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Scottish Parliament

Wednesday 10 March 2021

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

Portfolio Question Time

Environment, Climate Change and Land Reform

The Deputy Presiding Officer (Linda Fabiani): Good afternoon, everyone. I remind members that social distancing measures are in place in the chamber and across the whole campus. I ask that members take care to observe those measures, including when entering and exiting the chamber. Please only use the aisles and walkways to access your seat and when moving around the chamber.

Question 1 is from James Dornan. [Interruption.] Perhaps. If it is acceptable to members— [Interruption.] Oh—we now have Mr Dornan. I know that he is very acceptable to members.

Flapper Skate Protection

1. **James Dornan (Glasgow Cathcart) (SNP):** I am delighted that I came in at that point, Presiding Officer.

To ask the Scottish Government whether it will provide an update on what action it is taking regarding the consideration of protection for flapper skate. (S5O-05090)

The Minister for Rural Affairs and the Natural Environment (Ben Macpherson): I am pleased to announce the urgent designation of the Red Rocks and Longay marine protected area, which is located in the inner sound of Skye, to protect flapper skate. That action is complemented by an urgent marine conservation order, and both orders will take effect on 17 March 2021. The MPA, which will cover approximately 6 square kilometres, will provide strict interim protection for a nationally important nursery area and will support conservation of this critically endangered species. Our proposal for permanent protection of the location will be the subject of a public consultation during 2022.

The Deputy Presiding Officer: Do we have James Dornan?

James Dornan: Yes, I hope so.

Can the minister explain why it is important that we take that action urgently? What is the scientific basis for the designation?

Ben Macpherson: Protection of the site is vital to support the conservation of this critically endangered species, which is protected internationally. Historically, flapper skate were abundant in the north-east Atlantic, but their range has reduced significantly. This is the first skate egg habitat of this scale to be found in Scotland and little is known about flapper skate breeding. We have therefore taken the precautionary approach of providing interim protection from all activities that could affect the area while we develop proposals for permanent protection.

Sarah Boyack (Lothian) (Lab): Does the minister agree with the Our Seas coalition, which is concerned that the Scottish Government's claim that 30 per cent of our seas are protected is misleading because many of those supposed protected areas do not actually have protective measures in place?

Ben Macpherson: As the member knows, the Scottish Government is firmly committed to our marine protected areas, including the site that we are discussing. A hundred sites have fisheries management measures, of which 26 are specifically for nature conservation purposes. The Scottish Government is committed to the effect that the marine protected areas have and to the need for them in order to protect the species that we all treasure across the country.

Cetaceans (Acoustic Deterrent Devices)

2. **Mark Ruskell (Mid Scotland and Fife) (Green):** To ask the Scottish Government how it is protecting cetaceans from disturbance and injury caused by acoustic deterrent devices. (S5O-05091)

The Minister for Rural Affairs and the Natural Environment (Ben Macpherson): The Scottish Government is committed to protecting marine wildlife, including whales, dolphins and porpoises. The current regulatory framework provides a high level of protection for cetaceans, with rigorous processes in place to ensure that action can be taken where required.

A report on the use of acoustic deterrent devices at fish farms was laid in Parliament on 1 March, as required under the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020. The report explores the sufficiency of the regulatory framework and identifies where further action is required, and we will work with the sector and relevant stakeholders to take that forward.

Mark Ruskell: That report, which was published to Parliament last week, made no firm conclusion beyond requesting more data gathering and research. Can the minister confirm how many licences for the use of ADDs Marine Scotland has granted under the European protected species

scheme? Will Marine Scotland pursue legal action against fish farms that continue to use the devices without a licence, especially when the use of thicker nets to protect against seal damage would be a reasonable alternative?

Ben Macpherson: I refer the member to the report. As he will be aware, it concludes that, if necessary, additional measures will be introduced to ensure that a consistent approach is taken in order to meet international obligations. Following the review that Marine Scotland instigated last year, there are no licences under the European protected species scheme for the use of acoustic deterrent devices at fish farms.

Colin Smyth (South Scotland) (Lab): Marine Scotland has criticised fish farms that are not sticking to the rules on properly reporting the shooting of seals under licence. What action is being taken to ensure that those rules are being properly enforced?

Ben Macpherson: As the member will be aware, on 1 February, a change to the Marine (Scotland) Act 2010 came into force that removed two grounds under which the Scottish ministers was able to grant a licence to kill or take seals. As would be expected, the appropriate bodies are enforcing the legislation.

Rewilding

3. **Alison Johnstone (Lothian) (Green):** To ask the Scottish Government what its position is on working towards making Scotland the world's first rewilding nation. (S5O-05092)

The Minister for Rural Affairs and the Natural Environment (Ben Macpherson): We are committed to tackling the twin crises of climate change and biodiversity loss, which are among the most important challenges of this generation. Tackling them is central to our green recovery from Covid-19. We are leading the world in our move to end climate change and restore biodiversity in Scotland.

Our high-level statement of intent on biodiversity, which was published in December, set out our ambition, including our commitment to protect at least 30 per cent of our land for nature, as well as the 37 per cent of our seas that are already protected.

Alison Johnstone: The new nature restoration fund—the additional £10 million agreed in Green negotiations with the Scottish Government—has been welcomed by ourselves and others, including the Scottish Rewilding Alliance and RSPB Scotland. However, it is clear that we need more than investment; we need action. Protected areas are key to being a rewilding nation, but we need more than just lines on a map.

The Scottish Government likes to boast about how much of Scotland is protected, but it is possible to dredge a marine protected area, have driven grouse shooting in a national park and even build a golf course on a site of special scientific interest. Does the minister agree that that is unacceptable? What action will he take to ensure that protected areas mean that nature is actually protected?

Ben Macpherson: The protections and requirements are set out in the primary legislation that we have agreed as a Parliament. The investment that was agreed in the budget yesterday, which the member alluded to, will make an important difference. I am sure that in the next session, the Parliament will look at how we can continue to strengthen our measures on these matters as appropriate and for the benefit of tackling climate change and preventing biodiversity loss, while considering the other factors and interests of which we all have to be mindful.

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): Vitally important as the issue undoubtedly is, does the minister agree that, for many fragile communities in the Highlands and Islands, rewilding is also a—[Inaudible.] Of course, rewilding and rewilding are not necessarily mutually exclusive. Does the minister agree that we should pursue policies that are aimed at either rewilding or rewilding with the agreement and participation of those communities?

The Deputy Presiding Officer: The sound was not great there, minister. Did you catch it all or get the gist of it?

Ben Macpherson: I caught enough, thank you, Presiding Officer.

I am grateful to Alasdair Allan for highlighting the importance of our local communities; as a former migration minister, I very much agree with that.

Securing for the future the benefits that nature provides to people is at the heart of our efforts to stem the decline in biodiversity loss. I mentioned our biodiversity statement of intent, which was published in December. It includes a strong focus on the role of local communities alongside a commitment to engage with stakeholders in the development of a new biodiversity strategy and associated action plan.

Local biodiversity action partnerships provide a model for effective encouragement and co-ordination of local action. We strongly encourage local communities to seize opportunities to manage and improve their environment.

East Lothian Council (Climate Change Strategy)

4. **Iain Gray (East Lothian) (Lab):** To ask the Scottish Government what discussions it has had with East Lothian Council regarding its “Climate Change Strategy 2020–2025”. (S5O-05093)

The Minister for Rural Affairs and the Natural Environment (Ben Macpherson): The Scottish Government is committed to working closely with local government to facilitate high ambition in tackling the global climate emergency. Ministers and officials across the Scottish Government frequently meet representatives of all Scottish local authorities, including East Lothian Council, to discuss support across a broad range of issues.

Climate change officials last met East Lothian Council on 28 October 2020, and discussed the recent Scottish Government climate change plan update and how it aligns with the ambitions that are set out in East Lothian Council’s “Climate Change Strategy 2020-25”. Climate change officials also interact frequently with East Lothian Council on the climate emergency through public sector leadership forums such as the Sustainable Scotland Network, among many others.

Iain Gray: East Lothian Council’s strategy is already driving real change. The council has worked with the People’s Energy Company to launch an affordable energy tariff for county residents. Household recycling rates have been increased to 55.3 per cent of total household waste and there has been great progress on the installation of solar photovoltaics in the council’s housing stock. Most recently, the ambition to develop the East Lothian climate forest has been added, with the aim of planting 2 million trees across the county over the next decade. All that good work is taking place in the face of a £4 million shortfall in funding for the council. How can the Scottish Government provide real and practical support to the strategy?

Ben Macpherson: I pay tribute to Iain Gray, because this is probably the last time that I will interact with him in his work on behalf of the people of East Lothian.

In the 2021-22 budget, which was agreed yesterday, East Lothian Council will receive a total funding package of £203.6 million to support local services. That includes an extra £5.5 million to support vital day-to-day services. I am sure that there are other aspects of tackling climate change that the council will be looking at, such as the Scottish Government’s low-carbon fund and the vacant and derelict land fund, which is to support local authorities in expanding green space.

In my previous role as Minister for Public Finance and Migration, I had very good engagement with East Lothian Council. If there is

capacity between now and the election period, I would be happy to receive correspondence and, potentially, to engage with it on its priorities.

Littering

5. **Neil Findlay (Lothian) (Lab):** To ask the Scottish Government whether it will provide an update on the action that it is taking to tackle littering. (S5O-05094)

The Minister for Rural Affairs and the Natural Environment (Ben Macpherson): We are clear that litter is a blight on our landscape and that there is no excuse for it. Our national litter strategy is coming to the end of its five-year lifespan. We have been assessing progress, and we will shortly publish a report on it.

Later this month, the Cabinet Secretary for Environment, Climate Change and Land Reform will contribute to a litter summit, which provides an opportunity to reflect on the current situation, including the impact of Covid-19, and to look ahead to future priorities for tackling litter and improving our local environments. That will be the first in a series of opportunities to consider the next steps through working collaboratively with key stakeholders.

Neil Findlay: I am glad that the minister agrees that litter is a blight. In every town, city and country lane, we can see that litter levels have grown hugely since lockdown. Is it not clear that councils are simply unable to cope with that under the current budget settlement and with year-on-year cuts to their budgets? Will the minister make the case for giving councils back the cash to deal with that blight on our communities?

Ben Macpherson: Cleaning up litter costs public bodies £53 million a year—clearly, that is money that could be better spent on other services. As Neil Findlay said, local authorities are responsible for—and are best placed to do so—making decisions on prioritisation of local waste services, and responding to litter at local level. Local councils have engaged through creating their own innovative responses. For example, Perth and Kinross Council has created a small fund to support local land owners to clean up fly-tipping.

Tackling littering and fly-tipping is a collective endeavour—they require a collective response. The Scottish Government is very engaged with local authorities and other partners on how we will continue to tackle those issues together.

It is important to emphasise that we all, as MSPs, have a role to play. I pay tribute to Neil Findlay’s public service. In his remaining weeks, he will be part of that collective effort to encourage people to stop littering and to move towards a

Scotland in which we reduce littering significantly and achieve that together.

Liz Smith (Mid Scotland and Fife) (Con): Is it not true that part of the issue is the powers that local authorities have to deal with litter and fly-tipping? Can the minister give an update on whether the Scottish Government is considering making legislative changes that would allow local authorities greater powers to intervene?

Ben Macpherson: No legislative changes are pending in the immediate term. However, I am sure that the matter will, as we continue to evaluate our strategies, continue to be a priority for members who are returned in the next Parliament.

Claudia Beamish (South Scotland) (Lab): Can the minister give any detail on the deposit return scheme, beyond his commitment to commission an independent gateway review? The scheme has already been delayed, as he will know, until July 2022.

Ben Macpherson: I refer members to the Government-initiated question S5W-35780, which was answered on Monday. That answer gives the latest update on the deposit return scheme.

Agriculture (Climate Change)

6. Edward Mountain (Highlands and Islands) (Con): I refer members to my entry in the register of interests.

To ask the Scottish Government what its position is on the recommendation by the chief executive of the Committee on Climate Change that policies for the agricultural sector must be created rapidly to protect the environment and meet emissions targets. (S5O-05095)

The Minister for Rural Affairs and the Natural Environment (Ben Macpherson): The climate change plan update provides a pathway to transform Scotland's food and farming sector so that it can continue to produce high-quality and sustainable food, while reducing emissions and enhancing the environment. We are taking action now—the policies are intentionally front-loaded in order to achieve early progress.

We are making rapid progress through our farmer-led groups. The suckler beef climate group's report offers practical recommendations for lowering emissions, enhancing the environment and boosting business resilience. The programme board is working at pace to consider implementation of those recommendations. Four more groups will report in the spring, with recommendations for other key farming sectors.

Edward Mountain: Many farmers are not credited with the positive work that they do to

reduce carbon emissions. Does the minister agree with me that it is time to carry out baseline surveys, as doing so would provide a more complete picture of how farmers are part of the solution and not the problem?

Ben Macpherson: My understanding is that that is among the recommendations that we have received.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Does the minister agree that the additional funding of £5 million in the budget for agri-environment measures is very welcome? Can he outline other measures in the budget that will support our farmers to adapt their production methods so that they are more sustainable in the long term?

Ben Macpherson: A third of common agricultural policy schemes provide funding to support farmers, crofters and land managers in addressing climate change and achieving wider environmental benefits. The 2020-21 budget includes £40 million to support agricultural transformation. That will be supplemented by the additional £5 million of capital funding.

To support that transition, there is an additional £3.9 million for the Farm Advisory Service to ensure continued provision of high-quality advice. After a number of years spent working for a fairer allocation for Scotland, the Bew funds, totalling £25.7 million, will also be provided to farmers, crofters and land managers to aid transition in 2021-22.

Green Recovery (Covid-19)

7. Fulton MacGregor (Coatbridge and Chryston) (SNP): To ask the Scottish Government what steps it is taking to ensure that Scotland has a green recovery as it moves out of the Covid-19 pandemic. (S5O-05096)

The Minister for Rural Affairs and the Natural Environment (Ben Macpherson): As Scotland moves out of the pandemic, we are committed to rebuilding in a way that delivers a greener, fairer and more equal society, and which helps us to meet our world-leading climate targets. A green recovery is at the heart of our programme for government, and our climate change plan update, with more than 100 new policies, will help us to secure a just transition to net zero. That is supported by the £2 billion low-carbon fund, a record £1.9 billion low-carbon spend in this year's budget, and more than £8 billion in our five-year infrastructure investment plan to decarbonise across sectors while creating good green jobs.

Fulton MacGregor: Despite the delay to the UK budget, I was pleased to see the Scottish Government prioritising a green recovery in its budget. With the 26th United Nations climate

change conference of the parties—COP26—taking place in Glasgow this year, can the minister set out what the Scottish Government is doing to encourage other countries to adopt Scotland's ambitious approach to a net zero transition?

Ben Macpherson: One of our key objectives for COP26 is to support an ambitious global deal to tackle climate change in a way that is fair and will enable a just transition at home and abroad. This week, we have announced an international net zero futures initiative, in partnership with the Under2 Coalition and Bloomberg Philanthropies, to strengthen state and regional leadership ahead of COP26. Through that initiative, we will create a unique and dedicated space for state and regional Governments to foster peer learning, to share technical expertise, and to learn from examples of good practice on setting net zero targets and pathways to achieve them.

We will also publish Scotland's contribution to the Paris agreement, which is an indicative nationally determined contribution, ahead of COP26. That document will focus on the fact that Scotland has already set world-leading climate targets, and it will summarise our plans to reduce emissions and to adapt to climate change in a just way.

Natural Assets

8. **David Torrance (Kirkcaldy) (SNP):** To ask the Scottish Government what action it is taking to conserve and grow Scotland's natural assets. (S5O-05097)

The Minister for Rural Affairs and the Natural Environment (Ben Macpherson): The Scottish Government is committed to conserving and growing Scotland's natural capital, which underpins our society and our economy. We have made large-scale long-term investments in our natural capital through policies such as the Scottish rural development programme. Our updated climate change plan extends that through long-term investments in woodland expansion and peatland restoration, as nature-based solutions to climate change.

Our commitment to publishing a blue economy action plan will also support the protection of our marine natural capital.

David Torrance: Scotland's natural environment is our greatest national asset, but global assessments have highlighted the level of threat and the scale of the action that is needed in order to avoid the worst effects of climate change and to help to halt loss of our biodiversity. What progress is Scotland making in response to that crisis, and what actions are being taken to ensure that the assets are protected and conserved for future generations to enjoy?

Ben Macpherson: Our climate change plan update sets out our ambition to manage land in response to the climate emergency, especially in the agriculture, land-use change and forestry sectors. Our biodiversity statement of intent, which was published in December 2020, signalled our ambition for biodiversity in Scotland, and included a commitment to extending the area that is protected for nature to at least 30 per cent of our land by 2030. Since 2015, we have committed more than £200 million in agri-environment contracts to protect and enhance our environment across Scotland. We have also made a commitment to invest £250 million in peatland restoration in the next 10 years.

Rural Economy and Tourism

Tourism Sector (Summer Holidays)

1. **Lewis Macdonald (North East Scotland) (Lab):** To ask the Scottish Government what criteria the tourism sector must meet to ensure that people's summer holiday bookings will be honoured. (S5O-05098)

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): The main criteria, which all operators must satisfy, are that they are following the guidance and not acting outwith the regulations at any time. The precise legal requirements for the summer season are not yet known. We continue to pursue a cautious and gradual path out of lockdown, but we are hopeful that the Scottish domestic tourism sector will be open in time for the summer season, due to the efforts of all of society and the progress of the vaccine programme.

Lewis Macdonald: I am sure that those hopes will be shared by all members across the chamber, as they will be by all who are involved in tourism and hospitality in Scotland. Although people understand the Government's difficulty in setting any dates at the moment, they are keen to know which criteria will have to be met before that can happen. Does the cabinet secretary agree that it would be valuable to identify the triggers that will lead to tourism businesses being given the green light to reopen, for the sake of both their own forward planning and that of their customers?

Fergus Ewing: We are all keen to see tourism restarting, but it is correct that we take a cautious approach. The triggers for restarting will, of course, be based on an assessment of the relevant public health evidence from epidemiologists, and will proceed on that basis. However, we are hopeful that we will see significant progress, given the success in tackling the virus combined with the fact that we have delivered more than 1.7 million doses of the

vaccine and our aim is for every adult to be vaccinated by the end of July.

When restart happens—plainly, consideration is being given to precisely that—we will of course proceed in a gradual way. For example, last year, we started off by reopening self-contained premises such as self-catering accommodation, including caravans and caravan sites, because they allow people to have a holiday while staying within their bubble. Such an approach might commend itself again this year.

I am working hard with the sector and am engaging with it every day. In the past three days, I have had five meetings with various tourism interests. It is most certainly an issue on which there is an appetite for the provision of further information as quickly as possible, so we are working towards that end as I speak.

The Deputy Presiding Officer: Two members wish to ask supplementary questions. I will try to take them both if everyone is quick.

Kenneth Gibson (Cunninghame North) (SNP): Will the Scottish Government provide additional support for travel businesses that have been devastated by the current crisis? Will it also outline a road map for the eventual reopening of the industry, given that travel has been the service sector of our economy that has been hit hardest by the Covid-19 pandemic?

Fergus Ewing: We have been providing additional financial support for the sector. We also wish to provide as much clarity as possible on a road map for its eventual reopening. It is important to say that the section of the Scottish tourism sector that relies on international travel has been hit hardest of all. I take this opportunity to stress just how important international inbound travel is. Only this morning I was speaking to tour operators who stressed that people who come to play golf in Scotland or to enjoy the excellent hospitality, food and drink in our fine hotels and restaurants are a vital part of their businesses. Many such businesses—particularly those in our cities, but also those in rural Scotland—depend on international inbound custom from visitors, which prior to the Covid crisis was collectively worth £2 billion. I mention that because it is easy to neglect that segment of our tourism sector. I am delighted to have the chance to put that right now.

The Deputy Presiding Officer: I apologise to other members who requested to speak; I will have to move on.

Tourism Sector (Support)

2. Liam Kerr (North East Scotland) (Con): To ask the Scottish Government what action it will take to support the tourism sector in response to

reports that TUI will reduce its flights to Aberdeen airport. (S5O-05099)

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): Through the Scottish tourism emergency response group, the Scottish Government is working with enterprise agencies, the Convention of Scottish Local Authorities, VisitScotland and the Scottish Tourism Alliance to develop a five-year recovery plan for the tourism sector in Scotland. Short-term measures have already been introduced, in the form of £129 million in business support. We expect to announce further measures shortly.

TUI's decision to reduce flights to Aberdeen airport, which was reported last month, impacts on the outbound market and Scottish tourists travelling abroad rather than on the domestic market. Nevertheless, we recognise the impact that it will have on travel agents and airport employees. We will continue to consider what further support could be made available.

Liam Kerr: I thank the cabinet secretary for that answer, but we need to be clear. TUI announced that it is axing more than half its flights to Aberdeen specifically due to a lack of clarity from the Scottish Government. As the cabinet secretary points out, Aberdeen airport reports that that will inevitably lead to significant direct job losses unless more support is given to safeguard routes. What, precisely, is the Scottish Government doing to support Aberdeen airport and the north-east tourism sector? Does that include a north-east-specific and industry-specific recovery plan?

Fergus Ewing: The member is asking about the north-east. I have engaged with tourism interests in the north-east from the outset, and quite rightly so. That included a call with VisitAberdeenshire's chief executive, Chris Foy, just this week, and I have had numerous engagements with that agency, which has informed me about the situation in Aberdeen and Aberdeenshire.

I understand that the BBC has reported that TUI hopes to continue to take customers on summer holidays from Aberdeen to locations in Turkey and to Corfu and Palma.

We require to do this, and I hope that the Tories understand it. We must maintain measures to manage the risk of importation of the virus from areas of high prevalence, and that includes travel restrictions and managed isolation. Have we not learned the risks of importing the virus? We cannot discount or ignore those risks. As tourism minister, I am keener than anybody else in the chamber to see restart, but we have to be sensible about it and to listen to the evidence.

Inverclyde Hospitality and Tourism (Support)

3. Stuart McMillan (Greenock and Inverclyde) (SNP): To ask the Scottish Government how much financial support in response to the Covid-19 pandemic has been given to hospitality and tourism businesses in Inverclyde. (S5O-05100)

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): The Government has provided a range of support to businesses in Inverclyde as part of our overall package to mitigate the economic impact of the virus. That includes providing non-domestic rates relief to retail, hospitality and leisure premises worth £8 million in Inverclyde in the current financial year. We have also provided direct grant support to businesses in Inverclyde that have been obliged to close or to operate under restrictions. Between 2 November 2020 and 22 February 2021, more than £2 million was provided to businesses in Inverclyde through the strategic framework's temporary closure and restriction funds, and £2.4 million has been paid out to 377 businesses in hospitality, retail and leisure top-up payments.

Stuart McMillan: The financial support that has been provided to hospitality and tourism businesses in my Greenock and Inverclyde constituency is welcome, and I thank the cabinet secretary for that, but will he confirm that applicants from the rural parts of my constituency can apply for the increased rural tourism infrastructure fund? Will the cabinet secretary consider introducing a Clyde coast tourism fund to help the four local authority areas of Inverclyde, West Dunbartonshire, North Ayrshire and Argyll and Bute, which have greater tourism potential as well as local economic challenges?

Fergus Ewing: Mr McMillan has doggedly and continuously advocated tourism on his patch and, more widely, marine tourism, as other members have argued robustly for interests in their areas. Were I to promise a fund for every single MSP, I would be going further even than Father Christmas. Much as I may resemble that character, that would be an imprudent thing for a Government minister to do.

Nonetheless, I can confirm that we had unabated generosity in the budget in respect of the increase in the rural tourism infrastructure fund from £3 million to more than £6 million. I can confirm that the fund is open to applications from the local authority in Mr McMillan's constituency.

Neil Findlay (Lothian) (Lab): I will not suggest which fantasy character the cabinet secretary resembles.

The cabinet secretary mentioned fine hotels and restaurants in his previous answer. Many of those hotels, restaurants and hospitality businesses, including those in Inverclyde, have been given

substantial amounts of state funding during the Covid lockdown. However, far too many of them are still very bad employers and treat their workers in a very bad way. What has the minister been doing to negotiate with them so that, when we come back to a more normal situation, we do not return to staff being exploited?

Fergus Ewing: The member knows that the Scottish Government has consistently and rightly advocated the payment of the living wage and fair remuneration and treatment of all employees. That has been a theme and practice of the Scottish Government in this session of Parliament and before, and rightly so.

Secondly, obviously we welcome the fact that the furlough is available to assist businesses in meeting their staffing costs. However, Neil Findlay may or may not know that the furlough does not cover all the costs; it covers around 80 per cent of them. It does not cover, for example, national insurance or pension payments.

Businesses have fixed overheads. I want those businesses to survive. That is the point of what we are doing. We are trying to provide lifeline support, not to replace all revenue. Surely it is better that those businesses survive so that their employees have a job to come back to. I would therefore have thought that the support that we are providing to those businesses—which I believe is more generous than that down south—will directly benefit the employees. That is a good thing, is it not?

Beef Farming (Brazil Memorandum of Understanding)

4. Stewart Stevenson (Banffshire and Buchan Coast) (SNP): To ask the Scottish Government what discussions it has had with the United Kingdom Government regarding the potential impact on beef farming in Scotland of a memorandum of understanding with Brazil. (S5O-05101)

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): I have previously written to the UK Government on that matter, expressing strong concerns about any increase in imported beef through the Mercosur free trade agreement.

I am aware that the UK Government struck an agreement with Brazil last October to establish a joint agriculture committee to look at sanitary standards. Unfortunately, the UK Government has not engaged with us, despite standards in Scotland being our responsibility.

It is our belief that significant quantities of imported South American beef could have a damaging effect on Scotland's highly acclaimed beef production, potentially undermining our high

regulatory standards and impacting on domestic trade. Fundamentally, I cannot and would not support any increased quota.

Stewart Stevenson: Does the cabinet secretary agree that it is not simply a matter of sanitary standards and that the importation of hormone-treated beef from pastures in felled rainforest being shipped here to compete with our premium hormone-free Scotch beef is problematic on several levels, including that of climate change?

Fergus Ewing: Yes. I have said time and again that we would not tolerate any trade deal that allowed imports of hormone-treated beef. The Trade and Agriculture Commission, who I met on Monday, recommend that any trading partners wishing to import into the United Kingdom shall demonstrate equivalent production standards. That assurance from Tim Smith, the chief executive, was welcome. That should be implemented across all the UK's trade deals, ultimately banning the import of hormone-treated meat.

Crofting Commission

5. Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): To ask the Scottish Government what action it will take to enhance the capacity of the Crofting Commission. (S5O-05102)

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): The additional funding that I announced in July 2020 has allowed the Crofting Commission to establish four posts in the Western Isles and increase its development activities. That will allow the commission to continue its work in establishing new grazing committees, ensuring that our common grazings are managed effectively and encouraging diversified activities, such as agri-tourism, peatland restoration, habitat improvement and forestry. It will enable the commission to support the strengthening and diversification of crofting. The new officers will liaise with crofting communities to encourage croft occupancy and use. Finally, the commission will also further its work in tackling neglect of croft land, to create opportunities for new entrants.

Dr Allan: I am encouraged to hear about the new staff that the cabinet secretary mentions.

I am often contacted by constituents who are frustrated at delays that they experience with paperwork that is submitted to the commission. I make absolutely no criticism of the commission staff, who have a difficult enough job as it is. However, I would be grateful to know what is being done to ensure that the commission is able to meet the needs of crofters in that respect.

Fergus Ewing: I am aware that there have been such issues, but the additional funding that

we have provided this year has enabled the commission to take steps to make improvements to its information technology infrastructure, which will enable efficiency savings, and to the commission's website, which will improve the customer experience.

The new officers, for which Dr Allan has campaigned for some time, will be based alongside crofting communities on islands within his constituency, with a key aim of helping to build local relations in the crofting communities and generally furthering the cause of crofting and the interests of crofters.

The Deputy Presiding Officer: I remind members that, if they have a numbered question on the bulletin, they do not have to press their request-to-speak button in the chamber. The button should be pressed only for supplementary questions.

Tourism (Scottish Borders and Midlothian Councils)

6. Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I know that that was directed at me. [Laughter.] You kept putting it off and I kept putting it on, but there we go. Now I know why.

To ask the Scottish Government what discussions it has had with Scottish Borders and Midlothian councils concerning the impacts on tourism in their areas as a consequence of the Covid-19 pandemic. (S5O-05103)

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): I am somewhat reluctant to interrupt that exchange.

VisitScotland engages regularly with local authorities and has recently met with Midlothian Council to discuss the Covid response and recovery. It also engages with Scottish Borders Council weekly.

We engage through our enterprise agencies, along with VisitScotland, to continue to monitor the impact of the pandemic on the sector. The data will inform the five-year investment plan that is being developed as part of our response to the tourism recovery task force recommendations.

Christine Grahame: As the cabinet secretary is aware, my constituency of Midlothian South, Tweeddale and Lauderdale covers both local authority areas and has many outdoor tourist attractions. For example, we have horse riding schools, mountain biking and gardens such as Dawyck botanic garden and Kailzie Gardens—all closed. Will the cabinet secretary consider early opening of such outdoor attractions, which are relatively safe?

Fergus Ewing: Yes, of course we are considering all those matters very carefully. We are aware of the value of participating in outdoor activity, including exercise, and that consideration is obviously relevant to the decisions that have to be taken by the Cabinet overall. Christine Grahame has made a very good point, as well as delivering a brief gazetteer and almanac of the attractions in her constituency.

Colin Smyth (South Scotland) (Lab): The largest market for tourism businesses in the Borders and Midlothian is the rest of the United Kingdom, especially the north of England. In the past year, there have been more stringent travel restrictions between Scotland and England than between the different parts of Scotland. If the Government continues that approach as we ease out of lockdown, what additional support will it provide to businesses in the south of Scotland that, by definition, are more adversely affected by those restrictions?

Fergus Ewing: We try to treat all businesses with parity of esteem and to be consistent in providing lifeline support. That has been, I think, the correct principle to apply throughout. Colin Smyth has made a very fair point that businesses in the Borders area, and in Dumfries and Galloway, have a particular reliance on the market of visitors who come from England. That is absolutely understood. In fact, I discussed the issue this morning in a call with representatives of the Scottish weddings sector—which is, of course, concentrated in Gretna—including Alasdair Houston, who made those points very crisply and effectively.

We are acutely aware of the importance of the issue. We all wish to see a reopening of the market and to welcome again our good friends from England—our nearest neighbours—to continue to enjoy Scottish hospitality and custom, just as soon as we can safely do so.

Tourism (Clackmannanshire and Dunblane)

7. Keith Brown (Clackmannanshire and Dunblane) (SNP): To ask the Scottish Government what action it is taking to boost the tourism sector in the Clackmannanshire and Dunblane constituency. (S5O-05104)

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): We remain focused on immediate business support. We are keen to help as many businesses as possible to reopen viably, once conditions allow. Our focus has therefore been on developing and distributing the £129 million tourism support package. Looking to the future, the £15 million culture, heritage and tourism fund, which has been agreed through the Stirling and Clackmannanshire city region deal, will play a key part in recovery. Finally,

VisitScotland is working with Discover Clackmannanshire on its access Forth valley visitor campaign. When the time is right, VisitScotland will look to promote the region as part of its regular marketing activity.

Keith Brown: As the cabinet secretary knows, the Stirling and Clackmannanshire region provides a truly world-class offering, and visitors spend more than £350 million annually in the local economy—at least, that was the case before the pandemic.

How will the Scottish Government support development in the sector through the Stirling and Clackmannanshire city region deal, to ensure that the sector grows? For example, does the cabinet secretary have more detail on the culture and tourism elements of the deal?

Fergus Ewing: Yes. The Scottish Government is a full partner in the Stirling and Clackmannanshire city region deal and we are contributing £45.1 million over 10 years, with additional investment of £5 million over the same period. The key tourism project, which I touched on and which Mr Brown was correct to mention, will be the £15 million culture, tourism and heritage programme, which includes key partners such as VisitScotland, who will work with the private sector to strengthen the regional economy's tourism offering. I welcome Mr Brown's consistent lobbying on the issue, which is bearing fruit.

Tourism Sector (Recovery)

8. Jamie Halcro Johnston (Highlands and Islands) (Con): To ask the Scottish Government what plans it has for the long-term recovery of the tourism sector. (S5O-05105)

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): Recovery proposals for a five-year period are being developed by the Scottish tourism emergency response group, in consultation with members of the Scottish tourism recovery task force. Ministers are currently considering eight short-term proposals and hope to make an announcement on those shortly. Short-to-medium-term recovery proposals should be developed by May.

We are already delivering measures, through the provision of £129 million in targeted sectoral support schemes and the launch of the tourism and hospitality talent development programme, through the Scottish Tourism Alliance and the Hospitality Industry Trust.

Jamie Halcro Johnston: Following the First Minister's commitment on Tuesday to give indications about the reopening of hospitality and tourism—something for which the sectors have been hoping for weeks—will the cabinet secretary set out the steps that his Government and its

agencies will take to market Scotland as a destination for travel from the rest of the United Kingdom, given the importance of visitors from the rest of the UK and the success of the UK's Covid vaccination programme? Does he agree that clarity should be provided to the sector on when travel to Scotland will be encouraged again?

Fergus Ewing: Clarity has been provided, through STERG and through our constant engagement with representative bodies in the tourism and hospitality sector. This week, so far, I have had five meetings with tourism bodies, including two with the STA and meetings with representatives of the hotel management, Scottish wedding industry and tour operator sectors.

Our engagement with the tourism and hospitality sector allows us to inform our plans for recovery, but, of course, there is no point spending money on marketing until we are ready to restart. However, I assure the member that VisitScotland has, rightly, been working for a considerable time on restarting tourism.

I emphasise that the market in England is essential and that we want to welcome our friends from south of the border to come and enjoy Scottish hospitality again, just as soon as we can safely do so.

John Scott (Ayr) (Con): The First Minister gave me an assurance a week or so ago that she would discuss with the cabinet secretary the difficulties that the bed-and-breakfast sector faces and how to overcome them. Will the cabinet secretary please say what progress has been made on that?

Fergus Ewing: I had welcome engagement with the First Minister on tourism earlier this week, in an evening discussion with colleagues. The issue is extremely important, and I recognise that Mr Scott has, quite fairly, pursued it on various occasions.

I am pleased that Fiona Campbell, from the Association of Scotland's Self-Caterers, and David Weston, of the Bed and Breakfast Association in Scotland, welcomed our recently announced additional support, under the strategic framework business fund, for premises that do not pay business rates but pay council tax, which will have access to a payment of £2,000 per four weeks, which will be backdated to January. I am pleased to say to Mr Scott that that additional support has been warmly welcomed by the sector and as tourism minister I am delighted that it will enable some smaller accommodation providers, who do such a good job for Scotland, to survive and make it through to the end of the pandemic.

Motion of No Confidence

The Presiding Officer (Ken Macintosh): Our next item of business is a debate on motion S5M-24260, in the name of Miles Briggs, on a motion of no confidence.

14:50

Ruth Davidson (Edinburgh Central) (Con): Three years ago, two women came forward with allegations of sexual harassment against the former First Minister of Scotland. They were women who worked beside him and who, like anyone believing themselves harassed or abused by a senior colleague, felt the power imbalance keenly. Although these things can be about sex, they are always about power. They did not report it at the time; the former First Minister was arguably the most powerful man in the country and, as the current First Minister said in her evidence to the committee,

"a tough guy to work for".—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints*, 3 March 2021; c 23.]

After the fact, those women did come forward and we know now that a hastily written human resources policy on bullying and harassment, and its application, let them down. The policy was unfair, unlawful and tainted by apparent bias. It cost the taxpayer hundreds of thousands of pounds and the women untold injury—so much so that three years later it has never again been tested, despite the FDA union telling the committee that 50 per cent of staff told their workplace survey that they had experienced harassment by a colleague. It is a policy that has not been changed, revised or amended, and to have a harassment policy that workers are too afraid to use is a tragedy.

The one thing that could strengthen protection is to have an open and honest conversation about what went wrong, why it went wrong and how it can be made better. That is what the committee inquiry was set up to do—to have the Parliament already charged with oversight of the Executive review a systems failure so that we could fix the system and offer the thousands of people who work for the Government proper protection in future. The fact that the committee has been hampered at every turn from receiving even basic information in order to do its job does not just let down those women all over again; it lets down current and future Government employees, too.

That is the context of today's vote of no confidence. Let us review the past few months. On 4 November 2020, the chamber voted for the following motion:

“That the Parliament calls on the Scottish Government to publish all the legal advice it received regarding the judicial review into the investigation of the alleged behaviour of the former First Minister, Alex Salmond.”

On its passage, John Swinney did nothing and missed the deadline that was set by the Salmond inquiry committee of 13 November to hand over the information. On 25 November, another motion was passed by the chamber noting the previous vote and calling on the Scottish Government to respect the will of the Parliament, but John Swinney still did nothing. It took more than three months and the threat of a vote of no confidence in Mr Swinney that had the votes to win for his position to suddenly change and a promise of publication to emerge. The Deputy First Minister said:

“we will release the key legal advice.”

The first batch of that advice provided incontrovertible evidence of incompetence on the part of the Scottish Government. It included an urgent note from senior counsel saying that the judicial review had

“a very real problem indeed”.

The issue that had alarmed counsel so greatly was that they had just learned that the investigating officer had had prior contact with the complainers. That revelation was so serious that counsel advised as an option that

“the issue is disclosed and the Petition then conceded as a result”.

It collapsed its own case.

That raised the question of why counsel were not told about that information from the start. The investigating officer said during her evidence before the Salmond inquiry that she was “upfront” about the contact at the time. Who neglected to tell counsel that vital piece of information at the beginning of the judicial review process? Perhaps the minutes of the consultation from 11 September, near the start of the judicial review, would provide some answers, but we do not know, because John Swinney will not release any details of the meeting.

Despite those damning revelations, the evidence that was released on 2 March—the only legal advice that we got to see before the First Minister’s appearance at committee—was incomplete. John Swinney would go on to release 11 further documents in relation to the judicial review after the First Minister’s appearance—11 documents about which the First Minister could not be questioned under oath.

One piece of evidence—the email chain from 6 and 7 December—refers to the First Minister questioning counsel advice to concede the judicial review. If the Scottish Government had taken that

advice on 6 December and conceded, it would have saved the taxpayer hundreds of thousands of pounds in legal costs. John Swinney withheld the information about the First Minister until after her appearance at the committee. *[Interruption.]* Despite tranches of documents having been dragged from John Swinney, for fear of his job, key omissions still remain. Mr Swinney will have lots of time to address those points, and I will let him do so when I sit down. He will not take my time.

On 25 October, 2 November and 13 November 2018, the First Minister was represented either in person or by a member of her staff at consultations with counsel regarding the judicial review. In Friday’s letter to the Salmond inquiry committee, Mr Swinney does not mention the 25 October meeting at all, and claims that no minutes exist of the 2 November and 13 November consultations, the latter of which the First Minister herself attended. It is inconceivable that minutes were not taken at a meeting between the permanent secretary, the First Minister and the First Minister’s chief of staff and senior external counsel. What about the other consultations on 11 September 2018, 23 October 2018 or 3 January 2019? No minutes or advice from those consultations have been published either.

The omissions in the public evidence make it clear that key legal advice that the Deputy First Minister promised has not been provided. In a note from counsel on 17 December 2018, they mention a consultation that took place on 10 November. Not only have we not been provided with any notes from that consultation; it does not even appear in the Scottish Government’s timeline of the judicial review. Who provided that timeline? It was John Swinney, in a letter of 26 October 2020 to the Salmond inquiry committee. No wonder the committee has written again to the Deputy First Minister to say that it is “extremely frustrated” and

“not reassured it has received all relevant information”.

We back the committee.

We know that we will not win today’s vote of no confidence—the votes are there for the Deputy First Minister. However, we believe that it is important and right to put on record that this is no way for the Scottish Government to treat this Parliament.

While John Swinney’s outriders will, I am sure, do a lap of honour in the press, the real losers are Scottish Government employees, who have been lumbered with a protection at work policy that everybody knows is damaged goods and that staff are too afraid to use. With a bit of transparency and candour, the committee could have helped to work out what went wrong and why, but John

Swinney preferred to keep evidence secret at every turn. In a particularly damning note from 17 December, counsel told the Lord Advocate that they

“could not ... advise the Court that the Scottish Government had discharged its duty of candour.”

Given the way in which the release of legal advice has been handled, we believe that John Swinney and the Scottish Government have failed in that duty once again.

I move,

That the Parliament has no confidence in the Deputy First Minister, in light of the Scottish Government’s continued failure to publish legal advice called for in two resolutions of the Parliament on 4 and 25 November 2020.

14:57

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): On occasions on which motions of confidence are debated, other ministers tend to speak on behalf of the minister in question. Today, I have chosen to speak on my own behalf. The decisions that are under scrutiny in the debate are mine, and it is right that I am accountable to the Parliament for them.

On 4 and 25 November last year, the Parliament debated motions that called on the Government to release its legal advice. On both occasions, I set out why Scottish ministers were asserting legal privilege. It is an important tenet of Scots law that protects organisations and individuals alike, and allows them the benefit of frank, confidential advice from lawyers. That is why it is a principle that has been upheld by successive Scottish and United Kingdom Governments of different political parties.

Ministers’ view—my view—was that we could give the committee the information that it needed to understand what happened in the judicial review, while avoiding the damaging precedent for future Governments of waiving privilege. That is why, in December, I took the unprecedented decision to share with the committee, in confidence—and this is where Ruth Davidson is entirely incorrect in what she said—a detailed submission that explained the content of legal advice during the judicial review. I believed then that such an approach could fulfil our obligation to the Parliament and the committee without waiving legal privilege, thereby protecting the interests of future Governments. Since then, we have seen outlandish allegations of conspiracy and corruption promoted by people who, frankly, should and do know better. Those tactics require a response.

We concluded that the debate that those tactics provoked on the Parliament’s ability to scrutinise the Government, and the accusations on which

the debate was founded, could impact negatively on public confidence in the Parliament, Government and our judicial institutions. Therefore, last week, I decided that the balance of public interest had shifted and that we should publish the advice from counsel. That meant that the process of release moved on to its second stage—consideration by the law officers for the first time. They consented to the release.

We have moved as quickly as possible through the legal checks, having regard to the statutory obligations involved, before releasing those documents. Members will recognise the importance of those processes, not least to protect the identity of complainers. In releasing information, I kept in mind that the committee motion explicitly sought two things: the legal advice of our external counsel

“and associated minutes of meetings relating to the Judicial Review.”

The Government has now published all the formal written advice notes that it has received from external counsel. We have published emails from our senior counsel and an unredacted version of the summary that was shared with the committee in December. We have also published documentation that includes the legal advice of the law officers. We simply do not have the minutes of meetings. We have asked senior counsel whether they have a minute of those meetings, but they do not.

Jackie Baillie (Dumbarton) (Lab): Will the minister take an intervention?

John Swinney: No, because I need to put across an important point.

The outcomes of those discussions are reflected in the pleadings that were made to the court by the Government, which we shared with the committee some months ago. The documents that we released confirm that, in September, the clear view of counsel was that our prospects were good. They identified risks, as such opinions always do, but it was a positive assessment of our case. As time went on and problems emerged, the picture shifted, and external counsel became concerned and then alarmed. However, as late as in a note dated 11 December, the Lord Advocate was clear that there should be no question of conceding. Even on 17 December, external counsel agreed that the case remained stateable. It was the note of counsel of 19 December that led directly to the case being conceded.

None of that is hidden. Let us be frank about what we have released. It paints a clear picture—warts and all—and no embarrassment for the Government is spared in the publication of those documents. It is worth reflecting for a moment on the significance of what the Government has done

in that case. We have taken the extraordinary and unprecedented step of publishing formal legal advice of the kind that no previous Government in Scotland has published and we have done so in response to the request of the committee and to motions that were passed by Parliament. In any fair interpretation of what the Government has done, the Tories' pursuit of the motion today is now entirely baseless. With an election only weeks away, I suspect that the reality is that they were always intent on pushing the motion to a vote, regardless of what action the Government had taken.

I have sought to provide the committee with the information that it needed to do its work. We have supplied the committee with thousands of pages of documents. I have sought to ensure that the Government—and all future Governments—retains its ability to take frank, unvarnished legal advice, and I have sought to meet my obligations to Parliament. There are always clearly conflicting judgments that have to be resolved, alongside those three factors.

It is now for this chamber to judge whether those actions, which were taken in good faith, are sufficient to command their confidence. Since January 2019, this Government has accepted that mistakes were made in the handling of those complaints. As a result, two women were badly let down, and the Government must and will learn lessons from those mistakes.

15:03

Jackie Baillie (Dumbarton) (Lab): Before I turn to the substance of the debate, I will make a comment on motions of no confidence. I regard them as serious matters, not something to be brought forward without good reason and definitely not on the basis of political opportunism. Rather, they are a mechanism to hold the Government to account. Therefore, it is important to consider the substance of the issue that is before the chamber and decide on the motion on that basis; I do so as a member of the committee.

On 17 January 2019, the First Minister said:

“The inquiries will be able to request whatever material they want, and I undertake today that we will provide whatever material they request ... My commitment is that the Government and I will co-operate fully with it”.—[*Official Report*, 17 January 2019; c 14.]

There were no caveats. She was not speaking personally; she was speaking as the head of the Government. There is no doubt about the First Minister's meaning, but the Deputy First Minister appears to be wholly confused.

The committee has had partial information, delayed information and, in some cases, no information at all. The Government has treated a

committee of the Parliament with contempt, and it has treated the Parliament with contempt, too. Let us not forget that the two votes in the chamber asking for the legal advice to be provided to the committee were simply ignored. The Lord Advocate was not even asked for permission to release the legal advice, because the Scottish National Party Government had no intention of handing it over. Indeed, that is what the cabinet secretary reportedly told a meeting of the SNP group.

We could paper the walls of the chamber with the endless letters from the committee to John Swinney asking to see counsel's advice. At every turn, the answer was no. We then got a summary of advice from 31 October onwards—written by a civil servant, not a lawyer—which was not to be published, was to be seen in a reading room and could not be referred to directly in oral evidence or in the committee report. That was very secretive and very convenient.

It took the threat of a no confidence motion, supported by the Greens, to come along for the SNP to react. The cabinet secretary then fell over himself to give us the legal advice—well, at least some of it. There was then a drip, drip approach, with some of the legal advice kept back until after the First Minister had appeared to give oral evidence before the committee. However, I have to say, Presiding Officer, that the legal advice is still not all there.

I am not being pedantic for the sake of it. There were meetings in December. There were two critical meetings on 2 and 13 November, the latter involving the First Minister, the permanent secretary and the First Minister's chief of staff, together with senior counsel. It is inconceivable that no notes were taken. The cabinet secretary's response to the committee and to the chamber today is that there were no minutes, but there will have been notes—there absolutely will have been notes. Scottish Government lawyers and external counsel are required to take notes; it is a matter of professional duty to do so. The notes that were taken by them should be released to the committee. There can be no debate about that—absolutely none. The Government has waived legal privilege over other documents. Ultimately, those notes belong to the Scottish Government, and there is absolutely no reason for it not to release them to the committee immediately—unless, of course, it has something to hide.

The SNP Government has form. It withheld documents from the judicial review, which resulted in the “professional embarrassment” of its own senior counsel. It withheld documents despite a search warrant in the criminal case against Alex Salmond, which is, in itself, a crime. It has also withheld documents from the committee. There is

a pattern of behaviour here, and it is one of obstruction, secrecy and contempt for the institution of this Parliament.

The motion of no confidence may be in John Swinney, but I am clear that it is the behaviour of the secretive national party that is truly outrageous.

15:08

Alex Cole-Hamilton (Edinburgh Western) (LD): It gives me no pleasure whatsoever to rise to speak in favour of the motion. We have better things to be doing with our time. By rights, we should be focused on other things right now. We are, after all, in the last days of a parliamentary session and in the teeth of a global pandemic. By rights, the Salmond inquiry should have concluded months ago, with complainers allowed to forget about this sorry business. It did not, so they have not. By rights, the disclosure of all relevant material and evidence to our committee should never have been an issue for parliamentary debate, given that the First Minister promised our inquiry ready and total access to the documents that we needed.

It is entirely due to the obstruction and sleight of hand deployed by this Administration that we have arrived at this point and Liberal Democrats have no confidence in the Deputy First Minister. Ahead of the First Minister's appearance before our committee, her deputy assured us and the watching public that all relevant legal advice had been disclosed in good time for her to answer to it, but the worst of it appeared after the fact. That was bad faith on the part of the Deputy First Minister. My colleagues and I could and would have asked different questions of the First Minister had we seen on Tuesday that which was delivered to us on Thursday and on Friday. Those documents revealed the enormity of the embarrassment to senior counsel, and their threat to resign was confirmed in documents that were received only late last week.

What has been provided to us today is one thing; what is missing is something else entirely. Both Ruth Davidson and Jackie Baillie have highlighted several meetings and consultations that were without minutes. The meeting of 13 November is critical, because it had in attendance the First Minister and the permanent secretary, and it was just a fortnight after senior counsel had told the Government that it was likely to lose and probably should concede. In that same advice from 31 October, Roddy Dunlop QC told the Government that folding then could allow the Government to restart the complaints handling process, offering the women at the heart of the process a fair hearing with appropriate safeguards in place. I asked the First Minister about that when

she came to our committee and she confirmed that the women were never notified about that possibility and that their views were never sought. The Government was at a crossroads in those vital days, and the advice that was received and decisions that were taken at that meeting could have shaped the final outcome entirely.

The optics for a Government already mired in accusations of a cover-up over this are terrible. Either explanation could point to a breach of the ministerial code. Not taking a minute is a breach in and of itself, but far worse is that the minutes of those meetings could have been deliberately held back from our committee to protect the First Minister by hiding a more ruinous breach on her part. We will never know. It is astonishing to learn also that perhaps even counsel are unable to produce notes of that meeting, so we will have no idea of their read-out whatsoever.

I do not harbour personal animosity towards John Swinney, but this is the second time that he has tested the confidence of the Parliament. Although he might escape with his job intact today, I put him on notice that there may be a third motion of no confidence in him. A motion in the name of Willie Rennie was passed in the chamber last month compelling John Swinney to release the Organisation for Economic Co-operation and Development review of secondary education. To date, he has not done that, so the Deputy First Minister stands again in contempt of Parliament and again he may be subject to its judgment if he does not produce the review in short order. I say to Mr Swinney that he should act on the Parliament's instruction that he produce the OECD report or we will be back here next week or the week after with a similar motion to today's, and he might not be so certain of Green Party support on that issue.

15:13

Patrick Harvie (Glasgow) (Green): The Scottish Greens supported the creation of the Committee on the Scottish Government Handling of Harassment Complaints and wanted to see it focus on that important issue in order to understand the challenges, identify what went wrong and ensure that improvements were made for the future, because addressing the failings—both real and perceived—in that process is vital for giving people who wish to complain about inappropriate behaviour the confidence to do so and the reassurance that they will be treated with respect. However, what should have been an inquiry strictly focused on that issue of how allegations are handled was allowed to become nothing more than shabby political theatre.

In my view, members who should have been focused on the interests of complainants in the

past and in the future have clearly been more obsessed with the idea of winning a political scalp. The effect of that has been to set back the objectives that we should all share. Emma Ritch of Engender said:

“One of the things women are most attuned to when making complaints is the prospect of losing control over the process. What has happened with the Salmond inquiry has magnified this: that you could find yourself at the centre of a national scandal, where people feel free to impugn your motives and everything you want to talk about becomes about party politics or the constitution.”

Many of us have expressed similar concerns.

Despite those concerns, when the Parliament was asked, towards the end of last year, to vote on the need for legal advice to be provided to the committee, the Scottish Greens backed that position, and we were right to do so. If John Swinney had dug in his heels and continued to refuse, his position would have been untenable. Equally untenable is the position of those who demanded the First Minister’s resignation before even hearing her evidence and that of those who, last week, described the published legal advice as “damning” and a “crushing blow” but who now say that it is insufficient to draw conclusions from.

The Conservatives, in particular, have allowed a committee inquiry that should be focused on serious matters to descend into political farce. Why? Because they have nothing else to offer the people of Scotland. They have no positive vision of the country’s future; all they have is a desperate attempt to weave conspiracy theories. In appearing to take every word that came from the lips of Alex Salmond as unquestionable truth, they have ended up sounding exactly the same as the StuAnon cultists of Mr Salmond’s own fanbase. Both the behaviour of the former First Minister and the Government’s attitude throughout the inquiry have played a large part in this debacle. However, those using conspiracy theories to attack their opponents or promoting delusional ideas of Scotland being some sort of corrupt failed state must ask themselves how on earth they ever expect to lift Scottish politics up from the low point that they have brought us to.

When the committee finally produces its long-overdue report, I will be looking only at the issues of substance that address the question of why complainants raising allegations of harassment were failed and how we can ensure that that never happens again. I sincerely hope that the committee will choose—even at this late stage—to focus on that. The shallow game of winning political scalps should not be anyone’s priority, and the Greens will have no part in it.

15:17

Miles Briggs (Lothian) (Con): I grew up in the village of Bankfoot, in Perthshire, and I remember the first time I ever met a politician, which happened when I was in primary school. He was our local MP, John Swinney. I know myself, and I know from friends and family who still live in Perthshire and from colleagues from across the chamber, that John Swinney is a respected man. However, that is not what the debate and the motion are about. The debate is about the total disrespect that the Scottish National Party Government has shown to a committee of this Parliament.

It was the First Minister, Nicola Sturgeon, who tasked John Swinney with overseeing the investigation and giving the committee access to all the information that it requested. After two years, does anyone sitting here today seriously believe that that has happened? It is therefore little wonder that MSPs from across the parties who are on the committee do not now believe that we will fully understand what went on in Government or within the SNP.

I pay tribute to the members who sit on that committee for the work that they have attempted to undertake over the past two years to get the legal advice. Jackie Baillie said last week:

“In my 22 years in Parliament I have never been so obstructed, unable to do my job, as I have been on this committee.”

That should speak to all of us.

The Parliament voted by a majority on two separate occasions for SNP ministers to publish legal advice and to provide the committee with all the evidence that has been requested. That has not been provided. In both cases, the Deputy First Minister ignored votes taken in the chamber. It was only after this motion of no confidence was put on the table that we saw the Government provide the committee with some—limited—information.

As late as yesterday, the committee’s convener was writing to request that ministers publish, as a matter of urgency, notes and emails regarding 17 meetings held with lawyers. Linda Fabiani, the convener, said that the committee is not reassured that it has received all relevant information.

At every turn, SNP ministers have evaded the committee’s requests for evidence, redacted key information and disrespected the will of the Parliament. The question is, who in Government will take responsibility? SNP ministers are undermining the credibility of our Scottish Parliament and its ability to hold the Government to account.

As has been said, the Deputy First Minister may, indeed, survive the vote of no confidence tonight, but the damage that the SNP has inflicted on this institution will be longer term. I hope that, in the coming weeks, when the First Minister and the Deputy First Minister finally take responsibility for this scandal, they will reflect on the damage that they have done to the integrity of our Parliament, our Crown Office and the permanent secretary.

The Presiding Officer: That concludes the debate on the motion of no confidence. The vote on the motion will be taken at decision time, which will be at 8 o'clock this evening.

Jackie Baillie: On a point of order, Presiding Officer. I regret having to make this point, but I tried to intervene on the cabinet secretary and he would not let me do so. I would like to establish whether there are, indeed, notes of those meetings, as opposed to minutes.

The Presiding Officer: Thank you, Ms Baillie. That is not a point of order, but I am sure that the point has been noted by the Government and will be taken account of.

There will be a short pause before we move on to the next item of business. I remind all members who are leaving to follow the one-way systems, wear their masks and observe social distancing rules.

University of St Andrews (Degrees in Medicine and Dentistry) Bill: Stage 3

The Deputy Presiding Officer (Lewis Macdonald): The next item of business is a debate on motion S5M-24321, in the name of Jeane Freeman, on the University of St Andrews (Degrees in Medicine and Dentistry) Bill at stage 3.

No amendments to the bill have been lodged.

Before the debate begins, the Presiding Officer is required under standing orders to decide whether any provision of the bill relates to a protected subject matter—that is, whether it modifies the electoral system and franchise for Scottish parliamentary elections. In the Presiding Officer's view, no provision of the bill relates to a protected subject matter, so the bill does not require a supermajority to be passed at stage 3.

I invite members who wish to contribute to the debate to press their request-to-speak buttons now.

15:22

The Cabinet Secretary for Health and Sport (Jeane Freeman): I am pleased to open the stage 3 debate on the University of St Andrews (Degrees in Medicine and Dentistry) Bill. The bill has reached stage 3 without amendment and with what I hope is the support of members throughout the chamber. I think that that is in no small measure thanks to thorough and careful scrutiny by the Health and Sport Committee, for which it has my thanks.

I think that this is the last time that I will have the opportunity so, for the record, I thank the members of the Health and Sport Committee, under your fair and able leadership as convener, Presiding Officer, for all the work that we have undertaken together and for their constructive engagement on and the positive contribution that they have made to critical areas in my portfolio. I also offer my thanks to the organisations and individuals who provided evidence at stage 1.

That the bill is a short and largely technical one should in no way detract from its importance. In essence, it will repeal an archaic, unfair and arguably anti-competitive prohibition that prevents the University of St Andrews from awarding medical and dentistry degrees. The prohibition was always intended to be transitional, and no other higher education institution in the United Kingdom suffers a similar prohibition. After 50 years, we are well past the time for it to be removed.

The bill will remove from one of our most valued higher education institutions a prohibition that, as I said, was never intended to remain for so long. As an additional impetus, the bill will enable the University of St Andrews to award jointly with the University of Dundee primary medical qualification degrees to Scottish graduate entry medicine programme—ScotGEM—students in advance of the first cohort graduating in 2022.

During the stage 1 debate, we heard strong support from across the chamber for ScotGEM, Scotland's first graduate entry programme for medicine. The universities of St Andrews and Dundee have done incredible work to innovate new methods of delivering undergraduate medical education. That innovation focuses on the centrality of primary care. It inspires new interest in general practice and recognises the challenges and opportunities of remote and rural working, along with the lessons that those have for care in more urban settings.

I had the privilege of meeting and speaking to the first cohort of ScotGEM students. With other members, I have heard their strong testimony on the quality of learning and experience that they are receiving, and I have every confidence that ScotGEM will achieve its ambition of graduating passionate, skilled doctors for our national health service workforce who want to work and remain in NHS Scotland.

Removing the prohibition will create a fairer higher education sector in Scotland and across the United Kingdom, enabling all our valued higher education institutions in Scotland to maximise the options and opportunities that they offer to students.

As we recognised in the stage 1 debate, there are significant challenges to overcome in creating and growing a more sustainable medical workforce. There are also significant challenges to overcome in the higher education sector, including the constraints on immigration, the consequences of European Union exit and the potentially diminished attractiveness of studying abroad as a result of the coronavirus pandemic. Removing the prohibition is one step in providing greater flexibility to address all those challenges.

This short, technical bill has an importance and a significance that should not be underestimated. It is right and timely to remove an anomalous prohibition that disadvantages one of Scotland's higher education institutions.

I move,

That the Parliament agrees that the University of St. Andrews (Degrees in Medicine and Dentistry) Bill be passed.

The Deputy Presiding Officer: Thank you for your kind words, cabinet secretary.

15:27

Donald Cameron (Highlands and Islands)

(Con): I welcome the opportunity to open for the Scottish Conservatives in the stage 3 debate on the University of St Andrews (Degrees in Medicine and Dentistry) Bill. I confirm, of course, that the Scottish Conservatives will support the bill at decision time. I thank my colleagues on the Health and Sport Committee for their work and I pay tribute to those who are stepping down after many years of service, namely yourself as convener, Presiding Officer, David Stewart and Sandra White.

In saying farewell, it is incumbent on me to pay tribute to the cabinet secretary. I think that I am right in saying that this will be the last time that she gives a speech in a debate in the chamber, although there might be statements or portfolio questions in the next few weeks. Since I have been health spokesperson, I have certainly had many jousts with Jeane Freeman in the chamber and elsewhere, and I am sure that we have a few still to come, but I have always respected her as a formidable opponent and an industrious and effective minister. I have never doubted her commitment to the NHS and her genuine motivation in what she has sought to do in government, especially during the pandemic, and I wish her all the best in her well-earned retirement.

I move on to the substance of the debate. As many noted in the stage 1 debate, the legislation intends to amend the Universities (Scotland) Act 1966 to remove the provision that prevents the University of St Andrews from awarding degrees in medicine and dentistry. The provision was only ever intended to be a temporary measure and was brought about to give effect to the separation of Queen's College in Dundee from the University of St Andrews, so that the University of Dundee could be instituted. That purpose has long been served, and now that the University of Dundee is evidently well established as one of Scotland's leading universities, it is right that Parliament makes this change. It is long overdue.

Given that the first set of ScotGEM's students are due to complete their studies in 2022, it is only right that they are able to receive their degrees from both the University of St Andrews and the University of Dundee. Indeed, the British Medical Association Scotland has argued that

"for a number of ScotGEM students, this joint award was an important factor in their decision to apply and had it not been on offer, they may have applied to another institution."

The evidence that the Health and Sport Committee took from Callum George, deputy chair of the BMA Scottish medical students committee, was pertinent in that regard.

It is clear that, with the bill, we are not only rectifying an outdated provision but ensuring that many current ScotGEM students are able to be recognised as graduates of both institutions. We are also recognising the importance of the work of both institutions.

It is important that the concerns about a full repeal, rather than a partial repeal, that the University of Dundee has highlighted are acknowledged. However, on balance, we agree with the cabinet secretary that the University of St Andrews should be able to competitively offer similar degree programmes.

We also believe that the issue should be viewed through the prism of increasing the overall number of student medical places in Scottish universities so that we can address the longer-term issues of general practitioner vacancies. We know that the current data shows that the number of GPs aged over 60 and approaching retirement is at a 10-year high.

More broadly, we believe that the Scottish National Party Government has to increase student medical places. Specifically, we hope that the bill will make the ScotGEM course even more attractive to prospective students. Given the emphasis on improving recruitment and retention in healthcare settings in rural communities, it should be the long-term ambition of any future Scottish Government to fund an increase in ScotGEM places to address the clear issues in rural recruitment.

The Scottish Conservatives support the bill. We believe that now is the right time to make the change, and we agree with others that it will be positive for students and for both universities. However, beyond the bill, we must continue to resolve the evident challenges—both short term and long term—that our NHS faces. They can be remedied only by fixing the workforce crisis and ensuring that our healthcare services can manage growing demand into the future.

15:31

Daniel Johnson (Edinburgh Southern) (Lab):

I, too, pay tribute to Jeane Freeman, given that this is the last time that she will speak in a debate in the Parliament. I am not sure that she has always welcomed my questions and interventions on the health portfolio, but I have never been in any doubt about her seriousness and earnestness in discharging her duties or about her focus on the progress in our health service that she has sought to make. She has been a thorough and an effective minister. In particular, I thank her for her very constructive direct engagement with me on attention deficit hyperactivity disorder diagnosis and treatment pathways. My only regret is that the

pandemic got in the way of our seeing more immediate progress on that matter. However, I genuinely thank her for that engagement.

I turn to the University of St Andrews (Degrees in Medicine and Dentistry) Bill. I, too, am pleased to support the motion and the measure. I will try very hard not to repeat what I said in the stage 1 debate or what other members have said. It is a measure of the unanimity on the proposal that that will be somewhat of a struggle.

As Donald Cameron and the cabinet secretary have pointed out, the bill essentially seeks to address an anomaly that was created in the legislation that created the University of Dundee. That anomaly was supposed to be only temporary, but it has lasted for 50 years. The anomaly could be viewed as temporary, given that the University of St Andrews has existed for 600 years; nonetheless, it is time to remove it. No other institution has such a proscription on the granting of degrees for particular subject areas.

More important, the University of St Andrews demonstrates its ability not just in medical education but in innovation. We see both elements quite strongly in the ScotGEM programme that it has been instrumental in delivering. The bill is important in encouraging its future endeavours in that regard.

It is important to highlight the innovation in the programme. The University of St Andrews is a small university; indeed, it is among our smallest. Its location is remote, so it is perhaps unlikely for it to have the innovative outlook that it undoubtedly has. It is a research powerhouse, and the programme has been at the forefront of medical education.

The programme encourages graduates to retrain in medicine and, as I highlighted in the stage 1 debate, it is undoubtedly a valuable source of medics. People who have life experience have much to offer, and a programme such as ScotGEM will provide a valuable source of doctors for the future.

St Andrews has had to deliver its medical education in a compromised way. It has not been able to provide the clinical years of education that are required, so its students have gone to Manchester and other places for that. We lose those doctors, and Scotland cannot afford to lose doctors. We need more doctors, and we need more doctors in general practice. The programme will be very good and effective at meeting both those needs.

The ScotGEM programme focuses on community medicine in rural areas. As many as 35 per cent of the students who study the course come from a rural background. Likewise, the programme has a good track record in broadening

access by recruiting students from less wealthy and less affluent backgrounds. Recruiting students with those backgrounds is to be encouraged.

We cannot ignore the context in which we find ourselves. We are in the middle of a pandemic and our health service is being stretched like it has never been stretched since its inception. We need to ensure that we have people with the training and skills to work at the front line of our health service. Therefore, we need new ways into medicine and nursing, and we need to harness and embrace all the talents and skills that we have. We need programmes such as the ScotGEM programme that is offered by the universities of St Andrews and Dundee. Giving St Andrews the ability to award medical and dentistry degrees is an important step in reinforcing those efforts, even as we recognise the role that St Andrews already plays in training medics for the future.

15:36

Willie Rennie (North East Fife) (LD): I join others in paying tribute to the service of Jeane Freeman. She has been a responsive and effective minister, and she has put in quite a shift through the pandemic. She deserves a good retirement.

The legislation will remove a unique, unnecessary and unintentional prohibition—that on granting degrees in medicine by St Andrews university. Despite the restrictions, the university has worked hard to make a contribution to the NHS, through its bachelor of science in medicine qualification, through which students can transfer to other universities to graduate as doctors. As we have heard, more recently it established a medicine degree programme in partnership with the University of Dundee, from which it had separated in 1966—the event that created the need for the bill.

We know that the ScotGEM degree is designed for students who have already graduated in other subjects. It is an effective route into medicine. It focuses on primary care and on remote and rural medicine, and it is founded on community-based learning. The return to a level playing field will allow St Andrews university to contribute fully to patient care by graduating doctors and awarding degrees in an unfettered way; by retaining students in Scotland; by participating equally with other universities in medical research; by sponsoring important clinical trials; and by deepening its relationship with the NHS.

The university plays its part in Scottish life. Take the pandemic. Along with university staff, ScotGEM students have been involved in vaccination roll-out and have helped to match

student volunteers with front-line workers who are in need of support. Some university medicine staff have been integral to the management of the response by Public Health Scotland and the Scottish Government.

However, that engagement is deeper and longer. As part of ScotGEM, the university has employed 37 general clinical mentors across four health boards, who provide 47 clinical sessions per week to general practice, at a time when we know that recruitment is particularly challenging. The success of the ScotGEM programme model has been recognised by NHS Education Scotland, which gave the GCM team the award of “Highly Commended” at its medical directorate awards.

The university works closely with the University of the Highlands and Islands in delivering the medicine programme. Students are currently placed in 72 general practices.

There is an optional bursary for students who choose to bond to NHS Scotland by committing to a period of one year’s service for each year for which the bursary is taken, up to a maximum of four years, and 94 per cent of students take up the bursary, which shows the commitment to Scotland of the university and the students. The ScotGEM programme illustrates that they have been bucking the trend and that it has been widening access. There are more applicants from remote and rural areas and 28 per cent of entrants to ScotGEM lived in the Scottish index of multiple deprivation bottom 40 per cent postcode areas. Traditionally, the figure was just 20 per cent. Retention of students in the first few years of the programme is 100 per cent, which is quite incredible.

I have made all those points to show that the University of St Andrews is part of Scotland. It is reaching out to all parts of society and is part of our NHS. Of course, the bill will correct an anomaly from 55 years ago, but more important is that it recognises that the University of St Andrews is committed to Scotland and to what matters.

15:40

Emma Harper (South Scotland) (SNP): I welcome the opportunity to speak in this short but important stage 3 debate on the University of St Andrews (Degrees in Medicine and Dentistry) Bill. I thank the clerks and everyone else for their work on the bill, as well as committee colleagues and the cabinet secretary and her team. Jeane Freeman has demonstrated complete competence during the current parliamentary session, especially during the pandemic.

The bill, which is technical in nature, will remove the unfair and anticompetitive prohibition that prevents the University of St Andrews from awarding medicine and dentistry degrees. It is the

only university in Scotland that has that prohibition. In doing that, the bill will repeal a section of the Universities (Scotland) Act 1966 that prevents the university from offering medicine and dentistry degrees. That is welcome, because it affords the University of St Andrews equality in competition and educational opportunity.

As deputy convener of the Health and Sport Committee, I was involved in scrutiny of the bill at stage 1. The committee produced a short report on the bill that contained only one recommendation, which was that we should overwhelmingly support the general principles of the bill.

During the committee's discussion of the bill, we also considered evidence on NHS recruitment and widening access to studying medicine. The bill prompted discussion of the potential for a new medical school to be established. The Covid pandemic has prevented work on establishing a new school, so I welcome the cabinet secretary's commitment on that. I will continue to raise awareness of the work that is being done in Dumfries and Galloway for a new medical school potentially to be sited at the Crichton campus. I ask the cabinet secretary to keep that in mind as we move forward. I am sure that her replacement will continue to work on that. I will continue to engage with Jeane Freeman's replacement and local campaigners on that.

Our passing the bill will allow the university to award a joint degree with the University of Dundee for the purposes of the ScotGEM programme. It is Scotland's first graduate entry programme for medicine, with a rural medicine focus, and the first cohort of students is expected to graduate in 2022. If the bill is not passed, their degrees will be awarded by the University of Dundee, despite the important work of the University of St Andrews. The timing of the bill is therefore welcome, because it will enable the University of St Andrews to award the degree jointly with the University of Dundee, as was promised to the ScotGEM students, who are very excited about the joint primary medicine qualification.

The committee heard how passionately ScotGEM students feel about their unique identity as students of both universities; I therefore encourage members to support the bill's passage. I welcome the bill and its implications for the University of St Andrews and for ScotGEM students, many of whom are currently training across Dumfries and Galloway. I hear that they are doing a great job.

The Deputy Presiding Officer: We move to closing speeches.

15:44

Claire Baker (Mid Scotland and Fife) (Lab): I am pleased to close the debate on behalf of Scottish Labour, and to welcome the anticipated passing of the bill at decision time.

Jeane Freeman has always been a committed cabinet secretary who fights her corner. We will find agreement this afternoon, in her final debate, and I hope that she will take pride from having been part of the ScotGEM programme.

I thank the committee for its work on the bill. Stage 2 was not particularly onerous because no amendments were lodged, which is perhaps a reflection of members' agreement on the bill's single simple purpose.

Although the ScotGEM programme is the driver for the bill, it also addresses an anomaly from the 1960s, when the creation of the University of Dundee as a separate institution with a clinical school prevented the University of St Andrews from awarding medicine and dentistry degrees. Although the bill will remove that legal barrier, it will not result in the University of St Andrews being able to award such degrees beyond the ScotGEM programme, at this time.

The 2019 programme for government set out the intention to create a new medical school. The University of St Andrews has submitted a bid in the open competitive commissioning process. Although that process is currently suspended, the bill enables the university to compete in it, so I wish it well. That would place its academic offering on an equal footing with those of all other UK universities. Because it is the only university in Fife, that would also result in the first awards of medicine and dentistry degrees from the kingdom.

However, I appreciate that there are other matters to consider that were raised during scrutiny of the bill, and that further issues including widening access, NHS recruitment and the potential impact on the north-east must also be examined. Those issues reflect the views of Aberdeenshire health and social care partnership and the University of Dundee, both of which have expressed a preference for partial removal of the prohibition. The University of Dundee has also expressed concerns about training capacity for its students, if St Andrews were to start awarding medicine degrees, and its ability to place students in local hospitals. Those concerns are about capacity and competition in a shared geographic area with limited opportunities, so they must be resolved.

Although the purpose behind the bill is delivery of the ScotGEM programme, it will open up other opportunities for the University of St Andrews. On balance, I agree that it is appropriate that the bill will achieve that broader purpose.

I welcome the ScotGEM programme, which is innovative and is the first of its kind in the United Kingdom. I hope that it will be successful in increasing our GP workforce and could be considered for other institutions. I wish the first cohort of students, who will graduate in 2022, all the best in their future careers.

I also support the financial incentive for a commitment to NHS services. It would be interesting to know whether it is attractive to students, and to know how many of the 55 current students have taken up that offer. Retention of graduates is an issue. If this model is successful in securing commitment to the NHS, it could be considered for other professions in which we experience shortages.

We compete internationally for healthcare staff as well as for other key workers. It is also unclear what the impact of the new immigration system will be, but it will certainly have an effect on the number of European Union workers who will be able to transition seamlessly into working in the UK. We need to find ways of securing our workforce.

The challenges that health boards and integration joint boards face in recruiting and retaining GP and primary care staff are well known. In my region there has been a steady flow of retirements and resignations, and in some cases it is proving to be very difficult to replace the GP workforce. In Fife, a number of general practices operate closed lists, and some have now come under the direct control of NHS Fife. Many practices rely on locum cover and are described as being in a high-risk situation. That has also led to difficulties in delivering out-of-hours services in local hospitals, and to the recent closure of a palliative care ward because a responsible medical officer could not be identified. The impact of a shortage of GPs is therefore being felt in areas other than primary care.

Although the ScotGEM programme will not resolve all those issues, it is a positive intervention. As a member for Mid-Scotland and Fife, I am pleased to have seen the development of the course. Its focus on rural medicine and healthcare improvement is welcome. It also seeks to focus on acute care issues. I hope that, as more cohorts come through the course, the benefits can be realised across the whole of Scotland.

15:48

Brian Whittle (South Scotland) (Con): I am delighted to close the debate on behalf of the Scottish Conservatives. In truth, the bill simply corrects an anomaly in the further education system, as has been the consensus among members from across the chamber who have

spoken in the debate. The bill's aim is to remove a legislative prohibition that prevents the University of St Andrews from holding qualifying examinations and awarding degrees in medicine and dentistry. The reason for taking action at this time is to allow the University of St Andrews, jointly with the University of Dundee, to award undergraduate UK primary medical qualifications to Scottish graduate entry medicine students. The first set of students is due to complete the four-year course and graduate in 2022.

As was indicated earlier, that prohibition is unfair and anti-competitive, and it no longer serves a purpose. In removing the prohibition, the bill therefore creates a fairer higher education sector, enabling all of Scotland's institutions to maximise the options and opportunities that they offer to students.

The importance of the bill can be appreciated against the well-documented background of Scotland generally being short of clinicians: we are well over 800 GPs short, and Audit Scotland highlighted to the Health and Sport Committee that the plans put forward by the Scottish Government will still leave a significant shortfall of some 650 GPs at the end of the programme. Any step that allows for an increase in the number of those attaining a medical qualification must be welcome.

There was widespread general support for the repeal of the prohibition among the written submissions and oral evidence that were given to the committee, and one of the main reasons for that support was that the bill will bring the University of St Andrews school of medicine into line with other medical schools in Scotland, allowing the university to award the ScotGEM primary medical qualification—PMQ—jointly with the University of Dundee.

It was argued that students who enrolled on the ScotGEM programme of study were given a clear expectation that their degree would be jointly awarded by the universities of St Andrews and Dundee. For a number of students, that joint award was an important factor in their decision to apply, and it was a matter of fairness to ScotGEM students that they should receive that joint degree. The written submission from ScotGEM highlighted that the vast majority of students who responded to the survey were strongly supportive of obtaining that joint degree.

The University of Dundee supported the prohibition being removed only partially, for the purpose of ScotGEM, and remaining in place for all other degree-awarding purposes. That was on the basis that there could potentially be adverse unintended consequences to the education and training environment in Scotland. The Scottish Conservatives are supportive of the ScotGEM programme, however, and we also support the

removal of the prohibition to allow the University of St Andrews to award degrees in medicine and dentistry. We recognise that the prohibition is unfair and that it was not intended to remain permanently in place. For that reason, only a partial removal of the prohibition would not be appropriate.

There was an issue of whether the University of St Andrews will compete to establish the new medical school, but that is not provided for in the bill and would not require additional legislative changes. Although discussions around proposals for that new medical school have been postponed, we think it prudent that, when they are resumed, they take into consideration the wider evidence heard by the Health and Sport Committee during scrutiny of the bill on NHS recruitment and widening access to medicine.

I thank fellow members of the Health and Sport Committee, especially those who are not returning to the Parliament, for all their work. It has been an honour to work with them under your stewardship, Presiding Officer. I also add my tribute to the cabinet secretary, Jeane Freeman, for whom I have the greatest respect. We have sat in opposition and have debated many times, but always with respect and courtesy. I wish her well.

15:53

Jeane Freeman: I will start by thanking colleagues across the chamber and those who are joining us remotely for their very kind words, which are much appreciated.

Members have made a number of important points in this relatively short debate—it has been a short debate because we are in agreement about the importance of passing the bill—and I will address a couple of those points before I make some more.

Some 94 per cent of ScotGEM students have taken the bursary. One of the innovations of the ScotGEM programme is that testing out of the offer of a bursary in return for a commitment to work with the health service in Scotland, should the student graduate. That is a really important innovation, and it has proved to be effective and to work. For a future Government, it is an innovation to which great attention should be paid if we are serious not only about widening access to higher and further education and to healthcare but about attracting more individuals to healthcare.

I have taken note of the concern that was raised primarily by the University of Dundee—although the Aberdeenshire health and social care partnership raised it, too, to some extent—at the various stages of the bill's consideration, as has been mentioned, about the possibility of additional medical school opportunities increasing the

number of medical undergraduates and the impact that that might have on training, placements and so on.

The one thing that I would say about that—and I think we are all agreed on this—is that we need an increase in medical undergraduate places, and the Government has brought that into being. There is an argument that we will need more of those places just as we may need more training places for roles in other areas of healthcare, such as nurses, allied health professionals and so on. Actually, it does not matter where we put those. If we have more places, we will still have to work through issues around clinical placement opportunities and so on.

Liz Smith (Mid Scotland and Fife) (Con): I, too, pay a personal tribute to Jeane Freeman, whom I have always found to be responsive to any questions that I have had.

Does the cabinet secretary agree that the issue is not just about additional places but is also about increasing the diversity of opportunity for youngsters? Does she agree that one of the reasons why this is such an important bill is that it adds to that diversity, particularly in times of changing healthcare?

Jeane Freeman: I absolutely agree. I think that, regardless of whether a future Government takes forward what was in this Government's programme for government about a new medical school, there is a need to increase opportunities across our training services for all healthcare roles, to varying degrees, and, in doing so, to widen access and address some of the issues around equity.

ScotGEM is important because, apart from bringing an opportunity to ensure that there is a focus on remote and rural medicine and on general practice, it is an innovative approach that brings in graduates and delivers training in new ways, with new opportunities; that brings front-line expertise and experience into the learning; that offers new ways of designing the curriculum and harnessing practical front-line experience as part of student learning; and that does all of that while not compromising by one whit either quality or standards. I think that there is a lot in the design, the delivery and—so far—the success of ScotGEM to provide us with examples that we can learn from in other areas of medical undergraduate and postgraduate training, as well as other training and curriculum opportunities.

As colleagues have said, this is a short, technical bill, but, as I said before, we should not underestimate its importance. Members have mentioned a number of reasons why it is important, but, for me, at its core, the bill is about correcting what, by its longevity, became an

injustice. Although that injustice affects an institution, in truth, it affects all of us and those we are here to represent, especially young people in relation to the richness and diversity of opportunities that we can offer them.

I am pleased that the bill has widespread support across the chamber, because it is important. In some of the areas that it seeks to address and in some of the examples that members have given, I think that it offers important pointers and learning to a future Government about how we might advance not only the number of people we bring into our health service but how we do that and how we incentivise them to repay the investment in their education and training by continuing to work for our quite marvellous NHS Scotland.

The Deputy Presiding Officer: That concludes the debate on the University of St Andrews (Degrees in Medicine and Dentistry) Bill.

Business Motion

16:00

The Presiding Officer (Ken Macintosh): We are a little ahead of time. I have checked that members who are not in the chamber are online, so we move to the next item of business, which is consideration of business motion S5M-24328, in the name of Graeme Dey, on behalf of the Parliamentary Bureau, setting out a stage 3 timetable.

Motion moved,

That the Parliament agrees that, during stage 3 of the Hate Crime and Public Order (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limits indicated, those time limits being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 and 2: 1 hour

Groups 3 and 4: 2 hours and 10 minutes

Groups 5 to 7: 2 hours and 55 minutes—[*Graeme Dey*].

Motion agreed to.

Hate Crime and Public Order (Scotland) Bill: Stage 3

16:01

The Presiding Officer (Ken Macintosh): The next item is stage 3 proceedings on the Hate Crime and Public Order (Scotland) Bill. In dealing with the amendments, members should have with them the bill as amended at stage 2, the marshalled list and the groupings of amendments. I remind members that I will sound the division bell for the first division and proceedings will be suspended for five minutes for the first vote of the afternoon. The period of voting for each division will be one minute. Members who wish to speak in a debate on any group should press their request-to-speak button as soon as I call that group.

Section 1—Aggravation of offences by prejudice

The Presiding Officer: Group 1 is on characteristic of sex. Amendment 4, in the name of Johann Lamont, is grouped with amendments 17, 21 and 26.

Johann Lamont (Glasgow) (Lab): I have issued a detailed letter to all MSPs, outlining the thinking behind all my amendments, and I trust that colleagues have found that useful. I place on record my thanks to all those groups and organisations, women, and colleagues in the Parliament who have given me support in producing my amendments, and I hope that members will reflect on them positively.

We are dealing with a contentious piece of legislation, and I am happy to participate in debates in a serious way that, I trust, matches the seriousness of the challenges across our communities, which are confronted by hate, hostility, aggression and inequality. I am content to recognise that not everyone will agree with me, and that I shall be persuasive to some and not to others. What I shall not be is hateful—and I do not think that that is the motivation of anyone in this chamber.

Why am I arguing for my amendments? One view, of course, is that I am driven by transphobia—an accusation that has been levelled at some women MSPs, in the past, by fellow MSPs. Patrick Harvie MSP confirmed such a view last week, in a reaction to a Twitter comment about my speech last week on international women's day in which I sought to highlight the suffering, discrimination and violence that women suffer globally because of their sex. Patrick Harvie agreed with a comment that I had displayed

“a vicious bit of transphobia”

and added,

“I'm sorry to say we can expect more of that when it comes to stage 3 of the Hate Crime Bill.”

Perhaps we should forgive Patrick Harvie for letting his sense of male entitlement show. However, to foreshadow a debate in the Parliament by ascribing the motive of hatred to me or to any others who want to participate in the debate but who have the audacity to disagree with him, frankly, says a great deal more about his lack of self-awareness than about how we make good law.

I would defend to the death Patrick Harvie's right to make those comments about me, but we should remember that the challenge in this Parliament is to have a serious debate about the impact on our communities. Of course, it is easier to silence people for being full of hatred than it is to address their concerns.

The cabinet secretary has said that there is a very high bar to reach before anyone can be accused of threatening or abusive behaviour, but the truth of the matter is that Patrick Harvie regards what I said in the international women's day debate about the discrimination that women face because of their sex as reaching that bar. Would it not be an irony if I were to become the subject of a report, on the basis of what I said in a debate about the hate crime bill's provisions? That must trouble anyone who wants a serious discussion across our communities about what hatred means.

I am here to speak up for my constituents and for women with whom I have worked for many years, who understand the scale of hatred and violence that women face and have no well-funded lobbying groups to press the case to the Government on their behalf. Lobbying has been an issue in this Parliament—my colleague Neil Findlay has highlighted that—but most people have to put their hands in their own pockets if they want to lobby and push their case.

When it comes to this bill, however, the truth is that the key lobbyist, to which the Scottish Government has responded at every turn, and which has not stood with women or argued for women to be included in the bill, has operated at the expense of the public purse. The organisation has argued against women being included in the bill without actually speaking to the women who fund it through their taxes.

I have been patronised by many people over the years. We learn to live with that, but it has been taken to new levels by organisations that speak of equality and the needs of women but never think to test their views against the women in our communities.

Let me move on to the specifics of the amendments in my name and for which I seek support. I want to include sex as an aggravator and to define “sex” in the terms of the Equality Act 2010. The proposals are simple. They are supported by Lord Bracadale, who described the omission of sex as a lost opportunity. They are supported by many, many women and by men who stand with them. At heart, the proposition is very simple. If the bill sends a message about the unacceptability of hate crime and offers protections to potential victims of hate crime, as it should do, we might reasonably expect that the group that suffers most as a consequence of hatred—women—would be included.

Hatred of women is so commonplace that it is barely remarked on. A cursory glance at the news any day of the week will show it, not lurking but clear and brutal. Today, we saw a report that shows that the scale of the abuse of women across the world is massive and has not changed over time. Women being murdered by men who have gone on the rampage is upsetting but it is never a surprise. Men do these things; we know it. We see the tragedy and know that behind it is an angry man and a terrorised woman and her family. We see it in domestic abuse. We see it in crimes of sexual abuse. We see it in routine behaviour that means that, for women, whether we are walking or running in a park or going to work, anxiety about male violence is our constant companion, from our youth.

When we ask, out loud, the commonsense question of why women, who understand hate crime more than any other group does, are excluded, it is clear that there is no answer that can make sense of the decision. We are told that the issue is complex—so is the bill. We are told that men are manipulative. We have no doubt that there are men who will manipulate any provision in the bill, including those that relate to other protected characteristics that are identified in the bill.

Huge issues arise for women, but we are content to outsource our thinking to a working group, rather than wrestle with the issues of principle here in the Parliament. We have been given no evidence of the scale of the problem that has been identified by the people who want the working group to consider it. I do not doubt that the working group can do very significant work, but the principle of whether women should be a protected group should be decided here, because it means that when we campaign and have a national push to discuss hate crime, women will be at the centre of the discussion and will not be ignored.

I will finish on these points. I believe that the case for including women is undisputable, but if

members are not persuaded, I urge them to at least support amendment 17, which provides the definition of “sex” as outlined in the Equality Act 2010. The cabinet secretary said clearly that the sex aggravator should align with the provision in the 2010 act. Even if people accept the outsourcing of work on that huge decision to a working group, with no evidence of why, it is essential that the Parliament defines the work of the group. The amendment makes clear what the definitions of “men” and “women” are. If members think that those definitions are wrong or are up for debate, say so, and we can have that debate. It should not be for the working group that is being asked to look at the sex aggravator to come back with a new definition of “sex” and new definitions of “men” and “women”. Those are big decisions that should be taken by the Parliament.

I trust that members will support my amendments, so that women, who are at the front line of crime that is driven by hatred, are included. As Tim Hopkins of the Equality Network said,

“it is important that people can see themselves in the bill.”—[*Official Report, Justice Committee, 17 November 2020; c 22.*]

Well, women are people, too, and they should be seen in the bill and should be included.

I move amendment 4.

Pauline McNeill (Glasgow) (Lab): I will speak to the amendments in Johann Lamont’s name in group 1, and I thank Johann Lamont for lodging them so that we can debate what I and many women regard as a very serious omission from the bill.

Sex is a characteristic that matters when it comes to understanding levels of violence, which is why hundreds of women have written to me and pleaded for the inclusion of sex as an aggravator in law. Many women constituents are not prepared to wait three years for a working group, and I wonder why the Scottish Government is so convinced of that route in the midst of daily reports of male violence against women.

According to the World Health Organization, one in three women have faced physical or sexual violence in their life. That is why we have 16 days of action for women and girls who face human trafficking, female genital mutilation, rape, murder, forced prostitution, sexual violence and intimate partner violence. The Parliament has involvement in 16 days of action to amplify the voices of women.

I wonder why Scotland is not leading on the issue. Women are regularly the target of offending behaviour based on hostility towards their sex, and it is now well established that women in public life face much higher levels of online abuse than men, which has consequences for their participation.

The proposal to add age to the hate crime protected characteristics leaves sex as the main characteristic that would not be protected but is included in the 2010 act. It is a glaring omission and I do not understand why the Scottish Government is asking women to wait for three years. The longer the law is unchanged, the more the message is reinforced that this is not something that is a priority for the Parliament, and it perhaps reinforces fears that women have.

If it was the committee's view and Lord Bracadale's view—and, as I have said, the view of hundreds of women—that sex as an aggravator should be included in the hate crime bill, why is that not good enough? I do not understand that, either. Why is Lord Bracadale not good enough but Helena Kennedy and the working group are? It does not make any sense to me that one legal opinion is rejected as the one that is not wanted. That concerns me deeply.

I have two questions for the cabinet secretary. It would be helpful to know what kind of new law he thinks would include a standalone crime of misogynistic harassment. What would that look like and how would it differ from domestic violence and all the violent crimes that I have outlined? I am genuinely struggling to see what such a crime would look like, since women are already the victims of a range of crimes.

Why can the Scottish Government not put sex as an aggravator in the bill, but still have a working group three years later? If the argument is that if the working group thinks that it should go in the legislation, the Government will include it at that point, surely it could put it in now. If Helena Kennedy takes a different view, we could then change the law. I urge the Parliament to think seriously about omitting sex as an aggravator in a bill about hate crime.

The bill is one of the last pieces of legislation to be dealt with in this parliamentary session, and I urge members to seriously consider voting in favour of the amendments in this group.

16:15

Joan McAlpine (South Scotland) (SNP): A YouGov poll for UN Women UK that was published this week found that nearly every young woman in the United Kingdom had suffered sexual harassment. Claire Barnett, executive director of UN Women UK, pointed out that it is a human rights issue. As Ms Barnett said,

"It's just not enough for us to keep saying, 'this is too difficult a problem for us to solve'—it needs addressing now".

It does need to be addressed now, and that is why putting off the issue until the next parliamentary session is not convincing. That is why I will vote

against the Government whip to support Johann Lamont's amendments on the issue today. Initially, I did not take that view, because I understand that the proposed sex aggravator is gender neutral. I preferred the idea of an offence of misogyny, or even a female sex aggravator, which was never on the cards—although, given that the hate crime protections in the bill extend to characteristics that do not exist in the Equality Act 2010, perhaps there is really no reason why that could not be the case.

I became convinced that the scale of the sexist violence that women experience at male hands, including the two women a week who are killed by men in the UK, meant that it would be bizarre to exclude them from at least part 1 of the bill. The thing that finally turned me to my current position was the Government's decision to expand the definition of transgender identity to include cross-dressers who are not trans identified. That is not the definition of gender reassignment in the Equality Act 2010. It will seem bizarre to many people that men who enjoy cross-dressing are protected from hate crime, but women are not.

When we last debated violence against women last November, several members, including ministers, praised the femicide census, which documents the killing of 1,425 women by men in the UK last year, yet we seem to be saying that femicide is not hate. I know that a sex aggravator would protect men, but that is already the case under the 2010 act. In the 2010 act, sex is the characteristic, but it mainly protects women. In the bill, as in the 2010 act, the protected characteristics of race and sexual orientation also protect straight people and white people but would be applied most often in crimes against gay people and black people, who face the most oppression. Therefore, why not also include sex, which would protect women more than men?

A number of official women's organisations, which have been mentioned by Johann Lamont and which work closely with and are funded by central Government, have backed the decision not to include a sex aggravator. However, as the ForWomen Scotland briefing points out, none of those organisations did any research, even in their own networks, before getting to that position. Those organisations suggest that men could weaponise hate crime in domestic violence cases, but our domestic violence laws are already gender neutral.

Members should be aware that there is a reason why funded organisations take such a view. In the past few years, a major ideological schism has opened up in feminist thought, which has its roots in university gender and so-called queer studies courses, in which it is argued that gender is a personal choice and that sex is an identity. That

view is taken by the leadership of most Government-funded organisations. However, it is increasingly being challenged by a growing number of grass-roots feminist movements, which argue that gender roles are oppressive and that women face discrimination, violence and subjugation due to the sex that they were born.

The debate is polarised, but it is dynamic and changing. Only yesterday, one of the grass-roots feminist groups succeeded in a legal challenge to the UK census, which will force the Office for National Statistics to collect only sex at birth and legal sex information in the census. Just two years ago, when my committee took evidence on that issue for our census, the public authorities and some of those funded women's organisations told us that it was not possible to do so. Those organisations also opposed Johann Lamont's amendment 28 to the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill, which ensured that rape victims were able to choose the sex, not just the gender, of their medical examiner. Make no mistake—such positions are as ideological as they are absurd and they have nothing to do with protecting women. I am therefore proud to support Johann Lamont's amendments today.

Elaine Smith (Central Scotland) (Lab): I will make a short intervention in support of the amendments in group 1 that have been lodged by Johann Lamont.

Over the past few weeks, members from across the chamber have spoken up against the growing inequalities that women in our society face; they have all expressed concerns about the unacceptability of continuing violence and abuse against women and the urgent need to take action, which Johann Lamont, Pauline McNeill and Joan McAlpine have just outlined in their contributions.

However, today, when we are discussing measures to tackle hate crime, the cabinet secretary proposes to refer the inclusion of the characteristic of sex as an aggravator to a working group. It is not just Johann Lamont who is concerned about that. Women across Scotland are asking whether that is really the best that this Parliament can do.

This is not a new discussion. Thirteen years ago, in 2008, my colleague Marlyn Glenn raised the same point when the Parliament was considering the Offences (Aggravation By Prejudice) (Scotland) Bill. However, violence against women, misogyny and hatred of women were not included. During the evidence sessions on this hate crime bill, voices from the Muslim community called for support for mechanisms to measure hate crimes that are perpetrated against Muslim women.

I agree with all those grass-roots women's organisations that spoke up during evidence sessions and with all those who cannot understand why we would effectively exclude women in this piece of legislation.

As the working group gets on with its work, additional measures to tackle misogyny can, of course, be considered although, when the cabinet secretary rises, a response to Pauline McNeill's question on that would be most welcome.

For the legislation to be meaningful and understood, we have a responsibility to be very clear on what this Parliament means when defining men and women as two sexes. From the correspondence that I have received, I know that the people of Scotland, in the great majority, understand that, too. We cannot put women's concerns and fears to one side, and I was shocked by the lack of serious consultation with the women of Scotland, as well as the number of men who are queueing up to tell women what we should think and how we should feel and, frankly, trying to stop our voices from being heard.

I support the amendments in the name of Johann Lamont.

John Finnie (Highlands and Islands) (Green):

This is an important debate and I do not wish to silence anyone's voices. There are important issues at stake here and it is right that that is reflected in the debate.

Like many men—I know that people would say that that is a privileged position—I have frequently spoken about women's experiences of sexism, misogyny, harassment and abuse. There is no acceptable level of toxic masculinity.

Like everyone on the Justice Committee, I warmly welcome the appointment of the distinguished human rights campaigner Helena Kennedy QC and, more recently, I have commended the strong and talented group of women who were appointed to her working group. There is no doubt that progress in dealing with sexism, misogyny, harassment and abuse has been slow, as we have heard from the previous speakers. However, with this working group, it will gather pace. I want the world to be a better place quicker. I am not sure where some of the contributors get a figure of three years from; perhaps we will hear from the cabinet secretary about that.

However, the misrepresentation that is endemic in much of the discourse around this debate is, at best, disappointing, sometimes mischievous and, on some occasions, simply malicious. Some of the horrendous circumstances that women face, which we have heard about, are already covered by legislation, but we need to look at the concerns that have been highlighted.

However, one might reasonably anticipate the furore that would follow if a male politician such as me said, “Let’s disregard this working group, with its distinguished woman leader. It doesn’t matter that the group’s work, with all these talented women, is under way. I want to put in the legislation what I want at this time, regardless of what they might plan.” Words, tactics and intent are important. As before, I will not support amendments of that nature because, as before, I am not prepared to pre-empt or jeopardise the important work of Dame Helena Kennedy’s group.

Elaine Smith: On a point of order, Presiding Officer. It is unfortunate that, given the way in which the Parliament has to operate during the Covid pandemic, there is no way of intervening on members to clarify points. I do not hear anyone in the chamber saying anything about the membership of the misogynistic harassment working group. As women, we are quite happy to support the group and to see what happens at the end of its work, but we have waited 13 years for legislation. We do not see why we should wait any longer and why a sex aggravator should not be included in the bill. The working group, with its distinguished members, can, of course, continue with its work.

The Presiding Officer: Thank you, Ms Smith. The point of order relating to proceedings is accurate, in the sense that debates and discussions in which members participate online are very restricted, and it is not possible for those members to take interventions. I recognise that, but I am afraid that all members have to work with the current system.

However, the point of argument that Ms Smith raised has now been put on the record.

Neil Bibby (West Scotland) (Lab): Labour will support all the amendments in the group. As Johann Lamont and Pauline McNeill said, in his review of existing hate crime legislation, Lord Bracadale recommended that we introduce sex as a protected characteristic in the bill, and he said that the decision not to include it was “perhaps a missed opportunity.”

I note the concerns of many, including the Scottish Government, on the issue, and that the Justice Committee, in its stage 1 report, said that the arguments are “finely balanced”.

The establishment of the working group on misogynistic harassment, chaired by Baroness Helena Kennedy QC, is important, and we will follow its work closely. We welcome the commitment to publish a report within 12 months, and we hope that it will not take three years. However, as Pauline McNeill said, we worry that there will be a gap in the legislation for those 12 months if we do not include a sex aggravator in

the bill, and we worry about the time that it will take for further legislation to be enacted.

As others have said, women are subjected to hate because of their sex, and I am concerned, as other members are, that not only is there a gap in the legislation, but that we might send the message that women are less deserving of the protections that are afforded by the bill from the hate crimes that they experience.

The Government suggests that a sex aggravator can be added later, pending the working group’s conclusions, but the reverse is also true. Any primary legislation that results from the working group’s conclusions could remove or replace the sex aggravator if consensus on a preferred alternative can be found.

Amendment 4 would add sex as an aggravator and would allow courts to record offences as having been aggravated by “malice and ill-will” towards the victim because of their sex.

Amendment 17 provides the definition of sex, as it is defined in the Equality Act 2010, for the purposes of amendment 4. Amendments 21 and 26 are incidental to amendments 4 and 17.

For those reasons, Labour will support all the amendments in the group, and I urge the cabinet secretary and other members to support them, too.

Annabelle Ewing (Cowdenbeath) (SNP): As a member of the Justice Committee—I should say that I am also a member of the Law Society of Scotland—I have had the opportunity to consider the copious amount of written and oral evidence that the committee received. We received a lot of evidence from a lot of different people, who had a lot of different perspectives on a lot of different issues.

On the issue at hand, and further to consideration of the evidence, it is clear to me that, through the approach that is proposed, we have the opportunity to do something different, substantial and meaningful in relation to the abuse that women suffer day and daily. I have to ask myself the question: what is the point of pursuing the same legislative approach that we have seen decade after decade? That approach has not produced any better results for women; it has not delivered for women. The term “gender neutral” does not deliver for women. Provisions of the Istanbul convention lend support to that.

Johann Lamont: Does Annabelle Ewing agree that the women’s groups that argue against the sex aggravator on that basis welcomed the Domestic Abuse (Scotland) Act 2018, which was gender neutral, as being the gold standard?

Annabelle Ewing: I think that we all welcomed the 2018 act, which is, indeed, the gold standard

and something that the Parliament and the Scottish Government can be very proud of. On the specifics, I do not think that we can make quite the same analogy.

16:30

However, as I said, after decade after miserable decade of the abuse that every woman in this chamber will have suffered at some time—while it will perhaps have been, in the main, verbal abuse, for some women it will have been more than that, and I would include myself in that category—I think that it is time to try to do something different.

What is proposed here is a working group that is to report within 12 months, which is from an amendment that I proposed and to which the committee agreed in terms of the principle of a time limit being put in place. The working group will look at the misogynistic harassment issue, but it will also look at the issue of a sex aggravator. The group will report to the Parliament, and it will therefore be the Parliament, as the democratic Parliament of our country, that will consider the issues and take decisions.

Colleagues will know that I very much recognise the importance of the principle of the immutability of sexual dimorphism and the importance of not conflating sex and gender, and that I have argued for that in the Parliament and in the committee on the Census (Amendment) (Scotland) Bill, to which my colleague Joan McAlpine referred. I therefore very much recognise the concerns about those issues, but I feel that, having studied the evidence and as a lawyer, the concerns about that debate are becoming part of the debate on the bill before us. I do not necessarily see the two issues as being contemporaneous in that regard.

The Equality Act 2010, which has been mentioned, remains part of the legislation that governs our activities, and we cannot act ultra vires of the 2010 act. Therefore, inserting into the bill before us definitions from the 2010 act and other pieces of legislation seems to me, from a legal perspective, not to make much sense. The Equality Act 2010 is on the statute book and it governs everything that we can do. For the reasons that I have stated, I will not support the amendments in group 1.

The Presiding Officer: I call the Cabinet Secretary for Justice, Humza Yousaf.

The Cabinet Secretary for Justice (Humza Yousaf): I start by thanking Johann Lamont and all those members who have spoken to her amendments. Although I am about to explain in detail why the Government will not support her amendments, I state for the record that I have known Johann Lamont for quite a few years. We were political opponents in Glasgow Pollok during

the most recent election and for years before that. For all the disagreements that I have with her, I do not doubt for one second—not for one millisecond—her commitment to tackling hatred. I have known her to stand on the same platform and denounce hatred in all its forms. Although our debate will be robust—we have heard much of that robustness already—I state for the record that I do not doubt at all her intentions in relation to her proposed amendments. I welcomed the respectful but robust manner in which issues were debated at stage 2, and I am certain that contributions throughout today's proceedings will be made in a similar manner.

There remains a pressing need, as members have already stated, to tackle misogyny and gender-based violence in Scotland, and the Government is committed to doing so. Indeed, it is clear that there is a shared ambition across the Parliament to do so. However, it is also clear that there are strong but often diverging views on how that important issue should be tackled. Johann Lamont's amendments would result in the characteristic of "sex" being added to the list of characteristics in section 1 of the bill and would add a provision to define sex. She is right that, in principle, I do not oppose the intention behind the inclusion of sex in the hate crime legislative framework. I said publicly on the record, when Lord Bracadale's report came to me, that my initial view was to include a sex aggravator.

As I outlined at committee during stage 2, I know that, on the face of it, including "sex" in the bill seems appealing. To exclude the category of sex, as members have said, seems counterintuitive. However, we also heard during the committee's oral evidence sessions and know from its written evidence that a number of organisations that have decades of experience of standing up for women's rights, such as Scottish Women's Aid, Engender, Rape Crisis Scotland and Zero Tolerance Scotland, expressed concerns that a neutral sex aggravator could do harm to women. I will come to some of the reasons why that is shortly.

However, there is a concerning element in the remarks that have been made. We can accept that there are differences of opinion, but I am deeply disturbed by the insinuation that a few members have made about organisations such as Scottish Women's Aid, Rape Crisis Scotland, Engender and Zero Tolerance Scotland. Members have every right to disagree, but we should recognise not only that those groups provide a life-saving service for many women but that they have decades of credibility in this area. It is absolutely true that they are Government-funded, but the dangerous insinuation behind labelling them as such is that they are simply doing what the Government wants. Anybody who has had any

dealings with Dr Marsha Scott, Sandy Brindley or Emma Ritch knows that they are no Government patsies. When they need to challenge the Government, they do so strongly. Therefore, although we are right to disagree, I plead with members not to denigrate those organisations that have done so much to advance women's rights over the years.

I was struck by a number of the concerns that Women's Aid organisations raised regarding the introduction of a neutral sex aggravator that would apply to men just as it would to women. They said that it could become another tool for domestic abuse perpetrators to use as part of a wider pattern of coercive control. We know that perpetrators of abuse often use the criminal or, indeed, the civil justice process to perpetuate that abuse.

I want to read a quote from Grampian Women's Aid. Some members have talked about national organisations and have made an insinuation—in fact, not an insinuation but a direct accusation—that those organisations have not spoken to women on the ground. This is what Grampian Women's Aid said:

“we see time and time again, attempts by perpetrators to use elements of the criminal and civil justice system to enforce or extend control and abuse of children and women ... including calling the police and claiming to be victims when they are in fact abusers ... We of course can only speculate about the impact of a gender aggravation for hate crime laws. However, it is our understanding that there is no evidence that such an aggravation has helped protect women where it has been used elsewhere, and we are absolutely confident that perpetrators will attempt to use it to their own benefit should it be introduced in Scotland.”

In her intervention on Annabelle Ewing, Johann Lamont made a point about the domestic abuse aggravator being neutral. Given what Grampian Women's Aid said, why would we want to give perpetrators a potential additional tool to use in the perpetuation of their abuse?

That is not the only argument that women's organisations have used. Engender has a 35-page report. I will not go into the policy detail of that, but it is worth recognising that serious concerns have been raised by serious organisations that have a pedigree, a credibility and an integrity when it comes to standing up for women's rights.

Therefore, it makes perfect sense to me to ask experts—as we have done with the working group, chaired by Baroness Helena Kennedy, who is a lifelong feminist and a human rights lawyer—to look at where there might be gaps in the law and to examine a stand-alone offence of misogyny, but also to examine the issue of the inclusion in the bill of a sex aggravator.

Johann Lamont referred to that a couple of times as outsourcing that work. I happen to

disagree. As legislators, we are at our best when we ask experts such as Baroness Kennedy to look at issues in great detail. She has a panel of experts with specialisms in Scots law, human rights and women's equality, and she has managed to bring in advisory counsel from the Office of the United Nations High Commissioner for Human Rights to support the working group. That group had its first meeting on 12 February and the next one is scheduled for later this month.

Pauline McNeill kept referring to a period of three years. I have no idea where that number has come from. She joined us online, so she might not be able to intervene, but I would be happy to take an intervention because, as I have already set out in writing to every member, and as the working group has confirmed, the group will conclude its work within 12 months of 12 February. I have also confirmed that if, after exploring all the arguments that have been raised by Engender, Rape Crisis Scotland, Scottish Women's Aid and members of this Parliament, it concludes that a sex aggravator should be included, the Scottish National Party Government, if we are re-elected, will include a sex aggravator. I would bring forward the draft order to do that within a month. That work is continuing at pace. It will not take three years, and I am not sure where that figure has come from.

Regarding a definition of sex, as I have said previously, I do not have an in-principle objection to alignment with the Equality Act 2010. What I will not do, though, is prejudge the work that Baroness Helena Kennedy is undertaking in that regard. I do not have a fundamental, in-principle objection to what Johann Lamont is suggesting or doing; it is simply the case that I recognise what has been said by organisations that have decades of credibility in standing up for women's rights. They have expressed very serious concerns, many of which were articulated very well by my colleague Annabelle Ewing.

I ask members to give the working group the time that it needs—12 months, as the committee asked—to explore the issue, come forward with recommendations and create, potentially, a world-leading approach. Therefore, I ask members to vote against Johann Lamont's amendments 4, 17, 21 and 26.

The Presiding Officer: Before I invite Johann Lamont to wind up on the group, I notice that Pauline McNeill has requested to speak, so I will bring her in.

Pauline McNeill: Thank you, Presiding Officer. I asked the cabinet secretary a number of questions. Many commentators have concerns about the length of time that his approach would take. Whatever commitment the cabinet secretary gives, he will have to allow some legislative time and the committee will have to pursue the matter,

so many people think that it will take at least a few years. I will not be tied to the three years, but there are certainly concerns about the timescale. I also note the extraordinary times that we are in.

The cabinet secretary might not be able to reply to this, but I asked a question about what a crime looks like. He did not answer that, nor did he answer another question that I put. If he is not against a sex aggravator, which is what he said at the beginning, and given that Helena Kennedy is going to look at the matter, what would be the problem with inserting it now and then revising it in the future? He could have done that, and it seems to me that he has got into an argument for no reason.

Humza Yousaf: I thank Pauline McNeill for that and I thank you, Presiding Officer, for facilitating that intervention.

On the reason why we should not include a sex aggravator now, I note that Rhoda Grant, who might take part in the stage 3 proceedings later on, suggested that we should include it now and then remove it later if the working group says that it should not be in the legislation. However, a concern is held by Scottish Women's Aid and many others that a sex aggravator, which could apply to men as much as it would apply to women, could do harm. If the suggestion is that we should include it, allow it to do harm to women and then remove it because the expert working group has said, "Yup—it has done harm", I would ask how many women would be harmed in that process. To me, that seems the wrong way to go about it.

Forgive me—I did not understand Pauline McNeill's question about what would be a crime, but I am happy to take that away and perhaps address it in writing to her.

The Presiding Officer: I call Johann Lamont to wind up on the group.

Johann Lamont: Thank you, Presiding Officer. You will appreciate that there are quite a significant number of areas that I want to get through.

I have asked why we would ask the question out loud and then not include women in a hate crime bill when we all know that women are the most serious victims. People have said, "Well, it's all a bit complicated", but people have been saying that to women since I was a child. They have said that it is too difficult to get women into public spaces or to deal with difficult behaviour and that women have caring responsibilities. If we had taken that attitude, we would never have changed anything.

I commend Pauline McNeill, Joan McAlpine and Elaine Smith for their contributions, which proved that there are a lot of talented women who have something to say about the issue. We should

listen to them, because those women are speaking up on behalf of women across the country who have lobbied the Government on the matter.

I very much respect Annabelle Ewing for what she has said and done, particularly around the issue of not conflating sex and gender. I recognise that, but I think that she is wrong in the conclusion that she has come to. She understands that there is a problem for women in relation to hate crime, but says that it should not be central to any strategy or Government legislation, or the campaign around it that says that women should be part of that work.

A number of arguments have been made on the subject. We are told that it is very complex, but I make the point again that hate crime legislation in its entirety is complex. It is our job to work our way through complex legislation.

16:45

We are told that a sex aggravator might work against women because of manipulative men. Therefore, because the perpetrators are ultra-manipulative, we have to pull back. That, again, is a counsel of despair; if we had listened to it in the past, we would never have legislated on rape, coercive control or domestic abuse. I make the point again that although the domestic abuse legislation is gender neutral, it protects women, who overwhelmingly are the victims of domestic abuse.

We are also told that women can wait. It might only be a year—we are a bit vague about how long it will take—but women can wait until we make sure that we get this absolutely right. On the other hand, when people have said, "Given the complexities of the bill as a whole, perhaps it might be better to try to bring people together and get our communities to understand what we are doing, pause the bill and build consensus," we have been told, "No—we cannot wait." Let the women wait, but not every other issue in relation to the bill. That does not make sense.

In his contribution, John Finnie said that he was not willing to jeopardise the talented group of women, at least one of whom will be representing a group that is actively opposed to the sex aggravator being in legislation. I accept that it is a very talented group of women, but our point is that there are a lot of very talented women right across our communities who understand exactly what hate crime is, and we should be talking to them about what protections they should have.

It is ludicrous to say that the only way forward to address the needs of women is to set up a working group. I am sure that the working group can do a lot of really good work; they are very

talented people. However, there is no reason to prevent the sex aggravator from being put into legislation and then let the group work on the detail. If there are unintended consequences, the group can address them.

A lot has been made of the evidence that manipulative men would make things more difficult for women, but, of course, we are talking about an aggravator. The men are already manipulating the initial charge of violence—we know that, and we need to deal with it. The argument does not make any sense.

I want to talk briefly about what the cabinet secretary has said. Let me be clear: I have a lot of respect for the groups that are opposed to the position that I have taken. Indeed, when I was a minister, I funded those organisations to ensure that women were protected in the justice system and given refuge and support, so I have no problem with them whatsoever.

My argument is not that those groups are silenced by their connection to funding from the Scottish Government; it is that the Scottish Government overwhelmingly listens to them above any other groups. Indeed, we found out this week that the Scottish Government does not have a list of groups of women to test its ideas against. The only people that they have are the four groups that they fund. That is a closed circle, and we want to break into that circle and say that there is another set of ideas and arguments: that women need protection in the law. That can be done in principle; afterwards, let the working group do its very best.

I commend Joan McAlpine in particular, partly for her fantastic speech making the case, but also for having the courage to indicate that she will support my amendments against the position of her own Government. I am absolutely confident that if the cabinet secretary allowed his back benchers to do what they know is right, they would support the sex aggravator, support the working group doing the detailed work and definitely support the definition of sex that is in current legislation.

It is clear that this Government has form on changing definitions. It is in the courts at this very moment, defending a change in definition regarding the legislation on gender representation on public boards. That has been changed. Joan McAlpine was the person who took to the Scottish Government the attempt to change the Census Act 1920 and redefine the question on sex; she has informed a lot of the work around what is now in court.

I will finish on this point. If we listen to women and look at women's experience, it is self-evident that women should be covered by the bill. Women

would not argue for something that would make their lives worse. I urge the Scottish Government to listen to women and to what Tim Hopkins said. People need to see themselves in the legislation. Women are people, and they, more than anyone, know that they need the protection of the law.

I urge members across the chamber to support my amendments. If they feel that they cannot, they should at least ensure that we do not have a working group coming back in a year's time having redefined behind our backs the meaning of sex and men and women and, when people ask about it, saying, "Why are you moving against that change?" Let the working group do its best, but we make the decisions on that.

Fundamentally, as we all know, women face hate, violence and abuse, and they deserve the protection of the law as much as anyone else.

The Presiding Officer: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division. As this is the first division of the afternoon, I will suspend the meeting for five minutes to summon members to the chamber and to allow members, including those who are offline, to access the voting app.

16:51

Meeting suspended.

17:00

On resuming—

The Presiding Officer: We come to the division on amendment 4, in the name of Johann Lamont. Members may cast their votes now.

The vote is now closed. Please let me know if you had any difficulty in voting.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Boyack, Sarah (Lothian) (Lab)
 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)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)

Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Griffin, Mark (Central Scotland) (Lab)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harris, Alison (Central Scotland) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McNeill, Pauline (Glasgow) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)
 Wightman, Andy (Lothian) (Ind)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 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)
 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)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)

Hyslop, Fiona (Linlithgow) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McKee, Ivan (Glasgow Provan) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 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)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 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)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division on amendment 4, in the name of Johann Lamont, is: For 53, Against 68, Abstentions 0.

Amendment 4 disagreed to.

Section 3—Offences of stirring up hatred

The Presiding Officer: Group 2 is on the threshold for and operation of offences relating to stirring up hatred. Before I call the first amendment, in the name of Liam Kerr, as we are already nearing the agreed time limit, I am prepared to exercise my power under rule 9.8.4A to allow the debate on group 2 to continue beyond the limit in order to avoid the debate being curtailed unreasonably.

Amendment 32, in the name of Liam Kerr, is grouped with amendments 33, 5 to 10, 15, 30 and 31.

Liam Kerr (North East Scotland) (Con): My amendments in group 2 are split into two broad principles, and I will speak to each in turn.

Amendments 32 and 33 try to protect the right to private and family life, but in slightly different ways. At stage 2, I lodged an amendment to provide a defence for words that are spoken in a private dwelling and that are not heard by any other person except those within the dwelling. The

defence is similar to those in public order laws in England, Wales and Northern Ireland. My intention was to reflect the fact that, as the committee unanimously agreed, the proposed legislation describes itself as being concerned with “public” disorder. Under stirring-up laws, prosecution over private conversations in the home must surely constitute a violation of privacy and the human right to a family and private life.

During its evidence taking, the committee heard concerns that allegations could be made by individuals after an argument at a dinner party or similar social event and could then be investigated by the police. Calum Steele of the Scottish Police Federation warned us that conversations on contentious issues could be repeated innocently by children at school, which could then lead to reporting. The police would have no choice but to investigate and take witness statements from others present at the time of the speech, which could presumably include one’s own children.

Without a private and family life defence, the bill could lead to a scenario in which parents censor themselves in their own homes because they are anxious that their children might repeat, out of context, something that they have said. We must not make it the job of the police to investigate private disputes and to use the criminal law to set the parameters of acceptable opinion, even in the private sphere.

At stage 2, the cabinet secretary expressed concerns about people stirring up hatred in the home and folk then going out and expressing that. I heard his argument on that, so I have drafted my amendments specifically to address those concerns.

Amendment 32 makes it clear that, if a person is in their usual residence and behaves in a way that could constitute stirring up hatred, or communicates material that could constitute that, but no one outside the dwelling hears or sees it, they do not commit an offence. However, the caveat that I have added is that that defence is applicable only if the other people in the house at that time are either their family or people with whom the house is shared, plus another person from a different household. The beauty of that clause is that it entirely addresses the cabinet secretary’s concerns while ensuring that people can speak freely, without fearing an investigation or prosecution.

Humza Yousaf: I have a simple question for Mr Kerr. If I were to be beaten up because of the colour of my skin, does he think that I would care whether that hatred had been stirred up within a stranger or, for example, his own brother? It would not make a difference to me, as the victim of such a hate crime, whether I had been beaten up by a relative of his or by a stranger.

Liam Kerr: No—of course it would not. However, here we are talking about the dwelling defence and how we protect people from hate speech that might happen around their dinner table. I will address the cabinet secretary’s point as we move through the debate.

I have lodged a further amendment, just in case members remain concerned about the reference to an extra non-family person. Amendment 33 provides a defence if

“the only people present when the behaviour or communication of material occurs”

are the family of or those who live with

“the person engaging in the behaviour or communication”.

None of what I propose is ground breaking. There is precedent for a family and private life defence. Section 18 of the Public Order Act 1986 provides that an offence is not committed if the accused’s behaviour takes place inside a dwelling and is not seen or heard by others. Interestingly, the Law Commission in England recently reviewed whether such a dwelling defence should remain in public order laws. Just last month, it announced that the mechanism should stay to ensure a proper balance between tackling vile behaviour and respecting privacy.

Since the bill that is before us seeks to increase the coverage of the stirring-up offence, it makes sense to import a similar dwelling defence, to protect the right to a private family life and ensure that the public order element of the bill’s title remains pertinent. I therefore intend to press amendments 32 and 33.

Amendments 6 to 10, 15 and 31, in my name, all go towards the same point. From the start of the bill process, I have argued that part 2 needed to be removed and rethought, because we have to get this right. On this—the most controversial bill in the Scottish Parliament’s history—most of the concerns have centred on part 2. In a truncated timetable, and extraordinarily difficult and unprecedented circumstances, parliamentarians and the committee have worked well, and vital changes have been made. However, despite all the evidence taking, all the amendments at stage 2 and all the committee’s emergency sessions, significant concerns remain.

The bill, as amended, requires that behaviour must be judged abusive or threatening by a “reasonable person” and must be

“intended to stir up hatred”,

which is a considerable improvement. However, those terms are not further defined. Although it has been argued that their meaning will be obvious and that they will set a high bar, there is no doubt that the meaning of what is hateful, abusive or reasonable is contested.

Even should some of the many further amendments be agreed to today, huge questions will remain around, for example, what the police could be dragged into adjudicating under part 2. Murray Blackburn Mackenzie warned:

“if the Bill is passed in the form the government is seeking ... the freedom to ... make certain types of statements ... without risking at least serious disruption to life will now rest wholly on what front-line police officers decide in practice a ‘reasonable person’ might judge ‘abusive’”.

On the freedom of expression provisions, which we will consider shortly, although the Scottish Government has lodged an alternative section, which may still be further amended in the next group, we will all have had extensive representations suggesting that it might still not be quite right.

Members will have seen recent representations from many reputable organisations this week raising concerns that the wording is not wide enough to put it beyond doubt that merely offensive or controversial speech is not grounds for a stirring-up hatred prosecution to take place. The Society of Editors illustrates my point, saying:

“The SoE fears that unless there are safeguards put in place the ‘reasonable person’ test stands every chance of being highjacked and used to silence free speech and penalise a free media.

At the very least, the definition stands the chance of creating a chilling effect of the UK’s media.”

Is the society right? I do not know, but what if it is?

Much more thought needs to be given to the content and compass of the stirring-up offences. The cabinet secretary, the Parliament and hundreds of groups have tried for a year now to find the solution, but too many people think that the solution may not have been found. I therefore offer my solution to Parliament. If part 2 is removed from the Hate Crime and Public Order (Scotland) Bill, it will allow the bill to proceed, to consolidate existing provisions, to add a new statutory aggravator on age and to remove the blasphemy offence. We can then come back in the next parliamentary session, and a new Administration can look afresh at this disputed area.

I can anticipate the worry that people will have that, if part 2 were to be removed, it could leave people unprotected. Let me allay those fears, as I have also lodged amendment 31, which reinstates the existing protections provided by the Public Order Act 1986, ensuring that there is no reduction in existing protection should my amendments be accepted.

I will move amendment 6, and its consequential, to remove part 2, so that the Parliament can be secure in the knowledge that

there will be no reduction in protections, so that it can pass the rest of the bill and so that, in the next session, it can allow more time for renewed scrutiny and stakeholder engagement on the stirring-up offences to ensure that we get them right in order to protect what must be protected and who must be protected, while not infringing rights that must not be infringed.

I move amendment 32.

Adam Tomkins (Glasgow) (Con): It has been clear for months that, notwithstanding all the criticisms that have been made about the Hate Crime and Public Order (Scotland) Bill, a majority of MSPs support the proposed legislation, it will pass at stage 3 tonight and it will be enacted into law.

In all my involvement with the bill, I have sought to improve it. Of course, I could have spent the past few months simply trying to obstruct the bill, but it has been clear for a long time that it will pass, so what would have been the point of that? I want to ensure that the Parliament passes good law. My amendments—both those in this group and those in the next group to be debated—are designed not to thwart the policy objectives of those whose bill it is but to improve the delivery of those policy objectives in the law that we make.

I am in favour of hate crimes being crimes. I do not want to live in a country where people are free to threaten or abuse one another with the intention of stirring up hatred against them. I am also passionately in favour of individual freedom and liberty. When we are seeking to criminalise behaviour that stirs up hatred, we must do so with extreme care and caution. In particular, we must guard against two vices, either one of which could hole the good intentions of the bill below the waterline. We must guard against vagueness, and we must guard against overbreadth. We must specify, as precisely as we can, exactly what it is that we are seeking to criminalise, and we must ensure that we do not inadvertently catch within the web of our criminal law behaviour that ought properly to be left free.

That is what my amendments, both in this group and in the next, are designed to achieve. They do it by remembering this: that when we legislate, as we do here, on the terrain of fundamental human rights, our rights and liberties should be interpreted and understood expansively, and restrictions on our rights and liberties should be contemplated only where necessary, in the public interest, to safeguard a legitimate aim.

17:15

Stirring-up offences are not new. The bill does not invent them, although it expands them considerably. We have had stirring-up offences

with regard to racial hatred since the 1960s, and they are found now in the Public Order Act 1986. The full short title of the bill is the Hate Crime and Public Order (Scotland) Bill. That is no accident, yet it seems to have been overlooked in much of the debate on and commentary about the bill. The stirring-up offences are offences of public disorder, and they sit alongside other public order offences such as riot, affray, violent disorder and breach of the peace.

One does not need to be a lawyer to understand that, in order to commit a public order offence, there needs to be a public element to what one does. One cannot commit riot in private, and nor should it be possible for someone to be convicted of stirring up hatred if what they have done occurred only in private and there was no public element to it. That is the effect of the law at the moment. Section 18 of the 1986 act, which criminalises the stirring up of racial hatred, provides that the offence is not committed if the accused's behaviour takes place inside a dwelling and is not seen or heard by others.

It is, of course, the case that the criminal law does not stop at the threshold of one's home. Our domestic abuse statutes are just one example of that. If I were to invite half a dozen pals to my home and treat them to a rant of antisemitic bilge, and they were to go off and desecrate the nearest synagogue, I should, of course, be liable for a hate crime. I would have invited people into my home and used it as a platform for sharing my racist, bigoted views. Such behaviour would be caught by the bill as it is presently drafted, and my amendment 5 would do nothing to alter that.

Let us consider a different example, however. Let us imagine that I have a family gathering—a Friday night supper—at which my unreconstructed and somewhat embarrassing elderly uncle makes disparaging remarks about a same-sex couple and my somewhat oversensitive 15-year-old daughter, offended at what she has heard, tells her best friend about what has been discussed at my family dinner table. Her friend's father is a police officer, and the next thing we know is that there is a knock at the door and my elderly uncle is under criminal investigation. Is that really where we want the hate crime bill to go? Do we really want it to deal with family dinner table conversations that take place only in private, with no public element at all? I do not think so, and the Justice Committee did not think so, either.

In its stage 1 report, the committee reached the following unanimous conclusion:

“The Committee believes that there should not be an absolute defence against prosecution based on whether someone was inside a dwelling or not when it comes to words expressed, behaviour or the display of written material. However, care also needs to be taken that people are not investigated for, charged with, or prosecuted for,

offences based on their personal views, however abhorrent others may consider them to be, if the expression of those views took place in a private space, such as their own house, and there was no public element.”

That was the unanimous, all-party conclusion of the Justice Committee, which took extensive evidence on that point. Giving effect to that conclusion is exactly what my amendment 5 would do.

We all need a safe space where we can let off steam. The right to respect for private and family life and for home is a fundamental human right. If we abuse our homes, inviting others into them and converting them into platforms for threatening or abusive behaviour that is intended to stir up hatred, the criminal law should of course apply. Therefore, my amendment is not a dwelling defence: it does not exclude everything that happens inside the home from the criminal law. It is a criminal defence. It protects the privacy of wholly private family conversations, and it reminds us that offences against public order need a public element.

If there was any public element, of whatever nature, my amendment 5 would not apply. It would apply only to wholly private behaviour. That zone of privacy, as it were, is defined expressly by reference to the right to respect for private and family life in article 8 of the European convention on human rights. There is a realm of personal liberty that the Government may not enter. Existing stirring-up offences recognise that, and so should the new stirring-up offences that we are creating in the bill. For those reasons, I urge the Parliament to support amendment 5.

Humza Yousaf: I will speak to the amendments in group 2, beginning with amendment 6. However, I will start in the same place as I did in my response to Johann Lamont's amendments. I suspect that many Conservative members and I will disagree on a number of amendments, but not for one second do I doubt the commitment of Liam Kerr, Adam Tomkins or any Conservative MSP to tackling inequality or hatred in any form. I think that it is important to state that—although I will not do so in every contribution that I make—because the debate has been heated at times, not just in the Parliament but outwith it. I certainly know about that, because I have been the victim of hatred, as many know, and I have had messages of support from members of all parties, which I greatly appreciate.

I turn to the amendments at hand, starting with amendment 6. I confess that I am somewhat surprised that Liam Kerr chose to lodge amendment 6, which would, effectively, strike out the stirring-up offences. It was only a few weeks ago that he lodged an absolutely identical amendment at stage 2 and then, after listening to

my very persuasive speech, which it must have been, he was so convinced by my arguments that he voted against it. I very much hope that this will be a case of history repeating itself. Although I commend Liam Kerr's persistence, if not his confusion, on the issue, I cannot support what I consider to be quite a regressive amendment.

I urge members to wholeheartedly reject amendment 6. I believe that our criminal laws should provide comprehensive protection for our most vulnerable groups in society from the very damaging effects of behaviour that stirs up hatred, through a stand-alone offence that reflects the precise nature and gravity of those effects. The bill's provisions make it clear that that type of behaviour attracts the particular condemnation of society and that it simply will not be tolerated. Liam Kerr's amendment 6, unfortunately, disregards the recommendations of the Justice Committee in that area. It would result in Scotland having the weakest protections in the UK in the area of stirring up hatred. In debate, we sometimes forget that stirring-up offences exist across the UK—in England and Wales and in Northern Ireland. If we were to accept Liam Kerr's amendments, Scotland would have the weakest protection in law, by quite some distance, for those vulnerable communities.

Supporting Liam Kerr's amendment 6 would send a very damning message to all victims of hate crime. As has been recognised time and again, through the very compelling testimony of stakeholders who represent victims and of victims themselves, behaviour that stirs up hatred can have a really corrosive effect. It can result in entire communities feeling isolated, scared and vulnerable to attack. In the most serious cases, it can directly encourage activity and assault that threaten or endanger life.

Members may well remember the so-called punish a Muslim day in 2018. If I remember correctly, Anas Sarwar raised the issue in the chamber with the First Minister. Leaflets were distributed in schools and workplaces and were put through the doors of mosques, all in order to threaten an entire community. People were to be "awarded points" for pulling off the hijab of a Muslim woman or for pulling the beard of a Muslim man. That was with the intent of frightening, scaring, intimidating and, at its worst, assaulting and endangering the lives of the Muslim community. Muslims were frightened; I know that not just from my personal experience but from speaking to that community often. They feared for their safety. Some of them took a day off work; some felt that they had to keep their kids off school; some did not attend their university or college—all because they feared attack for no reason other than their faith. If we accepted Liam Kerr's amendment, we would not be giving the

protection in law that an entire community—such as the Muslim community during punish a Muslim day—so well deserves.

In short, I hope that members will stand shoulder to shoulder with victims of hate crime and will vote against amendment 6, which, if agreed to, would send a very harmful message to the people of Scotland.

Amendments 7 to 10, 15 and 31, in the name of Liam Kerr, are largely consequential to amendment 6, so I ask members to reject those amendments, too.

I turn to the various amendments that would introduce a dwelling defence or public element to the offences of stirring up hatred. Amendment 5 was lodged by Adam Tomkins. I appreciate the Justice Committee convener's engagement with me on the bill and in particular on this issue, which has genuinely exercised him since the bill's introduction. Amendment 5 would introduce a statutory defence for people who commit offences of stirring up hatred under section 3, where such offending behaviour occurs "wholly in private" and there is "no public element" to it. Similar amendments were lodged by Liam Kerr at stage 2 and heavily defeated; all members, with the exception of the Scottish Conservatives, voted against them.

I listened carefully to what Adam Tomkins said. He rightly highlighted the dangers of vagueness and the bill not being specific enough about how the criminal law would operate. However, I take issue with the characterisation that somehow the offences as they are provided for in the bill—much improved as they have been during the scrutiny process—are vague.

Liam Kerr: The cabinet secretary will be aware that Lord Bracadale supported the inclusion of a dwelling provision when he gave evidence to the Parliament. Precisely why, in legal terms, is the cabinet secretary not going for that? Has he had legal advice on the issue?

Humza Yousaf: Yes, of course. I have had advice from the Scottish Government legal directorate and from my officials. I will explain why I do not agree with Lord Bracadale. I did not accept all his recommendations, such as those on the race and gender aggravators.

It is entirely clear that the new stirring up hatred offence could be committed only where a reasonable person—that is the common law term, and the reasonable person test is an objective test—would consider behaviour or communication of material, wherever that took place, to be threatening or abusive and intended to stir up hatred, and where the behaviour or communication of that material was not reasonable.

Amendment 5 creates the same, entirely artificial, distinctions as were created by the amendments that were roundly rejected at stage 2. Fundamentally, it fails to recognise that the fact that an offence of stirring up hatred occurs within a private space does not mean that the wider harmful impacts that such offences seek to prevent are avoided. Let us all be clear: the effects of behaviour that stirs up hatred can and will be felt well beyond the four walls of the private space or dwelling in which the behaviour occurred. There are potentially life-threatening implications for members of the targeted group if the incitement of acts of violence through threatening or abusive behaviour that is intended to stir up hatred are acted upon.

I am firm in my view that if someone engages in threatening or abusive behaviour or communication with the intention of stirring up hatred, the criminal law should be capable of addressing such conduct, regardless of where it occurs.

It is also important to ask ourselves what is meant by behaviour that occurs “wholly in private” with “no public element”, which is the wording in amendment 5. I am afraid that the amendment is not at all clear and provides very little guidance. Wholly private from whom? Members of the public? People who do not live at the address at which relevant behaviour might have occurred? Amendment 5 provides no definition in that regard.

Amendment 5 refers to

“the right to respect for private and family life by virtue of Article 8 of the European Convention on Human Rights.”

That right does not preclude the application of the criminal law in private spaces. If it did, laws that protect people from assault, domestic abuse, threatening or abusive behaviour or sexual offences, to name but a few, would not apply if the conduct occurred in private. Why should stirring up hatred be any different?

The effect of the proposed defence in amendment 5 and the behaviour that it seeks to exclude from the scope of the stirring up hatred offences is therefore, potentially, far reaching. It appears to me that amendment 5 would mean that if a large group of people were invited to meet in a private space for the purpose of stirring up hatred against a group—for example, Catholics attending their local parish church or Jewish people attending their local synagogue—and words or materials were exchanged during that meeting that were threatening or abusive and intended to stir up hatred, and were seen or heard only by people within that private space, no “public element” would have occurred and no offence of stirring up hatred would have been committed.

17:30

Instead, for an offence to be committed it would seem to require people in public places—for example, on a street pavement—to see or hear the abusive or threatening behaviour or material. That ignores entirely the point that private stirring up of hatred can still inspire equally harmful acts of hatred outside that private space.

Adam Tomkins: I fear that the cabinet secretary, no doubt inadvertently, is mischaracterising the nature of amendment 5. It is perfectly clear from the wording of the amendment that if anybody invites members of the public who are not members of their family into their home for a meeting about anything, that is not a wholly private event and is an event with a public element. The cabinet secretary says that the amendment lacks definition, but I say to him that “public element” is a phrase that is drawn directly from Scots law on breach of the peace and “wholly in private” is expressly defined in the amendment by a reference to the fundamental human right to respect for private and family life. None of the cabinet secretary’s criticisms of the wording of my amendment 5 are, with respect, justified.

Humza Yousaf: I will come to that point. MSPs will be well aware by now that the first element of the threshold of the new stirring up of hatred offence is a requirement for behaviour or communicated material to be threatening or abusive. For me, that is the same threshold that has existed in Scots criminal law since 2010 with the statutory offence of threatening or abusive behaviour, but that offence, which has been prosecuted thousands of times over the past decade, does not have a defence if it occurs in private for very good reason: why should threatening or abusive behaviour be treated differently depending on where the conduct may have occurred?

It would mean that Scots law operated so that threatening or abusive behaviour without the intention to stir up hatred is an offence when committed wholly in private while threatening or abusive behaviour with the intention of stirring up hatred would not be an offence if committed wholly in private. That does not appear to be a sensible approach for Parliament to adopt.

I note that Mr Tomkins suggests that one does not need to be a lawyer to understand that a public order offence requires a public element. I should say that the public order element of the long title is to do with the repeal of the blasphemy law. I may not be a lawyer and I do not claim to have the expertise that Adam Tomkins does as a professor of law, but I fundamentally disagree with that statement on a point of principle. The very purpose of the offence is that hatred is stirred up in others, so comparisons about being able to riot

in private completely miss the point of the offence. If a person stirs up hatred in others and those others attack, for example, Catholics, Protestants or Sikhs as a result of hatred being stirred up in them, it should not matter at all where the hatred was stirred up. The effect is the same—groups being singled out for hatred and attacked for who they are.

I thought that Dr Kayembe, the newly elected rector of the University of Edinburgh, who was on BBC “Reporting Scotland” last night responding to Adam Tomkins’s amendments, made a very persuasive case when she talked about her children having been racially abused by other children and said that, no doubt, a lot of that hatred came from the family home, probably in a private space and possibly from the parents or an older sibling. That is worth listening to.

On Adam Tomkins’s example of an unreconstructed uncle, who we all have in our families, saying something perhaps unacceptable or offensive to a same-sex couple, that would not be prosecuted. That is because it would not meet the threshold that a reasonable person would view that as threatening or abusive. However, let us say for the purpose of his hypothesis that it did—do we genuinely think that it would reach the threshold of being intended to stir up hatred and be proven beyond reasonable doubt in a court? I do not believe that to be the case.

Similarly, amendments 32 and 33 by Liam Kerr are a further attempt to introduce a dwelling defence. I do not think that I have to go into too much detail on that, as I have taken a fair bit of time on Adam Tomkins’s amendment. As I said before, simply creating an artificial distinction whereby if hatred is stirred up in one’s sister, brother, child, step-child or grandchildren, somehow that should not be prosecuted, is a misunderstanding.

It is a misunderstanding to suggest that when hatred is stirred up in an individual, and they go and beat up or threaten somebody due to their sexual orientation, transgender identity, disability, faith or colour, the individual should not be prosecuted simply because the person who instigated that hatred was their brother, uncle, father or mother. To me, that makes no sense whatever. I ask members to oppose amendments 32 and 33.

Amendment 30, in my name, makes a change to schedule 1, which deals with the treatment of offences in the bill in relation to providers of “information society services”. The inclusion of provisions in schedule 1 follows the requirements of certain articles in the European e-commerce directive, and is commonly done in legislation. In accordance with the e-commerce directive,

paragraph 1 of schedule 1 provides that proceedings for such offences

“may not be instituted against a non-UK service provider”

that is established in the European Economic Area, unless it is necessary and proportionate in the public interest. The change in relationship between the UK and the EU arising from the EU exit and the end of the transition period has given rise to a concern that paragraph 1 of schedule 1, as currently framed, makes an unjustifiable distinction in that context between non-UK service providers that are established in the European Economic Area and those that are established elsewhere, including in the UK. Such a difference in treatment could conflict with rights under the European convention on human rights. Amendment 30 simply seeks to rectify that.

I ask members to support amendment 30 and oppose all other amendments in the group.

John Finnie: I will try to be brief. It is important to say that the extension of the existing offence of stirring up racial hatred to cover other characteristics is to be welcomed. It seems to me that it does not matter how mildly Mr Kerr wants to revisit the matter, the idea—particularly coming from a unionist—that our communities would have less protection from elsewhere in the United Kingdom is at best confusing, which I think is the word that the cabinet secretary used.

In relation to the dwelling offence, I will not reiterate what the cabinet secretary said. Of course, there is the sanctity of a dwelling, but that does not mean that there cannot be state intrusion when that is appropriate. If a local family of neo-Nazis are getting together to discuss their vile deeds, the location is irrelevant—it is about how the hatred manifests. We must protect our communities.

We have heard various examples of what could happen if Mr Kerr’s amendments to remove the stirring-up provisions were agreed to. In a briefing that we have been given, there is the example of leaflets being put through doors. On one side of the leaflet was an image of a mannequin being hanged; the other side said that the only debate about homosexuality was about how to carry out the execution. The leaflet also called for the death penalty. That was clearly threatening and intended to stir up hatred. We need to be cautious of whom we are pandering to.

Liam McArthur (Orkney Islands) (LD): I am grateful to Adam Tomkins and Liam Kerr for allowing Parliament as a whole the opportunity to consider the so-called dwelling defence, or as Adam Tomkins referred to in with regard to his amendment, a privacy defence.

I am afraid that, in pursuing their objective, amendments 32 and 33 get rather lost down a rabbit hole. However, amendment 5, in the name of Adam Tomkins, better reflects the point of principle that is at stake. He has talked with great force and some persuasiveness about how the bill should not engage with discussions that take place around the family dinner table. As a liberal, I tend to agree with that sentiment, which—as he reminded us—is reflected in one of the recommendations that the committee reached unanimously.

However, I do not think that amendment 5 would give effect to what Adam Tomkins is seeking to achieve. To avoid the rabbit hole down which Liam Kerr's amendments have disappeared, Adam Tomkins has opted for a broader definition of the protection that he seeks to afford. Unfortunately, that leads to the opposite problem of vagueness, which opens up the potential for unintended consequences and loopholes that could be exploited for all manner of behaviour that I know Adam Tomkins would be the first to condemn and abhor.

In the digital age, the effects of actions and speech that take place behind closed doors can be more far-reaching than was the case when such a dwelling defence might have been more reasonably argued. Moreover, it is worth bearing it in mind that the right to privacy under article 8 of the European convention does not preclude the application of criminal law in private spaces, as the cabinet secretary reminded us. If that were the case, laws that protect people from assault, domestic abuse, threatening or abusive behaviour or sexual offences would be hard to prosecute if the conduct occurred in private. Why should stirring up hatred be different?

I recognise and respect the genuine and legitimate concerns that Adam Tomkins seeks to address through his amendment 5. Liam Kerr's motivations, as evidenced by his amendments, 6, 7, 8, 9, 10, 15 and 31, appear to be rather different. On balance, the changes would risk doing more harm than good. The idea that private places should be sanctuaries for harmful behaviour requires to be challenged. On that basis, the Scottish Liberal Democrats cannot support amendments 5, 32, 33 or amendments, 6, 7, 8, 9, 10, 15 and 31, from Liam Kerr.

Neil Bibby: Part 2 of the bill has been one of its most controversial elements. We acknowledge and welcome the significant amendments that the Justice Committee made at stage 2 to strengthen the provisions in the bill. By introducing the reasonable person test and a requirement to prove intent to stir up hatred, the provisions are now stronger and have a higher legal threshold than

the current stirring up hatred offences in the Public Order Act 1986.

However, we have carefully considered additional amendments at stage 3 to provide further clarity and reassurance. There has been much debate around the decision not to include a dwelling defence, as is currently provided for in the 1986 act. As Liam Kerr said, there are real questions about enforceability.

We understand the evidence, which was brought forward and reiterated by the cabinet secretary and Liam McArthur, that a dwelling defence does not exist for other criminal acts in Scotland but, as Adam Tomkins believes, we believe that there must, in criminalising speech in particular, be due regard given to the rights that are afforded under the ECHR.

I note the view of Dr Andrew Tickell, who told the Justice Committee that although he was not convinced of the need for a dwelling defence, consideration might be needed for “a requirement of publicity” to comply with the ECHR, as is now required for common-law breach of the peace. I am persuaded that Adam Tomkins's amendment 5 strikes that balance to ensure that there must be a public element to the offence and to clarify the right to a private life under article 8 of the ECHR. Therefore, we will support amendment 5, although we will not support amendments 32 or 33.

There were significant amendments at stage 2, with further amendments being determined today at stage 3. We believe that part 2 of the bill is necessary and that it provides the legal protections that are required, so we will not support amendment 6—or the other amendments from Liam Kerr—to remove it from the bill. We will also support amendment 30 in the name of the cabinet secretary.

Liam Kerr: I thank members for their contributions to the debate and I associate myself with the cabinet secretary's opening remarks about respectful debate.

I will quickly address some of the points that have been raised. On the dwelling or privacy defences, the cabinet secretary raised the concern, which he expressed at stage 2 and in response to Adam Tomkins, that people could be invited into a home and hatred could be stirred up, with no criminality attaching to the home owner. I do not think that that stacks up, because I have drafted my amendments, as has Adam Tomkins, precisely to ensure that the home owner cannot do that. MSPs will have noted Adam Tomkins's intervention on that matter to the cabinet secretary.

The cabinet secretary also said that he is concerned about people intentionally stirring up hatred from the privacy of their house, perhaps

through remarks made in the media and on the internet, because that defence would potentially protect them. Again, I do not think that that stacks up because, as the cabinet secretary will have noted, Free To Disagree pointed out that people who publish vile statements online could already be committing a crime, so I cannot see that that is an argument against a dwelling defence.

In any event, I remind the cabinet secretary and the chamber that Lord Bracadale, whose review formed the basis of the bill, told the Justice Committee that concerns about extending public order offences into purely private settings are “well founded”.

Adam Tomkins reminded us that the all-party committee was unanimously clear in its stage 1 report, which says:

“care also needs to be taken that people are not investigated for, charged with, or prosecuted for, offences based on their personal views, however abhorrent others may consider them to be, if the expression of those views took place in a private space, such as their own house, and there was no public element.”

The committee was unanimous, and it was correct.

Adam Tomkins hit the mark. The bill is called the Hate Crime and Public Order (Scotland) Bill; there has to be a public element. Without it, we will be policing private thought. That is precisely what the bill should not be doing.

17:45

Finally, on the dwelling or privacy defence, given that Lord Bracadale, the Law Commission in England and distinguished legal experts support such a provision, and given that existing laws catch harassment, threatening or abusive behaviour and breach of the peace, I cannot understand why the cabinet secretary is so opposed to it. His arguments do not defeat theirs, so I will press the amendments.

On removal of part 2, I have listened carefully to the points that have been made across the chamber. I readily acknowledge how far the bill has come in its development. However, the bill—even in amended form—does not allay the concerns that have been raised by many people.

I listened to the concerns that several members raised about the protections if part 2 was not there, but none of what we heard changes the fact that something is already there, as Adam Tomkins said. I lodged amendment 31, which would reinstate the existing protections that are provided by the Public Order Act 1986, precisely to ensure that there would be no reduction in existing protections should my amendments be agreed to.

The Criminal Justice and Licensing (Scotland) Act 2010 covers “threatening or abusive” conduct. Statutory aggravators already attach greater severity to crimes that are motivated by hatred against others. By way of example, I note that support for my position comes in the Government’s financial memorandum, which states:

“the conduct in question would already constitute existing criminal offences such as breach of the peace or threatening or abusive behaviour.”

We must make law to protect people, but we must also make good law—law that does what it needs to do without unintended consequences. That is what I seek to do through my amendments.

I press amendment 32.

The Presiding Officer: The question is, that amendment 32 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division. Members may exercise their vote now.

The vote is now closed. Please let me know if you were not able to vote.

Alison Johnstone (Lothian) (Green): On a point of order, Presiding Officer. I was unable to vote. I would have voted no on amendment 32.

The Presiding Officer: Thank you, Ms Johnstone. I will make sure that your vote is added to the vote list.

For

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 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)
 Fraser, Murdo (Mid Scotland and Fife) (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)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

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)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 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)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (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)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (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)
 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, David (Highlands and Islands) (Lab)
 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) (Ind)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Abstentions

McAlpine, Joan (South Scotland) (SNP)

The Presiding Officer: The result of the division is: For 30, Against 89, Abstentions 1.

Amendment 32 disagreed to.

Amendment 33 moved—[Liam Kerr].

The Presiding Officer: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 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)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Greene, Jamie (West Scotland) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harris, Alison (Central Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (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)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

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)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 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)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (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)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (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)
 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, David (Highlands and Islands) (Lab)
 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) (Ind)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Abstentions

McAlpine, Joan (South Scotland) (SNP)

The Presiding Officer: The result of the division is: For 30, Against 90, Abstentions 1.

Amendment 33 disagreed to.

The Presiding Officer: Group 3 is on freedom of expression. Before I call amendment 1, in the name of Adam Tomkins, I highlight to members that we are exactly 45 minutes behind where we thought that we would be at this stage and that we are already scheduled to run until 8 o'clock. I recognise that these are important matters about which members feel strongly, but if members could curtail their remarks slightly, that would be helpful.

Amendment 1, in the name of Adam Tomkins, is grouped with amendments 2, 3, 11, 11G, 11B, 11C, 11D, 11E, 11F, 13, 14, 34, 16, 18, 19, 20 and 22.

Adam Tomkins: We come now to the core issue that the bill confronts. I fear that, despite what you have just said, Presiding Officer, my remarks might take some time. However, I hope that members will feel that they can speak freely about the issue.

The core issue is how to legislate effectively against hate crime while at the same time protecting freedom of speech. That is a dilemma on the horns of which the bill has been caught since it was first introduced, and it is still not resolved. We have, however, come a long way and, in order to set the debate on this group in context, I will briefly remind the chamber of the moves that have already been made to bring the bill into line with freedom of expression.

First, all the stirring-up offences, other than with regard to race, can be committed only intentionally. If someone is merely reckless as to

whether hatred will be stirred up, that will not be enough to trigger the criminal law; they must intend it. Secondly, specific offences relating to theatres and public performances have been removed from the bill entirely. Likewise, the offence of possessing inflammatory material that may stir up hatred has been removed from the bill. All those changes were made because of the huge volume of concerns about free speech that the bill as introduced generated.

At stage 2, a further and, to my mind, critical change was made. All the stirring-up offences were amended so that they can be committed only where a reasonable person would consider behaviour to be threatening or abusive. From a free speech perspective, that is the single most important change that the bill has undergone. Just because someone feels threatened or abused will not be enough to trigger criminal liability, unless a reasonable person would find the behaviour to be threatening or abusive.

Johann Lamont: Does Mr Tomkins accept that, in some contexts, the “reasonable” person would be directed by an institutional drive to have a particular attitude and that, for some women, the idea of the test of a reasonable person is not sufficient?

Adam Tomkins: I certainly accept that some women have forcefully expressed that view on social media and elsewhere, and I will go on to address it directly in my remarks.

Essential though that change of reasonableness is, and welcome as it is, even that does not go far enough to ensure that the bill can operate in a way that fully respects freedom of speech. There has been much to-ing and fro-ing about how the bill should reflect and incorporate that all-important free speech principle.

Some commentators have quite wrongly said that this aspect of the bill has been rushed. That could not be further from the truth. The Justice Committee took extensive evidence on the free speech implications of the bill at stage 1 and wrote about that evidence at length in the stage 1 report. At stage 2, although most of the amendments relating to free speech were not pressed to a vote, there was a very full and open debate on the issues. That debate, as ever in the Justice Committee, was conducted both robustly and respectfully. After stage 2 was completed, the cabinet secretary published a number of options for a free speech provision to be added to the bill. We published a full and open call for evidence on those options and we were delighted to be able to host a public round table with a broad range of stakeholders and expert witnesses to discuss those with the cabinet secretary.

I do not know of any issue, relating to any bill passed in this session, that has been subject to more scrutiny—and to more detailed and expert scrutiny—than the free speech implications of this bill.

That brings me to the substance of the amendments before us. I welcome amendment 11, in the name of the cabinet secretary, and will vote for it, but on its own and in the context of this particular bill, it does not go quite far enough. I shall explain why.

Amendment 11 provides that, as regards the protected characteristics of age, disability, sexual orientation, transgender identity, and variations in sex characteristics, behaviour or material is not to be taken as being threatening or abusive if it involves discussion or criticism of matters relating to those characteristics. To be clear, and coming to the point that was raised by Johann Lamont, it will not be a hate crime to criticise aspects of policy relating to transgender identity and it will not be a hate crime to discuss whether marriage, or the adoption of children, should be extended to same-sex couples.

So much fear has been stoked in relation to those matters that it is important to set that out. Criticising policy relating to transgender identity is not a hate crime under the bill. Even if you express yourself in a manner that others find transphobic, it is not a hate crime to discuss or to criticise matters relating to transgender identity.

Elaine Smith: For clarity on that point, would your amendment mean that a woman could be sure that she would not be treated as being abusive or threatening solely for saying things such as the following: “There are two sexes, and people can’t change sex.” “A woman is an adult human female.” “Male people shouldn’t play women’s sports.” “Access to single-sex spaces like changing rooms should be based on sex, not gender identity.” “Women’s prisons should only be used for biological women.” Those are just a few examples. I would be grateful if the member could be clear about what amendment 1 means.

Adam Tomkins: Those questions go to the heart of the issue and I very much welcome the fact that we are having the debate here today. I want to address those questions.

If you want to argue—or even to campaign robustly—for women’s sex-based rights, or to argue that sex is immutable or is binary, you are not committing a hate crime, even if someone else is offended, shocked or disturbed by what you say. Even if someone else is very upset by what you say and accuses you of transphobia, you are not committing a hate crime unless you cross that threshold of saying something that is not merely offensive but is something that a reasonable

person would hold to be threatening or abusive in a manner that intends to stir up hatred. That will be the effect of the bill if the cabinet secretary's amendment 11 is accepted by the Parliament and if my amendment 1, which I am now speaking to, is also accepted. I will turn to the detail of those amendments.

18:00

Amendment 11 makes additional provision relating to religion. It provides not only that "discussion or criticism" of religion is not to be taken as threatening or abusive behaviour but that "expressions of antipathy, dislike, ridicule or insult"

are not to be taken as threatening or abusive as regards religion. With that, the bill will bring into Scots law the free speech safeguards as regards religion that already exist in the law of England and Wales.

However, it is to be noted—this goes directly to the point that Elaine Smith makes—that, under amendment 11,

"expressions of antipathy, dislike, ridicule or insult"

are protected as free speech only as regards religion, and not as regards any of the other protected characteristics. Therefore, speech that is so critical of, for example, policy relating to transgender identity that it crosses the line and may be regarded as an expression of antipathy or dislike will not be protected by the cabinet secretary's amendment.

That is where my amendments 1, 2 and 3 come in. My amendments, which are not probing amendments—I intend to press them—are designed to sit alongside and complement the cabinet secretary's amendment 11. There is nothing in any of them that cuts across his policy intentions or objectives. They represent three different ways of seeking to achieve the same thing. We do not need them all; we need only one of them. If amendment 1 is agreed to, I will not move amendments 2 or 3. If amendment 2 is accepted, I will not move amendment 3.

The aim of all three amendments is to clearly distinguish in the bill the threatening or abusive behaviour that we are seeking to criminalise from speech that is, as it were, merely offensive, shocking or disturbing, which should not be caught by the criminal law.

Let me explain a little more about that distinction, Presiding Officer. My right to free speech extends to and includes speech that you might find offensive, shocking or disturbing. I do not have the right to express myself in a way that threatens or abuses you, but if, short of that, I choose to speak in a way that upsets, shocks, disturbs or offends you, that is too bad.

Those principles are fundamental to the way in which the European Court of Human Rights understands the right to freedom of expression in article 10 of the ECHR. Indeed, the words "offend, shock or disturb" in my amendments are lifted directly from that court's case law, which has been endorsed and read into our law by the courts here in Scotland, as has happened elsewhere in the United Kingdom. This could not be more important. As the English judge Lord Justice Sedley said in one of the leading cases, the right to speak only inoffensively or in a manner that the state approves of is not worth having. That is not free speech at all. It is controlled speech, or licensed speech.

Happily, in the context of the bill, those principles have been uncontroversial, uncontested and accepted by all. The cabinet secretary endorsed them when he gave evidence to the Justice Committee in October, and the committee, in turn, did likewise, again unanimously.

However, it is not enough that we all think and say that the bill does not seek to criminalise speech that others may find offensive, shocking or disturbing but which does not meet the threshold of being threatening or abusive. It would not even be enough to say that in the bill's explanatory notes. We need to write it into the bill, and I am offering Parliament three different ways of doing that. The first—amendment 1—is based on wording in the Human Rights Act 1998, the second is based on wording in the European Communities Act 1972 and the third is based on wording in the Public Order Act 1986.

Neil Findlay (Lothian) (Lab): The member is making an excellent speech. I have said very little on the bill as it has gone through Parliament, and that is why I am in the chamber to listen to stage 3 today. However, the more I have heard, the more concern it has caused me. I think that many of us, if we are being honest, believe that there should be a form of hate crime legislation but how it is being done in the bill is not it. Many people—out in the community and in here—would want the Government to withdraw the bill so that whichever party wins the election could come back with properly thought-out legislation that carries not only an overwhelming majority in this place but the confidence of the people who are victims of hate crime.

Adam Tomkins: That is exactly the position of the Scottish Conservatives—I welcome Mr Findlay aboard. That would be the effect of amendment 6, which was moved by my friend and colleague Liam Kerr and was debated in the previous group.

Amendments 1 to 3 are three different ways of achieving the same policy ambition. My preference is for the first formulation, which provides that when considering whether behaviour was

reasonable, as the bill requires the courts to do, the courts must have regard to the right to freedom of expression, including the general principle that that right extends

“to the expression of information or ideas that offend, shock or disturb.”

The formulation in amendment 1 has been carefully drafted. Its language is drawn directly from, and mirrors, the Human Rights Act 1998, article 10 of the ECHR itself, and the European Court’s key case law on free speech. As I said, the amendment is designed to sit alongside and to work with the cabinet secretary’s amendment 11. It writes into our law core principles of free speech that were unanimously accepted and endorsed by this Parliament’s all-party Justice Committee in its stage 1 report on the bill. I very much hope, therefore, that Parliament will be able to accept both my amendment 1 and the cabinet secretary’s amendment 11.

Elaine Smith: It boils down to this: what is a reasonable person? Could the member perhaps answer that? It may be that an MSP is a reasonable person but they objected last week to speeches as being transphobic that other members thought were reasonable. That is the first thing. Would the principal of the University of Edinburgh be considered a reasonable person? He has reported stickers that say “adult human female” to the police. We have to understand what a reasonable person is.

Adam Tomkins: I completely agree, which is exactly why I am moving my amendment. Relying on the idea of a reasonable person is essential, but it is not enough. In addition to that, we need to specify in the bill exactly what we mean. What we mean is that, just because someone is offended by what I have to say with regard to transgender identity or any of the other protected characteristics, that does not mean that I am committing a hate crime. Yes, they can go off and call me transphobic if they want, but that does not mean that I am committing a hate crime. Someone’s sense of being offended, shocked or disturbed by what I have said might very well upset them, but it does not trigger the criminal law. Relying on a test of reasonableness alone—important and essential though that is—does not do the job, which is why I am saying that, in addition to that, we need to legislate expressly to say that speech that is offensive, shocking or disturbing does not meet the criminal threshold. The criminal threshold is threatening or abusive speech that intends to stir up hatred and in the circumstances is not reasonable.

If the cabinet secretary’s amendment 11 and my amendment 1 are both accepted by the Parliament, there will, with respect, be no need for any of the amendments to amendment 11 that

have been lodged by Joan McAlpine and Johann Lamont. The substance of what Joan McAlpine wants to do in her amendment 11G will be done by my amendment 1, but in a manner that works with, rather than cuts across, what the cabinet secretary is seeking to achieve. The specific examples of speech that ought to be permitted that are in Johann Lamont’s amendments, which Elaine Smith has put to me during the course of this speech, will not need to be written into the law, because it will be clear in each case that the combination of amendments 1 and 11 already have the effect that Johann Lamont is seeking to achieve.

I urge the Parliament to accept my amendment 1, the cabinet secretary’s amendment 11 and the consequential amendments in our names: amendments 13, 14, 34, 16, 18 to 20 and 22. If those amendments are accepted, it follows that amendments 11G, 11B, 11C, 11D, 11E and 11F, in the names of Joan McAlpine and Johann Lamont, do not need to be pressed.

I move amendment 1.

Humza Yousaf: I will speak to amendment 1 and all the other amendments in the group, but I would not mind addressing Neil Findlay’s point first—and I am happy for him to come back in an intervention. He said that he has spoken to victims of hate crime and that they do not want the bill. I have no idea who on earth he has talked to. BEMIS, which is one of the national racial equality organisations, sent round a letter that said that it supports the bill, and 20 organisations signed up to that. The Muslim Council of Scotland, the Scottish Council of Jewish Communities, the Humanist Society Scotland, Scottish Women’s Aid, Victim Support Scotland—

Neil Findlay: On a point of order, Presiding Officer. We have a duty to be accurate in the Parliament. I never said what the cabinet secretary has just accused me of saying. I say to him: please correct the record.

The Presiding Officer: That is not a point of order, Mr Findlay; it is an argument.

Humza Yousaf: I would have given way after I finished my point. I am happy to look back on what Neil Findlay said, but he said, in a way, that the bill is not supported by victims of hate crime, and I tell him that it is supported by victims of hate crime. I have just read out a list, and I could go on. I gently suggest to him that, when he is purporting to speak on behalf of victims of hate crime, he should speak to the organisations that have represented victims of hate crime for many years.

I agree with many members who have spoken about the issue that we are discussing during the parliamentary process. Some have argued that there is a tension between hate crime law and

freedom of expression, but I am not persuaded by that. I do not think that the two have to be mutually exclusive, and I think that there can be strong protections in law against hate crime and strong freedom of expression provisions.

Let me state very clearly that the bill has never been about prosecuting the offensive. In fact, the word “offensive” does not appear in the bill. I and others might find a person’s speech to be distasteful, abhorrent and deeply offensive, but that in itself is not a ground for prosecution under the bill.

The bill is fundamentally different from what it was when it was introduced to the Parliament. Many changes have been made; Adam Tomkins articulated some of them well, particularly in relation to the stirring up of hatred offences in part 2. The bill now requires the following: that there is an intention to stir up hatred; that the court will objectively assess whether behaviour or material is threatening or abusive; that each element of the stirring up of hatred offences is to be proven beyond reasonable doubt with corroborated evidence; and that there is the availability of a reasonableness defence.

The convener of the Justice Committee articulated things well when he said:

“The way in which the scope of those offences has been narrowed and sharpened will do much more to protect and reassure than any formulation of words about freedom of expression”.—[*Official Report, Justice Committee, 22 February 2021; c 29-30.*]

I agree. The amendments in my name in the group will complement those safeguards. I agree with Adam Tomkins’s point. We need to have words on the face of the bill that give reassurance to people who have genuine and legitimate concerns about the impact of legislation—particularly, of course, this legislation—on their free speech and freedom of expression.

Amendment 11 was one of the four options that I provided to the Justice Committee for the round-table session. I agree that that was a very good session. The issue has had a lot of scrutiny. I was quite persuaded by what Danny Boyle of BEMIS—an organisation that many members know—said about the harm that could be caused if race were included in any freedom of expression provision. He essentially argued that that freedom of expression provision does not exist in other stirring up of racial hatred offences across the UK, so why is race being included in our discussion? I was convinced by that argument.

Amendment 11 will tie the freedom of expression provision to the operation of the stirring up of hatred offences. It does that by indicating whether certain types of expression used in behaviour or material could in themselves meet

the thresholds of the offences. For example, the amendment makes it very clear that criticism of matters relating to transgender identity are not solely to be taken to be threatening or abusive. However, if the criticism was expressed in a way that a reasonable person would consider threatening to trans people or that threatened trans people with violence, that could, of course, still amount to behaviour that is threatening or abusive.

18:15

I say to Elaine Smith, who intervened on Adam Tomkins, that none of the statements in the list that she articulated would be prosecuted if they were simply made in a chamber or in discussion, even if that discussion were robust. By the way, the reasonable person test is commonly used in many pieces of legislation; I can write to Elaine Smith with a list of a number of pieces of legislation that use that test.

For such statements to be prosecuted, it would have to be proven that they were made in

“a threatening or abusive manner”.

Even if that test were met—let us say that there was some dubiety about the test—it would still have to be proven, beyond reasonable doubt, that those statements were intended to stir up hatred. Someone who simply and solely—I think that Elaine Smith used the word “solely”—articulated those statements would not be prosecuted, regardless of the robust nature of the discussion.

Amendments 13, 14, 16, 18 to 20 and 22 are consequential to amendment 11.

Before I discuss further amendments in the group, I will reflect on the Justice Committee’s round table on 22 February. We heard very powerful evidence from Iain Smith of Inclusion Scotland. Many colleagues will recall him from his service as a Liberal Democrat MSP. I thought that he spoke incredibly eloquently at the round table on the importance of our freedom of expression provision. He said:

“it important that the bill should send out a clear message about what is and is not acceptable. In that regard, we do not think it appropriate that the bill should list behaviour or language that is acceptable. As I have mentioned, expressions of antipathy, dislike, ridicule or insult are not without consequences for those who are subjected to them. They can legitimise prejudice and lead to more serious consequences, even if that is not intended. ... do we want to say that it is acceptable to ridicule a disabled person who finds it difficult to get on to a bus thereby causing it to be late, or who is prevented from doing their daily shopping because they are subjected to expressions of dislike or insult? I do not think that the Parliament will want to say that for disabled people. Why should it want to say so for any other group in society? We ask members to think very carefully about that.”—[*Official Report, Justice Committee, 22 February 2021; c 11-12.*]

Amendment 11B, from Johann Lamont, would insert new wording into the freedom of expression provision. It would have the effect of adding new, specific wording on the operation of the provision, so that certain matters that are asserted, and the advancement or rejection of propositions that follows from those assertions, would be explicitly referred to in the provision.

All of the matters that are listed in amendment 11B are covered by the wording of amendment 11, which captures discussion or criticism of matters relating to each of the characteristics, except—crucially—race, which I have already mentioned. I do not think that there is a need to include a laundry list of specific wording, as is suggested. My worry is that, if we do that, we run the risk of suggesting that

“discussion or criticism of matters”—

which is a wide category—somehow does not already encapsulate the matters that are listed by Johann Lamont. If we create a non-exhaustive list, the problem is that it is, by definition, non-exhaustive, so there can be confusion over what is not included in the list. Therefore, I ask members to oppose amendment 11B.

I also agree with Adam Tomkins that, if his amendment 1, which I will speak to shortly, is accepted, there is no need for the other freedom of expression provisions that are being advanced by Joan McAlpine and Johann Lamont. I will explain that Adam Tomkins’s approach in amendment 1, which has regard to freedom of expression—including with respect to the effects of behaviour and material as part of the operation of the reasonableness defence—is a better approach to the issue.

Amendment 11G, from Joan McAlpine, is similar to elements of amendment 11F. It would add wording to the freedom of expression provision in amendment 11, such that, with regard to “discussion” and “criticism” being covered, it would make clear that that included when such discussion or criticism was “perceived as offensive”.

Although I understand what Joan McAlpine is trying to do with her amendment, my concern has always been that such an approach could have the unintended consequence of implying that criticism that is offensive could never be considered abusive, no matter how extreme the offensive nature of that criticism. If behaviour was, by a reasonable person’s definition, threatening or abusive, and it was intended to stir up hatred, it may not be prosecutable because it would also—in most cases, I suspect—be perceived to be offensive.

I turn to Adam Tomkins’s amendments. The Government will support amendments 1 and 34.

Amendment 1 would apply to all the offences of stirring up hatred when a person has been found to have behaved in a way, or communicated material, that was threatening or abusive and that was intended to stir up hatred, and claims that such behaviour or communication of material was reasonable in the particular circumstances. For the offences of stirring up racial hatred, the additional threshold of being insulting and likely to stir up hatred is also covered.

The effect of amendment 1 is that a court would be required to have particular regard to the importance of freedom of expression under article 10 of the ECHR when determining whether a reasonableness defence was made out. In so doing, the court must have particular regard to the general principle that the right to freedom of expression applies to the expression of information or ideas that offend, shock or disturb. It is right for the bill to give that reassurance. A number of stakeholders have expressed concern that their right to shock, offend or disturb might be compromised by the bill. Amendment 1 puts that beyond reasonable doubt and does it by tying it to the reasonableness defence, so that it does not have unintended adverse consequences.

I note that Adam Tomkins said—if I heard him correctly—that if amendment 1 is accepted, he will not move amendments 2 and 3. Therefore, in the interests of time, I will not go into the details of my concerns about those amendments.

Given the concerns that I have expressed, I cannot support amendments 2, 3, 11G, 11B, 11C, 11D, 11E and 11F. I will support amendments 1 and 34 in the name of Adam Tomkins and ask MSPs to support my amendments 11, 13, 14, 16, 18 to 20 and 22.

The Presiding Officer: Before I call the next speaker, I should say that we have just gone past the deadline for group 4 amendments. I invite the Minister for Parliamentary Business and Veterans to move a motion to extend the time limit.

Motion moved,

That, under Rule 9.8.5A, the second time limit (and, as a result, subsequent time limits) be moved by up to 30 minutes.—[*Graeme Dey*]

Motion agreed to.

The Presiding Officer: We might have to revisit that. [*Interruption.*]

I call Joan McAlpine to speak to amendment 11G and the other amendments in the group.

Joan McAlpine: I welcome the cabinet secretary’s freedom of expression amendment and will of course support it. I also support amendment 1 in the name of Adam Tomkins. However, I do not think that either amendment

goes far enough to protect people from vexatious complaints of hate crime. Adam Tomkins's amendment might offer a defence in court, which is welcome, but it will not necessarily prevent arrests, accusations or investigations. Both amendments fall short of implementing Bracadale's recommendation that there need to be clear lines in law between what is criminal and what is not.

I totally oppose threatening and abusive behaviour that stirs up hatred: I am in full agreement with the cabinet secretary on that. It is very clear, however, that many individuals and organisations are concerned that citizens could be falsely accused of such crimes.

The bill's "reasonable person" safeguard is welcome and will work well in most instances, but it will not work where views are polarised. In particular, the debate around women's rights and trans identity means that views that might be considered inoffensive and factual by some people will be perceived as hateful and abusive by others. My amendment 11G seeks to address that problem without extending the freedom of expression given to religion to other characteristics, as I am also aware of the unintended consequences that that might have, particularly for the protected characteristic of disability.

I know that it is not the cabinet secretary's intention to see people falsely accused. He told the Justice Committee:

"People should have the right to be offensive and to express controversial views."—[*Official Report, Justice Committee*, 27 October 2020; c 4.]

Amendment 11G puts that reassurance into the bill, within the cabinet secretary's freedom of expression provision, in a way that is crystal clear and which will help law enforcement. I do not agree with the cabinet secretary's suggestion that amendment 11G will allow anyone who has been accused of stirring up hatred somehow to get away with it by using the defence that what was said was only perceived to be offensive. In his amendment 11, the words "solely ... involves or includes" would still stand, leaving wide scope for genuine hate crime to be prosecuted even if my amendment 11G were to be agreed to.

Members will have seen from their inboxes that many people share my concerns about the need to strengthen freedom of expression. In particular, women who are concerned about calls that anyone who identifies as female must be accepted as such—"without exception", to use the words of campaigning groups—have been accused of hate speech, including by people in positions of authority such as politicians. Here I associate myself with Johann Lamont's earlier remarks about comments made by Patrick Harvie.

Women who have been branded hateful include sportswomen such as Martina Navratilova and Sharron Davies, after they raised concerns about female sports; Jenni Murray, the former presenter of "Woman's Hour", who is often considered a national treasure; Germaine Greer; and even J K Rowling, after she disclosed details of her own domestic abuse. They have all been no-platformed and accused of hate. Lesbian feminist philosophers such as Professor Kathleen Stock OBE of the University of Sussex have been subjected to terrible abuse, and the human rights lawyer Professor Rosa Freedman, of the University of Reading, had urine smeared over her office and was followed home.

Even doctors who express concerns about the significant rise in children being medicalised through approaches such as the use of puberty blockers, such as Marcus Evans and David Bell of the Tavistock clinic, have been accused of hate. In England, the criminal defence barrister Allison Bailey, a black lesbian feminist, is currently challenging a very well-known, publicly funded charity that had pressed her employer to take action against her. Some women have already lost their jobs for talking about such issues.

There is absolutely no doubt in my mind that the individuals who have no-platformed, bullied and tried to silence those respected men and women will use hate crime legislation against them—and in doing so they will consider themselves to be perfectly reasonable. Many will be in influential senior positions in public bodies.

A couple of years ago, a spokesperson for Scottish Trans Alliance urged supporters to report as a hate crime the use, in public places in Edinburgh, of feminist stickers opposing the Gender Recognition Act 2004.

Many public authorities, including the police, receive training from trans rights organisations whose definition of hateful behaviour is very wide indeed. In England, groups of police officers have taken public positions on such matters, including some on Merseyside who recently displayed on social media a poster that said:

"Being offensive is an offence".

The chief constable there later apologised, but clearly there are people in law enforcement and in other senior positions who share such views, all of whom would consider themselves to be reasonable. It would be nice to think that Police Scotland would take a more sensible view—I hope that it will—but good laws should not be made by crossing our fingers.

I believe that my amendment 11G will give clarity to the police and protection to members of the public. For those reasons, I encourage members to support it.

Johann Lamont: I recognise that we are under pressure of time, but unless some members have been absent for the past couple of years they might not have noticed that this is a very serious debate, which is highly contentious. If they are fed up about having to sit and listen to it, perhaps they should not be in the chamber at all, especially if they do not recognise the significance of what we are doing here. *[Interruption.]* I am sorry if we are boring those members, but I remind them that, as members of the Parliament, it is our responsibility to address such serious questions.

I am happy for members to stay and listen, and perhaps to contribute, but I resent in the strongest terms the implication that we are wasting people's time by considering the bill. The minister is not saying that, but from their reaction to what the Presiding Officer said earlier it was clear that some members were concerned that we might be taking too long over this. Forgive me, but I am not going to take—*[Interruption.]*

The Presiding Officer: Order, please.

Bob Doris (Glasgow Maryhill and Springburn) (SNP) rose—

Johann Lamont: Does someone want to come in?

Bob Doris: I thank Johann Lamont for taking this intervention.

I am listening carefully to all the contributions on these amendments, and I greatly value and appreciate them. I am not always agreeing with everything that is said, but I am finding the debate informative and helpful. I would not want Ms Lamont to suggest that I am somehow not engaged with this; I promise her that I am.

18:30

Johann Lamont: I apologise for having been rather broad brush, particularly given the bill. We heard groans at the idea that we might be kept here a bit longer. This is a serious matter for all of us. I very much appreciate what Bob Doris said.

I will not go through all the amendments in the group; members will have read my letter already, of course. However, I will talk quickly about some of them and I will make some important points about the whole question of freedom of expression.

Of the amendments in this group, amendment 11B most fully implements Lord Bracadale's recommendation that the bill should include provisions that help to clarify the line between the criminal and the non-criminal. It puts in the law a range of statements that should not be deemed abusive just in their own right. We have never really had an explanation from the cabinet

secretary for his rejection of a number of Lord Bracadale's recommendations, but that amendment is one of them.

Amendment 11C adds a subsection to the new section contained in amendment 11 on the protection of freedom of expression in relation to religion, expanding it to cover non-religious "beliefs or practices".

Amendment 11D comprises a new free-standing section that provides that

"Nothing in this Act shall be taken as requiring a person to profess any belief or to use language as if they held any belief."

It is remarkable that we might feel that we need to put that in legislation.

Amendment 11E adds two new subsections to the section contained in amendment 11. Taken together, those subsections allow

"examples of behaviour or material which is not to be taken to be threatening or abusive"

to be added to that proposed new section, using

"Regulations ... subject to the affirmative procedure."

Amendment 11F introduces a definition of "discussion or criticism" to make it clear that it

"includes the expression of opinions which have the capacity to offend, provoke, discomfort, shock or disturb, including those expressed as antipathy, dislike, ridicule or insult, and includes the rejection of any belief."

I recognise that this is a very difficult debate, and I agree with the cabinet secretary, in particular, that the comments by Inclusion Scotland have force, but we should be ensuring that the law does not allow somebody to berate anybody or to deny people their rights. It is not just about speech; that, in my view, would constitute a breach of the peace. Behind that, we should of course have a whole series of measures to address why on earth somebody thinks that that is acceptable behaviour.

I do not want to do anything in particular around the rights of disabled people. I know that they can be targeted and can suffer all sorts of disadvantage. That is the dilemma: it is about finding the balance in ensuring that people are protected from hateful and terrible behaviour while we also have the right to debate ideas.

I sometimes think that folk have now got to a place where they think that demands for freedom of expression are for people on the right or for people who are conservative in their views—socially conservative or whatever. Clearly, some people are making that case on the basis of their particular views at a particular time, which some people may regard as being on the right of the political spectrum. The truth is that we all need protection when it comes to freedom of

expression. My party was founded on saying and believing things that, at the time, were regarded as out there or unacceptable.

The women's movement knows that women had to break barriers and to say things that were seen as unacceptable, that the establishment did not regard as reasonable and that would have been regarded at the time as beyond the pale. We can see in more recent history how social movements—lesbian, gay, bisexual and transgender communities themselves—have said and challenged things that people would have regarded as being beyond the pale. We know that it is necessary for us to have freedom of expression.

I note Adam Tomkins's amendments. I feel that he is being optimistic in his interpretation of what they would do. A number of tests would still need to be passed, and people would need to be persuaded that someone was being reasonable. They might end up in court, even if they had done something entirely reasonable and even if they were exonerated. People might end up having to face challenges in court, which I do not think it is reasonable to expect from people who are simply expressing a view.

The cabinet secretary talks about the important work that was done at stage 2, and I recognise that. However, even at the round table, where the level of response on freedom of expression was massive, the truth is that, in the positions that were taken by some witnesses, particularly members of the women's organisations, there was no evidence of a shift.

The cabinet secretary was very good about meeting me and listening to my views, but it did not shift his position. There is a difference between facilitating a debate and moving the debate on as a consequence of what people have said, and I do not think enough has been done in that regard. Therefore, my amendments try to test what it is reasonable for people to be able to say.

I must underline the points that were made so effectively by Joan McAlpine about what the debate is and what the challenges are for many women just now. There are issues about what is regarded as reasonable and acceptable, about what is losing people their jobs and about what is silencing many of our young women, some of whom contact me privately and say, "I cannot do that or say that because, in my work community or social circles, it is utterly unacceptable, and there would be consequences."

A couple of years ago, I went to a meeting at the University of Edinburgh. I have been going to political meetings for a very long time, and I cannot remember ever being at a meeting that was so conscious of the need for security. It was a

women's meeting, to talk about these issues, and we needed security of a level that I do not recall ever before seeing. That tells us what it is like for a woman who wants to express the views that are set out in the amendments that I have spoken about today. The scale of the challenge, the silencing and the chilling effect is real. It is not that real for me, because I am old, but it is real for younger people who feel that they cannot freely express their views, and I think, with respect, that Adam Tomkins is offering hope but no guarantees.

I will finish on a point on amendment 11B. It provides a clear point of reference in the face of the law for those taking part in debates on sex and gender identity. It puts beyond doubt that asserting, advancing or rejecting certain things should not be treated as being abusive or threatening under the law, based simply on their content. Those things are:

"that ... sex is a physical, binary characteristic that cannot be changed ... that the terms 'woman', 'man' and related terms refer to sex as such a characteristic"

and

"that a person's sex may be relevant to that person's experience or relevant to other persons."

Members have had a briefing about amendment 11B from the Equality Network, which calls that an "unnecessary laundry list"—what are we women like, with our laundry lists?—of matters relating specifically to transgender identity that

"includes propositions that fundamentally undermine trans people's long-established right ... to be legally recognised in their transitioned gender."

It says that it is

"a list of 'approved' statements that include attacks on the fundamental rights of one group of people"

and that

"trans people's rights are open season for attack."

That is the Equality Network's interpretation of what other people would regard as an entirely reasonable, legal, logical and sensible thing to say: that there are two sexes. The call for us to be entitled to say that is described as a fundamental attack on the rights of one group of people. Well, I say that sex is a physical, binary characteristic that cannot be changed; that the terms "woman" and "man" refer to sex as such a characteristic; and that a person's sex may be relevant to that person's experience or relevant to other persons.

Colleagues, we have a choice: we can give women the protection that they need to talk about their reality in ordinary words safely, or we can endorse the view that just talking about that reality and what it means to them in their own words is, of itself, some form of attack and something to be condemned. I know what my choice is. It is the one that will let me leave this Parliament knowing

that I fought right to the end for women's rights, including the most basic right of all: the right for women to name those rights in their own terms.

I urge members to support the amendments in my name and particularly to support the amendment in Joan McAlpine's name.

Sandra White (Glasgow Kelvin) (SNP): I want to touch on amendments 1, 34 and 11. The speeches from Johann Lamont and Joan McAlpine were absolutely excellent. Freedom of expression is for everyone—that is an important part of the bill.

I, too, was a bit concerned about judicial issues and going to court. However, having listened to members' contributions—Adam Tomkins's, in particular—I feel that amendment 1 covers most of the issues about which I had a bit of concern. I thank Adam Tomkins for amendment 1 and the cabinet secretary for amendment 11 and others—I am going to support all of those as well as Adam Tomkins's amendments.

I have two wee questions. First, will the amendments to the bill apply to someone who happens to communicate or say something about a Government in another country and cover that against being a hate crime? That is very important to me, because I look at things internationally, not just in Scotland.

Secondly—perhaps the cabinet secretary will answer this—in talking about the bill and about how it is going to go through, members have raised the issue of people knowing about the bill. I suggest—I am sure that it will be in the bill—that, if we are going through with the bill, and particularly when it comes to freedom of expression, we need to ensure that Police Scotland officers are trained and told about the legislation and how they should approach it. I also think that the Crown Office and Procurator Fiscal Service has to be trained and educated about it. Most important, the general public has to be educated on what exactly the bill means—in particular, for freedom of expression.

I will leave it at that—whether the bill covers the two things that I have asked about.

Neil Bibby: There has been widespread concern and debate about the potential effects of part 2 of the bill on freedom of speech. Although there are strong protections against hate crime in the bill, it is important that there is clarity about what sort of speech is protected. Scottish Labour welcomes amendments that seek to provide such clarity and that provide further reference to existing protections on freedom of speech that are afforded by the ECHR—by article 10, in particular.

We support the Government's amendment 11, which provides for general freedom of expression whereby

“discussion or criticism”

of any of the protected characteristics is not in and of itself to be taken as

“threatening or abusive.”

It is important that there is a general provision for that, rather than specific provisions that are aimed at specific groups—other than for religion, the provision for which is slightly different but widely accepted.

We also support the technical and consequential amendments in the name of Humza Yousaf, which replace the existing freedom of expression provisions and clarify the language in the bill.

We also support Adam Tomkins's amendment 1 and his consequential amendment 34. Amendment 1 provides further clarity on rights under article 10 of the ECHR and reminds the police and the courts that, in the enforcement of the provisions, due regard must be had to those rights. Those rights under the ECHR are well established and well understood by the courts. They apply to

“information or ideas that offend, shock or disturb.”

I welcome the clarity that amendment 1 provides, and it is important that Parliament supports it.

In confirming our support for amendment 11, I noted that we believe that there should be a general freedom of expression provision. In general, it is bad law for legislation to be so prescriptive about what is allowed, as any text cannot cover every eventuality. We believe that general provisions such as those in amendment 1 better protect freedom of expression than non-exhaustive lists, which might be relevant only in the context of current political debate, so we cannot support amendments 11B and 11E. We accept that there will be deeply held or contested views on some of the characteristics that are protected under the bill, but we are not certain that that will be the case for all—for example, for age and disability. For that reason, we cannot support amendment 11C.

Finally, we will support amendment 11G, in the name of Joan McAlpine, and amendments 11D and 11F, in the name of Johann Lamont. Although those amendments may not be strictly necessary—especially should amendments 1 and 11 be agreed to—we believe that they will provide additional clarity and reassurance in the bill.

John Finnie: I thank Adam Tomkins. I am a member of the Justice Committee, and Mr Tomkins gave a very accurate résumé of the progress—yes, the progress—that has been made on the bill. I am sure that he will confirm that absolutely no one has been in touch to say that

they were not in favour of freedom of expression, and he has rightly identified that fear has been stoked about the issue. I ask his colleagues to reflect on any role that they may have played in that stoking.

18:45

What we have is a threshold and a high bar, which has been raised as we have gone along. I perhaps have more confidence than some of my colleagues in the police's judgment in dealing with reported incidents and in the Crown Office and Procurator Fiscal Service's approach to prosecution.

It is disappointing that some people characterised the everyday operation of our legislature, with on-going talks between parties and the Government to resolve issues, as sinister. The convener and the cabinet secretary are to be commended for their work. There was extensive consultation and additional evidence was taken.

The Scottish Greens will be happy to support amendment 1, in Adam Tomkins's name, and amendment 34, which will provide additional assurance. It is important that the court will have "regard" to the provisions. Likewise, we support amendment 11, in the name of the cabinet secretary, which is a product of the engagement to which I referred and which makes it clear that legitimate comment or criticism—including opposition to proposed reforms to gender recognition law—will not fall foul of the law.

The purpose of a freedom of expression provision is to provide the assurance that means that self-censorship is avoided when it comes to legitimate free speech, but that is not to carve a hole in the stirring-up offence. Should amendments 1 and 11 be agreed to, they will cover all discussion and criticism of any matters that relate to any characteristic.

Amendment 11B would add a list of matters that relate specifically to transgender identity. A previous speaker used a quotation, but it was not a complete quotation, so I will add an important word: it was about the inclusion of provisions that fundamentally undermine transgender people's long-standing "convention" right to be legally recognised in their transitioned gender. Gender recognition has enabled trans women to be legally recognised as women for all purposes since 2004. Recognition has been in place longer when it comes to many areas, such as for the purpose of passports, driving licences and medical records.

Of course, people should be free to discuss and criticise that fundamental human right without being criminalised, unless they do so in a way that is objectively threatening or abusive and intended

to stir up hatred. Amendment 11 already provides that reassurance. As the Equality Network said,

"to add into legislation a list of 'approved' statements that include attacks on the fundamental rights of one group of people is entirely wrong."

I agree.

The Presiding Officer: I apologise for interrupting the flow of the debate on this group, but we are again up against the time limit that has been set for the debate. Let me explain what has to happen. Normally, we can allow only an extra 30 minutes for a debate, so we have to suspend the standing orders and then ask for another 30 minutes.

Neil Findlay: On a point of order, Presiding Officer. Can you advise us about timings? Some members are not allowed to stay over and must take public transport, and the trains are running on a limited timetable. If we are going to stay late, that is fine. We just need to know that very early, so that we can arrange accommodation or whatever.

The Presiding Officer: We are not at that stage at all, Mr Findlay. We voted this afternoon, before we started to consider the amendments, on a timetable for the debates at stage 3 that anticipated that we would finish considering the amendments at around 7 o'clock and then finish the subsequent debate at around 8 o'clock. We are running roughly 45 minutes behind, and we have extended for half an hour, but I am going to ask the Minister for Parliamentary Business and Veterans to move a motion to extend the debate for a further half hour.

I implore members to try to curtail their remarks a little so that we can catch up, but I recognise that this is an important debate and I want to allow time for it.

Minister, I am minded to accept a motion without notice to suspend the final sentence of rule 9.8.5A.

Motion moved,

That the last sentence of Rule 9.8.5A be suspended.—
[Graeme Dey]

Motion agreed to.

The Presiding Officer: I am now minded to accept another motion without notice to extend the time limit by a further 30 minutes.

Motion moved,

That the second time limit (and, as a result, subsequent time limits) be moved by up to a further 30 minutes.—
[Graeme Dey]

Motion agreed to.

Liz Smith (Mid Scotland and Fife) (Con): On a point of order, Presiding Officer. I seek guidance on timings. This is one of the best debates that I

have heard in the Parliament, and it is important that members are allowed to have their say on these important issues. I foresee several extensions to the timings. Can some guidance be provided on what the finish time might be?

The Presiding Officer: It is very difficult to say. The group that we are on now is perhaps one of the most contentious; others may not be quite as robustly debated, but we will see. Like you, Ms Smith, I recognise the need to debate these matters properly and fully, allowing members the chance to express themselves. I therefore ask that members try to do so concisely, if they can. I am not asking members not to speak, just to do so concisely.

Johann Lamont: On a point of order, Presiding Officer. As someone who is perhaps one of the culprits, I wonder whether it is possible for you to take soundings about moving the debate after the stage 3 amendments to tomorrow or to a point that parties could agree. That would mean that we could concentrate on the amendments without feeling that the last bit would be rushed or that it would be keeping people back. I appreciate that people have caring responsibilities.

The Presiding Officer: I recognise that point of order. I have already taken soundings on the issue and, at that stage, business managers were not minded to move the debate. However, things might change as the evening progresses, so I will take soundings again on the issue. I stress again that these technical matters about process should not get in the way of the debate. It is very important that members have the confidence to express themselves and feel satisfied with the nature of the debate. As far as I am concerned, that is what is happening at the moment.

We move back to the debate, and I call Jenny Marra to be followed by Patrick Harvie.

Jenny Marra (North East Scotland) (Lab): I am glad that the Presiding Officer said that, because I am keen to express myself as fully as I feel is necessary. Amendment 1 in the name of Adam Tomkins is helpful, but it does not go far enough. I speak in support of the amendments that have been lodged by my colleague Johann Lamont.

Hate is now such a contested term, and I am worried that members of the Parliament are complacent about the atmosphere in which women are currently arguing that sex continues to matter in shaping their experiences of the world. I know that from my experiences over the past two years. I was branded online as hateful for questioning NHS Scotland's policy that stated that a baby's gender was assigned at birth. I know that not to be true and that my son's own sex was clearly observed and recorded at birth, but for that

to be branded as hateful is perhaps an example of the atmosphere that we are operating in.

The campaign group Women's Place UK, which submitted written evidence on the bill at stage 1, told us about the violent threats and protests that it has faced at almost all of its 27 public meetings, including a bomb threat. I was at the meeting that Johann Lamont talked about, as were many colleagues in the chamber, and never in more than 25 years of going to political meetings have I felt the intimidation that I felt then.

That was at the University of Edinburgh and, just yesterday, its student newspaper reported that "transphobic stickers" had been found on campus. Those stickers included one that said:

"Do you believe that male-sexed people should have the right to undress and shower in a communal changing room with teenage girls?"

When similar stickers were found on campus previously, an activist group encouraged people to report them to the police. The university principal was reported to have said that the perpetrators would be traced via closed-circuit television footage and he reported the stickers to the police.

Adam Tomkins told us that the test is that the person shows that they were being reasonable in the circumstances. I ask him about the sticker posters and the University of Edinburgh principal—were they being reasonable in the circumstances? I do not think that the Tomkins amendment is clear enough. Professor Tomkins knows as well as I do that, over the years, the courts have been biased in relation to women. Indeed, a book, which draws on Scottish examples, was written about the matter by Helena Kennedy, the very person who is heading up the working group.

We know that there has been bias over the years. It was just about two years ago that a dental student in Scotland got off with sexually abusing a young girl because the male sheriff said that it would be harmful to that student's dental career to have the crime against his name. The bias is apparent, so I ask Professor Tomkins, does his amendment not require the more specific detail that Johann Lamont has provided? His contribution in the group 2 debate, in which he said that more specifics are required in the legislation, suggests that perhaps it does.

I will draw to a close by saying that, in such an atmosphere, anything short of a provision that puts beyond doubt that basic statements about sex are not of themselves abusive under the bill will leave women exposed to unpredictable judgments by front-line police officers and the courts, and, before that, maybe even their employers. The only safe option for women will be constant self-censorship, which will have an invisible corrosive

effect that is antithetical to healthy democratic debate. The Parliament should not be so complacent about setting up such a situation.

Patrick Harvie (Glasgow) (Green): I draw members' attention to my entry in the register of members' interests, which shows that I am a member and supporter of a number of equality groups that, for decades, have fought for not only my human rights, but the human rights of many others.

I certainly do not intend to speak in the debates on all the groups today, but I feel the need to contribute to the debate on this group, especially given the extraordinary personal comments that were made about me earlier.

We all know that legislation that we pass in the Parliament cannot breach the ECHR. If it attempts to do so, it can be struck down by the courts. We also know that a stirring up hatred offence has been in operation for decades without having been found to breach freedom of expression rights. However, not everybody knows that such a protection exists; therefore, if there is a need for reassurance in the bill that does not undermine the operation of the offence, which has been agreed through cross-party discussions and led to amendment 11, so be it. However, some members have instead sought, either directly or tacitly, to have the bill endorse behaviour that is prejudiced, even if it is not in the scope of the offence.

We have already seen attempts to secure explicit legal protection in the bill for practices such as deadnaming and misgendering. Although it might be possible for such expressions to be made in ways that do not meet the tests of the offence, nobody should be in any doubt that they very frequently form the basis of abuse that is directed against trans people in our society. Now, among other troubling amendments, amendment 11B seeks specific legal protection, not for all views on a contentious topic, but solely for the expression of three beliefs, which, taken together, represent a position that is incompatible with the Gender Recognition Act 2004 in any form. That act has been in place for more than 15 years precisely because its absence was ruled a breach of trans people's human rights.

Although some people seem unwilling to acknowledge the existence of transphobia, and even seek to defend its proponents, recent years have seen the growth of an extraordinary wave of hostility to trans people in politics and in the media, and promises made to them by all five parties here in this Parliament have been broken. Attacks against their equality and human rights and their access to healthcare are routine, as are attempts to claim that everyone who supports trans equality is a misogynist.

19:00

Of course, I am not referring just to the spurious and absurd allegations that have been made against me; that claim also ignores the fact that so many of Scotland's women's and feminist organisations are intersectional and trans inclusive, which rejects the idea that trans people's rights and women's rights are in conflict. Even well respected organisations such as Rape Crisis Scotland and Glasgow Women's Library have been denounced as misogynist, simply because they do not discriminate against women who are trans.

Of course, all that is deeply harmful to trans people, and the situation would be made far worse today if Parliament agreed to amendments that seem to legitimise such attacks against them. However, we should also be clear about the deeper threat. Anti-trans campaigners are openly working with religious far-right organisations from the US, which, in turn, are open about their strategic goal of using trans equality as a wedge issue, in order to fragment the equalities movement. At least one such organisation is already active in Scotland and has been quoted approvingly by members of this Parliament. Let us not kid ourselves that, if they succeed in opposing trans people's equality and human rights, they will be satisfied with that. Their next target might be sex education, equality in family law, HIV drugs on the national health service or abortion rights. We do not need to look far to find anti-trans activists arguing against all those things.

I was elected to this Parliament in 2003 in the wake of the defeat of the appallingly hostile and prejudiced campaign to prevent the repeal of section 2A of the Local Government Act 1986. That issue was a test case and, since then, this Parliament has never voted directly to oppose the equality and human rights of Scotland's queer community, although there have been some close calls. It is dismaying to see amendments today that would end that proud track record.

I hope that the Parliament will reject the hostile amendments in this group, which are designed not to improve the treatment of hate crime in our society but to further an agenda of fragmenting the equalities movement because, whether in the remaining days of this parliamentary session or in the years ahead for the next, that is an agenda that threatens not only trans people; ultimately, it will threaten any and every marginalised group whose rights have been won by solidarity and are opposed by those who seek to fragment us against one another.

Elaine Smith: I think that we are now quite clear about Mr Harvie's views and motivations. I had remarks that I wanted to make, so I was not going to do this, but I will read out a tweet about

last week's international women's day debate. The tweet said:

"Oh there's a bit of vicious transphobia in the #IWD2021 debate. Thanks Johann."

The reply from Mr Harvie said:

"I'm sorry to say we can expect more of that when it comes to stage 3 of the Hate Crime Bill."

I ask everybody in the chamber to look at those international women's day speeches last week then tell me where the transphobia was in any of them.

Presiding Officer, I rise to support the amendments in the name of Johann Lamont and Joan McAlpine. I will also support amendment 1, which is in Adam Tomkins's name.

Many grass-roots women's groups, some religious bodies and many constituents have expressed concern to me about freedom of expression. They are concerned that the Government's amendments do not go far enough to protect free speech. Women are particularly concerned that the Government's amendments will not be enough to prevent the chilling effect on women's ability to discuss and debate their rights.

We are seeing that being played out just now. If anyone wants to go on to Twitter to see what people are saying about me and Johann Lamont, they will find that there are some chilling effects already. The rights that we want to discuss—the rights that exist in law—are protected for good reason and are based on the United Nations Convention on the Elimination of All Forms of Discrimination Against Women.

I have to say that I am now extremely careful about what I say about rights that I have taken for granted in the past. I cannot believe that that is what women face in 21st century Scotland. It is shocking that they are being silenced from speaking about rights that are protected by law—they are self-censoring, as Jenny Marra said.

I am conscious that any reference to sex-based rights, sex discrimination and sexism—not gender—will immediately attract accusations that I am being hateful or transphobic. My carefully drafted factual speech, much of which was based on my lived experience as a woman, for last week's international women's day debate, was attacked in that way. As I said, we see such attacks right now all over Twitter.

Therefore, I will support the amendments from Johann Lamont and Joan McAlpine, which will give clarity to those, including the police, who will have to interpret the legislation.

Liam McArthur: I echo Liz Smith's earlier comments. Contributions that we have heard on this group of amendments have probably seemed

shocking, disturbing and offensive to some, but everything that has been said needed to be said, in the context of the debate.

Johann Lamont spoke very passionately on the issue from her perspective, and her voice needed to be heard in the debate, as did Patrick Harvie's. Although I cannot necessarily support Johann Lamont's amendments, I thank her for pursuing the matter through stage 2 and stage 3, and for providing colleagues with very detailed and cogently argued evidence to support her amendments.

I also thank Adam Tomkins for the way in which he initiated the debate on the group, which is the way in which he has stewarded the committee through the scrutiny process. He laid claim to having helped to secure the reasonableness test. I merely claim to have pushed the cabinet secretary towards making the stirring-up offences intent only, on the back of the debate that we had in September. I certainly agree with him that, even in combination, those two changes were insufficient, which is why we are back here considering stage 3 amendments.

The amendments are at the crux of the debate on the bill. The Justice Committee has faced a fairly remarkable challenge in how to strike an appropriate balance between, on one hand, protecting those who might be vulnerable to hate speech and, on the other, protecting our fundamental right to freedom of expression. Of course, that right is not unfettered, but nor should it be unduly constrained by a requirement to be polite or respectful. In the words of Lord Justice Sedley, who is the unofficial patron saint of the bill, so frequently has he been prayed in aid:

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

However, striking the appropriate balance by turning intention and aspiration into black-letter law has proved to be enormously challenging.

At stage 2, various amendments were lodged that sought to provide protections in relation to speech and debate around various protected characteristics, but none was entirely satisfactory. My attempt involved adopting a broader catch-all provision, rather than applying different thresholds for different characteristics. That approach, if not the precise wording of my amendment, seemed to attract majority support, and it has formed the basis of amendment 11, which has been lodged by the cabinet secretary.

Amendment 11 offers reassurance on freedom of expression for each of the new characteristics that are added in the bill. It avoids singling out and reflects the fact that freedom of expression is a general right that should apply across all subjects. The exception, of course, relates to religion, which

reflects the pretty much universal support that the committee heard from representatives of faith groups, the Humanist Society Scotland and other key stakeholders, for the bill to go further in that area. That can be justified in making a distinction between, for example, the right to ridicule or express hostility towards ideas and beliefs, and hostility that is directed towards an individual's identity, which would be more problematic. Others have reflected on that, particularly in relation to disability.

Amendments 13 and 14, which will remove sections 11 and 12, are also sensible and to be welcomed. Nothing here, though, requires anyone to subscribe to any particular belief or to express themselves in ways that suggest that they do—which I hope helps to address the point in Johann Lamont's amendment 11D—nor do any of the provisions in the bill cut across an individual's rights under the ECHR. However, I accept that, as Adam Tomkins set out, amendment 11 on its own is insufficient. In that light, I very much welcome amendment 1, which makes explicit reference to the ECHR. Importantly, it would put in the bill the general principle that the right of freedom of expression applies to

“the expression of information or ideas that offend, shock or disturb.”

As Adam Tomkins suggested, that perhaps renders Joan McAlpine's amendment 11G redundant. My sense, too, is that amendment 1 would meet with Lord Sedley's approval.

Although I am nervous about the regulating powers that Johann Lamont seeks to introduce under amendment 11E, there is no doubt that there is merit in the argument that future Parliaments will need to keep the issues under review. We do post-legislative scrutiny far too rarely in the Parliament, but the bill is perhaps an obvious example of where it could usefully and sensibly be deployed.

The Presiding Officer: I call Adam Tomkins to wind up on this group.

Adam Tomkins: I will try, Presiding Officer, but this is a hell of a debate to try to respond to and to wind up. It has been an extraordinary and outstanding debate. As everybody knows, I am shortly to leave the Parliament and am not seeking re-election. I have had my criticisms of things that have been going on in this place in the past few weeks and I have no doubt expressed myself sometimes in a manner that has offended, shocked and disturbed others. However, the treatment of the bill and, indeed, the debate this afternoon have shown the Scottish Parliament at its best, which is not to say at all that I agree with everything that has been said.

I will start with something that Patrick Harvie said: that he found aspects of Johann Lamont's amendment 11B “troubling”. I have to say that I am deeply troubled by that remark, because there should be nothing troubling about an amendment—it is not my amendment—that simply seeks to set out what speech in the context of the debate around transgender identity is lawful and acceptable, even if it upsets people, and what speech is not. Saying or even arguing robustly that sex is a physical binary characteristic that cannot be changed is not a hate crime under this legislation and there should be no doubt about that. Saying that the terms “woman” and “man” and related terms refer to sex as such a characteristic is not a hate crime under this legislation and there should be no doubt about that.

John Mason (Glasgow Shettleston) (SNP): Whichever side of the argument one is on, is it not going into too much detail in the legislation to have that kind of thing in it?

Adam Tomkins: Yes, I think that it is, but that is not my amendment. However, I have to say that, as I leave the Parliament, I am troubled that members of the Parliament are themselves troubled by amendments that seem to me to be innocent, such as Johann Lamont's amendments.

To answer Mr Mason's question, I do not think that we need to go there if we accept amendment 11, in Humza Yousaf's name, and amendment 1, in my name. I thank the cabinet secretary for his support for amendment 1 and I also thank Joan McAlpine, Sandra White, Neil Bibby and Elaine Smith for voicing their support for amendment 1. More broadly than that, I thank John Finnie and Liam McArthur for their kind words, not just about amendment 1 but about my role in the making of the legislation more generally.

The cabinet secretary came to give evidence at the beginning of the Justice Committee's discussions of freedom of speech and the hate crime bill. He said that he recognised that we in Parliament must do two things about freedom of speech in the bill: we must both broaden and deepen the protection of free speech.

19:15

The cabinet secretary's amendment 11 broadens the protection of free speech and my amendment 1 deepens it. The combination of those two amendments, with no conflict between them, will achieve that aim of broadening and deepening the protection of free speech.

Joan McAlpine, Johann Lamont, Jenny Marra and Elaine Smith voiced sincere and deep concern about whether even that combination of amendments goes far enough. Johann Lamont

said that my amendment 1 offers hope but no guarantees. Joan McAlpine said that good laws should not be made by crossing our fingers. I do not often agree with Joan McAlpine, but I absolutely agree with her on that point.

I agree with Johann Lamont that amendment 1 does not offer guarantees, because I do not think that we can do so. What we can do when we make criminal law is offer clarity. My concern from the beginning has been to guard against vagueness in the hate crime bill by offering clarity as a solution and to guard against overbreadth by narrowing the scope of the offences as a solution to that. As Neil Bibby said, that combination of amendments delivers the clarity that we need in our criminal law.

Johann Lamont: I say respectfully that women who have faced this may strongly feel the need for more than Adam Tomkins's perception of what clarity is. We heard a speech from a colleague who made very clear that what I had put in amendment 11B was hate speech. What assurance and clarity can Adam Tomkins give to me and to the women who want to express their views in this regard that our words will not end up being reported as a hate crime? There is evidence in front of him—we have been told that what is said in amendment 11B is hateful. What consequence comes from that for us? What clarity do we have in that regard?

Adam Tomkins: What is in the amendment is hateful in that member's subjective opinion, but that does not make it a hate crime or make it criminal. Any of us can throw around accusations or allegations of transphobia or of any other kind of phobia, but that does not make it criminal.

In order for a point of view to be criminal, if amendments 1 and 11 are accepted, it must be not merely hateful, transphobic or offensive but threatening or abusive. There is nothing threatening or abusive in anything that anyone has said here. It would have to be intended to stir up hatred and the Crown would have to prove that on corroborated evidence. It would have to be unreasonable in the circumstances and, if amendment 1 is accepted, it would also have to be proved to be speech that is more than merely offensive, shocking or disturbing.

No one of the amendments offers the guarantee or the clarity that Johann Lamont is looking for, but they do when taken together.

Liam McArthur: Part of the problem that we have wrestled with throughout the process is the risk or threat of people bringing complaints. There seems to be no way of writing something into law that will remove that risk. This point might be better directed to the justice secretary than to Mr Tomkins as convener of the Justice Committee,

but is there anything that can be done to provide some assurance about the way in which the police would respond to any complaints that are made?

Adam Tomkins: That is the point that I was going to close on. It was addressed very powerfully by someone else with whom I do not always agree, Sandra White. She said that much of the answer to this will depend on police training. The police must be appropriately trained about the parameters of the criminality that we are setting down. I believe that that must happen not only with regard to freedom of speech but with regard to privacy, although I will not reopen that debate. If the police are well trained, we can get a long way there.

Johann Lamont: Will the member take an intervention?

Adam Tomkins: If I am permitted to, I will.

Johann Lamont: I just want to make the point that there is one way of making it clear in law that it is entirely reasonable for anybody to make these points, and that is to put it into the law. The only reason why I am asking for it to be put into the law is precisely because folk have complained that they are hate speech. Frankly, it is not a comfort for me to know that I am going to have a good case when I get to the court. I would quite like to be told that I am allowed to say that without any danger of being reported to the police.

Adam Tomkins: There are two things that we can do. The other thing, of course, is to do what Neil Findlay suggested, which is the same as what Liam Kerr suggested all the way back in September, and take the bill off the table. We will all have a choice, whether it is tonight or tomorrow, to vote for or against the bill at stage 3. If members do not believe that the bill is fit for purpose, they should not vote for it. We could then invite the next Scottish Parliament, which will soon be elected, to revisit the issues in the light of all the debate that we have had. We have been trying to put forward that proposition for some months, but we have not yet had any support from anybody in other parties.

Presiding Officer, what do I have to do now? I think that I need to press amendment 1.

The Presiding Officer: That was a successful conclusion, Mr Tomkins. Thank you. [*Applause.*] Unanimity has broken out.

Amendment 1 agreed to.

Amendment 5 moved—[Adam Tomkins].

The Presiding Officer: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a one-minute division.

Voting is now closed. Members should let me know if they were unable to vote.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Presiding Officer, I was unable to access the system. I would have voted no.

The Presiding Officer: Thank you, Mr Beattie, I will make sure that you are added to the tally.

Gil Paterson (Clydebank and Milngavie) (SNP): Presiding Officer, I was unable to access the app. I am still struggling to do it now. I would have voted no.

The Presiding Officer: Thank you, Mr Paterson. I will make sure that your name is added to the tally.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Boyack, Sarah (Lothian) (Lab)
 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)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Griffin, Mark (Central Scotland) (Lab)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harris, Alison (Central Scotland) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McAlpine, Joan (South Scotland) (SNP)
 McNeill, Pauline (Glasgow) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)

Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)
 Wightman, Andy (Lothian) (Ind)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 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)
 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)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 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)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 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)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 53, Against 69, Abstentions 0.

Amendment 5 disagreed to.

Amendments 2 and 3 not moved.

Amendment 6 moved—[Liam Kerr].

The Presiding Officer: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

The vote is now closed. Please let me know if you were unable to vote.

Gil Paterson: On a point of order, Presiding Officer. I am afraid that I was unable to tune in again. I would have voted no.

The Presiding Officer: I will make sure that that is added to the vote tally.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): On a point of order, Presiding Officer. I would have voted yes on amendment 6.

The Presiding Officer: I will make sure that that is added to the vote tally.

For

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 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)
 Fraser, Murdo (Mid Scotland and Fife) (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)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

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)
 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)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (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)
 McArthur, Liam (Orkney Islands) (LD)

McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (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)
 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, David (Highlands and Islands) (Lab)
 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) (Ind)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Abstentions

McAlpine, Joan (South Scotland) (SNP)

The Presiding Officer: The result of the division is: For 30, Against 91, Abstentions 1.

Amendment 6 disagreed to.

Section 6—Powers of entry etc with warrant

Amendment 7 not moved.

Section 7—Recording conviction for offence under section 3

Amendment 8 not moved.

Section 8—Forfeiture and disposal of material to which offence relates

Amendment 9 not moved.

Section 9—Individual culpability where organisation commits offence

Amendment 10 not moved.

After section 9

Amendment 11 moved—[Humza Yousaf].

Amendment 11G moved—[Joan McAlpine].

The Presiding Officer: The question is, that amendment 11G be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

The vote is now closed. I ask members to let me know if they were not able to vote.

19:30

Gil Paterson: On a point of order, Presiding Officer. I am sorry about this, but again I was unable to vote. I would have voted no.

The Presiding Officer: Thank you, Mr Paterson. You would have voted no. I will make sure that your vote is added.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Boyack, Sarah (Lothian) (Lab)
 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)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harris, Alison (Central Scotland) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McNeill, Pauline (Glasgow) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 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)
 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)
 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)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McKee, Ivan (Glasgow Provan) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 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)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 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) (Ind)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 51, Against 70, Abstentions 0.

Amendment 11G disagreed to.

Amendment 11B moved—[Johann Lamont].

The Presiding Officer: The question is, that amendment 11B be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

The vote is now closed. Please let me know if you were not able to vote.

Gil Paterson: On a point of order, Presiding Officer. I was not able to vote. I would have voted no.

The Presiding Officer: Thank you, Mr Paterson. You would have voted no. I will make sure that that is added.

For

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 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)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Greene, Jamie (West Scotland) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harris, Alison (Central Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Marra, Jenny (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (Aberdeen Donside) (Ind)
 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, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

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)
 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)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 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)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (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)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McKee, Ivan (Glasgow Provan) (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)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 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) (Ind)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Abstentions

Findlay, Neil (Lothian) (Lab)

The Presiding Officer: The result of the division is: For 36, Against 84, Abstentions 1.

Amendment 11B disagreed to.

Amendment 11C moved—[Johann Lamont].

The Presiding Officer: The question is, that amendment 11C be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

The vote is now closed. Please let me know if you were not able to vote.

Gil Paterson: On a point of order, Presiding Officer. I was unable to vote yet again. I would have voted no.

The Presiding Officer: Thank you, Mr Paterson. You would have voted no. I will make sure that that is added.

Mike Rumbles (North East Scotland) (LD): On a point of order, Presiding Officer. My app seems to have frozen again. I would have voted no.

The Presiding Officer: You would have voted no, Mr Rumbles. I will make sure that that is added.

For

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 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)
 Fraser, Murdo (Mid Scotland and Fife) (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)
 Lamont, Johann (Glasgow) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Marra, Jenny (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McDonald, Mark (Aberdeen Donside) (Ind)
 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, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)

Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

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)
 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)
 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)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lennon, Monica (Central Scotland) (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)
 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)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)

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)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 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) (Ind)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Abstentions

Findlay, Neil (Lothian) (Lab)

The Presiding Officer: The result of the division is: For 34, Against 86, Abstentions 1.

Amendment 11C disagreed to.

Amendment 11D moved—[Johann Lamont.]

The Presiding Officer: The question is, that amendment 11D be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

The vote is now closed. Please let me know if you were unable to vote.

Rachael Hamilton: On a point of order, Presiding Officer. I would have voted yes.

The Presiding Officer: Thank you very much. I will make sure that that is added. You would have voted yes.

Gil Paterson: On a point of order, Presiding Officer. I am afraid that I could not vote again. I would have voted no.

The Presiding Officer: Thank you, Mr Paterson. Your no vote will be added.

Jackie Baillie (Dumbarton) (Lab): On a point of order, Presiding Officer. My vote has not registered, and I would have voted yes.

The Presiding Officer: Thank you, Ms Baillie. I will make sure that your vote is added.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)

Bowman, Bill (North East Scotland) (Con)
 Boyack, Sarah (Lothian) (Lab)
 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)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Griffin, Mark (Central Scotland) (Lab)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harris, Alison (Central Scotland) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McNeill, Pauline (Glasgow) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 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)
 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)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McKee, Ivan (Glasgow Provan) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 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)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 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) (Ind)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the vote is: For 52, Against 69, Abstentions 0.

Amendment 11D disagreed to.

Amendment 11E not moved.

Amendment 11F moved—[Johann Lamont.]

The Presiding Officer: The question is, that amendment 11F be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a one-minute division.

The vote is now closed. Please let me know if you were unable to vote.

Maurice Corry (West Scotland) (Con): On a point of order, Presiding Officer. I would have voted yes.

The Presiding Officer: Thank you, Mr Corry.

Gil Paterson: On a point of order, Presiding Officer—yet again, I would have voted no.

The Presiding Officer: Thank you, Mr Paterson. You would have voted no. I will make sure that that is added.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Boyack, Sarah (Lothian) (Lab)
 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)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Griffin, Mark (Central Scotland) (Lab)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harris, Alison (Central Scotland) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McNeill, Pauline (Glasgow) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)
 Wightman, Andy (Lothian) (Ind)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)

Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 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)
 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)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 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)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 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)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 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)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 52, Against 69, Abstentions 0.

Amendment 11F disagreed to.

Amendment 11 moved—[Humza Yousaf]—and agreed to.

Section 11—Protection of freedom of expression: religion

Amendment 13 moved—[Humza Yousaf]—and agreed to.

Section 12—Protection of freedom of expression: sexual orientation

Amendment 14 moved—[Humza Yousaf].

The Presiding Officer: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

The vote is now closed.

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)
 Ballantyne, Michelle (South Scotland) (Reform)
 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)
 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)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (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)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (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)
 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, David (Highlands and Islands) (Lab)
 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) (Ind)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Balfour, Jeremy (Lothian) (Con)
 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)
 Fraser, Murdo (Mid Scotland and Fife) (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)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

The Presiding Officer: The result of the division is: For 93, Against 29, Abstentions 0.

Amendment 14 agreed to.

Section 13—Interpretation of Part 2

Amendment 34 moved—[Adam Tomkins]—and agreed to.

Amendment 15 not moved.

Section 14—Meaning of the characteristics

Amendment 16 moved—[Humza Yousaf]—and agreed to.

Amendment 17 moved—[Johann Lamont].

The Presiding Officer: The question is, that amendment 17 be agreed to.

Members: No.

19:45

The Presiding Officer: There will be a division.

That vote is now closed. Please let me know if you were not able to vote.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Boyack, Sarah (Lothian) (Lab)
 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)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harris, Alison (Central Scotland) (Con)

Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McNeill, Pauline (Glasgow) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Sarwar, Anas (Glasgow) (Lab)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)
 Wightman, Andy (Lothian) (Ind)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 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)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 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)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)

Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McKee, Ivan (Glasgow Provan) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 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)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 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)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 51, Against 67, Abstentions 0.

Amendment 17 disagreed to.

The Presiding Officer: We have reached the end of voting on group 3. We will now have a short suspension.

I am not sure whether members will consider this good news, but business managers have agreed that we will postpone the debate on the bill until another date, which will probably be tomorrow. However, there are still four groups of amendments to get through, so I would like to consult business managers and any of the main participants in the debate who might wish to join us. I ask them to come down to the well of the chamber in a few seconds to discuss how much progress, or otherwise, we can make tonight. However, we must still have decision time tonight, because a number of important votes must take place.

I suspend the meeting for at least five minutes, after which I will summon members back to the chamber.

19:46

Meeting suspended.

19:56

On resuming—

The Presiding Officer: We are now back in session. I will just update members on where we are. Business managers have agreed to postpone the debate on the bill until tomorrow. However, we

think that we can make progress through the remaining four groups. It is slightly difficult to time things exactly, but we think that we will be able to get through those groups and have decision time before 9 o'clock—that is what we hope. There will be a five-minute pause between the end of consideration of amendments and decision time, to ensure that members are available, because decision time is now quite delayed.

Group 4 is on the characteristic of sexual orientation. Amendment 35, in the name of Johann Lamont, is grouped with amendments 36, 39 and 40.

Johann Lamont: Before I speak to the amendments, I note that Patrick Harvie was concerned that there had been an “extraordinary personal” attack on him. For the avoidance of doubt, I point out that I literally quoted his own words and said that I defended his right to say whatever he wished to say.

Also, in the context of the bill, it is important to note that he is quite right to say that Parliament has a proud record of action on LGBT issues. I recall that when section 2A was debated in the chamber, there were, among those who fought hardest for its repeal, some very brave women, including Wendy Alexander, who was pilloried for her troubles. Therefore, the idea that the group of women whom I represent are funded by the alt-right or conservative American groups is ludicrous. I respect anyone who disagrees with me, but the idea that I or the women whom I speak for are funded by some mysterious deep-state conservative group could not be further from the mark.

Amendments 35 and 36 would amend two of the three definitions in section 14(6), which defines sexual orientation. They would amend subsections (b) and (c), which describe those who are not exclusively same-sex attracted as having a sexual orientation towards people of “a different sex”. The amendments would change “a different sex” to “the other sex”.

Amendments 39 and 40 are consequential, and would make the same change in a proposed new section on police recording. The effect of the amendments would be to put beyond doubt that the legislation is based on the understanding that there are only two sexes. When I raised the issue at stage 2, the cabinet secretary argued that the term “different sex” is needed in order to be inclusive of non-binary persons. That argument concerns me—although, of course, it is essential that we are respectful and inclusive in our legislation.

Section 14(7) of the bill provides that “non-binary” is a “transgender identity”—not a sex. My amendments in group 4 would therefore make

sure that we do not legislate in a way that would confuse sex with gender identity. As we have debated previously—it is a distinction that the cabinet secretary and many of his Cabinet colleagues have made and recognised—we ought not to conflate gender and sex. The cabinet secretary has been clear that he does not want to do that, so I was surprised by his argument at stage 2. I hope on this occasion to hear that the official understanding of sex in Scotland remains that female and male are the only ones that we have.

I move amendment 35.

20:00

John Finnie: The existing bill language—“persons of a different sex”—is consistent with other Scottish legislation over the past decade, including the Marriage and Civil Partnership (Scotland) Act 2014 and the Civil Partnership (Scotland) Act 2020. As I said at stage 2, I was a member of what was then the Equal Opportunities Committee, which scrutinised that legislation, and I do not recall that the issue was a feature in what many will recall was a very rigorous debate. Changing the language would be inconsistent.

I am particularly concerned about unintended consequences, so I will relay the information that the Equality Network and Scottish Trans Alliance have shared with members about that. They said:

“It is likely also to mean that the statutory aggravation could not be applied where a sexual orientation hate crime was committed against a person because they are in a relationship with a non-binary person (that is, because their partner is presumed to be neither of the same sex nor of the other sex to them, but of a different sex). It is important to bear in mind that what matters for the application of the statutory aggravation is the motivation of the attacker, and what the attacker presumes the sexual orientation of the victim is. The actual identity or legal sex of the victim or their partner is not relevant.

Non-binary people are explicitly included in the transgender identity characteristic in the bill, and it is consistent, and important, that their relationships are also included in the sexual orientation characteristic.”

I hope that colleagues will resist Ms Lamont’s amendments in group 4.

Neil Bibby: Amendments 35, 36, 39 and 40 in the group aim to alter the definition of sexual orientation in the bill. I know that members of the Justice Committee discussed that at stage 2 and, as John Finnie said, the language that is currently included in the bill, which refers to “persons of a different sex” is in line with other Scottish legislation such as the Marriage and Civil Partnership (Scotland) Act 2014 and the Civil Partnership (Scotland) Act 2020. As others do, I understand the concerns that have been raised about the need for consistency with other Scottish legislation.

As John Finnie also said, concerns have also been raised that the amendments could lead to unintended legal consequences, whereby some people could, through a narrow change in wording, find themselves losing the protections that are afforded by the bill. That could lead to a situation in which a victim who is in a relationship with a non-binary person, who identifies as being neither male nor female, would not be caught under the proposed new definition. It is important that the bill provides clarity on who is covered by it and what obligations it is placing on people’s speech. By changing the wording as is proposed in the amendments in group 4, we might, unfortunately, lose that clarity.

Humza Yousaf: Presiding Officer, I will be equally brief. I agree with and associate myself with the comments of Neil Bibby and John Finnie.

That is not to dismiss the concerns that Johann Lamont has raised. However, our two arguments have always been about precedent and inclusivity. The point has already been made that precedent is in Scottish legislation that has been passed by the Parliament and which was, in fact, voted for by Johann Lamont.

We have used the term that is used in the bill: “different sex”. The reason why we have done that is to be more inclusive. The term has done, and will do, no harm in legislation. That is not just my view; it is the view of those who support equality—our stakeholders including the Equality Network and Stonewall Scotland. Although I do not dismiss the points that Johann Lamont made, we believe that the bill is using the most inclusive term that includes non-binary people.

Johann Lamont: Of course we wish to be inclusive. Who would not want to be inclusive? However, it is clear in the legislation that non-binary is a transgender identity, not a sex.

If we want a debate in the Parliament about whether there are two sexes, we should have that debate. I am aware that that is a live debate in parts of our community. People believe that sex is on a spectrum and that sex is assigned at birth, not observed. Those are entirely legitimate things for people to argue, but if we want to have that debate we should have it and we should vote on it, so that it is clear.

What is happening here is that we are creating the impression that there are more than two sexes without having the debate on whether that is the case. There is language creep in the bill. When it talks about

“persons of a different sex”,

it means that there are more than two sexes. We know that—yet we know that non-binary people

regard themselves as having a transgender identity. That should be respected.

The case of a person who is targeted for having a preference for non-binary sexual partners has been raised, but section 1(5) already covers that, by providing that an aggravator applies when a person is targeted for offending because of their association with any person with any protected characteristic. Any offending that the person in that case suffered would be recorded as being motivated by prejudice against transgender identity. That would be right. Therefore, we do not need to confuse sex and gender identity to provide for any such case.

I repeat that we do not require to conflate the two terms. The language that I have used is consistent with that of the Equality Act 2010, but since stage 2, to try to be helpful, I have said “the other sex”, rather than what the Equality Act says, which is “the opposite sex”. The same point remains. The fundamental question of whether there are two sexes or whether sex is a spectrum is something that we have to decide. We do not decide it by putting it in a bit of legislation, which will be referred to later.

The minister could have settled the point for me if he had simply said that there are two sexes.

John Mason: I agree with the member’s fundamental argument that there are only two sexes, but I wonder whether this is the best bill to put that in or whether we should put it somewhere else.

Johann Lamont: I think that I made that point. If people think that sex is on a spectrum, they should introduce a bill in that regard and we can vote on it. What is currently happening is that language is being imported into legislation without our having that discussion. Members say that the language is reasonable and sensible and all the rest of it, but then they will discover that people are arguing, “You have already conceded the argument that sex is a spectrum, because—look—here it is in that legislation.”

I emphasise that non-binary people themselves regard themselves as having a transgender identity. We have to respect that.

If a Government minister is not happy saying, in the Parliament, that there are two sexes, how does he expect a high school biology teacher to feel safe doing so? What about a modern studies teacher who is trying to help her class to explore the issues?

It comes back to the point about confusing sex with gender identity. In that confusion, some of the argument about transphobia and hatred emerges. As Adam Tomkins said, the law should be clear. It should not signal; it should be clear. If we want to

make that decision, we should do so. As the law stands, there are two sexes, but people are finding themselves caught up in being reported to the police for saying so.

That is why we need to make laws that are clear and not set precedents that are ambiguous. The language should put beyond doubt that, as a Parliament, we understand that there are only two sexes. I urge members to support amendment 35.

The Presiding Officer: The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division. This is a one-minute division.

That vote is now closed. Please let me know if you were not able to vote.

Johann Lamont: On a point of order, Presiding Officer. I was unable to vote and I would have voted yes. [*Laughter.*] I got carried away.

The Presiding Officer: Thank you very much, Ms Lamont. I will make sure that your vote is recorded.

For

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 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)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Harris, Alison (Central Scotland) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Marra, Jenny (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McAlpine, Joan (South Scotland) (SNP)
 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, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

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)
 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)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Gray, Iain (East Lothian) (Lab)
 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)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lennon, Monica (Central Scotland) (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)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (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)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)

Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 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) (Ind)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Abstentions

Findlay, Neil (Lothian) (Lab)

The Presiding Officer: The result of the division is: For 34, Against 85, Abstentions 1.

Amendment 35 disagreed to.

Amendment 36 moved—[Johann Lamont].

The Presiding Officer: The question is, that amendment 36 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division. This will be a one-minute division.

That vote is now closed. Please let me know if you were not able to vote.

Johann Lamont: On a point of order, Presiding Officer. I was unable to vote and I would have voted yes.

The Presiding Officer: Thank you very much. That will be added to the register.

For

Ballantyne, Michelle (South Scotland) (Reform)
 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)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Harris, Alison (Central Scotland) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Marra, Jenny (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McAlpine, Joan (South Scotland) (SNP)
 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, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)

Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)
 Wightman, Andy (Lothian) (Ind)

Against

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 Kinrossshire) (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)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 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)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lennon, Monica (Central Scotland) (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)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (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)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 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)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Abstentions

Findlay, Neil (Lothian) (Lab)

The Presiding Officer: The result of the vote is: For 34, Against 84, Abstentions 1.

Amendment 36 disagreed to.

The Presiding Officer: Group 5 is on the characteristic of transgender identity. Amendment 37, in the name of Johann Lamont, is grouped with amendment 41.

Johann Lamont: My amendments in the group seek to deal with groups that are covered by the characteristic of transgender identity in section 14(7). Amendment 37 would remove section 14(7)(d) and so remove cross-dressers from the scope of the bill. Amendment 41 is a consequential amendment that would remove the same group from the data collection provision. Paragraphs (a) to (c) of section 14(7), which cover female-to-male and male-to-female transgender people and those who are non-binary are unaffected.

The amendment would have the limited effect of removing people who occasionally cross-dress from the list of those who are covered by an aggravator based on prejudice and the new stirring-up offence. The existing criminal law protects everyone against attack, but the question today is only about which groups we want to send a message, as some have put it, that hatred is especially serious and damaging. I regret that, earlier, I was unable to persuade colleagues to use the bill to recognise the overwhelming scale of hatred that is experienced by women based on their sex.

20:15

The bill also excludes hatred of those living in poverty, even though Lord Bracadale acknowledged clear evidence of verbal abuse,

harassment and physical assaults, particularly against homeless people. The bill also excludes groups such as goths, emos and punks, even though there is evidence of those groups being targeted for serious offending, including at least one case of murder.

Although women, homeless people and goths have been rejected, even in the face of evidence that they are targeted for offending based on prejudice, the Scottish Government has recently confirmed that it holds no evidence that cross-dressers experience it, despite the fact that their inclusion in the Offences (Aggravation by Prejudice) (Scotland) Act 2009 has enabled the collection of data for more than a decade. When the minister said that the Equality Network had provided examples of the group having been targeted for hate crime, it turned out that he meant entirely theoretical examples.

Some arguments have been put forward for including the group in order to avoid leaving a loophole, and I will come back to those arguments in my closing comments. However, it is my strong view that the only reason to include any group in the legislation is that we accept that inclusion is merited in its own terms. It is not a commentary on the crime or the person against whom the crime is perpetrated—we are making judgments about who is included and who is not. Therefore, we should be clear who the provision covers. The cabinet secretary has talked about

“a man who is not a trans woman but wears a dress for a drag performance”.—[*Official Report, Justice Committee*, 2 February 2021; c 39.]

The Equality Network brought up examples of a man dressing up for a night out at “The Rocky Horror Picture Show”, or men who cross-dress for what it terms “emotional need”. When women would be likely to be recognised as cross-dressers is obviously much less clear. In the letter that I sent to colleagues, I mentioned that, when the existing legislation was introduced, at no point was the issue discussed. However, I was prompted by hearing the cabinet secretary’s arguments at stage 2, and I would like us to now have the proper debate that we did not have in 2009. Why do we believe that hatred towards occasional cross-dressers should be covered by the bill but not hatred towards all the other groups that I have mentioned, especially women? I would like to hear colleagues’ answers to that question.

I move amendment 37.

John Finnie: As has been said, amendments 37 and 41 relate to the characteristic of transgender identity and would remove protection from crimes that are targeted at cross-dressing people. That is an existing hate crime, for which the protections have been in place for 10 years. Johann Lamont said that she would return to the

arguments about including the group, and I hope that she does. It is not about how frequently such offences are committed—if one person is made vulnerable, that is one person too many. To remove existing provisions is simply ridiculous.

I will give an example of what might happen if the protection was removed. A person who is accused of a transgender identity-aggravated crime could use an excuse and say, “My motivation was that I disliked that person because I thought they were a cross-dresser. I didn’t know that they were a trans woman or a trans man.” I am keen to hear the response to that point.

The bill is about consolidation and enhancement, not removing existing protections. These are deeply disappointing amendments.

Neil Bibby: Amendments 37 and 41 seek to remove people who cross-dress from the definition of the protected characteristic of transgender identity under the bill. Although it is true that a person who cross-dresses will not be trans simply because they are cross-dressing, as John Finnie said, their status and protection has been included in hate crime legislation for the past decade. I understand that they are included because the removal of such language and protections from the bill would create a potential loophole that would weaken protections for all those who suffer hate crime as a result of their transgender identity.

It is important that, under the legislation, the application of the aggravation is based on the presumption of the offender that the person is a part of the group that is covered by the protected characteristic, and it is that presumption that drove their ill will and malice towards the victim. By removing people who cross-dress from the provision, we could potentially, and unfortunately, introduce a defence that their offending against a trans person was based on their presumption that the person was cross-dressing, not that they were trans. If that belief was accepted by the court, an aggravation could no longer be applied.

Although I understand the points that have been raised, ultimately it is important to ensure that we do not leave open any loopholes in the legislation, which could happen with amendments 37 and 41.

Humza Yousaf: As Johann Lamont has said, the amendments seek to remove people who cross-dress from the definition of transgender identity. Again, I associate myself with the remarks of John Finnie and Neil Bibby. In my view, the amendments would limit the protections that are provided in the bill and remove protections that are already provided in the existing definition of transgender identity in the Offences (Aggravation by Prejudice) (Scotland) Act 2009.

Without existing protection being lost, people who cross-dress are also included in the bill

because they experience hate crime. As the Equality Network noted,

“The amendments could ... create a loophole which would undermine the protection for trans women and trans men”.

John Finnie also made the point well. The Equality Network is concerned that a person who is accused of a hate crime in relation to transgender identity

“could use the excuse, ‘My motivation was that I disliked that person because I thought they were a cross-dresser’”

and not because they were a trans woman or a trans man.

Elaine Smith: I am puzzled about that, and I hope that the cabinet secretary can enlighten me. We include cross-dressers in the bill but we do not include women. What happens if someone says that they did not know that someone was a trans woman and thought that they were a woman? Is that a loophole?

Humza Yousaf: The reverse could also be true. If a woman who was born a woman was the subject of transphobic hate, a transphobia aggravator could be applied, because it was the prejudice that motivated the hatred. That is how an aggravator works—it has always worked in that way. *[Interruption.]* Elaine Smith is saying that she does not understand. I can give a simpler example. If somebody of my colour of skin—

Elaine Smith: On a point of order, Presiding Officer. I do not appreciate anyone in this chamber telling me that I do not understand something. It is not that I do not understand; I want to have clarity and I do not wish to be patronised.

Humza Yousaf: I did not intend to patronise Elaine Smith. I thought that she said, “I don’t understand,” so I offered to provide another example.

The way that an aggravator works is that it depends on the motivation of the prejudice. For example, members might have seen the written submission from Sikhs in Scotland, which said that Sikhs are often targeted for Islamophobic hate. Sikhs are not Muslim, but they are often the target of Islamophobic hate. Therefore, if women are targeted for transphobic hate, they will be covered by a transphobia aggravator. That is how aggravators tend to work.

It is important to stress that, in the bill, cross-dressing is not its own characteristic in the way that it has been portrayed; rather, it is included in the wider definition of transgender identity. That takes into account how people could be targeted for transphobic hate crime due to how they present in public irrespective of their personal sense of gender identity.

As I keep saying, an offence that was committed against someone that was proved to have been aggravated by a prejudice towards cross-dressing would be recorded as an offence aggravated by prejudice against transgender identity. To me, it is clear that prejudice can be based on the fact that a person—a man or a woman—cross-dresses and not on the fact or the presumption that they are trans. Therefore, it is essential that we keep cross-dressing within that definition.

The use of up-to-date and inclusive language is an important overall objective. We are modernising the hate crime bill, and if we were to lose, dilute or weaken any of the protection that is currently afforded to cross-dressing people under the 2009 act, we could not consolidate or modernise the hate crime bill.

I take exception to some members continuing to say that women are not protected by the bill. In saying that, they completely ignore the intersectionality that exists in our society. We know that there is a gendered element to hate crime. Female Muslims are more likely to be subject to religious prejudice than male Muslims, and the same is true of black women, women with a disability and lesbian women. Women are protected by the bill if they are targets of hatred in relation to characteristics that they have or are perceived to have. That highlights the complexity of misogyny and that there is a need for more detailed consideration—as we have said in previous amendments—by the working group, which is chaired by Baroness Helena Kennedy. To suggest that women are not protected at all is to dismiss much of the hatred that many of them are subjected to. I am certain that Johann Lamont and others do not mean to do that, but it is important to put the point about intersectionality on the record.

I therefore ask members to reject amendments 37 and 41.

The Presiding Officer: I call Johann Lamont to wind up on this group.

Johann Lamont: Who knew? It was helpful of the cabinet secretary to explain to me that women of different groups suffer hate. The one thing that they have in common is that they are women.

I heard what John Finnie said about how hurtful it would be to remove cross-dressers from the bill, and I heard his point that we cannot have one person excluded. However, he voted today to exclude women from the bill, despite the fact that we know that women of all races, of all classes and of all disabilities or none suffer from crimes of hatred simply because they are women. He did so and then had the audacity to give me a lecture on being less inconsiderate about people who are cross-dressers.

Let me be clear: I respect people who have a transgender identity, and the bill seeks to protect them. Nobody believes that someone who cross-dresses as a hobby, as a lifestyle or as a matter of emotional need would ever be perceived as being in the same category as transgender people, who, as we have heard, face challenges and difficulties and have the right to respect, the right to healthcare and so on. Frankly, that is to trivialise a serious debate. I know that some people think that I am trivialising it, but I am highlighting that the bill offers more protection to somebody who dresses as a woman in his spare time than it offers to women. That cannot be right.

My colleague Neil Bibby made the point that there is a loophole. If a cross-dressing man was mistaken for a trans woman, the aggravator would apply only under section 1(5), which makes the offender's presumption the relevant factor. However, if a cross-dresser was mistaken for a woman, there would be no offence. The cabinet secretary said that he is concerned about the loophole. However, if somebody who commits a hate crime mistakes a trans woman for a woman, the woman does not have the protection, so the loophole exists whether or not cross-dressing is included in the bill. The loophole exists because the Government has turned its face against including women in the bill until such time as a working group reflects on what we all already know.

I must make this point in conclusion. I am all in favour of trying to understand how we can protect people through the bill. However, in my view, the term "cross-dresses" has been included in the bill not because members have any issue about transgender or do not recognise all those challenges, but because some folk inside the trans activist community talk about what is called a trans umbrella, which includes cross-dressers. We need to decide whether somebody who cross-dresses in their leisure time should be in the same group as trans people, given what we have said about their lives. I think that most people do not think that they should. In fact, if that point is made to people, trans people very often react against it, because they regard it as an offensive term.

The problem that we have is that we are affording greater protection to a group who describe cross-dressing as something that they do in their leisure time, for emotional need or whatever it might be, and who are not saying that they are trans. For the life of me, I cannot understand why we have ended up in that place, but it reflects the problem. If the cabinet secretary is concerned about the loophole, women should have been included in the bill, and then we would not have that problem. There is already an issue that trans women might not have the protection that they might have expected if the defence

against the charge is, "I thought you were a woman and not a trans woman." That is the problem that we have here. It will take more than a working group to undo the damage that has been done by the exclusion of women from hate crime legislation.

The Presiding Officer: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

The vote is now closed. Please let me know if you were not able to vote.

20:30

The Minister for Energy, Connectivity and the Islands (Paul Wheelhouse): On a point of order, Presiding Officer. Unfortunately, my page did not reload and I was unable to vote, but I would have voted no.

The Presiding Officer: Thank you. I will make sure that your vote is added.

For

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 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)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Greene, Jamie (West Scotland) (Con)
 Harris, Alison (Central Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Marra, Jenny (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McAlpine, Joan (South Scotland) (SNP)
 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, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

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)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 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)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lennon, Monica (Central Scotland) (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)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (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)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)

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) (Ind)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Abstentions

Findlay, Neil (Lothian) (Lab)

The Presiding Officer: The result of the division is: For 34, Against 85, Abstentions 1.

Amendment 37 disagreed to.

Amendments 18 and 19 moved—[Humza Yousaf]—and agreed to.

Section 15—Power to add the characteristic of sex

Amendment 20 moved—[Humza Yousaf]—and agreed to.

Amendment 21 moved—[Johann Lamont].

The Presiding Officer: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

The vote is now closed. Any member who was not able to vote should let me know.

Edward Mountain (Highlands and Islands) (Con): On a point of order, Presiding Officer. I was not able to connect to the voting app, but I would have voted no.

The Presiding Officer: Thank you, Mr Mountain. You would have voted no. I will make sure that that is added.

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): On a point of order, Presiding Officer. I would have voted no.

The Presiding Officer: Fergus Ewing would have voted no. Thank you very much, Mr Ewing.

Daniel Johnson (Edinburgh Southern) (Lab): On a point of order, Presiding Officer. The voting app would not let me vote, but I would have voted yes.

The Presiding Officer: Thank you, Mr Johnson. You would have voted yes. I will make sure that that is added, as well.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 Beamish, Claudia (South Scotland) (Lab)

Bibby, Neil (West Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Lamont, Johann (Glasgow) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Macdonald, Lewis (North East Scotland) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 McAlpine, Joan (South Scotland) (SNP)
 McNeill, Pauline (Glasgow) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Sarwar, Anas (Glasgow) (Lab)
 Smith, Elaine (Central Scotland) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, David (Highlands and Islands) (Lab)
 Wightman, Andy (Lothian) (Ind)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Campbell, Aileen (Clydesdale) (SNP)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Corry, Maurice (West Scotland) (Con)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Davidson, Ruth (Edinburgh Central) (Con)
 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)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 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)
 Greene, Jamie (West Scotland) (Con)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harris, Alison (Central Scotland) (Con)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Johnstone, Alison (Lothian) (Green)
 Kerr, Liam (North East Scotland) (Con)

Kidd, Bill (Glasgow Anniesland) (SNP)
 Lindhurst, Gordon (Lothian) (Con)
 Lochhead, Richard (Moray) (SNP)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Mason, Tom (North East Scotland) (Con)
 Matheson, Michael (Falkirk West) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 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)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Tomkins, Adam (Glasgow) (Con)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wells, Annie (Glasgow) (Con)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Whittle, Brian (South Scotland) (Con)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Abstentions

Findlay, Neil (Lothian) (Lab)

The Presiding Officer: The result of the division is: For 24, Against 95, Abstentions 1.

Amendment 21 disagreed to.

Amendment 22 moved—[Humza Yousaf]—and agreed to.

The Presiding Officer: Group 6 is on reports relating to hate crime. Amendment 23, in the name of the cabinet secretary, is grouped with amendments 24, 25, 12 and 27 to 29.

Humza Yousaf: I will speak to amendments 12, 23 to 25 and 27 to 29 in my name. I recognise that the value of the data and evidence on hate crime in Scotland must be improved, because it is not good enough to give us the granular detail that we

need to understand how pervasive hate crime is here in Scotland.

In response to calls from a number of stakeholders, particularly BEMIS, I lodged an amendment at stage 2 requiring Police Scotland to publish disaggregated data on police-recorded hate crime annually. That will provide vital information at the earliest stage of the justice system about which groups are being targeted, alongside key information about victims and perpetrators. We know that underreporting of hate crime is a real problem and an issue that must be tackled. Having the data and evidence to inform our response will be invaluable.

My amendments 27 to 29 will place a duty on the Scottish ministers to publish the reports and on the chief constable to provide information to the Scottish ministers. That will allow flexibility in how those reports are published and will allow, for example, the publication of figures on both police-recorded hate crime and convictions to be brought together in future, if that was deemed appropriate.

Amendment 12 seeks to ensure that disaggregated data on convictions is published annually by the Scottish ministers. It places a duty on the Scottish ministers to consider the information available and to take reasonable steps to obtain that information and to include it in an annual report.

Members will recall that amendments seeking to achieve a similar outcome were lodged at stage 2 by Dean Lockhart. Although I supported the intention behind those amendments, there were some technical issues. I committed to work with Dean Lockhart between stage 2 and stage 3 and I thank both him and Liam Kerr for raising this important matter and for working constructively with the Government.

As I highlighted at stage 2, the courts are currently unable to provide disaggregated data. The Scottish Courts and Tribunals Service has told us that its system cannot record the disaggregated data in the way that we need it. Amendment 12 is therefore drafted to ensure a degree of flexibility and does not place any restrictions on how the information will be provided to Scottish ministers to include in a report; for example, the information might come from systems that Police Scotland maintains on behalf of justice partners. I am delighted that the Crown Office and Procurator Fiscal Service, the SCTS and Police Scotland have committed to work together and with us to determine how best to ensure that Scottish ministers are provided with the relevant disaggregated data that we will need in future. I thank them for their valuable engagement to date.

Amendments 23 to 25 ensure that the enabling power to add sex to the bill can also be used to make provision relating to the publication of both police-reported data and convictions data in relation to the targeting of the characteristic of sex, should that characteristic be added to the hate crime legislative framework in future. If that were to be the case, I would want to ensure that we would also be required to publish data about convictions as well as data on police-recorded crime in which victims were targeted because of their sex.

Amendment 24 is a technical amendment that better aligns the enabling power with the provisions on police-recorded crime and convictions data. It amends

“is to be included in reports”

to

“may require to be included in reports”,

and it does so because the information may not always be available in such detail for every recorded crime or conviction. If sex were to be added in future, the amendments would enable the regulations to specify which information relating to the characteristic of sex is required to be included in a report on police-recorded hate crime, where it is available.

Amendments 23 to 25 are important, because they will enable vital information to be provided on which groups are being targeted, information about the age, sex, ethnicity and national origins of victims and perpetrators, and further information on convictions. Underreporting of hate crime is a key issue that must be tackled: having the data and evidence to inform our response will be key to ensuring that that is effective and provides the necessary support for victims.

I move amendment 23.

Pauline McNeill: I asked to speak on group 6 because I want to ask the cabinet secretary about his rationale for amendment 24. It seeks to amend the phrase

“the information relating to the characteristic of sex which is to be included in reports”

by changing “is” to “may require”. I agree with the minister that one of the benefits over the many years for which we have had an aggravation to a substantial offence in law has been that it has enabled us to collate relevant statistics on crime. The publication of police reports that break down that information is essential.

However, amendment 24 gives me the impression that the cabinet secretary might be diluting any requirement to collate statistics on the basis of sex. I ask him to confirm when he sums up on the group that that is not the intention. I

want to be clear that, if we get to a point where there is a new law or a sex aggravator is included, statistics will be collated on the basis of sex. The reason for my concern about that is not just my perspective on violence against women. It is important to recognise that young men, for example, are often the victims of crimes for which there is not necessarily an aggravator.

The cabinet secretary proposes the wording “may require”, which suggests that information may be included where it is available. I would have preferred wording that required the information to be included in all cases. To remove the word “is”, which is definite, and replace it with “may require” seems to make the provision looser. It would be helpful if the cabinet secretary could make clear the circumstances in which the information will be included in reports. I hope that he can reassure me on the purpose of amendment 24 and what he is seeking to do.

Johann Lamont: The cabinet secretary said that, basically, we will start to gather the information if a sex aggravator is included. Earlier, however, he explained to me clearly that women suffer hate crime in a whole range of ways, whether they are disabled women, Muslim women or whatever. As has been said, groups that represent Muslim women have made the point that it is important to record those crimes against Muslims on the basis of sex because that clearly tells us something about the nature of that ghastly form of Islamophobia. I certainly do not need to lecture the cabinet secretary on this, but women are seen as being very visible targets for abuse.

For those reasons, I cannot for the life of me work out why the cabinet secretary is not going to record the sex of people who are victims of hate crimes. The protected characteristic of sex may not be included at present, but it is really important to understand the way in which hate crime expresses itself. I made the point about Muslim women. It may be the same for disabled women—I do not know—but I cannot for the life of me work out why we are now diluting the requirement. I obviously have other concerns about the bill, but it seems that the cabinet secretary’s amendments in the group will dilute it further and delay even more our ability to understand the experience of women who face hate crimes.

The Presiding Officer: I invite the cabinet secretary to conclude on group 6.

Humza Yousaf: I simply make the point that the bill’s provisions and the duties that it places on the Scottish ministers will require us to report on the sex of the victim and the perpetrator. As I mentioned in my remarks—I hope that this gives Pauline McNeill a level of comfort—the only reason for the change in language is that all the information that we would like to publish may not

be available. If we put a duty on ourselves such that its publication will be required, but the data is not available, we would technically be in breach of that duty. The amendment will give us a little more flexibility.

Johann Lamont: Would the fact that we asked in law for the information to be collated not make it more likely that the information would be collated? Does legislation not drive the information that we gather? The cabinet secretary said that it might not be possible to make the information available, but does it not in fact work in the opposite direction?

Humza Yousaf: Nobody is saying that there is not a duty. There is a duty on ministers to publish the information. That is why the Scottish Courts and Tribunals Service, Police Scotland and so on will update their systems. I may have misheard Ms Lamont, but I clarify that the police will record the sex of the victim where it is known and will include that in the report. That information was included in the deep dive on hate crime that we published last month.

I hope that that gives some degree of comfort to Pauline McNeill and Johann Lamont. This is not an attempt to wriggle out of or water down any duty; it is simply ensuring that we have a little bit of flexibility in case we cannot get the information that we are looking for straight away. We certainly commit to go into real detail about the sex of the victims and perpetrators where that is known, as the deep dive did last month—I will be happy to send that to any member. I hope that that gives some element of comfort.

Amendment 23 agreed to.

Amendment 24 moved—[Humza Yousaf].

20:45

The Presiding Officer: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

The vote is now closed. Members should please let me know if they were unable to vote.

Gordon Lindhurst (Lothian) (Con): On a point of order, Presiding Officer. I tried to vote, but for some reason my voting app did not work. I would have voted no.

The Presiding Officer: Thank you, Mr Lindhurst. You would have voted no. I will make sure that that is added to the vote tally.

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)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 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)
 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)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 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)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 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) (Ind)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Boyack, Sarah (Lothian) (Lab)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Carlaw, Jackson (Eastwood) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Griffin, Mark (Central Scotland) (Lab)
 Harris, Alison (Central Scotland) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McAlpine, Joan (South Scotland) (SNP)
 McNeill, Pauline (Glasgow) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

The Presiding Officer: The result of the division is: For 70, Against 49, Abstentions 0.

Amendment 24 agreed to.

Amendment 25 moved—[Humza Yousaf]—and agreed to.

Amendment 26 not moved.

After section 15

The Presiding Officer: Group 7, which is our last group, is on the characteristic of age. Amendment 38, in the name of Margaret Mitchell, is grouped with amendment 42.

Margaret Mitchell (Central Scotland) (Con): During the scrutiny of the bill, there was significant

discussion about the inclusion of age as a characteristic and the issue of vulnerability.

In its evidence at stage 1, the Crown Office and Procurator Fiscal Service stated:

“Prosecutorial experience is that there are relatively few cases of age hostility”.

The Justice Committee concluded:

“the approach to this issue should be one based on vulnerability and not age.”

That is a view that I support and set out in probing amendments at stage 2.

We are where we are, and the cabinet secretary’s view has prevailed. Under the bill, age-related offences will be prosecuted on the basis of prejudice. In recognition of that, amendment 38 provides that, when considering whether an offence has been committed under sections 1 to 3, regard must be given to the vulnerability of the victim, including whether the victim is a child or an older person. The drafting of the amendment recognises that both young people and older people can be the victims of age-related crime.

Legitimate concerns have been raised about how our criminal justice system responds to cases that involve children and the elderly, and their treatment as victims or witnesses. By providing that regard must be given to the vulnerability of the victim, it is hoped that the special measures afforded to victims and witnesses under the Vulnerable Witnesses (Scotland) Act 2004 and the Victims and Witnesses (Scotland) Act 2014 could also be available to victims and witnesses under sections 1 and 3 of the bill. That would include, for example, the ability of a victim to record their evidence as soon as possible after the alleged offence has been committed, when the details are fresh in their mind. Furthermore, that recorded account would then be provided as evidence without the victim having to appear at any hearing or court case, which could be many months or even years later. Crucially, they would not have to continually repeat their account of what happened many times to different people, perhaps becoming frustrated and, in some cases, if the victim is elderly, even more unsure of themselves and confused.

Amendment 42, which is supported by Age Scotland, would place a duty on ministers to raise awareness of the inclusion of age as a characteristic under the bill. That would aid public understanding of the new age-related hate crime offence and what it means in practice for victims, whether old or young. The amendment recognises that legislation alone may help but cannot guarantee change. A campaign would help to address concerns that have been expressed that other crimes against older people ought to be part of wider awareness of support that could be

offered, as suggested by the Law Society of Scotland, through helplines, systems and guidelines to assist those who work with older people in reporting crimes. In effect, such a campaign would promote and highlight the advantages of a holistic approach to the work that is already being done under current strategies.

On that basis, I hope that the cabinet secretary will feel able to support both amendments in my name.

I move amendment 38.

Humza Yousaf: I will do my best to be brief. I have a one-and-a-half-year-old who does not sleep, and it is getting dangerously close to my bedtime, so I will try to be quick.

Members: Aw!

Humza Yousaf: That is more sympathy than my wife gives me. I thank members for that.

As Margaret Mitchell has said, amendment 38 would add a new section to the bill that would impose a duty on, among others, the police, the Crown Office and the courts to have regard to the vulnerability of the victim in considering whether, for the purposes of sections 1 and 3 of the bill, an offence had been committed in relation to the characteristic of age.

I am pleased that we are having a debate about Margaret Mitchell’s amendments, but the Government cannot support them. Ultimately, that is because, although we recognise that people can be targeted for their vulnerability, hate crime is quite different. I have said on the record that I am absolutely committed to exploring in future the area of vulnerability under the criminal law, but we cannot try to insert such provisions in a hate crime bill. Fundamentally, Lord Bracadale agreed that an offence that targets vulnerability is not motivated by hatred, and hatred is exactly what we are looking at in a hate crime bill.

Crimes that are motivated by seeking to take advantage of a person’s actual or perceived vulnerability are not crimes that are motivated by prejudice—that is, they are not, essentially, hate crimes. To include a new statutory aggravation for offences that take advantage of a person’s actual or perceived vulnerability simply would not fit within legislation that is fundamentally about offences that are committed as a result of prejudice. The focus of the bill can be seen in its long title, which includes the wording

“to make provision about the aggravation of offences by prejudice”.

Having age as a characteristic in hate crime law and considering separate criminal law reforms in respect of vulnerability are, of course, not mutually exclusive, but vulnerability does not belong in hate

crime legislation. People might be targeted for their age because somebody is motivated by hatred of the elderly or of people who are younger, but prejudice by vulnerability is not a hate crime category on its own.

The provisions in amendment 38 also apply for the purposes of sections 1 and 3, so that

“When considering whether an offence has been committed in relation to the characteristic of age, regard must be had to the vulnerability of the victim”.

The provision then provides that an assessment of vulnerability includes having regard to whether the victim is

“under the age of 16, or ... An older person.”

There are no offences created under section 1 of the bill. As we know, having debated it, section 1 provides for a number of statutory aggravations, including age, that can be added to the general offences. There is no consideration of whether an offence has been committed under section 1, and, as such, the amendment is technically deficient, because there are no offences under section 1.

The concept of stirring up hatred relates to groups who are associated with the characteristics, who can be victimised as a result of the effect of stirring up hatred, but the offences in section 3 are not offences against an individual victim. To make sense, amendment 38 would seem to require a specific individual victim of the offence, so the amendment is technically deficient on that basis as well.

Although I am committed to looking at the area of vulnerability under the criminal law, for practical policy reasons and because of its clear technical deficiencies, I ask members not to support amendment 38.

Amendment 42 would place a duty on Scottish ministers to promote public awareness and understanding of offences under the bill that are related to the characteristic of age. We are absolutely committed to raising awareness and promoting the new protections that we hope that the bill will introduce, once it passes. That will include marketing campaigns as well as updated guidance and educational tools, which we will work on in partnership with stakeholders.

I am very supportive of the principle behind amendment 42, but I do not think that it is necessary or, to be frank, advisable to place such a narrow duty on ministers to raise awareness for offences against one characteristic as opposed to all the characteristics. Instead, a more holistic approach will achieve the intention behind Ms Mitchell’s amendment, as well as securing wider engagement once the bill is, as we hope, passed and commenced.

Therefore, although I appreciate the intention behind Margaret Mitchell’s amendments 38 and 42, I encourage members to oppose them.

The Presiding Officer: Ms Mitchell, do you wish to wind up on the group?

Margaret Mitchell: I have set out my arguments. Given the lateness of the hour and the work that we still have to get through, I am content to leave it at that and let members make up their own minds when it comes time for those decisions.

The Presiding Officer: Thank you. We will go straight to the question. The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

The vote is now closed. Members should please let me know if they were not able to vote.

For

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 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)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Greene, Jamie (West Scotland) (Con)
 Harris, Alison (Central Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Lindhurst, Gordon (Lothian) (Con)
 Mason, Tom (North East Scotland) (Con)
 McArthur, Liam (Orkney Islands) (LD)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Rennie, Willie (North East Fife) (LD)
 Rumbles, Mike (North East Scotland) (LD)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)
 Wishart, Beatrice (Shetland Islands) (LD)

Against

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)
 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)
 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)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (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)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 McNeill, Pauline (Glasgow) (Lab)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 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, David (Highlands and Islands) (Lab)
 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) (Ind)
 Yousaf, Humza (Glasgow Pollok) (SNP)

21:00

The Presiding Officer: The result of the division is: For 33, Against 87, Abstentions 0.

Amendment 38 disagreed to.

After section 10

Amendment 12 moved—[Humza Yousaf]—and agreed to.

Section 15A—Publication of reports by police on recorded hate crime

Amendments 27 and 28 moved—[Humza Yousaf]—and agreed to.

Amendments 39 to 41 not moved.

Amendment 29 moved—[Humza Yousaf]—and agreed to.

After section 15A

Amendment 42 moved—[Margaret Mitchell].

The Presiding Officer: The question is, that amendment 42 be agreed to. Are we agreed?

Members: No. *[Interruption.]*

The Presiding Officer: The lights going out are part of the Parliament's energy-saving measures. I am sure that members approve.

We will move to the division on amendment 42.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Boyack, Sarah (Lothian) (Lab)
 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)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)

Griffin, Mark (Central Scotland) (Lab)
 Harris, Alison (Central Scotland) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McArthur, Liam (Orkney Islands) (LD)
 McNeill, Pauline (Glasgow) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Rennie, Willie (North East Fife) (LD)
 Rumbles, Mike (North East Scotland) (LD)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)
 Wishart, Beatrice (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 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)
 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)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)

Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Smith, Elaine (Central 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) (Ind)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 54, Against 67, Abstentions 0.

Amendment 42 disagreed to.

Schedule 1—Offences relating to stirring up hatred: information society services

Amendment 30 moved—[Humza Yousaf]—and agreed to.

Schedule 2—Modifications of enactments

Amendment 31 not moved.

The Presiding Officer: That ends consideration of amendments. We still have decision time to come. I have a few items to go through and then we will have a short suspension to make sure that everybody is here for decision time.

First, as members will be aware, at this point in the proceedings, I am required under standing orders to decide whether, in my view, any provision of the Hate Crime and Public Order (Scotland) Bill relates to protected subject matter—that is, whether it modifies the electoral system and franchise for Scottish parliamentary elections. The bill does no such thing, so it does not require a supermajority to be passed at stage 3.

I am also minded to accept a motion without notice from the cabinet secretary to move the

stage 3 debate on the Hate Crime and Public Order (Scotland) Bill to a later day.

Motion moved,

That, under Rule 9.8.5C, the remaining Stage 3 proceedings on the Hate Crime and Public Order (Scotland) Bill be adjourned to a later day.—[*Humza Yousaf*]

Motion agreed to.

We still have to have decision time, which will include a number of important votes. I will therefore suspend business to ensure that everyone is here, given that decision time has been delayed.

Decision time will be at 10 past 9. [*Interruption.*] Is that too long a break? Okay—I will move it to 8 minutes past 9. There will now be a three-minute suspension to ensure that everyone is on board for that time.

21:05

Meeting suspended.

21:09

On resuming—

Financial Services Bill

The Presiding Officer (Ken Macintosh): We will have a number of items to get through at decision time, even without the Hate Crime and Public Order (Scotland) Bill. Before we come to that, the next item is consideration of legislative consent motion S5M-24324, on the Financial Services Bill.

Motion moved,

That the Parliament agrees that the relevant provisions of the Financial Services Bill, introduced in the House of Commons on 21 October 2020, relating to amendments to the Anti-terrorism, Crime and Security Act 2001 and the Proceeds of Crime Act 2002, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.—[*Humza Yousaf*]

Counter-Terrorism and Sentencing Bill

21:10

The Presiding Officer (Ken Macintosh): The next item is consideration of legislative consent motion S5M-24323, on the Counter-Terrorism and Sentencing Bill.

Motion moved,

That the Parliament agrees that the relevant provisions of the Counter-Terrorism and Sentencing Bill, introduced in the House of Commons on 20 May 2020, relating to Scottish Ministers' executive competence with regard to the release of terrorism offenders from custodial sentences, should be considered by the UK Parliament.—[*Humza Yousaf*]

Business Motion

21:10

The Presiding Officer (Ken Macintosh): The next item is consideration of business motion S5M-24339, on a business programme. I ask Miles Briggs to move the motion on behalf of the Parliamentary Bureau.

Motion moved,

That the Parliament agrees—

(a) the following programme of business—

Tuesday 16 March 2021 (Hybrid)

2.00 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Topical Questions

followed by Ministerial Statement: COVID-19

followed by Ministerial Statement: Global Capital Investment Plan

followed by Stage 3 Proceedings: United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill

followed by Committee Announcements

followed by Business Motions

followed by Parliamentary Bureau Motions

6.00 pm Decision Time

followed by Members' Business

Wednesday 17 March 2021 (Hybrid)

1.00 pm Parliamentary Bureau Motions

1.00 pm Members' Business

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

followed by Ministerial Statement: ScotRail

followed by Ministerial Statement: Scotland's Testing Strategy – Update

followed by Stage 3 Proceedings: Domestic Abuse (Protection) (Scotland) Bill

followed by Standards, Procedures and Public Appointments Committee Debate: Urgent SPCB Questions

followed by Standards, Procedures and Public Appointments Committee Debate: Public Petitions System Changes

followed by Standards, Procedures and Public Appointments Committee Debate: Equalities and Human Rights Committee Remit

6.20 pm Decision Time

followed by Members' Business

Thursday 18 March 2021 (Hybrid)

12.30 pm Parliamentary Bureau motions

12.30 pm	First Minister's Questions	<i>followed by</i>	Business Motions
2.30 pm	Parliamentary Bureau Motions	<i>followed by</i>	Parliamentary Bureau Motions
2.30 pm	Portfolio Questions: Economy, Fair Work and Culture	<i>followed by</i>	Approval of SSIs (if required)
<i>followed by</i>	Scottish Government Debate: Local Government Finance Order	6.20 pm	Decision Time
<i>followed by</i>	Scottish Government Debate: National Mission to Reduce Drug Deaths and Harms		
<i>followed by</i>	Standards, Procedures and Public Appointments Committee Debate: Changes to Private and Hybrid Bill Procedures		
<i>followed by</i>	Standards, Procedures and Public Appointments Committee Debate: Changes in Relation to Revised Accompanying Documents for Emergency Bills		
<i>followed by</i>	Standards, Procedures and Public Appointments Committee Debate: Changes to the Financial Scrutiny Provisions		
<i>followed by</i>	Business Motions		
<i>followed by</i>	Parliamentary Bureau Motions		
<i>followed by</i>	Approval of SSIs (if required)		
5.35 pm	Decision Time		

Tuesday 23 March 2021 (Hybrid)

2.00 pm	Time for Reflection		
<i>followed by</i>	Parliamentary Bureau Motions		
<i>followed by</i>	First Minister's Statement: COVID-19 Reflections and Next Steps		
<i>followed by</i>	Topical Questions		
<i>followed by</i>	Stage 3 Proceedings: European Charter of Local Self-Government (Incorporation) (Scotland) Bill		
<i>followed by</i>	Stage 3 Proceedings: Tied Pubs (Scotland) Bill		
<i>followed by</i>	Committee Announcements		
<i>followed by</i>	Business Motions		
<i>followed by</i>	Parliamentary Bureau Motions		
7.20 pm	Decision Time		
<i>followed by</i>	Members' Business		

Wednesday 24 March 2021 (Hybrid)

12.30 pm	Parliamentary Bureau Motions		
12.30 pm	First Minister's Questions		
2.30 pm	Parliamentary Bureau Motions		
2.30 pm	Portfolio Questions: Education and Skills; Health and Sport; Communities and Local Government		
<i>followed by</i>	Stage 3 Proceedings: Dogs (Protection of Livestock) (Amendment) (Scotland) Bill		
<i>followed by</i>	Motion of Thanks		

followed by Business Motions

followed by Parliamentary Bureau Motions

followed by Approval of SSIs (if required)

6.20 pm Decision Time

(b) that, for the purposes of Portfolio Questions in the week beginning 8 March 2021, in rule 13.7.3, after the word "except" the words "to the extent to which the Presiding Officer considers that the questions are on the same or similar subject matter or" are inserted.—[*Miles Briggs*]

Motion agreed to.

Parliamentary Bureau Motions

21:10

The Presiding Officer (Ken Macintosh): The next item is consideration of seven Parliamentary Bureau motions. I ask Miles Briggs, on behalf of the Parliamentary Bureau, to move motions S5M-24341 to S5M-24346, on approval of Scottish statutory instruments, and motion S5M-24347, on committee meeting times.

Motions moved,

That the Parliament agrees that the Rural Support (Controls) (Coronavirus) (Scotland) Regulations 2021 (SSI 2021/72) be approved.

That the Parliament agrees that the Health Protection (Coronavirus) (International Travel) (Managed Accommodation and Testing) (Scotland) Regulations 2021 (SSI 2021/74) be approved.

That the Parliament agrees that the Registers of Scotland (Fees) Amendment Order 2021 [draft] be approved.

That the Parliament agrees that the Trade in Animals and Related Products (EU Exit) (Scotland) (Amendment) Regulations 2021 [draft] be approved.

That the Parliament agrees that the Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021 [draft] be approved.

That the Parliament agrees that the Criminal Justice (Scotland) Act 2003 (Supplemental Provisions) Order 2021 [draft] be approved.

That the Parliament agrees that, under Rule 12.3.3B of Standing Orders, the COVID-19 Committee, Education and Skills Committee, Finance and Constitution Committee, Local Government and Communities Committee, Public Petitions Committee and Rural Economy and Connectivity Committee can meet, if necessary, at the same time as a meeting of the Parliament between 1.00 pm and 2.00 pm on Wednesday 17 March 2021.—[*Miles Briggs*]

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

Decision Time

21:11

The Presiding Officer (Ken Macintosh): The first question is, that motion S5M-24250, in the name of Miles Briggs, which is a motion of no confidence, be agreed to.

Richard Lyle (Uddingston and Bellshill) (SNP): On a point of order, Presiding Officer. It is motion S5M-24260.

The Presiding Officer: It is indeed motion S5M-24260. I thank Richard Lyle very much for that—I need my glasses.

I will start again. The first question is, that motion S5M-24260, in the name of Miles Briggs, which is a motion of no confidence, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Boyack, Sarah (Lothian) (Lab)
 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)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Griffin, Mark (Central Scotland) (Lab)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harris, Alison (Central Scotland) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McArthur, Liam (Orkney Islands) (LD)
 McNeill, Pauline (Glasgow) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)

Rennie, Willie (North East Fife) (LD)
 Rumbles, Mike (North East Scotland) (LD)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)
 Wightman, Andy (Lothian) (Ind)
 Wishart, Beatrice (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (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)
 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)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)

Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (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)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division on motion S5M-24260, in the name of Miles Briggs, which is a motion of no confidence, is: For 57, Against 65, Abstentions 0.

Motion disagreed to.

The Presiding Officer: The next question is, that motion S5M-24321, in the name of Jeane Freeman, on the University of St Andrews (Degrees in Medicine and Dentistry) Bill, be agreed to. As this is legislation, members should cast their votes now.

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)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Reform)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Boyack, Sarah (Lothian) (Lab)
 Briggs, Miles (Lothian) (Con)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Campbell, Aileen (Clydesdale) (SNP)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Corry, Maurice (West Scotland) (Con)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Davidson, Ruth (Edinburgh Central) (Con)
 Denham, Ash (Edinburgh Eastern) (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)
 Fraser, Murdo (Mid Scotland and Fife) (Con)

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)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Greer, Ross (West Scotland) (Green)
 Griffin, Mark (Central Scotland) (Lab)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harper, Emma (South Scotland) (SNP)
 Harris, Alison (Central Scotland) (Con)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lochhead, Richard (Moray) (SNP)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 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)
 Mason, Tom (North East Scotland) (Con)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 McNeill, Pauline (Glasgow) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 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)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Stewart, Kevin (Aberdeen Central) (SNP)

Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Tomkins, Adam (Glasgow) (Con)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wells, Annie (Glasgow) (Con)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Whittle, Brian (South Scotland) (Con)
 Wightman, Andy (Lothian) (Ind)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the vote on motion S5M-24321, in the name of Jeane Freeman, on the University of St Andrews (Degrees in Medicine and Dentistry) Bill, is: For 122, Against 0, Abstentions 0.

Motion agreed to,

That the Parliament agrees that the University of St. Andrews (Degrees in Medicine and Dentistry) Bill be passed.

The Presiding Officer: The next question is, that legislative consent motion S5M-24324, in the name of Humza Yousaf, on the Financial Services Bill, be agreed to.

Motion agreed to,

That the Parliament agrees that the relevant provisions of the Financial Services Bill, introduced in the House of Commons on 21 October 2020, relating to amendments to the Anti-terrorism, Crime and Security Act 2001 and the Proceeds of Crime Act 2002, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.

The Presiding Officer: The next question is, that legislative consent motion S5M-24323, in the name of Humza Yousaf, on the Counter-Terrorism and Sentencing Bill, be agreed to.

Motion agreed to,

That the Parliament agrees that the relevant provisions of the Counter-Terrorism and Sentencing Bill, introduced in the House of Commons on 20 May 2020, relating to Scottish Ministers' executive competence with regard to the release of terrorism offenders from custodial sentences, should be considered by the UK Parliament.

The Presiding Officer: I propose to ask a single question on seven Parliamentary Bureau motions. The question is, that motions S5M-24341, S5M-24342, S5M-24343, S5M-24344, S5M-24345, S5M-24346 and S5M-24347 be agreed to.

Motions agreed to,

That the Parliament agrees that the Rural Support (Controls) (Coronavirus) (Scotland) Regulations 2021 (SSI 2021/72) be approved.

That the Parliament agrees that the Health Protection (Coronavirus) (International Travel) (Managed

Accommodation and Testing) (Scotland) Regulations 2021 (SSI 2021/74) be approved.

That the Parliament agrees that the Registers of Scotland (Fees) Amendment Order 2021 [draft] be approved.

That the Parliament agrees that the Trade in Animals and Related Products (EU Exit) (Scotland) (Amendment) Regulations 2021 [draft] be approved.

That the Parliament agrees that the Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021 [draft] be approved.

That the Parliament agrees that the Criminal Justice (Scotland) Act 2003 (Supplemental Provisions) Order 2021 [draft] be approved.

That the Parliament agrees that, under Rule 12.3.3B of Standing Orders, the COVID-19 Committee, Education and Skills Committee, Finance and Constitution Committee, Local Government and Communities Committee, Public Petitions Committee and Rural Economy and Connectivity Committee can meet, if necessary, at the same time as a meeting of the Parliament between 1.00 pm and 2.00 pm on Wednesday 17 March 2021.

The Presiding Officer: That concludes decision time. I thank members for their forbearance. We will be back tomorrow for First Minister's question time at 12.30.

Meeting closed at 21:16.

This is the final edition of the *Official Report* for this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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