the consequences of EU exit by working through the operational and financial implications. As I said, the additional £60 million of funding that we gave the SPA in this year’s budget has allowed police officer numbers to be maintained throughout the year.

However, Brexit not only has financial impacts; it has real-life community impacts. Brexit will mean that Police Scotland has no access to the European arrest warrant, which has helped to catch criminals who have absconded and fled overseas. It will mean that it has no direct access to the Schengen information system, which gives it alerts about people in Scotland who are wanted in, or missing from, other countries. Those operational tools are important to keep our communities safe; the real impact on justice, home affairs and policing will be felt in our communities.

Covid-19

The Presiding Officer (Ken Macintosh): Our next item of business is a statement from the First Minister, Nicola Sturgeon, on Covid-19. The First Minister will take questions after her statement. I encourage all members who wish to ask a question to press their request-to-speak button.

14:24

The First Minister (Nicola Sturgeon): Earlier today, the Cabinet concluded the weekly review of the levels of protection for each local authority area. I will shortly confirm the outcome of that review in detail. However, in summary, I can confirm that no local authority will move to level 4 this week. However, three local authorities that are currently in level 2 will move to level 3 from Friday. All other local authorities will remain in the same level as they are now.

I had previously indicated that this week’s review would be the last one before Christmas, with the next scheduled review taking place on Tuesday 5 January. However, in light of the rising or volatile case numbers being recorded in some parts of the country, I can confirm that this morning, the Cabinet decided, as a precaution, to review the levels again next week. I have also asked the Minister for Parliamentary Business and Veterans to work with the Parliamentary Bureau to agree contingency arrangements so that, if we require to increase the level of protection in any area over the recess period, we will be able to notify Parliament accordingly.

I will turn now to the context of this week’s review and then to the outcome of it. First, I will give a brief summary of the latest statistics. The total number of positive cases that were reported yesterday was 845. That represents 7.4 per cent of all tests carried out and takes the total number of cases to 107,749. There are currently 996 people in hospital, which is a decrease of 16 from yesterday. There are 45 people in intensive care, which is a decrease of one from yesterday. I am sorry to say that, in the past 24 hours, a further 24 deaths have been registered of patients who first tested positive for Covid over the previous 28 days. The total number of deaths under that measure is now 4,135. Those figures remind us once again of the grief and heartbreak that the virus is causing. Once again, my deepest condolences go to all those who have lost a loved one.

Today’s statistics, behind which are real people, provide an important and difficult context for today’s review. In recent weeks, the levels of protection that have applied across the country have helped to reduce prevalence of the virus. I

reported last Tuesday that, in the space of three weeks, the number of cases in the population had fallen from 142 per 100,000 to 99 per 100,000. However, over the most recent week, we have seen a slight rise in case numbers—from 99 per 100,000 to 110 per 100,000. Test positivity has increased from 4.8 per cent to 5.3 per cent.

Although we remain in a much better place than where we were in late October and early November—and, as of now, in a better position than many countries—the most recent data reminds us that our situation, like that of other countries across the UK and Europe, remains precarious.

It is also appropriate for me to update Parliament today on what we know so far about the new variant of Covid that has been detected in the United Kingdom. I have now been advised that, through genomic sequencing, nine cases of the new variant have been identified in Scotland. All those cases were from Greater Glasgow and Clyde. It is important to stress that there is no evidence at this stage to suggest that the new variant is likely to cause more serious illness in people. Although the initial analysis of it suggests that it may be more transmissible, with a faster growth rate than existing variants, that is not yet certain. Instead, it may be the case that the variant has been identified in areas where the virus is already spreading more rapidly. Further analysis will be necessary to understand the new variant better, and that analysis is being conducted through Public Health England.

In the meantime, we are considering whether any additional precautions are necessary in light of what we know so far, including whether there should be any change over the Christmas period because of the new variant or the wider context. I will discuss all that later this afternoon with the other UK Governments in a four-nations call that we requested yesterday. I will, of course, keep Parliament updated on any changes.

Everything that I have just reported makes the context for this week's review particularly challenging and underlines the need for continued caution. Before I confirm the outcome of the review, though, let me also inject a more positive note. The vaccination programme is now under way in Scotland. Last week, health and care staff started to receive the vaccine and, yesterday, the first care home residents were vaccinated. I can confirm that we will publish the first of our new weekly progress reports on the vaccination programme tomorrow.

We believe that, over the course of next year, vaccines will allow us to return to a much greater level of normality. As we have reflected previously, there is light at the end of the tunnel. However, as I said a few weeks ago, the road ahead of us may

still have dips in it and, at times, that means that the light will be hard to see. The next few weeks may well be one of those dips in the road. However, even if it is obscured at times, we must remember that the light is definitely there and that we will get through this.

I now turn to today's decisions, which have, as always, been informed by input from the national incident management team and our senior clinical advisers. As our strategic framework requires, we have assessed the level of restrictions against all four of the harms that Covid causes: the immediate health harm of the virus; the wider impact that it has on our health service; the social harms that are caused by restrictions; and the economic damage to people's livelihoods that is caused by the virus and our measures to suppress it.

As part of that assessment process, we consider the data for each local authority very carefully. However, we also, by necessity, apply context and judgment to that data. Our decisions are not arrived at via a simple algorithm or on the basis of indicators alone. We require to take account of other factors including whether the number of cases is rising or falling in a given area, and the wider risks of transmission that might arise from, for example, the festive period. We then reach cautious and balanced judgments that, in our estimation, are most likely to minimise the overall harm of the virus.

Given the overall context to our decisions this week, which I have set out, care and caution continue to be essential. As a result, I can confirm that all 18 of the local authorities that are currently at level 3 will remain at level 3. Although we still see progress across much of the central belt as a result of the recent level 4 restrictions, there are some areas—for example, East Ayrshire, North Ayrshire and Fife—where the number of cases has increased quite sharply in the past week. Although the changes in those areas do not warrant a move to level 4 at this stage, we will monitor the situation very closely over the next few days.

I turn specifically to the situation in Lothian. Last week, I confirmed that the City of Edinburgh Council and Midlothian Council areas would remain in level 3. That decision was subject to considerable scrutiny—understandably so—given that the raw indicators suggested that those areas should be at level 2. However, having observed an increase in the number of cases in the days leading up to last week's decision, and after applying our wider judgment, we concluded that easing restrictions would not be sensible. Unfortunately, the continued rise in the number of cases since then suggests that that was the right decision, although I understand how difficult it

was, and is, for the people and businesses that are most affected by it.

In the past week, case numbers in the City of Edinburgh Council area have increased by more than 40 per cent, from 70 cases to 100 cases per 100,000 of the population. The numbers in Midlothian have risen even more sharply, from 88 cases to 147 cases per 100,000 people. Test positivity has also increased in both areas.

Therefore, our judgment remains that it would be deeply irresponsible to ease restrictions in either Edinburgh or Midlothian at a time when the number of cases is rising sharply. Instead, our focus, and that of local partners, must be on encouraging maximum compliance with the restrictions to assure ourselves that, in the period ahead, level 3 is capable of containing and reversing the increase.

To complete consideration of Lothian, I turn to East Lothian. Case numbers there have increased by more than 50 per cent in the past week, from 69 cases to 126 cases per 100,000 people, and that is on top of increases over the previous two weeks. Unfortunately, therefore, and with obvious regret, the Cabinet has decided that East Lothian will move back to level 3 from Friday. That is a difficult but essential decision to seek to avoid a further deterioration in the situation and to keep people across Lothian as safe as is possible.

I can confirm that the Aberdeen City Council and Aberdeenshire Council areas will also move from level 2 to level 3 from Friday. As I have reported to the Parliament, we have been monitoring the situation in both areas very closely, and we have concluded that tougher restrictions now need to be applied. In the past week alone, case numbers in Aberdeen have increased by more than 50 per cent, from 76 cases to 122 cases per 100,000 people. Case positivity has also increased from 3.9 per cent to 6.1 per cent.

The increase in Aberdeenshire has not been quite as sharp as the increase in the city, but the number of cases is still rising. It is therefore our judgment that level 3 restrictions are necessary to bring the situation in Aberdeen and Aberdeenshire back under control.

I know that the move to level 3 for East Lothian, Aberdeen and Aberdeenshire, and the continuation of level 3 in many other areas, involves real and continued difficulties for many people and businesses, particularly those in the hospitality sector. However, in our view, these measures are essential to get and keep the virus under control.

It is also worth pointing out that we are not alone in Scotland in facing these challenges now. In large parts of England, hospitality is closed completely, and the whole of Wales is now under

restrictions that are similar to our level 3. Further afield, many countries across Europe are reimposing lockdowns as the winter months start to take their toll.

However, I know that that brings no comfort to those who are directly affected, so it is essential that Government continues to do all that we can to provide support. In addition to existing packages of support, last week the finance secretary set out a further package of business support, which is intended to provide extra help over the winter. I encourage all eligible businesses to make full use of that.

The other councils that are currently in level 2 will remain there this week. Those are Angus, Argyll and Bute, Falkirk and Inverclyde. I am pleased to report that the situation in Inverclyde has remained broadly stable. However, there have been recent increases in cases in Angus and Falkirk. We will be monitoring both those areas very carefully over the next week, and I cannot rule out a return to level 3 for one or both of them.

Finally, I will say a word about Argyll and Bute. Last week, we reported a very sharp rise in cases there, but we concluded that that was down to a particularly large outbreak in one workplace, rather than wider community transmission. That conclusion seems to have been validated this week, as case numbers have now fallen again by more than 70 per cent. That is in line with what we expected and hoped for, given the previous low rates across Argyll and Bute. However, although that is positive, the clinical advice is that we should allow a transmission cycle to fully elapse before moving the area to level 1. That will allow us to ensure that there has been no wider transmission from that workplace outbreak. I can therefore confirm that Argyll and Bute will remain in level 2 this week, but, assuming no adverse change to the situation, it is likely to move to level 1 next week.

There is one change that we will make this week, though, in recognition of the geographic diversity of Argyll and Bute. We will apply the same household rules that currently apply in some other islands to the outer Argyll islands—Islay, Jura, Colonsay and Oronsay; Coll and Tiree; and Mull and Iona, and the neighbouring islands of Ulva, Erraid and Gometra. That means that, from Friday, people on those islands will be able to meet in houses in groups of up to six, from a maximum of two households.

However, I take this opportunity to remind people in the rest of the country that staying out of one another's homes, while incredibly difficult, is the most important and effective way of limiting the spread of the virus.

Finally, I confirm that the Highlands, Moray, Orkney, Shetland, the Western Isles, Dumfries and Galloway and the Borders will all remain in level 1.

I also confirm that, during the next two weeks, we will use the experience of the levels system to date to consider whether the specific restrictions in each level remain adequate or require amendment in any way.

Broadly speaking, we think that the levels approach has worked well. However, we know that the winter period will put it under greater pressure—indeed, it is already doing so. We also know—we see this in some of the data that I have reported today—that case numbers are rising in some areas despite level 3 restrictions having been in place for some weeks. Therefore, the time is right to review the system, and I will report the outcome of that review to Parliament after Christmas recess.

I am aware that the outcome of today's review, and its wider context in Scotland, across the UK and in Europe, is difficult. We have been reminded again in recent days that Covid still presents a real risk—not only for us, but for countries around the world. Over the weekend, we saw Germany and the Netherlands announce extended lockdowns, and of course it has been confirmed that, from tomorrow, the whole of London will enter England's highest tier of protection, which includes full closure of hospitality.

Vaccination undoubtedly holds out a genuine hope for a return to something closer to normality in, I hope, the not-too-distant future. However, that point is not quite here yet. For the moment, all of us need to do everything that we can to limit the opportunities that we give the virus to spread.

Most of us will now be thinking ahead to plans for Christmas. As I said, there will be a four-nations discussion later today to take stock of recent developments, and I think that that is right and proper. However, for now, I urge the utmost caution.

If you can avoid mixing with other households over Christmas, especially indoors, please do. If you feel that it is essential to meet—and we have tried to be pragmatic in recognising that some people will feel that way—please reduce your unnecessary contacts as much as possible between now and then and follow all the sensible rules and mitigations.

For all that the past 10 months have been difficult, I know the next few weeks are likely to be the toughest part of the whole experience so far for many of us. The thought of staying away from loved ones over Christmas is difficult for any of us to bear. I hope that, by this time next year, all of this will be starting to fade into a bad memory and

we will be looking forward to a much more normal Christmas. There is no doubt that the best gift that we can give our family and friends this year is, if at all possible, to keep our distance, meet outdoors, if at all, and keep one another safe.

It remains essential for all of us to stick to the current rules and guidelines. The vast majority of us, with some exceptions for island communities, should not meet in other people's houses. That is hard but necessary. If you have been dropping your guard on that recently, I ask you to think again. If we meet outdoors, or in public indoor places, we must stick to the limit of six people from a maximum of two households. Travel restrictions continue to be vital. Nobody who lives in a level 3 area should travel outside their local authority area unless that is essential; people from other parts of the country should not go into level 3 areas unless that is essential.

Finally, remember FACTS, the five rules that will help to keep us all safe in our day-to-day lives: wear face coverings; avoid crowded spaces; clean your hands and hard surfaces; keep to a 2m distance; and self-isolate and get tested if you have symptoms. Sticking to those rules now remains the best way for all of us to protect one another. By doing so, we will help to keep ourselves and our loved ones safe; we will help to protect the national health service; and, most of all, we will help to save lives.

This year has been unremittingly horrible for everyone, but it has nevertheless reminded us what matters most: health, family, community and love. Let us hold on to all of that, and to a determination to keep one another safe, as we prepare to celebrate this difficult and different Christmas.

Ruth Davidson (Edinburgh Central) (Con):

This year has been difficult for us all, and, despite what we all hoped, the transmission rates that the First Minister has outlined make it clear that the virus is not about to let up over Christmas. There is no room for complacency. Although the guidance allows for greater contact between households, we should all do our bit to limit its spread by being suitably cautious over the festive period.

This week has seen the encouraging sight of the first Covid vaccines reaching care home residents. We all want delivery of the vaccine to continue smoothly, so that it reaches the most vulnerable people as quickly as possible. There are still some questions, and we hope to see more of the Government's plans published before Christmas.

The friends and families of vulnerable care home residents will be keen to hear the First Minister answer a specific question. If a resident cannot consent to receiving the vaccine or does

not have the capacity to give that consent, what processes are in place to ensure that the vaccine can be delivered without undue delay?

The news of a new strain of the virus is a cause for concern for many people just as we are starting to see the light at the end of the tunnel. The First Minister had a briefing on that development from the chief medical officer yesterday. We are just learning about the new strain, and we appreciate that researchers may not yet have all the necessary details, but will the First Minister go beyond her statement to update Parliament on the work that is being done to assess its virulence, its likely transmission rate and any new features of its symptoms and severity?

The First Minister: Regarding the first question, when vulnerable people in care homes or in other settings cannot consent to the vaccine, the normal arrangements for powers of attorney and for adults with incapacity apply. It might be helpful if I ask clinical advisers to set that out in writing for members and to place that information in the Scottish Parliament information centre so that, if members are contacted by constituents or their families, they will have that information to hand. By way of assurance, I advise that those issues are taken into account every year with the roll-out of the flu vaccine and other vaccination programmes or health interventions.

On the new strain of the virus, it is important to say that we must take it seriously, but it is equally important to say that none of us should prematurely overreact. The briefing that I had yesterday from the Chief Medical Officer, which was supplemented later yesterday and today with the latest information that we have from genomic sequencing work in Scotland, is, as I set out in my statement, that nine cases of the new variant have been identified in Scotland thus far. As far as I am aware right now, those date back to the latter part of November and into December, but we are still awaiting information on the time series of those cases and whether there are any connections between them, as well as any other information that the researchers and scientists consider to be relevant.

It is important to say that none of what is currently known about the new variant is absolutely certain. The briefing that I have had, which I think has been replicated in the information given by the UK Government, is that—this is an important reassurance—there is nothing to suggest that the new variant results in more severe illness in people. There has been a suggestion from initial analysis that the variant of the virus might transmit more effectively and quickly than existing variants, but it is important to say again that that is not yet certain. It might be instead that the variant has been identified in parts

of the country—in England that is London and the south-east, and in Scotland it is Greater Glasgow and Clyde—where the virus is already spreading more rapidly, which is giving the impression that the new variant is faster at spreading.

It will take further analysis to answer those questions more definitively. I am not going to try, from a non-clinical perspective, to set out exactly how that analysis is done, but samples of the new variant are being further analysed. They have to be cultured, then analysed and compared to others. That work is being taken forward through Public Health England. It is hoped that we will get more information over the coming days and—I would hope—before Christmas. When we do, I will, of course, set that out to Parliament.

Richard Leonard (Central Scotland) (Lab): I am sure that the First Minister will be aware of research published in *The Lancet* this morning that showed the much higher and disproportionate incidence of Covid-19 admissions to critical care units among patients from more deprived areas of Scotland. It also found a significantly higher incidence of Covid-related deaths in those areas. The research cited factors such as

“the financial necessity to continue working ... the nature of employment ... Public transport may pose a significant risk”,

and it pointed to poor housing and crowded accommodation—all synonymous with poverty and none a matter of choice. How seriously is the Government taking the unequal impact of Covid-19 on those in Scotland who are living in the deepest poverty? We know that the roll-out of the vaccination programme rightly reflects age and occupation, but, in the light of today's findings, will the First Minister give higher priority to people living in Scotland's areas of highest deprivation, and will she both make available and promote the vaccine accordingly?

The First Minister: I will come on to the specific questions about the vaccine in a moment, because there are well-understood processes for deciding prioritisation within any vaccination programme. However, on the broader issues, I am aware of the research that was published in *The Lancet*. Those findings are not new. We have been aware for most of the past 10 months that the virus has a disproportionate impact on people living in deprived areas and that it also has a disproportionate impact when it comes to people becoming seriously ill, being hospitalised, going into intensive care and perhaps dying.

What have not been fully understood, and what we are still developing our understanding of, are the reasons for that. That is true also of the impact in some of our black, Asian and minority ethnic communities. The developing understanding suggests that it is less to do with clinical issues

and more to do with societal circumstances that are exactly the factors that Richard Leonard alluded to: housing conditions and the broader conditions in particular areas.

A lot of work is going on as we continue to try to understand that, but, right from the start of the pandemic—or almost from the start—we have tried to factor those issues into our responses. Much of the work that we have done to provide additional financial support has been geared towards those living in poverty and conditions of deprivation. In short, we take the issues extremely seriously, as we do all aspects of the virus, and we will continue to ensure that our response is both tailored accordingly and flexible as our understanding of all those factors continues to develop.

My answer to the vaccine question is probably slightly more complicated. The Government does not decide unilaterally what the order of priority for vaccination is; we follow the recommendations of the Joint Committee on Vaccination and Immunisation. That is the case for all vaccination programmes, and it is the case for the Covid vaccination programme. The committee has put forward an order of priority that is based on clinical risk, and the first group is all populations over the age of 50. It is estimated that, by the time they are vaccinated, more than 90 per cent of preventable deaths will have been covered.

Again, I am not going to go too deeply into clinical territory, because I am obviously not a clinician. However, one of the reasons for that is that, although we appear to know that the vaccines suppress illness in people who are clinically most at risk—certainly, we know that about the one that has been authorised so far—we do not yet understand their impact on transmission from one person to another. That is another reason why we have to carefully follow the recommendations that are put forward by the experts. Of course, we will continue to promote uptake of the vaccine among the eligible groups, and we will continue to adapt our programme should the scientific advice suggest that that is appropriate.

Patrick Harvie (Glasgow) (Green): When much of the country was put into level 4, the First Minister told us that that was being done in order to reduce the rate of infection so that many people could hope to have something approaching a more normal Christmas. However, instead of waiting to find out whether those measures were effective, the Governments of the four nations committed in advance to the Christmas relaxation, a decision that the editors of the *Health Service Journal* and *BMJ* have today said was “rash” and “will cost many lives”. Now that we are seeing an increase in infections again, fully a week and a

half before Christmas and a week before the Christmas relaxation comes in, does it not look pretty clear that the editors of those health journals are right? When the First Minister joins that four-nations call about the review of the Christmas relaxation, what position will she advocate on behalf of the Scottish Government?

The First Minister: I will say a couple things in response to that. The level 4 restrictions have reduced prevalence of the virus. Most of the areas that came out of level 4 last week are the areas where the declines in case numbers have been most significant. Obviously, as we ease restrictions, we give the virus more opportunity to spread, which is why, perhaps counterintuitively, we need to take greater care as restrictions ease, not less.

People have different views on what we should do over Christmas. I do not think that the decision was rash. I cannot speak for others but, from my point of view, it was not rash. It was carefully considered and agonised over—as I have said before, these decisions are always agonised over, because they are not straightforward. There is no easy answer and there is no black and white, absolute right or wrong. In our actions against the virus, it is important that we retain the ability and the willingness to be flexible on everything. That is hard for people who want certainty. It is a natural human instinct to want as much certainty as possible, but that is a very hard thing to give people right now.

This might not continue to be the case, but right now the rise in cases in Scotland is less severe than it is in parts of England and certainly less severe than it is in Wales. Nevertheless, we see signs, again, that the virus has not gone away. Yesterday we had the news about the new variant. As I said earlier, we should not overreact to that or get ahead of ourselves, but we should nevertheless consider whether it should lead us in the direction of any more precautions. For those reasons, it is sensible to have the four-nations call to consider what the options are. We requested the four-nations call yesterday, in the wake of the news about the new variant, and I am pleased that it is taking place later this afternoon.

I am not going into the call with a fixed view, because it is important that we have that discussion across the four nations, given family patterns across the United Kingdom, but there is a case for us looking at whether we tighten the flexibilities that were given, in terms of duration and numbers of people meeting. I will consider the views of the other nations. If we can come to a four-nations agreement, that would be preferable. If that is not possible, the Scottish Government will consider what we think is appropriate. Of course, I

will update Parliament as soon as there is anything to update Parliament on.

Willie Rennie (North East Fife) (LD): There are now only 10 days left before Christmas, so if the First Minister has an idea about what she will propose this afternoon, it would be helpful if she could alert the public, many of whom will have long journeys planned for then. I can understand why she might not want to take a fixed position but, regardless of whether she wants to tighten her proposals for Christmas or do otherwise, I hope that she will understand that further indications would be helpful for people.

Today, we have heard further alarming indications about the virus, and we have also seen outbreaks in care homes where there is an absence of information about the other drivers and sources of the spread. People need more details about the current form of the threat. What more can the First Minister tell us about what the incident management teams are telling her, so that people can respond to that threat appropriately?

The First Minister: I assure Willie Rennie that I am acutely aware of how close Christmas is right now. He is right to make that point, and I am very conscious of it. Notwithstanding what I said earlier about the difficulty of giving people certainty in the middle of a pandemic—I do not like that situation any more than anyone else does—I am nevertheless acutely aware that we should give them as much certainty and notice as we can. That said, it is right for us to discuss the matter with the Governments in the other parts of the UK to see whether we might be able to arrive at consensus. I will update the Parliament and, perhaps more importantly, the public—I say that with no disrespect to my parliamentary colleagues—on that as soon as possible.

I wish to make one point very clear, so that it is not lost. Right from the moment that, for pragmatic reasons, we decided to recognise that some people would choose to see their loved ones over Christmas and that we would therefore try to put boundaries around that, the Scottish Government and I have advised people not to mix with others over that period, particularly indoors, if they can possibly avoid it. That continues to be the advice that I would give to people. If they can do so, they should try to get through this Christmas without seeing loved ones. If they have to see them, they should try to do so outdoors. However, we need to ensure that we are not giving the virus chances to spread.

That takes me on to the second part of Willie Rennie's question. I have gone through much of the past 10 months urging my clinical advisers to give me as much complicated, in-depth information as possible about the science behind all this. That is an understandable desire for all of

us, and I am as guilty of it as anyone else. However, there are moments when we have to accept that, at heart, the situation is not complicated: we are dealing with an infectious virus, which the scientists tell us spreads when people come together and give it the opportunity to do so. That will happen in pubs and restaurants and in people's own homes. It will also happen, if we allow it to, in care homes and hospitals and in all sorts of other settings.

Therefore we need to cut out activities that are unnecessary—that is perhaps not the best word to use, because most of us think that coming together with loved ones is a necessary part of life. However, right now, we have to go to work where possible and we also want children to be in school, so in order to prevent the virus from spreading, we have to try to cut out all the other interactions that we do not need to have. I know that that is impossibly tough for people, but for the remainder of this winter it will be necessary if we are to get through it and to get further into the vaccination programme with as little impact from the virus as possible.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): Although I am disappointed for my constituents in Midlothian, which, for understandable reasons given the spike in cases, is to remain at level 3, I am thankful that the Scottish Borders will retain level 1 status. Does the First Minister consider that remarks that were made last week by Colin Smyth, on behalf of Scottish Labour, in which he opposed the travel ban regulations, especially across the border, and referred to Cumbria as a "low level" area when it is actually in tier 2, which is high risk, were, to put it gently, misleading? Does she also consider that the ban is absolutely the right thing to do if we are to reduce the import of the virus to people in my constituency and beyond?

The First Minister: I understand that the situation is difficult for everyone and that, in raising issues in the chamber, members are reflecting the frustrations of their constituents. However, Christine Grahame has raised important points.

I point out that, although the Scottish Borders area remains in level 1, and I hope that that will continue to be the case, there has been an increase in cases there over the past few days. I therefore urge people across that area to comply with all mitigations to ensure that that increase does not continue.

Last week, we again heard objections to travel restrictions. However, travel restrictions are there for a reason and the Borders is a good illustration of that. It has had areas of higher prevalence around it. Therefore, if we want to keep the Borders in level 1, it is important that we do not have people from other areas, where the virus is

spreading more rapidly, coming into the Borders and imperilling that position.

Similarly, last week, we heard real opposition—and again, I understand it; it is legitimate—to the decision on Edinburgh and Midlothian. However, I hope that what has happened in the week since, even if it does not make everybody agree with every decision that we are taking, will at least make those who were objecting to the Edinburgh decision last week reflect and accept that we are not taking these decisions lightly; we are taking these decisions because we think that they are necessary. That applies to the application of the levels and Christine Grahame is absolutely right to say that it applies to the essential travel restrictions that remain in place.

Jamie Greene (West Scotland) (Con): Over 2 million people are eligible for a flu vaccine in Scotland. They are pre-qualified for that vaccine for a mix of reasons such as age or underlying health conditions. Many of them have been isolating from society for the best part of nine months, voluntarily or otherwise. However, not all of them are on the official Covid shielding list. Can I get an update as to when that wider group of high-risk people are most likely to receive their Covid vaccination, so that we can manage their expectations and offer them some much-needed light at the end of the tunnel?

The First Minister: There is, of course, the clinically vulnerable list as well as the other shielding list, so people in those categories are covered in one way or another. The more fundamental point here, which is a very important point, is that it is not me or the health secretary or any other minister who decides who is on clinically vulnerable lists for clinical reasons. Those decisions are recommended by clinicians because they are the ones who understand the reasons. We will always keep these things under review but, fundamentally, we will continue to act on the basis of the best clinical advice that we have.

Annabelle Ewing (Cowdenbeath) (SNP): The First Minister will be aware of recent Covid outbreaks in some care homes in Fife, where, very sadly, we have seen the deaths of some residents during the outbreak. The First Minister will also be aware of an increase in the number of schools linked to positive outbreaks in Fife. Can she clarify whether those developments have played a part in Fife remaining in level 3 and can she take this opportunity to reiterate the importance of maintaining social distance, of wearing face coverings and of avoiding crowded places, so that we can hopefully stem the transmission of the virus and avoid seeing Fife going up to level 4 next week or thereafter?

The First Minister: Given the outbreaks that we have seen in care homes in Fife, I understand

what a worrying time this is for families of care home residents, both in Fife and in other parts of the country. Of course, we continue to carefully monitor the situation on a daily basis with partners and local care home oversight groups. Decisions on the allocation of levels in Fife, as in other areas, are taken after a detailed review of all the public health data, including local and national assessments and consideration of the four harms. That includes a report from the local incident management team and analysis of any local outbreak, such as the examples that Annabelle Ewing has mentioned in Fife. That is all taken into account when reaching those decisions. Although the outbreaks may not be the only reason behind the decision to keep an area in a particular level or to put an area in a particular level, they are part of coming to that decision.

As Annabelle Ewing rightly says, we all have a responsibility to help to suppress the spread of the virus; people in Fife, as well as people in the rest of the country, should continue to adhere to the FACTS guidance as well as following all the other rules that are in place in their areas. I remind people that, if they are in doubt about the rules that apply in their local area, the postcode checker on the Scottish Government website has that information.

Jackie Baillie (Dumbarton) (Lab): People in West Dunbartonshire have worked hard to follow the rules, and we had hoped to move into level 2, but I understand the First Minister's cautious approach. That said, can she explain to my constituents why West Dunbartonshire is in level 3 but the Scottish Borders is in level 1, when the two areas have the same indicators—medium for cases and for test positivity, very low for forecast cases and low for hospital and intensive care unit forecasts—and when the rise in numbers was 112 per cent in the Scottish Borders, compared to 7 per cent in West Dunbartonshire? What additional factors have been taken into account in that case?

The First Minister: I again completely reject the narrative that some people are working hard and some people are not working hard, because everybody in every single part of the country is working really hard to try to suppress the virus. Sometimes, with the best will in the world, the virus increases in some areas, which is why greater restrictions are necessary, but we have to recognise that everybody is making really hard sacrifices.

Although it is an important question, if Jackie Baillie has been listening to all the information that I have been sharing with the Parliament weekly—I am sure that she has—she will probably know the answer. Actually, I guess that she does know the answer. West Dunbartonshire and the Scottish Borders have been in very different positions in

recent weeks. Just because, based on data alone, it might look as though they are converging, that does not take away from the fact that the different trajectories and experiences of those areas are factors in the pace of change that we now think is sensible.

West Dunbartonshire has been in level 4 because, only a matter of weeks ago, it had extremely high virus prevalence. We therefore think that it is prudent and correct to take a bit of time before we move it any further down the levels—which, of course, involves easing more restrictions—because the danger is that we could quickly send the area into reverse.

The Scottish Borders has come from a different place; it has had relatively low levels of prevalence that have been going up a bit in recent times, which is why we will be watching it carefully.

The two areas are coming from different positions. We need to continue to apply judgment about the wider context in order to try to get decisions right.

I fully accept that it is important that the decisions be subjected to real scrutiny, but I ask those who, understandably, criticised the decision about Edinburgh last week to reflect on the data at that time and, at least, to accept that that the wider judgment is important in respect of our arriving at the decisions that we must make.

Gillian Martin (Aberdeenshire East) (SNP): The review documents point to high levels of community transmission in Aberdeenshire, and we have had workplace outbreaks.

A couple of weeks ago, the First Minister told me in the chamber that deeper analysis would be done on the nature of infection rates in Aberdeenshire. Can she give more detail on the types of community transmission that have increased the infection's spread? Other than the increased restrictions that come with level 3, are any targeted actions being taken, particularly in relation to workplace outbreaks? Is it advised that travel between Aberdeen city and Aberdeenshire should happen only when necessary, and that that might not include Christmas shopping, which should perhaps be done locally?

The First Minister: I have been saying for the past two weeks that we are concerned about the situations in Aberdeenshire and in the city of Aberdeen, and that we are monitoring them carefully. There have been outbreaks in Aberdeenshire in care homes and in workplaces, which have had an impact on the overall picture.

The work of test and protect is the most important targeted action to ensure that, as far as possible, outbreaks in particular settings are contained. I think that test and protect is working

well to do that. However, it has become obvious that there has been wider background community transmission in Aberdeen and Aberdeenshire, which means that we cannot be confident that level 2 restrictions would be sufficient to bring that under control. We hope that the level 3 restrictions will have that effect over the next few weeks.

Gillian Martin is absolutely right that travel restrictions are an important part of that. My plea to people—it is also the law—is not to travel to a level 3 area unless it is for essential reasons and, if their local authority is in level 3, not to travel outside it. That applies to Christmas shopping. People should shop locally whenever they can in order to stop the virus spreading and to help local businesses as much as possible.

Liz Smith (Mid Scotland and Fife) (Con): The First Minister mentioned in her statement the difficulties that are faced by the hospitality sector. Could she confirm that some of the £60 million Covid spend that was recently earmarked for tourism will be used to provide assistance for golf tour operators, who play such an essential role in the Scottish hospitality industry, especially in places such as St Andrews and Gleneagles?

The First Minister: I will have to come back to Liz Smith to confirm that, because it is a particularly detailed point. If the fund that she talked about does not cover golf tour operators, I undertake to look at whether there is other help that we can make available to them, because they are an important part of our tourism industry.

The impact of the pandemic on hospitality and tourism is severe. That is true across Scotland and other parts of the UK. I recognise that and know just how devastating the current situation is for people who run hospitality or tourism businesses, who have built such businesses or who work in those sectors. I will continue to undertake that we will do everything in our power to provide the help and support that they need.

Ruth Maguire (Cunninghame South) (SNP): What assessment has the Scottish Government made of test to release for travel schemes, such as the one that is being adopted in England? Does the Government intend to adopt such a scheme here in Scotland?

The First Minister: We are observing the pilot projects in England closely and will consider the results from them. I believe that today is the first day of that work being done in England. Early reports that I have seen today suggest that there are significant issues attached to test to release that might need further work to resolve. We will look carefully at that.

In addition, we have been in dialogue with our commercial airports on their proposals for test to release in relation to international travel. We will

decide shortly whether we are reassured enough that test to release can be implemented in a way that sufficiently minimises risk.

All along, our decisions on testing and quarantine have been informed by clinical and scientific advice, with a view to minimising the risk to public health. That will continue to be the case.

Daniel Johnson (Edinburgh Southern) (Lab): It was reported in the press yesterday that the advice that was provided to the Scottish Government by the director of public health for NHS Lothian regarding the city of Edinburgh prior to last week's decision was

"DPH recommendation is for a move to Level 2."

That is how the relevant document was quoted in the press.

I recognise that the decisions about levels are judgments. That is right—indeed, it is important, especially in the light of the changing circumstances. However, transparency requires that we understand not just what the decisions are, but how those decisions are arrived at. The published rationale for last week's level decision for Edinburgh comprised just three bullet points; this week's comprises just five, with no supporting opinion or advice provided, beyond statistics.

I ask the First Minister to publish advice from local directors of public health alongside Scottish Government levels publications. I also ask that the Scottish Government provide more published detail regarding the rationale and judgment for the level decisions, particularly when they differ from the advice of local directors of public health.

The First Minister: We will consider what more information we can publish. We are trying to publish as much as possible, taking account of the fact that some decisions are not down to hard data and must be down to judgment. That position was challenged in court last week; the opinion of the court recognised the importance of the wider contextual process that the Scottish Government goes through.

I think that I was questioned in Parliament a week ago today about the public health advice on Edinburgh—if it was not then, I was certainly questioned on it at First Minister's question time on Thursday—so the idea that that was not known does not bear much scrutiny.

I believe that to have eased restrictions in Edinburgh last week would have been fundamentally wrong and a grave error of judgment. I accept that the decision might, simply on the basis of looking at the raw indicators, have been hard to appreciate for those who do not take such decisions, but I cannot accept that anybody—especially anybody who represents the city of Edinburgh—can look at the data this week

and come to any conclusion other than that it would be a grievous error of judgment to ease restrictions in the city of Edinburgh at this time.

Angela Constance (Almond Valley) (SNP): Out-of-school care networks have benefited from the full range of job retention, business, enterprise and third sector support funds, but they are now having to close projects in my constituency because of the fall in demand that has resulted from home working.

What further support will be provided to get those services for children and their working parents over the last hurdle, to ensure that such essential infrastructure for our economic recovery is not lost for ever?

The First Minister: We recognise that changes in demand for childcare relating to parents' work patterns and, of course, loss of employment have had an effect on childcare providers, and that that raises concern about the sustainability of their essential services. We are working with the whole childcare sector to understand the challenges and to establish whether there are reasons why the financial support needs for out-of-school care differ from those of the rest of the childcare sector.

In addition to the economy-wide support from both the Scottish and UK Governments that out-of-school care providers will have been able to access, the Scottish Government has provided targeted support to childcare providers, including out-of-school care providers, through the £11.2 million transitional support fund. However, we will continue to consider the issues carefully, and we will look to adapt the support that is available, if we think that that is appropriate.

Edward Mountain (Highlands and Islands) (Con): On 1 December, I asked the First Minister to reconsider allowing only up to six people from two households to meet in their homes in level 1 areas. Today, she has eased the restriction for some islands, but not the mainland. I have written to her twice asking for Moray and the Highlands to be included, and the leader of Highland Council has publicly backed my call. Given that the Highlands and Moray continue to have very low numbers of cases and are rightly at level 1, when does the First Minister think the "no household visits" rule will be relaxed?

The First Minister: We will review that weekly. I appreciate the views of local members and members of the local councils, but the clinical advice at the moment is that, outside the island communities—they are often islands that are greater distances away and do not have the same links to the mainland—that would not be a safe thing to do right now.

We will continue to review that on an on-going basis. I understand how difficult it is. It is difficult

for every one of us not to be able to visit other people's houses, but I know that it is even more difficult for people who live in rural and remote communities, where there might not be public facilities where they can meet other people.

We take the issue very seriously, but I return to a point that I made in response, I think, to Willie Rennie. The virus spreads by people coming together and interacting in the ways that we all like to interact. In order to stop spread and to minimise the risks over the winter period, we have to be very, very careful about all those interactions, which is why we think carefully—and will continue to do so—about the decisions.

The Presiding Officer: I am afraid that we have to call a halt to questions.

Points of Order

15:17

Liam McArthur (Orkney Islands) (LD): On a point of order, Presiding Officer. Last week, the Cabinet Secretary for Health and Sport assured me that islanders would have equal access to the Pfizer vaccine to people in the rest of the country. It now appears that, as a result of transport difficulties, that will not be the case for those who live on the smaller islands of Orkney and Shetland. As there was nothing on that in the First Minister's statement, I wonder whether she might have an opportunity at some point to update Parliament on how islanders in my constituency and Shetland will have equal access to the Government's on-going vaccination programme.

The Presiding Officer: I thank Mr McArthur. I am sorry that we did not reach his question today. There will be other opportunities for him to put that point to the Government, for example by lodging a written question or by pressing his request-to-speak button at First Minister's question time or portfolio question time this week.

Neil Findlay (Lothian) (Lab): On a point of order, Presiding Officer. Last week, at topical questions, the Cabinet Secretary for Health and Sport advised me that urgent all-party talks would be convened to discuss care home visiting. I wonder whether she has intimated to you that she wants to correct the record, as nothing has happened since last week.

The Presiding Officer (Ken Macintosh): I thank Mr Findlay. That has not been intimated to me. The point that Mr Findlay makes is a point for him to raise and pursue with the cabinet secretary. I am sure that he will be able to do so by lodging a question, by writing to or emailing the cabinet secretary, or by taking up one of the other opportunities that Parliament offers members to put questions to ministers.

Before we move on to the next item of business, there will be a short pause while some members change seats. I encourage all members to wear their masks, observe social distancing and follow the one-way systems in the Parliament building.

Drug-related Deaths

The Deputy Presiding Officer (Lewis Macdonald): The next item of business is a statement by Joe FitzPatrick on drug deaths. The minister will take questions at the end of his statement, so there should be no interventions or interruptions.

15:19

The Minister for Public Health, Sport and Wellbeing (Joe FitzPatrick): Presiding Officer, 1,264 of our fellow citizens lost their lives to drugs in 2019. That means that, on average, every week, 24 families in Scotland are holding funerals for loved ones who have died due to substance use. The scale of the deaths and the wider harms that are caused by substance use are nothing short of a public health emergency.

I have no words that will ease the grief. Nothing that I say can restore lost loved ones to their mothers, fathers, sons or daughters. However, I know that stigmatisation does not work, and it is fairly clear that the traditional approach to people who use drugs does not work for many of them. As with all public health issues, it is imperative that we follow the evidence. People who use drugs need to be treated with a public health response that prevents harms. Groups who push drugs and bring them into our nation need to be met with the full force of the criminal justice system.

The average age of people who have died due to substance use has increased over time. In today's statistics, the median age of the people who have died was 42; in 1999, it was 28. In 2019, 68 per cent of deaths were of people aged between 35 and 54. The questions are, "Why?" and, "What can be done?"

People in that age group who are long-term users of drugs experience a wide range of social, health and economic inequalities. For many of them, traditional drug treatments and services fail to meet their complex health and social needs. We must change the way in which we provide services—and the services themselves—in order to provide that vulnerable group with some hope of recovery or, at the very least, death prevention.

Changes that are already being made and that will make a difference to that group include the introduction of heroin-assisted treatment, which began in Glasgow last year, and the implementation of our medication-assisted treatment standards, which I will talk more about shortly.

At the other end of the age scale, and of just as much concern, is the rise in the number of deaths among those in the 15-to-24 age group. That rose

in 2019 to 76—the highest number since 2010. We have also seen an increase in hospital patient stays among young people, and we are working with partners, including Crew, to better understand the changing trends in their drug and alcohol use.

Today's report highlights the pressing danger of multiple drug use, otherwise known as poly-drug use. In 2019, 94 per cent of the deaths involved more than one substance, which poses significant challenges for drug treatment services. Although that trend is being seen across Europe, in Scotland there is a particularly high prevalence of the harmful use of opiates alongside benzodiazepines—two substances that slow breathing and heart rates, making the risk of death much greater.

One of the most significant rises in deaths relates to the use of street benzos. Those substances barely featured in our statistics before 2010, but they are now found in more than 60 per cent of fatalities. They are pills that are produced on an industrial scale in Scotland and sold at extremely low prices. Police Scotland is working with domestic and international partners to tackle the issues surrounding pill press machines and their use in the manufacturing of those substances. For over a year, I have been calling for the United Kingdom Government to work with us on the regulation of the sale of those machines, which are readily available over the internet. I will come back to that point later in my statement.

Other worrying trends are also coming through, such as the increasing number of female deaths and the number of deaths related to the use of cocaine.

Our actions sit under the rights, respect and recovery strategy and action plan, and I have accelerated the review of the need and demand for residential rehabilitation services. The working group that leads on that published its report last week. I have accepted its recommendations and have committed £90,000 to further progress that work, on top of the £150,000 of additional funding that has already been announced for an enhanced offer of residential rehabilitation to support the recovery of people who are leaving prison during the pandemic. So far, that has supported eight people and has involved referrals from four different prisons. In the new year, we will carry out an evaluation of people's experiences of using the pathway and of its impact on their individual recovery journeys.

I aim to set out early in the new year how we will substantially increase the provision of residential services in the short term. In addition, a project that is being supported through the drug deaths task force is targeting people who have experienced a near-fatal overdose, who are at most risk of drug death, by providing them with

support that combines a community-based response with a residential rehabilitation service. The approach has never been tried in Scotland before.

Today's statistics relate to 2019, and we are now at the end of 2020. This year, the drug deaths task force, which met throughout the pandemic, has taken forward a range of recommendations and has provided funding to a wide range of projects, with the aim of reducing harm. In January, the task force published a paper that set out six key evidence-based strategies for preventing drug-related deaths. Alcohol and drug partnerships have reported on how they are offering or adopting those approaches and on where they propose to do more.

More recently, the task force published a forward plan that sets out how and when it expects its intended actions to make a difference through three main areas of focus: emergency response, reducing risk and reducing vulnerability.

On emergency response, the task force has been instrumental in bringing about significant changes in the distribution and availability of the overdose-reversing drug naloxone. For example, the Scottish Ambulance Service has introduced a national programme of take-home naloxone distribution, which enables life-saving kits to be given to patients and their peers and family members after a non-fatal overdose.

Police Scotland has announced that it will run a naloxone pilot in three areas. That task force-funded project will begin early next year and will give around 700 police officers the opportunity to administer the life-saving nasal spray if they find themselves in attendance at an overdose. That is a huge step forward, which I know has taken a significant amount of work.

In addition, the task force has provided funding to a range of projects to widen the distribution of naloxone. Those projects are being taken forward by ADPs and other partners.

Evidence shows that fatal overdoses often follow non-fatal overdoses. Therefore, the task force has supported several projects that support people after a non-fatal overdose, helping to reduce deaths and increase engagement with alcohol and drug services.

On reducing risk, one of the most important areas on which the task force has been leading is, arguably, the development of standards for medication-assisted treatment. The most important points about the standards are that they place the person at the centre of decisions that are made about their care and treatment, they acknowledge wider issues such as trauma, and they provide that services will operate a policy of no barriers to treatment.

The standards also offer people choice—something that has been missing for many people who have tried to access treatment in the past—whether that is to do with same-day prescribing, choice of medication or access to mental health care at the point of MAT delivery. Furthermore, the standards will provide a level of consistency that has not been seen before, moving us towards a national approach that ensures a consistent service throughout Scotland.

The standards will allow clinicians and others to make radical changes to their working practices. There is evidence of that from a clinician who was involved in the early roll-out of the standards. His service had undertaken a test of change to demonstrate the impact on people of a low-threshold model that allowed him to support people who were seeking immediate help—something that he had not been able to do previously. As a result, of the 35 people who came to his service in the two months during which the trial ran, 93 per cent received treatment within 24 hours. Nearly all those people had additional needs—for example, to do with food poverty, access to benefits, homelessness and depression—all of which could be addressed at roughly the same time as MAT was initiated—that is, on the day on which the person came for help. That is welcome progress, which I hope can be replicated in services throughout the country.

On reducing vulnerability, the task force identified the need to address the stigmatisation of people and communities who are affected by drug use. It published a stigma strategy in July and members of the task force who have lived experience are developing a stigma charter, to which organisations and service providers will be asked to sign up.

Furthermore, significant work is going on to look at drug law reform. Just this morning, a plan was published that sets out how we will explore how changing existing drug legislation, if the Scottish Parliament had powers in that regard, could improve access to health and social care services.

One of the most exciting developments of the past year has been the introduction of the enhanced drug treatment service in Glasgow, which provides injectable diamorphine to those who have been in the treatment cycle for a long time. I look forward to hearing more about that in the new year as the service evaluation progresses, and we can consider how similar services could be developed to support this most vulnerable group elsewhere in Scotland.

Last year also saw the conclusion of one of the most extensive inquiries into drug use and deaths in Scotland, which was carried out by the Scottish Affairs Committee at Westminster. It is hugely disappointing that all of the committee's major

recommendations, including the need to declare a public health emergency, were rejected by the United Kingdom Government. I would urge the UK Government to look again at those recommendations, which are based on robust evidence.

However, the UK ministers are engaging constructively with us on several important issues including the regulation, with appropriate sanctions, of the sale and use of pill presses. That could impact on the production of street benzos, which, as I have mentioned, are implicated in many deaths in Scotland. I hope that we can act on a four-nations basis to achieve that quickly.

The past year has also seen us cope with the impact of a worldwide pandemic. I, along with the chief medical officer, wrote to all health boards at the start of the pandemic to ensure that essential life-saving services were prioritised. I take this opportunity to thank all the workers and volunteers for their dedication in continuing to deliver their essential work throughout this challenging time.

Today's figures are the statistical face of heart-wrenching human misery and devastated families. I again offer my condolences to each and every person who has lost a loved one. Other nations have shown that, when the approach is changed, the outcome is changed. We have examples that we can follow, and that is what I intend to do.

The Deputy Presiding Officer: The minister will now take questions on the issues that were raised in the statement. I intend to allow up to 30 minutes for questions.

Donald Cameron (Highlands and Islands) (Con): I thank the minister for prior sight of his statement.

Today's figures are stark and heartbreaking. Each death that results from drugs is an individual tragedy. It is particularly worrying that the number of drug deaths has doubled in Scotland over the past decade, and that Greater Glasgow and Clyde, Lanarkshire, Lothian, Tayside, and Ayrshire and Arran health boards account for three quarters of all drug deaths. I, too, note with deep concern the rise in the number of deaths among 15 to 24-year-olds, which is now at its highest level in a decade.

In 2007, there were more than 300 residential rehab beds. That number has been cut and, this year, almost half of residential rehab residents have found difficulty in accessing residential rehab and services. We have a world-class rehab facility here in Scotland—Castle Craig Hospital, which cares predominantly for Dutch patients when it could also be treating Scottish individuals.

Given today's alarming figures, will the Scottish National Party Government now support calls from

drug recovery groups to reverse the bed cuts, and will it create a £20 million Scottish recovery fund. If not, why not?

Joe FitzPatrick: One of the things that has struck me since I have been in post is speaking to people who use services and those who are in recovery. It is important that we recognise that there is no magic bullet for dealing with the problem.

There are groups of people who say that it is really important that we take a harm-reduction approach. Other groups say that it is most important that we support abstinence-based residential rehab. Increasingly, however, people across Scotland on all sides acknowledge that all that is true.

It is clear to me, from speaking to people, that the journey into residential rehab has been too challenging for many. That is why I asked Dr David McCartney of the Lothians and Edinburgh abstinence programme to head a working group to look at access to residential and other rehabilitation, and to come up with recommendations for how we can improve that and provide more consistency. Dr McCartney has given some initial recommendations and statistics, which I encourage members to read. It is a strong piece of work. I chose Dr McCartney because he is a strong proponent of abstinence-based recovery, and I wanted to make sure that I got a robust proposal that we could take forward. The working group has recommended additional work to make sure that we have a robust system that works for everyone.

Residential rehab is not an easy solution; the person must want to do and it has to be the right thing for them. There is a relationship between the person and the residential facility. It is clear to me that for many people in some parts of Scotland, the journey into residential rehab is too difficult and challenging. We will continue to work with the working group to support its work and, as I said in response to an earlier question from Miles Briggs, I will come back in the new year with its further recommendations and a proposal on how we can, in the short term, deliver residential rehab in a more transparent and straightforward fashion across Scotland.

Monica Lennon (Central Scotland) (Lab): In my topical question earlier, I said that the public must have confidence in the public health minister. Our drug deaths rate is off the scale, and tonight we will make the headlines for all the wrong reasons. Today, the public health minister, Joe FitzPatrick, claimed in a press release that the Government

“is doing everything in its powers”.

That is simply not true, so he should apologise for saying it. He was given the chance to withdraw the remarks earlier, but the minister remains in denial. There is so much to say, but we know that on his watch residential rehab beds are lying empty. We have volunteers in Glasgow running an overdose prevention centre out of the back of a van, and the minister will not even meet them. They are showing us what courage and bold action actually look like.

On Miles Briggs's point about cross-party working, we want to work with the Government and to assist the task force. We asked for that more than a year ago, but the minister and his chairperson said no. That is disgusting. If the minister will not do the right thing and resign, will he at least allow the Parliament to see what the task force is doing and let us sit around that table to find a way forward?

Joe FitzPatrick: I encourage members to look at the task force website to see the work that it is doing. I know that the chair of the task force has met members from across the chamber; I certainly have, too. Unfortunately, Ms Lennon was unable to attend the last meeting that I planned to have with her. I have just checked; as far as I can see, she has not managed to ask for another meeting. I have tried my best to engage with members from across the chamber.

I assure Ms Lennon that the grief that the families and friends of those who have lost loved ones weighs far heavier on my shoulders than do her remarks today.

Emma Harper (South Scotland) (SNP): Today's figures show an increase in prevalence of benzodiazepines among the mix of drugs that have tragically ended the lives of users. That is of particular concern in rural communities such as Dumfries and Galloway, where there has also been an increase in drug-related deaths in recent years. Clearly, availability and use of street benzos are of serious concern. I recognise that regulation of machines that are used in mass production of counterfeit medication is reserved, but can the minister outline what funding is available for projects to reduce consumption of so-called street Valium, particularly in more rural communities?

Joe FitzPatrick: The harms that are associated with street benzos are hugely concerning, and the trajectory of numbers of drug deaths in which street benzos are involved is upwards. We need to reduce the wide availability of pill presses, which is one of the factors that allow the pills to be produced in our communities, including in more rural areas. That is why I am working constructively with colleagues in the UK Government to see whether we can take a four-nations approach to legislation, which would be

partly about the internet and partly about use and regulation, which is devolved. The four-nations approach is the best way forward.

It is critical that we find better ways to support people with such addictions, so one workstream of the task force's medication-assisted treatment sub-group relates to how we can help folk in relation to benzos. Tackling the source of the drugs, which are sold at pocket-money prices and are often made in our communities, is an important aspect. I hope that we can make progress on that, but the challenge is not easy. We must understand why the drugs are being used.

We need to make progress on understanding what is in the drugs, so the task force has proposed a drug testing facility. That involves licensing issues that we want to resolve before the task force spends significant amounts of money on a facility. However, a pilot of drug testing in a number of parts of Scotland, as the task force has proposed, could be significant in saving lives.

Brian Whittle (South Scotland) (Con): We have just heard from a minister who is in denial. It is 10 years since the Christie report, and things have got exponentially worse. Investment in rehabilitation beds, needle-exchange programmes, properly funded alcohol and drug partnerships, a fully funded third sector that is integrated with statutory services, and the offer of special mental health services at the same time as addiction treatments are all measures that are available to the minister right here and right now.

The minister said that he and his Government intend to change their approach. Given the continuing failure of policy to date, that is a must. Will the Scottish Government ditch the constitutional football, reverse the cuts and invest properly in the solutions for which the front line has called for decades?

Joe FitzPatrick: It is unfortunate that Mr Whittle wrote his question before he had heard my statement. I have clearly been careful not to bring the constitution into the debate and I have talked as many times as I can about the four nations working together. I have made extensive efforts to emphasise the positive relationships and how we are working together positively. I am not satisfied with the collaboration in a couple of areas, so I will continue to try to make progress on them as positively as possible. However, we are collaborating on a four-nations basis in a number of areas. My opposite number, Jo Churchill—who is a UK public health parliamentary under-secretary—and I are collaborating on a number of significant matters.

I encourage Mr Whittle to read the detail about the task force's work, particularly on the MAT

standards. He talked about services working together. The approach is all about ensuring that our services are person centred—the person, rather than delivery, being at the centre. The standards try to change and improve the approach. That work is on-going.

I encourage Mr Whittle to have a good read of that work. A lot of people have put a huge amount of effort into developing the standards that are to be rolled out across Scotland, and they should be praised for that. It is all very well for the member to attack me, but I ask him, please, to look at the work that the task force is doing and to give praise where it is due.

The Deputy Presiding Officer: I am keen to get in as many members as I can, so I ask for succinct questions and answers and for due attention to be paid to answers when they are given.

Shona Robison (Dundee City East) (SNP): The minister said that we should follow the evidence. Will he give more information on the outcomes of the important project to work with those who have experienced a near-fatal overdose? When will the changes to working practices to enable same-day treatment and support for those who are in the trial to be replicated in services across Scotland?

Joe FitzPatrick: On the second question, the medication-assisted treatment standards are out for consultation, but same-day prescribing is being rolled out in alcohol and drug partnerships across Scotland and a number of places have made the change.

Often, when people come for help and support, that is the day when they are ready to make the substantial leap and change their life, so they need support as quickly as possible. We have seen some really good examples of how that can be done safely. There is a risk in prescribing drugs very quickly. We have seen evidence of low-dose regimes making a difference. That is making a difference. I am afraid that I have forgotten the first part of the member's question.

Neil Findlay (Lothian) (Lab): What an absolute disgrace! The First Minister and the Deputy First Minister walked out when the statement started and for most of the debate there has been no member of the Cabinet on the front bench. What a woefully inadequate statement from the minister. Drug deaths have doubled since 2014—

The Deputy Presiding Officer: Please ask your question, Mr Findlay.

Neil Findlay: It is the minister who has taken up all the time.

There has been a 55 per cent cut in drug and alcohol budgets over 10 years. The situation in

Scotland is three-and-a-half times worse than anywhere in the UK—with the same legislation, minister. Working class communities are in crisis. We will have working groups and take pill presses off people and think that that will resolve the issue. The minister is a nice man, and I believe him, but we do not need a nice person in charge—we need a competent person in charge. Please stand aside and let somebody drive the change that we need.

Joe FitzPatrick: I thank the member for recognising that I am a nice person. I am not sure that there was a question in there.

Patrick Harvie (Glasgow) (Green): I share the sense of grief at the figures that have been released. I wish that I could say that I was surprised.

The decisions on prosecution are fully within the devolved competence of the Scottish Government. Is there not an overwhelming case for saying that Scotland should adopt a principle now, that, in the absence of other criminal offences, the provision of life-saving health interventions such as safer consumption facilities should not be prosecuted, because shutting down such services can never be in the public interest? If we adopt that principle, would not those services have the chance to develop in order to provide a service of the standard that is required?

Joe FitzPatrick: The member will be aware that prosecution is in the realm of the Lord Advocate, rather than being the responsibility of ministers as such. I am sorry, but I cannot comment on those specifics.

In general terms, the law should be changed to allow actions that could potentially save lives and that are evidence based. There should be a legal framework for such actions. I have lobbied the UK Government on that on several occasions. I am disappointed that there has not been meaningful engagement on that particular matter. I have not given up, because I know that the UK Government's advisory panel has made it clear that there is evidence that such facilities save lives and that the law should be changed.

Prosecutorial advice is a matter for the Lord Advocate.

Alex Cole-Hamilton (Edinburgh Western) (LD): Covid has shown that in a crisis radical changes can be made in a heartbeat. This, too, is a pandemic; it is Scotland's hidden pandemic and it is time for an equivalent response.

I know that the Scottish Government says that it supports safe consumption rooms, but I have a straightforward question for the minister: does he believe that any individual citizen, watching over people, standing ready to intervene to prevent them from overdosing and dying, is doing so in the

public interest and is providing a public safety service?

Joe FitzPatrick: I am very clear that the law on such matters should be changed. The member has been very careful in how he has framed the question, but he is asking me to comment on matters that relate to a live case. I am sorry, but I have to be really careful about that.

The member knows my views on developing a framework in Scotland to introduce such facilities. If the UK Government does not want to change the legislation, it should devolve the powers to the Scottish Parliament and let us get on with it.

Alex Cole-Hamilton is right that the Scottish Parliament would introduce such legislation at pace. There is overwhelming cross-party support, certainly from most parties, to do that. There is a well-thought-through proposal for an overdose prevention facility in Glasgow, for which there is cross-party support among all parties on Glasgow City Council.

Such action should not be impossible. I call on members from across the chamber to put a bit of pressure on Kit Malthouse. It is possible that we could work together in a way that does not result in the UK Government losing face—or whatever the reason for the inaction is—but which allows us to introduce a policy that will save lives, as the international evidence makes clear.

Sandra White (Glasgow Kelvin) (SNP): It is a tragedy that so many lives have been lost and so many families affected. I do not want the issue of all those tragic deaths to turn into a political bun fight. That would help no one, least of all the people who have died and those who are suffering.

I want to pick up on the questions from Patrick Harvie and Alex Cole-Hamilton on safe consumption rooms. We know that Peter Krykant has been operating successfully in Glasgow. In my opinion, he has saved many lives and has supported many people by giving them life chances. The minister said that the matter is in the hands of the Lord Advocate. How can members bring the Lord Advocate to the Parliament to answer questions on why he feels that it is outwith the competence of the Scottish Parliament to introduce legislation that would allow us to operate safe consumption rooms in Scotland?

The Deputy Presiding Officer: I advise all members to bear in mind the sub judice rules on the mention of live cases.

Joe FitzPatrick: I hope that Sandra White will appreciate that I cannot comment on the case, because a criminal charge has been reported by the police to the Crown and the outcome of that case has not yet been finalised. As I said, in policy

terms, I strongly support the introduction of medically supervised safe consumption or overdose prevention facilities in order to save lives.

Annie Wells (Glasgow) (Con): It is heartbreaking that, as we have heard today, Scotland's drug deaths rate is the highest that it has been since records began. More shamefully, each and every one of those deaths was preventable. As Faces & Voices of Recovery—FAVOR—Scotland has said, it is abundantly clear that Scotland's drug services are not fit for purpose. The setting-up of task forces and the warm words that have been expressed by the minister are all well and good, but the simple fact is that actions speak louder than words. Once again, I ask the Scottish National Party Government when it will treat this emergency with the seriousness and urgency that it deserves, to prevent Scots from losing their lives needlessly.

Joe FitzPatrick: Annie Wells makes several points with which I concur. This is a public health emergency that we need to treat seriously. We need to treat it by considering all the options—ultimately, what is done needs to be what is right for an individual at the right time—and that is what we are doing.

The task force has been set up and had its first meeting in the middle of September—towards the end of this year. The evidence shows that the task force has taken forward a huge amount of work that is saving lives every day, particularly through the emergency response, which is the way to stop someone dying right at the time. The evidence shows that more naloxone is accessible to people at the point of a potential overdose than was ever the case previously. That is a world-leading programme in Scotland, but it is clear that we have to do many other things to get our harm-reduction response right. That involves considering innovative programmes such as the heroin-assisted treatment service in Glasgow.

We need to consider how we ensure that people have access to a residential rehabilitation route rather than a community rehabilitation route when that is the right route for them to take. I look forward to seeing the evidence from the task force's work on combining the benefits of residential rehabilitation with those of community rehabilitation. One of the challenges is the lack of evidence about a lot of services, but, as we fight this public health emergency, I cannot ignore it when I speak to people who are clear that something was the most important thing to their recovery.

Gail Ross (Caithness, Sutherland and Ross) (SNP): Iceland has dramatically reduced substance and alcohol use among young people in the past 20 years by adopting a five-step plan,

and groups in Caithness are currently piloting a similar model thanks to funding that has recently been received from the Scottish Government. The Icelandic model is now in operation in 35 cities across Europe. Will the Scottish Government give it serious consideration with a view to its implementation in Scotland?

Joe FitzPatrick: The Icelandic model is one that—hopefully across the chamber—we can take very seriously. I was pleased that we were able to fund the pilot in Caithness. It is being led by some amazing people, whom I had the fortune of meeting to discuss the Icelandic model. I also attended a couple of events in Dundee, where Tessa Parkes is considering the potential for the Icelandic model to be rolled out in an urban setting. She is pursuing a project, as part of which she is speaking to a number of people about the possibilities and considering how that might be done.

Clearly, there is a slightly different dynamic in Dundee compared with most places in Iceland. However, we are also able to consider how the model has been implemented in parts of the Republic of Ireland. The model certainly gives us hope for the future, and I look forward to the outcome of what is going on in Caithness.

Pauline McNeill (Glasgow) (Lab): So far in this afternoon's statement, there has been no recognition whatsoever that Scotland's record on drug deaths is completely out of step with that of every other nation, region and country in Europe. Is it not time to stop looking elsewhere to solve Scotland's drug deaths scandal?

Safe consumption rooms are part of the answer—the minister seems to agree with that—yet Peter Krykant faces prosecution for mobile safe consumption rooms. We already frame prosecution policy on domestic violence and race; we have the answers within our own powers, on the grounds of public health, to save lives. Can the minister tell me why, in the frame of public policy, we cannot direct prosecution—as we do on domestic violence and race—in relation to saving lives when it comes to Scotland's drugs scandal?

Joe FitzPatrick: We have already talked about why it would be inappropriate for us to comment on that specific case today. As I said, it has been reported to the Crown in respect of a criminal charge.

In response to the wider point, I absolutely recognise the challenge that we face in Scotland, which has been some 20 or more years in the making. We cannot change things overnight, but we have to ensure that we are working to improve services across Scotland.

I am confident that services across Scotland are stepping up and changing things. Some amazing

work is going on and some amazing people are working hard in that area. However, there is no silver bullet. I wish that there was and that you could shout at me and say, "If only you did this one thing, nobody would die tomorrow." If you could do that, I would find the money. Unfortunately, there is no silver bullet. We need to consider our systems and improve them to ensure that everything we do is person centred. As a society, we also need to knock down the barriers to support, and one of the biggest barriers is the stigmatisation of treatment for people who have drug use issues.

Stuart McMillan (Greenock and Inverclyde) (SNP): I remind the chamber that I am a member of the management board of Moving On (Inverclyde), which is a local addiction service.

Inverclyde saw a near 50 per cent increase in the number of drug deaths in 2019. Although I note the change of delivery at local authority level by bringing alcohol and drugs teams together last year, it is imperative that an increase in rehab use takes place across NHS Greater Glasgow and Clyde. Will the minister commit to delivering that investment, and will he also agree to meet local agencies and partners in Inverclyde to explain more about what has to be done to help those who are suffering with addiction in Inverclyde?

Joe FitzPatrick: Although he was unable to join me, the member will be aware that I visited the safe as houses project, which is a residential rehab facility with a community outpost. It is a good project and there is integration between that service and the local ADPs.

I would be keen to have another discussion with the member. Inverclyde has particular problems that we must understand, but it is also an area where I have seen good examples of innovative work that makes a difference on the ground. When I speak to people who use those services, they value them and the commitment of the people who work in them.

James Dornan (Glasgow Cathcart) (SNP): The minister is aware of the good work that is done by LEAP UK, and he will be aware that LEAP Scotland now exists. Will the minister tell us what discussions the Scottish Government has had with LEAP Scotland? If there have been none, does the Scottish Government intend to have such discussions in the near future?

Joe FitzPatrick: The Lothian and Edinburgh abstinence project was founded using Scottish Government money. One important aspect of that project is that it is one of the few residential rehabilitation projects to have a strong evidence base, which is published and peer reviewed.

Because of the work that goes on in that relatively small facility, I asked Dr David

McCartney to lead our work on residential rehab and to look at how we can take that forward across Scotland, to give more people access to that service when they need it. That is crucial. There may be a time when someone is ready to take that step, and it might not be the right time just two or three weeks later. We must ensure that those facilities are available to people at the right time. That is why I have asked David McCartney to take on that work.

The Deputy Presiding Officer: That concludes questions on the statement. I remind members that social distancing measures are in place in the chamber and across the campus. Members should observe those measures as they enter and leave during business.

Hate Crime and Public Order (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Lewis Macdonald): The next item of business is a stage 1 debate on motion S5M-23682, in the name of Humza Yousaf, on the Hate Crime and Public Order (Scotland) Bill.

Members who wish to speak in the debate should press their request-to-speak buttons.

16:02

The Cabinet Secretary for Justice (Humza Yousaf): I am pleased to open the stage 1 debate on the Hate Crime and Public Order (Scotland) Bill.

I intend to respond in my speech to a number of issues that were raised during the scrutiny process, but first I thank the members of the Justice Committee and the clerking team, and all those who gave evidence. Their evidence has helped to shape the comprehensive and helpful stage 1 report, and the majority of the recommendations in it have been accepted and welcomed by the Government.

Justice Committee members heard from Lord Bracadale at the start of their scrutiny of the bill. In 2018, Lord Bracadale published a report on hate crime that was commissioned by the Scottish Government. In commissioning that report, the then Minister for Community Safety—and now member of the Justice Committee—Annabelle Ewing, explained that

“racism, intolerance and prejudice of all kinds are a constant threat to society and, while Scotland is an open and inclusive nation, we are not immune from that threat ... This review will help ensure that we have the right legislative protections in place to tackle hate crime wherever and whenever it happens.”

I could not agree more with that sentiment. It is as true now as it was when Annabelle Ewing made that statement.

I thank Lord Bracadale for his extensive report, on which the bill is based. The Scottish Government consulted on his recommendations in late 2018, and, informed by the views offered, developed and introduced the bill earlier this year.

I do not think that anyone disagrees with the need to address hateful behaviour. It is only by confronting such behaviour that we can collectively build the Scotland that we all want to see, where everyone can live free from hatred and prejudice.

The bill, which spent several years in development, through the independent review and the Scottish Government consultation, is designed

to consolidate, modernise and reform hate crime law in Scotland.

Hate crime is not merely the use of unpleasant words that offend people; hatred has an insidious and corrosive effect on society. We often talk about that societal impact, and we are right to do so. We should also not lose sight of the impact that hate crime can have on the individual affected and on their family. I know that from personal experience, but so do many other victims who have been the targets of hate because of their sexuality, their race, their religion, their transgender identity or, indeed, any other characteristics, such as disability.

Johann Lamont (Glasgow) (Lab): Does the cabinet secretary agree that significant numbers of women are targeted precisely because they are women?

Humza Yousaf: Yes, I am certain that that is the case. I will come to a section later in my speech on the misogynistic harassment working group, which will look at the issue in greater detail. The Justice Committee took a great deal of evidence on that subject.

I make it clear from the outset—it is important to highlight and acknowledge this—that I know that members across the parties have expressed concerns about elements of the bill. I hope that I have demonstrated the conciliatory approach that I wish to take as the bill progresses through the parliamentary process. The Government has shown great willingness to compromise and address those concerns; I am certain that members will show the same willingness, so that, at the end of the process, we will have a bill that the entire Parliament can be proud of. Members might still have concerns about aspects of the bill, but I reiterate that I do not doubt their commitment to tackle hatred and that I will continue to have an open mind on amendments that may be proposed as we move into stage 2 of the parliamentary process.

I will move on to look at the stage 1 report in greater detail. A range of issues were aired during the committee's scrutiny of the bill and I will touch on some of them. They include the distinct approach that the bill takes on race; finding the appropriate balance between protecting freedom of expression and protecting groups who are targeted by hateful behaviours and speech; and the importance of the working group on misogynistic harassment, which I just referenced to Johann Lamont.

The bill takes a distinctive approach in respect of race compared to that taken to other characteristics. The approach was the subject of considerable debate and discussion during stage 1, but that is a sign of a healthy and robust

scrutiny process. That distinct approach means that, in relation to stirring up hatred, the offences for race carry different legal thresholds from those for the other characteristics, which is a situation that is replicated across the UK.

Two thirds of all recorded hate crimes in Scotland relate to race. In 2019-20, there were more than 3,000 charges relating to racial hate crime—eight times a day, every day, someone is targeted because of their race—and those are only the cases that we know about because they have been recorded.

Sadly, there is no denying the prevalence of racial hate crime offending in Scotland, so I believe that a distinct approach for race is needed—and is justified. We need an approach that recognises the seriousness of racial hate crime as well as the impact that it has on community and societal cohesion.

The removal of the word “insulting” from, or repealing, the existing stand-alone offence of racially aggravated harassment could be particularly damaging when it comes to tackling racial hatred in Scotland if doing so was perceived as weakening a criminal law protection in the area of race. If we removed the term “insulting”, we would be the only legal jurisdiction in the UK to do so. The committee heard compelling testimony from equality groups that supported the retention of that term. I am aware that, during its scrutiny of the bill, the committee asked whether the existing offence of racially aggravated harassment—which is also known as a section 50A offence—could be consolidated into the bill. I am pleased to confirm that the Scottish Government intends to do that by way of a stage 2 amendment.

The stirring up hatred offences in the bill prompted the greatest interest throughout scrutiny of the bill. As I said I would, I listened to the voices that expressed concerns in that area, and in September I announced fundamental changes to the operation of the new offences in the bill. I am pleased that the announcement of those changes before stage 1 scrutiny got under way allowed the Justice Committee to focus on the many important aspects of the bill.

The changes that I announced, which have been welcomed by almost all stakeholders, reflected the degree of concern that existed about the potential for the new stirring up hatred offences to lead to people self-censoring entirely legitimate activity. That was because if there was no requirement for there to be intent to stir up hatred in relation to the offence, there could have been at least the perception that the legislation might be used to prosecute legitimate acts of expression, which might have led to an element of self-censorship. It was never the intention for the new stirring-up offences to have that effect.

My proposed changes have allowed us to focus more on the corrosive effects of hate speech. As the committee heard, hate speech can leave entire communities feeling isolated, scared and vulnerable to attack. Although there might be—I accept this point—a relatively small number of prosecutions under the new offences, as has been the case under the existing provisions on race, stirring up hatred against a group of people is abhorrent, and the law must have the tools to address it when and where it occurs. I am pleased that the shift in policy that I announced has seemed to greatly ease the fears of a number of stakeholders.

A number of other issues relating to the operation of the stirring up hatred offences have been debated during scrutiny of the bill. At the Justice Committee last month, I announced that I proposed to remove from the bill specific provisions relating to theatrical performances, which some artistic stakeholders felt singled them out. Although those provisions were based on existing precedent contained in the Public Order Act 1986, I consider that they can be removed without significantly affecting the operation of the bill.

I have confirmed in my response to the stage 1 report that I will add a time limit to the police powers of search and entry in the bill—again, that was recommended by the committee.

I turn to freedom of expression, which I know has been an issue of some concern to members. I know that a frustration has been some people's view that there is a binary choice between freedom of expression and hate crime law—that it is one or the other. That is not a view that this Government takes, and I know that it is not the view of a number of stakeholders.

Freedom of expression is not and has never been an absolute right, and most members probably accept that. Equally, it is important for the Government to recognise—I give an assurance that we do recognise this—that it is a fundamental freedom that is important to our democracy and the rule of law.

I say to all members that it does not have to be a binary choice between freedom of expression, which we all value, and ensuring that we have strong hate crime laws that afford protection to people who are most often the target of hate. It is not one or the other.

Liam Kerr (North East Scotland) (Con): Does the cabinet secretary agree that hate crime can be tackled without violating the fundamental right of freedom of expression?

Humza Yousaf: Absolutely—that is my entire point. The two do not have to be mutually exclusive. Liam Kerr will know that we have in the

bill provisions on freedom of expression in relation to religion. I have given feedback to the committee on how I think that those provisions can be expanded to align better with the provisions on freedom of expression regarding religion in the English and Welsh legislation. I will, of course, be quite keen to hear from the committee what more we may be able to do.

On the other characteristics covered by the bill, I will continue to reflect on whether there is a compelling need to extend or strengthen the protections offered by provisions on freedom of expression. I am not persuaded that all characteristics need such a provision. Disability is one example—I would be curious to see whether anybody thinks that there has to be a freedom of expression provision in relation to people with a disability. However, I can see that there is merit in seeking to introduce such provisions in relation to some of the other characteristics covered by the bill and, indeed, in assessing the depth of what such provisions should be. In my response to the stage 1 report, I mentioned that I thought that there was merit in bringing forward freedom of expression provisions in relation to at least a couple of protected characteristics, namely transgender identity and age.

The process of scrutinising the bill—and, in particular, its stirring up hatred offences—has improved its quality. There has been effective and constructive parliamentary scrutiny, just as there should be.

I turn to the issue that Johann Lamont raised in her intervention: the characteristic of sex and how that is dealt with in the bill. I know that, for good reason, there are a range of very strong views on the matter. I reiterate that I do not doubt for a second that, regardless of which side of the debate a member is on, they believe very strongly in making sure that we have a bill that affords protection against hatred.

There is undoubtedly a pressing need to tackle misogyny and gender-based violence in Scotland. Through our work to implement the equally safe strategy and take forward recommendations from the First Minister's national advisory council on women and girls, we understand the significance of how such behaviour can limit women's and girls' space for action, and we want to address that.

I was therefore delighted to announce Baroness Helena Kennedy as the chair of the working group, which will look to explore options around a potential stand-alone offence. Baroness Kennedy is well placed to take forward that work in the context of equality and human rights. She has indicated that Scotland is taking a pioneering position by exploring how the law can be harnessed to address conduct that is directly aimed at women.

Johann Lamont: I am sure that the cabinet secretary would recognise that hatred of women, which has been expressed through the centuries, is nothing new.

Last Thursday, I spoke in a debate in the Parliament, after which I was accused of transphobic hate. That accusation was not true. However, if I were to respond to my accusers by saying that they were expressing a hatred of women and of the rights for women that I sought in the debate, I would have no defence against that and no protection in the provisions of the bill. Is that fair?

Humza Yousaf: I do not think that Johann Lamont is interpreting the legislation correctly at all. It does not concern subjective opinions in relation to, for example, the new offences regarding transgender identity. It would not be enough for someone to say, "I think that Johann Lamont is transphobic and therefore she should be investigated and prosecuted." A high threshold would exist, and it would have to be proven beyond reasonable doubt, taking account of all the contextual factors, that she intended to stir up hatred against people because of their transgender identity. I am certain that it would not be possible to prove that.

However, even if it were to be proven that Johann Lamont's behaviour had been intended to stir up hatred, the other legal threshold would also have to be met—that her behaviour was threatening or abusive. Again—I have no doubt that this will be covered in the debate—the test that would be applied by the courts is not a subjective one but an objective one. I therefore do not agree with Johann Lamont's interpretation.

I understand that I am running out of time, so perhaps I could say more on the working group on misogynistic harassment in my closing remarks.

I know that members will wish to speak on many other aspects of the bill that I have not had time to cover—for example, I am sure that we will go on to debate the dwelling defence, the public element, the definition of "abusive" and the reasonableness defence. I will listen carefully to everything that members have to say.

In the meantime, I again thank the Justice Committee for its comprehensive and excellent report, which gives us a good basis for going on to stage 2. My plea is that, as we have done in advance of this debate, we should continue to work together to strengthen the law and to tackle hate crime in a way that will protect the rights of everyone to live their lives free from harm, while also protecting the important fundamental right to freedom of expression. I am certain that we can do so. I commend the general principles of the bill to the Parliament.

I move,

That the Parliament agrees to the general principles of the Hate Crime and Public Order (Scotland) Bill.

The Deputy Presiding Officer: I call Adam Tomkins to open the debate on behalf of the Justice Committee.

16:17

Adam Tomkins (Glasgow) (Con): Our law reports are replete with resounding statements on the importance of free speech. In the case of *R v Secretary of State for the Home Department, ex parte Simms*, Lord Steyn said that

"freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them."

In *R (on the application of Animal Defenders International) v Secretary of State for Culture, Media and Sport*, Lord Bingham said that

"Freedom of thought and expression is an essential condition of an intellectually healthy society. The free communication of information, opinions and argument about the laws which a state should enact and the policies its government at all levels should pursue is an essential condition of truly democratic government."

In western liberal democracies, one of two approaches is taken to the problem of hate speech—that is to say, expression that is directed towards stirring up hatred. Most countries, including the United Kingdom, seek to regulate it, criminalising its worst excesses while bearing in mind the cardinal importance of free speech, as set out in the quotations that I have just cited.

The outlier is the United States, where the first amendment prohibits such regulation, with constitutional protection of speech that goes further than it does anywhere else. US critics of European, Canadian and New Zealand hate speech laws say that they suffer from two flaws, both of which are fatal from first-amendment perspectives—that they are vague and that they are overbroad. For the past two months, the Justice Committee, which I convene, has been poring over every line of the Hate Crime and Public Order (Scotland) Bill, anxious to ensure that it falls into neither of those traps.

As our unanimously agreed report makes clear, the aims of the bill are partly consolidation and partly expansion. Some of its provisions are based on existing offences that are found in the Public Order Act 1986, but others extend the reach of Scotland's criminal law.

There is no disagreement between the committee and the cabinet secretary about how such provisions should be understood. We all accept that we have no right to criminalise speech

just because we find it offensive—indeed, we have no right to do so no matter how offensive we find it.

Freedom of expression is not absolute in our law, but at the same time there is absolutely no doubt that it extends to the right to “offend, shock or disturb”.

“Freedom only to speak inoffensively is not worth having”, as one judge put it.

The bill is about matters that are of fundamental importance, but it is also about balance. Which of us would want to live in a Scotland where people are free to threaten each other or to abuse each other on the basis of their race, their religion, or any aspect of their sexual identity? Getting that balance right is not easy—it is not a question of science, but is a matter of judgment.

In the committee’s judgment, the bill does not get that balance right, which is why—again, unanimously—we have recommended a series of amendments. Most, but not quite all, of our amendments have now been accepted by the cabinet secretary, so I thank him for his thoughtful and considered response to our report, which was published yesterday.

In our report, we welcome the amendments that were announced earlier in the autumn, but we say that they do not go far enough. The cabinet secretary said in September that the new offences of stirring up hatred on grounds other than race should be amended so that they could be committed only where such hatred is intended to be stirred up, and not merely where it is likely. In the committee’s view, that was a useful and helpful first step.

The cabinet secretary returned to the committee in November to say that, in addition, he would remove from the bill the provision that is targeted at theatres and public performance of plays, and that he would strengthen how the bill protects free speech in relation to religion. It is not just “discussion or criticism” of religion that should be protected; so, too, should ridicule and expressions of antipathy—and even of insult. Again, the committee welcomed all that.

Let me say, Presiding Officer, that the cabinet secretary’s constructive and pragmatic approach to the bill has been much appreciated by everybody on the Justice Committee, and has greatly helped to improve our scrutiny of the bill. That scrutiny has led us to conclude that, welcome as the cabinet secretary’s amendments are, we need to go further in order to ensure that the bill achieves its objectives without interfering with our fundamental rights.

For example, it is not just free speech with regard to religion that needs further protection;

free speech with regard to other characteristics needs it, too. Police powers to enter and search premises need to be more tightly defined and further thought needs to be given to the extent to which we want to criminalise behaviour that takes place wholly in private but which would, nonetheless, be caught by the stirring-up offences.

On that point, I remind Parliament that the full title of the bill is the Hate Crime and Public Order (Scotland) Bill. Current stirring-up offences, as I have already said, are found in the 1986 act. We should bear it in mind that those offences are targeted at public disorder, not at private thought.

Among the suite of further amendments that we recommend, one, to my mind, stands out. Under the bill, it will become an offence to use threatening or abusive behaviour that is intended to stir up hatred. We must define what we mean by that. In particular, we must explain what we mean by “abusive”. That key term must have an objective meaning, such that—in the committee’s view—the Crown must show, in order to secure a conviction, that a reasonable person would have found the behaviour to be abusive. The cabinet secretary, in his response, has indicated his strong agreement with that sentiment and I welcome that, but he seems to think that the bill does not need to be amended to reflect it, so that is a matter that we are, clearly, going to have to come back to later.

I will illustrate what is at stake with a real example that touches directly on the questions that Johann Lamont has already asked this afternoon. It is a delicate matter that needs to be treated with care and sensitivity.

As we all know, there is at the moment in Scotland a robust and, sometimes, rather fraught live debate about women’s rights, about whether sex is immutable, and about the rights of transgender people. Some women who are campaigning on a certain view on these matters have been accused of transphobia.

The committee is absolutely clear that the bill is not intended to chill public debate on those matters or to lead to self-censorship in relation to them. However, the committee is anxious to ensure that those are not unintended consequences of the bill. That is why we need to ensure that a person can be charged with a stirring-up offence only if a reasonable person would have regarded their behaviour as abusive.

Tim Hopkins of the Equality Network and Becky Kaufmann of the Scottish Trans Alliance gave compelling evidence on that point. Becky Kaufmann said that aspects of the debate on women’s rights can make people—and, indeed, have made her—“extremely uncomfortable” and can be “very disrespectful” of people’s identities,

but that, nonetheless, that is no business of the criminal law.

That brings me full circle. The bill is not about criminalising that which other people find offensive or disrespectful; it is about behaviour, including speech, that threatens or abuses, and that does so intending to stir up hatred.

Humza Yousaf: I thank the convener of the Justice Committee for his thoughtful speech. I accept what he says, and I will go back and reflect further on whether we can give a definition of “abusive” in the bill and not just in the explanatory notes. I commit to doing that.

However, does he accept that, even if there is a discussion or debate on the definition of “abusive”, the second part of the legal test is crucial and that, to use his example, it would have to be proved beyond reasonable doubt that a person intended to stir up hatred against somebody else because of their transgender identity?

Adam Tomkins: Absolutely—I accept that. However, the committee received a pile of evidence to the effect that we need to think not just about what happens in the criminal courts, but about what happens in police investigations. Speaking for myself, I say that I want to ensure that we do not have unnecessary police investigations on the basis of, for example, a flimsy allegation that somebody has engaged in transphobia when no reasonable person would have arrived at that conclusion. That is the force of my concern.

I am nearing the end of my remarks, and I have focused so far on only one aspect of the bill—namely, the stirring-up offences. Although that is the most contentious aspect of the bill, other provisions in the bill will have far greater practical effects. On that, we are all agreed. Offences that are aggravated by prejudice harm not only the immediate victim, but communities at large. As such, they should attract an aggravated-offence sentence. The committee agrees with the cabinet secretary that judges should be transparent about that in their sentencing decisions.

Hate crimes are better understood as focusing on the particular vice of prejudice, rather than on broader considerations of vulnerability, but it should be for Parliament in legislation, and not for ministers in regulations, to determine hate crime.

The bill does not include sex as a hate crime characteristic; sharply contrasting views about that were presented to the committee in evidence. On balance, we think it prudent to await the conclusions of the newly established working group on misogynistic harassment before legislating in the area. We warmly welcome the appointment of Helena Kennedy to chair that working group.

There is a lot more to be said, but the clock is against me. I hope that I have given a flavour of the committee’s work on the bill. Our report is lengthy and detailed, for which I make no apology. The 390 paragraphs of our report were designed with one objective in sight: to shine a light on the bill and on its strengths and its limitations, rather than to generate yet more heat about what has been a very contested measure.

The committee could not have done that without the open-mindedness and fair-mindedness that each and every member of the committee brought to the inquiry. We could not have done it without the extraordinary dedication, high standards and professionalism of the committee’s brilliant clerking team, which is led by Stephen Imrie and Katrina Venters. Most of all, we could not have done it without the help and support of the hundreds of Scots who engaged in the law-making process and who gave evidence. I thank them all.

16:28

Liam Kerr (North East Scotland) (Con): I am pleased to open for the Scottish Conservatives in the debate on whether the Parliament should agree to the principles of the Hate Crime and Public Order (Scotland) Bill. Before I address those principles, I will pick up on the closing remarks of the Justice Committee’s convener. The bill is the most controversial in the history of the Scottish Parliament. An unprecedented 2,000-plus people and groups felt compelled to respond to the request for evidence. That is extraordinary, and I think that it shows the best of civic Scotland. However, it also shows just how badly the Scottish Government got the bill wrong when it introduced it.

Following that, the Justice Committee took evidence from witnesses who presented themselves to scrutiny in very difficult circumstances and pursuant to a challenging timeframe. Every witness added considerable value to the inquiry, and that is reflected in the quality of the committee’s report. The report is a tribute to the professionalism, skill and patience of the clerks to the committee and other parliamentary staff. I know that I speak for everyone here when I acknowledge them.

Finally, I must acknowledge the MSPs on the committee. I approached the inquiry with a significant degree of trepidation. In September, I led a debate in which I asked the Parliament to reject the bill as drafted and invited the Government to come back with something workable that did not attack freedom of speech, and which could be scrutinised and implemented in the short time that was available to protect, via the aggravators, those we are all so keen to protect. That proposition was rejected by all

parties, bar the Conservatives, so I worried about how the inquiry would go.

However, the committee was not only collegiate and courteous but forensic, and its evidence taking and the report showed the best of what parliamentary scrutiny can be. The committee came to the unanimous conclusion that the Parliament should approve the general principles of the bill only if the changes that were unanimously demanded in the report were made to it.

I turn to those principles. In the programme for government, the First Minister told us:

“we need to ensure that we have laws in this country that are capable of tackling hate crime because it is pernicious and horrible and we should have zero tolerance for it.”—*[Official Report, 1 September 2020; c 46.]*

She is right. There was widespread acceptance from witnesses that we must do all that we can to ensure that the first part of the proposed new law, which deals with the statutory aggravations, is not only capable of tackling hate crime but does so completely and unambiguously.

Few witnesses had any issue with the principles of part 1. Similarly, I do not think that anyone had any issue with the principles of part 4, on the abolition of the offence of blasphemy. Part 3, which deals with provisions around characteristics, was also accepted in principle, although, properly, there require to be further debates and amendments on that point. It is with part 2 that severe challenges arose.

As introduced, the bill poses a grave threat to freedom of speech. As drafted, it would outlaw speech even if it was plain that the speaker had no intention to express, never mind stir up, hatred. The offence could be committed even in a person's own home—we would even have to watch what we said around our own dinner table. Under the bill as drafted, those who take a particular position on women's rights risk being accused of transphobia and criminalised for hate crimes, as Johann Lamont mentioned.

Time and again, whether in written submissions or oral evidence, the committee heard from individuals and organisations as diverse as the Law Society of Scotland, the Faculty of Advocates, the Scottish Police Federation, the Scottish Newspaper Society, the Humanist Society Scotland and the Catholic Church that the draft provisions threatened freedom of expression.

Those are the challenges that I sought to resolve in September when I suggested that the Scottish Government take the bill as drafted off the table and come back with something that did not have the controversial stirring-up offences in it so that the provisions on the aggravation of offences

by prejudice, which we all agreed were so vital, could proceed smoothly and promptly.

Parliament was not with me on that proposition, but the cabinet secretary was with me on the fact that the proposed extension of stirring-up offences raises questions about impacts on freedom of expression and citizens' engagement in democratic debate. I say that because, in what I believe to be an unprecedented move, even before the Parliament had started to debate the bill and before the committee evidence-taking process had begun, the justice secretary announced that he would be making amendments to his own bill. He said that the new stirring-up offences would be amended at stage 2 so that they would be crimes of intention only. That was welcome but insufficient. We knew that it was insufficient because the pressure from civic Scotland did not relent.

Therefore, the justice secretary returned to the Justice Committee to acknowledge the fundamental flaws that are inherent in the part 2 principles and promised to lodge an amendment at stage 2 that would scrap the provisions on theatres, plays and live performances. Even so, the cross-party Justice Committee was unanimous in its view that that would still not right the wrongs of the bill, that further changes—those that are set out in the committee's report—had to be made and that only if the justice secretary implemented its unanimously agreed recommendations would the bill be acceptable.

Yesterday, we received the Government's response to the committee's report. Encouraging amendments are proposed. Section 5, on the possession of inflammatory material, is to be removed; there is a proposal for time limits on the police powers of entry per section 6; and freedom of expression protections are to be strengthened. We have a third set of changes to the bill's principles being proposed by the Government before we have even arrived at stage 2.

However, here is the rub. First, not all of the committee's recommendations regarding stage 2 principles have been taken on board. The reasonableness defence is not to be added to—there is just consideration of adding to the explanatory notes. The term “abusive”, which we heard so much about from the convener of the committee, is not to be defined but, rather, will be clarified in the explanatory notes. The Law Society of Scotland says in its submission that came in last night that simply clarifying in the explanatory notes is unacceptable.

“The Bill must stand on its own so there is no role for ‘guidance to accompany the legislation’”.

There is still no protection in the bill for things that are said in the privacy of one's home. Not only

is that a violation of the right to privacy but, to paraphrase the convener, how can a public order offence be committed in private?

John Mason (Glasgow Shettleston) (SNP): Does the member accept that there are other aspects of the criminal law that impact on what happens in one's home?

Liam Kerr: I do. We heard about that in committee. However, I think that my point stands. We do not have protection in the bill for things that are said in the privacy of one's home.

Other crucial problems remain unchanged. In the section 3 stirring up of hatred offences, the threshold for criminality is arguably too low, and the offences are still wider ranging than those in other jurisdictions in the UK. The freedom of expression protections will not cover all new characteristics and, even for the characteristics that are covered, the protections are arguably not sufficient.

The conditions that were imposed for support by the Justice Committee have not been satisfied, and we do not know today that the cabinet secretary's promised amendments will be agreed to at stage 2. He can propose all that he likes, but it is for the Parliament to approve those things or not. Today, we will vote on the principles of the bill as drafted.

The convener said in his opening remarks that the bill is about matters of fundamental importance but that it is also about balance and that, in the committee's judgment, it does not get that balance right. He is correct. The committee is correct. The bill, on the unamended principles of which we will vote tonight, does not get the balance right and, as drafted, it could criminalise that which other people find offensive or disrespectful.

Humza Yousaf: Will the member take an intervention?

Liam Kerr: Do I have time, Presiding Officer?

The Deputy Presiding Officer: Yes, if it is a quick one.

Humza Yousaf: Thus far, Liam Kerr has not really mentioned the victims of hate crime. What does he say to the Equality Network, Stonewall, racial equality organisations, the Muslim Council of Scotland, the Scottish Council of Jewish Communities, Victim Support Scotland, HIV Scotland—all those who support the general principles of the bill?

Liam Kerr: I say that I thank them very much for their counsel in the committee sessions. I am not sure that this is the point that the cabinet secretary was making, but he will have read the Murray Blackburn Mackenzie submission that came in last night, which anticipates that concern, saying:

"Careful scrutiny of legislation does not mean lack of compassion for the groups it sets out to help. Effective legislation requires critical engagement."

I know that the cabinet secretary will agree that that is what we are engaged in. I am very grateful to the groups that he mentioned. Their evidence was extremely important and I think that they will also appreciate that that is what we are doing.

As I said, the bill, on whose unamended principles we will vote today, does not get the balance right. I find support for that in the LGB Alliance submission that we received last night, which includes the words:

"We have serious concerns about the Bill in its present form, and ask that it be withdrawn and rethought."

The bill is the most controversial in the history of devolution, but the cabinet secretary's response has not reflected the avalanche of opposition that his bill has faced. Genuine hate crime must always be punished, but the bill goes too far. Our fundamental right to freedom of speech remains under threat, and accordingly the Scottish Conservatives will vote against the principles of the bill at decision time tonight.

16:39

Rhoda Grant (Highlands and Islands) (Lab): I start by echoing some of the comments that Liam Kerr made about the committee and the drafting of its report. I pay tribute to the clerks, to all those who gave evidence and to the committee members who took evidence, including my colleague James Kelly.

I joined the committee as the report was being drafted and, to be frank, I was expecting to join a bit of a rammy. However, that was not the case, and that is down to everybody who works with and in the committee. All worked hard to ensure that the committee could reach consensus and I believe that, by doing so, and if the cabinet secretary continues to work with us, we can pass good legislation that will stand the test of time. There are many complex points of law to be considered, but paramount is the balance between freedom of speech and protection from hate speech.

Scottish Labour is supportive of the overall principles of the Hate Crime and Public Order (Scotland) Bill and agrees that it is important to consolidate hate crime legislation. However, we have concerns about the way in which the bill has been drafted. It is welcome that the cabinet secretary has on several occasions listened to concerns, and I hope that he will continue to do so. Although the changes that he has accepted are welcome, I believe that he must go further to meet all the concerns that have been expressed about the bill.

There are concerns about whether to add sex as a characteristic in the bill. There is concern that leaving it out might give a signal that hate crime that is based on sex and misogyny is in some way of lesser importance than other hate crimes. There are also concerns that the promised legislation to deal with misogyny may never transpire.

In Scotland, we know that violence against women is not only about hatred; it is about control and inequality. Engender pointed out that both the Convention on the Elimination of All Forms of Discrimination Against Women and the Council of Europe's Istanbul convention on preventing and combating violence against women and domestic violence suggest a presumption against gender-neutral laws that protect men and women in exactly the same way, because those seldom protect women, given that men and women are not equally empowered. That concern has been expressed by Engender, Zero Tolerance, Scottish Women's Aid and Rape Crisis Scotland, which oppose a sex aggravator and support separate legislation that incorporates the societal issues that underpin misogyny and violence against women.

Scottish Labour welcomes the working group on misogynistic harassment, and agrees that provisions and protections must reflect the serious nature of violence against women. However, we share concerns about the delay, and we reserve our position on adding sex as an aggravator, in order to avoid a hierarchy of protections. We therefore agree with the committee that the working group should report within a year, in order to allow timely implementation of its recommendations, and we will reflect on what may be required between then and the finalisation of the bill.

Liam Kerr: I am grateful to Rhoda Grant for taking a very quick intervention. She knows that I share a lot of her concerns on that issue. Where is Scottish Labour at the moment on lodging an amendment at stage 2 to introduce sex as an aggravator?

Rhoda Grant: Obviously, we are considering that as part of what we may do at stage 2. I am not saying that we will do it, but we are looking at it and we will look at the balance of evidence when we speak to stakeholders, because there is an issue about having protection in place while we wait for a working group to report. It may be that the bill could be amended to allow for that to happen, so that there is no gap between one protection and another. However, as I have said, we will be discussing that with stakeholders, so have not drafted anything at this point.

It is welcome that the Scottish Government has conceded that amendments are necessary in order to make part 2 of the bill fit for purpose, and

we have already heard a fair amount about that. Requiring intent for the stirring-up offences will be an improvement to the provisions and will ensure that the bill includes adequate protections for freedom of speech and thought and does not criminalise legitimate views. The cabinet secretary's proposed triple lock is welcome. The behaviour must be threatening or abusive, and intended to be so. As with all criminal law, the crime must be proved beyond all reasonable doubt, and the perpetrator must intend wrongdoing.

I believe that the amendments are welcome, but Ephraim Borowski of the Scottish Council of Jewish Communities still had concerns about online hate speech. He told the committee:

"having posted their hatred, people will then end their comments with 'Just saying' or 'Just asking.' They are now being given a get-out-of-jail-free card because they can say that they did not intend to cause offence, but that they were merely asking a question".—[*Official Report, Justice Committee*, 10 November 2020; c 27.]

I would welcome clarification from the cabinet secretary that such an easy defence will not be possible under the bill. In that context, it is disappointing that the cabinet secretary has chosen not to clarify the operation of the reasonableness defence in the bill, as the committee recommended that he should do. Clarification could have provided reassurance about such a scenario. I hope that he will look at that again.

Humza Yousaf: I will address Rhoda Grant's point about there being an easy defence in my closing speech. On the reasonableness defence, I am struggling to understand how behaviour that is threatening or abusive and that is intended to stir up hatred could be justified as reasonable. I would be happy for any member to respond to that point in their speech or in an intervention; perhaps Rhoda Grant has an example of behaviour where the intention is to stir up hatred but for which there is a reasonableness defence because of X, Y or Z—if she does, I will be keen to hear it.

Rhoda Grant: I do not have an example, but the law needs to take account of every possible scenario. We have to be careful not to do anything that impinges on people's freedom of speech. Some of the language that is used on social media is pretty grim, and language that I think is reasonable might not be the same as language that someone else thinks is reasonable. I hope that the cabinet secretary will tell us whether there will be further amendment to the bill to provide comfort in that regard.

On freedom of expression, Tim Hopkins, from the Equality Network, said that the Law Commission for England and Wales talked about the English provisions that take a similar approach

to that of sections 11 and 12. He quoted the commission's clarification that

"the law applies to hatred against persons, not against institutions or belief systems",

that

"criticism of behaviour is permitted",

and that the provisions maintain

"a space for discussion of public policy on potentially controversial issues".

Some people argued that article 10 of the European convention on human rights, which is set out in schedule 1 to the Human Rights Act 1998, provides those protections. However, article 10 says:

"The exercise of these freedoms ... may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society".

Therefore, it would be better for the bill expressly to incorporate the protections, rather than depend on article 10. The cabinet secretary has shown willingness to improve the freedom of expression provisions in the bill; Scottish Labour thinks that he should set out how he intends to further amend the bill in that regard at stage 2.

I am running out of time, Presiding Officer. I will comment further in my closing speech.

16:48

John Finnie (Highlands and Islands) (Green):

The bill has taken a rather unusual route thus far. It has certainly prompted a lot of debate. I thank the people who helped us to get to this point: the witnesses, our outstanding parliamentary staff and—although self-praise is faint praise—my colleagues on the Justice Committee, because we have worked collaboratively to produce the report that we are discussing.

It became very apparent that words and phrases are important. I am thinking of words and phrases such as "stir up", "likely to", "insulting", "abusive", "reasonableness", "dwelling", "freedom of expression" and "freedom of speech".

We know that freedom of speech is not an absolute right. The committee explored how far that right extends, and in particular whether it extends into a right to offend. A similar issue arose in the context of the Defamation and Malicious Publication (Scotland) Bill, when we considered freedom of expression versus the right to defend one's reputation. Concerns were voiced about the bill's potential to have a chilling effect. In written evidence, the Law Society cited with approval Lord Justice Sedley, who said:

"Freedom only to speak inoffensively is not worth having".

Likewise, the Faculty of Advocates cited Lord Rogers, who said that freedom of speech applies to

"'Information' or 'ideas' that ... 'offend, shock or disturb'".

Words, and the weight that is attached to them, have become very important. In paragraph 44 of its stage 1 report, the committee agreed that

"the right to freedom of speech includes the right to offend, shock or disturb."

It went on to say that it

"understands that this Bill is not intended to prohibit speech which others may find offensive, and neither is it intended to lead to any self-censorship."

However, it was

"anxious to ensure ... that these are not unintended consequences of the Bill."

There is no single definition of hate crime. Lord Bracadale used the following definition, which is that

"Offences which adhere to the principle that crimes motivated by hatred and prejudice towards particular features of the victim's identity should be treated differently from ordinary crimes."

We know that existing arrangements for hate crime deal with it as an aggravator to an existing offence, such as robbery, assault or breach of the peace, and that a lesser degree of proof is required to prove that aggravation.

The consultation on the bill generated a lot of interest. A substantial portion of the responses expressed concerns about freedom of speech and religious expression. However, that has to be countered by the need of vulnerable groups for protection and

"sending out a message about the unacceptability of prejudice-based content."

There was a constant tension about freedom of speech, freedom to offend and the state's obligation to ensure that that does not tip over into hate. That led to some lobbying, with some intemperate language from some people and some emotive imagery about constabularies invading churches. That has to be set against concerns about the bill attacking existing protections if there were to be further dilution.

As others have said, the cabinet secretary's approach is to be commended. The letter in September and the indication in October about changes to exclude the likelihood provisions is very welcome. It is, I hope, a signal of the way in which we will continue. Thinking of the response yesterday, it seems that, for my colleagues, there is still a way to go on some aspects. The bill and the way that it has been dealt with send an important signal. It is an emotive subject, and we all want it to be properly addressed.

The cabinet secretary defended the retention of the word “insulting”, saying that it had been in legislation for 34 years. The Law Society said that “it lowers the bar for criminality a bit too far.”—[*Official Report, Justice Committee*, 3 November 2020; c 4.]

The issue of a hierarchy of discrimination and inconsistency in relation to race has been mentioned. However, the committee rightly agreed that there are unique features in the pernicious nature of race crime. Race organisations strongly argued in favour of retaining the word “insulting”, suggesting that removing it would create a perception of dilution. Amy Allard-Dunbar of Intercultural Youth Scotland said:

“Microaggressions are daily instances of racism that add up to cause significant racial trauma. A lot of them come under the term ‘insulting’, and it would be hard to understand their impact if the term was not included in the bill. That provision needs to be kept.”—[*Official Report, Justice Committee*, 17 November 2020; c 33.]

There has been a lot of discussion, including about the term “abusive”, which the Crown Office tells us is a concept well understood by Scots prosecutors. There are people in favour of the decision. Discussions on that should continue. Similarly, I do not think that we are done with the dwelling defence yet. It is welcome that the cabinet secretary proposes to remove the provisions on public performances; likewise the time limit on police powers.

There were polarised views in relation to the working group on misogynistic harassment. I feel that there is a gap, and I am delighted that Baroness Helena Kennedy is to carry out an investigation.

Victim Support said that the impact of hate crime

“is frequently more devastating and longer lasting than that of other types of crime because an aspect of an individual’s core identity and sense of belonging is attacked.”

In its view,

“abusive behaviour forms part of a number of microaggressions that not only negatively impact individual victims, but whole communities and marginalised groups.”

For that reason, we need to keep discussions going, but at decision time, the Scottish Green Party will vote for the general principles of the bill.

The Deputy Presiding Officer (Linda Fabiani): Liam Kerr please, for up to six minutes—sorry, Liam McArthur.

16:55

Liam McArthur (Orkney Islands) (LD): You are not the first and you will not be the last, Presiding Officer.

In normal times, this would have been a complex and sensitive bill with potentially far-reaching consequences. During a pandemic, with evidence taken in virtual meetings and under enormous time pressures, the task of scrutiny has been made immeasurably harder. Like others, I pay tribute to all those who played their part: to witnesses, who responded in their thousands and had to adjust oral evidence to take account of the shifting sands of the Government position; to committee colleagues, not least our convener, who have been diligent, forensic and collaborative throughout; and to our clerks and the Scottish Parliament information centre, who have provided exceptional support.

I also thank the cabinet secretary, who recognised the hole that he had dug for himself and sought a ladder rather than a shovel. He is not out the hole yet, but he is a good deal closer than he was when we last debated the bill back in September. In that debate, the justice secretary accepted the ladder that I offered him when he acknowledged the serious concerns around part 2 of the bill—the so-called stirring-up offences—and agreed to set out ahead of stage 1 evidence taking how he proposed to address them.

That resulted in those offences being made intent only. It was a small but significant shift that left a great deal still to be reviewed, repaired and removed, but it allowed the committee to begin hearing evidence in a very different atmosphere, on a bill that was salvageable as opposed to one in need of being put out its misery.

We should not underestimate how problematic that latter outcome would have been, because our hate crime laws need modernising and consolidating. Hate crime for all protected characteristics is on the rise, and although the culture shift required to reverse that ugly tide will take time, our police, prosecutors and courts need the tools to deal with it when and where it occurs. At the same time, of course, we must be alert to the impact on other fundamental freedoms.

Our report asks whether rights such as freedom of speech and privacy should be interpreted and applied generously and restrictions to those rights legislated for narrowly and only where necessary in the public interest. To that question, as a liberal, I believe the answer is yes—even if those freedoms are not unfettered.

Again, I quote Lord Justice Sedley, who has been anonymously cited by others, who argued that

“Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative ... Freedom only to speak inoffensively is not worth having”.

That is why, during our stage 1 evidence, I focused my questioning on how those freedoms might be afforded greater protection in the context of the bill, and that is where I intend to concentrate my energies during stage 2.

I welcome the justice secretary's earlier commitment to enhancing protections in relation to religion and his willingness to go further in broadening and deepening the protections relating to other characteristics. I look forward to seeing the detail of any such amendments and remain happy to work with the justice secretary, as well as those who gave evidence on those issues in developing options for the committee to consider.

Although it is important to stress that each characteristic is equally deserving of protection, as John Finnie said, those protections need not be equal. As the committee recognised, the history, nature and prevalence of hate crimes differ, and that justifies taking different approaches. In passing, and as the convener very ably laid out, particular attention will be needed for protections in relation to transgender identity. As witnesses observed time and again, in an already combustible debate there is a risk of making it even more explosive.

However, race clearly stands out, not least given its significantly higher prevalence; it is right, therefore, that we do nothing that dilutes or appears to dilute protections that currently exist. That makes the case for retaining both the current threshold for stirring up hatred and the reference to "insulting". It is also why bringing the stand-alone offence of racially aggravated harassment into the scope of the bill is the right thing to do.

Consolidation helps to make law more accessible and thereby more effective. In the same way, updating the language to replace "evincing" with "displaying" malice or ill will addresses concerns that we heard about accessibility.

Although most of the attention around the bill has focused on part 2, as Tim Hopkins of the Equality Network reminded us, part 1 on aggravators is far more important. The Scottish Law Commission found that, in England and Wales, where a stirring-up offence covers race, religion and sexual orientation, stirring up is infrequently used in comparison with aggravated charges. That reinforces Lord Bracadale's conclusion that basing our hate crime laws on an aggravator model remains the right approach.

At this stage, sex is excluded from the bill as an aggravator. I very much understand the rationale for exploring a stand-alone misogyny offence, but that leaves a glaring omission. There is also the risk that any future provision will be made under secondary legislation, which inevitably limits

scrutiny by the Parliament, even under the super-affirmative procedure. Baroness Kennedy's appointment as chair of the working group on misogynistic harassment is a coup, and I can think of no better person to take on that role. However, if that work delays by years any meaningful change to the law, the impeccable qualifications of the person who kicks the can down the road will come as cold comfort.

As BEMIS made clear and as the latest hate crime statistics bear witness,

"Scotland is not immune to racism or prejudice",

so we should ensure that our laws are fit for purpose. At the same time, we must avoid doing anything that undermines our fundamental freedoms, which makes the task of tackling hate crime more difficult.

That is the challenge for the committee at stage 2. The cabinet secretary has undertaken to perform major surgery on his bill, but more will be needed if it is to gain the Parliament's approval. With those caveats, the Scottish Liberal Democrats will vote for the bill's principles.

The Deputy Presiding Officer: All the opening speeches went over time, so we will be strict with the open debate. Members have six minutes for speeches, which must include any interventions.

17:01

Rona Mackay (Strathkelvin and Bearsden) (SNP): I am pleased to speak in the stage 1 debate on the bill, whose general principles I will support today. As the Justice Committee's deputy convener, I add my thanks to the clerking team and the bill team for the fantastic support that we received throughout scrutiny of the bill, which was a big job that they made immeasurably easier. They enabled the committee to deal with the bill's many aspects reasonably and consensually.

I am sure that the many victims of hate crime are even more disappointed than I am that the Conservatives will not back the general principles—those victims must feel severely let down. The cabinet secretary gave evidence to the committee twice, which absolutely demonstrates his willingness to engage and listen to all concerns. He has accepted the overwhelming majority of the committee's recommendations and is willing to engage further on other matters. Given that hate crime numbers in all categories are rising, it is imperative to hold to account those who spread hatred of minority groups.

The first recommendation in the committee's report says:

"The Committee agrees that the right to freedom of speech includes the right to offend, shock or disturb. The Committee understands that this Bill is not intended to

prohibit speech which others may find offensive, and neither is it intended to lead to any self-censorship. The Committee is anxious to ensure, however, that these are not unintended consequences of the Bill.”

That is a good place to start. The bill has achieved huge media and public attention because of fears that freedom of speech might be restrained, but that categorically is not and never has been the bill’s intention. The bill is intended to show that Scotland does not endorse the freedom to abuse or to threaten minorities.

In 2018, Lord Bracadale undertook a hate crime review with a view to consolidating various provisions on hate crime, some of which have existed for decades, and to making the existing fragmented legislation fit for the 21st century by putting it in one bill. The bill implements most of Lord Bracadale’s recommendations, and the legal profession and stakeholders have overwhelmingly welcomed the consolidation.

Recommendations that the Government accepted include those on strengthening protection of freedom of expression provisions and on having an objective test for applying the term “abusive”. On that test, it should be noted that the existing law under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 is widely used, and that any clarification must not restrict the definition in relation to domestic abuse cases, for example, which could have damaging unintended consequences. For that reason—I note what the cabinet secretary said in his intervention on the committee’s convener—I believe that putting clarity in the explanatory notes, rather than in the bill, is the correct decision.

Including the existing offence of racially aggravated harassment in the bill was also accepted, as were new limits on police powers of search and entry.

Some faith groups, artists, authors and others raised concerns about section 4, which was removed entirely. Section 5 of the bill, which deals with possession of inflammatory materials, will be removed by amendment at stage 2.

One of the most important amendments was made by the cabinet secretary even before scrutiny began. As we have heard, it related to part 1 of the bill, on stirring up hatred. The cabinet secretary introduced the requirement to show intent to stir up hatred, which has to be proved beyond reasonable doubt in a court of law. The amendment was universally welcomed by all witnesses and stakeholders during evidence sessions and is, I believe, the right thing to do.

Each member of the committee followed a specific line of questioning with witnesses. My line of questioning was on the different approach that is taken in the bill to racial hatred, by retaining the

“insulting” and “stirring up” elements that have been present in current legislation under the Public Order Act 1986 for 34 years. There was a—*[Inaudible.]* I do not support that view. Racial hatred accounts for two thirds of all—*[Inaudible.]*

The Deputy Presiding Officer: Excuse me, Ms Mackay. When you move backwards from your screen, we lose your voice. Please can you lean in?

Rona Mackay: I apologise, Presiding Officer.

To remove the word “insulting” would dilute the message that racial hatred is abhorrent. It would also mean that there would be a lower threshold for racial hatred in Scotland than there is in England and Wales. Groups that deal with racial hatred, including BEMIS, the Coalition for Racial Equality and Rights, and YouthLink Scotland, told us that they support the inclusion of “insulting”. Unlike the cabinet secretary, I have never been targeted in that way, so their evidence is good enough for me.

The so-called dwelling defence has been much debated—often, fuelled by misinformation. There should be no sanctuary, in a home or other closed space, for intent to stir up hatred. Other crimes that take place in the home do not have that defence. Any allegation of that nature would have to be proved beyond reasonable doubt—it is not about restricting discussion around the kitchen table.

Misogyny in Scotland must be tackled. I welcome the setting up of a misogyny working group to be headed by Dame Helena Kennedy QC. The group will consider whether the characteristic of sex as an aggravator ought to be added by regulation to the list of characteristics. However, leading women’s organisations, including Engender and Scottish Women’s Aid, articulated strong arguments against including a sex aggravator.

I am pleased that the cabinet secretary has said that he intends to lodge amendments at stage 2 to add freedom of expression provisions for the protected characteristics of transgender identity and age.

It would take more than six minutes to cover just one aspect of the bill. In conclusion, I ask everyone who had preconceived notions about the bill to listen to the detail and to understand that it is not about curbing freedom of speech. All of us—not just members of the Scottish Parliament, but the people of Scotland—who want to live in a country that is inclusive and has zero tolerance for those who stir up hatred with intent to abuse and discriminate against minorities, should get behind the bill.

I am proud to support the general principles of the bill today.

The Deputy Presiding Officer: We have absolutely no time left. If members go over time, either we will end up with an even later decision time, or I will have to cut off speeches before they end.

17:08

Ruth Maguire (Cunninghame South) (SNP): Crimes that are driven by prejudice and hatred have deep social consequences. There is not just physical and psychological damage to the victim of the crime, but damage to the group to which the victim belongs and to our wider community, as a whole. As parliamentarians, we have a duty to work together to ensure that we do our utmost to protect, so that they can live their lives freely, those who are most vulnerable and who are targeted with hate. The volume of interest in and engagement with the bill from diverse stakeholders reflects not only the importance of the issue, but of cross-party committee scrutiny and the bill process as a whole.

I am grateful to the Justice Committee for all its work at stage 1. I commend the cabinet secretary for his approach in listening to concerns that have been raised and acting on them. Having the debate in advance of stage 1 was extremely helpful in that regard. I appreciate that the Scottish Government accepts the overwhelming majority of the Justice Committee's recommendations, including on strengthening of protection for freedom of expression, ensuring that the test of the term "abusive" is objective and removing from the bill section 5, on possession of inflammatory materials.

While we do everything that we can to ensure that Scotland is a place where there is zero tolerance of hate crime, we must ensure that we strike the right balance between respecting, protecting and upholding all rights, including the right to free speech.

Freedom of speech, of course, carries with it duties and responsibilities, and it can be legitimately subject to conditions, restrictions or penalties in the interests of, among other things, public safety and prevention of disorder or crime. The bill cannot, and does not, prevent people from expressing controversial, challenging or offensive views, nor should it seek to stifle criticism or rigorous debate in any way.

The bill includes explicit provisions on freedom of expression, but the bill's provisions are required to be interpreted in accordance with the European convention on human rights, anyway. The ECHR guarantees us all the right to protest and to express views, even if they shock, offend or

disturb others, although I acknowledge Rhoda Grant's point about whether we should have to rely on the ECHR for judgments.

I welcome the Scottish Government's movement around the stirring up provisions. I note the positive reception that was given to that by many organisations that were concerned initially. Lisa Clark, from Scottish PEN, stated:

"the cabinet secretary's amendment to focus on the requirement to prove intention to stir up hatred is welcomed and has eased ... our anxieties about the potential for a chilling effect on writers".—[*Official Report, Justice Committee*, 10 November 2020; c 2.]

I want to talk about misogyny, which is not covered by the bill but which, nonetheless, requires urgent attention. The cabinet secretary highlighted the impact that hate crime has on individuals who are targeted and on their wider group. The impact of misogyny on the lives of women and girls should not be underestimated. We, of course, account for more than 50 per cent of the population, so the women and girls who experience misogyny make up a sizeable proportion of our citizens.

Having reflected on the evidence that was provided to the Justice Committee, I agree with it that it is wise to wait until the working group on misogynistic harassment has reported before Parliament considers legislating to add sex as a hate crime characteristic. The matter is undoubtedly complex, and there are many differing views on how best to approach it from a criminal justice perspective. There is no single definition in law that is commonly used in a criminal context to encapsulate the breadth of behaviours that come under the umbrella term "misogyny".

Evidence from Engender on international examples concluded that, in relation to other states and the current work on tackling violence against women and on criminal justice systems in Scotland and Europe, a sex aggravator not only would do nothing to make women safer, but might have unintended and harmful consequences. I understand why women would be instinctively drawn to a sex aggravator—as Engender was, and as I certainly was—but it is crucial that we legislate in a way that best protects women and girls. At the moment, it looks as though the addition of a sex aggravator is not the way to go, but we will, of course, have to wait to see the working group's conclusions.

The appointment of Baroness Kennedy and the Scottish Government's commitment, in principle, to developing a stand-alone offence of misogynistic harassment are welcome. I acknowledge that it will be up to the group's chair to agree the overall timescale in which to deliver what is being asked of it, but I press the cabinet

secretary to say a little more on that front. At a time when it feels as though misogyny is at epidemic levels, it would be helpful to women and girls in Scotland to hear the Government reaffirm that misogyny is taken just as seriously as other hate crimes are, and that effective action will be taken as soon as possible. In Baroness Kennedy's words,

"The law has often failed to provide adequate remedies and justice for the harassment, assault and sexual violence experienced by women. Women have had to fight hard to properly criminalise such behaviour. The everyday abuse of women too often involves verbal degradation of the darkest and most threatening kind."

Confronting all hate crime is central to building the safer, stronger and inclusive Scotland that we all want.

I will be proud to support the bill at stage 1.

17:14

Margaret Mitchell (Central Scotland) (Con): I thank the Justice Committee's clerks, who always do a superb job in compiling stage 1 reports but who, together with the Scottish Parliament information centre, have performed a herculean feat in analysing the staggering 2,000 responses to the committee's call for evidence and compiling the stage 1 report on what is one of the Scottish Parliament's most contentious bills in its 21 years of existence.

Hate crime is vile and should and must be acknowledged, recognised, addressed and dealt with proportionately, fairly and effectively in a number of ways through training, education, awareness raising and—yes, where necessary—the rule of law. However, legislation in itself is not a panacea for tackling hate crime; it might, where appropriate, be another tool in the box to address it.

The Hate Crime and Public Order (Scotland) Bill was introduced by the Cabinet Secretary for Justice, Humza Yousaf, on 23 April 2020. It seeks to consolidate all existing Scottish hate crime legislation into one new hate crime statute and to modernise and extend existing hate crime legislation in Scotland by including age as an additional characteristic and creating a new offence of stirring up hatred.

I want to focus on the age provision in the bill. According to Dr Hannah Bows's research on age, which the Justice Committee commissioned, seeking to recognise and respond to elder abuse through specific criminal offences or by widening access to the hate crime framework to include older age will neither reduce violence and abuse nor improve prosecution and violence rates, but it

"may exacerbate inequalities and potentially facilitate further cultural devaluation of older people."

She concluded:

"there are significant issues with extending legislation to older people based on the 'vulnerable older adult' arguments."

The Justice Committee noted Dr Bows's conclusion that the approach to elder abuse should be based on vulnerability, not age. It is significant that the committee further noted Lord Bracadale's recommendation that

"the Scottish Government should consider the introduction, outwith the hate crime scheme, of a general aggravation covering exploitation and vulnerability."

I agree.

The bill has five parts. Part 2 creates the new offence of stirring up hatred, which is the most controversial aspect of a deeply flawed bill. The part 2 stirring up hatred provisions are misguided and have attracted justified criticism from numerous and various contributors. Police Scotland stated that the provisions create a "hierarchy of discrimination" that could bring the justice system into disrepute—for example, through the inclusion of the word "insulting" in respect of one set of characteristics but not another set. The Scottish Police Federation said that the provisions could move policing away from criminalising deeds and acts to policing what people think and feel as well as criminalising what is said in private.

Freedom of speech is one of the fundamental freedoms in any civilised democracy. The Law Society of Scotland has warned that the bill lacks clarity and could threaten freedom of speech. For example, religion and sexual orientation are protected, but those protections do not exist for other characteristics. The Sheriffs Association stated the bill created the possibility of exposing

"artists, performers and academics ... to potential criminality".

The actor Rowan Atkinson and the crime writer Val McDermid have stated that the bill could result in stifling free expression. [*Interruption.*] Will I get time back if I take an intervention, Presiding Officer?

The Deputy Presiding Officer: No, you will not get time back.

Margaret Mitchell: I apologise, then—I cannot take an intervention.

Despite the cabinet secretary's intention to remove section 4, which is on theatre and public performances, it seems to me that the context in which remarks are made and thoughts develop has not been properly considered. Furthermore, in the jurisdictions in the rest of the UK, private conversations in the home are excluded, but they would not be in Scotland under the bill. Prosecutions for stirring up hatred require the

permission of the Attorney General or the Director of Private Prosecutions. In Scotland, the Lord Advocate's consent would not be required under the bill.

It is unprecedented that, before beginning its scrutiny of the bill, the Justice Committee took evidence from the cabinet secretary to allow him to state what amendments and substantial changes he proposed to make to the bill at stage 2. Crucially, if legislation is to be fit for purpose, it must be drafted with care and precision. Words and their meanings matter. The fundamental changes that have already been proposed and the necessary further ones being discussed today are evidence that the bill is rushed and flawed. Given that, the bill should be withdrawn now and considered properly so that it can be brought back in the next session of Parliament.

17:20

Fulton MacGregor (Coatbridge and Chryston) (SNP): As a member of the Justice Committee, I record my particular thanks to the clerks for their tireless work on the scrutiny of the bill, which has been an effort by all. I also pay tribute to all committee members from all parties for the collaborative nature of the scrutiny.

There has been a lot of publicity about the bill, with the media saying that it is controversial, flawed or contentious. We have heard some of those words today. It is easy to get sucked into all that, but it is not what we found in the committee. Witnesses were generally supportive of the principles of the bill, although some had concerns that I will come to and which we have already heard about. Members worked together to improve the bill and our stage 1 report is a fair reflection of that process.

The main issue is that we all want to tackle the plague of hate crime in our country. It is real. We all know that and we in the committee and in Parliament have heard it many times. A few weeks ago, the cabinet secretary came to the cross-party group on racial equality, which I chair, to talk about the bill. Many of the organisations that support those who are affected by such crimes were positive about the principles of the bill and agreed to write to the Government to say that following the cabinet secretary's presentation.

There is no committee member or party that is not committed to tackling hate crime. We worked from that platform. We want to work in a way that does not impinge on freedom of speech and the bill does that.

It is perhaps our first recommendation from the stage 1 report that best sums up the bill. Rona Mackay read it already but I will do so again because it is important:

"The committee agrees that the right to freedom of speech includes the right to offend, shock or disturb. The committee understands that this bill is not intended to prohibit speech which others may find offensive, and neither is it intended to lead to any self-censorship. The committee is anxious to ensure, however, that these are not unintended consequences of the bill."

That final part, about unintended consequences, is important, because all parliamentarians have a duty to ensure that there are no such unintended consequences. Part of that involves helping the public to understand what the bill does and does not do.

That said, the committee has done its job. The evidence clearly led us to aspects of the bill that needed to be changed. The cabinet secretary has already spoken about those and about the amendments that he will lodge at stage 2. As others have said, he came to the committee early in the process. We heard significant concerns about the stirring up of hatred. Even if some of those were exaggerated, it is right to address that issue head on. Our report welcomes the cabinet secretary's proposal that the bill be amended at stage 2 so that, with the exception of race, the stirring-up offences will apply only to intent.

We received a lot of evidence voicing concerns about section 4, which deals with offences that are committed as part of a public performance. It is right that the cabinet secretary has committed to removing that section from the bill.

We also heard a lot of concerns about section 5, which deals with offences of possessing inflammatory material. The committee's report made suggestions about providing more clarity that might ease those anxieties. The cabinet secretary went further in his response and will be seeking to remove that section from the bill.

Those are all indicators of a Government working collaboratively to bring forward the best legislation possible.

I welcome the Government's agreement to deepen the freedom of expression provision for religion and also welcome the cabinet secretary's intentions, raised today, to lodge amendments at stage 2 that will add freedom of expression sections for the protected characteristics of transgender identity and age. Those are welcome additions to the bill.

Regarding the individual hate crime characteristics, I agree that race should be treated differently and that there should be an offence of stirring up racial hatred. The history and volume of such crimes point to the need for that outcome, which is also what the stakeholder groups would expect.

We heard strongly held views about whether sex should be included as a hate crime

characteristic. Ruth Maguire summed that debate up well. Dr Marsha Scott of Scottish Women's Aid worried that such a move

"might have unintended negative consequences".

Engender agreed, commenting that

"rushing to legislate ... runs the risk of entrenching that misunderstanding further in criminal justice bodies and public understanding, and in women's perception of what the state will or will not tolerate for them".—[*Official Report, Justice Committee*, 24 November 2020; c 3, 5.]

However, there were strong arguments on the other side of the debate, including from Lucy Hunter Blackburn, who told us that

"it is really important that people see themselves in the bill. A group of people who cannot see themselves in the bill ... are those who are subjected to any kind of abusive behaviour or harassment ... based on their sex".—[*Official Report, Justice Committee*, 17 November 2020; c 65.]

Ultimately, the committee unanimously came to the same place on the issue as the Scottish Government: that both cases were strong and that we need the working group that has been established to do its work and report back to Parliament on the issue. We suggested a timescale of a year for that, but I accept that that is ultimately for the group to decide.

This is a good bill. It will not solve every problem or do everything, but it has the potential to change lives and help tackle hate and prejudice. I hope that this debate has tackled some of the myths around the bill and demonstrated that the committee is working to improve it and make it as good a piece of legislation as possible. I am disappointed to hear—I heard it only today—that the Conservatives will not vote in favour of the bill's general principles, but I will certainly do so and I encourage others to do so.

17:26

James Kelly (Glasgow) (Lab): First, I pay tribute to the Justice Committee, and particularly the clerks, who have done an outstanding job in getting the evidence considered by the committee, bearing in mind the huge volume of written submissions and the fact that we were dealing with a complicated bill in difficult circumstances because of the pandemic.

Hate and prejudice have no place in a modern progressive society. From that point of view, anything that can be done through legislation and other means to root out perpetrators of hate and prejudice and provide proper protection for victims has to be very much welcomed. The context for the bill's introduction was the Bracadale review. There was broad agreement that legislation that tidied up the legal process, made it more efficient and provided more clarity was welcome.

However, it is fair to say that, when the bill was published, it ran into areas of difficulty. In getting legislation through Parliament, aside from the parliamentary process, there are two areas that need to be considered. First, does the legislation have public support? Secondly, does it provide legal clarity? When the Justice Committee ran its consultation, there were a vast number of responses that raised concerns. It takes a great deal to get the Police Federation of Scotland, the Catholic Church and the Law Society of Scotland on the same page, criticising the bill. The bill as published failed to get public support.

The Law Society said in its submission that the bill lacked legal clarity and that it would potentially run into the same difficulties as the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, meaning that, whether someone was a football supporter, a police officer or someone with a role in the judiciary, there was a lot of confusion as to what constituted a legal issue under the legislation.

Liam Kerr: Mr Kelly makes a reasonable point. Does he agree with the Law Society that putting things in the explanatory notes is not a sufficient substitute for putting things in the bill?

James Kelly: I take that point, and I will come on to the Law Society's substantive written submission for this debate.

The bill as published clearly had issues and was flawed. In that regard, the committee has done an excellent job in interrogating the bill. The committee has also done the cabinet secretary a favour in relation to its interactions with him. It shows how badly drafted the bill was that the cabinet secretary had to come back to the committee on three occasions with clarifications and commitments as to what amendments would be required. Fair play to him—at least he has interacted with the process and has proposed amendments.

There are clearly a number of issues with the bill. Much of the debate has concentrated on part 2, on the stirring up hatred offence, on which Liam Kerr raised a specific point. Even the fact that the cabinet secretary has said this afternoon that he will consider putting in the bill a definition of "abusive behaviour" in terms of stirring up hatred shows how far he has come.

Issues of freedom of expression have been raised by religious groups, and we have heard about the problems that theatres and theatrical groups have had in relation to performances. A lot of issues that the committee considered in its report require further attention.

Part 1, which consolidates offences, is well drafted, and that is welcome. However, in its submission, BEMIS raised the point that the lack

of disaggregated data does not allow us to properly interrogate the statistics on hate crime. That should be addressed at stage 2.

The bill, in its initial draft, is flawed and has difficulties. The committee has done an excellent job in flushing out some of those difficulties and suggesting improvements. The cabinet secretary has interacted with that process, but there is still a good way to go. The amendments will have to be thoroughly and robustly tested at stage 2 to ensure that the concerns that people have raised about part 2 have been addressed. For us to do that, we need the appropriate balance between correctly tackling hate crime and protecting freedom of speech. There is still a job to do on that at stage 2.

17:32

Annabelle Ewing (Cowdenbeath) (SNP): I am pleased to have been called to speak in the stage 1 debate on the Hate Crime and Public Order (Scotland) Bill. As the cabinet secretary mentioned in his opening remarks, I have a particular interest in the subject. As a newish member of the Justice Committee, I, too, pay tribute to the significant work carried out by the clerks and SPICe. I also thank everybody who took the time to make a submission. I remind members of my entry in the register of interests, wherein they will note that I am a member of the Law Society of Scotland and hold a current practising certificate, albeit that I am not currently practising.

There has been a lot of noise surrounding the bill, but a lot of studious and diligent work has been pursued out of the glare of tabloid newspaper headlines and Twitter. It is that studious and diligent work that I wish to focus on. We are all engaged in a very serious undertaking, which is to ensure that every citizen has confidence that the criminal justice system works for them and is not beyond their reach. Indeed, as has been pointed out, there is a risk that some people are focused on the theoretical impact of the bill rather than on the actual impact of actual hate crime on real people.

That is not to say that we are not duty bound to do our utmost to get the balance right. Of course, that is, in essence, the balance that is set out in article 10 of the European convention on human rights: on the one hand, the freedom of expression and, on the other hand, the recognition that such a freedom carries with it duties and responsibilities. That is the key point that I would submit.

In that regard, I am pleased to note that the cabinet secretary has listened to the concerns that have been raised and is considering addressing those concerns by strengthening the freedom of expression provisions in the bill. Obviously, we

wait to see the detail, but it is very encouraging indeed that the cabinet secretary has signalled his intentions. I believe that the strengthening of the freedom of expression provisions in the bill will secure the requisite balance that we need in law.

In the limited time that I have left, I wish to focus on an issue that I highlighted during the committee's deliberations: the characteristic of sex, which is a protected characteristic under the Equality Act 2010. As we have heard, the bill as it is currently drafted does not include that characteristic within its scope. I understand that its omission reflects a long-standing debate about how best to tackle the scale of the problem that women face in that area.

I was particularly struck by, among the evidence that the committee received, the detailed arguments advanced by Engender and other organisations to the effect that, to date, symmetrical approaches to the issue have demonstrably not worked. In that regard, the Istanbul convention on preventing and combating violence against women and domestic violence was cited, as it has been in the debate. It was recalled that the convention provides for a presumption against gender-neutral laws. I understand that it is on that basis that the Scottish Government proposes to set up a working group—which, as we have heard, is to be chaired by Baroness Helena Kennedy—to consider two issues: whether, in due course, the characteristic of sex should be included in the bill and whether, in addition, there should be a stand-alone offence of misogynistic harassment.

Having considered the matter very carefully indeed, and having taken into account the important point that the working group will also address the addition of the characteristic of sex in the bill—of course, I do not wish to prejudge the detailed analysis that the working group will carry out, which is much needed—and given the scale of the problem that affects women in that area, I support that approach. However, I add the caveat that the working group should complete its report within 12 months, as those key issues must be addressed and they cannot be kicked into the long grass, even inadvertently. I am reassured in that regard by the evidence of the Crown Office and Procurator Fiscal Service that, in the absence of a statutory aggravator, there would be nothing to prevent prosecutions from taking place in relation to cases that are reported at present.

Nevertheless, I have to say that, at this time, I am not persuaded by the submissions that the committee received from some organisations, which tended to suggest a conflation of the motivation for the working-group approach with other debates currently being had on the immutability of sexual dimorphism and the

importance of not conflating sex and gender. Those are important issues, and they will be debated as the months go by, but I am not convinced that having a working group is in any way intended to impact negatively on the current debate.

Presiding Officer, I have been timing myself on my phone, from which I note that my time is just about up. I will conclude by quoting Lord Bracadale, who, when giving evidence to the committee on his review of hate crime, said:

"I identified a number of functions that make hate crime legislation necessary. It marks and undermines the additional harm that hate crime causes to the victim, other members of the protected group and wider society. It has an important symbolic function in sending out a message that such behaviour will not be tolerated."—[*Official Report, Justice Committee, 27 October 2020; c 34.*]

[*Interruption.*] I agree entirely with that statement.

17:38

Liz Smith (Mid Scotland and Fife) (Con): There was a challenge there, I think, Presiding Officer.

First, I record my thanks to the members of the Justice Committee and its convener, my colleague Adam Tomkins, for what is, without doubt, an extremely thorough, thoughtful and well-balanced report. Given the nature of the subject, it cannot have been an easy task to grapple with such complex legal issues, including disputed definitions, such as those of "abusive action", "inflammatory material" or the word "insulting".

Although the committee took the view that Lord Bracadale's distinction between hate crime and other crimes is helpful, there remained the hugely complex and, at times, controversial task of striking the right balance between allowing extensive freedom of expression and the need to punish hateful action, thereby protecting the public. Paragraph 38 of the report sets out that challenge in a nutshell in saying:

"Legislating on hate crime inevitably touches on fundamental rights",

which, of course, include the right to free speech. Indeed, in recent weeks, for us to recognise just how difficult that is, we need only have listened to the passionate and, at times, bitter debate within the University of Cambridge as to what free speech actually constitutes, and by whom it should be safeguarded.

Neither can it have been easy for the committee to deal with such a large volume of submissions and witness statements, which is always a sign that there is not only a high degree of public interest in the bill but a wide variety of views to be represented.

Back in September, when we debated the bill in Scottish Conservative business time, I began my speech by pointing out the need to be mindful of the meaning of "good law"—the concept in jurisprudence that law

"decrees that a legal decision is both valid and able to hold legal weight,"

and that it is not a decision

"that has to be overturned or rendered obsolete."

As I explained,

"Good law is the basis for effective policy making and, as such, it requires ... a clarity of purpose; to be understood in simple language; to be strong in its evidence base; to be workable; and to be accepted by the public."—[*Official Report, 9 September 2020; c 55.*]

In short, good law should strike a balance between simplicity and legal precision, and should adhere to the highest standards of drafting and clarity of language. I think that the Justice Committee has largely succeeded in agreeing that those are the most important principles for good law making, so it has to be against those criteria that we examine the bill at stage 1.

Also in the September debate, my colleague Liam Kerr set out exactly why the Scottish Conservatives had real objections to some key sections of the bill, particularly in relation to part 2. He did so because those sections would not do what the bill said it would do on the tin. Despite the good intentions, part 2 of the hate crime bill has been seen as illiberal, intrusive and deeply flawed. It is deeply unpopular with a wide range of stakeholders and with the public, because they can see those glaring flaws, which mean that part 2 is all too ready to be misinterpreted. In short, that part of the bill in particular was not, in its intentions, striking the balance that the committee set out.

Once again, I draw the comparison with the named person legislation. Despite the benign intentions that were acknowledged by the Supreme Court, it was so full of problems—perhaps unintended consequences—that it would be deeply intrusive into private family life at the same time as giving unacceptable powers to the state and to those who would administer the scheme. Of course, we all know that when it came to the data-sharing aspect of that legislation, which was covered in part 4, it was struck down by the Supreme Court. It was bad legislation that was likely to give rise to illiberal action and confusion over legal responsibilities, and to undermine fundamental freedoms and personal choice.

There is another parallel to draw. Just like the hate crime bill, the named persons legislation brought together unlikely bedfellows from a wide range of backgrounds. That, in itself, should give members pause for thought. In my extensive

parliamentary experience, that is usually a sign that something is wrong or deeply flawed.

The legislative debacles that were the named persons law and the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 must not be repeated.

There are some good intentions behind the hate crime bill, but as it stands, it is badly in need of reform. There are still debates to be had at stage 2—about tightening up language so that there can be no misinterpretation or ambivalence about the proposed law, about strengthening the free speech provisions and about whether there is a need to create a prosecution lock when it comes to stirring-up offences. There is also a debate to be had about how to ensure that there is better recording of hate crimes.

Of course, legislative changes will not do everything. I was struck by the committee's view that there is an important role for education in all this. I whole-heartedly agree. Although that will be a matter for another committee, we must not lose sight of its importance.

The process of scrutiny has been increasingly under the spotlight in this session of Parliament, and not always for good reasons, so we must not repeat past mistakes. I have been here 14 years, and they have certainly become more frequent in recent times.

We owe it to our constituents to ensure that bad law has no place in Scottish politics, which is why the Cabinet Secretary for Justice must listen carefully and respond to the concerns of the committee—most especially, in my view, in relation to part 2.

I thank the committee again for its excellent work. It has been no easy task, but I respect the committee members and the committee convener—my colleague Adam Tomkins—for all that they have achieved.

17:44

John Mason (Glasgow Shettleston) (SNP): I appreciate being given the opportunity to speak, Presiding Officer.

As members know, I am not a member of the Justice Committee, but I have taken an interest in the bill—not least, because a number of faith groups have taken strong lines on it. Also, I am convener of the cross-party group on freedom of religion or belief, at which we spend a lot of our time considering hate crime in other countries and the need for freedom of expression in those same places.

I guess that there will always be a tension between freedom of speech and expression on the

one hand, and protecting vulnerable and potentially vulnerable groups from verbal and other abuse, on the other. As someone who broadly seeks to adhere to biblical or traditional Christianity, I very much want the freedom of speech that allows us to go out into the marketplace, to share our faith and to encourage people of all faiths and none to see that following Jesus Christ is the only way to God.

People might strongly disagree with what I have just said, but I hope that no one would suggest that it is inherently hateful. Logically, I must then be happy to allow other groups to be critical of Jesus and of Christians, and to encourage us to follow a secular or other path. After all, the person who is at the centre of our faith was insulted and was killed on a cross, so being insulted from time to time does not come as a huge surprise to followers of Jesus. To an extent, we expect it.

Freedom of speech and expression is hugely important. With my CPG hat on, I see very well the need for protecting vulnerable groups, which is the reason for the bill. That is certainly the case in Scotland and the UK, but it is even more the case in a number of other countries. It seems to me that, if similar legislation were to be passed in China, Pakistan and India, it would be a huge help and encouragement to minority groups there—those who practise Falun Gong, the Uighur and Tibetans in China, Muslims and Sikhs in India or Christians in Pakistan.

I accept that we are trying to get the balance right between different values—freedom of speech and protecting some of the most vulnerable sections of our community. As Rhoda Grant mentioned, it is worth noting the warning from Ephraim Borowski of the Scottish Council of Jewish Communities not to go so far the other way that freedom of expression takes over and we give a “Get out of jail free” card for any kind of hate speech.

The bill has always been clear in sections 11 and 12 that freedom of expression is protected and that we can criticise each other's views on religion or sexual practices. The European convention on human rights also guarantees the right to protest and to express views, even if they shock, offend or disturb others. Therefore, I think that the bill is acceptable in that regard. However, there is clearly a feeling that freedom of speech needs more underlining, and I have no problem with that. I understand that the Government proposes a widening and deepening of the freedom of expression provisions, which is to be welcomed.

It was suggested by some that there should be a blanket guarantee of freedom of expression to replace sections 11 and 12. However, I agree with the Government's response that that is not

desirable or required for race and disability. As Scotland and the UK become increasingly secular, some religious people certainly feel that they and their beliefs are under threat. There is a suggestion that religion is a private affair and that it has no place in the public square. I therefore think that the bill can help to protect religious people from overly aggressive hard-line secularists.

From that perspective, it disappoints me that some religious groups appear to oppose the bill *per se*. I thought that Inclusion Scotland made a good point when it said that it is

“concerned that consideration of the Bill has been overly focussed on the theoretical impact of the Bill on freedom of expression rather than the actual impact of hate crime on real people, including disabled people.”

There had been concern about whether the provision on possessing inflammatory material might cover even owning religious scriptures such as the Bible or the Qur’an. I have to say that I did not feel that there was a problem with the provision, but it sounds as though the Government’s proposal to remove section 5 would be a positive step to reassure people.

I am wary of the suggestion that private dwellings should be removed from the criminal law. As Michael Clancy of the Law Society of Scotland said,

“There is no sanctuary, in that sense, for most aspects of the criminal law and I do not think that there should be a sanctuary when it comes to hate speech.”—[*Official Report, Justice Committee*, 3 November 2020; c 9.]

We pretty well know that much racism and sectarianism stem from the home and the family so, ultimately, in extreme cases, we need to be willing to tackle that.

We received a fair number of briefings in preparation for today’s debate, in which a number of points particularly struck me. For example, the Equality Network and the Scottish Trans Alliance emphasise the importance of non-legislative action, and BEMIS has spoken about that, too.

Training for the police, appropriate treatment for victims and public awareness campaigns are all vital. We know that organisations such as Show Racism the Red Card and others are doing valuable educational work with young people on sectarianism. We certainly want to see more of that kind of thing.

Overall, I very much support the bill and am pleased that the Justice Committee was able to recommend that its general principles be approved, subject to appropriate amendments being lodged. Humza Yousaf has been very proactive in proposing amendments to alleviate many of the concerns that have been raised, and I welcome that.

I certainly hope that Parliament will support the bill at stage 1.

17:50

Alex Rowley (Mid Scotland and Fife) (Lab): In opening my remarks, I must make the point that the way in which the cabinet secretary and the Scottish National Party Government introduced the bill left a lot to be desired. The policy memorandum that accompanies the bill states:

“This Bill provides for the modernising, consolidating and extending of hate crime legislation in Scotland. Legislation in this area has evolved over time in a fragmented manner with the result that different elements of hate crime law are located in different statutes, there is a lack of consistency, and the relevant legislation is not as user-friendly as it could be. The new hate crime legislation will provide greater clarity, transparency and consistency.”

That seems like a good objective but, as we know and as the Government has acknowledged, the bill as drafted is pretty poor and, rather than offering answers, it has simply raised more concerns.

I note that, in its report, the Justice Committee states:

“A substantial proportion of respondents (including most individuals) had concerns about the impact of hate crime laws on freedom of speech and religious expression and about laws designed to protect specific groups. Many called for the repeal of hate crime laws, or, at least, did not want such laws to be extended. These views shaped their responses to the consultation”.

That reflects much of the contact that I have had from individuals, who have raised their concerns and called for parts of the bill to be scrapped, as they believe that the bill threatens freedom of speech and freedom of expression.

Although some have praised the cabinet secretary for being willing to compromise, I believe that it was a major folly to bring forward such an ill-considered and ill-drafted bill. The danger of such an approach is that it has allowed the bill to be politicised in a way that it should not have been, with the result that, despite the committee’s hard work and the fact that most organisations have said that they support the principles of the bill, the Tories are not even prepared to allow it to go forward to the next stage. The danger of the bill becoming politicised is that people use it for political gain in order to get votes. That is the problem. The cabinet secretary made a major mistake when he introduced a piece of proposed legislation that was simply not fit for purpose, and he should acknowledge that.

I am clear that hate and prejudice have no place in Scotland and that it is important to have clear and robust laws to deal with hate crimes that are committed in our society. I am equally supportive of the overall principles of the Hate Crime and Public Order (Scotland) Bill and agree that it is

important to consolidate hate crime legislation in one body of law. I believe that the evidence that we have received from various organisations over the past week or so and the work of the Justice Committee indicate that there is support for the principles of the bill.

It is welcome that the Scottish Government has conceded that amendments are necessary to make part 2 of the bill fit for purpose. Requiring intent for the new stirring-up offence will be an improvement to the existing provisions. However, Scottish Labour still has concerns about the bill as it is currently drafted and agrees that further improvements to part 2 are needed to ensure that it includes adequate protection for freedom of speech and thought, and that it does not criminalise legitimate views. It is encouraging that the cabinet secretary has shown willingness to improve the freedom of expression provisions in the bill, but we believe that he should set out how he intends to further amend that aspect both generally and in section 12.

Public understanding of the bill will rely on clarity about the terms that are used. That is why we support the committee's recommendation that improvements be made to the definitions so that the language is up to date and the application of provisions on reasonable defence, for example, is clear.

I urge the cabinet secretary not to take an arrogant view and not to fail to acknowledge the failures in introducing the bill in the way that he did, but to work together with others. The committee has done a great deal of work to try to bail him out. I also urge the Tories not to play politics, because the bill is a key piece of legislation and, done right, it will be good for Scotland.

17:55

Richard Lyle (Uddingston and Bellshill) (SNP): The debate on the bill has been one of the most intense that I can remember. In the past six months, strong views have been expressed by a huge range of people—lawyers, police officers, academics, journalists, actors, writers, women's campaigners and faith groups. The bill has generated hundreds of newspaper headlines, thousands of submissions to Parliament and—colleagues will attest to this—a great deal of correspondence from constituents.

The people of Uddingston and Bellshill have been vocal on the bill, and I owe it to them to raise their concerns today. I have received many emails about the bill, and I will read from a few of them. Mari said:

"Please take a stand and require amendments to protect freedom of speech and private conversations."

That constituent is concerned that speaking from the comfort of her own home will be turned against her.

If people are plotting a hate crime or indeed a terrorist crime, they should face the full force of the law. This may just be newspaper hype, but it needs to be explained.

Anne says:

"People must be allowed to express their views in their own home without the threat of police intervention."

She asks for a dwelling defence, saying that, otherwise, innocent remarks could and will be blown up. She asks:

"Do we really want to interfere in people's private lives?"

Thomas asked the same, and those questions must be answered.

I want to ask, and try to answer, two questions today. First, why has the bill received such a strong reaction from the public? Secondly, how should we proceed in the light of that? There is no doubt in my mind that the aims of the bill are laudable. Crimes that are motivated by hatred and prejudice are a blight on society, and the Government, like me, wants them to be punished. I support that intention, but any law must be measured and be supported by the general public. Good intentions are not enough in and of themselves.

Many bills that have been discussed in this Parliament were well motivated but had to be improved at their various stages, and the bill that we are discussing today is a prime example of that. We have to ensure that it meets the test of ridding us of hate, whether that hate arises because of race, religion or sexual orientation. No self-respecting person should hate another person just because of their race, colour, sexual orientation, religion or even their politics. We all occupy a small planet and we must rise above that and learn to live and work with one other.

However, the consequences of well-motivated but poorly executed legislation are serious. We are talking about new offences that will bring citizens into contact with the criminal justice system, and we have to ensure that they tackle hate and bigotry in a measured way. The proposals in the bill may have significant, far-reaching consequences for individuals, families and communities. It is crucial that we get the legislation right the first time instead of having to pick up the pieces later, after the damage has been done.

I think that that concern about the detail of legislation answers my first question, which was why the Hate Crime and Public Order (Scotland) Bill has caused such concern. The stirring up hatred offences in part 2 are highly subjective and

their scope has not been defined. I am sure that, after today, they will be defined and, as the bill progresses, that will be resolved. I am grateful to the Government for promising to lodge amendments at stage 2 that will provide more clarity.

There is still wide concern about the definitions in the bill. What does the term “hatred” mean? In today’s world, merely disagreeing with certain ideas is considered hateful by certain people. That is the world we live in and that is what we have to deal with. Vague stirring up hatred laws could give people a tool with which to punish their political opponents and pursue personal grievances through the courts.

Members may recall that my second question was about how we should proceed. If we were being asked to support the mere consolidation of laws, all members would be on board. However, part 2 of the bill presents a problem. Given the concerns that I have expressed on behalf of my constituents, I ask the Government to try to resolve many of the questions that are being asked and which have been asked in the debate. Associated with the bill are risks that need to be discussed and resolved, and I, for one, think that the cabinet secretary is trying to do that.

As I have already said, hate and bigotry have no place in modern society. I welcome the intentions of the bill and will support it tonight.

18:00

Shona Robison (Dundee City East) (SNP):

Like others, I begin by thanking in particular the Justice Committee clerks, who have done a tremendous job; my colleagues across different parties who have worked in a very constructive and consensual way; those who have given evidence; and, of course, Lord Bracadale, whose report lies behind what is an important bill for modernising hate crime law.

I also want to thank the cabinet secretary for his approach to the bill. That has been very important in getting us to where we are, in that the Scottish Government has so far accepted 33 of the 39 recommendations—about 85 per cent. That shows his willingness to reach compromise and consensus. So far, there has been huge movement on the stirring-up offences, which has been welcomed by stakeholders; on the strengthening of freedom of speech, which has also been welcomed by stakeholders; and on the removal of the reference to theatrical performances. Now there has been further movement on police powers of entry and on freedom of expression and other characteristics. All that is very welcome and is in line with the committee’s recommendations.

The cabinet secretary has also made clear that the terms “threatening” and “abusive” must have an objective test. The question is how that is best expressed. The cabinet secretary has left the door open on that, including the possibility of further exploration of whether it might be included in the bill.

In addition, the defence of reasonableness is, I think, difficult, and the cabinet secretary has outlined the difficulty of finding an example. I think that the committee acknowledged that in its report, and it is something for further consideration.

I turn to a couple of the comments that have been made during the debate. Margaret Mitchell seemed to be suggesting that one of the reasons for not supporting the bill was the retention of the term “insulting” in relation to race, and I have a couple of things to say about that. It is very important that we recognise the distinct approach to race and the fact that there is a different legal threshold, which is due of course to the prevalence of racial hatred as an issue. I do not want the term “insulting” to be removed, as I think that that would weaken existing legislation and send out a really bad message. I hope that members agree with me on that.

Given all the movement that I outlined at the beginning of my speech, it is disappointing that Liam Kerr has said that the Tories will not support the principles of the bill at stage 1. That is not in keeping with the tone and consensual nature of the way in which the committee has worked or that of the report.

I have some sympathy for Rhoda Grant’s point about the omission of sex as a protected characteristic. However, there is now a working group to look at the need for a stand-alone offence of misogyny, under the very expert chairing of Helena Kennedy. As she and the expert group have been asked to do that job, we ought to allow them to get on with it, albeit that I think that we need to keep a watching brief in order to make sure that that is done within a reasonable timeframe.

I want to end my speech on this point. We must always remember that at the heart of this are the victims of hate crime. That sometimes gets lost in the legal detail in debates about the bill, but we must remember that that is what the bill is about. That is crucial if we are to create the inclusive Scotland that we all want.

Without doubt, the bill has been on a journey. I think that we have reached a large degree of consensus. I am pleased to support the principles of this important bill and I hope that the consensual approach will continue as it enters its next stage.

The Deputy Presiding Officer (Lewis Macdonald): We move to the closing speeches.

18:05

Rhoda Grant: This has been an interesting debate. I think that everyone agrees that we need to strike a balance between protecting freedom of speech and dealing with hate speech, and that the bill should not chill debate or stop disagreement and argument, because we can reach consensus only if we are allowed to express our opinions freely.

I think that every member agreed that, as James Kelly put it, hate crime has no place in a modern Scotland or any modern society, so we should do everything in our power to stop it. James Kelly, Margaret Mitchell, John Mason and other members talked about what we need to do not just through legislation but by other means to educate people about hate crime and ensure that it is not part of our modern society. If hate speech no longer happened, we would not need the bill at all.

A lot of speakers talked about the lack of clarity in the bill. James Kelly quoted the Law Society on that point. The cabinet secretary has clarified on three occasions that there will be changes to the bill. Those changes are welcome, but, as Alex Rowley pointed out, a bill that should have been universally supported by members of this Parliament and, indeed, people outside the Parliament did not get that support because of the very poor quality of the drafting. As Richard Lyle said, the backlash against something that we should all support was unexpected; it happened because of the poor drafting.

We need to be careful, because, as I think Liz Smith said, making bad law is worse than not making law at all. It is a sad fact that, towards the end of a parliamentary session, bills have often been pushed through without time being taken to give them proper scrutiny or to pause for thought, and the legislation has subsequently been found to be flawed and has had to be revisited. I make a plea for time to be provided for reflection on whether the proposed amendments at stage 2 will get it right. We need to get the bill right, and I echo the points that Richard Lyle made to that effect. The cabinet secretary has accepted changes; I urge him to go further and accept more change, because that will be important if we are to get the law right.

Adam Tomkins highlighted the committee's concerns about the terminology in the bill. Terms such as "abusive" need to be explained in the bill; people need to understand how they will be interpreted, so that there is no doubt about what they mean. Behaviour that is abusive or threatening must be believed to be so by

reasonable people. It is important that we put that in the bill, because the meaning must be clear, so that we do not chill debate and disagreement, as Alex Rowley said.

In an intervention during the cabinet secretary's speech, Johann Lamont showed how accusing someone of hatred can be a means of trying to silence the person's voice and prevent them from expressing their views and opinions. We need to take care that the bill does not allow that to happen.

Members talked about the aggravators of sex and misogyny. Ruth Maguire talked about the increasing misogyny in society, which concerns us all. It is more complex than hate crime in that it involves power relationships. Women are not a minority—indeed, they are probably the majority—but the way that they are treated because of misogyny makes their place in society unequal.

It is a shame that the bill will be passed before the working group reports—it should have been the other way round. We should have had a crime of misogyny. Had that been done first, it would have dealt with the arguments. The fact that there will be a gap in which people are not protected by sex as a characteristic is really not good enough. Again, it highlights some of the faults in how the bill has been introduced, which might have been rather rushed and without consideration having been given to what we are trying to achieve by it.

A number of speakers, including Liam McArthur and John Finnie, talked about insulting behaviour, which they explained had been included in racial hatred offences for some time. That is retained separately in the bill. Many have argued that it is not used with reference to racial hatred prosecutions, but the point was made strongly to the committee that taking it out of the bill might signal a watering down of racial abuse protections. I do not think that that would be supported on any level.

Some members talked about theatres. Liam McArthur, Rona Mackay and others welcomed the removal of section 4, and I fully agree with them. It is difficult to understand why theatres and the acting profession were singled out in the bill. Anyone who has watched "Small Axe", a series by Steve McQueen on the BBC, will have seen a portrayal of racial hatred that is sometimes difficult to watch, although it is important to do so.

We all believe that hate crime has no place in a modern Scotland, and we want to get the bill right. Labour will support the bill at stage 1, but we will look for further amendments to ensure that it does what it is supposed to do without chilling debate in our society.

18:12

Donald Cameron (Highlands and Islands)

(Con): I refer to my entry in the register of members' interests, as I am a member of the Faculty of Advocates.

I welcome the opportunity to close for the Scottish Conservatives in this important debate on a bill that, as many members—including Richard Lyle, Adam Tomkins and others—have stated, is one of the most disputed pieces of legislation ever brought before Parliament.

I join others in thanking the Justice Committee for its considered and thorough report, which I will refer to. I particularly thank my friend—and the convener of the committee—Adam Tomkins for his remarks at the beginning of the debate, in which he set out some of the changes that have taken place during the committee's deliberations on the bill.

From the outset, I reiterate the views of all my colleagues on the Conservative benches and, indeed, across the chamber. We all abhor intolerance, bigotry, racism and prejudice of any kind. We all recognise the profound harm that hate crime causes to the victim and the community to which they belong. However, we, on these benches, profoundly believe that the bill still goes too far.

In the debate in September, I referred to the right to freedom of expression and the importance of preserving that right, notwithstanding the necessary constraints that have always applied to that right. It is a qualified right; there are no absolutes.

I repeat what I said in September about the justice secretary's own perspective on the bill. I have never doubted his personal commitment to the bill, in the light of his own experiences, or his good faith in attempting to make changes to it, or the sincerity with which he has approached the significant, difficult and thorny issues that arise. However, despite the well-intentioned moves by him and his Government to amend the bill, it unfortunately still falls short of what we and many people in Scotland are calling for.

We have stated that there are elements of the bill that we agree with. As my colleague Liam Kerr noted in his opening remarks, few—if any—witnesses to the committee had any issues with parts 1 and 4 of the bill, and many agreed with part 3, while recognising that some amendments were needed. However, it is clear to us that part 2 simply goes too far, and we remain unconvinced that the Scottish Government properly recognises that. Colleagues across the Parliament will have received hundreds of emails from constituents about the bill and, truth be told, very few—if any—

of the people who have contacted me have been vocal in their support.

Many people are concerned that, if the bill is passed, it could have the potential to criminalise acts that may be considered inconsequential or acts that cause only minor offence. For instance, the National Secular Society argued that, despite amendments to the bill, it felt that it would not provide comfort to

“writers, artists or playwrights who anticipate lengthy, expensive, stressful, sleepless months before court cases.”—[*Official Report, Justice Committee*, 10 November 2020; c 32.]

The Scottish Newspaper Society argued that it knows from the

“number and nature of referrals to the Independent Press Standards Organisation many complaints are lodged on the basis of offence being taken and this legislation creates the conditions for such grievances to move through the criminal justice system.”

One of the most profound interventions was that of BBC Scotland, which stated that it

“strongly shares the concerns expressed by the Scottish Newspaper Society as to the impact on freedom of expression”.

Those are significant and stark comments from diverse and differing quarters of Scotland, and they are not alone. As I noted in my remarks to the chamber in September, and as others have noted, valid and deep concerns have been expressed by Police Scotland, the Scottish Police Federation, the Faculty of Advocates and the Law Society of Scotland, to name but a few organisations.

As Liam Kerr pointed out earlier in the debate, there is also strong public opposition to the bill. Although it should come with the usual caveats, a poll by Savanta ComRes found that 87 per cent of Scots say that free speech is an important right in our society and 63 per cent think that disagreement and debate are beneficial to society. It also found that only 29 per cent of people feel that the law should criminalise offensive words.

As others have noted previously, opposition to elements of the bill has come from people across the political spectrum, which is remarkable. It is clear from the significant opposition from individuals and organisations that the Scottish Government should go back and think again, and I urge it to do so.

I will turn briefly to the committee's report. The committee concluded that

“support for this Bill will depend on whether the Scottish Government makes the further changes to the Bill needed to bring it into line with the recommendations we have agreed unanimously”.

I acknowledge that the Government has taken on board several of the committee's

recommendations, including the strengthening of freedom of expression protections and the strengthening of section 6 in relation to warrants. As others have noted, it has also gone further than the committee's recommendation to provide clarity to the provisions in section 5 by removing that section altogether, which we welcome—*[Interruption.]* I am sorry, but I do not have time. I normally would, but I am constrained.

We welcome that, but it is not enough. The Scottish Conservatives believe that there remain elements of the bill that we cannot support. There is still no protection in the bill for things being said in the privacy of one's home, and the section 3 stirring up of hatred offences are still wider ranging than in other jurisdictions of the UK. We also remain worried that Lord Bracadale's recommendation to remove the word "insulting" from section 3 has not been taken up. That, along with other vague concepts such as the word "abusive" and the reasonableness test, mean that numerous flaws remain. To take issue with the point that has been made about the definition of "abusive" appearing in the bill, criminal courts applying the legislation day to day are far more likely to have the legislation to hand than the explanatory notes.

Although the Scottish Government has accepted the committee's recommendation that free speech protections need to be strengthened, it has also indicated that it does not intend to cover all new characteristics that are introduced in relation to the stirring-up offences.

Several months ago, I called on the Government to pause, think again and come back to Parliament with a new bill that did not risk criminalising the freedom of expression. We made numerous suggestions about how the bill in its current form could be strengthened, but, regrettably, the Government has ignored several of those calls. We are being asked to support a bill that, at its heart, seeks to stamp out the scourge of hate crime but that also attacks the freedoms that our society holds dear. On that principle, the Scottish Conservatives—with deep regret—cannot support the bill at stage 1.

18:19

Humza Yousaf: The debate has been constructive and has generated more light than heat. I do not agree with everything that has been said, but arguments have been articulated in a constructive way to progress the bill. I repeat that, as I said in my opening speech, although members might disagree about the bill and although the Conservatives will not vote for its general principles, I do not doubt the commitment of any member of the Conservative group to stand against hatred, bigotry and prejudice. I have been

the victim of those things on many occasions, and many Conservative colleagues have messaged me and come up to me to provide their support. I have no doubt about their intentions, but I will come back to why I am disappointed by their stance on the bill.

Many members, if not all, said that freedom of speech is a crucial cornerstone of our democracy, and I could not agree more. I also agree that the law must not criminalise that which is purely offensive or shocking or can be described as disturbing. I was keen to stress during the committee's scrutiny that the word "offensive" is not mentioned anywhere in the bill. The new offence of stirring up hatred will criminalise behaviour that is threatening or abusive and is intended to stir up hatred, which must be proven beyond reasonable doubt. I will come back to some of those concepts.

I will address key issues that members across the chamber have raised. Many members, including Rhoda Grant, Ruth Maguire, Annabelle Ewing and Shona Robison, referred to the misogynistic harassment working group, on which I welcome the committee's recommendation. When we first considered drafting the bill, I was probably in the same space as the committee and many members have been in—I thought that it was wise to accept Lord Bracadale's recommendation of what he called a gender aggravator, which we called a sex aggravator to align the provision with the Equality Act 2010.

As with all the bill's provisions, I listened to those who are most affected. When I met the largest national organisations that represent women and tackle violence against women—Engender, Scottish Women's Aid, Rape Crisis Scotland and Zero Tolerance—they presented a strong, united front that a sex aggravator could do more harm than good. I had not considered that until I spoke to those groups. Engender then released a report, which many members have read.

It is important to reflect on the unintended consequences. If we include a sex aggravator, which could still come from members' stage 2 amendments, we will have to ensure that it does not fall foul of unintended consequences. Scottish Women's Aid made the strong point that a perpetrator of domestic abuse could use a sex aggravator to continue to abuse the victim or survivor. How would we guard against that? Like all the aggravators, a sex aggravator would be neutral—it would apply to men as it did to women, just as a race aggravator applies to a white person as much as to somebody of colour. That is hugely important to consider.

Johann Lamont: I appreciate very much the fact that the issues will be considered further.

Perhaps I have missed this. Will the cabinet secretary explain why that problem applies uniquely to hatred of women and not to other ways in which people are targeted with hatred?

Humza Yousaf: I commend the Engender report to Johann Lamont, because it goes into detail about how there is not a good evidential basis for a sex aggravator being used effectively to deal with misogynistic harassment. Johann Lamont might take a completely different view, and she and her party have every right to lodge stage 2 amendments, but it is hugely important to consider the unintended consequences.

That is not to say that a sex aggravator will not be added to the bill. I have accepted the committee's recommendation that, if the enabling power is used to make an order, the instrument should be subject to the super-affirmative procedure, to allow for further parliamentary scrutiny. We are not saying that there should not be a sex aggravator; we are taking a moment to allow the misogynistic harassment working group, which Baroness Helena Kennedy is chairing, to take its time—but not too much time, as I will say shortly—to do the work and ensure that no unintended consequences will arise.

I will be speaking to Baroness Helena Kennedy about the committee's recommendations. She has indicated that she is aware of the committee's recommendation for a 12-month timescale and we will have a discussion about whether she will be able to carry out the broad area of work that she is being asked to do, which is pioneering and potentially world leading, within 12 months. If she is able to do that, we would want to see that work being done in that timescale.

I want to touch on a few more issues that members have raised. I should caveat everything that I say by noting that the Government and I will give serious consideration to any amendments that are lodged at stage 2. We will go in with an open mind. There is nothing that has been suggested thus far, either by the committee in its report or by members today, that I would be completely closed to and say was completely off the table.

The reasonableness defence remains in the bill. However, for those who have asked us to expand on that, with a non-exhaustive list of factors, I repeat the challenge that I put to the Justice Committee twice and that I have repeated today, without receiving a satisfactory answer. If someone can give me an example of behaviour that was intended to stir up hatred, and the defence was that it was reasonable, I would be extremely keen to hear it. I have put that to law experts. We have many members who are non-practising solicitors and lawyers, including a law professor. If they can think of an example where

the reasonableness defence is needed in that regard, I would be all ears. I look forward to hearing about that in advance of stage 2.

A third area that has been raised by members from all parties, but particularly by the Conservatives, is the issue of a public element and protecting conversations that take place in private or in the home. I noted that it was the unanimous recommendation of the committee—forgive me if I am incorrect—that there should not be an absolute dwelling defence in the bill. That was mentioned by legal experts; many legal experts and Police Scotland agreed with that point. The Law Society of Scotland was very strong on that point and the Crown Office agreed. I assume that because the recommendation was unanimous, the Conservatives are not pushing for an absolute dwelling defence. However, they are perhaps suggesting that we consider a public element.

In all sincerity, I would be keen to understand what is meant by a public element. I will give one hypothetical example—I am more than happy, if time allows, to take an intervention on the point or we can discuss it post-stage 1. Let us say that someone invited five friends to the house, they locked the doors and closed the curtains so that there was no public element whatsoever, and they stirred up hatred towards Catholics. Those five friends then went out and desecrated chapels and assaulted priests. Those five individuals could be prosecuted for a variety of offences, but is it genuinely the Conservatives' position that, because the doors were closed and the curtains were drawn, the instigator—the person who stirred up that hatred—should face immunity from the criminal law? They do not need to answer that right now, but I would be keen to understand what they mean by a public element.

Could a public element mean that someone could hire a community hall and bring people in by invitation only, close the doors and stir up hatred, but because there was no public element—it was by invitation only—that person should be immune from prosecution? I genuinely do not understand what is meant by the public element and greater clarity from the Conservatives on that point would be most welcome.

Briefly, members articulated themselves clearly on the freedom of expression provisions. The Justice Committee made some important recommendations that I was pleased to accept and welcome. I accept Liam McArthur's interest in that in particular and I would be happy to work with him in advance of stage 2 and hear his views on how the Government could go further and how the bill could go further.

There are two issues: broadening and deepening. On the deepening aspect, I would be

keen to hear from members where they think that the freedom of expression provisions could go further. We have gone further on the freedom of expression provision in relation to religion. Can we go further on the freedom of expression provision on sexual orientation? If anyone holds that view, I would be keen to engage on that front.

I have said that we will broaden, extend and expand the freedom of expression clauses. We will introduce new freedom of expression clauses for transgender identity and for age. I will keep an open mind if someone says to me that we need one for disability, a variation of the sex characteristic, race and so on, but I am not convinced that they are needed for other protected characteristics.

On the term “abusive”, I reiterate what I said in my intervention on the convener: I will give further consideration to providing clarity in the bill. Rhoda Grant, James Kelly and others made the point about the definition of “abusive”. As I articulated in the Government’s response, my concern is that we do not fall foul of adverse unintended consequences. I am concerned that we might end up creating confusion in criminal law if we include a definition of “abusive” in the bill while other legislation—for example, the Criminal Justice and Licensing (Scotland) Act 2010, which deals with threatening or abusive behaviour, or the Domestic Abuse (Scotland) Act 2018—does not contain such a definition. That might not be the case.

Adam Tomkins: I am grateful to the cabinet secretary for taking an intervention. It is late in the day, but this is a really important matter. In the 2018 act and in the 2010 act, under the offence in section 38, “abusive” is objectively defined. It is defined differently in those statutes, but it is objectively defined. What harm would be done by an amendment that simply said that, for the purposes of the stirring-up offences, “abusive” means that a reasonable person must have found the behaviour abusive?

Humza Yousaf: I know that I am going up against a law professor, but the difference in interpretation is that Adam Tomkins considers that to be a definition whereas we consider that to be a different legal test. If we were to introduce a reasonable person test, that would be another legal test. The threshold would become that behaviour needed to be threatening or abusive and cause fear and alarm, for example, and such behaviour had to be proven to be intended.

I am not taking the proposal off the table. It is worthy of consideration. I am talking to our legal advisers, as members would expect. I would like to have a discussion with the convener in advance of stage 2 about whether we can provide clarity to the definition in the bill without there being adverse negative consequences. I make that commitment.

I will end—forgive me, Presiding Officer; I know that I have gone over my time—by saying that I am disappointed in the Conservatives’ position. I reiterate that I do not doubt that they are sincere in wanting to tackle prejudiced behaviour and discrimination, but I am disappointed, because the Government has engaged in good faith and we have found common ground. I am sure that they have done so, but I say to the Tories that it is important that they engage further with victims organisations and those who are most impacted by hate crime.

If the Conservatives were to vote against the bill’s general principles, they would be voting against the general principles, not the minutiae of particular provisions or amendments that might be lodged. I can see them shaking their heads, but that is what they would be doing. They would be voting against the general principles of a hate crime bill that is supported by the Equality Network, Stonewall Scotland, racial equality groups, many faith groups, Age Scotland and Victim Support Scotland.

I know that there are genuine concerns that aspects of the bill could have what is described by many people as a chilling effect on freedom of speech. We should also all bear in mind, as I am sure that we do, the chilling effect of hate crime. Ask any gay person, any lesbian, any bisexual, any person with a disability, any black or Asian person who has been racially abused, any Muslim, any Jew, any Sikh, any Christian, any Catholic or anybody who has been the victim of hate crime about the chilling effect that hate crime has had on them.

I will end on this quote, which Victim Support Scotland sent in a briefing to MSPs. They spoke to a user of their service who is continually physically and verbally threatened in their own community due to both their race and sexual identity. That individual said:

“He’s attacking me and my family because of who we are and what we look like. It hurts. I can’t change who I am.”

That goes to the very root of hate crime; you cannot change who you are.

I commend the motion in my name and I hope that the Parliament will allow the bill to proceed to stage 2.

Hate Crime and Public Order (Scotland) Bill: Financial Resolution

18:35

The Presiding Officer (Ken Macintosh): The next item of business is consideration of motion S5M-23531, in the name of Ben Macpherson, on a financial resolution for the Hate Crime and Public Order (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Hate Crime and Public Order (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act.—[*Ben Macpherson*]

Decision Time

18:35

The Presiding Officer (Ken Macintosh): The first question is, that motion S5M-23682, in the name of Humza Yousaf, on the Hate Crime and Public Order (Scotland) Bill at stage 1, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: We will move to a division. We will suspend for a few moments to allow members to access the voting app.

18:35

Meeting suspended.

18:40

On resuming—

The Presiding Officer: We will resume proceedings and go straight to the vote. I remind members that the question is, that S5M-23682, in the name of Humza Yousaf, on the Hate Crime and Public Order (Scotland) Bill at stage 1, be agreed to. Members may cast their votes now. This will be a one-minute division.

For the benefit of members online, we are now in the vote on motion S5M-23682, in the name of Humza Yousaf, on stage 1 of the Hate Crime and Public Order (Scotland) Bill. Members should vote yes if they agree with the bill.

I am afraid that we have had some technical difficulties. Members who are joining us on BlueJeans did not hear me calling the vote and half a dozen of them were therefore unable to exercise their vote. We will have to run that vote again. It is better to run it again than to disenfranchise members.

We will wait until we can be sure that members can hear the instructions from the chamber. There will be a short pause while we find that out. We are not suspended. We are still in session and we are still being broadcast.

There is a slight problem with Blue Jeans, and the members online cannot hear instructions from the chamber. We will run the vote again and I will type in instructions so that they can all see when the vote is open, which is our back-up position. We will run the vote for slightly longer. We can check whether anybody has voted. We will therefore run the vote again for two minutes and we will make sure that everybody has a chance to vote. Just hold on a second before we get ready to vote.

The question is, that motion S5M-23682, in the name of Humza Yousaf, on the Hate Crime and Public Order (Scotland) Bill at stage 1, be agreed to. Members may cast their votes now. This will be a two-minute division on the Hate Crime and Public Order (Scotland) Bill at stage 1.

The vote is now closed, so I will check whether any member struggled to vote and I will confirm the result after I have done that.

Edward Mountain (Highlands and Islands) (Con): On a point of order, Presiding Officer. Oh—finally, the robust system has confirmed that I voted no. I withdraw my point of order. The system is obviously not bust but robust.

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): On a point of order, Presiding Officer. I thought that I had voted, but I have an error message suggesting that I have not.

The Presiding Officer: I can confirm that you did vote, Dr Allan.

The Minister for Public Health, Sport and Wellbeing (Joe FitzPatrick): On a point of order, Presiding Officer. My screen does not say whether I voted or not, so I am hoping that I did.

The Presiding Officer: You did.

Rona Mackay (Strathkelvin and Bearsden) (SNP): On a point of order, Presiding Officer. I was unable to vote, and I would have voted yes.

The Presiding Officer: Thank you, Ms Mackay. We heard that, and I will make sure that your vote is added to the vote roll.

Jenny Marra (North East Scotland) (Lab): On a point of order, Presiding Officer. I am sorry, but I could not hear you and I missed the vote. I would have voted yes.

The Presiding Officer: Thank you, Ms Marra. That is noted and your vote will be added to the vote roll.

Alex Neil (Airdrie and Shotts) (SNP): On a point of order, Presiding Officer. My system would not allow me in to vote. Microsoft has got no verification codes left. Can I ensure that my vote is recorded as—*[Inaudible.] [Laughter.]*

The Presiding Officer: Can I just check what your vote was, Mr Neil?

Alex Neil: I would have voted yes.

The Presiding Officer: Thank you. That has been noted and your vote will be added to the vote roll.

Sandra White (Glasgow Kelvin) (SNP): On a point of order, Presiding Officer. I voted yes in the first vote, then was unable to vote in the second vote. Then the system told me that I voted no, and

then it told me that I had not voted at all. I would have voted—and did vote—yes.

The Presiding Officer: Thank you, Ms White. I will make sure that your yes vote is recorded.

I can confirm that we have now accounted for all votes.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 Griffin, Mark (Central Scotland) (Lab)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Macdonald, Lewis (North East Scotland) (Lab)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Gillian (Aberdeenshire East) (SNP)

Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 McNeill, Pauline (Glasgow) (Lab)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Smith, Elaine (Central Scotland) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Ind)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Golden, Maurice (West Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harris, Alison (Central Scotland) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Mason, Tom (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Abstentions

Tomkins, Adam (Glasgow) (Con)

The Presiding Officer: The result of the division on motion S5M-23682, in the name of

Humza Yousaf, on the Hate Crime and Public Order (Scotland) Bill at stage 1, is: For 91, Against 29, Abstentions 1.

Motion agreed to,

That the Parliament agrees to the general principles of the Hate Crime and Public Order (Scotland) Bill.

The Presiding Officer: The final question is, that motion S5M-23531, in the name of Kate Forbes, on the financial resolution to the Hate Crime and Public Order (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

The vote is now closed.

I am afraid that there were a few technical difficulties with that vote, so I will take points of order, and we will make sure that everybody's vote is recorded.

We have a point of order from Rona Mackay, although I am not sure that the sound is working.

Rona Mackay: Oh dear. *[Laughter.]*

The Presiding Officer: We have a point of order from Rona Mackay.

Colleagues, there are a number of technical difficulties. Basically, members who are online cannot hear us. Although we are in communication, it is not satisfactory. We have agreed the main item of business, so I suggest that we postpone the vote on the financial resolution until tomorrow. We will rerun the vote tomorrow when we have business in the chamber.

Before we move to members' business, I encourage all members to be careful when leaving the chamber, to wear their masks, to observe social distancing and to follow the one-way systems that are in place around the building.

I will suspend the meeting for a few moments to make sure that members who are joining us remotely can do so.

18:58

Meeting suspended.

19:02

On resuming—

No-take Zones

The Deputy Presiding Officer (Christine Grahame): The final item of business is a members' business debate on motion S5M-22945, in the name of Kenneth Gibson, on establishing new no-take zones. The debate will be concluded without any question being put.

Motion moved,

That the Parliament congratulates everyone involved on the success of the Lamlash Bay No Take Zone (NTZ); notes that a NTZ is an area of sea and seabed from which no fish or shellfish can be taken, including from the shore area; commends what it considers the excellent work carried out by the Community of Arran Seabed Trust to protect and restore the marine environment and ultimately sustain the livelihood of those dependent on fishing and tourism; recognises the positive impact of NTZs on seabed biodiversity and the size, fertility and abundance of commercial species in adjacent areas due to overspill from healthy NTZs; acknowledges what it sees as the success of NTZs internationally, such as in New Zealand, the Isle of Man's Ramsey Bay and the Green Zones of the Great Barrier Reef; acknowledges what it considers the importance of creating and maintaining a sustainable approach to fishing, and notes the calls on the Scottish Government to consider the establishment of new NTZs in other marine areas at risk of human overexploitation.

Kenneth Gibson (Cunninghame North) (SNP): I thank Scottish National Party, Labour, Green and Independent colleagues for supporting my motion to enable tonight's debate to take place; colleagues who have stayed to listen to the debate after many delays this afternoon; and Howard Wood and Jenny Stark from the Community of Arran Seabed Trust—COAST—for their excellent briefing.

On 3 December, the Scottish Government announced the designation of 12 new special protection areas and four marine protected areas in our seas. The fact that 37 per cent of Scottish seas will now be covered by the Scottish MPA network was welcomed by environmentalists. NatureScot said that the announcement marked "significant progress" towards Scotland's marine conservation ambitions and is a positive step towards a "nature-rich future".

Why is that important? An estimated 3.2 billion people rely on fish for almost a fifth of their protein intake, and yet, according to the United Nations Food and Agriculture Organization, 90 per cent of fish stocks worldwide are either fully fished or overfished at biologically unsustainable levels. Chronic overfishing has seen a depletion in biodiversity, which in turn has led to conditions in which commercially viable fishing cannot thrive.

The Firth of Clyde provides a prime example of a place where fishing was central to the economy

for centuries. Before the industrial revolution, the firth enjoyed an abundance of species: huge herring shoals attracted cod, turbot, monkfish and sharks to the area. Fishing boomed and technological advances meant that, by the 1940s, fishermen were catching more than 40,000 tons of herring annually.

Practices became more intensive and more destructive, relying increasingly on trawling to remain commercially viable. By the early 2000s, the Firth of Clyde was on the verge of becoming a "marine desert" and the entire ecosystem was in jeopardy, with nephrops now the main fishery. That decimation of the Clyde's biodiversity, a tragedy in itself, was also devastating to Scottish fishing. Jobs were lost, boats were decommissioned and the industry is now a shadow of its former self.

MPAs are hugely important. Unfortunately, they can vary wildly in effectiveness and, alone, they will not restore and sustain marine biodiversity. The use of high-intensity fishing vessels, capable of catching hundreds of tonnes of fish a day, is not forbidden by MPAs. Although there must of course be a place for sustainable pelagic fishing, we must combat biodiversity loss.

A no-take zone is an area of sea and seabed from which no fish or shellfish can be taken, including from the shore area. The Lamlash Bay no-take zone was the first community-led marine reserve of its kind in Scotland when it was established in 2008. At a modest 2.67km², it was the result of 13 years of campaigning by COAST, which I enthusiastically supported; it was also supported by Richard Lochhead, the Cabinet Secretary for Rural Affairs, Food and Environment at the time, who delivered it.

Lamlash Bay was, and is, an excellent location for a no-take zone, being home to one of the largest maerl beds in Scotland. Maerl is an ideal habitat for small species, which can easily find food and hide from larger predators. However, Lamlash Bay is by no means unique in its ability to benefit from a no-take zone. All around Scotland, there are marine areas abounding in natural beauty that are at severe risk of human overexploitation.

No-take zones are by far the most effective type of MPA and they increase conservation benefits hugely. A study in biodiversity conservation at the University of Tasmania found that MPAs often fail to reach their full potential due to factors such as illegal harvesting; regulations that also allow detrimental legal fishing; and the migration of sea creatures outside boundaries because of inadequate reserve size.

MPAs are most effective when they are well enforced, upwards of 100km², and isolated by

deep water or sand, and when they are well established, which can take years. For an MPA to be successful, a vital feature is that it either is a substantial no-take zone or contains such zones, where flora and fauna cannot be removed. Internationally, no-take zones are increasing in number, aiding both marine biodiversity and resilience to climate change.

Australia's green zones previously made up just 5 per cent of the great barrier reef MPA, but now cover more than a third of it. Green zones have improved biodiversity and are home to a huge variety of organisms, including many rare, vulnerable and endangered species. Since the 1980s, coral trout biomass has more than doubled and the trout are larger and more abundant than those in general-use blue zones.

Evidence following tropical cyclone Hamish, which hit the reef in 2009, suggests that large, reproductively mature coral trout in green zones are also more resilient to the effects of natural disasters. Recreational activities such as boating, snorkelling and diving are allowed, but fishing and coral collecting are entirely prohibited.

Other international examples show the potential of no-take zones to restore ecosystems to a more complex and resilient state. The Palau islands' national marine sanctuary, which covers 80 per cent of Palau's national waters, was described at this year's UN ocean conference as

"one of the world's most ambitious ocean conservation initiatives".

At 475,077km², the fully protected area is six times Scotland's entire land mass and nearly 178,000 times larger than Lamlash Bay's no-take zone.

Palau's waters host more than 1,300 species of fish and more than 400 species of hard coral. Since the sanctuary was established in 2015, regulations have been phased in to combat illegal fishing. The impact of the no-take zone was evident as early as 2017. Protected waters had twice the number of fish and five times as many predatory fish as those that were not protected. As a key food source for other predators, a healthy fish population is an excellent indication of a thriving ecosystem. The sanctuary came fully into effect on 1 January 2020. Palau is a nation of only 18,000 people, but it has big ambitions.

The Isle of Man's Ramsey Bay was designated the island's first marine nature reserve in October 2011, and there are now 10 designated marine reserves around the island, accounting for 10.8 per cent of Manx waters. Ramsey Bay reserve covers around 95km², divided into zones. About half of it is highly protected, with no commercial fishing permitted. The zones are coupled with a fisheries management zone that is co-managed by the Manx Department of Environment, Food and

Agriculture and the Manx Fish Producers Organisation. That innovative approach means that sustainable fishing can continue around no-take zones and the commercial benefits can be enjoyed responsibly.

On Arran, I have seen at first hand the work done by COAST to combat biodiversity loss. Since the Lamlash Bay no-take zone was designated, monitoring scientists have recorded double the number of living organisms on the seabed in comparison with adjacent fished areas. Of particular success has been the recovery of commercial species such as scallops and lobsters, populations of which have increased significantly in size and abundance in the no-take zone.

A study in February found that there are nearly four times as many king scallops as there were in 2010, and the size and number of both adults and juveniles has grown. The scallops also have significantly increased fertility compared with those from outside the no-take zone and produce as many young scallops as fishing grounds that are more than 20 times larger.

Further, the population of European lobsters is quadruple the 2010 population, and the lobsters are much larger and more fertile, with the potential to produce up to 100 times more eggs than before the no-take zone was established. Those benefits are felt not only in Lamlash Bay; studies show that there is evidence of lobster spillover into surrounding areas. Just last week, almost 2 miles outside the zone, a local creel fisherman legally landed a lobster that had been tagged in the no-take zone in 2018.

Research demonstrates that COAST's conservation efforts have been successful from a social, as well as an ecological, standpoint. A poll of more than 300 residents of and visitors to Arran showed awareness at 95.2 per cent, which is an increase of 23.5 per cent on 2011, and support was very high at 97 per cent.

Arran residents and businesses consider research undertaken in Lamlash Bay to be "very important" economically, which is unsurprising given that marine reserves enhance local fisheries and create jobs and new incomes through eco-tourism. Arran residents were also more optimistic about the health of their local seas compared with the Scottish average in a recent national poll carried out by Marine Scotland.

New MPAs are very welcome, and they are important in combating biodiversity loss. However, they do not negate the necessity of further measures.

Lamlash Bay and the international examples that I have given show the hugely positive impact that no-take zones can have on the surrounding environment, as well as on the potential for

sustainable commercial fishing. I therefore urge the Government to look closely at what the Lamlash Bay no-take zone has achieved and at the excellent work done by COAST to see how that success can be replicated, with community support and engagement, in many other locations in Scotland's waters.

19:10

Claudia Beamish (South Scotland) (Lab): My thanks go to Kenneth Gibson for lodging the motion for debate. With or without Government acknowledgement, we are in the midst of a climate and nature emergency, and it has been my constant concern that the marine environment is neglected in the conversation.

The international examples that Kenneth Gibson highlighted are valuable. Lamlash Bay is, indeed, a shining example of community empowerment and environmentalism. Howard Wood and COAST have my utmost respect.

I found it inspirational to visit the bay with Howard several years ago. The visit was a wake-up call for me. Seeing COAST's video of sea bed regeneration honed my commitment to the work for a sustainable future for our coastal communities, based on the need to protect and enhance our inshore marine environment.

As we will no doubt hear later in the debate, the results of the highest level of marine protection show a dramatic return of nature when exploitative and extractive activities are removed. Precious and iconic Scottish species such as pretty pink maerl beds are able to thrive. As we heard from Kenneth Gibson, juvenile fish such as cod and whiting and other small species are given protection by the lush sea bed.

It is the very withdrawal of our impact that leads to increased biodiversity and abundance, and the development of a healthier sea bed. Those benefit the fishing communities working legally around the no-take zone, as the abundance spills over and stocks are at more sustainable levels. Marine wildlife rebounds and the ocean is allowed the space and time to recharge that it is denied by commercial fishing levels in some areas.

It is senseless not to apply those lessons to the broader spatial management of our seas if we want a thriving and sustainable fishing sector. The Government is under a legal duty to properly implement MPAs and their management measures, and to apply the national marine plan duties to improve fisheries decision making.

The Environment, Climate Change and Land Reform Committee's report on regional marine plans will be out soon. I am sure that the minister will take careful note of that report and of how vital

it is that everyone—all the sectors and the communities that are involved—works together as we shape our future—[*Inaudible*].

As Open Seas pointed out in its briefing, the Government is failing to meet its duties, as proven by the leaked NatureScot report that shows losses in vital marine habitat.

In our seas, economic recovery and environmental recovery must go hand in hand. Coastal communities are on the front line when it comes to Brexit and the implications of Covid-19. Tackling those issues and the climate and nature emergencies demands a blue recovery. That is a key part of delivering a just transition for all. I stress that there must be consultation, as highlighted in some of the briefings that were sent to us before the debate.

An interconnected issue is the role of marine environments in climate mitigation. No-take zones can better protect key blue carbon habitats that sequester carbon emissions and help us meet impending and crucial emissions reductions targets.

I am pleased to support Kenneth Gibson's motion and add Scottish Labour's voice to the calls for more no-take zones in Scottish waters. It is time that we give those marine areas back their self-will.

19:14

Joan McAlpine (South Scotland) (SNP): I congratulate Kenneth Gibson on securing the debate today.

I was keen to speak in the debate because of my personal connection to Lamlash and the wider Firth of Clyde. As a Gourrock girl, I grew up sailing on and fishing in the Clyde. For our family, Arran, and especially Lamlash, where the no-take zone is, is a place of special memories. In the 1960s, we decamped to a but and ben there every July, at the time of the Greenock fair. One of my early memories of Lamlash pier is of seeing rows of urchins, still with their spines on, which divers had caught. They would be scraped and buffed up to sell to tourists—I recall a couple of nice lavender examples on my auntie's dressing table.

At that time, we had no appreciation of the harm that such activities caused to biodiversity. The creatures inside the sea urchin shells were scooped out and discarded. They were not considered to be good for anything, not even as bait to be used to catch haddock and whiting in nearby Brodick Bay—a summer pastime in those days, which soon disappeared with the fish.

As wasteful as diving for sea urchins might have been back in 1966, it was not nearly as destructive as what came next. In preparation for today's

debate, I learned that the Government allowed trawlers to come closer to Scottish shores in 1984. That explained a lot, because dredging is so destructive and indiscriminate in its assault of the sea bed, bashing sea urchins, tearing the limbs of starfish and leaving an underwater wasteland.

I recall far greater biodiversity in the Clyde in the 1960s and 1970s and as recently as the early 1980s, when we fished in and around Inverkip, where my father kept his boat. We went out every summer and caught predominantly cod, as well as haddock—if we were lucky—flounder and even the occasional skate. There were also sea trout near Inverkip, and until the 1980s my father caught grey mullet. Then, all the fish seemed to disappear. It did not make a lot of sense to me then, because the Clyde was getting cleaner. I know now that the only explanation is the overfishing and uncontrolled trawling that was allowed after 1984.

With the success of the no-take zone in south Arran, we see a way ahead that can perhaps take us back to the times that I remember, when the Clyde was more fertile, and the times before that when, as Kenneth Gibson said, the Clyde was abundant. I come from Gourrock, which began as a herring port, but the town has not seen a herring for many a lang year.

The no-take zone was established in response to a campaign by the Community of Arran Seabed Trust and was designated in 2008 by the then Scottish National Party environment minister, Richard Lochhead. I was impressed to read that scientists who have been monitoring the area have recorded a doubling of living organisms on the seabed, compared with adjacent fished areas. The no-take zone has become a fish nursery for many important species, including cod. A report in *Frontiers in Marine Science* notes a remarkable turnaround in a few short years, with the number of scallops increasing between twofold and fivefold and, as Kenneth Gibson said, lobsters not only increasing in number but growing much larger.

In a short time, a small no-take zone in south Arran has improved the position for species not just in that small zone but in adjacent areas—because, obviously, fish and crustaceans do not respect boundaries. Therefore, I was surprised to hear that it is the only no-take zone in Scotland. I ask members to imagine the effects if we had many more no-take zones around our coasts. No-take zones around not the whole coast but a substantial part of it would make a huge difference.

The benefits for tourism are apparent, as anyone who has tried to book accommodation in Lamlash less than a year in advance can testify. Many more no-take zones around Scotland would benefit not just tourism but sustainable fishing, as

species would be able to spawn and grow in peace. The approach is not anti-fishing; it is about establishing a sustainable fishing industry, which would be beneficial to our coastal communities.

The Government is to be congratulated on setting up the no-take zone in Arran in 2008. Let us build on that success by creating many more no-take zones and tackling the nature emergency that we face alongside the climate emergency.

19:19

Peter Chapman (North East Scotland) (Con):

I welcome the opportunity to speak on behalf of my Scottish Conservative colleagues in this important debate, which I thank Kenneth Gibson for securing. As we have heard, a no-take zone is defined as an area of sea and sea bed from which no fish or shellfish can be taken—that applies to the shore area, too. The United Kingdom has four such zones, all of which have proved successful. I will talk more about our Scottish no-take zone, but the others in the UK are in the Medway estuary, at Flamborough Head in North Yorkshire and at Lundy island off Devon.

Our Scottish no-take zone in Lamlash Bay, which was established in 2008, has gone from strength to strength, as we have heard. Researchers have found that, in the past 10 years, the size, fertility and abundance of commercial species such as lobsters and scallops have significantly increased in the zone's boundaries. I am pleased to note that lobsters are now more than four times more abundant in the no-take zone than in adjacent areas. Sea-bed biodiversity has increased by 50 per cent, and observations from divers, fishermen and anglers indicate that the sea bed and the fish are recovering.

Howard Wood, who is the co-founder of the Community of Arran Seabed Trust, said:

“Without destructive forms of fishing, this amazing, complex seabed allows more species to inhabit, hide and feed. You can see what happens when nature is allowed to thrive.”

To his references to inhabiting, hiding and feeding I add the ability to breed. Unlike us humans, as fish grow older, they become more fertile. As they grow older and larger, many species spend more of their energy on producing eggs. That is why no-take zones can be vital to helping species to repopulate the surrounding area.

Conservationists argue that up to a quarter of all UK waters should or could be no-fish zones. There is no doubt that that would allow stocks of fish such as North Sea cod to replenish, but I doubt that such coverage would go down well with our fishermen. They always argue that, no matter how many crabs, lobster or fish are in the sea, if

coastal communities cannot make a living from them, that cannot be a way forward.

As with most arguments, this is all about having a sensible balance. There is no doubt that no-take zones would be beneficial in the long run. We do not often have a win-win situation, but I genuinely think that having more no-take zones would be good not only for the environment but for our fishermen.

On balance, I definitely support having more no-take zones and I encourage the Scottish Government to begin the work to allow us to progress the principle of that. It is essential for that work to include consultation of our fishermen. We must get their buy-in for the proposals and take them with us, rather than telling them from on high what has been decided. Only by getting their support for no-take zones will we make the zones a success. That is the way forward. By taking our fishermen with us, we can have a win-win for all who are concerned.

19:24

John Finnie (Highlands and Islands) (Green): I, too, congratulate Kenneth Gibson on securing this important debate. I congratulate everyone who is involved in the success of the Lamlash Bay no-take zone, which the motion refers to. The Community of Arran Seabed Trust—commonly known as COAST—does excellent work to protect and restore the marine environment, which ultimately sustains the livelihoods of those who depend on fishing and tourism.

We often hear the phrase “a sea of opportunity”. I agree that a sea of opportunity awaits if we follow the no-take zones approach, but not if we allow the grab-everything approach of the reckless elements of our fishing sector. It is important that we recognise that, to have a sustainable industry, we must have a sustainable environment for that industry to work in. The evidence on the doubling of species numbers confirms that the approach that we are taking is right.

The Scottish Creel Fishermen’s Federation has said that years of overfishing and poor management mean that future generations will inherit an asset

“that is a shadow of its former self”,

so we must all redouble our efforts to ensure that that does not happen. I wish the SCFF every success in making its case for a judicial review of the Scottish Government’s decision that affects competing interests in the Inner Sound of Skye. I agree that it is often perceived that there are competing interests, but if we all have the common interest of ensuring a vibrant marine environment, as others have said, we can make progress.

Alistair Sinclair, from the SCFF, has said:

“Creelers and trawlers are left to sort it out among themselves.”

Part of that is about gear conflict. It is not an equality of arms. As he said,

“It is inconceivable that ... Scotland’s marine environment would improve if trawling expanded at the expense of creeling.”

As others have said, dredgers are destructive beyond measure. There have been investigations into six incidents of suspected illegal scallop dredging since March 2020, so the fact that we do not have an inshore fisheries bill is disappointing. However, I understand that there is common purpose among the parties in many respects.

We need to take some of the machoism out of discussions about the fishing industry. Commercial fishing is not about winning things; it is about international co-operation and the precautionary principle. Fish do not recognise international boundaries any more than they recognise the boundaries of no-take zones, but they recognise that the environment in such zones is better for them to flourish in. We have heard some of the important statistics in that regard. It is most important that we take evidence-based decisions that are supported by robust impact assessments. There must be an end to overfishing and discards.

The creation of more no-take zones would bring a lot of benefits. We have heard the argument for more marine protected areas. We need more monitoring and more robust policing, but we also need to understand the limitations of legislation and the evidential thresholds that have to be overcome. That will affect the number of successful prosecutions.

The change to the 3-mile limit in 1984 has been mentioned. The issue is about spatial management, co-operation, things being community led and the benefits for the environment and eco-tourism. No-take zones are a way of ensuring that aspects of climate breakdown are addressed positively.

I think that our seas will flourish if we have more no-take zones. I congratulate the community at Lamlash on all its work in that regard.

19:28

The Minister for Energy, Connectivity and the Islands (Paul Wheelhouse): I thank Kenny Gibson for lodging his motion on what is clearly an important issue to the Government, many members and their communities, such as the community on Arran. I thank all colleagues for their contributions. I particularly thank Mr Gibson, who set out the importance of fish and seafood as a source of nutrition, and some of the key findings

from the monitoring of the no-take zone at Lamlash Bay. Other members shared a range of views that highlight the importance of the marine environment to our wellbeing.

Members will, of course, be aware that no-take zones are not in my portfolio. I should explain that I am covering at short notice for my colleague the Minister for Rural Affairs and the Natural Environment, who is on compassionate leave. Although I have very fond memories of my time as the Minister for Environment and Climate Change, I do not have the depth of current knowledge of the issues that were raised in the debate, so I apologise in advance if I am not able to respond to all of them. Where necessary, I will ensure that issues are followed up afterwards.

Through our future fisheries management strategy, we want to ensure that we fish at sustainable levels and that the right protections are in place for our marine environment, underpinned by a robust scientific evidence base and, importantly, an enforcement regime, both of which John Finnie mentioned.

We have already confirmed that, where necessary and appropriate, additional measures will be introduced, such as for the protection of vulnerable spawning and juvenile fish areas, and remote electronic monitoring for the pelagic and scallop fleets, and for other sectors of the fleet as required.

The deployment programme has fitted remote electronic monitoring, including cameras, to 30 per cent of Scottish scallop dredge vessels, which it is hoped will help with the issues that Joan McAlpine raised in relation to Inverkip. As part of our wider modernisation programme, 40 creel vessels in the Outer Hebrides inshore fisheries pilot have also been equipped with low-cost vessel tracking systems.

For the rest of my speech, I will outline some of the marine conservation successes of the past 10 years, highlight current work and take a brief look into the future.

The establishment of the Lamlash Bay no-take zone in 2008 was a ground-breaking decision by Richard Lochhead, following a long and persistent campaign by the Community of Arran Seabed Trust, known as COAST. It was a bold and laudable move that Richard Lochhead made when he was Cabinet Secretary for Rural Affairs and the Environment. I recognise COAST's continued efforts to work with academic partners, most notably the University of York, to monitor and assess changes that have occurred over the past 12 years. That work has not only produced a substantial evidence base, but has given a lot of students a great opportunity for field work during their studies.

Kenneth Gibson described evidence that there was marine desert in the Firth of Clyde area. I understand that Marine Scotland undertook a review of the Clyde in 2012, which concluded that it was not a marine desert, but recognised that there was a need for some improvements. The situation was perhaps not as bleak as has been suggested, but there was certainly room for improvement.

As Peter Chapman mentioned, we should not forget the fishing industry, which is the often-forgotten component of the success of Lamlash Bay. I understand that there has been a high level of compliance over the past 12 years, which has helped to create the conditions that are now being reported on. That serves as a strong reminder of the need to have those who will be directly affected by management measures fully involved and engaged in decision-making processes. In that respect, I agree with what Peter Chapman said.

Before the Covid-19 pandemic took hold, 2020 was being termed as a superyear for biodiversity, with important negotiations for a new global biodiversity framework due to take place, and the United Nations climate change conference of the parties to be held in Glasgow. As members are aware, those events have been rolled forward into 2021. Joan McAlpine was absolutely right to say that there is a strong link between the nature emergency and the climate emergency; therefore, those talks in 2021 will be particularly important.

The year 2010 was also a superyear for biodiversity, in which there were three significant milestones: the Marine (Scotland) Act 2010 received royal assent, creating new domestic powers and duties for marine planning, licensing and conservation; the Convention for the Protection of the Marine Environment of the North-East Atlantic—the OSPAR convention—adopted the north-east Atlantic environment strategy; and the Convention on Biological Diversity adopted a global framework for biodiversity, known as the Aichi targets.

Those three things have been significant drivers of our work in the past 10 years to improve the marine environment. We now have a national marine plan, which guides sustainable development, and we have established three marine planning partnerships. We have a marine licensing system, which is designed to keep activities within environmental limits, and we have expanded the MPA network from less than 10 per cent to 37 per cent, as Kenneth Gibson noted. This year alone, we have nearly doubled the size of the network, including designating Europe's largest marine protected area. Those measures represent a huge leap forward in a decade, of which we should all be proud.

We appreciate that we have not fully addressed and achieved all the targets from 2010. Yesterday, the Cabinet Secretary for Environment, Climate Change and Land Reform published a statement of intent on biodiversity. The statement made it clear that current projects to improve the status of biodiversity will continue and be enhanced, where possible, until a new Scottish biodiversity strategy is agreed. That is relevant to the marine environment, in which we are working to deliver fisheries management measures for the MPA network and ensuring that the most vulnerable habitats are adequately protected outside the MPA network. Progress on that has been slower than originally planned this year, due to the response to Covid-19 and the impact of European Union exit preparations; however, that important work will continue over the next few years and build on the significant stakeholder engagement that has taken place over the past decade.

The statement of intent also commits to delivering a new Scottish biodiversity strategy within 12 months of the new global framework being agreed by the Convention on Biological Diversity in 2021. Members will wish to note that a new OSPAR north-east Atlantic environment strategy is also expected in 2021. That means that a new course will need to be set for 2030, so that we can meet the new international targets that are expected to be agreed next year. In setting that new course, consideration can be given to the need for tools such as no-take zones, which members from across the chamber have called for, and other forms of strict protection, to achieve the outcomes that we desire.

Once again, I thank Kenneth Gibson for bringing the debate to the chamber. There have been great contributions from colleagues. Claudia Beamish mentioned maerl beds, and I know from my previous role just how important they are. She rightly identified that they are beautiful, but they also contribute to the sequestration of carbon dioxide and are therefore important in our attempts to control damaging climate change.

I thank Howard Wood and the team at COAST for their long-standing efforts to promote conservation of the marine environment. I met Howard Wood at a global climate action summit in San Francisco, and it was great to see him influence a debate at international level by taking the example of what we can achieve in Scotland, in communities such as Arran, to a global audience.

We have come a long way since 2008, and we should celebrate the progress that we have made with conservation of the marine environment. I acknowledge the importance of today's debate. The journey is not yet complete, and we recognise that there is much still to do. Many of our

successes have been down to significant amounts of stakeholder engagement and ensuring that the wide range of views and perspectives are taken into account. Although that takes time, it results in better outcomes. I hope that stakeholders will continue to engage with marine conservation issues as they have done over the past decade, so that the next decade is just as successful as the last.

Meeting closed at 19:36.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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