



OFFICIAL REPORT
AITHISG OIFIGEIL

Meeting of the Parliament

Thursday 9 January 2020

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

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Scottish Parliament

Thursday 9 January 2020

[The Presiding Officer opened the meeting at 11:40]

General Question Time

National Health Service (Staffing Levels)

1. Bill Kidd (Glasgow Anniesland) (SNP): To ask the Scottish Government what the impact might be on NHS staffing levels in Scotland from the reported drop in the number of European Union citizens applying to live and work in the UK. (S5O-03975)

The Cabinet Secretary for Health and Sport (Jeane Freeman): Data from the Office for National Statistics reveals that European Union migration has fallen by 85,000 since the 2016 referendum.

With just under 6 per cent of our medical workforce, 5 per cent of nurses and midwives, 10 per cent of dentists and 5.5 per cent of adult social care staff coming from the EU or the European Economic Area, that decline is of significant concern.

Curtailling the free movement of EU nationals in the United Kingdom as a result of Brexit will have potentially serious consequences for the recruitment and retention of health and social care workers in Scotland.

Bill Kidd: Does the cabinet secretary agree that the issue underlines the difficulty that Brexit poses in unduly causing the loss of qualified and skilled individuals from our dedicated public services workforce?

Jeane Freeman: Indeed, I do. As my colleague Michael Russell said yesterday, it is important to emphasise—yet again—that it is in our interest to attract people from across the EU to visit, work, study and live in Scotland. Freedom of movement is not a burden for us but a boon, and we should not celebrate its ending.

In addition, the UK Government's current approach on immigration will not serve Scotland well. The majority of jobs in the social care sector are likely to fall below the estimated income threshold, with current average salaries indicating that between 30 and 40 per cent of staff in those roles will earn less than that threshold. Along with the ending of EU nationals' freedom of movement, that will damage our health and social care service at a time of anticipated additional demand. The immigration proposals from the UK Government will not assist us at all; they simply underline not

only that we should not be leaving the European Union but that immigration policy should be in the hands of this Parliament.

Stirling and Clackmannanshire City Region Deal

2. Keith Brown (Clackmannanshire and Dunblane) (SNP): To ask the Scottish Government whether it will provide an update on the Stirling and Clackmannanshire city region deal. (S5O-03976)

The Cabinet Secretary for Transport, Infrastructure and Connectivity (Michael Matheson): The Scottish Government shares the frustration of regional partners in having the Stirling and Clackmannanshire city region deal finalised.

On 19 December, following the general election, I wrote to Alister Jack, the returning Secretary of State for Scotland, urging him to agree to sign the deal on 22 January, which is the date that is being held by regional partners for signing the deal. I have yet to receive a response from Mr Jack, although my officials continue to engage in pursuit of that date.

Keith Brown: As the cabinet secretary will be aware, as part of the heads of terms, Clackmannanshire was allocated £8 million in capital funds by the UK Government, which it stated had to be fully committed to projects within a year. A year ago, the local decision-making body, the Clackmannanshire commission, submitted its preferred projects to the UK Government and has been waiting for a final decision ever since.

Does the cabinet secretary agree that it is completely unacceptable, particularly as we head towards the full deal sign-off, that the council and local organisations are still waiting to find out how the funding will be allocated, which leaves them unable to progress with the in-depth business cases that will be required to access those funds?

Michael Matheson: I fully agree with Keith Brown that that is entirely unacceptable. Regional partners are eager to develop their full business cases in order to make sure that they can deliver inclusive economic growth across Clackmannanshire and Stirling as part of the deal. As has been stated, the UK Government has set aside £8 million for capital investment projects as part of the deal.

Clackmannanshire Council and other regional partners have engaged as fully as one could expect with the UK Government, but even though we are reaching the final days of preparation for the signing of the deal, the UK Government has not yet conveyed any decision on the issue. That is unacceptable. My officials will continue to work

with regional partners on the matter, and we will continue to pursue the UK Government on the details of the fund.

Mark Ruskell (Mid Scotland and Fife) (Green): Given that only one fifth of the city region deal funding across Scotland is intended to support transport priorities, how will the cabinet secretary ensure that the spending supports both climate emergency measures and inclusive economic growth opportunities? In particular, will he rule out supporting the new Viewforth link road through the deal while ruling in support for reopening the Stirling-Alloa-Dunfermline rail route?

Michael Matheson: Funding through city deals and growth deals is only one aspect of investment in infrastructure and other projects in local authorities and regions. We have a whole range of funding streams providing different funding activities, including those to help to reduce the use of transport, either through active travel or through alternative means. For example, the Stirling and Clackmannanshire deal includes some £7 million of additional active travel funding to support the greater use of walking and cycling and to encourage the use of low-carbon transport. An additional £17 million is being provided for Scotland's international environment centre in order to provide a space in which to conduct cutting-edge research into tackling global environmental challenges.

The Stirling and Clackmannanshire deal is a good example of measures that are being taken to tackle climate change. It sits alongside the wider measures that we are taking outwith city and growth deals.

Dean Lockhart (Mid Scotland and Fife) (Con): Does the cabinet secretary welcome the plans for a UK Government-funded international tartan innovation centre to be located in the centre of Stirling as part of the city region deal? The centre will showcase the unique history of tartan and will greatly benefit the local economy in Stirling.

Michael Matheson: I welcome the investment that has been made by the UK Government and the £17 million that has been invested by the Scottish Government in the Scotland's international environment centre, the digital district and the regional digital hub programme. I also welcome the culture, tourism and heritage investments of some £15 million that have been made by the Scottish Government.

Having said that, I would like the UK Government to get round to signing the deal. Despite repeated attempts to get the UK Government to come to a finalised agreement on the deal, we have not been able to make progress on the matter. I hope that the member will encourage his colleagues at Westminster to get

their act together and to get the deal signed so that the partners can get on with delivering it.

Falkirk and Grangemouth Investment Zone (Discussions)

3. Angus MacDonald (Falkirk East) (SNP): To ask the Scottish Government when it last discussed the Falkirk and Grangemouth investment zone with the United Kingdom Government. (S5O-03977)

The Cabinet Secretary for Transport, Infrastructure and Connectivity (Michael Matheson): I discussed the Falkirk growth deal with the UK Government during a call with the Secretary of State for Scotland on 19 September. I wrote to Mr Jack in October, urging him to provide clarity on the UK Government's intended investment in the deal. I have yet to receive a response.

Next week, I will participate in a Falkirk and Grangemouth investment zone conference hosted by Falkirk Council. I will take the opportunity to reinforce the Scottish Government's commitment to a growth deal for Falkirk and will press the UK Government to confirm its intended level of investment in the deal.

Angus MacDonald: It is disappointing to hear that Alister Jack has not responded. The cabinet secretary will be aware of the clear wish of Falkirk Council—which we all share—to see the matter move forward at pace. He will also be aware of Falkirk Council's climate emergency declaration and its ambition for Grangemouth to be a zero-carbon town by 2030. Given that Grangemouth is home to some of Scotland's highest CO₂ emitting industries, does the cabinet secretary agree that Falkirk Council should be given every assistance to reach that goal and that the Falkirk and Grangemouth investment zone deal must take cognisance of the need to achieve net zero CO₂ emissions by 2030 and net zero emissions of all greenhouse gases by 2045?

Michael Matheson: I have been encouraged by the submission by Falkirk Council and its partners in relation to the proposed deal. Although, at this stage, we are not in a position to commit to individual projects, the deal could be transformational through its impact in reducing emissions. Officials will continue to work with local partners on the development of the proposals.

The Scottish Government is working in partnership with the energy-intensive industries to build on the considerable existing strengths of industry across Scotland and to highlight the fact that the industrial decarbonisation route also presents significant economic investment opportunities. We will continue to co-ordinate activity across partners and will engage with

Scottish Enterprise and Falkirk Council in pursuing the skills and expertise that will be required in relation to the important Grangemouth industrial cluster.

I assure the member that we will continue to do all that we can to make progress on the issue. I will continue to engage with Falkirk Council and other partners to make progress on the deal.

Queen Elizabeth University Hospital (Independent Review)

4. Anas Sarwar (Glasgow) (Lab): To ask the Scottish Government whether it will provide an update on the independent review of the issues at the Queen Elizabeth university hospital. (S5O-03978)

The Cabinet Secretary for Health and Sport (Jeane Freeman): The independent review of the Queen Elizabeth university hospital, which is co-chaired by Dr Andrew Fraser and Dr Brian Montgomery, remains on track to deliver its report by spring 2020.

The review has heard evidence from whistleblowers and a wide range of staff, and it will now hear evidence from hospital managers and contractors. Although Lord Brodie will determine the proceedings of the public inquiry and how it will gather evidence, I anticipate that the inquiry team will be able to consider the review's published findings as a key piece of evidence for its work.

Anas Sarwar: During the Christmas recess, it was revealed that the Scottish Government was informed of Milly Main having contracted *Stenotrophomonas* at the time, in 2017; that the health board failed to report Milly's death to the procurator fiscal; and that, more recently, the health board has been issued with a notification of contravention letter and an improvement notice by the Health and Safety Executive in relation to the ventilation system and to its failure to protect high-risk patients who were vulnerable to infections. There is a connection to that and the water supply.

Parents, staff and the public do not trust the board, so they are looking to the cabinet secretary. Will she take this opportunity to respond to those revelations and set out what steps are being taken?

Jeane Freeman: As Mr Sarwar knows, one of the principal steps that is being taken is the escalation of the health board to level 4, which involves Scottish Government direct intervention and leadership, under the leadership of Professor Fiona McQueen, our chief nursing officer.

I met the oversight board this morning to get its update on the progress of the work that it is undertaking in three critical areas. It is looking at

the immediate issues in relation to infection prevention and control, which involves a detailed, case-by-case review from 2015 to date. Its second workstream involves direct engagement with parents and families, and it is involving those individuals in its work. The third area relates to technical issues.

The oversight board and the work that it is undertaking are specific responses to the escalation to level 4; I informed Parliament of the escalation and the issues that led to it. Running parallel to that is the independent review that Mr Sarwar asked about, and the public inquiry.

As I said in December, I intend to make a statement to Parliament by the end of this month on the progress made by the oversight board and the engagement and involvement of families in all those matters.

As I said, the independent review is on track to report in the spring. In the coming weeks, I intend to come back to the Parliament to advise members of the terms of the remit for the public inquiry and its stand-up date, having first consulted with families and party spokespeople on that remit, as I have already committed to do.

All that work is under way. I completely appreciate the significant level of interest that those families and the wider public—understandably and rightly—have in the matter. I assure everyone in the chamber, and Mr Sarwar in particular, that I continue to be involved daily in understanding and driving the work that we need to drive, in order to receive answers to many of these questions and to ensure that, going forward, all the necessary steps are being taken to ensure that infection prevention and control—across the campus but particularly for the most vulnerable groups—is of the standard that we require.

Miles Briggs (Lothian) (Con): Will the cabinet secretary confirm whether all reports have now been shared with the Scottish Government and with all the reviews that are being undertaken?

NHS Greater Glasgow and Clyde has announced that it is taking legal action against the contractor. What advice have Scottish ministers given to the board on that issue? What advice are ministers also giving to NHS Lothian, given the situation at Edinburgh's sick kids hospital?

Jeane Freeman: I confirm that all the reports that we are aware of have now been shared with the Scottish Government, including the AECOM report. That report has not yet been published, but it is the basis on which NHS Greater Glasgow and Clyde received the legal advice that it is now progressing. I have told the board that it needs to get legal advice on how quickly it can publish the AECOM report so that it becomes public, and that, if any parts of it require to remain private because

they may impact on the success or otherwise of the board's court action, it should be clear about what those parts are. I hope to understand the board's position on that in the coming weeks so that the report can be published. At that point, I believe that all relevant reports and pieces of information will be in the public domain, and known to the Scottish Government and, therefore, to the oversight board.

The legal advice that NHS Greater Glasgow and Clyde received on whether there are grounds for a potential court action on particular aspects is entirely for the board, as the contract holder, to receive. The Scottish Government has no locus in providing, or intervening in, that legal advice, although of course we require to be made aware of it.

As to how that may impact—or not—on NHS Lothian and its contract, I know that the board of NHS Lothian is aware of the issues in Glasgow. It will take its own view and seek its own legal advice, again as the holder of the contract. At this point, I am not aware from NHS Lothian of any particular decisions that it may have made in that regard. However, I would expect to be made aware, and, again, for that information to be in the public domain.

The Presiding Officer (Ken Macintosh): Question 5 has not been lodged.

Glasgow City Council (Support for Homelessness)

6. **Johann Lamont (Glasgow) (Lab):** To ask the Scottish Government what its position is on whether Glasgow City Council has received appropriate support from the ending homelessness together fund. (S5O-03980)

The Minister for Local Government, Housing and Planning (Kevin Stewart): We have set aside £32.5 million of the Government's £50 million ending homelessness together fund to support local authorities with the implementation of their rapid rehousing transition plans and housing first.

Glasgow City Council received £301,000 to develop its rapid rehousing transition plan in 2018-19, and £1,332,000 to implement its plan in 2019-20. In 2020-21, we plan to award Glasgow £1,237,000, which will go towards the implementation of its transition plan. Confirmation of that funding is subject to the outcome of the Scottish Government's spending review and parliamentary approval of the 2020-21 Scottish budget.

That funding is in addition to the budget that is available to local authorities to support homelessness work. We will continue to work with all councils on our shared goal of ending

homelessness and supporting people right across Scotland.

Johann Lamont: That was a long response, but it did not answer my question.

I am sure that the minister will be aware that a report from Glasgow City Council highlighted that, although the council has received funding for its rapid rehousing transition planning, it is

"significantly less than what we"—

that is, the council—

"bid for to enable us to meet all of the targets set out in our plan".

That report also recommended writing to the Scottish Government in relation to future funding arrangements.

Does the minister recognise that, without sufficient funding, the homelessness crisis in Glasgow cannot be tackled effectively? Will the minister respond to Glasgow's request? Will he accept that the persistent and disproportionate cuts to Glasgow City Council have had a massive impact on its ability to support vulnerable people? As housing minister, what representations has he made to the finance secretary to ensure that local services are fully funded and that the Scottish Government's policy on homelessness is more than lip service?

Kevin Stewart: Our policy to tackle homelessness in Scotland is much more than lip service. I point out to Johann Lamont that we put in place the £50 million ending homelessness together fund before we received the homelessness and rough sleeping action group's recommendations about what was required to tackle homelessness in Scotland. We put the money where it was required, and we will continue to do that.

On the rapid rehousing transition moneys, I took soundings from local authorities across Scotland. That is why the initial £15 million that was put into that work became £24 million. The purpose of that money is to allow local authorities to transform their services. It is additional money, beyond the moneys that they should already be spending on homelessness services. I hope that local authorities, including Glasgow, will take advantage of that additional money, transform services and help end homelessness in Scotland.

First Minister's Question Time

12:00

Education (Exam Results)

1. Jackson Carlaw (Eastwood) (Con): In September, while publicly berating Opposition critics, the Cabinet Secretary for Education and Skills privately commissioned his officials to probe the increasing failure rate in higher exams. Will the First Minister publish their findings today?

The First Minister (Nicola Sturgeon): We will publish findings that the Parliament should be aware of as and when we have them.

I take issue with what Jackson Carlaw has just said, because on 27 November the Deputy First Minister informed this Parliament's Education and Skills Committee of the analysis that he intended to carry out on the 2019 Scottish Qualifications Authority results. I do not think that the Deputy First Minister can be held responsible if the Tories are incapable of paying attention to what is going on in Parliament. *[Interruption]*.

Jackson Carlaw: Although it is not something that I encourage, I always defend people's right to express their view if they have the opportunity to do so.

Actually, I was not on my feet fast enough, because I had not realised that that was it from the First Minister. I see that she intends to begin this year in the same slippery fashion that she ended the last one. It was not only the Conservatives; it seems that the whole world misunderstood what the cabinet secretary said.

To take the spin out of the First Minister's answer, let us give the facts. In August of last year, we learned that the number of students achieving A to C grades in highers had fallen. Mr Swinney promptly attacked us for daring to suggest that that revealed that something might be wrong with his handling of education. Then, over Christmas, we learned that—at the same time—he had asked his officials to find out what is going wrong.

Yesterday, in a letter to the shadow education secretary, Liz Smith, Mr Swinney declared that he does not need to explain himself to this Parliament because there is nothing new to say—that is what he said in his letter. I know that education is no longer the Government's number 1 priority, but does that not smack of arrogance—even to the First Minister?

The First Minister: I gently suggest that perhaps Liz Smith should have a go at explaining things better to Jackson Carlaw, because Jackson Carlaw has stood up in the chamber and

suggested—as the Tories also did over the recess—that John Swinney secretly commissioned an analysis of the 2019 exam results.

John Swinney has pointed out, and I have done so again today, that he informed the Education and Skills Committee on 27 November that he had asked for such an analysis. I think that Jackson Carlaw should reflect on the premise of the question that he is asking me today. The Deputy First Minister also informed the committee that, following that analysis, partners have been asked to look at further work to support learning and teaching through a number of actions. As that work progresses, its outcomes will be shared with the committee and with Parliament. As I understand, it may be for that reason—although Jackson Carlaw can correct me if I am getting this wrong—that the Tories withdrew their request for a parliamentary statement this week, when that information was pointed out to them.

On wider performance, we know that there is more work to be done in Scottish education, which is why it remains this Government's top priority. However, attainment is increasing. The percentage of school leavers who are getting a level 5 qualification, such as a national, has increased from 71 per cent when we took office to 85—almost 86—per cent now. Also, the number who are getting a higher qualification has increased from less than half to almost two thirds. Lastly, for the first time ever, more than 30 per cent of pupils are achieving at least, or more than, five passes at higher level, which is up from just over 20 per cent in 2009. We also see the attainment gap reducing.

That is the progress that has been made in Scottish education. It is down to the hard work of teachers, pupils and parents across the country, and it is the progress that we will focus on continuing to make.

Jackson Carlaw: So, spin to the first question, denial to the second—spin and denial; the twin pillars of this Government. Of course, we all pay tribute to the teachers, students and parents, who are working hard, but let us return to the issue at hand. The education secretary asked a fair question of his officials: what does the falling pass rate for highers tell us about the health of education in this country? Therefore, let me put that question to the First Minister, and give her the opportunity to explain. What does a drop in that pass rate tell us about education? What does a record low in programme for international student assessment—PISA—scores tell us about school performance? What does the declining school subject choice tell us about her Government's record?

The First Minister: I have just set out a range of statistics that reflect the real performance of Scottish education. I can understand why Jackson Carlaw chose not to listen to those, because they do not suit the argument that he is making. However, let us not gloss over the issue at hand, which, of course, was the subject of his first question. He might want to call it spin, but he has stood up in this chamber and repeated an accusation against the Deputy First Minister that was made during the recess and which is flatly wrong. That is not acceptable, and I do not think that Jackson Carlaw should get away with it. I think that he should perhaps reflect on that and take the opportunity to apologise for it.

We will continue to focus on the progress that is being made. On the day that this year's exam results were published, the Deputy First Minister recognised that there had been a fall in the overall pass rate for highers, although it remains very high. However, in general, we saw a strong set of exam results, with three quarters of candidates attaining a pass at higher grades A to C; more than a quarter of candidates achieving a grade A at higher; and an increase in entries and pass rates across national 5, including a rise in passes for English and maths. Coupled with the statistics that I gave Jackson Carlaw in my previous answer, I think that that performance shows improvement. I want to see more improvement, which is why we will get on with the job at hand and leave Jackson Carlaw and the Tories floundering around making baseless accusations.

Jackson Carlaw: So, basically, the Deputy First Minister's position is, "I am just so misunderstood"—so misunderstood, in fact, that journalists, students, teachers and parents all misunderstood what he said.

The issue is simple. Clearly, there is something wrong with our education system. Parents know it, teachers know it, students know it and, in private, the education secretary knows it, too. The problem is that, when it comes to action, we have a First Minister and an education secretary who are more concerned with hiding their record than with admitting to it and correcting it.

Presiding Officer, 2020 will be the year that this Government's diabolical domestic record on education will come home to roost—a year when we will see the Scottish National Party Government put its own survival in the light of events before the priorities of the people.

Having promised five years ago that education would be her number 1 priority, is it not time for the First Minister to make it exactly that?

The First Minister: Of course, just a matter of weeks ago, the people got their opportunity to cast their verdict on the performance of this

Government, and I think that we all know how that ended up.

I say this seriously to Jackson Carlaw: I think that the only people who have misunderstood anything are the Scottish Tories. Of course, I am being charitable when I say that, because, actually, I think that what the Tories are doing is not misunderstanding but misrepresenting, and they should be apologising for it.

Jackson Carlaw says that the Deputy First Minister, the Government and I are seeking to hide our record. Here is what the Deputy First Minister said on the day that the exam results were published:

"there has been a fall in the overall pass rate."

That does not strike me as an attempt to hide the matter.

Jackson Carlaw then said that, having denied that fact, the Deputy First Minister somehow commissioned in secret an analysis of why the pass rate had fallen. What I have told him today—and what the Deputy First Minister told Liz Smith earlier this week—is that the Deputy First Minister informed the Education and Skills Committee of that on 27 November. Perhaps it is the Scottish Conservatives who need to wake up and pay a bit more attention. This Government will get on with the job of improving performance in Scottish education, and perhaps Jackson Carlaw needs to think about making a less stuttering start to 2020.

Home Care Services (South Lanarkshire)

2. Richard Leonard (Central Scotland) (Lab): On 17 December 2019, the Care Inspectorate served an improvement notice on South Lanarkshire Council's home care service for Hamilton, Larkhall and Blantyre. Inspectors found that the hard-working staff were feeling overwhelmed, stressed and frustrated, that care users were anxious, frightened and stressed, and that the service was "chaotic and disorganised". The council must make changes by the end of the month or face the real prospect of the Care Inspectorate cancelling the service registration. Does the First Minister accept that that situation is entirely without precedent in South Lanarkshire? What will happen to those of our most vulnerable people who depend on those vital home care services if the council's registration is cancelled?

The First Minister (Nicola Sturgeon): It is the council's responsibility to take the actions that the Care Inspectorate has recommended or instructed it to take, and to ensure that what Richard Leonard has outlined today does not happen. The reason why we have the Care Inspectorate is to ensure that we have the highest standards of care across the country. It is important that that system works properly and robustly.

The responsibility of the Government is to ensure that we work with councils in the provision of health and social care and that we do so in a more integrated way than has been the case in the past. We are also responsible for properly funding local government services, as best we can within the resources at our disposal. That is why the local government budget increased in real terms in this financial year. The Government will continue to work with councils to ensure that they deliver the services that elderly people and everybody else across the country have a right to expect.

Richard Leonard: On 20 December 2019, just three days after serving the improvement notice on the Hamilton service, the Care Inspectorate issued a report on South Lanarkshire Council's home care service for Rutherglen and Cambuslang. It was another damning report. Inspectors highlighted practices that they said were

“unsafe for both services users and care staff.”

Care users and their families are entitled to hold those who are responsible for the mismanagement of care services to account.

It has been almost five years since the integration of health and social care and still the system is not working. This week, Scotland's councils have warned that this Government's cuts have put their budgets at breaking point and community services at risk. Will the First Minister accept that the responsibility, of course, lies with councils such as SNP South Lanarkshire Council but also with the SNP Government?

The First Minister: If Richard Leonard had listened to my previous answer, he would have heard me talk about the responsibility of councils and of the Government. Our biggest responsibility is to work effectively in partnership.

As I said, the reason why we have a Care Inspectorate is to ensure that we have the highest standards of care across the country. It is right and proper that the Care Inspectorate should look at service provision and, where it considers it appropriate, make recommendations. The clear responsibility of any council is to respond to and address those recommendations. I would expect South Lanarkshire Council to do exactly that.

With regard to the responsibility of my Government, the integration of health and social care is an important reform that is helping to deliver improvements in the delivery of social care. We are also investing significantly more resources into social care services and will continue to make that a priority.

Within the confines of a budget that has been reduced over the past decade by a Conservative Government at Westminster, which Richard

Leonard and his colleagues appear to be content to allow to make the big decisions about budgets in Scotland, we have delivered a real-terms increase in local government budgets in this financial year. Of course local government works under pressure. This Government also works under financial pressure, but we will continue to work with councils to ensure that the delivery of local services is the priority and has the priority that it deserves.

Richard Leonard: Let us fix on responsibility. The Government is responsible for quadrupling the cuts to local government over the past 10 years. The claims of the Convention of Scottish Local Authorities are backed up by Audit Scotland, which reported at the end of last year that 19 integration joint boards across Scotland required a financial bailout, and just over a year ago we warned that acute pressures on social care services meant that they were reaching breaking point. Now we have care services in the constituency of the Minister for Older People and Equalities being served with an improvement notice. Is it not time that Scotland had a Government that properly valued care services? Is it not time that Scotland had a Scottish care service that was properly resourced, had consistent standards and had compassion for both staff and care users—one that meets their needs and respects their rights?

The First Minister: As I said to Jackson Carlaw, the people in Scotland have very recently had an opportunity to cast a verdict on the performance of this Government. They did that and we know the outcome of it.

Let us look in detail at local government funding. If we look at the time at which this year's budget was set and take health out of the equation, because I think that all of us—even the Tories, although their policies do not quite match their rhetoric—accept that health should be protected, we see that the Scottish Government's resource budget will be 7.8 per cent lower in real terms this year than it was in 2013-14. If we look at our funding to local government, we see that we have managed to keep the pressure on local government beneath that figure, so in relative terms we have protected local government. Local government budgets have increased in recent years but, because of the deep austerity over the past decade, there has been a reduction in those budgets over that time. However, it is less in Scotland than it is in Labour-controlled Wales.

Members: Oh!

The First Minister: Labour does not like this, but there has been 6.2 per cent pressure in Scotland while over the same period there has been 11.5 per cent pressure in Labour-controlled Wales. In a very difficult financial circumstance,

this SNP Government is doing more to protect local government than Labour has managed where it has the responsibility. That might help to explain why the people of Scotland cast the verdict that they did in December in the general election.

The Presiding Officer (Ken Macintosh): We have a couple of constituency supplementaries.

Drumbrae Care Home

Alex Cole-Hamilton (Edinburgh Western) (LD): Last year, my constituent Malcolm Muirhead died after losing a stone and a half in a month while residing at the Drumbrae care home, which is run by the City of Edinburgh Council. A social work report raised concerns that he was being washed only once a week, in a sink, and that he had bloated and infected feet and overgrown nails. The home was closed to new admissions. This week, an unannounced visit by the Care Inspectorate found serious concerns about staff competence, the distribution of medication and the treatment of residents. The care home will be deregistered in February if improvements are not made. Does the First Minister agree that that is symptomatic of a crisis in social care in our country and that our constituents have a right to expect a higher standard of care from public sector homes?

The First Minister (Nicola Sturgeon): Let me certainly agree in part with Alex Cole-Hamilton: what he has described is completely unacceptable. I believe that residents of care homes and their families have an absolute right to expect better standards than those that he has outlined in the very tragic case of Malcolm Muirhead. Where I do not agree—a disagreement that I express sincerely—is that it is, to use his words,

“symptomatic of a”

wider

“crisis in social care”.

Social care is under pressure, as are healthcare and public services, because of the austerity—*[Interruption.]* Labour members are shouting, “Whose fault is that?” The architects and authors of austerity are the Tories at Westminster, previously helped by the Liberal Democrats. That is whose fault it is. It is to escape that that I take a very different view on the future of the Scottish Parliament from other parties in the chamber. We will continue within a very constrained budget, as I have outlined in detail today, to take the action that protects health and social care as best we can. That is what we have done and what we will continue to do.

NHS Lothian (Neurology Services)

Neil Findlay (Lothian) (Lab): In October, I raised with the First Minister the case of my constituent who has been waiting for an operation. She has severe neurological pain, has been off work for a very long time and has to take 48 tablets a day to try to alleviate the agony that shoots through her head and face every few seconds.

Following my question, the Cabinet Secretary for Health and Sport wrote to me, saying:

“there is no suggestion of any kind that the delay to the new department of clinical neurosciences has anything to do with the case of your constituent”

and that my

“constituents’ case would be resolved by NHS Lothian.”

Well, my constituent’s case still has not been resolved by NHS Lothian. She remains in agony, has had her operation cancelled again and has again been told by NHS Lothian officials that that is due to a lack of staff and a lack of theatre space because of the debacle around the sick kids hospital and the neurology centre.

Will the First Minister take this opportunity to speak directly to my constituent—who is watching this session—and give her some hope that her living hell will end soon?

The First Minister (Nicola Sturgeon): When any individual does not get the standard of care that they have the right to expect from the national health service, I always apologise to them readily, and I will do that to Neil Findlay’s constituent.

As Neil Findlay has said, he raised the issue before, and the health secretary wrote to him. Neil Findlay and his constituent clearly and understandably do not consider that the issue has been resolved. I will therefore ask the health secretary today to look again at this issue and liaise with NHS Lothian, and respond as quickly as possible to Neil Findlay once she has had an opportunity to do so. *[Interruption.]*

The Presiding Officer: We will have a short suspension.

12:21

Meeting suspended.

12:21

On resuming—

The Presiding Officer: We will resume First Minister’s question time.

Public Transport

3. Patrick Harvie (Glasgow) (Green): The Government often quotes the work of Professor Philip Alston, the United Nations rapporteur on extreme poverty and human rights. His report said:

“Transport ... should be considered an essential service, equivalent to water and electricity, and the government should ... ensure that people living in rural areas are adequately served.”

We are a long way off from that vision. Since devolution, bus fares have almost doubled, so it is no surprise that passenger numbers are down by 15 per cent. Many of Scotland’s communities are so poorly served that people feel that they have no choice but to drive, and the situation is getting worse, not better.

We can change that. Scottish Green proposals to give councils the power to run local bus services, which could improve reliability and fares, were included in the recent Transport (Scotland) Act 2019. What practical help is the Scottish Government giving to our local councils to help them use those powers?

The First Minister (Nicola Sturgeon): We have given local government those powers and it is for local government to decide how to use them. As on any other use of powers, we will always be open and willing to discuss with local government how we can support it to do that.

I and the Scottish Government very much want to see an increase in people using our bus services, not just in rural parts of the country, although that is particularly important, but across all parts of the country. That is why one of the key commitments in last year’s programme for government was the £500 million investment in improving bus infrastructure. Patrick Harvie is right that sometimes the barrier is cost, but often the barrier is a lack of convenience and flexibility. We want to improve that and, through the range of policies that we are undertaking, that is what we are determined to do.

Patrick Harvie: That £500 million on infrastructure is welcome, but it is spread over a very long period and it is a fraction of what the Government is spending on new road capacity.

We all know that transport in Scotland is unfair, unhealthy, costly and pushing carbon emissions up, when they should be coming down. We urgently need to ensure that public transport is always the cheapest and most convenient option for people.

With First Group moving out of its United Kingdom bus operations, there is a clear opportunity across Scotland, including in Glasgow and Aberdeen, to bring those services back into public ownership, but that will not happen without

clear, proactive support from the Scottish Government. It is time to end the power of the private operators who cherry pick the profitable routes, and instead build a public transport system that works for the public interest.

Will the First Minister be bold and ensure that that happens across Scotland, in urban and rural areas alike, so that all communities can be served by a quality integrated transport network that is fit for the 21st century?

The First Minister: We have already taken important action in that regard. The Transport (Scotland) Act 2019, which Patrick Harvie referred to, made important steps in the right direction by giving new powers to local government. Alongside that, as I mentioned in my previous answer, we will deliver transformational long-term funding for better bus infrastructure. Importantly, that is in addition to the £260 million that we invest in bus services every year. I absolutely agree that we need a convenient, flexible, integrated bus service that is much easier and more convenient for people to use. The bus partnership fund will deliver that step change to improve the offer that buses can make.

Patronage on our buses has been declining for a long time; in fact for my entire lifetime, and probably before that—at least since the 1960s. We need to turn that around by making sure that bus services are affordable, convenient and flexible for people to use. That is exactly what we are determined to do through legislation and additional funding.

Heathrow Expansion Plans

4. Willie Rennie (North East Fife) (LD): The memorandum of understanding between Heathrow airport and the Scottish Government supports 40 new long-haul flights, the growth of domestic flights and a £10 discount for every domestic passenger for 20 years.

It is a plan for the expansion of the airline industry, and it is fully endorsed by this Scottish Government. Last May, the First Minister promised me that she would review the Scottish Government’s support for Heathrow’s expansion following the recommendations of the United Kingdom Committee on Climate Change. What was the outcome of that review?

The First Minister (Nicola Sturgeon): Across the Government, we are still reviewing policies as part of the process of updating the climate change action plan. The cabinet discussed the progress that we are making towards that plan just this week. When we set out our plan across aviation and a range of the Government’s responsibilities, we will set out what we need to do differently. I remind Willie Rennie that when Heathrow last

came to a vote in the House of Commons, Scottish National Party MPs did not vote for it. As a Scottish Government, we are not in control of the decision about a third runway at Heathrow, but if it is going ahead, then Scotland should seek to maximise the economic impact and benefit of it.

The climate emergency, the updated advice from the Committee on Climate Change, our responsibilities to not just meet, but exceed, the obligations in the Paris agreement, mean that we need to review all that. That is exactly what the Government is doing with a rigorously and vigorously open mind. Some of what comes out of that process will be challenging, and I would bet my life that some members in this chamber—hopefully not Willie Rennie, based on the tenor of his question—will oppose some of what we have to do to meet our climate change obligations. We are absolutely determined that, having set those world-leading targets, we have to take the action now to ensure that we can meet them and lead the world by example.

The Presiding Officer: Thank you. We have some further supplementary questions—*[Interruption.]* Apologies, Mr Rennie. *[Interruption.]* That was my fault, not Mr Rennie's.

Willie Rennie: The SNP does not want to hear the question, Presiding Officer, and we know why.

This is months on, First Minister. Is the Scottish Government still reviewing the case for support for Heathrow expansion? This is urgent—it is a crisis right now. If her MPs have not supported it at Westminster, why is the First Minister still supporting Heathrow expansion here in Scotland?

Climate change has brought Zambia to the brink of famine. Australia has been burning since September. The ice caps continue to melt. Yet the First Minister continues to support Heathrow expansion. When COP26 delegates come to Glasgow, will the First Minister be able to look them in the eye and say that she is doing everything that she can on climate change?

The First Minister: Yes. Let me go back to a really important point. Unless I am remembering this incorrectly—I do not think that I am—the Liberal Democrats voted for the Climate Change (Emissions Reduction Targets) (Scotland) Bill a matter of weeks ago. The 2019 act puts a responsibility on the Scottish Government to introduce an updated draft climate change plan within six months of the act receiving royal assent—which is by the end of April. We are going through that process right now to ensure that we come forward with a comprehensive plan of action to meet the targets in the 2019 act. That is the right and responsible way for a Government that is determined to tackle climate change to behave.

When we propose the plan, I hope that Willie Rennie will have the courage of his convictions. Before he reminds me, I know that this is First Minister's question time, and he is rightly posing questions to me, but, equally, I could ask him why, in the light of the climate change crisis that we face, his party still opposes policies such as the workplace parking levy, which is a way of trying to get people out of their cars. All of us across the chamber and across society have big questions to ask of ourselves and to answer, and this Government will not be found wanting. I am not sure that the same can be said of Opposition parties when it comes to the detail of this debate.

Non-Domestic Rates (Scotland) Bill

Kenneth Gibson (Cunninghame North) (SNP): Does the First Minister share my concern that amendment 9 to the Non-Domestic Rates (Scotland) Bill, which was agreed to at stage 2 by Green, Tory and Labour MSPs, will abolish uniform non-domestic rates and lead to the loss of more than £300 million of rates relief to businesses across Scotland each and every year. Does she agree that Parliament should seek to reverse amendment 9 when we get to stage 3, as is being advocated by the Scottish Retail Consortium, the Union of Shop, Distributive and Allied Workers, the Federation of Small Businesses and many others?

The First Minister (Nicola Sturgeon): I strongly agree. Amendment 9, which removes uniform business rates, will make it virtually impossible for the Government to continue to provide the support that we currently provide to small businesses. Kenny Gibson has outlined the breadth and depth of opposition to the amendment. I do not think that any member in any party in the chamber can claim to be on the side of small businesses the length and breadth of our country if they do not vote to reverse the amendment at the next opportunity. I hope that members across Parliament will reflect very seriously on that.

New Year's Day Trading

Jackie Baillie (Dumbarton) (Lab): The First Minister might be aware that the Union of Shop, Distributive and Allied Workers—the retail workers union—was campaigning outside Parliament today to end new year's day trading for large stores. Many retail workers in Scotland had to work on 1 January instead of spending time with their families. Parliament has already put in place legislation covering Christmas and new year's day trading that would stop large stores from opening, but the new year's day provisions have not been implemented. Will the First Minister commit to backing USDAW's calls, to consulting on new

year's day trading and to giving shop workers the festive break that they deserve?

The First Minister (Nicola Sturgeon): Shop workers deserve a festive break such as the rest of us get the benefit of. I commit to looking very carefully at the USDAW campaign. I absolutely understand the motivations that are driving the campaign, and I will consider what further steps the Government can take to address those concerns. When I have had the opportunity to do that, I will be happy to ask the relevant minister to reply in detail to Jackie Baillie.

**Prestwick Airport
(Use by United States of America Military)**

Ross Greer (West Scotland) (Green): The First Minister has been critical of the American Government's escalation of military conflict with Iran. Has she taken the one measure that is available to the Scottish Government to restrict such escalation? Has the Scottish Government taken any steps to restrict the US military's use of Prestwick airport, which the Government owns on behalf of the Scottish public?

The First Minister (Nicola Sturgeon): Prestwick airport, of course, operates commercially and at arm's length from the Scottish Government. If it did not do so, we would not be able to keep it open, as we have done.

We expect Prestwick airport to operate ethically, as we do of any company. The Government will continue to speak up for international law and human rights, whether that is in the context of the recent very worrying developments in Iran or in a wider context.

European Union (Withdrawal Agreement) Bill

Gillian Martin (Aberdeenshire East) (SNP): Yesterday, the Scottish Parliament voted overwhelmingly to refuse consent to the UK Government's European Union (Withdrawal Agreement) Bill. If, as we expect it will, Westminster now presses ahead and legislates in devolved areas without the consent of the Scottish Parliament, what will be the implications for the devolution settlement and our democracy?

The First Minister (Nicola Sturgeon): The refusal of the Scottish Parliament to consent to Westminster's withdrawal agreement bill reflects the strong opposition of the people of Scotland to Brexit, which was reaffirmed as recently as the general election in December.

We are now in a situation in which the vast majority of people in Scotland do not want Brexit. This Parliament has refused to give its consent to the legislation that is facilitating Brexit. If added to that is the situation—which I think, sadly, Gillian Martin is right to anticipate—of the Westminster

Government continuing to ride roughshod over the views of this Parliament and the wider Scottish public, that will demonstrate that the United Kingdom, as it is currently constituted, cannot accommodate the differing views of people in Scotland. The lesson that I take from that is that people of Scotland deserve the opportunity to choose a different future—to become an independent country and to protect our place in the European Union.

Proposed Glasgow Metro Rail System

5. George Adam (Paisley) (SNP): To ask the First Minister whether she will provide an update on the proposed Glasgow metro rail system that will connect Glasgow airport to the rail network. (S5F-03831)

The First Minister (Nicola Sturgeon): Improving connectivity for the region is a priority of the Glasgow city region deal, to which the Scottish Government has committed £500 million of the total £1.13 billion.

We are committed to improving connectivity to Glasgow airport. In the 2019 programme for Government we welcomed the Glasgow connectivity commission report and committed to consideration of a Glasgow metro as part of the second strategic transport projects review. That review is the largest strategy in transport appraisal for a decade. Work on it is under way, and it will make recommendations in early 2021 on the transport interventions that are required to deliver the priorities and outcomes of the new national transport strategy.

In addition to that, Transport Scotland officials have already committed to working with the relevant local authorities to inform the on-going appraisal of the metro proposal.

George Adam: Connectivity to Glasgow airport has been debated for many years. The current proposal is the most ambitious yet, and is the best option to provide opportunities for the airport and Paisley. Does the First Minister support the case for a Glasgow metro stopping at the airport and at Paisley Gilmour Street, and does she agree that the metro would have significant benefits not only for the airport but for Paisley, Renfrewshire and Glasgow Southside?

The First Minister: Yes. I have enormous sympathy with the case that the councils are putting forward, as the MSP for Glasgow Southside. That is, of course, one of the reasons why we have committed to working constructively with partners to consider the proposals carefully and seriously. I absolutely recognise the potential to enhance connectivity, including to the airport and Paisley, which is why the programme for Government committed to appraising the scheme

in the strategic transport projects review. That is the right way to proceed.

There will undoubtedly be challenges, which is why it is important that we work closely with local authorities, as Transport Scotland has committed to doing.

Jamie Greene (West Scotland) (Con): I welcome the fact that progress has been made on the issue. Will the First Minister provide the simple reassurance that her Government is entirely committed to ensuring that, no matter what the end solution looks like, Glasgow airport will be connected to the city of Glasgow?

The First Minister: I have already made pretty clear my views on the importance of good, and better, connectivity to Glasgow airport.

No responsible Government would stand here and say that regardless of

“what the end solution looks like”,

we will go ahead and do something. It is absolutely vital that we go through proper processes. There has not yet been a full appraisal of the business case that has been made for the metro system—that is part of the work that is still required. The Government’s position—committing to appraising it as part of the strategic transport projects review, and Transport Scotland agreeing to work with the councils—is the best way to take forward the case and to consider collectively how it can be delivered.

It is important to say that although we all—I certainly do—understand the merits of the proposal, potential investment of such scale must be subjected to normal processes and, in particular, to normal statutory processes.

Neil Bibby (West Scotland) (Lab): We have been here before. Promises have been made and people have been let down. In 2009, the Scottish National Party Government cancelled the Glasgow airport rail link. In 2019, the SNP cancelled another Glasgow airport rail link. It now appears to have cancelled the personal rapid transit system to Glasgow airport. When does the First Minister think she will cancel the latest project?

The First Minister: I say to Neil Bibby that throughout the period there have been many opportunities for the people of Glasgow to make known their views on the actions and performance of this Government. The outcome has not been particularly pleasant for the Scottish, or the Glasgow, Labour Party.

The proposal is being progressed by the councils in the region. The purpose of the Glasgow city region deal is to ensure that the councils can decide on priorities and take them forward. This Government will support them—I

have set out how—as they do that. As we do so, we will continue to work hard to ensure that the SNP Government and the SNP retain the confidence of the people of Glasgow that was demonstrated, again, just a few weeks ago.

Local Authorities (Cash Reserves)

6. Alexander Stewart (Mid Scotland and Fife) (Con): To ask the First Minister what the Scottish Government’s response is to reports that local authorities are having to spend millions of pounds from cash reserves in order to balance their budgets. (S5F-03824)

The First Minister (Nicola Sturgeon): My first response is, of course, to sympathise with local councils, which, like this Government, are bearing the brunt of Conservative austerity.

Local authorities have a duty to set a balanced budget, and they have to decide how they do that. In 2019-20, the Scottish Government, for its part, provided local government with a settlement of £11.2 billion, which, in itself, is a real-terms increase. Taken together with the flexibility around council tax, local authorities have had access to an additional £602 million, which is a real-terms funding increase of 3.8 per cent.

It is up to individual local authorities to make their own final budgetary decisions on how to utilise that package of funding to deliver the positive outcomes that people across Scotland expect and deserve. All councils will consider properly how they use any cash reserves when they consider it prudent to do so.

Alexander Stewart: The Accounts Commission’s recent report states that

“councils face the increasing challenge of meeting changing and growing demands on their services”.

Council incomes are “straining to keep pace” under a 7.6 per cent decline in real terms since 2013-14. This Scottish Government is piling additional pressures on to councils through its priorities on education and home care, which are having a detrimental effect on their finances.

The First Minister’s Government has been in charge for 12 years. During that time, her Government has systematically eroded resources that are a lifeline to local authorities. When will the First Minister take responsibility and provide councils with the necessary funds, which they deserve, so that they can support the communities that they represent?

The First Minister: Alexander Stewart is nothing if not brave. Local authorities are working under real pressure because of the austerity that is being imposed on this Government by Alexander Stewart’s party.

The Accounts Commission found that local government resource budgets went down by about 6 per cent in real terms between 2013-14 and 2018-19, which is the period that it talks about in its report. Over the same period, the Scottish Government's budget was 7.8 per cent lower in real terms than it had been in 2013 as a direct result of Tory austerity. That reduction of 6 per cent for local government in Scotland shows that, in relative terms, the Scottish Government has acted to protect local government. What is the equivalent figure in Tory-run England? I do not know whether Alexander Stewart wants to get up again and tell me. On the assumption that he does not, I note that the equivalent figure is a 22.8 per cent real-terms reduction in local government funding imposed on English local authorities by a Conservative Government. Therefore, I will take no lectures from the Tories when it comes to local government funding.

If we had followed the advice of the Scottish Conservatives and had given tax cuts to the richest in our society, local government services would be struggling even more. I think that that is one of the many reasons why the Tories lost more than half their seats at the general election.

University Applications

7. Iain Gray (East Lothian) (Lab): To ask the First Minister what the Scottish Government's response is to reports that 14,000 applicants missed out on a place at university last year. (S5F-03840)

The First Minister (Nicola Sturgeon): Universities and Colleges Admissions Service data covering 2019 show that more than 35,700 Scottish students were accepted to a United Kingdom university and 94 per cent of Scottish 18-year-olds who applied through UCAS received at least one offer of a place. That is the highest level since 2009.

In 2017-18, there was a record high number of Scotland-domiciled full-time first-degree entrants to Scottish higher education institutions, which was an increase of nearly 16 per cent since 2006-07.

Iain Gray: It is three years since Audit Scotland told the Government that it had failed to raise the cap on numbers of Scotland-domiciled students studying at Scottish universities in order to meet increased demand. Indeed, the number of would-be students who are missing out on university has almost doubled under the SNP Government. For those who do get into university, funding has been cut by £700 per student. Will the First Minister commit to restoring university funding and to reviewing the cap on university places, in order to increase and widen access for students from all backgrounds?

Nicola Sturgeon: I repeat, for Iain Gray's benefit, the information that I gave in my first answer.

Since 2006-7, we have seen a 16 per cent increase in Scotland-domiciled full-time first-degree entrants to Scottish higher education institutions. The 2019 figures that he has referred to show the third-highest number of acceptances on record, and the number of applicants who are not getting a place at university is at its lowest level since 2009. That is the record of this Government.

We are continuing to invest strongly in higher education and in supporting young people to go to university. In terms of student support, we have raised the higher education bursary income threshold from £19,000 to £21,000. We have increased bursary support for the poorest young students from £1,875 a year to £2,000 a year, and we have increased bursary support for the poorest independent students in higher education. We have also introduced the care-experienced bursary and have removed the age cap from it. We have done all of that within a budget that the Labour party has sat by and watched the Tories have the right to reduce over the past decade.

Whether it is on health or education, within a constrained budget, this Government is doing the job of delivering the best that we can for people across Scotland. That is probably why people in Scotland again expressed confidence in this Government when they last had the chance to do so.

The Presiding Officer: That concludes First Minister's question time. We will shortly move to members' business, which is a motion in the name of Maurice Corry on the Commonwealth War Graves Commission. We will have a short suspension to allow the gallery to clear and members and ministers to change seats.

12:47

Meeting suspended.

12:50

On resuming—

Commonwealth War Graves Commission

The Deputy Presiding Officer (Linda Fabiani): The next item of business is a members' business debate on motion S5M-19234, in the name of Maurice Corry, on the Commonwealth War Graves Commission. The debate will be concluded without any question being put.

Motion debated,

That the Parliament recognises the work of the Commonwealth War Graves Commission in honouring the 1.7 million men and women of the Commonwealth forces who died during the First and Second World Wars, through construction and perpetual maintenance of war cemeteries, memorials and plots; understands that this work consists of immaculately planned and groomed landscapes and the conservation of headstones and memorials through teams of specialists around the world; acknowledges the extensive effort that the Commonwealth War Graves Commission makes to properly identify and respectfully bury all remains, ensuring that every individual is memorialised by name whether it be on a personal headstone or memorial; commends these vital efforts by the Commission in remembering the fallen; understands that over 175,000 Scots are respectfully commemorated and remembered by the commission in foreign countries, while over 20,000 of the total war graves cared for by the commission are spread across 1,200 locations in Scotland, including in West Scotland, and notes calls for all MSPs to join the Commission in its active remembrance of all those who paid the ultimate price.

12:50

Maurice Corry (West Scotland) (Con): I am delighted to bring this subject to the chamber today. I thank members from throughout the Parliament for their support for my motion. I welcome Patricia Keppie from the Commonwealth War Graves Commission, who has come here to listen to our debate. I appreciate all the work that she does and the role that she plays for the commission throughout Scotland.

The work of the Commonwealth War Graves Commission certainly deserves our appreciation and support. As an intergovernmental charitable organisation supported by six independent member states, the commission's role is to record and maintain war memorials and the graves of those from across the Commonwealth who died in the first and second world wars.

We can trace the inception of the Commonwealth War Graves Commission back to the first world war. Sir Fabian Ware, the commander of a British Red Cross unit, saw the magnitude of loss felt through the war, and he recognised the important need to ensure that, wherever possible, those soldiers who died were

not lost but were laid to rest respectfully, as they deserved.

By 1917, that work, under the title of the Imperial War Graves Commission, was officially established by royal charter, and the commission was tasked with gathering and recording details of the war dead. By the end of the war in 1918, 587,000 graves had been identified, with a further 559,000 individuals registered as having no grave. With war graves spread across all the areas that had experienced the catastrophic impact of war, many individuals were either buried in unidentified locations or—where the fighting had been at its most intense—left unburied. It is in that depressing context that the Commonwealth War Graves Commission set out to honour those who had paid the ultimate sacrifice.

Through the sensitive process of exhumations and reburials, the group began the meticulous process of recording and archiving soldiers' details, the results of which we rely upon so much today. The commission also allows for the remembrance of those who died in war but who were never found. The memorial to the missing provides a focal point for individuals who have no known grave to ensure that they are properly commemorated and are not forgotten.

It is abundantly clear that commission workers take great care in tending to the memorial sites, as is evident through their horticultural care. The commission rightly prides itself on employing horticultural experts across more than 150 countries—individuals who are incredibly mindful of being sensitive to the look and feel of the memorials and war graves. For instance, in Gurkha cemeteries, experts planted Nepalese seeds, and in Dieppe in France, one can find Canadian maples to commemorate the fallen Canadian soldiers who were laid to rest there. The task of preserving and maintaining those peaceful places of remembrance falls to a group of more than 900 gardeners, whom the commission employs. The efforts of those individuals deserve to be commended, and I gladly do that today.

The Commonwealth War Graves Commission has recognised the impact of architectural design from the beginning. In its commemorative planning it utilised a wealth of skills and experience by having three well-known principal architects: Sir Reginald Blomfield, Sir Edwin Lutyens and Sir Herbert Baker. Their work culminated in making enduring memorials to the war dead that are recognisable across the world. Examples include the Menin Gate memorial in Ypres in Belgium and the India Gate. Sites such as those point towards the enduring legacy of sacrifice, and they are visited by hundreds of thousands of people every year.

Perhaps the two most recognisable and visible features of Commonwealth war grave cemeteries are the war cross, designed by Blomfield, and the stone of remembrance, designed by Lutyens. Blomfield's war cross was adopted as a fixture of memorials and war graves across the Commonwealth as early as 1917, and more than 1,000 crosses were erected in France and Belgium alone.

The stone of remembrance is designed to represent all faiths and none, and stands as a symbol of common sacrifice. Poignantly, Rudyard Kipling, who was brought in by the commission as a literary advisor, suggested the inscription on the stone, taken from the Book of Ecclesiasticus:

"Their name liveth forever more."

Of course, those architects could not carry out their work without a team of assistant architects, many of whom had first-hand experience of war. Surely, their personal insights were reflected in the sensitive design, befitting all those who died in service to their country.

Equality is at the core of the Commonwealth War Graves Commission. Neither rank nor race matters: every individual across the Commonwealth is commemorated equally, without bias.

At its root, the Commonwealth War Graves Commission recognises the importance of providing a focal point for remembrance and commemoration. The monumental scale of loss through war, particularly evident in the aftermath of the first world war, left countless families bereaved and a grieving nation. For loved ones especially, a respectful memorial—one that encourages remembrance and pays tribute with great care—can bring the closure that they need.

Today, the relevance of the Commonwealth War Graves Commission is in no doubt. Its vision for the future is consistent with the ethos that has always underpinned its work: to commemorate servicemen and women from across the Commonwealth who fell during the first and second world wars. It still seeks to ensure that archives and records are preserved safely and, by relying on an experienced and proficient team, that war cemeteries and memorials are maintained with the utmost care.

The Commonwealth War Graves Commission highlights an amazing depth of commitment and care, both by the many soldiers who gave their lives for peace and by those who maintain their final resting places. I am sure that future generations will continue to be grateful for the work of the Commonwealth War Graves Commission in ensuring that

"Their name liveth forever more."

12:57

Bruce Crawford (Stirling) (SNP): I thank Maurice Corry for bringing this debate to the chamber. I enjoyed his opening contribution, and the knowledge that he has shared.

As many members will know, 2020 marks the 103rd anniversary of the Imperial War Graves Commission, which is now of course called the Commonwealth War Graves Commission, being established. It was founded in 1917 with the founding principles that: each of the dead should be commemorated by name on a headstone or memorial; headstones and memorials should be permanent; headstones should be uniform; and there should be no distinction made on account of military or civil rank, race or creed. Those principles are as relevant today as they have ever been, powerfully declaring that each life lost is worth no more or less than the next—no matter whose.

The role of the commission today is in preserving the memory of 1.7 million people who died fighting in the horror of the two world wars of the previous century. I understand that, where remains of a military person found are not from either of the world wars, it is the responsibility of the Ministry of Defence to arrange for a military funeral. However, for a fallen person of the first and second world wars, that is the responsibility of the commission.

That responsibility is carried out with dedication and commitment at around 23,000 locations in 154 countries around the globe. That highlights the significance of the role of the Commonwealth War Graves Commission, and how much of an undertaking the commemoration and memorialisation of our fallen soldiers is.

In Scotland alone, there are around 1,275 Commonwealth war grave sites. They range from military cemeteries owned by the commission to religious sites and those run by local authorities. The number includes 240 war graves in the Stirling area, an example being Ballengeich cemetery, which sits in the shadow of the historically significant Church of the Holy Rude and of Stirling castle in Stirling's old town. It is the final resting place of 58 people who fell during the two world wars.

Stirling and Scotland suffered a tremendous loss of life during those wars. I am hugely grateful that the commission was created in order to ensure that there would be an official body tasked with commemorating the ultimate sacrifice made by so many.

Of course, a major part of the role of the commission is in maintaining the graves and memorials. All of us in the Scottish Parliament take part in annual commemorations for the war

dead. In my constituency, the Scottish Government helped to fund extensive repair work on the cenotaph in Stirling city centre. That is another example of just how important commemorative sites and the Commonwealth war graves are in preserving the memory and lessons of the past.

The first world war ended over a century ago, but to this day, the annual ceremony is a very sobering moment. It is a chance to reflect with others on the sacrifice made by so many so that today's and future generations could live with the freedoms that we often take for granted.

I would like to conclude by going over some numbers once again as they are worth repeating. There are: 240 war graves in the Stirling area; over 1,275 commission sites across Scotland with 20,000 war graves; 1.7 million graves worldwide of which 175,000 are of Scots; and 23,000 sites around the globe in 154 separate countries. Those figures alone tell of the scale of the two world wars.

The work of the Commonwealth War Graves Commission is hugely important, not just in honouring the dead but in highlighting the devastating cost of war. Generations throughout the previous century had their lives torn apart by two world wars. I hope that none of our generations today, or in the future, will ever again know that horror.

13:01

Edward Mountain (Highlands and Islands) (Con): I thank my colleague Maurice Corry for bringing this important debate to the chamber. As the years pass and the world wars become a more distant memory, it is important that the work of the Commonwealth War Graves Commission continues, so that we remember our war dead. Our war graves and memorials put into perspective the huge loss of life experienced in two world wars.

As Bruce Crawford has already said, the CWGC honours 1.7 million men and women who died in the armed forces, at 23,000 locations and in more than 150 countries and territories. Taken as a whole, that is the equivalent of managing 994 football pitches, which is no small undertaking.

When I was serving with the Army in Egypt, I visited the El Alamein war cemetery, which is cared for by the commission. There are 11,872 Commonwealth soldiers buried there, and a simple online search will enable anyone to find all their details: their country of origin, regiment and family. The way in which we inter our war dead does not glorify war but is a respectful way of remembering those who gave their all. When I was in El Alamein, I also visited the German war

memorial. The German War Graves Commission does an equally good job, and it was an important moment of reflection for me. In peace time, it is right that we remember that we do not want war and that every side suffers.

I will recount a brief story of something that happened in 1983, when I was serving with a Commonwealth military training team in Uganda. The then high commissioner asked whether, if I was passing, I could visit a site—I think that it was called Simba Hill—to view a graveyard that apparently was in poor repair. The request was from the Commonwealth War Graves Commission, as the site was the resting place of a Ugandan soldier who was killed in the first world war.

The request was not without issue. To put it mildly, the area was interesting and one that I would have normally avoided. I still wonder today what the locals thought was going on when four heavily armed soldiers, who were clearly identifiable as Commonwealth soldiers, arrived asking directions to a Commonwealth war grave. It was clear that no one was going to offer to take us there, and, in most cases, they left in a rush, looking less than happy.

When we eventually found the site, it was an overgrown mess, which was unsurprising given the eight years of Idi Amin's rule and the on-going civil war. I reported back to the high commissioner. Some months later, he sought me out and showed me some pictures of the site, which had been completely transformed. When I asked who had done that, he answered simply, "The Commonwealth War Graves Commission." From that day on, I have had the greatest respect for the organisation, knowing that it takes every care to look after our war dead.

I also point out that the CWGC does much more than tend cemeteries to ensure that the sacrifices that were made in the two world wars are never forgotten. The commission set up its own charitable foundation to engage with young people on the story of the two world wars. The foundation supports educational initiatives, intern programmes and community activities, which not only honour the 1.7 million people whom the CWGC commemorates but equip our young people with new skills.

I thank the Commonwealth War Graves Commission for its tireless and dedicated care of war cemeteries and memorials around the world as well as in the Highlands and Islands. On one occasion, I contacted the commission about a site in Arnisdale, where the war grave was in less than perfect condition, and it was quickly repaired. I am pleased to report that the work was undertaken by Highland Council, which should have undertaken that work in the first place.

Overall, I have nothing but praise for the commission. The immaculate upkeep of graves honours the sacrifices that were made for us, and the commission's archives clearly demonstrate the costs of war.

13:06

Annabelle Ewing (Cowdenbeath) (SNP): I am pleased to speak in the debate and congratulate Maurice Corry on securing it. I welcome to the public gallery Patricia Keppie of the Commonwealth War Graves Foundation, whom I had the pleasure of meeting when she took the time to come to the Scottish Parliament last year to highlight the important work of the Commonwealth War Graves Commission.

As we have heard, the commission is an intergovernmental organisation comprising six member states. Its principal function is to mark, record and maintain the graves and places of commemoration of the Commonwealth war dead of the first and second world wars.

The commission is currently responsible for the continued commemoration of 1.7 million deceased Commonwealth military personnel in 154 countries. As we have also heard—I repeat this because, as Bruce Crawford said, it is important to highlight the scale of the work and remit of the commission—it is responsible for the care of the war dead at more than 23,000 separate burial sites and the maintenance of more than 200 memorials worldwide. The significance of the commission's remit and responsibilities is clear.

Aside from looking at the statistics, it is important to emphasise that the Commonwealth War Graves Commission carries out its work and discharges its responsibilities admirably and in a dignified way, which we should commend. A lot of care and pride is taken in the sensitive work that it does.

All Commonwealth war dead are commemorated individually and equally, so that their name—if known—appears either on a headstone at an identified burial site or on a memorial. The war dead are treated equally, irrespective of military rank, race, creed or any other consideration, and the headstones, cemeteries and memorials are perpetually maintained and carefully tended. Further, the commission has constructed or commissioned memorials to commemorate the dead who have no known grave. The largest such memorial is in France—the Thiepval memorial to the missing dead of the Somme.

It is important to mention that the commission maintains more than 40,000 non-Commonwealth war graves and is responsible for the graves of 67,000 Commonwealth civilians who died as a

result of enemy action in the second world war. That commemoration is achieved by the entering of names in the civilian war dead roll of honour in St George's chapel, in Westminster abbey.

In Scotland, there are some 20,000 war graves that are cared for by the commission. In my constituency of Cowdenbeath, there are 106 Commonwealth war graves. Those are to be found in Balingry, Aberdour, Cowdenbeath, Cardenden, Inverkeithing, Rosyth, Lochgelly and Dalgety Bay. Prompted by this afternoon's debate, my new year's resolution is to visit each and every one of those graves in my constituency to pay my respects. Perhaps the minister would care to join me on one of my visits, as I am sure that such participation would be very much appreciated by my Cowdenbeath constituents.

I thank the Commonwealth War Graves Commission for all that it does to ensure that the countless lives that were lost in the first and second world wars are not just commemorated but commemorated with the dignity that they very much deserve.

13:10

Anas Sarwar (Glasgow) (Lab): I, too, congratulate Maurice Corry on introducing this important debate. I also congratulate him on, and thank him for, his unstinting commitment to the issue, and to marking and recognising the role of all our armed forces personnel, current and former. As all the speakers have, I congratulate the Commonwealth War Graves Commission on its fantastic work, and all the volunteers and activists who are involved in that work to honour the 1.7 million men and women who lost their lives in defence of our country in both the first and second world wars.

It is really important, particularly for future generations, that we recognise the role of those who have fallen and never forget them. In the process, we never forget not only what the impact and consequences of war have meant for our history, but what they mean for our future.

In our increasingly divided times, it is important to remember how we got here, and the fact that we had Commonwealth citizens from right across the globe, people of all faiths and none, standing shoulder to shoulder in both the first and second world wars—particularly when we have the narrative of the far right being established across the United Kingdom. That narrative wants to demonise migrants and people from ethnic minority communities and certain faiths, and forgets that we are what we are as a country because of the sacrifices of people from various backgrounds, ethnicities and faiths.

Four million Muslims, Sikhs, Hindus and people of other faiths from South Asia alone fought in the two world wars. In defence of this country, 74,000 members of the British Indian Army lost their lives in world war one, and more than 87,000 in world war two. That is why, working in partnership with Colourful Heritage and others, we are trying to establish the first ever memorial here in Scotland to the British Indian Army soldiers and the contribution that they made. From my discussions with the Minister for Parliamentary Business and Veterans, I know that that is supported in principle by both him and the Scottish Government. I hope that we can make that a reality, if not this year, then next year.

One thing that we have already done is hold the first ever memorial service for British Indian Army soldiers at the war graves in Kingussie. The first service took place in 2018 and, last year, the service was attended by the minister for veterans, which I know was greatly appreciated by not only people who have heritage and history with the armed forces, but our wider communities in Scotland.

I will share one story that answers the call from the far right. Those war graves have only recently been discovered in Kingussie, and only recently had a multifaith and multi-ethnicity memorial service that brought together charities, the British armed forces, the Scottish Government and other representatives. However, I want to thank one woman in particular—Isobel Harling. She is a Kingussie local who is 95 years old and whose brother served in the Royal Air Force. For more than 60 years, she has personally been tending to and looking after those graves, showing the fantastic recognition that people of all faiths and none have for the role that was played by all those people in defence of this country in world wars one and two.

In the coming months, working with Colourful Heritage—which wants to capture, celebrate and inspire future generations—the British armed forces, the Scottish Government, and the minister directly, I hope that we can build that lasting memorial to the British Indian Army here in Scotland.

Again, I congratulate Maurice Corry on introducing the debate and thank the Commonwealth War Graves Commission for its tremendous work. I look forward to working with it in the coming months on its objectives.

13:14

The Minister for Parliamentary Business and Veterans (Graeme Dey): I thank Maurice Corry for securing this opportunity to highlight the excellent work of the Commonwealth War Graves

Commission. I also welcome members' contributions to the debate, because it is entirely fitting that the Scottish Parliament marks the efforts of the commission. Its role as the custodian of the final resting places of the 1.7 million men and women, military and civilian, from across the Commonwealth who died during, or as a result of, the first and second world wars should not be overlooked. Scotland saw the death of around 150,000 and 50,000 of its young men and women in the first and second world wars, respectively. Their graves are scattered across the globe, as we have heard, tended by the staff of the CWGC. Some, I might add, are in places still touched by the horrors of modern conflicts.

Of the 1.7 million individuals whom I noted, just over 21,000 are buried here in Scotland across 1,300 cemeteries and, as we have heard, many of them came from other corners of the Commonwealth. In my county of Angus, the commission maintains 400 graves in 33 different sites, honouring young men largely from the Royal Navy and Royal Air Force who gave their lives during conflict. That illustrates, as does what members have said, that barely a household in Scotland was left untouched to some degree by the horrors of those wars and that the work of the Commonwealth War Graves Commission reaches into each and every one of our communities.

The commission's founding principles seek to ensure that all those who made the ultimate sacrifice are honoured equally, regardless of rank, religion or race and regardless, as Edward Mountain indicated, of where they were laid to rest. The commission's efforts in maintaining and caring for the tranquil surroundings of their many cemeteries and memorials mean that descendants can still, despite the many years that have passed, pay their respect to loved ones lost during conflicts. That is something that I, as minister for veterans, am very grateful for. I would be pleased to join Annabelle Ewing on one of the visits that she has pledged to undertake in her constituency.

The other point that I wish to make is the extent to which the commission really does represent the Commonwealth and the strong bonds that exist between Scotland and fellow Commonwealth members. Its membership includes Canada, Australia, New Zealand, South Africa and India, countries to which Scotland retains firm ties. During ANZAC day last year, my ministerial colleague Ben Macpherson spoke at a service to remember two young New Zealand pilots whose plane crashed during the second world war while training not far from Edinburgh. Further, I was honoured last October to be invited to speak at a commemoration service in Kingussie, to which Anas Sarwar referred, that honoured the men of Force K6 of the British Indian Army, several of whom are buried there. At the outbreak of the

second world war, those young men found themselves leaving their homeland to travel first to France, before coming to the Highlands following their evacuation from Dunkirk.

The young man at whose grave in Kingussie I laid a wreath was just 18 when he left India. One can only imagine the impact that those experiences must have had on him. Headstones now mark the final resting place of 13 members of Force K6 across the north of Scotland. Despite those sad circumstances in which the bonds between Scotland and India were formed, it is welcome to see that the links between our two countries still endure. For example, the Scottish Government has provided support to establish the Social Enterprise Academy in India to provide support for Indian social enterprises; and 16 of our 19 higher education institutions have research links with India, including in areas of national importance to India such as smart cities, health and water treatment.

I hope that those links will continue to grow and strengthen as the years go by, because I was touched by the turnout at Kingussie. There were so many different denominations of Indian heritage, all there, as I was, to honour the sacrifice that was made by soldiers from the subcontinent. In so doing, they provided a sharp reminder to those who seek to sow the seeds of division of the inclusive and multicultural Scotland that we are and must continue to be. I could not agree more with Anas Sarwar on that, and I share his desire for the realisation in the not-too-distant future of Colourful Heritage's wonderful campaign to create a lasting memorial to the sacrifices of the Indian Army. In order to learn more about the organisation's work, I have committed to meeting representatives of Colourful Heritage in Glasgow.

War grave settings can be sad places, but they also serve a purpose beyond merely providing a fitting resting place and somewhere for families to connect with members who were lost in long past conflicts. Edward Mountain talked about visiting the cemeteries of El Alamein and, many years ago, in a different life, I visited the cemeteries at Arnhem in Holland. It was an extremely moving experience, one that left a lasting impression in terms of the horrific price that is paid in war and the need to prioritise avoiding such conflicts—a lesson that, as Bruce Crawford suggested, we should be mindful of today, more than ever.

I again thank Maurice Corry for bringing the debate to the chamber and allowing us to mark the work of the Commonwealth War Graves Commission, and I thank members for their contributions.

13:20

Meeting suspended.

14:00

On resuming—

Digital Connectivity

The Presiding Officer (Ken Macintosh): Good afternoon. The next item of business is a statement by Paul Wheelhouse on enhancing Scotland's digital connectivity. The minister will take questions at the end of his statement, so I encourage members who wish to ask a question to press their request-to-speak buttons.

14:00

The Minister for Energy, Connectivity and the Islands (Paul Wheelhouse): This Government is committed to transforming Scotland's digital connectivity and delivering world-class digital infrastructure. We have made significant progress already in that regard, despite telecommunications being an entirely reserved matter and all legal and regulatory powers sitting with United Kingdom ministers.

Through the £400 million digital Scotland superfast broadband—DSSB—programme, which was set up by my colleague Fergus Ewing, we met our target of providing access to fibre broadband to 95 per cent of premises across Scotland on time and on budget. In fact, we exceeded that target. Now, more than 943,000 premises can access fibre broadband, which is around 103,000 more premises than we originally anticipated.

We are also going where others would not invest. Before the DSSB programme, there were no plans for commercial fibre broadband roll-out in Orkney, Shetland or the Western Isles. Now, more than 80 per cent of premises in those places have access. We have also seen huge increases in coverage in much of rural Scotland, from the Borders to Argyll and Bute and the Highlands. As the DSSB programme team has announced, take-up of broadband services on DSSB-funded infrastructure now sits at over 60 per cent, although it was expected that take-up would be only around 20 per cent. That higher take-up further enhances investor confidence.

Through a contractual mechanism that is known as gainshare, that better than expected take-up has resulted in additional funds being available, which is ensuring that build continues and that there is no gap between the DSSB programme completing and our reaching 100 per cent—R100—programme beginning. Indeed, we now have a strong foundation from which to reach 100 per cent.

Since 2014, superfast broadband access has increased by 35 percentage points in Scotland—from 59 per cent to 94 per cent—compared with a

21 per cent increase in the UK. I am aware that the UK Government has, belatedly, woken up to its responsibilities in this area. As part of his leadership campaign last summer, Boris Johnson pledged to deliver full fibre

“to every home in the land”

by 2025. By the December UK election, that promise had been watered down to a commitment to

“roll out gigabit broadband across the country by 2025”.

The UK Government has also been slow to invest in digital connectivity beyond its contribution to the DSSB programme. Currently, it is contributing just £21 million of the £600 million that this Government has committed to the R100 programme. The UK Government is providing a miserly 3.5 per cent of that money, with the balance of £579 million being fully funded by the Scottish Government. However, I expect Scotland to receive our fair share of the £5 billion that was announced by the UK Government for extending gigabit-capable connectivity, and I would welcome the Parliament's support to achieve that.

That is why, over recent years, in the light of large areas of rural Scotland continuing to experience very poor or non-existent broadband coverage and poor connection speeds, we could not wait for UK ministers to fulfil their responsibility to deliver broadband infrastructure for all. We have, therefore, forged our own ambitious digital agenda, committing to deliver access to superfast broadband to every home and business in the country through the R100 programme.

I have kept the Parliament informed of developments in the procurement process for R100 throughout the past year. Most recently, I advised Parliament that contracts covering south and central Scotland areas have been signed, and, as promised, I can provide more detail today on what those contracts cover. They will deliver £133 million of investment in the south lot area and £83 million of investment in the central lot area.

In the south lot, alongside commercial coverage, we will reach more than 99 per cent of the 26,000 premises that are eligible for R100, leaving in the region of just 200 premises in the area requiring to be connected by alternative means. In the central lot, the contract that we have signed with BT, alongside greater than anticipated commercial build, will reach at least 47,000—almost 87 per cent—of the 55,000 eligible premises. The remainder will require to be connected by alternative means, which I will outline shortly.

I remind members that our commitment was to extend superfast access to all, providing access to speeds of 30 megabits per second or more. I am

able to announce today that we will go significantly beyond that. I am delighted to advise that, as a result of our actions, all of the planned R100 build in the south of Scotland and the vast majority of the R100 build in central Scotland will use full-fibre—or fibre to the premises—technology. That will provide access to gigabit-capable speeds—in other words, not 30Mbps but 1,000Mbps. The roll-out of full fibre to most parts of southern and central Scotland is going significantly beyond our original commitment and will deliver a truly future-proofed solution for Scotland, ahead of the rest of the UK, even though the topography of those areas means that this will be one of the most challenging broadband infrastructure builds anywhere in Europe.

Of course, that complexity and the fact that the technology that is being delivered will go beyond our original commitment mean that the civil works will take time. Engineers will reach around half of the target premises in both lots—approximately 23,000 in central Scotland and 12,000 in the south—by the end of 2021, and the majority of the build will be completed by the end of 2023.

I acknowledge that, on its own, that would be insufficient to enable superfast access for all homes and businesses by the end of 2021, as promised. That is why, in the meantime, we will provide additional support to ensure that everyone can access superfast broadband services in that timescale.

As I have previously made clear to the Parliament, there was always going to be a need for an aligned intervention to connect premises that, for technical reasons, are beyond the reach of R100 contracts. I can advise today that the aligned interventions will be delivered through a voucher scheme that will be funded by the Scottish Government. I can further advise that anyone who is unable to access superfast broadband through the R100 programme by the end of 2021—even if R100 will ultimately reach them—will also be eligible for that voucher scheme. The voucher scheme will launch later this year and will provide grants to broadband customers in non-domestic and domestic premises, offering support to access a range of technologies and suppliers.

Of course, I had hoped to announce details of all three contracts today. Unfortunately, as I advised before the recess, the contract award for the north lot, to which we have committed £384 million, is now subject to a legal challenge from Gigaclear Ltd. Until that challenge is heard and resolved, we are unable to award the contract as planned. I am unable to comment on the litigation process, but I reassure members that we will do our utmost to ensure that people in the north of Scotland can access superfast broadband through

the R100 programme as soon as possible. In the meantime, customers in the north lot area will be able to access the voucher scheme when it launches, later this year.

Commercial investment has an important part to play in enhancing Scotland's digital connectivity. Indeed, as members may be aware, it is a matter of law that the Scottish ministers cannot invest in areas where commercial investment is already proposed. Commercial suppliers are already going further than was originally anticipated, which has reduced the number of premises that require public investment. BT is currently updating its modelling to reflect those changes. Once that is completed and detailed survey work has been undertaken, I will be able to share specific details of the roll-out plans down to premises level.

The fibre that we deliver through the R100 programme will help to improve Scotland's mobile connectivity, providing the backhaul that is needed to support the growth of 4G and 5G services, which will benefit the development of the Scotland 5G Centre and our 5G strategy. It will enable the movement of data across Scotland, supporting the growth of data-driven industries and technologies such as digital health delivery and the internet of things—IOT—in which Scotland is already a leader. It will also support our ambition to establish Scotland as a green data-hosting location.

The R100 fibre will link to new international fibre connections that will connect Scotland to the rest of the world, enable data to be moved efficiently across national boundaries and open up a range of new economic opportunities for existing and emerging businesses. Crucially, enhanced digital connectivity will support Scotland to make a just transition to the new ways of working that are needed to address climate change. It will give people and businesses the tools and skills that they need to harness the potential provided by digital technology.

There is no doubt that rural Scotland has perennially had to play catch-up with the rest of the UK when it has come to digital connectivity and prior waves of telecommunications investment. The work that has been done to date, which has been led by this Government's approach—again, I pay tribute to Fergus Ewing for that—and undertaken through DSSB, has laid foundations on which R100 will build. That will ensure that, for the first time, Scotland is ahead of the curve not just in the UK but internationally.

The R100 programme is a prime example of how the Scottish Government is using devolved economic development powers to mitigate and resolve a market failure that has arisen in what is, for now, a reserved policy area: telecommunications. This Government will extend full-fibre broadband across the length and breadth

of rural Scotland. We will deliver a huge number of full-fibre connections in what are among the most challenging locations anywhere in the UK or Europe. For most of those who will benefit, we will greatly exceed our 30Mbps superfast commitment.

The R100 programme will help to deliver social, economic and environmental benefits for all of Scotland, enabling innovation and the creation of highly skilled jobs, opening up remote working and social and leisure opportunities, delivering digital health and other new public services, and reducing travel, including the need to commute.

Scotland's enhanced digital connectivity will support our transition to a net zero economy and will boost population retention and attraction. I am excited about what that connectivity will mean for everyone in those communities that we reach through delivery of this hugely ambitious investment and commitment.

The Presiding Officer: The minister will now take questions on his statement.

Jamie Greene (West Scotland) (Con): I thank the minister for advance notice of his statement, albeit that it is a disappointing one. I feel sorry for Mr Wheelhouse, because sitting next to him is the Cabinet Secretary for the Rural Economy, Mr Ewing, who made all the promises on superfast broadband, yet it is Mr Wheelhouse who has had to come to the chamber superfast and break every one of them.

To be fair to the Scottish Government, I accept that it chose to make promises above and beyond its call of duty on digital connectivity. I have always accepted that, and it was an admirable ambition. The problem is that buried away on page 3 of the statement is an admission that that commitment simply will not be met. Reaching 100 per cent of premises across all of Scotland by the end of 2021 has become reaching them by the end of 2023 at the earliest. Another big project is two years late. It all sounds so familiar.

I will ask some specific questions on what we have heard. On the south and central lots, what percentage of the 100 per cent coverage—if we ever get there—will be directly and solely attributable to Government intervention, as opposed to commercial roll-out? What, technically, are the “alternative means” that will fill in the gaps in fibre coverage, which the statement said it would talk about but does not? Notwithstanding the difficult, technical legal challenges that the minister is facing, given that the south and central lots will now have to wait until 2024 for coverage, how much longer beyond that does the minister think that people in the north lot will have to wait for superfast broadband?

Finally, given a choice between a guaranteed speed of 10Mbps right now from the UK

Government and waiting at least four years for the Scottish Government's 1,000Mbps, which does the minister think people would choose?

Paul Wheelhouse: I should thank Jamie Greene for that list of questions, because it will be fun responding to them.

On the guaranteed 10Mbps, if Mr Greene had been paying attention to the statement—I point out that he had advance sight of it—he would know that I made clear in it that a voucher scheme will be available to give customers a superfast service before the end of 2021 if they want one. That is well ahead of the 10Mbps speed that the UK Government has specified and well ahead of its 2025 commitment for gigabit-ready services. On both counts—in timing and in quality of the offer—what we are providing under the statement is better than the commitments of the UK Government.

On the work in the south of Scotland, as I made clear, only about 200 premises will be left in the whole of the south of Scotland, which includes not just Dumfries and Galloway and the Scottish Borders but parts of Midlothian, West Lothian, Clydesdale and Ayrshire. Just 200 premises across that entire region will require additional support, and they will be eligible for our aligned intervention voucher scheme, which will deliver a service to them, should they wish it, before the end of 2021. We will certainly deliver to them as equivalent a service as we can and we are looking at trying to deliver up to gigabit speeds for them, using vouchers to do so.

I hope that, when Mr Greene reflects on the statement and today's discussions, he will see the positives. As for the idea that something is buried on page 3 of a statement that has been given to Parliament and broadcast on television, I would argue that I have not buried information but have been honest about the impacts of litigation and the improved quality of the outcome that we are going to deliver, which have an implication for timing.

I hope that, when Mr Greene reflects, he will see that, under the DSSB programme, we have already delivered to 943,000 premises that could not be delivered to commercially. We are legally allowed to operate only where there are no commercial plans so, by definition, that is entirely additional to commercial roll-out. I hope that, when he has time, he will reflect on his performance today.

Colin Smyth (South Scotland) (Lab): I thank the minister for advance sight of his statement. The minister has confirmed the worst-kept secret: the Government's R100 programme, irrespective of the promised speed of 30Mbps or more, was never ever going to be reached by the end of 2021. The manifesto commitment was made in

haste, but it was reneged on painfully slowly. We still do not have a timetable for when the commitment will be reached.

In his statement, the minister indicated that the vast majority of properties that are covered by the current R100 programme—in south and central Scotland, at least—will get fibre to premises. What will happen to properties that are not covered by the R100 programme? Will all those properties also get fibre to premises? When I say “all”, I do not just mean properties in cities that the commercial sector is targeting, or the new builds in our towns that are currently getting fibre to premises by the commercial sector; I mean the millions of homes that are not covered by the R100 programme or the commercial sector’s current plans for fibre to premises, and which are often in smaller towns in areas such as those that the minister represents. If the R100 programme now largely means fibre to premises, surely that means far more properties that are not covered by the commercial sector’s plans or by the current R100 programme must be brought in.

Paul Wheelhouse: Colin Smyth has raised a kernel of a genuine point, which I will address first, before I return to something else that he said.

I reiterate that 100 per cent of the R100 deployment in the south of Scotland region will be full fibre. That leaves just over 200 premises in the whole of the south of Scotland that will need another intervention, and they will be eligible for an aligned intervention voucher scheme. For technical reasons, we might not be able to provide full fibre for the scheme, but we will certainly deliver a minimum of superfast broadband, which was the commitment, and I hope that we will be able to find a solution that goes way beyond that. A range of technologies could be deployed and, on a property-specific basis, we will look at the most appropriate technology to use. I do not want to specify that all 200 premises will be provided with one or another; there will probably be a mix. We will do everything that we can to ensure that services go well beyond superfast speed, if we can do that.

I hope that that gives Colin Smyth reassurance. The scheme will cover all the towns and communities across the south of Scotland for which there is not already a commercial proposal. As he might know, commercial investment plans are afoot in the south of Scotland, and I hope that he recognises that a number of companies have made significant announcements in that regard across South Scotland, which is the region that we both represent. I hope that he welcomes that.

I will challenge Colin Smyth on one point. He implied that we have just landed things such as the voucher scheme on the Parliament today. For the entire time that I have been in the

Parliament—and, I believe, with Mr Ewing before that—we have been talking about the need for aligned interventions to sit alongside the main R100 procurement. We have always said that the R100 programme will not do the job entirely. We will need commercial roll-out and aligned interventions, and I have set out today a process for delivering exactly that.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): Does the minister agree that it is hugely disappointing for people in the north of Scotland that Gigaclear’s actions have resulted in a delay to the award of the north lot, which, given the amount of Scottish Government investment, promises to be truly transformational for the area? Does he also agree that it is completely unacceptable for a company that has never invested a penny in Scotland—

The Presiding Officer: Ms Watt, I point out two things. First, your microphone is not up. Secondly, there is likely to be litigation, so I would be very careful about expressing comments about the outcome of that litigation.

Maureen Watt: Okay. The company had its contract to deliver a far smaller and far less complex broadband project in Devon and Somerset terminated due to non-delivery and there is now a delay to the roll-out of broadband in the north of Scotland simply because it did not win that contract.

The Presiding Officer: I am sure that the minister will be careful in his response.

Paul Wheelhouse: I will be, Presiding Officer. I appreciate the understandable frustration that members are expressing about the news and the litigation. I am sure that Maureen Watt appreciates that I cannot comment on the legal challenge or on the past performance of Gigaclear. However, I am disappointed about the delay to the roll-out of broadband to people who are living and working in the north of Scotland. I think that it is fair enough to comment on that.

We want to ensure that public sector procurement processes are fair, transparent and accountable. I hope that the situation can be resolved as soon as possible to ensure that, one way or another, we are able to deliver services in the north of Scotland and that customers are not unduly affected by these developments.

In the meantime, I stress that customers in the north lot are eligible for the voucher scheme that I have mentioned. That will enable grants to businesses and home owners to be delivered, which will allow access to superfast broadband when the voucher scheme launches later this year. I am considering what we can do proactively to ensure that there is as much visibility of the

scheme as possible and that customers in the north of Scotland know about what it can offer.

John Finnie (Highlands and Islands) (Green): I thank the minister for early sight of the statement, and for the positive news that is contained therein. It highlights the UK Government's shortcomings and the absolute brass neck of Conservative members in their response. The Scottish Government will enjoy Green Party support in calling for a fair share of the UK moneys—if, indeed, they materialise.

The minister will be aware that the Western Isles ConCom—connected communities—project, which is run by Highlands and Islands Enterprise, is to close, and that in excess of 30 per cent of households in each of the three island authorities do not have access to superfast broadband. Will he commit to prioritising roll-out of superfast broadband in our island communities?

Paul Wheelhouse: I have to be slightly careful. I hope that John Finnie will understand why, given that the subject that is under litigation is the north area. However, I can absolutely give the member the assurance that we are, regardless of the outcome of that process, prioritising our island communities, as we have always tried to do, with the outside-in approach. We are working to ensure that those communities get their fair share of investment—indeed, sometimes justifiably more than that—in order to try to bring about genuine transformation in digital connectivity in the islands. That was flagged up in the national islands plan consultation process as being critical to protecting against depopulation, and to allowing the areas' economies to thrive.

I welcome John Finnie's support, and that of—I hope—colleagues from across the chamber, as we work constructively with UK ministers to get for Scotland as much as possible of the £5 billion that has been promised, in order that we can deliver the best outcome for communities on our islands.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): The minister is right to highlight the role that commercial providers have in enhancing our digital connectivity. Will he outline what support the Scottish Government is offering to enable service providers to invest, and will he give some examples of what they are delivering locally alongside Government investment in broadband and mobile connectivity?

Paul Wheelhouse: I am grateful to Willie Coffey for his long-standing interest in the issue, and for asking that question. As I alluded to in my statement, we are using devolved levers to support telecoms operators. Ultimately, the matter is reserved to the UK Government, so we have to be careful. One intervention that we made through last year's budget was to provide 10 years of non-

domestic rates relief on newly laid unlit fibre, which doubles the UK Government commitment of just five years of relief. I know that that has had an impact: we have had positive feedback from the industry, which has warmly welcomed the measure.

We have also taken action to reform the planning system and to extend permitted development rights, with the aim of encouraging new investment in Scotland's digital infrastructure. As a result, we have seen extensive new commercial plans emerging from BT, Virgin Media, Vodafone and CityFibre. In the past year alone, CityFibre announced £200 million of investment to roll out its gigabit fibre to the premises network in Scotland, as part of its gigabit cities programme; Virgin Media confirmed that further network expansion is under way through its £3 billion project lightning, which will increase its fibre capacity and coverage footprint in Scotland to about 46 per cent; and Openreach announced that four Scottish towns—Kilmarnock, which is close to Mr Coffey's heart, Bathgate, Broxburn and Whitburn—will be prioritised as part of its fibre first programme.

Our approach has also had a positive impact on the R100 programme, with commercial suppliers already going further than we had initially anticipated, which has reduced the number of premises that require public investment. For example, Sprouston and Walkerburn in the Borders will benefit from commercial roll-out, so we no longer have to cover those two communities with R100. I hope that that gives members a sense of the impact that commercial investment is having on roll-out of R100.

Mike Rumbles (North East Scotland) (LD): Forgive me, Presiding Officer, if I appear to be rather weary with yet another ministerial announcement of a delay in meeting the Scottish Government's broadband commitment to have every home connected by next year. How is it good news when the minister says that quite a few people in the south of Scotland who do not have a connection will now have to wait until the end of 2023, and we do not know how long my constituents in the north will have to wait?

However, there is exciting news: people will be dancing in the streets of the villages of Aberdeenshire, because they are going to get a voucher that will be able to connect them to the service. That is all very jolly, but what people actually want to know from the minister is when they will all be connected. Please answer the question, minister.

Paul Wheelhouse: This is a shame. I have been in the habit of having positive discussions with Mike Rumbles, lately. Unfortunately, the old Mike Rumbles has emerged again today.

As I mentioned, I cannot discuss the legal case, but Mr Rumbles will clearly be aware that it has had an impact in relation to today's announcement. As I said in my statement, we had intended at this point to give clarity about all three contracts, as I had communicated at committee. Unfortunately, there has been a legal challenge. It is perfectly legitimate for the business to do that. I am not criticising that, but it is something that we have to live with.

Mr Rumbles asked about the delays. I made it clear in my statement—perhaps he did not have a chance to reflect on it in advance—that we have committed largely to full-fibre roll-out in the north lot area, which his constituents will be served by. Of the 55,000 premises that we are able to target through R100, 87 per cent will get a solution through our main R100 procurement. Everyone else is entitled to the aligned interventions voucher scheme. All the people who are affected can choose, should they wish to do so, to have that service through a voucher by the end of 2021. Therefore, if they want to avoid going beyond 2021, they can do so. However, if they are prepared to wait, they will always—*[Interruption.]* Those who are covered by the R100 project will ultimately get the R100 delivery—*[Interruption.]* Perhaps Mr Rumbles could wait for my answers to his questions before he fires more at me.

The R100—*[Interruption.]* I think that Mr Rumbles is asking me when it will happen. That is down to individuals. If people want the service before the end of 2021, they can ask for and get a voucher for that.

People will get the detailed planned roll-out of R100 in the coming months. There will be an online checker, so that people can see at a glance—an improvement on the DSSB system—their premises and whether and when they are getting the R100 procurement; whether and, ideally, when they are getting a commercial deployment; or they will be shown their eligibility for aligned interventions.

I hope that Mr Rumbles will have a more cheerful expression on his face once he has read the detail of what I have said today.

Emma Harper (South Scotland) (SNP): I welcome the minister's announcements, particularly that R100 will deliver almost 100 per cent access not just to superfast broadband, but to broadband with gigabit-capable technology. That has the potential to provide a huge boost to South Scotland's economy, particularly in not-spot areas such as the busy train line between Stranraer and Barrhill. It would be helpful to better understand the areas that the lots cover. What is meant by south, central, and north lot areas? Will the minister provide more information about that?

Paul Wheelhouse: I will happily do so. To make the lots as attractive as possible to the telecoms market, the country was split into three regions—north, central and south. Keeping in mind that R100 is tackling the most difficult-to-reach premises, each lot was, to try to improve their attractiveness, structured so that it contains a mix of the most difficult-to-reach premises and more accessible properties.

The north lot broadly covers the Highlands and Islands, Angus, Aberdeen, Aberdeenshire and Dundee, and extends as far south as Dunoon on the west coast and Crianlarich in Stirlingshire and Coupar Angus and Dundee in the east. The north lot also encompasses all our inhabited islands, including those in North Ayrshire.

The central lot broadly covers central Scotland and Fife, and extends as far south as Ayr on the west coast and Dunbar on the east coast.

The south lot covers the Scottish Borders, Dumfries and Galloway and, as I have alluded to, parts of West Lothian, Midlothian and East Lothian and parts of East Ayrshire, South Ayrshire and Clydesdale.

I will provide a more detailed breakdown of the areas that are covered by each lot, which I will place in the Scottish parliament information centre, to assist members in informing their constituents about how today's announcement affects them.

Finlay Carson (Galloway and West Dumfries) (Con): Although it is not unexpected, the delay will be very disappointing to rural businesses in my constituency. As the minister will agree, the uncertainty for businesses is a major issue that could cost them thousands, if not hundreds of thousands, of pounds.

I welcome the commitment to publish detailed plans of which premises will get superfast services and when. I acknowledge that BT is currently modelling, but when is the minister likely to publish information on individual businesses and let them know when they are likely to be connected?

Paul Wheelhouse: That is a fair question. I will give a bit more clarity on the point that I made at committee. We are revising our understanding of the commercial roll-out. BT is taking an extensive look through the delivery plans that it has agreed with us, and is trying to net off the areas that will be covered by commercial roll-out, so that we have a definitive list of the properties that we will be dealing with under R100. We expect to do that between now and the spring, and to publish by the summer an online checker that contains the detailed information that I have promised to Fin Carson and other members. It will give detail down to premises level, rather than to postcode area, which was the DSSB approach.

Members will therefore be able to help individual constituents who have approached them by guiding them to that information. We are looking at potential ways to communicate through Parliament and to offer members opportunities to ask questions on behalf of their constituents. We can take members through that information.

Gillian Martin (Aberdeenshire East) (SNP): Not every Aberdeenshire MSP will come out with curmudgeonly nonsense, as Mike Rumbles did, because most of us recognise that, if we waited for the UK Government or commercial providers, the vast majority of Aberdeenshire would not have a sniff of superfast broadband. That said, I am disappointed about delays to the north contract because of Gigaclear's action, but I welcome the minister's commitment to ensuring that people and businesses in my constituency, and elsewhere in the north of Scotland, benefit from the voucher scheme. Will the minister provide a little more detail on what the scheme will involve, and how he will ensure that people in the north know about it and how to apply?

Paul Wheelhouse: I thank Gillian Martin for her positive remarks. I share her frustration, but she will understand why I cannot go into the detail of the implications of the legal action.

As I said earlier, the voucher scheme will be available across all three lots. It will launch later this year and will provide grants to broadband customers in residential and business premises, to allow them to access a range of technologies and suppliers.

Members will be aware of existing voucher schemes run by the UK Government. We are working with UK ministers and officials to join up our respective funding pots and processes, in order to deliver the most streamlined and effective solution to benefit people, businesses and communities. Ideally, people will go to one stop and get all the information and funding that they need. That would be helpful—we have had positive discussions with UK ministers and officials on that.

Our approach will aim to make use of a proven application and payments platform, which is used for the existing UK-wide rural gigabit connectivity programme, and I am currently considering what we could do when the scheme launches to ensure that people and businesses in the north lot area know what the scheme can offer. We will engage with colleagues from the north to find out their views about how best to engage, including through their offices, to ensure that constituents get the information that they need if they approach their MSP.

I am keen to get the contract for the north lot concluded as soon as possible. I assure Gillian

Martin, and indeed all the members in the north of Scotland area, that we will do all we can to make that happen, while protecting the Government's interest at the same time.

Lewis Macdonald (North East Scotland)

(Lab): Will the minister confirm that the Government's intention is that full fibre to the premises will be delivered to R100 customers in the north of Scotland, as elsewhere? If so, will the voucher scheme enable customers to install full fibre to the premises connections, if they wish to do so?

Paul Wheelhouse: On the point that Mr Macdonald raises, I am in difficult territory, because if I comment in any degree on the content of the technology, I might fall foul of the on-going legal action, as there are potentially two different outcomes to be determined. In a broad sense, I can say that both bids have a lot of full fibre in them—if I can go as far as that without getting myself into trouble. We are keen to maximise that, working in some parts of the north with commercial partners, which are delivering full fibre, as the member knows, in the city of Aberdeen and in other locations where that is prevalent.

Presumably, it is possible in some cases that the voucher scheme may help to deliver full fibre to premises, but there will also be satellite, fixed wireless and other technologies. As I said earlier in response to Colin Smyth, I do not want to be too specific about the outcome, because in one valley there might be a cocktail of solutions, depending on what is cost-effective and what will deliver the best service outcome for a household or business. I do not want to be too prescriptive. Full fibre is certainly one of a suite of options but—to be honest—in some cases there is potentially the need for satellite and fixed wireless to be deployed.

Jenny Gilruth (Mid Fife and Glenrothes)

(SNP): The minister mentioned promoting commercial investment, which I hope will result in addressing areas such as the Montrave estate in my constituency. Will the minister say more about what he understands of the UK Government's plans regarding digital infrastructure, and how likely it is to meet its target of 2025?

Paul Wheelhouse: Although we note the UK Government's commitment to invest £5 billion in improving connectivity across the UK, there appears to be a clear misunderstanding of how long it will take to carry out a procurement exercise of that size. As Mr Ewing and I both know, it is not an easy process. I am certainly aware of that—as, I think, are colleagues in other parties—especially as I understand that there will be a period of discussion and negotiation this year to ensure that state aid cover is in place for any

new investment by the UK Government, before procurement can even commence. If we add in the time and resource required to physically deploy the infrastructure, that 2025 target looks hugely challenging. In the same way that colleagues here are saying that they always thought that the Scottish Government's target was challenging, as has proved to be the case, I caution that UK ministers may find it difficult, too.

The announcement today confirms that the R100 programme will deliver a high proportion of full-fibre infrastructure—the point that Lewis Macdonald raised—ensuring that Scotland will have a head start on the rest of the UK. That is perhaps a unique situation for Scotland in the history of telecoms infrastructure roll-outs, and we should all seize that opportunity to grow the economy, against the backdrop of historic underinvestment in that area.

I certainly welcome the views of two House of Commons committees, which have called on UK ministers to provide additional funding to Scotland and other parts of the UK in order to tackle the issue. They have suggested that Scotland should be prioritised for that, because of our topography.

We believe that any further funding in support of gigabit-capable connectivity offers a real opportunity for us to work with UK ministers. After all, what we do will help to deliver their target and to make quick wins against their targets. We are keen to collaborate where we can on R100.

Edward Mountain (Highlands and Islands) (Con): Sadly, another contract is going to be delivered late—another broken promise. Fergus Ewing offered to resign if R100 was not delivered by 2021, and it appears that it will not be delivered in the Highlands before 2026 or 2027. If Mr Ewing is having trouble with the drafting, I will give him a hand.

Will the vouchers issued for superfast broadband in the Highlands ensure that no one there pays more than those in the central belt for the equivalent broadband connection?

Paul Wheelhouse: The latter part of Mr Mountain's question relates to a fair issue to ask about. If I recall correctly, we have discussed at committee that we are worried about the cost of delivering services. I take some encouragement from the announcement today from DSSB that take-up has now reached 60 per cent, which is really encouraging, but I entirely accept that there may be people who are being priced out of using broadband services.

We do not have the tools in this Parliament to intervene in the telecoms market. That is not to make a constitutional point; it is a fact. For us to make an intervention there, the UK Government would have to take a step forward in that regard.

The idea of a social tariff has been floated. Could the approach under which the social tariff operates in the energy sector be applied in the broadband sector, too, to help customers faced with the high costs of connecting? I am sure that we all share the ambition to get everyone connected where we can do so.

Regarding Mr Mountain's first point, I think he is being hugely unfair on Mr Ewing. Mr Ewing is always an honourable and principled man, as we know, but he has moved on from his previous portfolio, I am the person who is now responsible for delivering the programme, and I take the blows on the chin for that now. Regardless of whether it was me or Mr Ewing in place—or indeed anyone else—we would potentially face the threat of legal challenge. What has happened is unfortunate, and we have to live with it, but I am confident that we will deliver a highly successful programme with a great outcome for the customers who will benefit from our broadband investment. I would hope that, once the heat of this debate has gone by, members will be grateful to see real progress in all their constituencies.

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): As the minister will be aware, the connected communities service that has been alluded to, which has provided broadband as a stopgap for many of my constituents in hard-to-reach places, will cease in March, largely due to the rapidly decreasing number of people requiring it. That switch-off will nonetheless leave a number of my constituents with no access to broadband in the immediate term. What can be done now to assist those connected communities customers who face losing their digital connectivity in March?

Paul Wheelhouse: That is an important point, and Mr Finnie raised a similar one. I recognise Dr Allan's considerable constituency interest in the matter.

In a situation where a broadband network is failing and is going to collapse, with an impact on customers, there is clearly an opportunity to engage with Ofcom to see what we can do, working together with it, to support those customers and to ensure that they have continuity of service. I am certainly happy to meet Dr Allan, and indeed Mr Finnie, who have both expressed an interest in this regard, to try and give them surety about what we can do to help their constituents and to ensure that no customer is left without a service for a long period.

Clearly, we will have to work with the regulator. We do not have a direct axe to grind in that debate, but we will do what we can to facilitate a good outcome for those customers.

Portfolio Question Time

Environment, Climate Change and Land Reform

14:38

Carbon Emissions Reduction (Support for Businesses)

1. David Torrance (Kirkcaldy) (SNP): To ask the Scottish Government what support is available to businesses that are committed to lowering carbon emissions and improving air quality. (S5O-03967)

The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham): Our green new deal will deliver billions of pounds of investment in our net zero future and will position Scotland to take advantage of a green economy.

We are taking action to optimise existing support, so that Scotland's energy-intensive industrial sites are better positioned to access funding opportunities that will help them to deliver emissions savings while remaining internationally competitive. We are also providing practical and financial support to local authorities to tackle local air pollution hotspots. That includes a total of £4.5 million in annual funding.

David Torrance: I have met representatives of several local businesses that are keen to convert their fleets to electric or hydrogen-powered vehicles. A common concern is the challenge of balancing investment in new technology and effective and sustainable operational performances with a desire to commit to a clean-energy future. What role can the Scottish Government play in assisting that transition?

Roseanna Cunningham: The Scottish Government offers interest-free loan funding to enable businesses and consumers to purchase ultra-low-emission vehicles through the electric vehicle loan scheme, which is delivered by the Energy Saving Trust. We have also invested around £30 million to increase publicly available charging to more than 1,200 charging points on the ChargePlace Scotland network.

Net Zero Emissions

2. Liam Kerr (North East Scotland) (Con): To ask the Scottish Government whether it is on track to meet net zero emissions by 2045. (S5O-03968)

The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham): Scotland is almost halfway to achieving net zero emissions, with a 47 per cent

reduction in emissions having been achieved between 1990 and 2017. That strong progress is recognised in the recent report from the Committee on Climate Change. In line with that report, we also recognise that more needs to be done to reach net zero emissions by 2045. That is why we are currently updating our climate change plan to reflect the new targets. The committee's advice for the United Kingdom Government is also clear: it must

"step up and match Scottish policy ambition in areas where key powers are reserved".

Liam Kerr: The report by the Committee on Climate Change, which was published in December, criticised the Scottish National Party Government for lagging behind both England and Wales in designing a future farm funding system that encourages environmentally friendly farming. It identifies that as an area in which the policy levers exist here, at Holyrood. Urgent action is required to meet the 2045 target. Will the cabinet secretary explain what is taking so long?

Roseanna Cunningham: The Cabinet Secretary for the Rural Economy has now left the chamber, but I can tell the member that I have had a number of conversations with Fergus Ewing, including this week, about the extent to which agriculture must contribute to achieving net zero emissions by 2045. As the member may have heard the First Minister say, there was a Cabinet discussion on Tuesday about the overall issue of Scotland achieving net zero emissions by 2045. Work towards that includes a range of actions across everything that is addressed in the climate change plan, which includes agriculture.

Angus MacDonald (Falkirk East) (SNP): What assurances has the Scottish Government received from the UK Government that, in the key areas that it has responsibility for—such as carbon capture and storage, decarbonisation of the grid and an increase in the pace of vehicle transition—it will take action in the coming year to ensure that Scotland meets the 2045 target?

Roseanna Cunningham: It is a pity that, in spite of our having written on multiple occasions, calling for action in the many specific reserved areas that were flagged up by the Committee on Climate Change, we have received no substantive assurances whatsoever from the UK.

Sarah Boyack (Lothian) (Lab): Given the Scottish Government's very slow progress to date on decarbonising heat and Citizens Advice Scotland's recent call for greater investment and action on tackling heat emissions, what new action will the Scottish Government take to tackle emissions from heat, to help Scotland to reach net zero emissions?

Roseanna Cunningham: I am sure that the member listened to my earlier responses. We are currently carrying out a very quick revision—an update—of the existing climate change plan, and the question of heat decarbonisation is key: it will need to be addressed, and we are looking at the potential for action. However, it is also one of the key areas in which action from the UK Government will be required if we are to achieve what we need to achieve to get to net zero emissions by 2045.

People really need to look in detail at what the UK Committee on Climate Change flagged up as the division between devolved and reserved requirements, because it is a real issue for us in achieving our net zero targets.

Mark Ruskell (Mid Scotland and Fife) (Green): Last night's challenging Channel 4 documentary by George Monbiot emphasised the scale of the changes that may be needed globally in our food production in order to meet net zero targets. Although some people will feel threatened by that message, in the week that the Greggs vegan steak bakes arrived on the shelves in Scotland, what is the Scottish Government doing to ensure that we are capturing the economic and environmental opportunities that are being driven by consumer demand for reduced-meat diets?

Roseanna Cunningham: I thank the member for inadvertently having given me advance notice of the supplementary question that he was going to ask. I did not see the programme that he referred to, but I am aware of the debate that is taking place.

There are a couple of things that I should say in addition to my comments on agriculture, which I will not repeat. There is a global challenge, but we will encounter difficulties if we try to attach global solutions to local conditions. The situation in Scotland, particularly in relation to livestock production, is very different from the situation elsewhere. I know that the member understands that, because we have already had some conversation on that point.

My colleague Fergus Ewing is considering the issue carefully. We are very conscious of the need to deal with agricultural emissions, but we need to do that in a fair way that recognises the continued future of that industry. Dietary changes are always to be welcomed, particularly when it comes to increasing fruit and vegetable intake, which is a health issue as well as a climate change issue, but we need to approach the matter in the context of the current Scottish agricultural system. We must not presume that the mistakes that are being made globally are being repeated in Scotland, because they are not.

Crown Estate (Coastal Assets)

3. **Maurice Corry (West Scotland) (Con):** To ask the Scottish Government what action it will take to maximise the Crown Estate's coastal assets, including enhancing the opportunities for marine sport and tourism activities. (S5O-03969)

The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham): Crown Estate Scotland's draft corporate plan for 2020 to 2023 includes a proposal for a coastal assets strategy. The strategy will seek to maximise the potential of Crown Estate Scotland's coastal assets through their efficient management and development. The draft corporate plan also sets out options for Crown Estate Scotland investment, including in support for the growth of Scotland's blue economy.

Activity over the coming years will include a focus on marine tourism—including, potentially, marine sport activities—and on helping coastal communities to manage their local marine resources.

Maurice Corry: A report on sailing tourism in Scotland states that Scotland's £130 million sailing tourism economy is set to grow by as much as 28 per cent in the next seven years and identifies further opportunities for private and public investment in critical infrastructural developments to meet growing demand.

Can the cabinet secretary outline what the Government is doing to encourage further growth and development of specific assets, such as Rhu marina on the Firth of Clyde?

Roseanna Cunningham: I am aware of the member's interest in Rhu marina at Helensburgh; he has already been active in that regard. Since Crown Estate Scotland took over, it has worked with Rhu marina on several improvement works. Rhu marina was recently awarded four gold anchors by the Yacht Harbour Association, so some considerable progress has taken place.

More generally on Scotland's coast and waters, we and colleagues across the chamber are very keen to continue to push for the potential development of our marine environment, but there are some issues that need to be addressed in relation to how we balance things.

This gives me the opportunity to advertise that 2020 is Scotland's year of coastal waters, which I expect to be another signifier of increasing marine tourism in Scotland.

Flood Prevention (Inverclyde)

4. **Stuart McMillan (Greenock and Inverclyde) (SNP):** To ask the Scottish Government what flood prevention action will take place following the

completion of the Inverclyde integrated catchment study. (S5O-03970)

The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham): The integrated catchment study will provide detailed information on flooding mechanisms from overland flow, sewers and watercourses. Once the study is complete, responsible authorities will be in a position to consider what actions should be taken to manage flood risk in Inverclyde.

Stuart McMillan: The cabinet secretary, who visited Inverclyde several years ago, will be very aware of my interest in flooding in Inverclyde.

The study will be hugely beneficial for infrastructure planning in Inverclyde for many years to come. For that reason, it is important that the study is maintained going forward. Can the cabinet secretary provide an update on the funding for flood prevention infrastructure that has been provided to Inverclyde Council since 2007 and what Inverclyde Council has requested for the remainder of the parliamentary session?

Roseanna Cunningham: I need to remind the chamber of how we do flood funding in Scotland. In 2016, we agreed a 10-year flood funding strategy with the Convention of Scottish Local Authorities. The strategy is funded through the local authority capital settlement and amounts to a minimum of £42 million per year. Eighty per cent of that annual funding supports delivery of the flood protection schemes that were identified in the flood risk strategies that the Scottish Environment Protection Agency published in 2015. Four of those schemes are in Inverclyde, and Inverclyde Council has received all the required funding from the Scottish Government to take them forward. The remaining 20 per cent of funding is distributed annually among all Scottish local authorities, based on their share of properties at risk of flooding.

Since 2007, the Scottish Government has provided Inverclyde Council with £2.9 million from the local authority capital settlement to support delivery of flood protection schemes in Inverclyde—that has been for the four schemes that I referred to.

Future funding will depend on what schemes are taken forward and what priority they are given.

Finlay Carson (Galloway and West Dumfries) (Con): The cabinet secretary will be aware that in November I raised the worrying issue that, four years on from the flooding that devastated Newton Stewart, we are still awaiting a much-needed flood protection scheme.

Will the cabinet secretary give us an update on any discussion that she has had with Dumfries

and Galloway Council, and outline what role she can play to ensure that a scheme can be delivered as a matter of urgency? I understand that a flood order has been waiting to be published since the summer.

Roseanna Cunningham: It would be helpful if the member were to speak with me directly about the specifics of that matter. In general, it is for local authorities to bring forward the schemes. I do not micromanage that. If there is a particular issue with what seems to be a bureaucratic blockage, I am happy to engage with the member on the specifics of that.

Environmental Standards

5. Willie Coffey (Kilmarnock and Irvine Valley) (SNP): To ask the Scottish Government how it plans to uphold environmental standards in Scotland when the United Kingdom leaves the European Union. (S5O-03971)

The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham): We are committed to maintaining or exceeding EU environmental standards, whatever the outcome of Brexit.

Despite three years of uncertainty, we have been working to ensure that the four key EU environmental principles continue to sit at the heart of policy making and law in Scotland, and we intend to legislate for domestic governance arrangements. An announcement will be made before the new continuity bill is introduced.

Willie Coffey: The original withdrawal agreement contained a commitment to maintain environmental protections, but I understand that that has been removed. Does the cabinet secretary agree that that is appalling, given the current climate crisis? The UK Government wants to move away from the standards and protections for our environment that are offered by European Union regulations.

Roseanna Cunningham: It is clear that, in the face of the twin global crises of climate and biodiversity, we should be increasing our efforts and working more closely with other countries, not loosening our ties and turning back the clock on environmental protections. It seems inexplicable to me that the UK Government appears to be moving in that direction. I hope that that apparent movement turns out not to be the case. It is a worrying development—there is no doubt about that.

We will, of course, resist any moves that would lessen our freedom to maintain and strengthen our environmental protections in Scotland.

Claudia Beamish (South Scotland) (Lab): I will continue on that theme. Reflecting what was a

Scottish National Party policy commitment to Greenpeace during the UK general election, will the Scottish Government set

“legally binding targets (long term and interim) to clean up our air, soils, seas and rivers”

and enshrine a commitment to develop policies that will reduce Scotland’s global environmental footprint and restore nature in Scotland? That is particularly important in the present circumstances.

Roseanna Cunningham: We are working very hard indeed to take that work forward. As the member knows, and as I indicated, we are in the business of ensuring that the environmental principles are statutorily based. We are looking at environmental governance for this year. We have only just been given sight of the UK Government’s environment bill and we are having to look very carefully at some of its implications for devolved matters.

I think that the member knows that, as I indicated, it is my full intention that what we do not only reflects the EU’s current environmental protections but will continue to reflect them as the EU makes improvements. We will also look for where we can go further and do even better than that.

Fox Hunting (Proposed Legislation)

6. Colin Smyth (South Scotland) (Lab): I refer members to my entry in the register of members’ interests, as I am a member of the League Against Cruel Sports. To ask the Scottish Government whether the timetable for its proposed legislation on fox hunting allows sufficient time for it to be passed within the current parliamentary session. (S5O-03972)

The Minister for Rural Affairs and the Natural Environment (Mairi Gougeon): Yes.

Colin Smyth: I thank the minister very much for that answer. It is exactly a year since the minister said that she would bring forward a bill during the current parliamentary session, and I welcome the fact that she has reinforced that commitment today.

Given the length of time that it takes to pass legislation, and the fact that we have only 18 months left in the session, will the minister tell us when exactly she will publish the pre-legislation consultation, and when exactly she will publish the bill and bring it forward to Parliament? Will she give a clear commitment to the people of Scotland that boxing day 2019 was the last tally-ho for fox hunting, and that that cruel practice will be consigned to the history books, where it belongs?

Mairi Gougeon: I thank Colin Smyth for that question, which I completely understand. I have

met him and other members to discuss the proposals that I announced in January last year. I hope that he and other members across the chamber understand that we set out our planned legislative timetable in the programme for government. That is subject to the content of the year 5 legislative programme being agreed to, and to parliamentary timetabling and the extensive and wide-reaching impact of Brexit—we need to see how that pans out. Nonetheless, it is still very much our plan to bring forward a bill, and we have sufficient time in hand, outwith all those other issues, to progress that. We will bring forward and consult on our proposals in due course.

Rona Mackay (Strathkelvin and Bearsden) (SNP): If passed, what impact will the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill have on the penalties for those who commit animal welfare offences, including fox hunting?

Mairi Gougeon: If passed, our Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill will increase the maximum penalties for existing serious domestic animal and wildlife offences, which include offences against foxes. It will increase those penalties to a potentially unlimited fine and five years’ imprisonment. Importantly, it will also increase the statutory time limit on wildlife crime offences, which in essence allows Police Scotland more time to investigate, gather evidence and undertake forensic tests. Increasing the statutory time limit was one of the recommendations that Lord Bonyon made in his review of the Protection of Wild Mammals (Scotland) Act 2002, and it is a key aspect of the proposals that we have put forward.

Scottish Environment Protection Agency (Meetings)

7. Sandra White (Glasgow Kelvin) (SNP): To ask the Scottish Government when it last met representatives of the Scottish Environment Protection Agency, and what issues were discussed. (S5O-03973)

The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham): I met the SEPA board on 26 November 2019 to discuss priorities for the future, including tackling the global climate emergency. My officials regularly meet SEPA on a variety of issues.

Sandra White: I draw the cabinet secretary’s attention to the current state of the River Clyde. Does she agree that the river requires a clean-up, as Glasgow will host many events this year, most notably the 26th conference of the parties, or COP26? Will the cabinet secretary seek assurances from SEPA that the River Clyde will be assessed and that those responsible will be

obliged to act on that assessment? The Clyde needs a long-term strategy to ensure the maintenance of the river and the surrounding areas.

Roseanna Cunningham: The Government is, of course, looking forward to playing a central role in leading and driving ambition at COP26. We are leading the United Kingdom on tackling the climate emergency, which should be celebrated.

On the specifics of the question, monitoring and long-term investment in improving the Clyde is ongoing. River Clyde water quality has improved significantly since 2017, thanks to the co-operation of multiple stakeholders, including Scottish Water, SEPA and local authorities, such that the Clyde is now classified as “good” in a number of aspects. Between 2010 and 2021, Scottish Water will have invested £610 million in its waste-water assets to ensure that sewage is treated properly before it is discharged into the Clyde. Scottish Water is also investing £15 million to improve the River Kelvin, which is a tributary of the Clyde.

Keep Scotland Beautiful has established the Upstream Battle project, which aims to educate communities, support clean-ups in the Clyde valley and increase awareness of the harmful impact of litter. The ultimate goal of that project is to stop litter from getting into the Clyde. The Scottish Government is one of a number of funders and has provided £30,000 to the project. More widely, the Scottish Government’s water environment fund, which is administered by SEPA, has helped restore natural habits by removing fish barriers and concrete channels to allow fish to reach the upper reaches of the Clyde catchment. That fund has invested £3 million in river restoration projects near Hamilton and Shotts. If specific issues are of concern to Sandra White, I am sure that SEPA would be happy to discuss them with her directly.

Open Ground Habitats (Protection)

8. Lewis Macdonald (North East Scotland) (Lab): To ask the Scottish Government what action it is taking to protect open ground habitats, such as peatlands and grasslands, which are critical to the conservation of curlew. (S5O-03974)

The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham): We are using a range of measures to protect the habitats of open ground bird species, such as the curlew. Those measures include the protection of suitable habitats in Scotland’s statutory protected areas, as well as the management of habitats under the agri-environment climate scheme, with £31 million committed for wader management under the scheme to date.

I am also pleased to note the very recent award of more than £156,000 by Scottish Natural Heritage to curlews in crisis Scotland under the Scottish Government’s biodiversity challenge fund. The funding has been given to help increase suitable breeding areas and reduce predation at sites in Caithness and Ayrshire. That will play a crucial role in our efforts to improve nature and will help Scotland meet its international biodiversity commitments.

I believe that Lewis Macdonald is species champion for the curlew.

Lewis Macdonald: I am, so I welcome that award. As the cabinet secretary will recall, I pressed her for support on a previous occasion.

The cabinet secretary will also recognise that there is a need to balance new forest planting to sequester carbon with the need to protect habitats and species such as the curlew to support biodiversity. Will she authorise a spatial mapping assessment to guide future forestry planting decisions and to protect safe breeding habitats in the future?

Roseanna Cunningham: The member is probably aware that it would not be for me to make that decision; it would be a decision for the Cabinet Secretary for the Rural Economy. I will raise the matter with him directly.

The member has raised a very legitimate point, which is that we need to understand the balances and the consequences that might arise over a range of different issues. More trees need to be grown and there is a need for increased carbon capture through green infrastructure, such as tree planting. Of course, we also have to think about the consequences for biodiversity. Some of the work that we do has an immensely positive impact on biodiversity, through peatland restoration, for example.

A slightly different issue has to be addressed when it comes to forest planting, and I will ensure that my colleague Fergus Ewing has the member’s concern in front of him. Survey work and environmental information are already required under the forestry grant scheme, but the member seems to be asking for something more strategic and widespread, and I will ensure that that is brought to my colleague’s attention.

Scottish Biometrics Commissioner Bill: Stage 1

The Presiding Officer (Ken Macintosh): The next item of business is a debate on motion S5M-20331, in the name of Humza Yousaf, on the Scottish Biometrics Commissioner Bill at stage 1.

15:03

The Cabinet Secretary for Justice (Humza Yousaf): I am delighted to open this stage 1 debate on the general principles of the Scottish Biometrics Commissioner Bill. I thank Margaret Mitchell, the convener, and the Justice Committee for its scrutiny and its stage 1 report on the bill. I also thank the Finance and Constitution Committee and the Delegated Powers and Law Reform Committee for their consideration of the bill. I commend the Justice Committee for taking evidence from a very wide range of stakeholders and individuals. I am grateful to those stakeholders for the considered views that they offered to the committee.

I welcome the committee's view that the establishment of an independent Scottish biometrics commissioner is both timely and necessary; I also welcome the committee's recommendation that the general principles of the bill be agreed to. In its stage 1 report, the committee made a number of detailed recommendations and comments, and called on the Government to consider and respond to them. The Government is still reflecting on some of those points, but I hope that the interim response, which I provided to the committee earlier this week, provides a useful indication of the Scottish Government's position. I will issue my final response next week.

In this afternoon's debate, I will focus on the principles of the bill and what we want to achieve through it, although I will, of course, try to address some of the more significant points that the committee raised.

By introducing the bill, the Scottish Government recognised the need for transparency and accountability in how biometric data is used in the context of policing and criminal justice, and the importance of those issues to building and maintaining public trust. We live in times of rapid technological change, in which new biometric techniques continue to develop and evolve. Scientific innovation in policing has the capacity to make us safer, but it also raises pertinent questions about ethics, lawfulness and privacy. Therefore, we should recognise that public confidence requires that fundamental rights and the rule of law are not only respected but, importantly, seen to be respected. With that in

mind, the bill creates an independent commissioner to ensure that the approach to biometric data is effective, lawful and ethical, and to ensure that an appropriate balance is struck between keeping communities safe, respecting the rights of the individual and improving the accountability of the police.

I cannot stress enough how important it is that we equip our police officers with the necessary technology to ensure that they can keep us safe. However, it is equally important for the public to have absolute confidence in those technological advances and in how their data will be collected or retained. The legislation, the commissioner and the code of practice will help to provide those reassurances.

The new commissioner's general function is to support and promote the adoption of lawful, ethical and effective practices in relation to the collection, use, retention and, of course, disposal of biometric data in the context of policing and criminal justice. That function will be carried out by keeping under review relevant law, policy and practice, by promoting public awareness and by promoting and monitoring the impact of a code of practice.

I turn first to the scope of the oversight arrangements that are contained in the bill. They apply currently to Police Scotland and the Scottish Police Authority, but I intend to broaden the scope by lodging amendments at stage 2 to include the Police Investigations and Review Commissioner, in recognition of the fact that the PIRC manages biometric data in the course of its investigations. The Justice Committee will be pleased to hear that I am also actively considering the inclusion of cross-border policing bodies such as the British Transport Police, the Ministry of Defence Police and the National Crime Agency.

I want to speak now about the commissioner's public awareness-raising function. Given the explosion in biometric data technologies in recent years, it is all the more important that we have an independent commissioner who will lead a national conversation about rights, responsibilities and standards. The Justice Committee asked how that conversation can be progressed. I see that we have a golden opportunity for the new biometrics commissioner to link up with others, such as the Information Commissioner and the Scottish Human Rights Commission, to perhaps take forward a national campaign.

The Justice Committee raised a number of questions and recommendations on the code of practice and the associated functions and powers of the commissioner, and I will address some of those now. I welcome the committee's support in principle for the requirement to have a code, which the commissioner will prepare and promote. I envisage that the code will set out the standards

and responsibilities of Police Scotland and the SPA, with the aims of ensuring good practice, driving continuous improvement and enhancing accountability. The code will be subject to consultation, and to the approval of Scottish ministers and, crucially, the Parliament.

I want to clear up a misunderstanding. The code is already being put on a statutory footing. The bill includes a number of statutory provisions about the code—for example, it requires the commissioner to prepare and review a code, it requires there to be consultation on the content of the code and it requires specified policing bodies to have regard to the code. The bill therefore already delivers on the committee's recommendation that the bill should

“establish a statutory basis for the existence and application of the Code”.

It is the content of the code that is not specified in the bill. That is to allow for flexibility and future proofing and to ensure that the commissioner may act in a way that is impartial and allows them to use their own judgment.

The committee's recommendation around using the independent advisory group's code as an interim code was well intentioned, but I feel that the specification of the code by anyone other than the new commissioner would undermine the key principles of impartiality and statutory consultation. I believe that the better solution will be to let the commissioner undertake the process of preparing the code in the way that the bill specifies, which includes consultation, so that we have a code that is fully formed and up to date, and which has been informed by the views of the relevant parties.

Liam McArthur (Orkney Islands) (LD): I am grateful to the cabinet secretary for giving way and for explaining the rationale around the code of conduct. Does he not accept that, in drafting the code of conduct, the IAG was seeking views and the expertise of stakeholders that he insists would need to be consulted on such a code?

Humza Yousaf: Yes. I believe—

The Deputy Presiding Officer (Christine Grahame): Excuse me, cabinet secretary—I just sneezed on the microphone. I am sorry about that.

Humza Yousaf: I accept that, Mr McArthur. There is nothing preventing the new commissioner from having regard to the IAG's code of practice and consulting the IAG members, but I would not want to pin them into that corner. The new commissioner should have flexibility and, for them to be genuinely independent, it is important that they be allowed to develop the code in the way that they see fit. The member is right to mention that the IAG consulted a number of the relevant parties.

Let me return to the commissioner's powers. To enable the commissioner to effectively perform his or her functions, they will have the power to require police bodies to provide information. A failure to provide information to the commissioner can be referred to the Court of Session for enforcement.

The information that is gathered by the commissioner will allow him or her to prepare and publish reports that will be laid before Parliament, containing recommendations that will be directed to the police bodies that are listed in the bill. Those bodies can be required to respond publicly to a recommendation and, if they fail to do so, the commissioner could publicise such a failure. The ability to draw Parliament's, and the public's, attention to the activities of police bodies should not be—and, I am certain, is not—underestimated.

John Finnie (Highlands and Islands) (Green): I am grateful to the cabinet secretary for taking an intervention on that point. I had planned to mention this in my speech. You could instead just have a requirement that had to be adhered to, and there would be no need for any of this. We know that judicial review is not a simple process. Surely, with any piece of legislation, discretion can be afforded to the decision making within it, but the requirement can be compulsory.

The Deputy Presiding Officer: I know that I am on my hobby-horse, Mr Finnie, but before the cabinet secretary responds, what word did you use that you should not have used?

John Finnie: “You”?

The Deputy Presiding Officer: Yes. We are not going to use the term “you”, are we? Thank you.

Humza Yousaf: That was a punishable offence by Mr Finnie.

On his substantial point, I think that that approach would be the wrong one. I think that I said in a meeting with the member that I will continue to keep an open mind, but I am not persuaded yet.

The evidence to the Justice Committee from the biometrics commissioner for England and Wales was compelling. He told the committee:

“The police are sensitive about carrying the public with them. That means that, when we visit, they are always extremely open with us; we always have open discussions and they are always amenable to our suggestions about their compliance, and the basic reason is that they want to continue to hold public trust.”—[*Official Report, Justice Committee*, 24 September 2019; c 7-8.]

The commissioner went on to talk about the different dynamic that would exist, should there be a requirement as opposed to a duty to “have regard to”. He thought that that change in dynamic

would be extremely unhelpful. I am also of that view.

All of us understand that the police are under a great deal of scrutiny—as they rightly should be. I completely agree with that, and the police agree with that as well. They have scrutiny from Her Majesty's Inspectorate of Constabulary in Scotland, from the Justice Sub-Committee on Policing, from the Justice Committee and, more broadly, they are accountable to the SPA, the Police Investigations and Review Commissioner, Audit Scotland and so on. They are very aware of that public scrutiny and attention, and they put importance on taking the public with them. That is an important dynamic, which I would not want to change. I will listen to what the member says, and to what the Justice Committee says, on that.

It is important to be firm that there will be consequences if a recommendation that is made by the commissioner is ignored. A number of consequences might occur. First, the situation can be reported to Parliament. That not only makes it public and incurs reputational damage, but the body in question may also be called to account for itself to Parliament; indeed—dare I say it?—to the sub-committee convened by John Finnie.

Also, the commissioner may decide that the lack of co-operation has highlighted the need for a full review or for legislative change. If the commissioner made such a recommendation, we would, of course, be open to that suggestion. Therefore, lack of regard to the code or to a recommendation from the commissioner might have far-reaching consequences and I hope that the Justice Committee will be reassured by that. However, I suspect that this will continue to be a matter for debate as we progress to stages 2 and 3 of the bill.

As the committee recognised,

“the role of biometrics is fast becoming a central element of the way in which Scotland is policed and crime is investigated and prosecuted”

and, as the Commissioner for the Retention and Use of Biometric Material observed, many countries are looking at what Scotland is doing through the bill. I want to put Scotland at the forefront of driving forward transparency, accountability and improvement in relation to biometric data for policing and criminal justice purposes. That is why the architecture of the bill allows flexibility, why the definition of biometric data is broadly drawn and why the commissioner's powers and functions are focused on rights and responsibilities.

The bill creates a biometrics commissioner for modern times who will operate in a fast-changing world but always with a focus on our rights, our safety and our expectation of transparency in

policing and the criminal justice system. I look forward to working with members of all parties to secure those objectives as we continue to take the bill through Parliament.

I move,

That the Parliament agrees to the general principles of the Scottish Biometrics Commissioner Bill.

15:17

Margaret Mitchell (Central Scotland) (Con):

As the convener of the Justice Committee, I am pleased to speak on the Scottish Biometrics Commissioner Bill. I express my thanks to the Justice Committee's members and clerks for their hard work and to all the witnesses who provided evidence as part of our scrutiny of the bill.

The past 25 years have seen a digital revolution, with technology now central to the way we live. That impacts on how the police investigate crime. The bill establishes a Scottish biometrics commissioner and a statutory code of practice to provide oversight for the collection, use, retention and disposal of biometric data in the context of policing and criminal justice. The committee welcomes the bill, but, as ever, the devil is in the detail.

The oversight system created by the bill sets the blueprint for Scotland's response to the growing influence of biometrics. The committee agreed that the bill must set out clearly the principles that should underpin that oversight and that the promotion and protection of human rights, privacy, public confidence and community safety are crucial. Therefore, it is disappointing that the Government's response to our report does not support the specific inclusion of those principles in the bill.

The committee believes that the bill must provide the commissioner with the necessary powers to hold the police service to account for its use of biometrics and to ensure compliance with the code of practice. That is absolutely vital to ensure public confidence and trust in the use of biometrics by the police and the criminal justice system.

The committee agrees that the Scottish biometrics commissioner should be independent of the Government, appointed by the Scottish Parliamentary Corporate Body and should be able to scrutinise biometric processes adopted by all who provide policing within Scotland and who share biometric data with Police Scotland including the British Transport Police and the National Crime Agency.

At present, other public and private sector bodies are collecting and sharing biometric data without regulation. There is a lack of transparency in

that requires to be addressed urgently. The bill proposes that the commissioner has oversight only of Police Scotland and the SPA, at a time when public concern over the use of biometrics is growing. Witnesses suggested that a wide-ranging debate on the issue should be led by the new commissioner. The committee urges the Government to fully meet its policy intention of providing confidence to the public by extending the debate to apply to all those who collect biometric data in Scotland. I welcome the cabinet secretary's recognition of that need and call on him to support the commissioner in leading that debate.

Members unanimously support a code of practice, to be established by the commissioner, and believe that the code should be considered and approved by the Parliament. Given the far-reaching human rights, ethical and privacy issues relating to the use of biometrics for criminal justice and policing purposes, the commissioner's lack of powers to ensure compliance with the code raises concerns. Although name and shame is a key approach in the oversight of the 43 police forces in England and Wales, there is only one police force in Scotland, so the committee considers that that approach is not a viable option for the new commissioner under the code of practice. The committee considers that the commissioner must have the powers to enforce any compliance that may be needed.

We recognise that there may be exceptional circumstances in which the police are not able to comply with the code. The committee therefore recommends—there was lengthy discussion of this—that the 'have regard to' approach be reviewed in the light of experience and that the commissioner reports to Parliament on its effectiveness.

I note the Government's view that the commissioner could "explore" procedural changes with Police Scotland, or recommend new legislation to strengthen observance of the code, but those options are far from ideal.

Another key concern raised in evidence was the lack of a complaints mechanism in the bill. It is essential that people are able to complain about their biometric data being taken or used without their consent. The committee recommends that the bill provides for a complaints mechanism to allow the commissioner to deal with complaints from the public. It is disappointing that the cabinet secretary is opposed to that recommendation.

Humza Yousaf: Does the convener recognise that it is important for us to not stray into the reserved functions of the Information Commissioner and that, as things stand, if anybody in Scotland has a complaint about how their data is being used or that their data is being

misused, they can go to the Information Commissioner to ask for that complaint to be investigated?

Margaret Mitchell: The bill is all about transparency and the collection of more biometric data, which is very personal information. If we are to have trust and the bill is to be successful, the public must have a mechanism through which to complain, and I urge the cabinet secretary to reconsider that when we come to stage 2.

The use of technology that impacts on the rights of individuals must always be justified and proportionate. Committee members stress that the bill must ensure that the police always adopt an ethics-centred approach to the use of new invasive technologies. The commissioner will have a key role in exploring whether the use of new technologies is necessary and justified, and in ensuring that technology is used according to the principles that underpin the oversight mechanism.

The committee recommends that the bill provide for an ethics advisory group to assist the commissioner, and that that group be appointed by the commissioner and be independent of the Government. I am sorry to see that the cabinet secretary rejects a statutory basis for such a group. The cabinet secretary recently announced plans to establish an independently chaired ethics group to advise the Government. It would be helpful if he could be clear that an ethics group for the commissioner would be separate from any ethics group appointed by him.

Serious concerns were expressed about private companies that collect and share biometric data with the police, and public sector use of biometrics, such as in parole e-monitoring and local government closed-circuit television systems. Here, the bill provides very few, if any, reassurances. The committee therefore recommends that the Scottish Government reviews provisions on the scope of the commissioner's remit and powers after a suitable period, that the commissioner reports to the Parliament annually on the adequacy of the resources provided to their office, and that the Scottish Government reviews the commissioner's funding, in co-operation with the SPCB. I note the Government's comments on a review of funding and post-legislative scrutiny. However, we should not rely on post-legislative scrutiny; we should aim to get this legislation right the first time.

The committee considers that the bill will need to be strengthened at stages 2 and 3. I ask the cabinet secretary to rethink some of his objections to our recommendations. In the meantime, the committee welcomes the bill and recommends that the Parliament agrees to its general principles.

15:26

Liam Kerr (North East Scotland) (Con): I am very pleased to open this stage 1 debate on the Scottish Biometrics Commissioner Bill on behalf of the Scottish Conservative and Unionist Party. For the avoidance of doubt, my colleagues and I, like the committee, support the bill's principles and will vote accordingly at decision time.

At the outset, I echo the convener's thanks to the clerks for pulling together a great deal of information on a complex area into a comprehensive, clear and accessible report. The principles of the bill are sound: to address ethical and human rights considerations in Scotland relating to the collection, use, retention and disposal of biometric data in the context of policing and criminal justice. The bill seeks to do that by establishing the post of a Scottish biometrics commissioner who will oversee the use of biometric material and will draw up, and promote the use of, a code of practice that will govern how biometric material should be used and gathered. It also seeks to underpin public trust in the way that the police use biometric data; a key point that I shall return to shortly.

I have set out the bill's general principles in that way because the scope of the bill raises a number of considerations that have been highlighted in the Justice Committee's stage 1 report and that bear further examination as the bill progresses.

First, and perhaps most important, is that the resourcing of the bill will determine its success, both in the immediate and longer term. The committee's report is clear that one of the key concerns raised by witnesses centres around the level of resources required to allow the commissioner to operate effectively. The report states clearly that

"Other SPCB supported officeholders have faced resourcing issues as a result of changes or expansion to their role and powers over time or as a result of growing demand for activity."

By its very nature, this is a rapidly developing and changing environment that is likely to see an increase in activity. The report's conclusion was stark:

"the Committee is concerned that the Financial Memorandum may not sufficiently estimate the resources which may be needed to support the delivery of the Commissioner's functions".

In the same vein, the Law Society of Scotland has made a useful and important submission to the debate and specifically highlights that not only should the role be

"appropriately funded"

but that

"such funding must also continue at an acceptable level to allow for"

the inevitable mission creep. The Law Society goes on to say:

"Only in that way can the Scottish Commissioner be able to ensure that they can properly fulfil their functions and be appropriately accountable".

That is why the cabinet secretary's response to the committee's report is somewhat concerning when he says:

"The provision of further resources will be subject to wider public spending pressures and will be considered as part of the annual budget setting process".

Of course. But that is not a cast iron commitment to ensure either appropriate or continuing funding as the role inevitably enlarges.

On another matter, the committee is right to highlight at paragraph 86 of its report that biometrics use goes far beyond Police Scotland and the SPA; for example and especially, it goes into education and the national health service.

There is a public need and a public good in seeking to regulate biometrics in that way, and there is a pressing need for transparency. What do we do about that? The committee called for a public debate but, at the very least, the code of practice ought to address how the commissioner will interact with private sector users of biometrics. Again, I note the Scottish Government's response, which is encouraging, but a great deal of responsibility would be loaded on to the commissioner, which takes us back to resourcing, both initially and going forward.

Of course, all that leads to concerns about enforcement. I recall the committee being concerned about whether there should be a duty to comply with the code as opposed to a duty to "have regard to" it. The convener highlighted that the committee felt that the enforcement powers were insufficient, which could undermine public confidence. That merits further consideration, although I recall the cabinet secretary arguing his case persuasively in committee, and I note his letter of 7 January. In my view, it seems sensible to have the review that the convener talked about.

If public confidence is a key aspect of the bill, the absence of a complaints mechanism to enable the public to refer issues to the commissioner—for example, for lack of compliance with the code—is regrettable. In committee, many witnesses brought up that issue, and the committee's report says:

"there is a risk to public confidence and transparency if a complaint mechanism is not included in the Bill."

I find that view persuasive.

I hear the point about the Information Commissioner's Office, but the new biometrics

commissioner will want to engage with the public and be available. One can imagine a situation in which the new commissioner, in seeking to fulfil the public engagement or awareness role, is approached by a member of the public about an apparent breach, but is required to send them away to the ICO. I suggest that that would not lend itself to providing public trust and confidence. I accept the requirement in the cabinet secretary's response to develop a comprehensive communications strategy to understand the role, but I am less persuaded that there is no merit in including a direct complaints mechanism, as the committee unanimously recommended.

I owe my final point to my learned friend Gordon Lindhurst, who I expect will, in closing, develop the argument on what I am increasingly of the view is a key issue. The cabinet secretary rightly raised the issue of enforcement, which is worth exploring further. Section 12(3)(b) of the bill allows the Court of Session to treat a failure to provide information to the commissioner under section 11 as a contempt of court. The drafting seems somewhat draconian, given the lack of similar provisions elsewhere. In addition, given the drafting, an individual will not know in advance whether an action will be in contempt of court, unlike a situation in which someone does know whether they are ignoring a direct order of the court. Furthermore, the interplay between that section and section 11(3), under which

"A person is not obliged ... to provide information which that person would be entitled to refuse to provide in proceedings in a court in Scotland",

is, I gently suggest, challenging. I will leave that point there for consideration by my colleague later and, perhaps, for review at stage 2.

Suffice it to say, I confirm that we will support the general principles of the bill at stage 1, and I look forward to cross-party collaborative working to drive improvements into the Scottish Biometrics Commissioner Bill.

15:33

James Kelly (Glasgow) (Lab): I am delighted to open the debate for Scottish Labour, and I confirm that Scottish Labour will support the general principles of the bill at decision time. As other members have done, I place on record my appreciation of the work of the Justice Committee—particularly that of the clerks in compiling the report. I also thank the witnesses who appeared before the committee.

The bill that is before us is important. If we look at the background to biometric data and data in general, we can see its importance and that, over 100 years, it has played a central role in policing and criminal justice. Police and law enforcement

agencies have used data very effectively to prosecute crimes and to bring those who have committed crimes to justice.

Data collection and the extent of the data that is collected have increased significantly over the past 25 years, as Margaret Mitchell said, particularly with the vast improvements in technology that we have seen. That is welcome in helping the police to do their job. We have seen numerous examples of cold-case reviews having allowed the police to go back and investigate crimes from 30 or 40 years ago and secure successful prosecutions as a result of improvements in biometric data techniques.

At the same time, given the breadth of the collection of data, the number of people that it covers, how that data is stored and how long it is stored for, there are central issues around respecting people's human rights while enabling the police and the prosecution authorities to carry out their job effectively. It is essential, therefore, that we establish an independent biometrics commissioner.

Three issues that are addressed in the committee's report have already begun to play out in the debate: the scope of the commissioner's role, the powers that the commissioner will have and access to the commissioner for complaints. The scope is currently limited to Police Scotland and the SPA, so I welcome the cabinet secretary's announcement this afternoon that it will be extended. However, we should examine whether it should go further, including public bodies such as the NHS and covering the way in which some private bodies collect and store data. The Justice Committee heard in evidence concerns about the breadth of the organisations that are collecting biometric data, using it and passing it to the police. There is no doubt that that will continue to grow, so it is clearly an area that needs to be examined further.

The powers will be established through the code of practice that the commissioner will move forward with, and a lot of the debate this afternoon has been around whether the provisions that are currently in the bill are adequate. There has been much discussion about whether the phrase "have regard to" is legally adequate to ensure that people comply with the code of practice. I am not persuaded that it is strong enough; I think that we need to require more legal compliance. Although we agree on the bill, the cabinet secretary and I have had numerous political disagreements over the years. I can "have regard to" the cabinet secretary's views on, say, the matter of the constitution, but that does not mean that I have to follow them or implement them in the speeches that I make in the chamber. We need something stronger if we are to give the commissioner the

powers that he needs to ensure that the code of practice does not become toothless.

On access, it is important that the public have a mechanism to bring forward complaints properly. I listened carefully as the cabinet secretary made a number of representations on that, but I still feel that the bill, as it is currently drafted, needs more on public awareness and that more needs to be done to allow people to bring complaints if they feel that their human rights are being compromised in any way. As I said, that is becoming a central issue.

The other area that will be crucial is how the bill caters for future developments. Although the bill, as it is currently drafted, is reasonably balanced, that area will expand greatly in the coming years, and the code of practice and the commissioner need to be able to take account of developments in technology.

I welcome the principles of the bill. It is important that we have an independent biometrics commissioner, although issues have arisen in the Justice Committee's report about the scope of the commissioner's role, the powers that he will have and access to the commissioner. I hope that the cabinet secretary takes on board some of the views that have been expressed this afternoon. I am sure that, if appropriate changes are not indicated ahead of stage 2, members from all parties will lodge amendments that seek to strengthen the bill, to make it more effective and robust.

15:40

John Finnie (Highlands and Islands) (Green):

I advise members that the Scottish Green Party will support the general principles of the bill at decision time. I, too, thank all those who have been involved in the process—particularly the clerks who compiled the report. The examination of the proposed legislation has been thorough. I also thank all those who have provided briefings, including Amnesty International—I refer members to my register of interests, as I am a member of Amnesty International.

Paragraph 87 of the Justice Committee's report, to which the convener alluded, states:

"The Committee asks the Scottish Government to consider how the lack of debate and transparency on the use of biometrics across Scotland might be addressed, and what role the Scottish Biometrics Commissioner could play in this".

The Scottish Government's response of 7 January says that the biometrics commissioner would

"be best placed to lead any debate on the level of transparency".

I do not agree. I think that it would be inappropriate to leave all of that to the biometrics commissioner. As the convener and others have said, this is a fast-moving area. It may seem strange to say that we need to debate the topic when we are actually doing so, but we need a lot more debate on this issue for the very reasons to do with technology that members have outlined.

The Scottish public is under heavy surveillance. I will not dwell on the issue, but we have seen that with the digital triage devices—the cyberkiosks—which were deployed without assessment, lacked a robust legal basis and received little, if any, oversight from the SPA. Public rights could have been eroded, but Police Scotland has responded extremely positively and has engaged with others.

Things have moved on, and the Justice Sub-Committee on Policing is looking at issues to do with facial recognition, which would clearly fall within the remit of the biometrics commissioner. A live challenge on that issue is going on elsewhere in these islands.

I welcome the contributions from the Scottish Human Rights Commission, Open Rights Group, Big Brother Watch, the Scottish Information Commissioner and various academics. I commend the independent advisory group for the role that it has played throughout and for recommending that an ethics advisory group should be established if the bill is passed. I consider that that recommendation should form part of the bill.

The committee's stage 1 report alludes to facial recognition, facial search technology, gait and movement recognition technology, eye/iris/retinal identification, voice recognition software and data from social media that is capable of providing biometric sources to the police—which, I am told, is second-generation biometrics. Consequently, we need robust oversight.

I recall the trialling of CCTV in Airdrie in the 1990s, when I was working in a different capacity, and the issues remain largely the same. Who will undertake the role? What role should the police and the private sector have and for what purpose? Who will have oversight? Who will have access to the material? How long should it be retained for? Parliament must lead that debate, along with our country's justice system. I am sure that Police Scotland and the Crown Office and Procurator Fiscal Service would welcome discussions on that area. It is key that we all protect citizens' rights, because, if we do not, who will?

The code of practice, which has been alluded to, is intended to deal with some of the issues. In its written submission, the Scottish Human Rights Commission highlighted that a detailed analysis of the deletion of biometric data was part of the independent assessment group's initial report but

that the issue has not been picked up. We also know, from our deliberations, that data that is already in the protection of Police Scotland and the SPA is not all legitimately held. We allude to that as a “legislative gap” in paragraph 132 of the committee’s report.

In its response to the report, the Scottish Government said:

“Since the publication of the 2016 HMICS review of the use of the Facial Search functionality within the UK Police National Database ... Police Scotland has successfully delivered a new national custody episode management system which enables custody images to be automatically weeded from that system when the corresponding image is similarly deleted from the Criminal History System.”

It is unclear to me what that is supposed to mean. It was my understanding that, for technical reasons, photographic details of people who had been acquitted remained on the system. If that has been corrected since 2016, that is very good, but perhaps the cabinet secretary could outline to us whether that is the case.

The bill covers Police Scotland and the Scottish Police Authority. However, I have been frustrated by the fact that a number of police services that operate in Scotland are not accountable to this Parliament. Those include the British Transport Police and the National Crime Agency, never mind some of the other UK agencies that it will be more challenging to deal with. I welcome the fact that the cabinet secretary wants the British Transport Police and the National Crime Agency to be covered by the bill, and I wish him luck in getting the UK Government to agree to the Ministry of Defence Police being covered by it. I hope that it agrees to that and that people will support the use of section 104 orders. However, if the UK Government’s agreement to that is not secured, not all of policing will be covered by the bill—only the principal police force and the principal holders of the information will be.

We are in a situation in which it is not just public bodies that hold information. Public space CCTV systems, road camera enforcement systems and automatic number plate recognition systems can all capture facial images of citizens who are engaged in routine lawful activity. In its briefing, the Open Rights Group refers us to the case in which the European Court of Human Rights said:

“any state that claims a pioneer role in the development of new technologies bears special responsibility for striking the right balance”.

We are talking about the scrutiny of who has what, who has access to it and all the rest of it. Schools hold biometric information, and the national health service holds information that I understand is referred to as the gold card collection. Amnesty says that the regulation of biometrics outside policing, including its use by the private sector, is

“challenging but vital” and that the Government should consider how best to achieve that. As it is presently configured, the bill will not do that.

I will return briefly to the “have regard to” provision. Like James Kelly, I have regard to a lot of things. I have had regard to dietary advice, but I will have to endure the reputational damage of not having adhered to it. We should get it right the first time. There should be no problem whatever with our policing services accepting that, if the person who is engaged by this Parliament to deliberate on decisions in this area says they should do something, they should do it. There should be no issue whatever with that.

The reality is that there is flexibility within any system of law enforcement. Day in and day out, the police make judgments about whether to take actions; day in and day out, the Crown Office and Procurator Fiscal Service considers representations that are made. It should not be punitive for the police to adhere to the decisions of the commissioner, but I feel that “have regard to” is a very unsatisfactory phrase to use.

Future proofing is an issue, and the technology is far ranging. We must watch out for the snake-oil salespersons who are very happy to sell us technology that has a 2 per cent success rate—I am referring to facial recognition technology. Police Scotland has no plans to introduce it at this time, but that is in the 2026 plan. As has been said in some of the representations that have been made to us, scrutiny of the technology should be an important function of the biometrics commissioner.

I will leave it there.

The Deputy Presiding Officer: We have some time in hand, but I cannot be overgenerous, interesting though Mr Finnie’s contribution was.

Mr McArthur, if you want to use up a wee bit of extra time, dinna fash yersel—you will get it.

15:49

Liam McArthur (Orkney Islands) (LD): Thank you, Presiding Officer. I will not abuse that invitation.

Like others, Scottish Liberal Democrats strongly support the general principles of this focused but important bill. As others have done, I pay tribute and offer thanks to those who helped the Justice Committee during our stage 1 scrutiny.

I also want to acknowledge the contribution of John Scott QC and his colleagues on the independent advisory group, who have done so much to lay the foundations for the bill. Mr Scott barely had time to draw breath, after digging the Government out of a hole over unregulated stop

and search, before being invited to help to shape the regulatory framework for use of biometric data. He and his IAG colleagues certainly rose to that task; it is important that Parliament now passes legislation that stays true to their recommendations. As I will shortly come on to explain, I do not yet believe that the bill does that well enough. First, however, I will take a moment to put the bill in context.

The term “biometrics” is the umbrella term for our most valuable personal data, so we are considering how to govern how accessible it is to others. In 2015, it emerged that pictures of 330,000 Scots who had been taken into custody had been made available to users of the police national database. The pictures could be accessed nationwide and included pictures of many people who had never done anything wrong. The pictures were analysed and consulted in criminal identification processes.

That revelation kick-started a Liberal Democrat campaign that was spearheaded by my former colleague, Alison McInnes, to protect people effectively from unregulated use of biometrics. She wrote to the First Minister at the time, demanding a review of facial recognition technology, which prompted the announcement of a review by Her Majesty's Inspectorate of Constabulary in Scotland.

During the passage of the Criminal Justice (Scotland) Bill, which became the Criminal Justice (Scotland) Act 2016, Alison McInnes lodged amendments that would have subjected collection of biometric information to the same rules as DNA and fingerprints. That would have required information to be

“destroyed as soon as possible following a decision not to institute criminal proceedings against the person or on the conclusion of such proceedings”.

Two independent expert reports, from HMICS and the independent advisory group, then agreed that fresh legislation and oversight were required. Although it has taken time for the Government to introduce the bill, the Scottish Liberal Democrats clearly welcome it, as we do the creation of a biometrics commissioner to oversee the collection, use, retention and deletion of biometrics.

To restrict the commissioner's remit to policing, however, is problematic. As the Justice Committee heard repeatedly during its evidence sessions, biometrics are increasingly used across a range of areas—public and private. There is obviously a significant challenge in ensuring that a regulatory framework keeps pace with technologies that are evolving at a bewildering pace, but I believe that the Open Rights Group, Amnesty International and others are right to call for the scope of the commissioner's role to be extended. Let us not forget that the IAG recommended that the

commissioner should have oversight of biometrics that are used

“by the police, SPA and other public bodies.”

The cabinet secretary has informed us that he plans to extend that to cover the PIRC—I very much welcome that confirmation—and he suggests that he is prepared to keep an open mind on wider extension, but the bill needs to be more specific about how that could be made to happen. As various witnesses told the committee, it is not unreasonable to aim for the commissioner's role to cover use of biometrics by public authorities and private actors, where biometrics are being used on the general public. That may be the case in other parts of the justice system, or in areas including education and health, where biometrics are being used increasingly. That extension would reflect the public mood and expectation.

Of course, there is a balance to be struck between, on the one hand, public safety and giving the police the tools that they need in order to do the job that we require of them and, on the other, individual rights—not least, the right to privacy.

Humza Yousaf: I will address the substantial point about potentially broadening the role in the future. Does Liam McArthur recognise that biometrics data that is collected and retained by the police and the SPA for policing and criminal justice purposes is unique in its own right? Often, such data is taken without the consent of the individual, if it is needed for crime investigation purposes. Therefore, the focus on policing and criminal justice is the right place to start because of the unique nature of the data that is collected.

Liam McArthur: I absolutely do not dispute that, nor would I dispute that that is perhaps the area of priority. However, we should not lose sight of the fact that the technology is increasingly being used and deployed in other areas of the public realm.

There is already public concern about live facial recognition technology, which was referred to by John Finnie and others. Such technologies are increasingly being trialled and used by the police to monitor public spaces. We must be very wary of what can amount to indiscriminate mass surveillance—not least given the inaccuracy of the technology. In its briefing, Amnesty refers to analysis that shows that the technologies generate false positives in about two thirds of cases. The Metropolitan Police suggests that the figure is as high as 80 per cent, with there being particular problems in matching images of people from the black and minority ethnic community. Clearly, that is no basis for roll-out of the technology, at this point.

The lack of a legislative framework and transparency, the potential for discrimination, the absence of public information and rights of review or appeal all point to use of such technologies and retention of images being potentially unlawful. The issue of review or appeal was picked up by the Law Society of Scotland, which argues that, for public confidence, a complaint mechanism to enable the public to refer issues to the commissioner on use of biometrics, and for when there has been lack of compliance with the code of practice, should be included in the bill.

As for the code of practice, a draft of which was drawn up by the IAG, the committee concluded that it should be on a statutory footing and should come into force at the same time as the commissioner takes office. The Law Society of Scotland suggested that that would avoid the need for speculation about what the code might or will include. Disappointingly, the cabinet secretary has rejected those calls, which is something that I am sure that the committee will return to at stage 2.

The cabinet secretary also appears to be determined to do his own thing when it comes to the proposed ethics advisory group. John Scott and his colleagues recommended the establishment of such a group

“as part of the oversight arrangements.”

The remit would be to

“work with the Commissioner and others to promote ethical considerations in acquisition, retention, use and disposal of biometric technologies and data.”

The Government accepted the recommendation but has failed to put it in the bill. Again, that is disappointing and needs to be addressed.

On enforcement powers, the Government has argued that the threat of naming and shaming is sufficient. The committee was not convinced, nor indeed were many people from whom we took evidence. Again, that is something to which, I am sure, we will return at stage 2.

More encouragingly, I note the cabinet secretary’s willingness to consider amending the bill to include regulating powers so that biometric data can be defined and subsequently updated. That is very welcome.

Scottish Liberal Democrats have led the way over the past five years in campaigning for proper regulation of use and retention of biometric data, including the establishment of a biometrics commissioner. On that basis, we warmly welcome the bill, but believe that there is more work to be done to ensure that it is up to the formidable task that is required of it.

15:57

Rona Mackay (Strathkelvin and Bearsden) (SNP): Technology in biometrics is advancing at breakneck speed, so we must be prepared for it by introducing a sensible framework of legislation to enable the police to detect, prevent and prosecute crime. That is why I am pleased to support the general principles of the Scottish Biometric Commissioner Bill today.

I thank the clerks and bill team for their hard work in collating the evidence that we heard from a variety of excellent witnesses, and I thank the witnesses for helping us with their expertise in the field.

The written and oral evidence that the committee received showed broad support for the establishment of a Scottish biometrics commissioner. Of course, it is important that we have the public’s support for and confidence in the use of the new technology. A new independent and expert commissioner is pivotal to achieving that, and to helping us to ensure that use of biometric data in criminal justice and policing is effective, lawful and ethical.

The bill covers acquisition, use, retention and disposal of biometric data, including fingerprints, DNA and currently emerging techniques such as iris recognition, which are all necessary to keep communities safe and to help police in their fight against crime. In my view, it is an example of using technology for the best purposes—although, of course, human rights and data protection requirements pose challenges and must be strongly considered. Again, that is why the post of biometrics commissioner is so necessary.

The UK Government’s Commissioner for the Retention and Use of Biometric Material, Professor Paul Wiles, is on record as saying that the bill will place Scotland at the forefront of legislating for oversight of biometric data in criminal justice. He said,

“Many other countries are quite interested in what Scotland is doing, because they are all aware that they have similar issues”.—[*Official Report, Justice Committee*, 24 September 2019; c 2.]

Biometrics in its earliest forms saw the introduction of use of criminal history photographs and fingerprinting, which has been going on for about 100 years. Those of us who are of a certain age will remember when DNA fingerprinting was introduced 30 years ago, and how it revolutionised policing and crime detection. We all marvelled at the technology that allowed more and more crimes to be solved. That scientific development has played a fundamental role in solving serious crimes, including murder and sexual offences.

We are moving on to more sophisticated and accurate biometric testing, so it is only logical for

Scotland to have its own independent commissioner, who will be appointed by Parliament in order to ensure impartiality.

Due to the fast-changing nature of the technologies, the committee and the Government have sought to keep some aspects of the bill flexible enough to cope with technical advances. Due to the complexity and nature of the bill, it has been split into sections. It is impossible to discuss all aspects in a short speech, but I will highlight the main areas of discussion that came up in evidence to the committee.

Sections 2 to 5 of the bill set out the functions and powers of the commissioner. A primary function of the commissioner will be to draft and promote a code of practice on use of biometrics by Police Scotland and the SPA. The commissioner will also play an important part in informing the views of policy and law makers who are responsible for making the law within which Police Scotland and the Scottish Police Authority must operate. The code of practice will not be specified in the bill, in order to allow for flexibility and future proofing, as I said earlier.

There was discussion on whether the code should be mandatory, with sanctions to be imposed if it is broken, rather than it being something to which people should “have regard to”. John Finnie mentioned that; I know that he feels strongly about it. There is a strong argument for that. The committee has asked the Government to review the effectiveness of the term “have regard to” as a working practice. In reality, the code of practice must be taken seriously, and any failure to observe it will need to be accompanied by a good reason for that. There could also be legal consequences if the code is not adhered to, including judicial review.

Another aspect that was widely discussed during evidence was the jurisdiction and cross-border nature of some aspects. We had to consider who would be accountable for data and where ultimate responsibility would lie. The Government believes that it is for Police Scotland and the SPA to manage the data that they allow to be uploaded to United Kingdom databases, and that it is their responsibility to ensure that records are managed effectively.

The committee recommended that, in relation to their functions in Scotland, the National Crime Agency and the British Transport Police be included in the bodies that are set out in section 7, and asked that the Scottish Government lodge the necessary amendments at stage 2. The cabinet secretary spoke about that in his opening speech. I will welcome such amendments.

There is also an argument for including public and private bodies, as several members have

mentioned. The Scottish Government is currently liaising with various bodies and the UK Government on that; it is, as they say, a work in progress.

The committee also recommended that the Commissioner for the Retention and Use of Biometric Material be added to the bodies that are set out in section 3, in order to enhance the power of the Scottish commissioner to work with others. It also recommended adding the Forensic Science Regulator and the Surveillance Camera Commissioner.

I believe that the Scottish Government favours a memorandum of understanding between the organisations, which would signpost a complaints mechanism that is to be available to the public. However, the Government stresses that it would be for the new Scottish biometrics commissioner and the UK commissioner to agree on that.

The committee also recommended the setting up of an ethics advisory group. The Scottish Government is also open to considering wider views on the remit and membership of that group, and to whom it should report. The Government believes that it is important that the remit is scoped to ensure relevance, and that its members have the appropriate skills and experience.

As the convener mentioned, the committee recommended that a complaints mechanism be included in the bill, but the Government believes that the commissioner’s role should be strategic oversight, rather than dealing with resolution of individual complaints. I am sure that that will be fleshed out in the later stages of the bill.

There are areas of detail that are still to be determined, which will of course be addressed at stage 2. However, it is essentially a good bill that will greatly enhance crime prevention and detection. I whole-heartedly support its general principles.

16:03

Shona Robison (Dundee City East) (SNP): I am pleased to speak in the debate, and I support the general principles of the bill. Like others, I thank the clerks and the bill team for all their work so far.

It has been an interesting experience for the Justice Committee to look at the bill, which has expanded my knowledge of all matters biometric. The key point is that we must recognise that technological advances have brought huge benefits to the police in detecting, preventing and prosecuting crime. The aim here is to ensure the effective use of biometrics technology by the police in a manner that is ethical and respects

fundamental rights and freedoms. It is a balancing act.

The roles of the commissioner and the code of practice will help to maintain public confidence in how biometric technologies and data are used by the police in crime detection.

As other members have mentioned as background, the bill emanates from the independent advisory group's report on the use of biometric data in Scotland. The report pointed out that there is currently no independent governance or oversight of use of such data in policing in Scotland. In deciding whether an independent biometrics commissioner would be necessary, the group had regard to the presumption against establishing new public bodies in Scotland, but it considered that there was no body within the competence of the Scottish Parliament to which oversight of biometric data could be given.

During its work, the IAG received several submissions that suggested possible aspects to the commissioner's role, which we have heard about in the debate. A key aspect was the development of a code of practice that relates to the handling of biometric data and holding bodies to account for following the rules that are set out. There were also recommendations that the commissioner should have a mandate to begin investigations and have an independent complaints mechanism, and that they should report to Parliament and publish regular reports on their work.

An important element that the IAG mentioned was that the commissioner should have a role to play in public education and engagement. It was felt that the public is sometimes frustrated about the lack of clear jargon-free information to allow people to understand the powers that authorities hold, as well as the powers that the public have to hold authorities to account and how to exercise those powers. I hope that engagement with the public will be a key role of the commissioner.

I welcome some of the cabinet secretary's commitments. On the recommendation that there should be an ethics advisory group on biometrics in Scotland, I welcome the cabinet secretary's commitment to form an independently chaired reference group to scope the possible legal and ethical issues that arise from emerging technological developments.

I move on to the conclusions of the committee's stage 1 report. There has been a bit of a debate about the scope of the bill, and the committee heard a good deal of evidence about that. Some have called for a wide extension of the bill and others have called for a smaller extension to other parts of the justice system, such as CCTV systems in the Scottish Prison Service. Some

have called for it to be extended to include private sector users of biometrics and private sector technology developers, whose work drives the use of new biometric data.

Although I have sympathy with that position, a phased approach and making sure that we get it right for the justice system—initially, for policing, in particular—is important. I welcome the fact that the cabinet secretary has agreed to extend the scope to the PIRC.

As I understand it, the Scottish Government has said that it might be appropriate in the future to extend the commissioner's oversight role to cover other criminal justice-related matters, and the bill includes a power to amend the resulting act in that regard. I also understand that the Government will consider consultation in due course about including in the scope of the Scottish biometrics commissioner further persons or bodies with criminal justice-related functions. That strikes the right balance at the moment. On whether it goes further than that in the future, we need to enable the commissioner to get themselves and their office up and running, then perhaps revisit their scope in due course.

There has been a debate about a statutory footing for the code of conduct. I hear what the cabinet secretary is saying: the code of conduct itself has statutory underpinning, but its detail should be left flexible for the commissioner to develop in consultation with bodies and—importantly—the public. Again, that probably strikes the right balance.

As others have said, the work that is being done here in Scotland is of interest to other jurisdictions that are also wrestling with these issues as technology develops apace. I look forward, hopefully, to Scotland leading the way in the area—as I am sure that it will.

16:10

Maurice Corry (West Scotland) (Con): I welcome this afternoon's stage 1 debate on the Scottish Biometrics Commissioner Bill. I acknowledge the scrutiny work of the Justice Committee, with the support of its clerks, and thank them all for that. The committee's report raised most helpful recommendations, which I hope will be properly considered today.

With the increasing use of biometric data, particularly the rise of second-generation biometrics, the need for a biometrics commissioner in Scotland is absolutely clear. We have a situation where biometric data has evolved and expanded and is now about not just the collection of DNA, fingerprints and photographs but enhanced facial recognition software, social media information and voice pattern systems,

among other things. Legislation must reflect those changes, taking into account the sensitive nature of data collection, which is what the bill seeks to do.

New biometric data opens up more opportunities for our police force. It can target the gaps in criminal proceedings with new ways of detecting criminal behaviour through, for example, personal traits and advanced movement technologies. For victims of violent crime or sexual assault, such scientific developments can, in many cases, ensure that their cases reach a just close. Of course, I am in favour of any advances that equip our police force in Scotland to prevent crime to the best of its ability.

However, although biometrics may pave the way for solving serious crime in the future, it is incredibly important that any new legislation considers the ethics of using such data and technology. Indeed, the protection of human rights, personal security and privacy when gathering and storing data can present potentially serious obstacles that should not be ignored. With that in mind, the creation of a Scottish biometrics commissioner is a positive and necessary step forward. It is vital that such a position will allow for any biometric data policy and practice by Police Scotland and the Scottish Police Authority to be kept under close review. In particular, I welcome the decision that the role will be especially mindful of how young people and those who are most vulnerable might be impacted by the data-gathering process. That oversight would encourage a greater level of protection and accountability for those who need it most. I am supportive of the flexible and independent nature of the commissioner's role, particularly in relation to how they might consider new technologies and incorporate those into the criminal justice system as appropriate.

Importantly, the role of the biometrics commissioner would also serve to create a public dialogue about our understanding of biometric data, particularly the second-generation advances and how those might be used safely. Ultimately, the use of biometrics in Scotland needs to be made clearer and have greater transparency. A Scottish biometrics commissioner would have to encourage a public conversation about how data is collected and how those practices can be effectively utilised overall—without infringing on human rights standards.

Linked with that, I would welcome further discussion on the possibility of widening the biometrics commissioner's role to encompass the use of biometric data by other groups. Indeed, many of the witness contributions that are included in the Justice Committee's report state that public bodies such as the national health service, as well

as some private companies, are also in need of essential oversight of how they collect and store biometrics data. Although I accept that it may be best to start with a policing and justice remit at this stage, clarification as to whether the commissioner's capacity might be expanded to include other groups in the future would be very much appreciated.

To gain public confidence in personal data protection, the bill would be further strengthened through the inclusion of a complaint mechanism, as the Justice Committee recommended.

We cannot expect the public to put their trust in the provision of a biometrics commissioner if the role does not allow for complaints referral. If issues are detected in Police Scotland's or the SPA's handling of biometrics, the public need to be assured that a level of accountability is in place. That would ensure that the role of the biometrics commissioner is independent and efficient.

Of course, at the centre of our debate today is how ethical standards can be preserved. As we know, the independent advisory group for the bill recommended that an ethics advisory group be created to work with the commissioner and other key stakeholders. Its role would be to encourage ethical decisions to be made in the use, retention and disposal of biometrics. That recommendation was in response to there being no provision for such a group in the bill. I am sure that colleagues share my opinion that that was an oversight. Although I am aware that the Scottish Government has indicated that it is working towards establishing that group in conjunction with the commissioner role, I find it concerning that that was not clarified in the bill beforehand.

I welcome this first stage of the Scottish Biometrics Commissioner Bill. The bill sets out a much-needed role alongside a code of practice that will ensure that personal data is handled in keeping with ethical standards. I hope that the upcoming stages of the bill will address some of the issues raised in the Justice Committee's report, so that the bill can be as effective as possible.

16:16

Fulton MacGregor (Coatbridge and Chryston) (SNP): It gives me pleasure to speak in this debate as a member of the Justice Committee, which scrutinised the bill at stage 1. Like others, I take this opportunity to pay tribute to the witnesses and to the clerks, who have undertaken so much work on the bill. I also pay tribute to the clerks for the work that they are doing on other bills, because the Justice Committee, as I am sure members will know, is a

very busy committee indeed, and the clerks definitely have their work cut out.

It is great also that there has been broad cross-party consensus on the bill, with the committee agreeing to the bill's general principles and the stage 1 report. There is no doubt that we need the bill now. As other members have said, technological advances have brought massive benefits to policing in recent times and help to keep us all safe. However, the bill and the creation of a commissioner will help to ensure that the use of biometric data is effective, lawful and ethical.

Of the areas that the committee considered in greater depth, there are three that I want to focus my remarks on today: first, increasing the scope of the commissioner; secondly, the creation of an ethics panel; and, thirdly, the flexibility of the bill to move with the times. Those areas have already been covered by other members and there is broad agreement about them, but I will perhaps come at the Government response from an angle that is slightly different from that of some of my committee colleagues.

Shona Robison talked about this issue just a couple of minutes ago and others have raised it, but one of the areas that the committee focused on was giving consideration to the scope of the commissioner. The committee recommended that the National Crime Agency and the British Transport Police be included among the bodies that are set out in section 7(1) and section 3. I note in the response from the Scottish Government that it is considering the inclusion of those bodies as well as the Ministry of Defence Police, and that discussions are on-going. The cabinet secretary stated that a section 104 order under the Scotland Act 1998 would be the most appropriate mechanism for conferring duties on such bodies and that it is not possible to introduce that as a stage 2 amendment. I welcome that Government response, because the area was one of the more debated aspects in our consideration of the bill at stage 1, and I feel that the Government response has brought clarity to it.

We also recommended that provisions for the Commissioner for the Retention and Use of Biometric Material, the Forensic Science Regulator and the Surveillance Camera Commissioner be added to section 3. I note and welcome the fact that the Government is considering that. Perhaps when the cabinet secretary sums up, he could expand on any thoughts that he and the Government might have on that ahead of stage 2, if he has time. I note also that, overall, the Scottish Government is clear that it might be appropriate in future to extend the commissioner's oversight role to cover other criminal justice-related matters and that that will be consulted on. Again, I welcome that.

As we have already heard, there was some discussion in the committee on an ethics advisory group. The committee believes that an ethics advisory group that is established to support the commissioner must be independent of the Government and that its membership should be a matter for the commissioner. Amnesty International said in its briefing that the use of biometrics has the potential to breach human rights, such as the rights to privacy, to freedom of association and to peaceful assembly, and it referred to facial recognition, which John Finnie talked about in his speech. It is important to bring in what Amnesty International said about that, because it is an important aspect of the reason for having an ethics panel.

I note that the cabinet secretary gave a positive commitment to establish such a group, which he articulated at several committee meetings during stage 1, and I accept his detailed explanation for why that might not be best achieved through primary legislation, which includes the fact that that is not what was recommended by the IAG in 2018 and that the equivalent group in England and Wales is not on a statutory footing—I know that that group was referenced quite regularly. There are fears that such a move might be premature and lead to a lack of the flexibility that we all agree is important in this legislation. The Scottish Government would prefer to take time to consult to ensure that it has a wide range of views about the best way forward, so that the remit of the group is relevant and that the group has members with appropriate skills and experience. That is a fair enough request from the Government—if it feels that it needs more time to consult, we should take that seriously. It is also important that lessons are learned from the establishment of the emerging technologies advisory group, which will be established early this year, given that the groups will have similar remits. Those are reasons that have convinced me in relation to the committee's recommendation.

The final area that I will address is flexibility to move with the times, which is important because of the rapid development of technology in the field of biometrics. The committee discussed that in great depth, and many witnesses brought it up, too. I welcome the fact that the Government is content to bring forward an amendment in this area at stage 2. Given the initial response that the cabinet secretary sent to the committee, I ask him to expand on his early thinking on the issue when he sums up.

I also note that, in its briefing, the Law Society calls on the Government to ensure that the role of the commissioner is appropriately funded on an on-going basis to ensure that any change in remit can be coped with. I think that we all expect that the role will need to be flexible and that it will have

to change as technology changes so that we can have an ethical approach.

This is a good bill. Clearly, there are issues that will be debated at stage 2 in order to make it even better—that is the point of having this process. This has been a good and consensual debate, and I encourage Parliament to agree to support the principles of the bill at stage 1.

16:22

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): I start by thanking the clerks to the Justice Committee, the bill team and the witnesses from whom the committee took evidence ahead of today's debate.

As we have heard, “biometrics” is the technical term for a strand of biology that applies statistical analysis to physical measurements. Many of us use biometrics every day, from entering this building to unlocking our mobile phones using facial recognition technology. As the stage 1 report notes, over the past 30 years, this type of technology has become key in detecting and prosecuting crime. Indeed, because biometrics are non-transferable and difficult to falsify, their growing importance in the justice system cannot be underplayed. Advances in technology have created many benefits for our modern-day justice system, and the role of the new independent commissioner has therefore become of essential importance in overseeing the use of personal information by the police, in addition to helping to maintain public trust in its ethical use. As the committee notes, the creation of that role is both timely and necessary.

As was mentioned by Shona Robison, the need for a biometrics commissioner, independent of the Government, was also a key recommendation in the 2018 independent advisory group's report, which said:

“There should be legislation to create an independent Scottish Biometrics Commissioner. The Commissioner should be answerable to the Scottish Parliament, and report to the Parliament. The Commissioner should keep under review the acquisition, retention, use and disposal of all biometric data by the police, SPA and other public bodies.”

Although technological advances in biometrics have undoubtedly brought huge benefits to policing, they have also created challenges for Governments globally, as it can be difficult for legislation to keep pace. In its briefing ahead of today's debate, Amnesty International says:

“effective regulation of these technologies is a significant challenge that governments across the globe are grappling with as technology evolves faster than regulatory frameworks—and we remain open minded about how best effective regulation can be achieved to ensure all

biometrics technology use is in line with international human rights”.

As Rona Mackay mentioned, on the issue of human rights, HMICS asserted that the role of the commissioner creates an opportunity in Scotland to

“explore emerging human rights and ethical considerations around the use of biometric data”.

The Commissioner for the Retention and Use of Biometric Material summed up the challenges of new technological advances in his 2018 annual report. He said:

“We are seeing the rapid exploration and deployment by the police of new biometric technologies and new data analytics. Some of these will improve the quality of policing and will do so in a way that is in the public interest. However, some *could* be used in ways that risks damaging the public interest, for example by re-enforcing biases of which reinforcement is not in the public interest. If the benefits of these new technologies are to be achieved there needs to be a process that provides assurance that the balance between benefits and risks and between benefits and loss of privacy are being properly managed.”

The committee asked the Government to consider how a perceived lack of debate and transparency in relation to the use of biometrics across Scotland might be addressed. The Government's response accepts that the commissioner

“as an independent office-holder will, once appointed, be best placed to lead any debate on the level of transparency on the use of biometrics for criminal justice and police purposes”.

The financial memorandum states that the commissioner's role will be part-time—estimated to be 0.6 full-time equivalent—and that the commissioner is to be supported by three full-time staff. In evidence sessions, the committee heard debate as to whether the position should be enhanced to a full-time role. Detective Chief Superintendent Sean Scott advised that

“It will be an extremely busy role; it is a burgeoning area of business and there is so much to do ... Extending the code of practice into other areas will be a huge task, so full time might be the best option.”—[*Official Report, Justice Committee*, 29 October 2019; c 12.]

However, Tom Nelson, the director of forensic services at the Scottish Police Authority, advised that, although a full-time role was in operation in England, that individual's role covers 43 forces. He concluded that

“0.6 of a full-time equivalent is probably reasonable ... given the size of Scotland compared with England and Wales.”—[*Official Report, Justice Committee*, 29 October 2019; c 12.]

In response to my line of questioning, Mr Nelson also explained that a lot depended on the level of staffing available to the commissioner. I raised that issue with Professor Paul Wiles, who said:

"I think that the role will be part time due to a combination of the amount of time that the commissioner is envisaged as providing and the extent to which his or her office can help in that process ... It is a team effort rather than just that of a single person."—[*Official Report, Justice Committee*, 24 September 2019; c 9-10.]

As Liam Kerr mentioned earlier, the need for public confidence and trust in the use of biometrics by the police and criminal justice system is essential. The committee recommended that

"the Scottish Government includes a complaint mechanism within the Bill, to enable the public to refer issues to the Scottish Biometrics Commissioner on the use of biometrics by Police Scotland and the SPA, or on their lack of compliance with the Code of Practice."

However, I note from the Government's response its assertion that, as the commissioner's role is

"intended to be one of strategic oversight rather than resolution of individual complaints",

the responsibility should instead rest with the Information Commissioner's Office. The Government also mentions the development of

"a fully comprehensive communications strategy, which would help the public understand the Commissioner's role."

That is welcome.

As we have heard today, the evidence that the Justice Committee received on the establishment of the biometrics commissioner has been broadly supportive. As the Commissioner for the Retention and Use of Biometric Material, Professor Wiles, stated, the bill places Scotland at the forefront of legislating for the oversight of biometric data in criminal justice.

On that positive note, I conclude my speech.

16:28

James Kelly: It has been an interesting debate. There is a lot of consensus around the bill and a lot of support for its general principles and the establishment of a biometrics commissioner.

In their speeches, Humza Yousaf and Liam Kerr emphasised the need for public confidence in the role of the biometrics commissioner. That is a good test for some of the arguments that played out during the debate. There has been disagreement between the committee and the cabinet secretary around the scope of the commissioner's role. In the bill as introduced, the commissioner's role will cover Police Scotland and the SPA. The cabinet secretary has helpfully said that that will be extended to the PIRC and the British Transport Police.

During the debate, members have argued that the scope of the role should be extended to public bodies such as the national health service and to private companies. Shona Robison argued for a staged approach, supporting the position that the

cabinet secretary outlined. Maurice Corry was interested in testing that further, and John Finnie wanted to move much further down the line and take on board private companies.

Having listened to the arguments this afternoon and to the evidence at committee, I am more persuaded to move along the line to where John Finnie is. I understand Shona Robison's point about a staged approach, but we are establishing an important role. Data collection techniques and technology—and its uses—can change quickly, and private companies are picking up on issues such as facial recognition technology. We therefore need to be more robust in the bill. I return to testing things against public confidence: we need to go further than Humza Yousaf has outlined in order to instil public confidence in the approach that we finally agree.

Similarly, in relation to powers, Margaret Mitchell made a strong case on behalf of the committee that there should be more on compliance with the code of practice. There was a lot of discussion about whether the phrase "have regard to" is strong enough. If we really want public confidence, we need to go further than simply saying that people should "have regard to" the code.

On access, again, if we want public confidence, we need to have a strong complaints process with which the public are able to engage. A number of members made points about the need for amendments to include a complaints process in the bill—and we truly need such a process. Another key point on the code of practice that was brought out is that, bearing in mind the code's far-reaching consequences, approval should be for Parliament, not ministers. The committee felt strongly about that.

A number of members, including Liam McArthur, Rona Mackay and Fulton MacGregor, spoke about the ethics advisory group. Liam McArthur made a very strong point about its absence from the bill as introduced. Bearing in mind the data collection issues that we are dealing with, it is important that proper regard is given to the establishment of an ethics advisory group.

John Finnie made an important point about the potential gap in the legislation around retention of data. We heard some evidence on that at committee. Data might be held without a proper legal basis for doing so, so I hope that, separate from the bill, the Government will ensure that an appropriate legal basis is established to ensure that any data that has been collected is deleted when the end of its retention period is reached. It is crucial that people's human rights are not compromised.

It has been an interesting debate. Some differences have been brought to the fore in a reasonable and considerate manner. I am sure that the cabinet secretary, being the reasonable and considerate person that he is, will take on board some of the changes that members have suggested ahead of stage 2 consideration of the bill.

16:34

Gordon Lindhurst (Lothian) (Con): It is perhaps not just a conservative instinct—I say “conservative” with a small c in this consensual debate—but a human instinct to stand up for the individual, to check the power of the state and to prevent Governments or their agencies from overstepping their bounds, so I welcome measures that seek to prevent unnecessary intrusion into the lives of ordinary Scots.

As was so eloquently said by my colleague Maurice Corry, legislation needs to reflect the technological progress that we have made. Legislation should, of course, support the police in carrying out their duties and in their use of new technology in all circumstances in which doing so is appropriate to their tasks. However, the public must be protected from any misuse or abuse of all technologies or techniques, new or old, and their use must submit to the rule of law and respect for individual dignity.

With that in mind, Parliament will no doubt require to revisit the issues that arise in this debate, in both the public and private fields, as we move into the future. Others have already commented on that. I cannot better James Kelly’s superb round-up of members’ contributions, which I shall not repeat.

If the legislation contributes to respect for those principles, the office of the commissioner may take a leading role in promoting a greater understanding of personal biometric data and how its use affects us, preventing overreach, and balancing what Police Scotland has termed the

“competing concerns of public benefit”.

However, as has been highlighted, key issues remain. First among those is the approach that any newly created commissioner would take to working jointly with the UK commissioner—a post that was created in 2012. During stage 1, the Parliament’s Justice Committee heard evidence from the Law Society of Scotland that the bill does not specify how the Scottish commissioner should interact with his or her UK counterpart. For example, will the policy in Scotland—with its separate judicial system and police service—diverge distinctly from UK policy? How will that affect co-operation on joint competencies? Such questions have arisen.

Although I note the cabinet secretary’s comments in his opening speech on cross-border bodies, we surely need greater clarification of how information sharing, obligations and oversight involving the two offices will work, not least in light of cross-border considerations of terrorism and organised crime.

The UK commissioner, Paul Wiles, told us that his mandate to monitor and publicly report is enough to ensure compliance. The bill, of course, goes a step further by giving his Scottish counterpart the power to require the provision of information. However, it does not grant the commissioner power to sanction public bodies that are found to be in breach of any proposed policy on biometrics. My colleagues Liam Kerr and Margaret Mitchell, who is the Justice Committee’s convener, have rightly pointed to the committee’s view on the weakness of the enforcement provisions and to the lack of a complaints procedure, which will not bolster public confidence.

Against the background of Scotland having a single unitary police force, there is perhaps more potential for unintentional overreach than if we had multiple forces across the country, and there is less scope for performative comparison by benchmarking in Scotland than there is in England and Wales, with their decentralised police authorities. In England and Wales, scrutiny of standards from an enforcement perspective can be exercised by comparative means.

That supports the committee’s conclusion that a code of practice must be provided for in subordinate legislation made under the bill. Naming and shaming will hardly be adequate to ensure compliance. Serious and legitimate concerns have been raised in evidence to the committee about the lack of legal enforceability in the bill as currently drafted.

Against that background, and given the framework that is set out in the bill, I turn to section 12(3)(b), which seems both unclear and extraordinary in some ways. In general, section 11, on the commissioner’s power to gather information, appears unobjectionable—apart, perhaps, from section 11(3). Likewise, by providing a means to enforce the commissioner’s powers through recourse to the Court of Session, section 12 also appears to make sense—apart from section 12(3)(b).

The difficulty with section 11(3), as I see it, is that the definition that it contains of what information may or may not be provided is what is called in the courts a moot point. It can depend on a multiplicity of factors. That causes an immediate lack of clarity as to what information is being referred to where it says

“information which that person would be entitled to refuse to provide in proceedings in a court in Scotland.”

However, the major point is that section 12(3)(b) gives the Court of Session a power to deal with a failure to provide information to the commissioner “as if it were a contempt of court.”

The words “as if it were” summarise the problem. It is not a contempt of court. Is the bill seeking to set up the commissioner as a quasi-judicial figure? If so, that is a bad thing, because to confuse roles and powers that individuals who act in public offices possess is a bad thing. In the normal course of events, contempt of court carries a penalty of up to two years’ imprisonment to deal with, for example, failures to obey, or carry out, orders of a court. It should not be extended lightly. In short, it should not be extended to include something that is a failure in relation not to a court, but to someone else.

It would be helpful if the cabinet secretary could explain the provision a bit more—in this debate, if he can—and point to specific examples under existing legislation in other areas where conduct that is not contempt of an actual court may be treated as if it is.

I agree that the bill can provide a useful counterpoint to the emerging threat of a biometric avalanche. On that basis I, like others who have spoken in the debate, am supportive of it.

The Deputy Presiding Officer (Linda Fabiani): I call Humza Yousaf to wind up the debate. Cabinet secretary, if you can take us up to 5 to 5, that would be useful. That leaves some time for interventions, and I am sure that there will be a few.

16:42

Humza Yousaf: I will do my very best, Presiding Officer.

I thank the members who contributed to this afternoon’s debate, which has been healthy and constructive. Quite rightly, it has also been challenging, and I would expect nothing less, given the subject matter. I am very familiar with some of the issues that have been raised. I will take away and give further consideration to the issues that Gordon Lindhurst and, previously, Liam Kerr raised about contempt of court, and I will either write to the members or, perhaps, address the issues at stage 2. Some of the issues that have been raised have not been in my consideration thus far, and I thank members for raising them with me.

I am encouraged that the lead committee’s endorsement of the bill has been reflected in the debate. The bill covers a broad range of fundamental questions. How do we best keep

communities safe while respecting the rights of individuals? How do we best ensure that we hold the most personal of data in an effective, proportionate and ethical manner? How do we ensure that the draft legislation and associated procedures are future proofed to enable us to respond to technological advances in the digital age? How do we best ensure that the public are aware of their rights and, equally important, that they know who to turn to should they have concerns? Those are just some of the basic but fundamental questions that each of us has to ask in relation to the bill, and many of those who contributed to the debate attempted to answer them.

It would be very unusual for any bill to achieve complete consensus at stage 1. There is consensus that we should agree to the bill’s principles and move on to stage 2, but there are, of course, differences across the chamber and challenges to the Government, which I have heard loudly and clearly. I will try to address some of those issues one by one. If I have time, I will be more than happy to take interventions, so if I omit any of the fundamental matters, members can intervene and ask me about them, should they wish to do so.

First, I will address complaint handling, which was raised by almost every speaker in the debate, but first and foremost by the convener of the committee in her speech. It has been mentioned in the committee as well.

In the drafting of the bill, a fair amount of consideration was given to the non-duplication of the roles of the Scottish biometrics commissioner and the UK Information Commissioner’s Office. The Scottish biometrics commissioner’s role is very much to complement the role of the Information Commissioner’s Office. It is worth reiterating and stressing that there is currently an avenue through which a complaint about the handling of data can be made and then investigated. A member of the public in Scotland can make such a complaint right here, right now. The role of the biometrics commissioner is designed to avoid duplication.

The work of the ICO is driven by complaints from individual members of the public. That is its bread and butter and the thrust of its work. The Scottish biometrics commissioner’s remit will be driven by identifying systemic deficiencies. There has been a lot of discussion with the ICO about the complementarity of the roles, and the ICO very much welcomes the creation of the new biometrics commissioner.

I agree with Liam Kerr and many other members that we want to maintain public trust and confidence, not to lose it. Therefore, making it very clear where complaints should be directed will be

hugely important. I envisage that the Scottish biometrics commissioner might wish to develop a comprehensive communication strategy to explain its role.

Above and beyond that, it would make sense for the two commissioners to agree a memorandum of understanding, in order to aid understanding of their respective roles and to confirm to members of the public who wish to complain about the handling of their biometric data that they should take a complaint to the ICO. Scottish Government officials have had a number of discussions with the ICO, which has indicated its willingness to enter into such a memorandum of understanding.

James Kelly: I agree that we do not want duplication. If we are setting up a biometrics commissioner with a specific code of practice that pertains specifically to the role, collection and retention of biometric data in Scotland, it seems logical that, if people were to have an issue with any of that process, they would want to go directly to the biometrics commissioner as opposed to the ICO.

Humza Yousaf: I do not disagree with what James Kelly is alluding to, which is that there could be an element of confusion about who people should go to. I will give a practical example that MSPs deal with in our everyday lives. I have constituents who come into my constituency office, which I share with my MP colleague, with an issue that is on a reserved matter. First, they will speak to me at my surgery, and then, if the case is to do with the Department for Work and Pensions or immigration, I will pass on their details to the MP, and I will inform my constituent that I have done that. I have never had a constituent complain that I have passed on their details, with their permission, so that the MP can pursue the case and, I hope, get a satisfactory outcome.

There can be confusion about what an MSP deals with, what a councillor deals with and what an MP deals with. However, as long as there is a seamless transition to the right point of contact and the person who can deal with the complaint or concern, there is rarely an issue. Having the two commissioners agree a memorandum of understanding is the right approach to take.

I should have said at the start of my speech that I will be open minded about all the suggestions that have been made by members across the chamber. My other concern in relation to complaint handling is that we could be out of scope, because the ICO has a reserved function on data protection and the investigation of complaints. However, I will give what has been said careful consideration.

Members right across the chamber consistently raised issues with the phrase, "have regard to". I listened carefully to the point that John Finnie,

James Kelly, Liam Kerr and others made that, instead of the phrase "have regard to", we should require compliance with the code of practice from the beginning and then perhaps review the situation in future. I understand that the Parliament wishes to ensure that Police Scotland and the SPA adhere to the code of practice. However, it is important to note that any provision that would force those bodies to comply with the code would in effect create a general regulatory regime in relation to the processing of biometric data by those bodies. Given that biometric data can also be personal data, my concern is that such a regulatory regime would cut across data protection law, which is reserved, and so may be outside our legislative competence.

Having said all that, I am happy to consider the committee's recommendation that we review the "have regard to" provision. I am mindful that the Government and Parliament could carry out post-legislative scrutiny of the commissioner's power at any time, without further legislative provision being required. However, I hear pretty loud and clear that members from across the chamber have real and sincere concerns. Therefore, I give an absolute assurance that, before stage 2, I will reflect on the points that each of the justice spokespeople and the convener of the Justice Committee made in that regard.

Another issue that has been mentioned is whether it is possible to extend the scope of the bill beyond policing or Police Scotland. My view is that it is possible to extend the bill, within the overarching purpose of criminal justice and police purposes, to include private sector bodies or other Scottish public authorities that operate in that field. Indeed, the bill already expressly includes the power to do that by regulation once the commissioner's office is up and running.

Liam Kerr: Given that the scope could be extended, can the cabinet secretary give any greater reassurance on resourcing? I am worried that his response to paragraph 266 in our report might not inspire confidence among potential candidates for the role of commissioner.

Humza Yousaf: On resourcing, obviously, the bill is accompanied with a financial memorandum. On top of that, on the question that was raised about whether the resourcing is adequate, the view was taken that it is very similar to the resourcing for the English commissioner. Therefore, at the moment, I do not envisage a resource challenge. Clearly, if the scope was extended—I will expand on that point in a moment—there may well be a resource implication. At that point, the Government would absolutely have to look at that. We would not look to extend the scope of a commissioner if there

were concerns about resourcing. Any concerns would have to be made very obvious up front in that process.

Any move to extend the commissioner's role would require the development of a substantive case for change, supported by an appropriate evidence base and by public consultation. I will keep an open mind as to the broadening of the commissioner's remit to include other public bodies, but I say firmly that that would be after the new commissioner has had time to bed in and after a period of consultation. That would be the appropriate approach.

Liam McArthur and a number of other members raised the issue of an ethics advisory group. I note the committee's wish for an advisory group to be established on a statutory footing and for its members to be appointed by the Scottish biometrics commissioner for the purpose of supporting the commission. However, that is at odds with the IAG's recommendation, which the Scottish ministers have already committed to implementing. To be clear, I fully support the formation of an ethics advisory group. I recognise that it can make a valuable contribution to our collective understanding of the key ethical, legal and technical issues arising from the use of biometric data in policing and criminal justice.

I fully intend to honour that 2018 commitment, but I remain unconvinced of the need to include the group in the bill. The committee's report does not make clear why a statutory footing is required. I note that the IAG did not ask for the group to be statutory and that the biometrics and forensic ethics group in England and Wales, which the stage 1 report and the IAG reference, is not a statutory group. I ask members to reconsider and perhaps explain their position more fully.

I am open to wider reviews of the remit and the membership of the group and to whom it should report. The IAG called for a consultation to explore the options and that is what I want to do.

A number of other issues were raised, but I have responded to the fundamental ones. I will reflect carefully on some of the challenges that members have raised about the Scottish Biometrics Commissioner Bill. If the Parliament is content to approve the principles of the bill, I will, of course, work with the committee to amend it as appropriate and to ensure that it achieves what we want it to.

I commend the motion to Parliament.

The Presiding Officer (Ken Macintosh): That concludes the stage 1 debate on the Scottish Biometrics Commissioner Bill. If no one objects, I am minded to take a motion without notice to move decision time forward to now.

Motion moved,

That, under Rule 11.2.4 of Standing Orders, Decision Time be brought forward to 4.55 pm.—[*Graeme Dey*]

Motion agreed to.

Decision Time

16:55

The Presiding Officer (Ken Macintosh): There is only one question to be put as a result of today's business. The question is, that motion S5M-20331, in the name of Humza Yousaf, on stage 1 of the Scottish Biometrics Commissioner Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Scottish Biometrics Commissioner Bill.

Meeting closed at 16:56.

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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