OFFICIAL REPORT
AITHISG OIFIGEIL

Meeting of the Parliament

Thursday 25 January 2018

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 25 January 2018

CONTENTS

Scottish Parliament

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

General Question Time

Rail Travel (Fife Circle)

1. **Alex Rowley (Mid Scotland and Fife) (Lab):** To ask the Scottish Government what action it is taking to address reports that rail travellers on the Fife circle face poor journey experiences and that there are consistent failures of service. (S5O-01694)

The Minister for Transport and the Islands (Humza Yousaf): I completely understand the frustration that customers can experience as a result of poor performance and recognise that ScotRail has faced a number of challenges in recent months, which I fully expect to be addressed immediately. Alex Hynes, the managing director of ScotRail Alliance, has instigated an independent review that is being taken forward by Nick Donovan as part of ScotRail's recovery measures, which I very much welcome. The sooner the performance challenges are addressed, the sooner passengers can enjoy the level of service that they desire and deserve.

My officials at Transport Scotland continue to closely monitor and challenge ScotRail's performance and will work with it as it develops and implements the actions to improve performance over the coming months and years.

Alex Rowley: I am pleased that the minister understands the frustration that is felt. I am sure that he understands how frustrating it is when someone who is standing on a platform, waiting for the train to come, sees the train going right past them. People can be left waiting for an hour, which results in their being late for work.

The *Dunfermline Press* has launched a crush hour campaign—the name speaks for itself. Masses of rail users in Fife are horrified at the service that they are getting. Will the minister agree to meet me, so that we can go through the detail of all the problems?

People have been patient, but they have waited long enough. We need action. Will the minister consider taking the railways back into public ownership so that the profits can be invested in the railways and we can address the unacceptable situations that occur on the Fife circle rail route?

Humza Yousaf: I am sure that Alex Rowley understood from my answer that I was in no way dismissing the concerns. I completely understand them, and I have been keeping up with the coverage of the issue in the *Dunfermline Press.*

I will try to wrap some context around the issue. For most of 2017, until the autumn months, there was a significant improvement in Fife rail services, with performance running at about 90 or 94 per cent. However, the services have not coped well since the autumn months, which is the reason for the independent review. I have been contacted by many MSPs from across the chamber who represent Fife, including Shirley-Anne Somerville, Annabelle Ewing, Jenny Gilruth and Liz Smith.

I spoke to Alex Hynes this morning about this issue and others. I am more than happy for my office to facilitate a meeting between Alex Hynes and the MSPs who have contacted me and others from Fife, including Alex Rowley. I would also be more than happy to meet Alex Rowley individually. However, because it is a matter for ScotRail, I think that a meeting with the managing director would be the appropriate measure, and my office will facilitate that meeting if that would be helpful.

As the member probably knows, there will be an upgrade in the rolling stock later in 2018 or early in 2019. Nevertheless, people in Fife should not have to wait for that to get an improvement in their service; therefore, the immediate priority is getting that improvement in performance.

On Mr Rowley's latter point, I understand his ideological position but I gently remind him that it is the Scottish National Party Government that has allowed a public sector bidder to bid for the railways for the first time—something that was denied by successive Labour Governments at Westminster.

Mark Ruskell (Mid Scotland and Fife) (Green): The issue of skip-stopping, which we are discussing, is a problematic one, because a skipped stop is treated only as a partial cancellation, which means that no financial penalties result from it. Does the minister agree that skip-stopping must be identified in the new franchise and that financial penalties need to be applied to it?

Humza Yousaf: I reiterate that, when a stop is skipped, it counts as a public performance measure failure and, of course, ScotRail is held to account for those.

With regard to the issue of financial fines, the service quality incentive regime—SQUIRE—is probably the best auditing regime of any railway in the United Kingdom. That has been borne out by the fact that ScotRail has been fined quite substantially when it has failed to meet the extremely high criteria that we set for it.

I will reflect on Mark Ruskell's point when considering future franchises, but, before we get to the franchise endpoint, we should continue dialogue with ScotRail to minimise a practice that is unhelpful. When I became the transport minister, I told ScotRail that I expected it to minimise the skipping of stops, particularly during peak hours. That has happened, but it is clear that the autumn and winter months have been challenging for ScotRail, and that is unwelcome.

Good Food Nation

2. **Gail Ross (Caithness, Sutherland and Ross) (SNP):** To ask the Scottish Government what progress is being made towards Scotland becoming a good food nation. (S5O-01695)

The Cabinet Secretary for Rural Economy and Connectivity (Fergus Ewing): Our plans for Scotland to become a good food nation are continuing. The Scottish Food Commission recently submitted its recommendations for the proposed good food nation bill, and they are currently being considered across the Scottish Government with a view to a consultation being held this year. The consultation will inform the content of a good food nation bill that will be introduced during this parliamentary session.

Gail Ross: I stated recently in the chamber that that piece of legislation has the potential to be one of the most exciting and important bills that the Parliament will pass in this session. Given the number of sectors that the bill will cover and the amount of interest that there is likely to be in it, how long will the consultation process last, when will it commence and how will we make sure that everyone—not just stakeholders and industry experts—gets a chance to respond?

Fergus Ewing: The consultation will be launched later this year and will be open for 12 weeks. We are investigating ways to inform the public about it. The legislation will be slightly different from the norm, and I aim to get the maximum involvement, as Gail Ross has rightly suggested. We fully recognise the importance of involving as many people as possible in the promotion of Scotland as a good food nation.

Edward Mountain (Highlands and Islands) (Con): Given that funding for the food and drink strategy has remained unchanged at £5 million a year since 2014, will funding to support the proposed good food nation bill come from that allocation or will separate funds be found?

Fergus Ewing: I am sorry that the Tories have introduced that monetary note. The promotion of Scotland as a good food nation will be about how we carry and promote ourselves and about promoting good nutrition, attracting more people to Scotland to enjoy the high quality of our natural larder and encouraging young people to learn how to prepare food. It will not be all about money. I hope that, at some point, the Conservatives will get that.

Mental Health (Schoolchildren)

3. **Mary Fee (West Scotland) (Lab):** To ask the Scottish Government how schools identify and support children with mental health problems. (S5O-01696)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): Education authorities and all those who work in our schools have a responsibility to identify, support and develop the mental wellbeing of pupils, with decisions on how to provide that support being taken on the basis of local circumstances and needs.

Every child and young person should have access to emotional and mental wellbeing support in school. Some children will be provided with access to school-based counselling, while others will be supported by pastoral care staff, and there will be liaison with the educational psychological services and family and health services for specialist support when that is required. A mental health link person is available to every school. That has been achieved in a variety of ways, using various models that work to meet local needs.

As part of the Government's mental health strategy, we are undertaking a national review of how personal and social education is delivered in schools, which will include an assessment of how the teaching of mental wellbeing is being delivered. The review will be completed by the end of this calendar year.

Mary Fee: The cabinet secretary will be aware of the findings of a Scottish Association for Mental Health survey of teachers that showed that two thirds felt that they had insufficient training in mental health to carry out their roles. Seventy-three per cent of the teachers who were surveyed had low levels of confidence in their resources to respond to a pupil who raised concerns about mental health. On the basis of those results, will the Scottish Government commit to ensuring that teachers receive adequate training on a continuing basis? Will the cabinet secretary commend North Ayrshire Council for leading the way in offering pupils access to mental health counselling after starting a new counselling service across its secondary schools?

John Swinney: I welcome North Ayrshire Council's approach, which I expect to be reflected in a variety of ways around the country in different local authorities. The service will not be delivered identically in other parts of the country, because other local authorities will consider how best to

meet the needs of young people as effectively as they can.

I am very aware of the findings of the SAMH survey and take them seriously. We recognise the significance of the issues, which is why they must be reflected on by our initial teacher education providers and feature in the continuing professional development of the teaching profession.

I am in and out the schools of Scotland weekly—I was in a school this morning, before I came to the Parliament—and I see very good work being undertaken to address the mental wellbeing of young people. Health and wellbeing is one of the three fundamental aspects of curriculum for excellence that were part of Her Majesty's Chief Inspector of Education's guidance to education authorities in August 2016, which must inform curriculum delivery in all areas of Scotland.

Loneliness and Social Isolation (Third Sector)

4. **Ruth Maguire (Cunninghame South) (SNP):** To ask the Scottish Government how the proposals in its draft strategy to tackle loneliness and social isolation could help to promote the third sector. (S5O-01697)

The Minister for Social Security (Jeane Freeman): In our draft strategy, we are clear that third sector organisations have an important role in reducing social isolation and loneliness. To support that, we have protected the core third sector budget at 2016-17 levels.

Volunteers are central to this effective work, and in 2016-17 our investment in the volunteer support fund resulted in 3,505 new volunteers being recruited from disadvantaged backgrounds. Engaging people with that experience, and those who are older, remains a challenge, so our commitment of £3.8 million to that fund from 2017-18 onwards is important.

We want to do more—we have made clear our commitment to do more with that investment—so our draft strategy focuses on community-led work, what more needs to be done and what we as a Government can do to enable community-led initiatives to flourish.

Ruth Maguire: The minister will agree that there are already many examples of great things being done by the third sector to tackle loneliness and social isolation. My constituents in Stevenston have benefited from working with Centrestage Communities' raise your voice Ardeer project, which brings people together with musical memories and family nights under its theme of fun, food and folk. What is the Scottish Government doing to encourage such organisations to respond to the consultation to ensure that existing best practice is learned from and taken into account as the strategy develops?

Jeane Freeman: As an MSP in a neighbouring constituency, I am well aware of much of the work that Centrestage undertakes in my area. In Cumnock, along with the Robertson Trust it has developed work with women on that theme, and now has the very successful heart and soul initiative and a community cafe. The key characteristics of that organisation—and the other organisations that members spoke about in last week's debate—are that it is rooted in and led by the community in which it works. Those aspects are central to our strategy.

We have encouraged third sector interfaces in each local authority area to circulate information through their networks about how to respond and to encourage responses to us. Over the coming weeks and months, we will host a number of engagement events across Scotland in order to encourage responses to our consultation, and for my officials and I to hear directly about work that is being done, but also what more work needs to be done. I look forward to hearing from Centrestage, the Robertson Trust, Age Scotland and a myriad of other organisations and people in their communities about how our strategy can be improved. We will do all that we can to encourage their participation.

Annie Wells (Glasgow) (Con): As I alluded to in my speech last week on loneliness and social isolation, I am pleased that social prescribing will form part of the strategy. How does the Scottish Government intend to monitor and select pilot projects in communities that can be recommended as models to be used elsewhere?

Jeane Freeman: I welcome Annie Wells's support for that element of our strategy and, indeed, her support last week for the strategy as a whole. Our consultation includes organisations giving us their views on those matters. We will return to Parliament with our final strategy and provide detail on our proposition on how to progress some of those issues.

Mark Griffin (Central Scotland) (Lab): The minister will be aware that the Government's budget proposes cuts that will affect the third sector's ability to help communities to be more sustainable and tackle loneliness. Surely a real-terms cut of £400,000 to central third sector funding, the £4.4 million cuts to regeneration programmes and more cuts to local government undermine the good intention of the loneliness strategy, which we all support.

Jeane Freeman: I always find it sad when colleagues in the chamber refuse to hear what ministers say or to read documents that are there

for them to read. I repeat: we have protected the third sector budget and the equalities budget is up.

As I said in last week's debate, it ill behoves my colleagues across the chamber to misrepresent not only what the Government has in the draft budget but what our colleagues in the Scottish Parliament information centre have confirmed is in it. I am sure that if Labour members have their proposals for the budget ready, my colleague the Cabinet Secretary for Finance and the Constitution will be more than happy to discuss any constructive proposals they may have.

Erasmus+ Scheme

5. **Michael Matheson:** To ask the Scottish Government what assessment it has made of the impact of the Erasmus+ scheme on the third sector, the further education sector and youth work in Scotland. (S5O-01698)

The Minister for Further Education, Higher Education and Science (Shirley-Anne Somerville): Erasmus+ receives on-going evaluations that are undertaken by the projects. A full impact assessment report is not due until 2020. However, feedback from stakeholders and projects illustrates the difference that the initiatives are making. The Erasmus+ programme has played a significant role in broadening Scottish young people's educational experience, developing their cultural awareness and increasing their employment prospects. Since 2014, more than 15,000 people have been involved in nearly 500 Erasmus+ projects across Scotland. The flow of people to and from Scotland supports the development of the skills, experience and global outlook that are necessary for Scotland's society and economy to thrive.

Joan McAlpine: Two weeks ago, the Culture, Tourism, Europe and External Relations Committee heard at first hand about the benefits of Erasmus+ not only to university students but to young volunteers, apprentices and further education students. Will the minister join me in backing the keep Erasmus+ campaign, which is led by YouthLink Scotland, Leonard Cheshire Disability Scotland and other organisations, and call on the United Kingdom Government to ensure that Brexit does not destroy that vital scheme?

Shirley-Anne Somerville: The Scottish Government is absolutely clear on the value of Erasmus+ and the risks that Brexit poses to it so, yes—I heartily support the campaign that Joan McAlpine mentioned. As I said in my original answer, the programme has played a significant role in broadening educational experience, developing cultural awareness and increasing employment prospects. As Ms McAlpine correctly points out, that applies not only to university students. In fact, often the young people who are the furthest away from higher education benefit the most, as they have been able to take part in international exchanges that they might not otherwise have been able to take part in. Brexit and the loss of membership of the single market and of freedom of movement threaten all that. The Government will do all that it can to ensure that it protects Scotland's young people from the worst effects of the hard Brexit that the UK Government continues to pursue.

Holocaust Educational Trust

6. **Adam Tomkins (Glasgow) (Con):** To ask the Scottish Government what support it is giving to the Holocaust Educational Trust. (S5O-01699)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): We must never forget the Holocaust and the people who continue to suffer because of genocide and intolerance, racism and bigotry.

Since 2009, the Scottish Government has provided the Holocaust Education Trust with funding for the lessons from Auschwitz project. The funding began in 2009 with £214,000 per year and has since risen to £296,000 per year in 2017-18. That is a total of £2.25 million over the period. That illustrates the Government's commitment to providing opportunities for Scotland's young people to develop as responsible citizens, which is a key element of our curriculum. To date, the project has reached more than 68 per cent of Scotland's schools, with 3,200 Scottish students having participated in it along with more than 500 teachers.

Adam Tomkins: The Holocaust Educational Trust plays a leading role in promoting Holocaust memorial day, which is on Saturday and on which Bill Kidd has a question in First Minister's questions in a few moments. Holocaust memorial day falls on the anniversary of the liberation of Auschwitz, which the Deputy First Minister visited with Scottish schoolchildren recently.

It was my honour to open our Parliament's annual Holocaust memorial day debate earlier this month, which this year focused on the theme of the power of words. Will the Scottish Government stand with me and with every member of this Parliament who spoke in that debate in pledging to remember the unique horror of the Holocaust and thanking the Holocaust Educational Trust for its invaluable work in ensuring that we will never forget? [*Applause*.]

John Swinney: I agree unreservedly with the remarks that Mr Tomkins made in his question. The events of the Holocaust must be forgotten by nobody, and as we look at the troubled and uncertain world in which we live today, there is

even more requirement for people to be reminded of the horror of the Holocaust.

As Mr Tomkins said, I accompanied Scottish school pupils to Auschwitz-Birkenau in November. Despite my having extensively studied that period of modern history, nothing prepared me for what I witnessed. The experience for our young people, of whom I was enormously proud—they were much younger than me but were able to handle with great dignity, care and understanding the events of that trip—indicated to me that the investment that we make in the work of the Holocaust Educational Trust is vital to ensuring that we sustain among our young people that understanding and their appreciation of those terrible events.

The First Minister represented the Government at a Holocaust memorial day event last night in the city of Glasgow, which was run by our schools and was another fine tribute to the excellence that exists within Scottish education, and to the deep understanding of the significance and horror of the events that Mr Tomkins raises in Parliament today.

The Presiding Officer (Ken Macintosh): Before we turn to First Minister's questions, I welcome to the gallery Dr Meher Taj Roghani, the deputy speaker of the Pakistan Provincial Assembly of Khyber Pakhtunkhwa. *[Applause.]*

First Minister's Question Time

12:02

Scottish Police Authority

1. **Ruth Davidson (Edinburgh Central) (Con):** Last week, I asked the First Minister about the Cabinet Secretary for Justice's involvement in the decision to prevent the chief constable from returning to work. She said nine times that all Michael Matheson did was ask questions of the Scottish Police Authority's decision. However, in evidence this morning to the Public Audit and Post-legislative Scrutiny Committee, the former chair of the SPA revealed that Mr Matheson's involvement went far beyond that. He said that, in their private meeting, the justice secretary told him that the SPA had made a bad decision. Which version of events is true?

The First Minister (Nicola Sturgeon): I have heard extracts of this morning's committee session. I have not managed to listen to all of it, but I do not think that Ruth Davidson is correct in her characterisation of the evidence that was heard this morning. Andrew Flanagan said, for example, that the justice secretary did not request that he change his decision. What the justice secretary did was ask questions about the steps that had been taken. Andrew Flanagan also expressly said that he was not directed by the justice secretary.

As I said last week, there is a clear distinction here between, on the one hand, the operational independence of the SPA and, of course, of the police in matters that no justice secretary should intervene in and, on the other hand, the proper role of a justice secretary in making sure that due process is followed. Michael Matheson asked legitimate questions about the steps that had been taken leading up to the decision to ask the chief constable to return to work. For example, had the Police Investigations and Review Commissioner been asked whether his return to work would compromise the on-going investigation? Secondly, had the senior command been notified? We heard the acting chief constable say earlier in the week that that was not the case. Thirdly, had plans been put in place for the welfare of officers who had raised concerns?

The reason, as I heard it this morning, why Andrew Flanagan felt that he had no option but to change his decision was that he could not answer those questions about process. It is entirely legitimate, and I think that the public would have expected it, for the cabinet secretary to do what he did.

I come back finally to the point that Ruth Davidson could not address last week. If her position is that the justice secretary should not have asked those legitimate questions, is she saying that she thinks that the chief constable should have returned to work without any of those issues having been properly explained? I am prepared to bet that, if that had happened, she would have been standing up in the chamber saying how outrageous that was. In those circumstances, she might actually have been right.

Ruth Davidson: The evidence that emerged this morning might be inconvenient for the First Minister, but she cannot pretend that it does not contradict her earlier answers. This morning, the former chair of the SPA was asked whether he felt that the Cabinet Secretary for Justice had made "a value judgment" on the decision, and he said yes. Just hours after their one-to-one, Michael Matheson hauled the chair of the SPA back in for another meeting—this time with civil servants—in which he raised issues of process that would prevent the chief constable's return. The chair of the SPA called that a "one-sided" meeting and said that he felt that he had "no choice" but to reverse the decision of his independent board. He said that he changed his mind based on the cabinet secretary being unhappy.

The independent chair of an independent body had two meetings with the justice secretary. In the first, he was told that he had made a bad decision. After the second meeting, he was left in no doubt that he had to reverse that decision. How can that possibly tally with what Scottish National Party ministers have claimed in recent weeks?

The First Minister: The key aspects of the evidence are clearly inconvenient for Ruth Davidson. As I said earlier, Andrew Flanagan clearly said that he had not been requested by the justice secretary to change his decision and that he was not directed to do so. Questions were asked and, as I said last week—I repeat it today—I absolutely take the view that the justice secretary was right to ask those questions.

I again invite Ruth Davidson to address this point. If she does not take the view that a decision to invite the chief constable to return to work without asking the PIRC whether that would compromise an on-going investigation, without telling the acting chief constable and the rest of the senior command, and without putting in place any plan for the welfare of officers who had raised concerns and made complaints would be a defective one, is it her position that it would have been a good decision and that the chief constable should have returned to work the following day?

I think that it was right to ask those questions, and I again put it to members and the Scottish people that, if the justice secretary had not asked any of those questions and the chief constable had turned up to report for work at Tulliallan the next morning, Ruth Davidson and other Opposition leaders would have come to the chamber and demanded statements, and no doubt demanded that the justice secretary consider his position. There is rank hypocrisy at play, and everybody can see it.

Ruth Davidson: The First Minister asked what I would have done. I would have ensured that my justice secretary let the Parliament and the country know about the decisions that he was making.

The most damning thing of all is that now—on 25 January—we are still having to piece together the details of what happened at the beginning of November, when the Government was involved in one of the most important policing decisions that it has taken since it came to office. We are only now getting formal evidence that the justice secretary was absolutely instrumental in preventing the chief constable's return. If it had not been for reports in the press, the whole thing would have been kept under wraps and the Parliament would have been kept in the dark.

When the national force was set up, we were told that transparency would be its watchword. Can the First Minister really stand there and claim that this episode has shown that to be true?

The First Minister: We are getting a clear picture that, in the unlikely event that Ruth Davidson was First Minister, the chief constable would have come back to work that day without any relevant questions being asked. That is not the kind of governance that the people of Scotland expect and deserve.

On the issue of what Parliament knows, there is nothing that Ruth Davidson has brought to Parliament today that is different from what she brought to it last week. The reason for that is that there was nothing in what we heard this morning that changes what was already known. The justice secretary came to Parliament, gave a full statement and answered questions from across the chamber about exactly what had happened, and nothing that we have heard since then has changed the facts that the justice secretary put to Parliament. We also had a debate in the chamber yesterday, brought by the Tories, on which they lost the vote because they had not made the argument that they are trying to make.

The point is that the justice secretary, discharging his responsibilities, asked legitimate questions. If those who say that he should not have asked those legitimate questions really take that position, they have to explain to the Scottish people why they think that it would have been right for the chief constable to return to work without any consultation with the organisation that is

carrying out an investigation, without the acting chief constable even being told about it and without any concern for the welfare of other officers. That may be Ruth Davidson's position; it is not my position, which is that the justice secretary acted entirely appropriately.

Ruth Davidson: Let us cut through all of this. Last week the First Minister stood there and told the chamber nine times that her justice secretary did nothing but ask a few questions. We now know that that is not true. We know that he made it clear that the SPA's decision was wrong. She says that Mr Matheson did not instruct the process, but we now know that the SPA's former chair left his second meeting with the justice secretary feeling that he had no choice but to overturn the authority's decision. Last week, the First Minister stood there and told me that Michael Matheson did not intervene, but does the evidence this morning not show that there is a different story? Does it not make it clear that—bluntly—the justice secretary leaned on the SPA?

The First Minister: With the greatest of respect, it shows no such thing. Andrew Flanagan, the former chair of the SPA, said at the committee this morning that he had not been requested by the justice secretary to change his decision. He had no option—in his view—but to change his decision, because he could not answer the most basic questions about the process that had been followed.

Again, we come back to the nub of the issue. Ruth Davidson has changed ground with every question that she has asked today, but the nub of the issue is this. If she is saying that the justice secretary should not have asked those questions and acted in the way that he did, by definition she must be saying that the chief constable should simply have been allowed to return to work, no matter that none of those basic steps had been followed.

Ruth Davidson keeps saying that, last week, I said nine times that I thought the justice secretary had behaved entirely appropriately. I have said it several times again today, so let me say it one more time: the justice secretary acted entirely appropriately, he acted in the interests of the people of Scotland and, faced with the same circumstances again, he would do the same and ask the same legitimate questions all over again.

Save Our Bield Campaign

2. **Richard Leonard (Central Scotland) (Lab):** Last week I raised with the First Minister the save our Bield campaign. Elderly people are facing eviction from their homes. The First Minister said that her health secretary would meet with the campaigners as a matter of urgency, but today's *The Courier* newspaper reports that campaigners are still waiting. Can the First Minister update the chamber on what progress has been made?

The First Minister (Nicola Sturgeon): Yes, I can. Shona Robison's private office has, over the past week, made a number of offers of meeting times that the group was—no doubt for understandable reasons—unable to accept. Last night, the health secretary spoke directly to one of the campaigners, seeking to organise a meeting. She wanted to ensure that she had their views before she met Bield, which she did earlier this morning. During that meeting the health secretary arranged to meet representatives of the campaign, and that meeting will take place on 6 February.

Richard Leonard: I hope that we can see an early and satisfactory resolution to the matter, because when a Government makes a promise to the people, it is important that the promise is kept. [*Interruption*.]

The Presiding Officer (Ken Macintosh): Order. Let us hear the question.

Richard Leonard: It is important, not least when it comes to the wellbeing of people's families.

On 1 May 2016, the First Minister told Gordon Clark on national television that there were no proposals to close the children's ward at the Royal Alexandra hospital in Paisley. Now, less than two years later, her Government is closing the children's ward. Mr Clark is here today, in the gallery. Will the First Minister take this opportunity to apologise to Mr Clark for misleading him?

The First Minister: It is interesting that Richard Leonard says today that back in May 2016 I gave a commitment about the Royal Alexandra hospital and the children's ward there, because this is what Labour said about that after that debate: Labour said that during the debate I had been asked to give a guarantee to protect those services and I had refused to give the guarantee. [*Interruption*.] That was Neil Bibby, for the avoidance of doubt.

On the substance of the issue—because this issue is far more important than political exchanges—the health secretary updated the Parliament earlier this week on the decision on ward 15 at the Royal Alexandra hospital. She said—and I think that she was right to say it—that it had been possibly the most difficult decision that she had had to make as health secretary. That is entirely understandable; every decision that affects the interests and particularly the health of children should be a difficult one for ministers to make. She arrived at the decision having taken into account a range of views, including the very important views of parents, and she arrived at it based on clinical evidence.

It is worth noting what the lead paediatric clinicians and chief nurse for paediatrics at the Royal Alexandra and the Royal hospital for children said earlier this week. They think that the change will help to implement the standard that the Royal College of Paediatrics and Child Health set to ensure that high-quality healthcare is delivered to children, and that the implementation of those standards will contribute to better outcomes for children and young people. That is the clinical advice that drove the decision.

Of course, the health secretary attached conditions to the decision: first, that the health board must maintain and develop community-based paediatric services and maximise local provision; and secondly, that it must work directly with families in the Paisley area on specific, individual treatment plans, which must be in place before any service change is made. As the matter moves forward, the interests and health of children will be paramount at every stage.

Richard Leonard: Well, I hope that the First Minister listens to expert opinion when it comes to, for example, mesh implants, too.

The First Minister needs to understand the depth of anger about the decision. This is not just about party politics—it is about her integrity. People feel betrayed, with good reason. Campaigners were accused of lying. Scottish National Party politicians were more interested in saving the local McDonald's than they were in saving the local children's ward. When a decision was finally made, it was sneaked out on a Friday afternoon. The Government tried to bury bad news in the middle of a snowstorm.

Will the First Minister say why the people who depend on the Vale of Leven hospital or the parents who depend on the children's ward at St John's hospital should trust her now, and why the people of Paisley should ever trust her again?

The First Minister: First, on the manner of the announcement, the health secretary stood up in this chamber earlier this week, set out the reasons for her decision and answered a range of questions from members from across the Parliament. That is right and proper.

On the issue of substance, as we have always done—as we did when we were first in Government and saved the accident and emergency services at Monklands and Ayr hospitals from the closures that Labour planned—we take decisions on the basis of best clinical evidence. These are never easy decisions, for any health secretary.

Let me quote Philip Davies, a consultant paediatrician, who was interviewed after the health secretary announced the decision. He said that if children are seriously unwell,

"having the back-up facilities of things like the paediatric intensive care unit, theatres, specialist medical and surgical specialties at the Royal hospital for children"—

things that are not available in ward 15—

"means that we can start definitive care for sick children at a much earlier stage".

That is the clinical evidence that underpinned and drove the decision.

The charity Action for Sick Children Scotland said:

"The most compelling argument is that clinical standards are there to support the best quality healthcare ... and we feel that this would be best achieved by moving Ward 15 to the Royal Hospital for children."

That is the evidence that drove the health secretary's decision.

The concern about local access is an important one, and the concerns of parents absolutely require to continue to be addressed, which is why the conditions that the health secretary attached to the decision are so important. The first was on the development of community-based services and the second was the board's requirement to work with individual families on individual treatment plans. Those conditions are important, and the health secretary will ensure that they are both met before any service change proposal goes ahead.

Murray & Murray Ltd (Closure)

The Presiding Officer: We have a couple of constituency questions, the first of which is from Jenny Gilruth.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): On Monday, Murray & Murray Ltd, a kitchens manufacturer in Glenrothes, went into liquidation, with the loss of 40 jobs. The company has left several customers in the lurch, as it demanded up-front payment.

What support can the Scottish Government give to those of my constituents who are affected by those job losses and by Murray & Murray's unfinished work?

The First Minister (Nicola Sturgeon): I thank Jenny Gilruth for raising the issue. At a time like this, our thoughts are with those who work for a company in such a situation—in this case, Murray & Murray.

We will look to work with the company to minimise any threat to employment and, if redundancies are in prospect, PACE—partnership action for continuing employment—the organisation that deals with such matters, will work with affected employees to make sure that we help them into alternative employment. This is a difficult time for all concerned, and the Scottish

Government will do everything that it possibly can to assist.

NHS Grampian (Pain Clinic Waiting Times)

Tom Mason (North East Scotland) (Con): The latest quarterly figures show that, of 536 referrals to a pain clinic in NHS Grampian, only 51 were seen for the first appointment within the 18-week target. Clinicians in NHS Grampian have confirmed that the waiting time for new routine appointments is now 40 weeks. When should patients expect to see reductions in their waiting times?

The First Minister (Nicola Sturgeon): The Scottish Government will continue to work with health boards to make sure that patients who need care achieve that care timeously. I know how important it is for patients to access the services of pain clinics and to access them speedily. I will ask the health secretary to look into the specific issue that the member has raised and to reply to him in writing. I readily acknowledge that the issues that he has raised are important.

Royal Alexandra Hospital (Children's Ward)

3. **Willie Rennie (North East Fife) (LD):** The First Minister hides when she has been found out. She usually hides behind the national health service in England or Wales. Today it is a new low. She is hiding behind Scotland's doctors. Doctors may have advised her to close the children's ward at Paisley. They did not force her to lie in an election television debate. Is she not ashamed of blaming the doctors for her broken promise? [Interruption.]

The Presiding Officer: Order, please. Mr Rennie, be careful with the use of your language, please. You can finish the question. I am not sure that anyone heard the end of your question, as there was so much noise. Please finish the end of your question.

Willie Rennie: I will ask the end of my question again. Is the First Minister not ashamed of blaming the doctors for her broken promise?

The First Minister (Nicola Sturgeon): All we have learned from that question is that Willie Rennie is a pathetic attention seeker. Given the state of his party, that is perhaps not surprising.

Let me return to the substance of the issue. First, the proposal on the children's ward at the Royal Alexandra hospital came to the Scottish Government almost a full year after the debate that Willie Rennie is talking about.

Secondly, Willie Rennie accuses me of hiding. I am standing in the chamber of the Scottish Parliament, answering questions on this issue and a range of other issues.

I was health secretary for five years. Maybe this is just a difference between Willie Rennie and me, but I happen to think that when decisions are being taken about really important matters of health service provision, it is important to listen to the experts on the front line. With the greatest of respect to Willie Rennie, it is important to listen to the doctors and the nurses, who probably know more than he does about how best to care for some of the sickest children in our society. Yes, we listened to the doctors; I am sorry if that upsets Willie Rennie, but I am not prepared to apologise for listening to doctors, who know best about how to treat sick children in this country. [*Applause.*]

The Presiding Officer: Order. I am sorry, but indulging in that level of clapping does not impress anybody. Please keep it to a minimum.

I say to both participants and to the chamber that the use of such language does no one any favours. In particular, Mr Rennie, "lying" is a word that you have to be extremely careful about, although it does not help if the First Minister rebuts that by using personal accusations—[*Interruption*.] I should not have to remind anybody in the chamber that they should treat one another with respect. You are here to talk about the issues and not to indulge in personal accusations across the chamber. Please would both participants bear that in mind in framing both the question and the answer.

Willie Rennie: Presiding Officer, I was there. I was standing right next to Nicola Sturgeon when she said what she said. The First Minister led everyone to believe that the children's ward at Paisley was safe in her hands. That is what was pathetic. She said that she would always stand up for local services, but now she is shutting them down. Let me ask her this: does she feel guilty for misleading the parents of sick children?

The First Minister: What I said in that debate was that there was no proposal on the ward. At the time, there was no proposal on the ward; no clinical evidence had been presented. That changed over the course of the months that followed.

This is quite a similar exchange to the one that I had with Ruth Davidson. The Opposition parties are so intent on attacking the Government—as is their job—that they fail to follow through on the logic of what they are saying. Ruth Davidson is so keen to attack Michael Matheson that she forgets that the logic of her question is that she would have allowed something indefensible to happen.

What Willie Rennie is saying is that the health secretary should have stood against all the clinical evidence from the nurses and paediatricians who care for sick children. I know how difficult these issues are, and I know how difficult they are for

parents. There can be nothing worse than being the parent of a desperately sick child, but that makes it all the more important that we listen to expert advice to make sure that we have the best possible services in place for sick children, and that is what the health secretary has done.

Rail Services

The Presiding Officer: There are a number of supplementary questions.

Jamie Greene (West Scotland) (Con): This week has proven to be quite a miserable one for rail travellers in Scotland. A landslip has closed the Glasgow to Edinburgh line; the west Highland line was closed after a derailment; landslides are affecting cross-country services near Kilmarnock; and flooding and debris are causing problems right across the network. All of that is causing disruption to tens of thousands of commuters. We cannot control the weather, but is the First Minister confident that our rail network was adequately winter-proofed and ready for the adverse weather? Can she provide an update to Parliament on when those services will be operational again?

The First Minister (Nicola Sturgeon): It has been an incredibly difficult week for those who work on our railways and for those who travel on them. The member went through some of the reasons for that, which are mainly weather related. That is why it is such a tribute to those who work on our railways that, as of 8.30 this morning, performance across the Scottish network—with the exception of the Edinburgh to Glasgow line, which I will come on to in a second—against the performance measure was 91 per cent. That is good performance, and those who have delivered it deserve credit from us.

Of course there have been challenges caused by the weather, the most serious and significant of which is the closure of the Edinburgh to Glasgow railway line because of the landslip that occurred in a cutting near the village of Philpstoun, which was caused by very heavy rainfall at around noon yesterday. A work plan has been agreed and implemented for the reinstatement of the railway. That is planned to be completed this afternoon but, as members will understand, that will be subject to an inspection of the signalling cables that were buried in the landslip.

These are difficult circumstances for passengers. I thank the travelling public for the patience that they display. I deeply regret it when inconvenience is caused, but I am sure that most reasonable people know that some of these weather-related incidents cannot be avoided. Our job is to ensure that things get back on track as quickly as possible, and that is exactly what is happening.

Scottish Sports Association

Kezia Dugdale (Lothian) (Lab): The Scottish Sports Association is an independent member-led organisation that supports voluntary sport, and the Government's decision to remove its funding has been met with widespread dismay and anger, with every single Opposition member of the Parliament signing a motion to that effect. Given that there is no majority in the chamber for that decision, will the First Minister urgently revisit that cut and live by her personal promise to champion Scottish sport?

The First Minister (Nicola Sturgeon): The Scottish Government has a good relationship with the SSA and we strongly appreciate the support that it provides. This week, the Minister for Public Health and Sport met the SSA and representatives of the cross-party group on sport to discuss how we develop a sustainable financial future for the SSA. Aileen Campbell has been clear that we continue to consider ways in which the SSA can have a sustainable future that supports collaborative working to create the active Scotland that we all want. We will continue to take forward those deliberations, and I hope that we can get to a position that is good for the SSA and for sport in general.

I remind members that we invest heavily in sport generally, and that the draft budget is committed to increasing the funding for sportscotland by £2 million. We have also pledged to underwrite any potential shortfall in national lottery funding for sportscotland of up to £3.4 million to provide certainty for the sport sector in the absence of action from the United Kingdom Government. We will continue to take decisions that are in the interests of developing sport across our country.

General Practitioner Contract

Miles Briggs (Lothian) (Con): General practitioners across Scotland, especially in rural Scotland, are concerned about the impact that the new GP contract will have on their practices. Under the proposed contract, one rural GP in Argyll and Bute is set to lose 87 per cent of their funding. All of us would agree that that is an unacceptable situation. Many GPs feel that the Scottish Government is setting rural GPs against urban GPs. I therefore make a positive suggestion to the First Minister and the Cabinet Secretary for Health and Sport: they should pause the contract process until the Parliament's Health and Sport Committee has had the opportunity to properly scrutinise the new contract in order to ensure that it does not further destabilise a situation that is already a crisis for general practice across Scotland.

The First Minister (Nicola Sturgeon): Last week, the overwhelming majority of GPs voted to

accept the new GP contract, which I warmly welcome. It is good for the profession and it will also be good for patients.

Of course we must listen to the issues for rural GPs, which is why a short-life working group has been established to look specifically at those issues. Members do not simply have to listen to the Scottish Government on this; it is the British Medical Association's position that the concerns that are being expressed by rural GPs are unfounded and that no GP will lose funding as a result of the new contract. That is the reality of the situation, but I accept that we have to convince rural GPs that that is the case, and we will continue to work collaboratively with them to seek to do exactly that.

Cervical Cancer (Screening)

4. **Kenneth Gibson (Cunninghame North) (SNP):** To ask the First Minister what steps the Scottish Government is taking to increase the uptake of screening for early diagnosis of cervical cancer. (S5F-01963)

The First Minister (Nicola Sturgeon): Cervical screening saves around 5,000 lives a year and prevents up to eight out of 10 cervical cancers. We have invested in a national campaign to promote screening generally, and £5 million of funding from our cancer strategy has been invested in our screening programmes, including cervical screening, to encourage those who are eligible to take up their invitation. We are also supporting the work of charities such as Jo's Cervical Cancer Trust to increase awareness of screening and address the barriers. To enable that charity to extend its reach, we are funding its new outreach service, which targets women who are less likely to attend. Thanks to cervical screening and the human papillomavirus vaccination programme, cervical cancer is now preventable, and that is a good thing.

Kenneth Gibson: Cervical cancer is the most common cancer in women aged under 35, yet a recent survey by Jo's Cervical Cancer Trust found that more than three out of five—some 61 per cent—of those women are unaware that they are in the most at-risk age group for the disease. A quarter of eligible women aged 25 to 64 do not currently take up their invitation to have a smear test, and the figure rises to one third among 25 to 29-year-olds. The reasons behind that are largely to do with self-consciousness and embarrassment.

Are any measures being taken to reduce the stigma that seems to surround cervical screening, especially among younger women? Does the First Minister agree with the health secretary that, quite simply, screening saves lives?

The First Minister: I absolutely agree with that. We know that there are barriers to women accessing cervical screening. Those barriers include fear, pain and, often, embarrassment. As a woman, I not only understand those concerns but identify with them. It is important that we continue to talk to each other and support and encourage each other to understand the importance of screening.

At a Government level, to help to overcome those barriers, as I said a moment ago, we are investing in a high-profile awareness-raising campaign to generate conversations about the issues. We are also supporting local activities in communities to open up a dialogue about cervical screening, to help women to fully understand why the test is so important and to make it the norm for women to attend when appointment letters are issued.

We will continue to raise awareness and will work to address the stigma, as taking up screening is, for many women, nothing short of a matter of life and death.

Mental Health Support (Schools)

5. **Edward Mountain (Highlands and Islands) (Con):** To ask the First Minister what action the Scottish Government is taking in response to reports that two thirds of teachers do not feel that they have been sufficiently trained in supporting the mental health needs of pupils. (S5F-01948)

The First Minister (Nicola Sturgeon): We believe that every child and young person should have access to emotional and mental wellbeing support in schools, so we want to ensure that all teachers and staff are confident in supporting their needs.

Mental health first aid training is currently being delivered to staff in secondary school communities by Education Scotland in partnership with NHS Health Scotland. In addition, as part of the 10-year mental health strategy, we have begun work to implement an improved mental health training service for everyone who supports young people in schools.

Edward Mountain: I would like to push the First Minister a bit more on that, if I may. Schools across Scotland are understaffed and overstretched, and teachers want nothing more than to support their pupils. Given that only one in 100 teachers recalls doing any detailed work on mental health in their initial teacher training, will the Scottish Government give a commitment to this chamber that mental health will be comprehensively covered in all teacher education?

The First Minister: I will ask the education secretary to see what more we can do around teacher training. It is an important point. It is vital

that teachers, at the earliest stage of their career, understand the importance of mental health.

We continue to take the action that I spoke about earlier. In December, we announced funding for a youth commission on mental health services, which will be delivered in partnership with the Scottish Association for Mental Health and Young Scot. The commission will provide recommendations on the way forward for child and adolescent mental health services and support. We also provide funding to Childline Scotland to provide confidential advice and information to children and young people.

These are important matters that we will continue to take forward. It is because they are important that we are putting forward a budget to this Parliament that increases funding for our national health service and ensures that teachers get more funding going directly to them in our schools.

If the member believes that our schools are overstretched, as he said, I ask him to please not support proposals in the forthcoming budget discussions that would remove £500 million from the amount of money that the Government has to invest.

Clare Haughey (Rutherglen) (SNP): I refer members to my entry in the register of members' interests—I am a registered mental health nurse.

Can the First Minister outline what other actions her Government is taking to improve the mental health and wellbeing of our children and young people and what role the mental health strategy plays in that?

The First Minister: The mental health strategy plays a key role in that. The strategy is backed by investment of £150 million over five years, and it sets out how we can improve early intervention and ensure better access to services, including for young people. As I said in response to the previous question, we are also funding a range of initiatives to involve young people in the discussions around mental health, including the funding for the youth commission and for Childline that I spoke about a moment ago. We will continue to take such steps to ensure not only that we are focusing on prevention—which is the most important thing—but that we have the services in place for those who need them.

Royal Alexandra Hospital (Children's Ward)

6. **Neil Bibby (West Scotland) (Lab):** To ask the First Minister when the children's ward at the Royal Alexandra hospital will close. (S5F-01952)

The First Minister (Nicola Sturgeon): As I said earlier, the Cabinet Secretary for Health and Sport approved NHS Greater Glasgow and Clyde's proposals on two conditions: first, that the health board maintains and develops community-based paediatric services and maximises local provision: and, secondly, that the board must work directly with families on specific individual treatment plans. Those plans must be in place before any service changes are made and will ensure that there is full understanding of what services and support will be available to local families and where. The board has given the assurance that there will be no change made to the service until the individual patient plans are in place.

Neil Bibby: My community understands that there is a debate to be had about localisation and specialisation, but in an area as sensitive as children's services the least that people deserve is an honest debate. During an election campaign, the First Minister gave a calculated and cynical answer that she thought she could get away with. She is right that I did not trust her answer: I thought that she was trying to mislead people and I have been proved right.

Last week, the health secretary tried to sneak her decision out on a Friday afternoon, and local Scottish National Party politicians who once accused campaigners of scaremongering now applaud the decision in Parliament. On two occasions, the health secretary has snubbed an invitation to meet the parents who will have to live with her decision. Does the First Minister understand why so many people—including Gordon Clark, who is in the gallery today—feel betrayed? What will she learn and change from the disgraceful way that her Government and party have treated the people of Paisley?

The First Minister: I do not agree with or accept that characterisation. The substance of the issue is what matters most. The health secretary met parents twice before making the decision, and I understand that the chair of the health board wants to organise a meeting with parents to discuss the individual patient plans that are to be put in place. The health secretary is happy to attend that meeting. On-going engagement with parents is vital.

Neil Bibby asked me what lessons have been learned. As everybody who has been in the position of taking such decisions knows, they are never easy. Health secretaries have to look at the evidence in the round. The views of parents are hugely important but, ultimately, it is about providing the best services for sick children.

I have already quoted a number of clinicians. I am sorry, but I do not think that such views from experts and specialist clinicians should be ignored. They were the basis for the decision. However, the community services that are to be provided are also important, and on that I think parents are absolutely right to continue to ask questions. That

is why the conditions that are attached to the decision are so important and why the health secretary will make sure that both are met in full before any service change proceeds.

Holocaust Memorial Day

7. **Bill Kidd (Glasgow Anniesland) (SNP):** To ask the First Minister how the Scottish Government is marking Holocaust memorial day. (S5F-01972)

The First Minister (Nicola Sturgeon): We must never forget the horrors of the Holocaust and other genocides around the world, which are a stark reminder of the inhumanity and violence that bigotry and intolerance can wreak if left unchallenged. Last night, I was honoured to speak at this year's national event to mark international Holocaust memorial day, which took place at Glasgow Caledonian University. I commend Interfaith Scotland and the Holocaust Memorial Day Trust for their excellent work in organising that event. I know that members across the chamber will be marking the day in different ways. We must continue to stand shoulder to shoulder in challenging hatred and promoting a world where everyone lives with fundamental human dignity.

Bill Kidd: I thank the First Minister for that answer and acknowledge the support that the Scottish Government gives to the Holocaust Educational Trust. I will also thank, if he does not mind my doing so, the Presiding Officer for his support of the Holocaust Educational Trust in Parliament this week.

I stated earlier that the Deputy First Minister was deeply affected by his recent visit to Auschwitz with 200 Scottish school pupils. Colleagues from across the chamber have been moved by their visits to Srebrenica and to other sites of genocide and persecution across the world. Such terrible atrocities remind us of man's inhumanity to man, but those who have been lost to us will never be forgotten. Will the Government continue to support projects in our schools that give Scotland's young people the chance to remember, learn and play their part in consigning intolerance and genocide to the history books forever?

The First Minister: As the Deputy First Minister said just before First Minister's questions, the role of education is vital and can never be overstated. Last night, I listened again to a very impressive young woman who was part of the programme of schools visits to Auschwitz. I have heard the testimony of many of those young people who have visited and it never fails to have an impact and to move me deeply.

I have not yet had an opportunity to visit Auschwitz—the Deputy First Minister visited recently—but I hope to do so in the future. Around 18 months ago, I took the opportunity to visit Srebrenica. I knew a lot about the Bosnian genocide in theory, but it was not until I visited the site and the memorial and talked to people who had been affected—some of the bereaved and survivors—that I felt the true impact. I know that other members have had similar experiences. It will live with me for the rest of my life.

With every year that passes, since the second world war in particular, it becomes more important that remembrance continues: we must ensure that the next generation never forgets. That is why Holocaust memorial day and all the events around it are so important. This year's theme is the power of words. We have been reminded today that we can all learn lessons about that. Words have great power, so we should all be careful how we choose them.

At the very end of today's First Minister's questions, notwithstanding all the many things that divide us as a Parliament, a country and a society, we should come together to remember the power of our common humanity. This is Holocaust memorial week, but today is also the day on which we celebrate the birthday of our national bard. It is appropriate that those things are in such close proximity, because in many ways, Robert Burns personified that humanity in saying:

> "That Man to Man, the world o'er,
> Shall brothers be for a' that."

Electric Shock Training Collars

The Deputy Presiding Officer (Linda Fabiani): I ask those members of the public who are leaving to do so quietly.

The next item of business is a members' business debate on motion S5M-08960, in the name of Maurice Golden, on electric shock training collars. The debate will be concluded without any question being put.

Motion debated,

That the Parliament understands that a range of experts, including academics, dog behaviourists, trainers and vets, consider the use of electric shock training collars to be both harmful to a dog's wellbeing and ineffective as training aids; believes that regulating use of these devices would do little to help protect dogs from harm and could create unnecessary bureaucracy; notes that Wales has implemented a ban on their sale and use, and notes the calls urging the Scottish Government to acknowledge that only a complete ban will offer dogs in the West Scotland region and across the country maximum protection, and for it to implement such action swiftly.

12:49

Maurice Golden (West Scotland) (Con): Let us be under no illusion: electric shock collars are harmful and must be banned. For that reason, I am delighted that the Scottish National Party has listened to me and the 20,000 people who have signed my petition calling for such a ban.

Part of our role as an effective Opposition in this Parliament is to hold the Government to account, but another part of it is to influence Scottish Government policy. The Scottish Conservatives have led the way on this issue, and the SNP Government has listened. However, this is first and foremost a victory for animal welfare in Scotland and for the countless animal charities and trainers and members of the public who have campaigned for this result.

I also recognise the cross-party support that the issue has received, with a representative from every party in the Parliament supporting a ban.

Mark Ruskell (Mid Scotland and Fife) (Green): I appreciate the work that the member has done personally on the issue. Will he also put pressure on the Westminster Government to enforce a ban on the sale and distribution of shock collars? Without that, we will not really have a ban in Scotland.

Maurice Golden: I will address that point in about two and a half minutes. The member should feel free to intervene again if I do not fully explain it, but I am confident that I will.

Although yesterday's announcement is welcome, we still need clarity on whether it is a complete ban that applies to all harmful training devices. For example, it has been argued that devices with varying settings might be treated differently.

We also need clarity on the consultation with animal welfare organisations, a move that I support but which also raises concerns. The SNP's previous electric shock collar consultation initially offered the prospect of a ban, only to result in a proposal for regulation, and we need clarity on who will be consulted this time, how long the process will last and what will be consulted on. There must be no attempt to use the consultation process to water down the ban with the arguments that we sometimes hear about, for example, shock collars being necessary for deaf dogs when, in fact, non-shock vibrating collars are a viable alternative. Equally, the idea that training in relation to livestock chasing can justify the use of electric shock collars is refuted by Department for Environment, Food and Rural Affairs research that shows the effectiveness of positive reinforcement in such training.

Another significant point is that we need clarity on the legal aspect of the ban—that is, on how the courts will enforce it. The guidance that is to be issued will be advisory and judges will not be bound to take it into account. I would welcome the cabinet secretary's initial thoughts on those matters today, with further details coming in due course.

Going back to Mark Ruskell's intervention, I believe that we must also consider banning the import and sale of electric shock collars. Although I believe that implementation of the draft guidance that was released yesterday will effectively ban these harmful devices in Scotland, I am supportive of going one step further. That is why I have written to the Secretary of State for Environment, Food and Rural Affairs to urge him to look into the matter. My colleague Ross Thomson, who is a dog owner and dog lover and a former member of this Parliament, has pledged to lead efforts in Westminster to ban the devices.

Let us remember why banning the devices is so important: they are harmful, and they have no place in dog training. The premise is very simple. Electric shock collars and other electric pulse training aids work by delivering a shock to a dog with the intention of ensuring that it associates that shock with a specific behaviour and is thereby deterred from repeating that behaviour. It sounds so reasonable, but if we strip away the polite-sounding description, we are left with the fact that the devices electrocute dogs. That is not right and it is not fair.

Unsurprisingly, electrocuting dogs can result in long-term harm. A 2013 DEFRA study highlighted the negative impacts: one in four dogs trained with the devices showed signs of stress compared with

fewer than one in 20 trained through positive methods. It was also shown that long-term impacts were still present even when the collars were used by professionals trained to industry standard. That last point is particularly significant, because it shows that regulation of the use of electric shock collars would not work, even if only qualified trainers were allowed to use them.

Instead, we can focus on what works. Reward-based training is already successfully used by many organisations. They include the Blue Cross, which believes that it is the only effective approach; the Dogs Trust, which last year rehomed around 1,000 dogs in Scotland following reward-based training; and Battersea Dogs' and Cats' Home, which has some of the most experienced canine behaviourists available and which supports using only positive training methods—in fact, it will not rehome an animal with anyone who plans to use aversive training techniques.

Those organisations, along with the Kennel Club, the Scottish Kennel Club, the Scottish Society for the Prevention of Cruelty to Animals, the Animal Behaviour and Training Council, Edinburgh Dog and Cat Home and others too numerous to mention, have been crucial with regard to keeping the issue in the spotlight, and we should not forget the more than 20,000 people who signed my petition. To all of them, I say thank you. We achieved our goal. We made a difference. Now, let us make sure that we see that difference delivered.

12:56

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I congratulate Maurice Golden on securing the debate and Ben Macpherson on his parallel motion.

I advise the chamber that, with your consent, Presiding Officer, I will have to leave immediately after my speech, as I will be chairing the Conveners Group sometime around 1 pm.

Returning home late last night from a Burns supper, I learned that the Scottish Government now supports a ban on the use of electronic shock collars. Maurice Golden and Ben Macpherson are new blood. I want to pay tribute to Kenny Gibson, who cannot be here because he is chairing a cross-party group, and to Alison Johnstone, as both have campaigned for a ban on the use of electronic shock collars since at least 2011. I also commend Colin Smyth, who has pursued such a ban since he came into Parliament.

Along with all the animal charities, including OneKind, the SSPCA, the Dogs Trust and the Kennel Club, the cross-party group on animal welfare, which I chair, will welcome the announcement. Indeed, on 8 January 2015, I led a members' business debate entitled "a shocking way to treat a dog". I say gently to Maurice Golden that not one Conservative member signed my motion for that debate, which called for a ban on electronic shock collars. At that time, the Government was not disposed to follow the lead of Wales, which banned the use of shock collars in 2010. I therefore welcome not only the Government's change of heart but the conversion of at least some members of the Conservative Party. For me, some animal welfare issues should be matters of individual conscience, and I invite Maurice Golden to join the cross-party group on animal welfare, as we have more work to do. As the cabinet secretary knows, we are an extremely proactive group.

Now to the nitty-gritty. I note the terms of the cabinet secretary's press release and I welcome the guidance. However, I know that, in Wales, the ban was secured by regulation, so I have some questions, the answers to which I will read later in the *Official Report*. Will regulation be the Government's chosen route, and can that be achieved through the Animal Health and Welfare (Scotland) Act 2006?

The Welsh regulations also apply to cats—believe it or not, shock collars are also used on cats. The Welsh Government says:

> "The regulations ban the use of any collar that is capable of administering an electric shock to a cat or dog."

I know that the cabinet secretary is very much a cat lover and has had a cat for many years, so I suspect that she will be sympathetic to the suggestion that any ban should also apply to the use of shock collars on cats.

If the ban is to be achieved through regulation, how long will that take, broadly speaking? Regulation should be a faster route than primary legislation. If it is not to be done through regulation, by what means will it be done? Will it be done through a standalone bill, or perhaps through a member's bill?

I say to Maurice Golden that I am afraid that there is nothing new in this place. After my debate three years ago, I hosted an event at which MSPs were encouraged to try electronic shock collars on their wrists. Only a few turned up, but those who tried the collars were converted on the spot. I hope that Mr Golden has a similar experience with any MSPs who attend his event.

I have had pets all my adult life—a dog and a series of cats. I would think of using a shock collar on my lovely and indomitable Mr Smokey no more than I would think of using one on myself, although some might think that the latter would not be a bad idea.

Training by pain and not persuasion is just plain wrong. We have cross-party and Government impetus, and I congratulate again all the petitioners and parliamentarians—both current and previous MSPs—who have never given up on a ban. I thank Maurice Golden for securing the debate and the Government for undertaking to see that the ban becomes a reality while I am still here.

13:00

Colin Smyth (South Scotland) (Lab): I thank Maurice Golden for lodging his motion. Labour's support for a full ban on electric shock collars is consistent and long standing. In the 21st century, there is no place for the use of those barbaric devices. In recent months, it has been hugely encouraging to see more and more MSPs come forward to support that position, which I know is shared by many members across the parties.

The evidence shows that the devices cause distress, anxiety and emotional harm to dogs. It is clear for everyone to see, as is the evidence that the range of highly effective positive training methods renders the collars needless. The charity Battersea Dogs' and Cats' Home has been in existence for more 150 years. Over 15 decades, it has cared for and rehomed dogs that have often displayed the most difficult behaviour, yet its work has achieved incredible and lasting results through positive and reward-based methods without ever having to resort to aversive training techniques such as shock collars. Not only are the positive alternatives more humane and effective than sending a painful electric current through the neck of a dog to frighten it into obedience, but a growing body of evidence suggests that the use of shock collars is counterproductive.

It was clear from the answers—or, rather, non-answers—from the Government to a series of written questions on shock collars that I lodged last year that the Government's initial approach to try to regulate such collars ignored the evidence and was, frankly, unworkable. The proposal was, in effect, to create a qualification in cruelty for trainers, which was simply abhorrent. We cannot regulate cruelty. Therefore, I welcome yesterday's Government announcement that it plans to ditch the existing policy. The question now is whether the new approach that is proposed by the Government, which is the issuing of guidance under the Animal Health and Welfare (Scotland) Act 2006, will be strong enough to prevent the full use of shock collars.

Under the 2006 act, it is an offence to cause unnecessary suffering to an animal or to fail to meet its welfare needs. However, at present, it would be almost impossible to prosecute someone for the use of a shock collar on those grounds. The proposal to issue guidance under the act, stating that aversive techniques will include shock collars, would add some clarity to the provisions. However, would that be strong enough to result in prosecution? Although charities such as the Dogs Trust welcome the Government's change of direction, they have understandably said that they would prefer a ban to be introduced under section 26 of the 2006 act. A ban that was introduced in secondary legislation would be just that: a ban.

The proposed guidance from the Government states that a person may be committing an offence of causing unnecessary suffering if they use a shock collar; equally, though, they may not be. The onus would remain on the prosecution to demonstrate beyond reasonable doubt not just that a collar had been used but that unnecessary suffering had been caused. That is still a high threshold.

I hope that, when the cabinet secretary sums up the debate, she will share with the chamber whether she believes that the proposed guidance will have the same legal status as, for example, the approach of the Welsh Government—which has used secondary legislation to lead the way in the United Kingdom and ban the use of shock collars—and why guidance is the approach that is being taken by the Scottish Government. If the answer is simply the need for speed, there is no reason why guidance cannot be a temporary measure until a more robust approach, introduced through secondary legislation, can be adopted.

Many politicians may want to take credit for the Government's welcome change of position on the issue. However, I pay tribute to animal welfare charities such as the Kennel Club, the Dogs Trust, Battersea Dogs' and Cats' Home, OneKind and Blue Cross for their campaigning work and the work of their supporters to achieve this change. I also commend the outstanding work of charities to advocate for animals on a host of issues.

There is much still to do. I hope that yesterday's announcement by the Government will signal further changes in policy, such as a reverse of the deeply regrettable decision to lift the ban on tail docking, a consultation on a ban on snaring and a commitment to go beyond Lord Bonomy's recommendations and ensure a proper ban on hunting. I hope that we will soon see the proposed legislation to raise animal cruelty sentences in line with the campaign by Battersea Dogs' and Cats' Home and others. If we see those changes, I assure the Government that it will have the full support of all Labour MSPs and, more importantly, the full support of the public.

13:04

Ben Macpherson (Edinburgh Northern and Leith) (SNP): I, too, firmly believe that electric

shock collars for dogs are inherently cruel and totally unnecessary. I thank Maurice Golden for securing a debate on this important animal welfare issue. It is great to join colleagues in welcoming the Scottish Government's bold and decisive action yesterday to promptly and effectively ban the use of electric shock collars and other electronic training aids that are capable of causing pain or distress to dogs.

As members are aware, I, too, have recently been campaigning on the issue, together with key animal welfare organisations including OneKind, Battersea Dogs' and Cats' Home, the Dogs Trust, the Kennel Club, Blue Cross and the Scottish SPCA. I pay tribute to all their work on the issue, and to fellow MSPs who have campaigned for change—particularly Christine Grahame, who has championed the matter for some time. Most of all, I pay tribute to the cabinet secretary for acting responsibly and decisively on the basis of evidence and ethics. She made it clear yesterday that causing pain to dogs through inappropriate training methods will not be tolerated here in Scotland and that the SNP will ban electric shock collars and other electronic training aids.

The Scottish Government has listened to legitimate views and opinions on both sides of the issue and, in carefully considering the issue, it has recognised growing public concerns. There is no doubt that the cabinet secretary's announcement will create a full ban on the use of electronic training devices. The ban, which will be developed through the use of section 38 of the Animal Health and Welfare (Scotland) Act 2006, will be prompt, effective and legally robust. Putting on my old lawyer's hat, I can advise that using that act is an effective way to make sure that the ban is not unnecessarily vulnerable to judicial review.

Members will also be aware that I have circulated my own petition and motion on the issue and that I did not support Maurice Golden's motion. Although I agree with Mr Golden's general call for a ban and pay tribute to him for lodging the motion, I was not able to support the wording of the motion because it included a significant inaccuracy. With respect, Mr Golden's motion falsely states that Wales has banned the sale of electric shock collars. The Welsh Assembly, like the Scottish Parliament, does not have the power to do that—only the Tories at Westminster can ban the sale of electric shock collars in Scotland, in Wales and across the UK, because the ability to ban the sale of those cruel devices is fully reserved to Westminster.

Therefore, together with my Westminster colleagues—particularly Tommy Sheppard MP and Deidre Brock MP, who has tabled an early day motion at Westminster—I call on the UK Government to follow Scotland's example and use its reserved powers to ban the sale and distribution of electric shock collars. At the moment, people can buy those cruel devices easily and cheaply. We need to stop that, and it is up to the Westminster Government to step up and do that.

In good faith, I welcome and support Mr Golden and other Conservative MSPs putting pressure on their colleagues and being part of a collective effort to pressurise the Tory UK Government to do the right thing, because it is time to ban electric shock collars completely across the UK.

13:08

Mark Ruskell (Mid Scotland and Fife) (Green): I declare an interest as an honorary member of the British Veterinary Association. I join members in thanking Maurice Golden for bringing this issue to Parliament ahead of any eruptions that we might have in committee. I also pay tribute to the cross-party work that has been done in this Parliament over a number of years to build the case against electric shock collars as well as the fantastic work that has been carried out by animal charities in Scotland.

We

"should avoid punishment when training your dog as it teaches response out of fear; this is bad for its welfare and can cause behavioural problems later in its life."

Those are not my words but the words used by the Scottish Government in its existing "Code of Practice on the Welfare of Dogs". I am pleased that the Scottish Government has recognised, as the Welsh Government has already recognised, that even the regulated use of electric shock collars is wholly inconsistent with its own approach to animal welfare, which is embedded in its guidance.

The evidence shows that punishment does not work. For example, one major behavioural study that surveyed and filmed owners and dogs found that punishment led dogs to become less playful and less likely to interact positively with strangers. It also found that dogs that were trained using a more patient, reward-based approach were more able to learn a novel training task. Therefore, punishment affects both a dog's behaviour and its ability to learn.

The scientific evidence for the case against e-collars has built up over the years. The University of Utrecht study, for example, showed that, when dogs are subjected to shocks, they unsurprisingly show clear signs of stress, fear and pain, which leads to long-term stress-related behaviour. We have heard about the recent DEFRA studies that reinforce that finding. They show negative behaviour with the use of e-collars even when

training is conducted by professional trainers using lighter-touch training regimes.

There is, of course, a small but vocal lobby of e-collar advocates—I am sure that they have bombarded members' email inboxes—just as there was a vociferous lobby of working dog owners who believed that there was a welfare benefit to amputating hundreds of puppy-dog tails to prevent the amputation of a single adult dog's tail. There was a point towards the end of last year when the Scottish Government was in danger, once again, of tying itself up in knots by pandering to that lobby and creating vocational qualifications in the use of aversive training aids—a kind of national vocational qualification in torture. To be honest, I could never see my local college offering that as a positive destination for school leavers. It was never a viable option.

The Government's fresh move to update the guidance and make it clear that aversive techniques could compromise dog welfare is the correct approach. It adds clarity and makes it more likely that prosecutions could take place under the Animal Health and Welfare (Scotland) Act 2006. My only question to the cabinet secretary is about the timescale for the introduction of that update.

The Scottish Government has acted within the limits of its powers but it is now vital, as other members said, that the Westminster Government uses its powers to ban the sale and distribution of e-collars. Every time that I google the words "shock collars", I am bombarded by adverts encouraging me to buy them, alongside adverts for trainers who offer shock services. Public awareness is low and the implications of using e-collars need to be spelled out to responsible pet owners who may be unaware of the evidence and their legal responsibilities. It will be incredibly difficult to catch and prosecute unscrupulous owners and trainers who use the devices without an accompanying ban on their sale and distribution introduced on the same timescale as the amendment to the guidance.

There is a critical point there for the MPs and for lobbying at Westminster. Both Governments need to move together. The Scottish Government has set the bar and the Westminster Government now needs to follow. I hope that genuine cross-party pressure can be exerted to bring that about.

13:13

Tom Arthur (Renfrewshire South) (SNP): I thank Maurice Golden for bringing the matter to the chamber and congratulate him on securing the debate. I pay tribute to my friend and colleague Ben Macpherson for his work on the issue. Across the Parliament, we have a shared view on the matter, but his work has helped to refine the argument.

I commend the Scottish Government for the action that it is taking. Having considered the evidence carefully, I agree that it has taken the correct position.

As Mark Ruskell said, I do not think that there is any member who has not been bombarded by a range of groups with different views. In my surgeries and office, I have met people from both sides of the argument. I was struck by the sincerity of trainers on both sides. Both are ultimately concerned with the welfare of dogs and ensuring that dog owners are responsible. That underscored to me the point that the challenge is not to correct dogs' behaviour when it gets to the stage at which people would justify using shock collars; it is to prevent it from getting to that stage.

I had a range of submissions, including one from a dog owner who had used a shock collar on a puppy. The argument that the owner made was that it had helped to address the puppy's behavioural problem quickly and was far more humane than taking the dog to puppy classes, where it would be terrified by 30 other puppies. I declare an interest as a dog owner. One of the most important things to do with a puppy is socialisation—to engage it with other dogs and human beings, so that suggested to me that a great deal of misinformation and misunderstanding exists.

The approach has to be about positive methods of training dogs. It is about early intervention and encouraging responsible ownership. Buying a dog does not start with collecting the puppy or putting down a deposit. It should start months before with research to understand the breed and the issues relating to dogs, and with identifying and engaging with reputable breeders. All of that is incredibly important.

The approach is also important more broadly, because the preventative approach of responsible and informed ownership not only creates a situation that removes the need for shock collars that some people perceive, but prevents a range of other problems that can emerge. Shock collars cause pain and distress to dogs, but many other activities and issues cause a lot more pain and distress.

As I said, I am a dog owner—my wife and I have a pug. One does not necessarily think of pugs as dangerous dogs that need shock collars, although given their capacity to follow people around at their feet, they can be a trip hazard. [*Laughter*.] However, nearly every pug that we see is overweight. We know that we have an obesity crisis in Scotland, but we also have an obesity crisis among pugs. Why is that? It is because

owners who allow their dogs to get to that weight are not informed about the welfare of the dog. Good welfare is not about rewarding the dog and giving in to those pleading eyes; it is about responsible dog ownership, including making sure that the dog is properly exercised and properly fed. That is just one example.

My view is that, if we have a culture in which more people are responsible dog owners from when their dogs are puppies, their dogs will not have behavioural problems later in their lives. On that basis, I argue that the Government has made the correct decision. The focus for all dog owners, with the incredible range of support that is available from dog welfare charities, should be that the solution to all behavioural problems is not to let them develop in the first place.

13:17

Finlay Carson (Galloway and West Dumfries) (Con): I congratulate Maurice Golden on securing today's important members' business debate. As the Scottish Conservative spokesman for animal welfare, I welcome the opportunity to speak on this important issue and to condemn the use of electronic shock collars and other pain-based training devices.

Electronic shock collars or ESCs, which are sometimes described as aversive training devices, work by using discomfort or fear to train a dog. They are worn around a dog's neck and work by delivering an electric shock—either via remote control or automatically—to the dog in order to "correct" undesirable behaviour. The devices do nothing more than inhibit behaviour by creating a fear response. Dogs show behaviours for various reasons. A dog's only way to communicate is by barking, growling or running away. If we try to stop a dog communicating, we are not addressing why it is choosing to express itself as it is, which can sometimes be a fear response to something with which it is uncomfortable.

Recent research that was commissioned by the Department for Food, Environment and Rural Affairs showed significant long-term negative welfare consequences for a proportion of dogs that were trained using ESCs. One in four showed signs of stress, compared with less than 5 per cent of dogs reacting to positive training methods. One in three yelped at the first use of an electric shock collar and one in four yelped at subsequent uses. The research concluded that even when ESCs are used by professionals following an industry-set standard, there are still long-term negative impacts on dog welfare.

The study also demonstrated that positive reinforcement methods are effective, for example in treating livestock chasing, which is the most commonly cited justification for the use of ESCs, particularly in rural Scotland.

I do not for one minute believe that trainers or dog owners who currently—excuse the pun—use ESCs have any intention of harming their dogs. I believe the exact opposite: they love their dogs as much as anyone else. However, we are now a society that looks far more closely at our relationship with animals. The decision to ban the devices is, in many ways, down to the change in public opinion and attitude. Indeed, that change in attitude recently brought about the Wild Animals in Travelling Circuses (Scotland) Act 2018, which bans wild animals in travelling circuses. Many years ago, the practice would not have raised an eyebrow, but it is now totally unacceptable to use wild animals for public entertainment. To a far greater extent than we did in the past, we in modern society make our arguments with regard to animals not solely on the basis of scientific evidence but on moral grounds.

The Scottish Government launched a consultation on banning or regulating use of electronic training aids at the end of 2015. That consultation covered remote-control training collars, anti-bark collars and pet containment fences that use a static electric pulse, sound, vibration, or water or citronella sprays. An independent survey that was commissioned by the Kennel Club in 2015 found that 73 per cent of the Scottish public were against the use of electric shock collars and that 74 per cent would support a Government ban.

Until yesterday, the Government was considering a licensing policy based on a qualification, which would still have allowed electric collars to be used in some cases. However, simply to regulate that cruel act is tantamount to supporting the use of electric collars.

I am delighted that the campaign by my colleague Maurice Golden and the fact that we were to have this debate have put pressure on the Government, and I sincerely hope that the evidence and representations in Maurice Golden's campaign will persuade the Government to introduce appropriate legislation to bring in a total ban. How the ban will be enforced is still unclear, so I would welcome clarification on that.

I thank the many individuals and organisations that have provided briefings for the debate—in particular, Battersea Dogs' and Cats' Home and the Dogs Trust. I look forward to the Government taking action to ban the devices in the near future. That outdated method of training needs to be put to rest, and more effective ways to train dogs need to be endorsed and promoted.

13:22

Ruth Maguire (Cunninghame South) (SNP): I thank Maurice Golden for bringing this important subject of debate to the chamber. MSPs across the Parliament care deeply about animal welfare, and we will achieve lots if we work together.

The fight against electric shock collars has now been won in Scotland, of course. I warmly welcome that, but the fight remains to be won in the United Kingdom. Although the motion does not refer to the UK Government's failure to act to date, I welcome the opportunity to make the case for banning sale and supply of electric shock collars throughout the UK.

I congratulate my colleague Ben Macpherson on his extensive and tireless campaigning on the issue—not least through his online petition, which calls on the Scottish Government and the UK Government to take what action they can to ban these harmful devices. He deserves a lot of credit for the welcome shift in policy that the Scottish Government announced yesterday, when it made it clear that it will introduce an outright ban on electronic training devices that cause pain or distress to dogs. The Scottish Government also deserves credit for having clearly listened to, taken on board and responded to people's concerns in its welcome shift to an outright ban.

Both Scotland and Wales have now concluded that the best way to protect animal welfare is to ban electric shock collars. It is crucial that we now turn our attention towards pressuring the UK Government to use its power to ban the sale and supply of those harmful devices across the UK.

The arguments against allowing the sale and supply of electric shock collars are the same as those against allowing their use. Electric shock collars are cruel and ineffective, bad for animal welfare, and do not work.

I will deal with welfare first. As well as suffering from the immediate pain and distress that are caused by the electric shock, dogs are likely to suffer long-term adverse effects, which mean that future attempts at positive-reinforcement based training are likely to be rendered ineffective. Just as important, evidence from animal welfare charities and the majority of professional trainers makes it clear that the only effective way to train a dog is through positive reinforcement.

In the interests of animal welfare and effective training, I whole-heartedly agree with the Dogs Trust, which has said that

"Under no circumstances"

should we

"condone the use of equipment or techniques that use ... pain or fear to train a dog."

The "no circumstances" part is important, because the only way to make it clear that adverse training is completely immoral and ineffective, and to ensure that it is never used at all, is to ban the sale and supply of the devices altogether. Unfortunately, that is something that only the UK Government has the power to do. Therefore, in the spirit of Maurice Golden's motion, which condemned electric shock training collars as

"both harmful to a dog's wellbeing and ineffective as training aids",

I call on him and his colleagues to use whatever influence they might have with their UK colleagues to urge the UK Government to do its part by banning the sale and supply of these harmful devices. The Scottish Government has listened and responded: I hope that the UK Government can demonstrate that it is listening as much to the compelling arguments against electric shock collars and that it will take action as urgently as we have done here in Scotland.

13:25

The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham): It will be quite clear that the subject of electronic training collars—or e-collars—is a complex and highly emotive one, and a matter of concern to many. There has been deliberation by the Scottish Government and the Scottish Parliament in previous years, as well as conversations taking place in other parts of the UK. I remind members that the status quo ante is that, both north and south of the border, there has been no regulation of the collars' use at all.

That was the starting point, and I sought to correct that position, even though the formal consultation had come to no consensus on a way forward. The Scottish Government is committed to ensuring the highest standards of welfare for all animals. However, finding the most appropriate way forward on the matter of electronic collars has been challenging. Some avenues were, and remain, closed to this Government—that matter was acknowledged today by a number of members including Maurice Golden, Ben Macpherson, Mark Ruskell, Ruth Maguire and possibly others.

These items cannot be cleared from our shelves—metaphorically speaking—so, following the public consultation in 2015, I announced plans in the programme for government to

"tightly control the use of electronic ... training collars"

to allow only appropriate use under the supervision of properly qualified dog trainers. That approach was proposed in light of the continuing mixed views on the devices, along with evidence put before me that modern e-collars provide non-

painful settings and can be used as part of a balanced training programme.

I considered that approach to be a proportionate response to a complex issue. However, the continuing concern about that proposed approach has led me to review the proposals. That is why I have decided not to pursue the initial plan to explore a way of approving trainers to allow the continued use of the collars in targeted circumstances. I know that that will disappoint those owners who genuinely believe that their animals have benefited from the collars and those trainers who have been engaging constructively with officials.

I have therefore asked officials to prepare clear Scottish Government guidance, reiterating that any physical punishment of dogs that causes unnecessary suffering is not acceptable in Scotland and is an offence under the Animal Health and Welfare (Scotland) Act 2006. That includes the use of electronic collars that administer an electric shock, anti-bark collars and any device that squirts noxious oils or other chemicals or substances into a dog's face or other part of its anatomy.

The guidance will be issued under section 38 of the 2006 act and will supplement the existing Scottish "Code of Practice for the Welfare of Dogs". Draft guidance is already on the Scottish Government website and I recommend that members seek it out. The guidance will make clear that causing unnecessary suffering by the use of such devices is an offence. Together with recommendations in the current code of practice, courts may take into account compliance, or non-compliance, with the proposed guidance in establishing liability in a prosecution.

The guidance will help to support the important work of the front-line enforcement agencies that have the difficult job of dealing with animal welfare problems in Scotland. It will go much further than the current "Code of Practice for the Welfare of Dogs" in England—I think that most people accept that. It will also address wider concerns about training devices and methods than are dealt with by the legislation in Wales, which, I need to caution members, has resulted in only one prosecution since it was brought in. There are bigger and more difficult questions around all this.

The draft guidance will no doubt be the subject of further discussion with welfare organisations, particularly those that are involved in the practicalities of enforcing animal welfare legislation. I encourage the SSPCA, in particular, to be involved. I think that Maurice Golden asked about the timescale; I can advise that consultation is now live and comments are invited by 14 February. We will then consult the Environment, Climate Change and Land Reform Committee, before we finalise the wording. The intention is to move on the issue as quickly as is reasonably possible.

In the near future, I hope to issue guidance on other dog welfare issues, such as the purchase of illegally bred or imported puppies and the breeding of dogs with extreme conformations that lead to chronic suffering because of difficulty breathing, walking or giving birth—I suspect that Tom Arthur's beloved pugs come into the category of animal for which that has become a significant problem.

I wanted to respond to something that Christine Grahame said, so it is unfortunate that she has had to leave, to chair another meeting. The guidance at present does not cover cats. I am happy to consider similar guidance in due course, although I caution members that electronic collars for cats tend to be used for boundary fence systems, which I think that Finlay Carson mentioned, rather than for training. That raises different and more complicated issues in respect of electric fencing, which is used elsewhere. We need to be a little careful and understand that cats are in a different category in this debate.

I think that I have dealt with most of the issues that were raised, so I will conclude, albeit a little early. I am convinced that the issuing of timely guidance—and it will be timely—under section 38 of the 2006 act will be an effective, practical and immediate way of addressing the legitimate and widespread welfare concerns about collar use in Scotland. The measure will address the issue of electronic collars practically, proportionately and as quickly as we can do—crucially—with the powers that are available to us.

The Deputy Presiding Officer: Thank you, cabinet secretary. Concluding early is always useful on a Thursday lunch time.

13:32

Meeting suspended.

14:30

On resuming—

Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill: Stage 1

The Presiding Officer (Ken Macintosh): The next item of business is a debate on motion S5M-10072, in the name of James Kelly, on the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill at stage 1. I call James Kelly, the member in charge of the bill.

James Kelly (Glasgow) (Lab): The Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 has completely failed to tackle sectarianism. It is illiberal and unfairly targets football fans. It has been condemned by legal experts, human rights organisations and equality groups. The Scottish National Party Government must now produce a unified approach, working through Parliament, charities and education. It is time to scrap this discredited act.

I acknowledge that this is a serious matter. I am proposing a member's bill that seeks to repeal in full an act of the Scottish Parliament. It is therefore reassuring that we have a robust process that I am required to run through, with an initial consultation that received more than 3,000 responses—over 74 per cent of which supported my proposal—a final proposal that required signatures from MSPs from across the chamber, and of course the three-stage parliamentary process that started with the Justice Committee's hearings.

I place on record my thanks to the clerks to the Justice Committee, other officials, those who gave evidence and members of the committee. The Justice Committee has produced a comprehensive body of work that adds to the parliamentary consideration of my bill.

It is worth reflecting on the introduction of the 2012 act. Much has been made of the background of the 2011 Celtic v Rangers game and the events that followed it. In that parliamentary session, some MSPs felt that the SNP Government had a somewhat ambivalent approach to sectarianism—I can remember an angry clash between Jack McConnell and Fergus Ewing—so talk of an approach to tackling sectarianism was welcomed in some quarters. However, earlier this week, I looked back at *Official Reports* from 2011—obviously, I was closely involved in the process as I led the Labour opposition to the legislation—and it became clear to me that where the SNP attempts to gain support for the legislation from all parties across Parliament fell down was in the lack of consultation, the lack of willingness to work with other parties, and the fundamental issue that the 2012 act was not about tackling sectarianism but was about targeting football fans. I think that that is what led to all Opposition MSPs opposing the passing of the legislation in the stage 3 vote in 2011.

The implementation of the 2012 act was characterised by aggressive policing, which caused a lot of friction with fans. There was confusion over definitions in the act and over what was or was not legal. Police officers had to be sent on a training course to learn about what was potentially offensive chanting under the act. We ended up with a lot of division—division between the police and fans, and division between political parties—and confusion among the judiciary as to what was or was not legal under the act. A lot of those themes have run all the way through to today, six years down the line, so it is no surprise that we have arrived at this position.

In the evidence that the Justice Committee heard, there was a very clear view from football supporters that they do not feel that section 1 of the 2012 act is fair, in terms of its targeting of football supporters, and that it is not effective. They feel that the act has led to a deterioration in relationships between the police and fans. The committee heard the legal point of view from the Law Society of Scotland, which advised that all convictions under the act in the previous year could have been captured under pre-existing laws—for example, under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, in relation to breach of the peace, or under section 74 of the Criminal Justice (Scotland) Act 2003, in relation to religious aggravation.

The Law Society of Scotland also said that it had a concern that the reach of the 2012 act was far too wide and that, as a result, further legal challenges were likely, undermining the already diminished credibility of the 2012 act.

I emphasise the evidence from the Scottish Human Rights Commission, a well-respected body that works closely with the Scottish Government. The SHRC drew the Justice Committee's attention to the fact that two areas in the 2012 act could be in breach of the European convention on human rights, leading to a lack of legal certainty. The committee also received evidence from several academics who questioned the potential implications of the act in relation to freedom of speech.

Joan McAlpine (South Scotland) (SNP): The member has talked about evidence that the Justice Committee received, but the Equality Network, Stonewall and the Scottish Council of

Jewish Communities all said in their evidence that repealing the 2012 act without having a viable alternative, as he suggests, would send out exactly the wrong message about sectarianism and our attitude to it in society.

James Kelly: I will cover the points about messages and alternatives towards the end of my speech.

It is important that we look at some examples of the impact of the legislation on people's lives. One tranche of data from recent years showed that 49 per cent of those convicted under section 1 of the act were young people aged under 20. It is unfortunate that those who have been captured by the act's provisions tend to be young working-class males who have no previous offences and who are in employment. I cannot believe that the Scottish Government intended that consequence when it introduced its bill in 2011.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Will the member take an intervention?

James Kelly: No, I want to make some progress.

If we look at some of the cases, we can see how unfair the 2012 act is and the impact that it has had on people's lives. In one incident, a Rangers fan with an "Axe the Act" banner, which obviously referred to the 2012 act, was arrested.

Another feature is police use of overnight curfews. A Motherwell fan who was singing a song about an opposition team was detained for four days in Greenock prison; and a Hibs supporter who had no previous convictions and who voluntarily attended a police station with his lawyer and his family was charged and then detained overnight.

There is also the effect on people's lives and careers. One young man was charged and, after lengthy proceedings, was found not guilty. However, due to disclosure rules, he had to inform his employer. That caused him a lot of stress because he felt that his career was under threat; there was also a lot of family pressure. A number of people who have been captured by the 2012 act are student teachers and national health service professionals who have been caught up in prolonged legal battles, causing real strain. The way in which people have been targeted and captured under the act has had a real human impact.

Section 6 of the 2012 act deals with threatening communication. It was unusual for such a provision to be bolted on to a bill that dealt with offensive behaviour at football. Legislation in relation to online abuse, which has grown in recent years, is clearly essential.

Mairi Gougeon (Angus North and Mearns) (SNP): How does the member intend to deal with the point raised by the Crown Office and Procurator Fiscal Service about the three specific areas that section 6 addresses? How will the repeal of the 2012 act solve those problems?

James Kelly: I am about to cover that.

As the police told the Justice Committee, although section 6 is well intentioned, because of the way in which it has been drafted, the legal threshold is too high, which makes it difficult to prosecute. As a result, the police and prosecutors are not using section 6. There have been only 17 cases in the six years that the act has been in force, and only one conviction—

The Minister for Community Safety and Legal Affairs (Annabelle Ewing): Will the member take an intervention?

James Kelly: No, I have taken an intervention and I am dealing with this point.

There has been only one conviction—in 2016—so the legislation is clearly not effective in addressing threatening communications. The police told us that they are securing prosecutions under the Communications Act 2003, rather than under section 6 of the 2012 act. Although section 6 is well intentioned, it is not fit for purpose.

That brings me to the point raised by Joan McAlpine. As a result of all those issues, the 2012 act sends a very weak message. Members should not forget that, throughout the past six years, only one party—the governing party—has continued to support it. That severely undermines the credibility of the message. If legal experts are saying that the basis of the act is weak and that its continued operation will result in legal challenges, including under the ECHR, we cannot say that it is operating well as a piece of legislation. It also causes a lot of confusion in communities about what is legal and what is not. The act sends a very weak message and it has failed to tackle sectarianism.

Looking back to the debates in 2011, I notice that I drew attention to the 696 charges involving religious aggravation that were recorded for the previous year. However, in the past year, there have been 719 such charges. Since the act has been in force, the number of charges involving religious aggravation has increased—it is now at its highest for four years—but only 7 per cent of those charges related to football. The act has completely failed to tackle sectarianism.

We need a completely new approach. We need a unified approach—one that brings together political parties, fans and legal experts and that emphasises a strong message around pre-existing legislation that works. We need to invest in education, and to support, rather than cut, anti-

sectarian education programmes. Allied to that, we need the police, football clubs and football fans to work together to promote good behaviour at football. Those three strands are a good way forward and will be far more effective than the discredited legislation that is currently in place.

I move,

That the Parliament agrees to the general principles of the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill.

14:44

Margaret Mitchell (Central Scotland) (Con): I am pleased to speak on behalf of the Justice Committee and summarise the findings of our stage 1 report on the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill.

A majority of members of the committee support the general principles of a bill that has divided opinion, and the committee report reflects both sides of the debate. However, although members were divided on whether to support the bill's general principles, the rest of our report contains unanimous recommendations and conclusions, and I thank all my committee colleagues for their efforts and willingness to achieve that outcome.

The bill is contentious, and reflecting all the views that were expressed presented a difficult challenge for the Justice Committee clerks. As a result, the entire committee would like to record its thanks to the clerks for their excellent work on producing the stage 1 report. Furthermore, although committee opinion was divided on the solution, all members agree that sectarianism and offensive behaviour should be challenged wherever they are found.

With regard to the committee's consideration of the bill, an open call for evidence was issued in June, and the 30 submissions that were received from organisations and the more than 250 from individuals helped us to identify the key issues to explore with witnesses in oral evidence. Over six committee meetings, members took evidence from eight panels of witnesses comprising academics, fans groups, legal experts, religious groups and equality groups as well as the minister and James Kelly, and the committee thanks everyone who provided oral and/or written submissions. The issues explored included whether repeal would create a gap in the law; the effectiveness of the offences in sections 1 and 6 of the 2012 act; and the message that repeal would send.

The 2012 act created two new offences. The offence in section 1 covers offensive behaviour at regulated football matches, while the section 6 offence covers threatening communications. In evidence, the committee heard concerns from witnesses about both offences as well as warnings of the potential consequences of their repeal. Those who support retention of the 2012 act considered that repeal would send the wrong message about what is and is not acceptable behaviour, while those who apply the act stated their belief that the section 1 offence was fit for purpose and clearly understood by police officers. On the other hand, those in favour of repeal considered that the section 1 offence discriminated against football fans and that its poor drafting resulted in inconsistent application by police officers.

The committee also heard some evidence on how the 2012 act could, if retained, be amended. We quote in our report a swathe of changes that the legislative academic Andrew Tickell suggested could be made to improve section 1. Moreover, the minister committed to considering any improvements to section 1 that might be offered, and the minority of committee members who did not support the general principles of the bill were of the view that the Scottish Government should revisit the 2012 act and lodge constructive amendments in that respect.

The section 6 offence also split opinion, but for different reasons. Those in favour of retaining the 2012 act argued that repeal would create a gap in the law. I shall return to that topic later, but I will say that the issue was of particular concern to some religious groups, such as the Scottish Council of Jewish Communities. However, those who support repeal of the 2012 act argued that section 6 is rarely used, due to the high threshold that is created by its wording. The committee agreed that, should the bill be passed, it would be appropriate to consider how the provisions in section 6 could be updated and included in any further revision of hate crime legislation.

James Dornan (Glasgow Cathcart) (SNP): Did the committee come to any conclusion about how to fill the gap that would be created by the repeal of section 6 of the act? The member might say that section 6 has not been used often, but it seems to me that it is still very important to have those provisions on the statute book.

Margaret Mitchell: The member is being a bit impatient—I am just about to come to that exact point.

On the question whether passing the bill would create a gap, those in favour of retention of the act highlighted the offence of incitement to religious hatred contained in section 6 as well as the extraterritorial provisions in the act and the sentencing powers in section 6.

Those who supported repeal of the 2012 act pointed out that breach of the peace, the Communications Act 2003 and section 38 of the

Criminal Justice and Licensing (Scotland) Act 2010 would be applicable to types of behaviour that are covered by the 2012 act. The committee concluded, on balance, that both sides of the debate were accurate in their description of what repeal would mean, and that, other than the offence of incitement to religious hatred that is contained in section 6, repeal would not result in behaviour or actions that are currently prosecuted under the 2012 act becoming legal. The development of the issue of what can be done in that situation addresses the point that Mr Dornan raised.

As well as the policy debates surrounding the bill, there was also much debate in the committee about the timing of the proposed repeal. Lord Bracadale is currently in the midst of an independent review of hate crime legislation, which is due to report in spring 2018 and the auspices of which cover the 2012 act. Some witnesses argued that the committee and Parliament as a whole should delay the consideration of Mr Kelly's bill until Lord Bracadale's review had concluded. However, the committee is aware that Lord Bracadale's consultation paper states:

"The Review will therefore consider how the law should best deal with the type of hate crime behaviour covered by section 1 in parallel with the Parliament's consideration of James Kelly's repeal bill. The final recommendations made by the Review will take into account the law as it exists or is anticipated at that point."

Given that information, and given the wide scope of Lord Bracadale's review, together with the time that it might take to properly examine his report once it is published, the committee unanimously agreed in its report that it would not be appropriate to delay the parliamentary consideration of the bill while Lord Bracadale concludes his work.

The committee as a whole was interested to hear of measures that could be taken to tackle sectarianism and hate crime. This bill has reinvigorated discussion of what is and is not acceptable behaviour. Members agreed that, regardless of whether the 2012 act is repealed or retained, the time is ripe for further publicity and education on what is and is not acceptable behaviour. The committee also recommended that defining sectarianism in Scots law could be a useful step and stressed that education is vital in tackling such attitudes.

Members were very interested to hear about Sacro's tackling offending prejudice—STOP—service, which provides diversion from prosecution and works with people to help them to identify their own attitudes and behaviours in an effort to effect long-lasting change. Unfortunately, that service and others like it have hardly been used in relation to the 2012 act. The committee therefore recommends that those schemes, where appropriate, should be used more widely.

In conclusion, a majority of the members of the committee support the general principles of the bill at stage 1, and the entire committee looks forward to continuing to explore the issues that will be raised by witnesses should the bill return to us for stage 2.

14:53

The Minister for Community Safety and Legal Affairs (Annabelle Ewing): The Scottish Government stands on the side of the vast majority of football fans who want to enjoy the game with friends and family in an atmosphere that is untainted by offensive, abusive or threatening behaviour. Sadly, we continue to see problematic behaviour at football matches. A persistent minority seem to think that it is their right to behave as they please with no regard for those around them or wider society. We do not see similar behaviours at other sporting events or, indeed, in other places where large numbers of the public gather for entertainment. This season alone has witnessed the abuse of Dunfermline Athletic's Dean Shiels by opposition players and fans; vile online abuse towards the young Celtic FC Foundation ambassador Jay Beatty; banners replicating images that are associated with paramilitary groups; and people posting offensive comments on social media about the Ibrox disaster.

Above all, we want to ensure that people remain protected from those crimes, and we recognise that those behaviours will not just disappear and that actions and interventions are required.

Johann Lamont (Glasgow) (Lab): Does the minister agree that many good football fans who want the bill to be repealed also abhor that behaviour in a football ground?

Annabelle Ewing: I agree that the vast majority of football fans do not condone that behaviour. However, the fact of the matter is that many fans do not take their friends and families to football games now because of prejudicial and hateful behaviour. That is a terrible shame.

Neil Findlay (Lothian) (Lab): Will the minister give way?

Annabelle Ewing: I would like to make a bit of progress.

Other interventions are, of course, recognised as being important, and I stress that the Government has invested £13 million since 2012 to support organisations to tackle sectarianism—an unprecedented amount that is far in excess of anything that was provided by previous Administrations. Our work has focused on

education and schools, communities, prisons and workplaces, and has delivered the first ever national education resource and supported teacher training to roll it out.

James Kelly: Will the minister take an intervention?

Annabelle Ewing: I will take an intervention, even though Mr Kelly was not very keen on taking my interventions.

James Kelly: I am sure that there will be an opportunity in the summing up. Will the minister confirm that the budget for the work of the sense over sectarianism partnership was cut from £2.3 million in 2015-16 to £800,000 in 2016-17?

Annabelle Ewing: Mr Kelly has been misinformed. Funding of £2.3 million has not been awarded to any individual organisation. Sense over sectarianism has received a total of £340,000 from the Scottish Government in the past three years.

The Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 is part of our work to tackle hate crime. The act was not about replacing existing law but about giving better and sharper tools to police and prosecutors. Section 1 covers hateful behaviour that stirs up hatred against others based on their religious affiliation, race, colour, nationality, ethnic origins, sexual orientation, transgender identity or disability. Why would we want to hear vile language used against any of those communities in our football grounds? In its most recent briefing notes, Stonewall Scotland confirmed that 60 per cent of sports fans have witnessed anti-lesbian, gay, bisexual and transgender language or behaviour in a sports setting, and 82 per cent said that it took place in relation to football.

Section 1 also prevents people from expressing support for terrorism and glorifying or mocking incidents that involve the loss of life or serious injury. What justification is there for allowing that behaviour at football? Freedom of speech has to be protected, but surely that has to be balanced against the damage that offensive speech causes. The Justice Committee heard from representatives of minority communities who emphasised the damaging impact that hateful language and behaviour have in undermining and destabilising our diverse communities.

Liam Kerr (North East Scotland) (Con): Will the minister take an intervention?

Annabelle Ewing: I am sorry, but I must make progress.

The act provides extraterritorial powers to ensure that freedom of movement does not mean escaping the law. Section 6 brings Scotland into line with the rest of the United Kingdom in relation to incitement to religious hatred, ensuring that religious communities have as much protection in Scotland as they do in the rest of the UK. Those powers would be lost if the act were repealed.

We have heard that the 2012 act breaches human rights. When it was introduced, the bill that became the 2012 act was certified as being within the legislative competence of Parliament, which includes compliance with the European convention on human rights. There has been no successful legal challenge in the courts on the ground that it breaches human rights in all the time that it has been in force.

Some fans blame the act for a breakdown in relations between them and the police, yet the act makes no provision for policing. Police Scotland's evidence to the Justice Committee was that there has been no deterioration of the relationship from a police perspective. Even if the act is repealed, the evidence to the Justice Committee suggests that there would be no change to operational police tactics. I thank the Justice Committee for producing a very thorough piece of work and I am considering action in response. I confirm that my officials have already been instructed to look at the scope for creating a legal definition of sectarianism and I will report on that in due course.

The Justice Committee report notes that those who are against repeal think that the act should be amended. We have been consistently clear in our commitment to work with those people who have concerns. If any party still wishes to pursue the amendment route, the door remains open. The Scottish Government is conscious of the will of Parliament, and if that will is to support the principles of the bill, it is entirely responsible for us—indeed, it is our duty—to make sure that the implications of such a move are fully understood and that action is taken to mitigate the impact of any gap in the law that would appear as a result of the repeal.

Equality groups have been very clear that they place great importance on the protection that the act offers them, and it is absolutely right that we look at constructive ways to ensure that support for repeal does not leave them feeling exposed and unprotected. If the bill is agreed to at stage 1, the Scottish Government will seek to ensure that there is a continuity of protection for minority communities.

We would certainly hope that even the most strident supporter of repeal would want to work constructively with us to build a consensus to put in place protections for all vulnerable communities ahead of repeal, including considering a delay in the implementation of the bill, if necessary, to allow us the time to do so. In particular, the loss of section 6 powers would be worrying for those communities as they are concerned about the

possibility of their children, families and friends being exposed to online abuse, and it is right that that issue is addressed through legislation.

Simply going back to where we were before the act was introduced is retrograde and counter-productive and will do nothing to tackle abusive behaviour at football or protect vulnerable communities. Repealing the act—with no viable alternative—will do nothing to help us to build the country that we aspire to be. Regrettably, there would be negative consequences of repealing the act for our vulnerable communities, and I ask members to reflect very carefully on what they are doing.

15:00

Liam Kerr (North East Scotland) (Con): I open for the Scottish Conservatives to speak in favour of the principles of the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill. The 2012 act is bad law. On its progress through Parliament, the initial bill was met with criticism and disapproval from all Opposition parties, who considered the legislation to be unfair, unworkable and inconsistent. Almost five years later, it is clear that that consensus remains—so much so that, in November 2016, a clear majority of MSPs voted to repeal the 2012 act as "a matter of priority".

During the stage 3 proceedings on the 2012 act, Roseanna Cunningham, the then Minister for Community Safety and Legal Affairs, said:

"the critical role for Government ... is to ensure that the law is fit for purpose".—[*Official Report*, 14 December 2011; c 4644.]

This legislation is not fit for purpose. A senior judge said that it was "horribly drafted". Andrew Tickell told the committee:

"the act specifically instructs judges to completely ignore the actual context in which the behaviour takes place. That is perverse."—[*Official Report, Justice Committee*, 14 November 2017; c 53.]

Professor Sir Tom Devine said that the 2012 act would go down in history

"as the most illiberal and counterproductive act passed by our young Parliament to date."

The Scottish Human Rights Commission said that restrictions of freedom of expression made the act contrary to human rights treaties, and in 2014 reported its concerns to the United Nations so that it could monitor whether the restrictions placed on freedom of speech

"are truly necessary in a democratic society."

John Mason (Glasgow Shettleston) (SNP): Is the member arguing that there should be total freedom of speech and that there should be no limits on any hatred or anything else at football or elsewhere?

Liam Kerr: I refer John Mason to the interesting evidence that we heard at committee on that specific point. My response to his question is no. We are dealing with a specific act and, as we will see in a second, that act should be repealed for the reasons that I will come on to.

I can very easily get to a starting point that this law should not remain on the statute book, but I listened carefully in committee and reflected on a number of the concerns that were raised. I heard much concern about the message that would be sent if the act were repealed and note the important citations in the committee's report in that regard. However, I have asked myself whether that message will be sent.

Assistant Chief Constable Higgins stated clearly:

"Repealing the act might be interpreted by some as a lifting of the restrictions on how they can behave in football stadia, or it might not."—[*Official Report, Justice Committee*, 3 October 2017; c 3.]

Dr Joseph Webster said that repeal does not mean affirming the validity of the currently proscribed behaviour. He considered that how repeal is perceived is all our collective responsibility to deal with. He is right: it is all our duty to send a message that hate crime is illegal—and still will be after repeal.

James Kelly made an important and persuasive point that the current message is weak in any event. To say that legislation should not be repealed because that might send a problematic message to potential offenders is not a good enough reason not to repeal it.

Paul Quigley of Fans Against Criminalisation suggested that repeal would send a positive message. He said:

"Repealing the bill would send the message that football fans will no longer unfairly and unduly be criminalised as they have been under the 2012 act, in a specific way that people in wider society are not."—[*Official Report, Justice Committee*, 3 October 2017; c 37.]

The second concern that I reflected on was that there might be a legislative lacuna. Seven months ago, Annabelle Ewing told us that repealing the act

"in the absence of a viable alternative demonstrates contempt for those targeted."

That is correct. However, the committee heard from the Law Society of Scotland that all 287 charges that were brought under section 1 of the 2012 act in 2015-16

"could have been prosecuted under pre-existing legislation".

Annabelle Ewing: I point the member to the evidence that was given by the Crown Office and Procurator Fiscal Service, which detailed exactly where the issues of concern would arise.

Liam Kerr: I am grateful for the intervention. I, in turn, point back to the evidence of ACC Higgins, who said:

"In the absence of the act, someone who was arrested for singing an offensive song would almost certainly have been charged with a breach of the peace or a section 38 offence."—[*Official Report*, *Justice Committee*, 3 October 2017; c 19.]

Professor Fiona Leverick agreed, stating:

"the common-law crime of breach of the peace, section 38 and a number of statutory aggravations are in place and continue to be, and … offensive behaviour at football matches could be dealt with under pre-2012 legislation."—[*Official Report*, *Justice Committee*, 7 November 2017; c 32.]

My final concern was whether the act has worked. Dr John Kelly told the committee:

"since the 2012 act came in there have actually been more of what the Scottish Government might define as problematic songs."—[*Official Report*, *Justice Committee*, 14 November 2017; c 50.]

Dr Joseph Webster said:

"What fans have done is change their behaviour by holding their hands in front of their mouths while singing certain songs in order to prevent CCTV from capturing them singing them. … they have replaced certain songs and chants with other words in order to try to skirt the law."—[*Official Report*, *Justice Committee*, 14 November 2017; c 49.]

Annabelle Ewing said that, sadly, we continue to see such behaviour at football. It is clear that she agrees that the 2012 act is not working. Even if we feel that such chanting has diminished, Professor Leverick told the Justice Committee that it is impossible to tell whether that is because of the act because there are so many other factors. Correlation is not causation.

The 2012 act has not brought about a behavioural change of itself. It has not changed the underlying drivers of prejudice or discouraged the expression of offensive behaviour. It has redirected those behaviours and prejudices and camouflaged them, but it has not stopped them.

The 2015 Morrow report states:

"there is no single, simple answer to deep-seated issues of social division such as sectarianism"

and that the key to achieving real change is a balanced mix of community-led, civil and Government action. We need an enduring change in culture and attitude, but that happens in homes, classrooms and communities. It is facilitated by the work of charities and third sector organisations such as Nil by Mouth. We need to see and support more of that community-led activity.

I have heard the objections and reflected on them. I have dealt with them and the only plausible conclusion is that the 2012 act must be repealed. Therefore, the general principles of the bill are sound and I shall vote accordingly.

15:07

Daniel Johnson (Edinburgh Southern) (Lab): The Parliament has a mixed reputation when it comes to legislation. Some people believe that a structural problem—something to do with our constitution as a unicameral Parliament, perhaps—has led to poor-quality legislation, drafting errors or ill-thought-through laws being passed. Therefore, I welcome the reforms that the Presiding Officer has introduced to improve our processes. Perhaps more post-legislative scrutiny will help to improve the quality of legislation coming out of the Parliament.

That might be an unpopular opinion to voice in the chamber. However, it is one that many people outside Parliament hold, so I welcome the opportunity to speak in a debate on a particular form of post-legislative scrutiny because, when it comes to the 2012 act, those critics have a point. It is a bad law because, as the Law Society of Scotland has pointed out, it does not add to the existing law; because it has sown division between the people who feel targeted by it and the police; and because it is too open to interpretation by individual police officers.

Therefore, I very much welcome the opportunity to reconsider the 2012 act and take forward my colleague James Kelly's proposal to scrap it. Mr Kelly has made the arguments well. I commend him for his stewardship of his member's bill. As someone who has opened a consultation on a bill proposal, I know how much work it has taken him and his staff to get to this stage. I add my support, and the full support of Labour members, to the arguments that he made in his speech. However, I will take my speech in a slightly different direction and refute some of the arguments against scrapping the act.

First, there is an argument that we should wait until Lord Bracadale's review into hate crime legislation is complete—Margaret Mitchell made a good comment on that. However, Lord Bracadale's review is being run in parallel with the bill's passage through the Parliament.

Lord Bracadale stated explicitly in his consultation paper that the recommendations

"will take into account the law as it exists or is anticipated at that point."

We await his recommendations with interest and look forward to seeing how the Parliament can look to improve our hate crime legislation. However, using Lord Bracadale's review to hold

up the scrapping of the act would be spurious at best. Indeed, the Justice Committee's report states that

"it would not be appropriate to delay consideration of this Bill"

on those grounds.

Secondly, there is an argument that scrapping the act will create a gap in the law, but that is simply not the case. Academics including Professor Leverick have argued that common-law breach of the peace, section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 and a number of statutory aggravations can and should be used if the act is scrapped.

Annabelle Ewing: Will the member take an intervention on that specific point?

Daniel Johnson: I alluded earlier to the fact that the Law Society of Scotland argues that the 2012 act did not improve on the existing common law and statutory law and said:

"We ... are not of the view that its repeal will leave a gap in the criminal law."

If Ms Ewing would like to say why it is wrong, I would be grateful to hear that.

Annabelle Ewing: I point the member to the evidence of the Crown Office and Procurator Fiscal Service, which he can read in the Justice Committee evidence sessions. Of course, repeal would also remove section 6 and, therefore, remove from Scots law the specific offence of incitement to religious hatred. Does the member feel that that sends a good signal to society?

Daniel Johnson: Again, all that the minister can point to is the signal. The point is that that section is ineffective, as has been pointed out a number of times. The fact that it has been used in only a handful of cases and the fact that so many people have pointed to the threshold being too high should allow the minister to realise that it is simply ineffective.

The Law Society's evidence states clearly that all 377 of the charges under the act in 2016 could have been captured by pre-existing legislation.

It is not just academics and lawyers who are saying this. The police said in their evidence that repeal

"would not pose a significant operational challenge"

and that they would

"address the behaviour using other legislation."

The assistant chief constable went on to say:

"regarding boots on the ground and how football matches are policed, little—if anything—would change."—[*Official Report*, *Justice Committee*, 3 October 2017; c 6.]

Let us not delay the decision when no gap is created in the law and there is no impact on Lord Bracadale's review.

Thirdly, there are arguments about the message that repealing the law would send out. Legislation, as we know, is not just about what is passed, but also about the message to society. Laws are both led by and lead societal change. The 2012 act had a clear message: it was clearly designed to show that action would be taken on sectarianism. What message will repealing the 2012 act send? I argue that it will show that this is a responsible Parliament that is fixing the problems created by poor legislation and scrapping a law that focuses overly on a particular group in society when the problems are part of a much wider societal issue.

James Dornan: Will the member take an intervention?

Daniel Johnson: I do not feel that I have time. I apologise to Mr Dornan.

Repeal will send out a message about the acceptance of sectarianism only if we let it. Throughout the passage of Mr Kelly's bill, Labour has continued to argue that sectarianism is a blight on our country that shames us all. It is unacceptable and it should not happen. We must tackle the issue, but through education, particularly with young people. We should work with football clubs and fans to change their views. We will not allow anyone, therefore, to portray the scrapping of the 2012 act as sending a message that sectarianism is acceptable or that we are not keen to tackle it. Most important, my party and this Parliament, I believe, are united in our belief that action must be taken, but that does not justify an unworkable, illiberal, poorly drafted law remaining on the books.

The arguments that are put forward by the bill's opponents simply do not hold up. There is no need to wait for Lord Bracadale's review, no gap is created in legislation and there is no suggestion that, by repealing this law, we will send out any message other than that this is a bad law and we should scrap it. Its drafting, its controversy and its failure to do more than the existing laws have helped to discredit it. This Parliament has already voted in 2016 on a motion that called on the Government to scrap the act, and the Justice Committee has now delivered a report that agrees with that. Mr Kelly's proposal is simple: we should scrap the act. I urge all members to vote for the bill at stage 1.

The Deputy Presiding Officer (Christine Grahame): We move to the open debate. Speeches should be five minutes, although there is a little time in hand for interventions, which members can make up.

15:14

George Adam (Paisley) (SNP): I have listened to the debate so far, and much has been made of the 3,000 fans who engaged with the process. However, the recent figures show that the average weekly attendance for the Scottish Premiership is 193,220. Therefore, only 1.5 per cent of that number of football fans have engaged in the whole scenario. We have to balance things and look at the matter from that perspective, as well.

I am the convener of the St Mirren Independent Supporters Association, which has a 28 per cent share in St Mirren Football Club. I am a great believer in fan empowerment. The whole idea of that programme is that, after a 10-year period, the fans and the community in Paisley will own their professional football club. For me, one of the most important parts of football is that the fans should be involved in it at all levels.

It was the great Pelé—who was, in my opinion, the greatest player the world has ever seen—who coined the phrase "the beautiful game". There is no better explanation or description of football. The world over, football fans will argue about and discuss every aspect of the game. When football is played at its best, there is no other sport that can compete with it. However, that passion and spirit for the game can at times descend into a nasty place.

I came to the debate and dealt with it first and foremost as a football fan. Football is in my DNA—more accurately, St Mirren Football Club is in my DNA. The phrase "one town, one team" is used in Paisley. That is how many non-football-supporting Buddies and supporters of other towns' teams look at their team.

As a football fan, I have seen how a minority of fans can ruin the beautiful game for others and become abusive and threatening. During the Justice Committee's evidence sessions, I continually brought up why the 2012 act came into being and what had happened within and outwith our national game. An air of menace was connected with some games, which spilled out into normal day-to-day life. I have explained that repealing the act would send entirely the wrong message to those who seek to be offensive at football games. All the old song sheets will be dusted off in anticipation of the repeal. Is that really where we want to be in 21st century Scotland?

Liam Kerr: Does George Adam agree that the old song sheets have merely been updated and that people cover their mouths with their hands to sing the same songs?

George Adam: That is wrong. Even Mr Kelly, in his evidence, said that it is wrong for a football fan to sing a song that is not about football. Anything that is not connected to the game should not be at a football match. The Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 criminalised hateful, threatening and offensive behaviour that is likely to initiate public disorder in relation to football, and I do not see why that is a problem.

As a fan, I will give a personal example. At a St Mirren v Celtic game in 2010, I witnessed an example of offensive behaviour that I found disgusting. Many members will be aware that my wife Stacey is a fanatical St Mirren fan, that she has multiple sclerosis and that she is a wheelchair user. At that game, some away fans had tickets for the St Mirren end and, at the end of the game, things turned nasty. Stacey had what she believed was a reasoned discussion with an away fan only to hear a Celtic fan shout, "Will someone shut that"—I will clean it up at this stage—"cripple up?" The situation descended into chaos. Fans on both sides found that behaviour totally unacceptable. Do we believe that it is right for football fans to express themselves in that manner? The 2012 act still allows fans to express themselves but not in an offensive manner. However, there are people who support the repeal who believe that a football fan should be able to sing and do what they like at a game.

Stuart Waiton, who is one of the academics who strongly supports Mr Kelly's bid for repeal of the 2012 act, provided shocking evidence to the committee. In his oral evidence, he continued to state that fans can say what they like as often as they like at football matches and that they have the right to do so. In a book entitled "Football Hooliganism, Fan Behaviour and Crime: Contemporary Issues", to which he contributed, he said:

"Perhaps most problematically, we now had a law in Scotland that could be used to target anything that a 'reasonable person' would find offensive at a football match, and yet football, in many respects, is all about being offensive."

For me, there is a big difference between passion for the game—the competitiveness involved in supporting your team—and being offensive to someone at football. The Scottish Council of Jewish Communities agrees with me. In its written evidence, it said that it is

"concerned that repeal of the Offensive Behaviour at Football and Threatening Communications Act would send exactly the wrong message",

adding that

"we urge the extension rather than the repeal of this legislation".

I am not blind to the fact that the 2012 act needs to be reviewed. That is why, in the stage 1 report, I and my colleagues asked the Scottish Government to take another look at the act.

The Deputy Presiding Officer: Thank you. I am afraid that you must conclude. I gave you a little extra time.

George Adam: I am just concluding, Presiding Officer. I am just saying, let us not let those who want to be offensive at football win—

The Deputy Presiding Officer: That means conclude. I call Maurice Corry, to be followed by Mairi Gougeon.

15:20

Maurice Corry (West Scotland) (Con): Sectarian behaviour and hate crime have no place at football games or in general Scottish society. Sectarianism has, for too long, been a blight on Scottish life and has been allowed to fester and create deep wounds within our communities. The way we shall fight and end sectarianism in Scotland is by changing our culture and our attitudes towards it. That will take place in homes, classrooms and communities the length and breadth of our country. In each situation, the action required will be different, as sectarianism has taken on different guises in each community that it affects. No single solution will fix every problem.

That work is already under way. It is being undertaken by a huge swathe of charities and third sector organisations. We need more support for that kind of work, not unnecessary legislation that adds nothing to the fight against sectarianism, and that is what the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 is—unnecessary. It is a politician's way of looking as though they are trying to tackle the issue without really tackling the causes head on. It has not helped and will not help to tackle sectarianism in Scotland.

The Law Society of Scotland concluded that the new offence did not improve upon existing offences and that all 287 charges brought under section 1 of the legislation in 2015-16

"could have been prosecuted under pre-existing legislation",

as my colleague Liam Kerr has stated. The Law Society concluded that the act

"has not been fundamental to tackling sectarianism",

and I agree with that interpretation. The pre-existing offences such as breach of the peace and threatening or abusive behaviour already covered the types of offences that the 2012 act was designed to tackle.

The real tragedy about the 2012 act is that it was a wasted opportunity. It came at a time when the issues that often surround football in Scotland were flaring up badly both on the terraces and on the pitch. It had become accepted that something needed to be done, but the answer was not, and will never be, to railroad knee-jerk legislation through Parliament and try to arrest our way out of sectarianism. That was pointed out by Assistant Chief Constable Higgins when he spoke to the Justice Committee. He said:

"I cannot arrest my way out of changing hate crime and sectarianism in this country; a far wider approach is needed to challenging behaviour that is inappropriate."—[*Official Report, Justice Committee*, 3 October 2017; c 16.]

What should have happened was engagement with the vast majority of civilised and law-abiding football fans in this country, rather than illiberal legislation that has left them feeling persecuted and blamed for the actions of a minority. They feel persecuted because they are being singled out as the only problem area in Scotland. Andrew Jenkin of Supporters Direct Scotland said:

"You cannot have legislation that applies to one specific sector of society; that is grossly unfair."—[*Official Report, Justice Committee*, 3 October 2017; c 51.]

The consultation on the legalisation showed those feelings. As we have heard, a huge number of stakeholders took part, including more than 3,200 football clubs and members of the public, and the result was that 71 per cent of respondents backed the repeal of sections 1 to 5 and 62 per cent supported the repeal of sections 6 to 9 of the 2012 act. That is not because those people are not committed to fighting sectarianism, but because they see the act as doing nothing to fight it.

It is for the aforementioned reasons that I will vote for repeal of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012.

The Deputy Presiding Officer: That was a bit of a mouthful for you at the end, Mr Corry—the name of the act.

15:24

Mairi Gougeon (Angus North and Mearns) (SNP): I am always grateful for the time that I spend on the Justice Committee, because of the sheer scale of its remit and all the different items that the committee considers. I have not felt differently about our consideration of the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill. I would not say that I regularly attend football games, but I am a Brechin City FC supporter. My team took on Celtic at the weekend and, unfortunately, did not come out of the game too favourably.

If there is one positive to be taken from the process of scrutinising the bill, it is that it has given the Justice Committee and the Parliament the chance to scrutinise the operation and impact of

the 2012 act. I genuinely welcome that opportunity, although I disagree with the Justice Committee's conclusions. I do not support the general principles of the repeal bill because of the message that repeal would send out. That is not to say that the 2012 act is perfect, but the best way to deal with the issue is to amend the 2012 act, not to repeal it.

The committee received a great deal of written and oral evidence during the course of its scrutiny. I thank everyone who submitted evidence. It was apparent, right from the outset, that there were many contrasting and contradictory opinions. The Glasgow Bar Association pointed out that Police Scotland said that the power in section 6, on threatening communications, is not being used because of the narrow scope of the section and its wording. The witness went on to say that

"the police do not feel comfortable using it."—[*Official Report, Justice Committee*, 7 November 2017; c 24.]

In that regard, I agree with some of the points that James Kelly made when he said that the intention is there but that section 6 has proven hard to implement. That might be the case, but, if the member agrees that section 6 is well intended and that there is work to be done there, the best approach would be to amend the section so that it works, not to remove it and leave nothing in its place—unless I missed him talking about alternative approaches in his speech.

I want to talk about the evidence from the Crown Office and Procurator Fiscal Service. Our witness from the COPFS made three points about section 6. First, he said that

"one of the pieces of logic behind section 6 was that it would address a debate in connection with the Communications Act 2003",

in the context of whether someone could be prosecuted in relation to sent communications and threatening behaviour on forums and blogs. Secondly, he said:

"The principal benefits of section 6 are in relation to its extraterritorial provisions".

Thirdly, he said:

"Section 6 also provides for greater sentencing powers than those in the 2003 act ... we have had a case in which an accused person posted comments that were supportive of a proscribed terrorist organisation—ISIS—and the view of the sentencer was that the severity of those actions should be reflected in a starting point of 24 months' imprisonment. That starting point for the sentencer would not have been available in the alternative charge under the 2003 act."—[*Official Report, Justice Committee,* 3 October 2017; c 20.]

We heard no alternatives from James Kelly, and I am seriously concerned about the impact that repealing section 6 without putting anything in its place could have in Scotland.

The committee also heard from third sector organisations and charities about the message that repeal would send. The witness from Stonewall Scotland told us:

"LGBT people tell us that football is a sport in which they do not feel safe or secure, whether that is because of chanting or comments that are made in the stands ... Repealing the act without putting other measures in place could undermine work that has been undertaken by organisations such as Stonewall Scotland, the Equality Network, football clubs, Police Scotland and the criminal justice agencies to increase LGBT people's confidence not only in reporting hate crime but in attending sporting events such as football."—[*Official Report, Justice Committee,* 24 October 2017; c 9.]

In its submission, Stonewall said:

"We would oppose a repeal of Section 6, which provides important protection for LGBT people who are currently experiencing an increase in abusive and threatening communications online. We also strongly believe that condition B of section 6 of the 2012 Act should be extended to include disability, sexual orientation, transgender identity and race. Of these characteristics, only race is currently covered by other legislation."

Stonewall was by no means alone in its view. It is important that we do not throw the baby out with the bath water, not just leaving a gap in the legislation but failing the large number of groups who feel protected by the 2012 act.

In summary, I quote the words of Andrew Tickell of Glasgow Caledonian University, who said:

"The legal criticisms of great parts of the 2012 act are very well founded. I think that Parliament should respond to those failures in the bill by amending it and fixing the problems, rather than repealing it."—[*Official Report*, *Justice Committee*, 14 November 2017; c 38.]

As I said, I do not think that we would find one person in the Parliament who would say, after considering all the evidence, that the 2012 act is a perfect piece of legislation. However, the way to deal with that is to amend the act, not to repeal it.

15:29

Mary Fee (West Scotland) (Lab): I am pleased to speak in favour of James Kelly's bill to repeal the flawed and illiberal Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, which is a piece of legislation that was forced through by the SNP Government and was the first act of the Scottish Parliament to gather absolutely no support from Opposition parties.

It is clear that a wholly joined-up approach that includes schools, colleges, football clubs, leisure clubs and law enforcement, starting in early years education, is key to being proactive in tackling sectarianism.

Let me be clear at the outset. I take a zero-tolerance approach to all forms of sectarian or

offensive behaviour. I have been a victim of sectarian abuse on more than one occasion, none of which was in the context of a football match. The most vitriolic of those episodes ended in court because of the laws that were already in place prior to the 2012 act. My son and I were subjected to vile and sectarian language and racial abuse outside my own home. The individual concerned was charged with both racially aggravated breach of the peace and aggravated sectarian breach of the peace. On both charges, the individual was found guilty and given a substantial fine.

Those same laws will be used to tackle offensive and sectarian behaviour occurring at football matches, just as they would have been without the 2012 act. That was confirmed by Police Scotland during the Justice Committee's evidence sessions, when Assistant Chief Constable Higgins said that someone singing an offensive song would be

"charged with breach of the peace or a section 38 offence".—[*Official Report*, *Justice Committee*, 3 October 2017; c 19.]

The Law Society of Scotland said:

"We are of the view that the common-law crime of breach of the peace, section 38 and a number of statutory aggravations are in place and continue to be, and that offensive behaviour at football matches could be dealt with under pre-2012 legislation."—[*Official Report*, *Justice Committee*, 7 November 2017; c 32.]

Professor Fiona Leverick echoed that point.

It is therefore clear that there will be no gap in the law, as is being claimed by the Scottish Government and SNP MSPs. The targeting of football fans is unjust and illiberal. The fact that the 2012 act has damaged relations between fans and police was a predominant theme that emerged from the evidence sessions with fans' groups and from written evidence.

Paul Goodwin highlighted the "horrific public relations" around the act. As we can all recall, the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill was rushed, and the Scottish Government, using its majority, forced it through Parliament.

As Stewart Regan of the Scottish Football Association points out, there is no similar summit called for each year after T in the Park, despite the high level of disorder and offensive and criminal behaviour of festival goers. No other sport or cultural event has gained the watchful eye of the Scottish Government in this manner.

Professor Leverick informed the committee that

"nowhere else has specifically football-related criminal offences".—[*Official Report*, *Justice Committee*, 7 November 2017; c 25.]

Mairi Gougeon: I want to address the point about legislation specifically targeting football. How would the member respond to the fact that there are 87 pieces of legislation across the UK, both primary and secondary, that relate to football?

Mary Fee: No other legislature anywhere else has passed a specific piece of legislation that is similar to this act. That was made clear to us throughout our evidence sessions.

Repealing the act will allow the police to monitor football matches in the same manner as any other sporting event, using the exact same laws.

I have great sympathy with Stonewall Scotland and other equality and religious groups who express concern that repeal could send the wrong message. To tackle that, we must be more supportive of programmes and campaigns that encourage diversity and respect in football and at all cultural events. As a member of the Equalities and Human Rights Committee, I would like to see a more inclusive approach taken by clubs, supporters groups and fans towards generating a more welcoming and family-orientated atmosphere in our sporting grounds.

Tackling offensive and sectarian behaviour must continue through education. Educating people is a proactive measure, not a reactive measure, as this act is.

The Deputy Presiding Officer: I remind members that if they intervene, their request-to-speak light will go off. They should check that they still have a red light in front of them. Mr Dornan, I think that it is you at the moment, but it happens to everyone.

15:35

Rona Mackay (Strathkelvin and Bearsden) (SNP): Today is the culmination of many hours of evidence taking, report reading and outreach visits that took place for stage 1 of the bill. I, too, thank the clerks for all their hard work and organisation—as always, it was first class. I also thank the many witnesses who took the time to give evidence to the Justice Committee.

Clearly, this is a very contentious issue, which has roused passionate opposition among some football fans, and I respect that. Having been born in Glasgow and having grown up in the west of Scotland, I have always been aware of the poisonous sectarian divides that have historically been the scourge of Scotland. In 2005, the then Labour First Minister Jack McConnell said:

"For far too long bigoted sectarian behaviour has been a scar on Scottish life ... Bigoted sectarian attitudes have no place in 21st-century Scotland."

He was not saying that sectarian attitudes are on display only at football matches, but no one—not even our many passionate witnesses—could deny that sectarian behaviour did and does take place at football matches. I was at an old firm match last year as part of a Justice Committee evidence-taking visit and heard it for myself.

Liam Kerr: George Adam was clear on that point: the act has failed. BEMIS, which was formerly known as the black and ethnic minority infrastructure in Scotland group, has said that the act fails to tackle hate crime. Does the member support both those views?

Rona Mackay: The act acknowledges that we have a huge problem and to repeal it would send out entirely the wrong message.

One of the recommendations in the stage 1 report is that the Scottish Government should consider a discussion about how we define sectarianism, should the bill progress to stage 2.

Like my colleagues, I believe that the act is by no means perfect. However, for several reasons, I do not believe that outright repeal, with nothing to replace it, is the answer. The bill could be amended to address the issues in section 1, which most repeal supporters object to. Of course, it would be for the Government to construct amendments, but perhaps the act could be extended to cover religious marches or gatherings where sectarian behaviour sometimes occurs, or sectarian behaviour happening at other events, as described by Mary Fee. With careful consideration of the objections received, I am confident that a compromise could be achieved to avoid total repeal.

Daniel Johnson: Will the member take an intervention?

Rona Mackay: I want to make a bit of progress.

I listened to James Kelly on television last night saying that he would work with the Government and others on alternative proposals—I would hope that he could do that on amendments to the existing act.

My main reason for not supporting the total repeal of the act is that I believe that, as others have said, it will send out the wrong message to society. We have taken bold steps to show that Scotland is not living in the past and to repeal the act in its entirety would be a retrograde step.

Furthermore, and crucially, the Justice Committee heard heartfelt evidence from Stonewall Scotland, Victim Support Scotland, the Equality Network, the Scottish Council of Jewish Communities, churches and the Scottish Women's Convention that they did not support repeal, because the act comforted them and gave them a feeling of safety. We cannot ignore evidence from such respected bodies.

We all know that the majority of football fans go to a match to watch the game and cheer on their team, so the act does not really concern them. I have asked friends who I know attend football matches regularly and all, bar one, were indifferent to the existence of the act. It is a vocal minority that opposes the act, and it is their right to do so.

We have heard a lot about section 6 of the 2012 act, which is extremely important. There would be a gap in the law if that section was thrown out as a result of the bill. My colleague Mairi Gougeon outlined examples of that. Of course, there were divided opinions on that during evidence taking, but, again, the perception of throwing out an act that condemns threatening communications would send out a problematic message from this Parliament.

In the committee's questionnaire to secondary schools, almost 66 per cent of pupils said that they had experienced online offensive behaviour. That is a critical problem today.

If the principles of the bill are agreed to, I hope that, as has been said by the minister and others, there will be enough time to plug the holes in legislation that would occur following repeal of the act.

I urge Parliament not to kill the 2012 act but to amend it to send out the strong message that Scotland has moved on and intolerant attitudes have been consigned to history.

15:40

John Finnie (Highlands and Islands) (Green): I refer to my entry in the register of members' interests and to my various associations with Heart of Midlothian Football Club.

The purpose of the committee's deliberations was to scrutinise Mr Kelly's bill but, by default, we in effect ended up doing post-legislative scrutiny on the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. It was good scrutiny, and I thank everyone who participated in it. I thank our clerks and those who submitted briefings. My view is that that scrutiny found the legislation wanting and that, clearly, Mr Kelly has made his case. In part, that has been acknowledged by all the speakers thus far—no one has yet stood up and said that the act is fine as it is. I certainly support Mr Kelly's keenness to see the act repealed at the earliest opportunity. The Scottish Green Party, which has consistently opposed the act, shares that view, and we will vote accordingly at decision time.

In the short time that I have available, I will comment on one or two aspects of the debate.

One is the perception that is often put about by people who are unconnected to football that football fans are at war with the police. That is not the case; indeed, it is not what we heard from the police. Our report says:

"The Committee also recognises that the number of football fans engaging in criminal behaviour is minimal, and welcomes the context provided by the SFA, Police Scotland and fans' groups to demonstrate this".

It is important to put things in perspective. It is also important to note that the most significant aspect of policing that has affected football is self-policing—the tartan army is often talked about in relation to that.

There is an interesting debate about the right to offend. I certainly hold views that others would find offensive, and there are a lot of people who hold mainstream views that I find deeply offensive. However, that is a debate for another time. We are dealing with a specific piece of legislation.

On the peculiarity of the section 6 offence in the 2012 act, people have talked about it being bolted on to a specific piece of football legislation, despite the fact that it has a wider application. I will quote some valued witnesses that I often find myself quoting in relation to legislation—I thank them for their briefings and their evidence. The first is the Law Society of Scotland. In relation to section 1 of the 2012 act, the society's evidence about the gap in the law refers to the specific case of Mark Harris v Her Majesty's Advocate, from 2009, and goes into detail about section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, which has been alluded to by other members. The Law Society states:

"These examples demonstrate the ability of the criminal law to address the types of behaviour that the 2012 Act has sought to address."

It goes on to say:

"We do not believe that the Section 1 offence has improved the common law breach of the peace or Section 38 ... and are not of the view that its repeal will leave a gap".

The more significant issue relates to section 6 of the 2012 act, which is on making threatening communications and on which we received a lot of information. I will not quote verbatim from the Law Society's evidence but, tallying it up, I find that it mentions six provisions, starting with common law breach of the peace, section 38 of the 2010 act, the Public Order Act 1986, the Criminal Justice (Scotland) Act 2003, the Crime and Disorder Act 1998 and section 127 of the Communications Act 2003. The Law Society says:

"We do not believe that the Section 6 offence has improved upon the common law and laws based in statute to address this type of behaviour and are not of the view that its repeal will leave a gap in the criminal law."

Mairi Gougeon: How does the member address the specific points that I raised earlier and that the Crown Office and Procurator Fiscal Service brought up in its evidence about the fact that section 6 tidied up grey areas of the law in the Communications Act 2003? What will we do if section 6 is repealed and where do we go from there?

John Finnie: I commend Professor Leverick's evidence on alterations that could be made, with which the member will be familiar.

Stonewall is another organisation by whose views I set great store. Its members face unacceptable situations at football, but we know that that happens notwithstanding the 2012 act being in place. I think that the consensus in the committee was that sectarianism and abuse of that nature will be addressed by education. That is the approach that I would commend. I also commend the rainbow laces initiative.

Probably the most compelling piece of evidence for me was from the Scottish Human Rights Commission. When an esteemed organisation such as that states:

"the Commission considers there is a strong likelihood that key provisions of the Act fall short of the principle of legal certainty and the requirement of lawfulness",

that, for me, is damning for the 2012 act.

Finally, looking ahead, I commend Sacro's tackling offending prejudices service—STOP—which can be an alternative to prosecution. Early intervention to address the issue, connected with education, is the way ahead, so we will be supporting Mr Kelly's bill.

15:45

Liam McArthur (Orkney Islands) (LD): When we had a debate on the issue in November 2016, I called for the Government's discredited Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 to be sent for an early bath. On that occasion, Parliament agreed. Since then, for me, the evidence that has been received by the Justice Committee has, by and large, reinforced that view. I am grateful to all those who took the time to share their insights—on whatever side of the argument they fell—as well as to the committee clerks, the Scottish Parliament information centre and committee colleagues.

Of course, repeal of the 2012 act is not an end in itself. Efforts to combat the stain of sectarianism must be redoubled, as should our wider efforts to crack down on hate crime more generally. As the advisory group on tackling sectarianism made clear however, the foundations for change rest on initiatives that focus on prevention and on building trust and understanding, and on recognising that

councils, churches, football clubs, schools, the media, and community organisations are all key to delivery of effective grass-roots solutions.

The committee's stage 1 report puts up front our collective condemnation of sectarianism and hate crime—a consistent message that has been sent out by this Parliament over its lifetime. To those who are concerned that repeal will dilute or undermine that message, I offer reassurance that the Scottish Liberal Democrats will always support effective evidence-based measures to tackle hate crime. What we will not do, however, is stand by while counterproductive quick fixes are put in place in order to garner headlines, but which undermine genuine efforts to tackle complex problems.

I also struggle to accept that the wrong message will be sent by repealing an act that—as we have heard repeatedly—does not in fact provide the protections that its supporters claim it provides. We do no one any favours by leaving unchallenged that sort of false comfort and confidence. That view is apparently shared by BEMIS and the Coalition for Racial Equality and Rights.

James Dornan: Surely nobody is asking Liam McArthur to leave that unchallenged; surely what people are asking him to do is suggest something to put in its place. To say that the only method of dealing with the matter is to repeal the act and leave gaps—no matter what is being said by members of other parties—is surely wrong.

Liam McArthur: With all due respect, I think that Mr Dornan has not listened to what I have said. To provide false comfort and certainty through legislation that is ill-judged, that is mistargeted and that is actually damaging those relationships seems to me to be something that Parliament should resist at all costs.

I accept that a distinction must be made between the nature and effect of section 1 and section 6 of the 2012 act. I have some sympathy for those who are concerned about repeal of the latter, and I will come back to that in due course. No such qualms exist over repeal of section 1—it being the reason, no doubt, that one judge described the act as "mince".

Time and again, we heard criticism of the 2012 act's ill-conceived knee-jerk reaction to albeit reprehensible scenes at an old firm game and to other serious incidents at the time. The act was railroaded through Parliament by a First Minister who was deaf to concerns about the lack of compelling evidence that the tools that were at the disposal of the police, courts and our judicial system were inadequate, and who was deaf also to concerns about the impact that the legislation would have, and has had, on relationships between football fans and the police.

Mairi Gougeon: Will Liam McArthur give way?

Liam McArthur: No, I will not.

Criminalising one section of society in one set of circumstances while leaving wide open what constitutes "offensive behaviour" was unjustified, illiberal and dubious in terms of human rights.

Should the act be repealed, there will be no gap in the law. Breach of the peace and other powers exist and will be used, as various expert witnesses told us, including Police Scotland.

Annabelle Ewing: Will Liam McArthur give way?

Liam McArthur: The minister can address that point when she winds up.

Plugging a gap that does not exist is, at best, gesture politics. Now, faced with the prospect of defeat over repeal, SNP ministers offer talks on how best to clear up the mess that they created. That is a desperate injury-time bid to save face.

Of course, Lord Bracadale's on-going review is welcome and will help us in respect of how we will tackle wider hate crime issues in the future. The idea, however, that we should hold off taking action on the 2012 act until Lord Bracadale has completed his report is misplaced; indeed, I suspect that it is not a view that is shared by Lord Bracadale himself. Even if he reports later this year, his recommendations will not find their way into a draft bill, let alone on to the statute books, for years. As I pointed out in committee, only now is the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill implementing proposals from Sheriff Principal Taylor's 2013 report. In the meantime, the damage that is being done by the illiberal legislation that is the 2012 act—notably, by section 1—demands attention.

As I said earlier, however, section 6 presents a more nuanced argument. The provisions on threatening communications have at least the benefit of applying across the board rather than to just one section of society on one particular day. Although the section 6 powers have not been greatly used, there is more of a case for saying that on repeal a gap might come into being in that respect. The concerns of various religious groups appear to relate more to section 6, so I am persuaded that at stage 2 we will need to consider how repeal might be timed in order to avoid a hiatus.

Parliament must send out a strong message today that hate crime in all its forms is unacceptable, but that cannot be achieved by pretending that complex issues can be addressed through oversimplified solutions. It seems that the

SNP's approach to legislation can often be summed up by the view that if the only tool that we have is a hammer, we should treat everything as if it were a nail.

The Deputy Presiding Officer: Please conclude.

Liam McArthur: Those who argue that supporters of repeal are apologists for sectarianism are wrong.

15:51

Ben Macpherson (Edinburgh Northern and Leith) (SNP): As a member of the Justice Committee, I thank committee colleagues, our clerks and all the witnesses who gave evidence.

Like many people in Scotland and around the world, I love football. I loved playing it growing up in primary school, in secondary school, in university and at club level. Some of my friends have been professionals and I still enjoy a kick-about and going to watch matches, when I can. Football is absolutely "the beautiful game" and everyone should be able to enjoy watching and playing it without experiencing offensive behaviour or intimidation. Although the majority of football fans are respectful and well behaved, football can have a negative and polarising effect on people and their communities. Unfortunately, that is still the case at times here in Scotland.

I am clear that the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012—not the "football act", as it might have been erroneously described—is not perfect or a panacea. One thing that became clear during the Justice Committee's recent deliberations on the 2012 act is that it could certainly benefit from review and reform. However, what is equally clear is that repealing the 2012 act without having a viable alternative to it would be irresponsible and reckless, because it provides a useful set of powers for police and prosecutors. As law lecturer Andrew Tickell astutely said, repealing the 2012 act would be

"like using a sledgehammer for a task for which a scalpel is better devised".—[*Official Report, Justice Committee,* 14 November 2017; c 38.]

Johann Lamont: Given that the Parliament voted a year ago to express its view that the 2012 act should be repealed, is not it irresponsible of the minister not to have brought a review of the legislation before now to address the member's concerns?

Ben Macpherson: The meaningful and constructive thing to do is exactly what the Government has done, which is to conduct a review of hate crime legislation as a whole, and thereafter to reflect on that evidence and think about how we can do something comprehensive. The irresponsible thing to do would be recklessly to repeal the 2012 act in full, which would leave a gap in the law in respect of section 6.

The position as I see it is that repealing the 2012 act will not be in the interests of the common good, but neither will leaving it unamended in the medium to long term, in its current form. In my view, we should be debating how to reform the 2012 act and make it more effective. Mr Kelly's repeal bill is a destructive measure, so I will not vote in favour of its general principles. If the bill passes stage 1 today, he and many others might see that as scoring a crafty goal against the SNP, like a poacher on the six-yard line, but such populism is irresponsible and unhelpful. It would certainly be irresponsible to rush his bill through. In good faith, I ask him not to rush it through without adequate time for the authorities to prepare for the landscape post the 2012 act.

There are many reasons to retain the 2012 act. It is supported by most people in Scotland: 83 per cent support legislation to tackle offensive behaviour at football and 80 per cent support the act directly. Removal of section 6 would create a gap in the law—in particular because it criminalises threats that are made with the intention to incite religious hatred, which was not previously covered by Scots law. Section 6 also has extraterritorial application, which will be unavailable to prosecutors if the 2012 act is repealed.

We should listen to stakeholder groups, who have expressed concerns about repeal of the 2012 act. I could quote many concerns from the evidence to the committee, but I will be brief because my time is running out. The Church of Scotland gave evidence that:

"repealing the Act without replacement would be a symbol that our elected representatives do not think that behaving offensively or sending threatening communications is problematic."

The Scottish Council of Jewish Communities said:

"repeal of the Offensive Behaviour at Football and Threatening Communications Act would send exactly the wrong message."

Reforming and amending the 2012 act would make a meaningful and constructive difference, but repealing it without a viable alternative would be reckless and irresponsible.

15:55

Brian Whittle (South Scotland) (Con): I am grateful for the opportunity to speak in today's debate. It is important to recognise that, although progress has been made in recent years, Scotland still has an issue with sectarianism and other

offensive behaviour, as other members have highlighted. Those of us who, over the years, have witnessed old firm and other football matches at first hand cannot fail to be aware of the kind of behaviour that we are discussing today.

Such behaviour is not confined to the terraces. Let us be clear at the outset that not only is such behaviour unwelcome and unacceptable in modern Scotland, but that the law states that any behaviour that causes personal offence—be it sectarian, homophobic, or racially motivated—is a breach for which the perpetrators can and should be charged appropriately. However, the knee-jerk reaction after a particularly fiery old firm game by the then First Minister Alex Salmond, when he said that something must be done, led to legislation that is poorly written and therefore difficult to enforce.

Annabelle Ewing: It is important to remember that the game to which the member refers was not the catalyst, but was just the tip of the iceberg. Explosive devices had been sent through the post to various figures and death threats were made against Neil Lennon. It is important to remember the context.

Brian Whittle: We are talking about the context of offensive behaviour: such sectarianism at old firm matches has been going on for a very long time. I suggest that although we have some way to go, progress has been made. As I have said before, such behaviour at football—as in any other situation—is reprehensible and should be dealt with as such.

However, no matter how good or otherwise were the intentions of the then First Minister, bad law is bad law. Where implementation of the law is problematic, it has to be questioned, as must its relevance—especially on issues for which the law already caters.

The Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 focuses on behaviours at specific events. In reality such behaviour is a societal issue. It is not specific to football. Singling out such behaviour around 90 minutes of sport detracts from the overarching issue. We all agree that the issue has to be tackled, but where law is already applicable, the focus should be on how we better address, educate about and change such behaviour in our school playgrounds and in our communities. The fact that such behaviour manifests itself in a more public way when crowds of people turn up at a football ground and shout at each other for 90 minutes while the football match is going on in the background should not disguise the fact that it also goes on in our communities, just the same.

Should we be asking the football clubs to do more? Absolutely. They have a significant part to play, and that should be an ongoing process. Should we attempt to single out and disproportionately penalise a certain section of society because we can and perhaps because that highlights that at least we are attempting to do something? No.

We agree that policing by consent is desirable, but the 2012 act is contrary to that ethos. Police find it difficult to apply the act consistently. That being the case, it is time to have a rethink. As the original bill progressed through Parliament, opposition parties were critical of it for being unfair, unworkable and inconsistent. While the 2012 act has been in place, that consensus has been reflected on the ground by people who have to attempt to implement the law.

The then Minister for Community Safety and Legal Affairs, Roseanna Cunningham, said quite rightly that the critical role of Government was to ensure that the law was fit for purpose, but when a senior judge says that the legislation is “horribly drafted” and that it specifically instructs judges to completely ignore the actual context in which the behaviour takes place, that is perverse and it is obvious that the bill has missed the mark that was indicated by Ms Cunningham.

There is a worry that scrapping the act will send the message that the behaviour in question is somehow acceptable, but I argue that targeting football supporters actually helps to perpetuate sectarianism. We recently lost Cyrille Regis, who was a pioneer in tackling racism in sport in the late 1970s. He and two of his cohorts, Laurie Cunningham and Brendon Batson, played for West Bromwich Albion at a time when racism was rife and obvious on the terraces. However, as a result of enduring education and positive reinforcement, that kind of blatant racism is unthinkable today. Change can be made without the need for legislation such as the 2012 act. I argue that an educational approach is far more effective.

It is entirely right for Parliament vigorously to pursue methods of eradicating hate crimes for good, wherever they occur; in fact, we should do that before they occur. However, if the act in question is ineffective in meeting its objective and when it brings into question issues of human rights, it is time for a rethink. Bad law is bad law. The SNP Government needs to take heed of the mounting evidence and to repeal the 2012 act.

16:01

John Mason (Glasgow Shettleston) (SNP): Clearly we are debating a very hot topic—offensive behaviour at football—but we are also touching on issues that emerged 500 years ago with the reformation, subsequent wars and the

persecution of a whole range of people throughout Europe in the name of Christianity. First of all, then, I want to say how disappointing it is that sectarianism and related issues have developed, despite the fact that Jesus himself prayed that his followers would be one, united in their love and commitment to him.

We should acknowledge the history of sectarianism, anti-Catholicism and anti-Irish racism in the west of Scotland. The Catholic or Irish minority has been badly treated, and we cannot ignore the fact that that has left scars. As has been said in the past, Scotland has been nervous about talking about the issue, and I pay tribute to Donald Gorrie of the Liberal Democrats and Jack McConnell of Labour for making it clear, since the Parliament's re-establishment in 1999, that we need to face up to it.

After a period of less activity on the matter, we in the SNP felt—absolutely correctly—that we had to do something. The previous common and statutory law was clearly not working, and I fully support the decision that legislation was needed. However, I accept that the bill was too rushed—after all, a problem of 500 years' standing could not be sorted in one year—and that I, as a back bencher, should perhaps have questioned the timescale. However, I was new to the Parliament in 2011, and I failed to do that.

That said, we are where we are, and as the Justice Committee itself heard, there is a danger that repeal of the 2012 act will send out the message that any songs, chants or expressions of hatred are acceptable at football.

Neil Findlay: Is that not the exact point? Is it not the case that having a group of back benchers who never question anything leads to bad law being brought in?

John Mason: If the member knew me, he would know that I have questioned a few things and that the present and previous First Ministers have had me in their offices to shout at me.

One point that I certainly agree with in the committee's report is the need for a definition of sectarianism. I should point out that, by "sectarianism", I also mean anti-Irish racism and anti-Catholicism, but it is a bit of a mouthful to say that every time. In that respect, I felt that the definition set out by Duncan Morrow's advisory group, particularly in its interim report, was very good.

I want to deal with one or two points that have been raised with me during this process. First, people have asked me why football has been targeted. I think that one of the answers to that is that when the public was asked about sectarianism, 88 per cent of them linked it with football. Moreover, I think that some people behave worse at football than they do in other parts of their lives. When I attend football matches, I see folk who appear to behave very well elsewhere behaving a lot worse.

James Kelly: Will the member give way?

John Mason: I am sorry, but no. I have already taken an intervention.

I see fans being ejected from games and sometimes being suspended by a club—including by my own club, Clyde—who could easily have been charged. I think, therefore, that the legislation is being enforced extremely leniently, not least because the police cannot be expected to wade in and arrest 10,000 fans. In that regard, I think that Rangers and Celtic fans have been dealt with more leniently than fans at smaller clubs, who are easier to deal with. The recent incident of plastic eyeballs being thrown on to the pitch to mock a disabled player suggests that behaviour at football is worse and needs to be targeted.

Secondly, people say that something cannot be allowed in one place but not another. That is wrong: we allow drinking inside but not on the street; and alcohol is allowed after 9 pm in many places, but not on trains. If we have a problem in a particular place—such as at a football ground—it is perfectly reasonable to tackle it at that place.

Thirdly, people say that education is enough. I agree that education is part—a very important part—of the answer. Books such as Theresa Breslin's "Divided City" are great. "Divided City" is used in schools, and I have seen a dramatisation of it performed by youngsters at the Citizens Theatre. However, education has not worked and, I fear, will not work without legislation as well. The tackling of smoking and alcohol abuse has needed legislation as well as education, and I am convinced that sectarianism and hatred need legislation, too.

Fourthly, people ask, "What about marches?" I agree that marches, in particular Orange marches, encourage hatred. The whole atmosphere in Glasgow is poisonous on the days when there are big Orange marches. Therefore, I hope that Lord Bracadale's wider review of hate crime legislation will cover the issue of marches as well.

Fifthly, people ask, "Is freedom of speech not important?" Yes, freedom of speech is important. It is a great right, but it is not unfettered.

Sixthly, people say that the 2012 act is vague. I accept that it is vague, but it is lot less vague than breach of the peace.

The 2012 act is not perfect, but it has had some success in people being charged, and in sending out a message that expressions of hatred, sectarianism, anti-Catholicism and anti-Irish racism are not acceptable in modern society. We

take a grave risk of moving backwards if we repeal it, and I strongly oppose James Kelly's bill.

16:06

Johann Lamont (Glasgow) (Lab): I am happy to speak in this important debate. I should declare an interest, in that I am a Celtic season-ticket holder, my brother and his family are Rangers supporters and, for good measure, there is no greater fan of Kingsley the Partick Thistle mascot than I. I love football, and many people across this country love football and are paying attention to this debate today.

I was Labour's justice spokesperson when the debate on the bill that became the 2012 act emerged as a consequence of events at a Rangers-Celtic game—it was that specific. The then First Minister said that he would legislate by the start of the new season. A good soundbite, I guess, but it soon hardened into an impossible timetable, with poor legislation developed with little thought and even less clarity. As a result of all the reservations that were expressed by members from across the chamber, including some on the SNP back benches, the First Minister paused the process, but he then chose to dig in rather than reach out to others who were concerned about football.

I do not believe that there is anyone in the chamber who wants to celebrate sectarianism, who wants to hear racist, sexist or homophobic abuse at football or anywhere else, or who would want to deny anyone protection from that abuse. This is not a debate about who cares most about that abuse; it is a matter of judgment, seriously addressed. That judgment concerns whether the 2012 act makes things better or worse. As someone who has fought all her life for equality, I take the view that it makes things worse.

Further, this is not a bubble debate in which we can practise our outrage and demonise one another. The truth is that the bill that we are debating is here not because of party interest but because, out there in the real world, many serious people oppose the 2012 act, have been victims of its lack of clarity or see it as illiberal and ineffective. Members can demonise me, but they ought not to dismiss the astonishingly broad coalition of people who want the 2012 act to be repealed.

I notice that some have sought to personalise the debate and to say that James Kelly is being irresponsible in taking his bill forward. I agree that he should not need to be doing what he is doing, because any responsible Scottish Government that was worthy of its name, which saw the injustices that were being perpetrated in its name through the 2012 act and which was aware of the widespread opposition to it inside and outside the Parliament would already have acted to repeal it and would have ensured that there was a safety net if it perceived there to be a gap. I say to the Government that there is no shame in admitting that it got it wrong, but there is shame in obdurately refusing to listen.

The strongest argument that I have heard against repeal is that the 2012 act sends a message. However, it is not clear what that message is. For some people, it sends a very mixed message. In truth, it is difficult to know how to avoid prosecution under it. I can say something here in the chamber without harm, but if I said it at a football match, I could be prosecuted. I could say something in the pub with the television showing the football and I could be prosecuted, but if somebody switched the television to the tennis, I would not be prosecuted. For too many football fans, it sends out an all-too-clear message: football fans are uniquely offensive and given to racist, sexist, sectarian and homophobic abuse. Football fans reflect our society, and we should tackle abuse wherever it occurs. The abuse is the issue, not the venue.

How do we get change? We do so by understanding how football has already changed. I hate to tell younger people here that when I was young, Scottish football fans were horrible, but the tartan army transformed into a group that was willing to celebrate football without being abusive. When I was young, I watched the first black player for Rangers, Mark Walters, at Celtic Park and I was ashamed to see Celtic fans throw bananas on to the pitch; my husband wrote to *Celtic View* to insist that the fans desist. That would not happen now, partly because of education and partly because of the enforcement of the law, but also partly because football fans themselves chose to act to take on those who shamed their clubs and shamed their country.

As a woman at the football, I have seen that football has changed immeasurably. We can work with fans and the police to put in place measures that will support decent fans who simply want to enjoy the game. The 2012 act does the opposite: when people go to a match, they do not know whether what they are doing is prosecutable or not. The Scottish Government sends another mixed message: it clings to an act that does not work and, at the same time, it has systematically stripped funding out from the very organisations that will tackle sectarianism, bigotry and abuse and do the work that needs to be done in our communities to root out those attitudes.

The Deputy Presiding Officer: You must come to a close, please.

Johann Lamont: Those programmes have gone, and all we are left with is an act whose title

and provisions create difficulties in our communities. I support its repeal because I believe that that will do football in this country, the people who go to football matches and our broader communities the best service.

16:12

Fulton MacGregor (Coatbridge and Chryston) (SNP): I am a member of the Justice Committee, which has scrutinised the bill at stage 1. We heard a wide range of evidence and I put on record my thanks to all those who gave evidence and, of course, the clerks. As others, including James Kelly, have said, the report was very well written and captured all the main points.

As an Albion Rovers supporter who attends games with attendances of around 400, where the police officer on duty that day takes time to speak to fans in a normally family-friendly environment, I have found the process of scrutiny to be of great interest. As an MSP who was not elected when the 2012 act was passed, I think that it is important to note what we have been asked to scrutinise. John Finnie touched on that point. We are being asked not whether we should implement this law but rather whether we should repeal it. I approached the evidence gathering in that manner and thought about the repercussions of repeal without anything else being in place, as proposed by James Kelly.

The constituency that I represent has, unfortunately, like much of central and west Scotland, been blighted by the curse of sectarianism. We cannot deny that and we should never shirk from trying to tackle it. I applaud all members of the chamber who have addressed that issue in their speeches today. Football has a role in this; I have many friends and family who will not take their children to Celtic Park or Ibrox because of perceived behaviours that they may be exposed to by a minority of fans.

I am part of the second generation of a family without religious ties. That came about as a result of the wedding of my grandparents in 1952: my gran a Roman Catholic from Ireland who, with her family, had settled in Coatbridge and my granddad a Protestant, also from Coatbridge. Apparently, the wedding caused a few shock waves at the time, but I just like to think of them as Coatbridge's Romeo and Juliet of their generation. However, whether we are part of it or not, sectarianism affects everyone in every part of civic Scotland, from offensive remarks on Facebook to running battles on Whifflet main street on match day to those saddening scenes of flag waving on 19 September 2014 in George Square against a backdrop of flares and mounted police.

I thought that it was great when the 2012 act was passed because although it might not solve all the problems, it would start to tackle them. When I heard the evidence for repeal, I was surprised at the strength of it. Heritage, culture and freedom of speech are important—I believe in all those things, too—and I pay tribute to all those who gave evidence and made that case, including Fans Against Criminalisation, BEMIS and Stewart Regan from the SFA.

Equally, we heard compelling evidence to retain the 2012 act—because laws must be made to protect us—from organisations such as Stonewall Scotland, the Scottish Disabled Supporters Association and the Scottish Women's Convention. Many of those organisations represent minority groups and are extremely concerned about the impact that repealing the legislation would have and what message it would send, and some of my colleagues have talked about the content of their evidence.

On balance, I am minded to vote for retaining the 2012 act and therefore to vote against the repeal bill tonight. There was evidence from different witnesses—albeit conflicting, as has been teased out—that there would be a gap in the law, particularly in relation to section 6, and that we would be failing to protect the majority of football fans and the wider public more generally.

The majority of those who gave evidence on both sides of the debate indicated that they would prefer to delay any repeal until after Lord Bracadale's review. However, as the Justice Committee convener has said, the committee, after some debate, agreed unanimously that, in order to be fair to the review and because the review has no time limit, consideration of the bill should not be delayed.

It has not been an easy position to reach for me because, as I have outlined, there were persuasive arguments on both sides. I draw members' attention to this statement in the stage 1 report, which has already been mentioned:

> "The minority who voted against the general principles of the Bill are of the view that, should the 2012 Act be retained, the Scottish Government should revisit the 2012 Act and bring forward constructive amendments."

Ben Macpherson and Mairi Gougeon have made that point very clear. My colleagues and I are not simply in favour of retention of the 2012 act for retention's sake. Our stance is that, rather than repealing the 2012 act, the Government should amend it to take on board the many concerns, particularly around section 1 and, ultimately, make it a better law that works, because that is what we all want.

I will quickly discuss the issue that James Kelly mentioned and on which I tried to intervene—it

came up in evidence, too—of young people, perhaps with no history of offending, picking up convictions for offences established under the 2012 act. As someone who has a background in criminal justice social work and youth justice, I was worried by that, particularly as the Scottish Government has made funding available for a diversion scheme through Sacro and, under the current justice secretary, placed more emphasis on restorative justice and diversion from prosecution. However, I am also clear that that is not an issue to do with the act itself and should not be argued as a reason to repeal; rather, it is an issue of implementation and of courts, local services and prosecutors knowing what diversion schemes are available.

If the repeal bill is agreed to, which seems probable, we must get on with respecting that democratic will and implementing the outcome. I know that the Scottish Government will take steps to ensure that we continue to tackle sectarianism in the post-repeal period. If, however, the 2012 act is retained, I think that those with concerns can be assured that the Government will be strongly encouraged to revisit and improve the legislation, as set out by SNP members in the committee.

16:18

John Scott (Ayr) (Con): I welcome today's stage 1 debate and congratulate James Kelly MSP on introducing the repeal bill. I thank the Justice Committee for its hard work on the bill, and note that it has backed the general principles of the bill. I welcome the committee's stage 1 report on what is essentially post-legislative scrutiny of the 2012 act. The report is not kind to the Scottish Government, and the 2012 act is perhaps the classic case in legislative terms of the SNP Government acting in haste and repenting at leisure.

I have a deal of sympathy for Roseanna Cunningham MSP, who was charged by her colleagues with getting a bill dealt with quickly. The SNP majority Government of the day rammed it through Parliament in order to get it on to the statute book. I share Johann Lamont's recollections of the shortened timescales that were demanded of the minister.

The bill's flaws were manifest at the time—they were well documented in Parliament then and they have been well documented since. The sound of wings flapping over Holyrood recently is merely the sound of chickens coming home to roost on this poorly thought-out piece of legislation.

To quote the Justice Committee's stage 1 report, its SNP members

> "are of the view that, should the 2012 Act be retained, the Scottish Government should revisit the 2012 Act and bring forward constructive amendments."

That tells us that even SNP members accept that the 2012 act is not fit for purpose. They are not alone in their condemnation. On that, we as parliamentarians also have to thank the people who provided the 286 submissions to the Justice Committee in response to its call for evidence because 227 of those submissions were in favour of repeal of the 2012 act. That is, almost 80 per cent of the respondents wanted the act to be repealed.

Annabelle Ewing: Will John Scott give way?

John Scott: I am sorry, but I do not have time. The minister will be able to make her remarks in her closing speech.

Condemnation of the act was not limited to submissions in response to the call for evidence by the committee. More than 3,200 football clubs and members of the public took part in the consultation on James Kelly's member's bill proposal and 71 per cent of those respondents backed repeal of sections 1 to 5, while 62 per cent supported the repeal of sections 6 to 9.

Therefore, this is post-legislative scrutiny in action and the Conservatives will support the repeal of the 2012 act. Of course, if no other law were available to deal with bad behaviour at football matches, perhaps a case could be made for amending it, but that is manifestly not the case. Sufficient pre-existing law is in place to cover the type of behaviour that the 2012 act targets. That is the view not only of the Scottish Conservatives but of the Law Society of Scotland.

Of course, if there was no other legislation to deal with incitement to religious hatred, perhaps again a case could be made for amending the act, but Professor Fiona Leverick told the Justice Committee:

> "if someone behaves in a threatening manner or makes a threat, that would be covered by section 38 of the Criminal Justice and Licensing (Scotland) Act 2010".—[*Official Report*, *Justice Committee*, 7 November 2017; c 34.]

Two key elements of the act were not required in the first place. To be frank, the 2012 act was introduced as a knee-jerk response to satisfy the Government's view that something needed to be done at the time, although legislation was in place to deal with complaints before it was introduced.

If the act is repealed, we need to look to the future and develop a view on how we deal with such offensive behaviour, which the minister acknowledges continues notwithstanding the act. She defends the act, but it is self-evidently not working.

As it is with many other problems, educating children and young people early in life is one of the most obvious ways of eliminating sectarianism and abusive behaviour. That is not only about telling children and young people that sectarianism and abusive behaviour are bad things. It is about teaching them tolerance and that others are entitled to their views, even if those views are at odds with theirs. That comes from an understanding of history, evolution and social justice and from an understanding of others' needs as well as of our own.

The Scottish legal landscape would be a better place without this poorly thought-out act. I hope that the Parliament supports that view at decision time.

16:23

James Dornan (Glasgow Cathcart) (SNP): Repealing the 2012 act is an error of massive proportion. Whatever members' views on the act, the message sent out by repeal plays into every ancient stereotype of the sectarian, drunken Scot who wants only to drink and fight. It damages the reputation of Scottish football, Scotland and the Scottish Parliament.

I know that that is not what the Greens intend and expect. Although they are massively wrong, they are voting for what they think is the right reason, such as that the legislation is flawed. I also accept that there are some Labour members who would be concerned about that, although it appears that, for others, self-interest and/or the chance to kick the Government is far more important.

That plays right into the Tories' hands. Many of them would be happy to see the Scottish Parliament treated with contempt and derision, and I fear that that will be the consequence of a decision to repeal the act. My office was contacted by someone who said:

"legislation is often used to indicate the kind of society that we want to try to be".

I agree and I cringe when I think about what kind of society people will think that we want Scotland to be if we vote to repeal the act.

We have heard a lot today about the act targeting only football fans. That is nonsense. It targets people who break the law. In most civilised societies, what happens is that we try to change the behaviours of those who break the law. Here, it seems to be the case that, if there is a well-organised, influential, apparently well-funded group of people who can wield some political clout, they can get a compliant politician to fight to change the law on their behalf.

We also have Daniel Johnson, a Labour MSP, introducing a member's bill to protect retail workers from attack—a very sensible move that I hope I will be able to support. However, why is he bringing it forward when there are already laws in place to deal with assault? It is because he sees special circumstances around the safety of shopkeepers, in pretty much the same way as we see special circumstances around behaviour at football.

We hear a lot about spending money on education. The SNP Government has spent more than any previous Administration on exactly that. What good, though, is spending money through education and other methods from Monday to Friday if the same young kid then goes to the football on a Saturday and hears people call his dad a Fenian or an Orange B? All that good work is heading out of the window because we think that that behaviour is no longer worthy of our attention.

I saw online someone accusing Nil by Mouth of being untrustworthy because it receives funding from the Scottish Government. That eejit should hang his head in shame, particularly given the circumstances in which Nil by Mouth came about in the first place.

Last Saturday, FAC had a meeting to discuss the act. At first it was reported that the meeting was cancelled because two "Rangers casuals" came to the meeting and would not promise to behave. The person who chaired the meeting denied that, and I believe him. However, he went on to say that the police were called because the two Rangers supporters were there and would not behave. A meeting that was called about a law that does not "Let the People Sing" calls the police because of a fear of the wrong kind of singing taking place. We could not make it up, and unfortunately we do not have to.

I am not sure when or how one group of fans got to dictate to the rest the criteria for being a Celtic fan. I have been one for nearly 60 years. I saw them in both their long barren spells, as a young child before Stein came and through the Macari and Brady years, yet apparently I no longer qualify for this unique club because I oppose the right to bring sectarian songs and songs about terrorism and the loss of innocent lives, including many Irish people, into the stadium.

I have sung those songs. I sang them when I was a teenager during the 1960s and early 1970s, but times change. The situation in Ireland changed and I got older. Back then, people could smoke on a bus, be in a car without wearing a seatbelt and ride a motorbike without wearing a helmet, but they could not, for example, be openly gay. That was still against the law in Scotland. What I am saying is that times change, but it appears that

some football fans do not. When or if members make their decision to take us back to the 1970s tonight at 5 pm, they should just remember what it was like back then.

Last week, a member of my staff was delivering my annual reports when one particularly irate constituent came charging out of his door, scrunched up the annual report and shouted to him, "I'd never vote for that F-ing Celtic-supporting, IRA-loving Fenian C." That is how far we still have to go, and repealing the act will send out the message that we are not really bothered about getting there.

I will tell members something else. If they are serious about this and the motion is agreed to tonight, I hope that they will then support my member's bill proposal on strict liability, because if not, they are not serious at all.

The 11-year-old daughter of a member of my staff heard her mother and I discussing this debate last night. She later said to her mum, "Mum, the bottom line is this—in years to come, will the Labour man be able to put his head on the pillow knowing that he's changed the lives of wee kids like me or will he be really sad that he could have changed history and he didn't?" Out of the mouths of children, eh?

The Deputy Presiding Officer: We move to the closing speeches and I call Neil Findlay. You have six minutes, Mr Findlay.

16:29

Neil Findlay (Lothian) (Lab): I used to be a football fan. The game used to give me great pleasure. There is nothing like the excitement of a big match with a full house, and the high—and ultimately very low—point for me was following Scotland to the 1990 world cup. I still come out in a sweat every time I hear Costa Rica mentioned. However, the football that I enjoyed has changed.

The growing chasm between those who play the game and own the teams and the fans who spend their hard-earned wages attending matches is a real danger to the future sustainability of clubs and the game. The vast amounts of money that have flooded into football have not made the game more competitive in Scotland; they have just made it ever more predictable. The experience of fans, who are the lifeblood of the game, comes a long way behind advertising, soaring ticket prices, merchandising and television revenues. For those reasons, I have fallen out of love with football.

I accept that being part of a crowd of people at any cultural event can be an exciting, good-humoured and exhilarating experience but, on other occasions, it can be ugly, especially when peer pressure and an aggressive crowd mentality take hold.

Let me be clear: I loathe bigotry, sectarianism and racism. That was drummed into me by my parents from an early age. Detesting everything about sectarianism is one of the things that my late father instilled in me, and I thank him for having done that.

As we debate the repeal of the 2012 act, my main reasons for supporting James Kelly's proposals are not rooted in football; they are rooted in defending the rights of my constituents and the rights of my class. Ever since the 2012 act was introduced, the responses from fans, the legal profession and rights groups have been negative and persistent. I do not support the repeal of the act for opposition's sake; it is about defending the rights of people who choose to go to watch a sport, but have their rights removed for doing so.

As it stands, the 2012 act in the main criminalises young working-class men because of something that they do inside, or on the way to, a football match, but that very same behaviour in other circumstances would either go unpunished or be dealt with under a different law.

James Dornan: Does Mr Findlay accept that the vast majority of the crowd should be allowed to enjoy the game without listening to the sectarian singing that we hear at many grounds across Scotland?

Neil Findlay: Absolutely.

The 2012 act seeks to impose a set of values on individuals who are deemed by that act to be engaging in distasteful activities. In my view, that is straightforward class prejudice.

In a ludicrous contribution, George Adam said that any song that is not about football should not be sung at a football ground.

George Adam: Will the member give way?

Neil Findlay: No, thank you. Sit down, Mr Adam.

"Sunshine on Leith" would be banned from Easter Road, "Penny Arcade" would be banned from Ibrox, and "Just Can't Get Enough" would be banned from Celtic Park. I am not the biggest Depeche Mode fan, but one of their early singles should not be classified as offensive, and the singer should not be arrested for singing it.

We should seek to address sectarianism across society as a whole so that young people grow up learning to be tolerant, empathetic and respectful. The overwhelming majority of them are. We are more likely to tackle sectarianism through education, cultural change, our schools and colleges and youth work, and by continuing to fund anti-sectarianism projects rather than by

demonising young working-class football supporters.

A certain political and media class has never liked football fans or the influence of fan culture. I accept that that culture has at times crossed the line, but incidents are relatively few, and most football fans are law-abiding and conscientious citizens. When that culture does cross the line, the law already exists to deal with it.

As I said earlier, for me, this is not about football; it is about the fundamental right to be equal before the law. For a person to lose that equality and their rights because they walk through the door of a football stadium but not the door of a rugby stadium, a theatre or pop festival shows the absurdity of the 2012 act.

The act was passed without the support of other parties, which was the first time that that had happened. It is not fit for purpose. The police have been unable to implement the law, the courts are unclear about how to deal with offenders, and the trust and the relationship between football fans and the police have been undermined.

The 2012 act was introduced too quickly, without due consideration of the outcomes that it would have on the lives of those whom it would affect. We must address bigotry, sectarianism and intolerance in our society, but that was never the way to go about it. The act is an experiment that has failed, and it is time for the Government to admit that it was wrong. If it does that, I will applaud it for its honesty, and I am sure that thousands of football fans and many other citizens would do the same.

I commend James Kelly for introducing the bill, which has my support and the support of my party. I make an appeal to SNP back benchers, who know that the 2012 act is bad law and that it should never have been introduced, not to vote by what their whips tell them but to vote with their conscience, to reject the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 and to support Mr Kelly's bill.

The Deputy Presiding Officer (Linda Fabiani): I remind members that this is not a football match.

16:35

Gordon Lindhurst (Lothian) (Con): Yet again, we have debated the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. The Conservatives have been opposed to it since it was rushed through the Parliament, and we remain opposed to it today. It was an ill-thought-out and reactionary piece of legislation that, when viewed in the best light, was intended to deal with a problem that we all recognise. However, it is an unnecessary law, because the law already in existence fully provided for the crimes in the new law and could therefore be used for charging offenders.

The appropriate approach to dealing with a recognised problem is not always the creation of a new criminal law. Anthony Horan, of the Catholic parliamentary office, was correct when he said:

"We need to do more than simply throw legislation at the problem."—[*Official Report, Justice Committee,* 7 November 2017; c 16.]

Education can play a large part in addressing unacceptable sectarian behaviour. My colleague Maurice Corry talked about taking that fight to our homes, classrooms and communities, where we can change culture and attitudes. In evidence given to the Justice Committee, we are told that there is significant scope to improve the use of interventions such as the Sacro tackling offending prejudices programme. STOP is a cognitive behavioural programme that helps people to think about their attitudes and how to change them.

Liam Kerr reiterated the Law Society of Scotland's evidence that all 287 charges brought under section 1 of the 2012 act in 2015-16 could have been brought under pre-existing legislation. The 2012 act is unnecessary, and it unfairly targets a section of society. It is an example of law being produced for the sake of it, rather than law that already exists being enforced.

The Minister for Community Safety and Legal Affairs herself pointed out to the committee that

"Football is not an island on its own where people are free to do as they choose without any need to consider the wider impact of their behaviours. Aggressive behaviour that is deemed acceptable at football will simply be carried into other areas of life."—[*Official Report, Justice Committee*, 5 December 2017; c 10.]

It is ironic that the SNP Government has created that island and placed football supporters on it, ignoring the fact that such behaviours can and do occur in other areas of life, irrespective of footballing interests or allegiances.

Annabelle Ewing: Will the member take an intervention?

Gordon Lindhurst: Certainly.

Annabelle Ewing: I have heard it suggested in the debate that there are no real problems now—that the huge problems happened before and although there are still some problems, they are not big. I remind members that a man pled guilty to charges under the 2012 act for shouting and making racial gestures—a monkey gesture—to Scott Sinclair, a Celtic player, during a Celtic-Rangers match on 29 April 2017. It is still a very current problem.

Gordon Lindhurst: No one is suggesting that there is no problem. What we are saying is that the 2012 act will not solve the problem and is not addressing it.

How is it fair to treat football supporters travelling to Tynecastle differently from rugby supporters travelling to Murrayfield?

James Dornan: Will the member take an intervention?

Gordon Lindhurst: No, I will not, I am afraid.

I echo Neil Findlay's comments, because the approach is surely socially divisive. What is clear is that negativity and demonisation have been brought about by the 2012 act, which has resulted in the distrust between fans and the police that we have heard about already today.

Police officers are placed in an unenviable position by all of this. One of the key criticisms of the 2012 act relates to the need for police officers to apply the section 1 offence, which means that they require to place themselves in the position of that notional reasonable person who would be offended by certain behaviour, or, as section 1(2)(e) of the 2012 act fails to define, "other behaviour". That is not a definition; it is a nonsense—an absurdum.

We are none of us mind readers and, for anyone, second-guessing what might happen in another's person's head, in the hypothetical event that they were present somewhere where they were not present, is a total mind maze.

Danny Boyle, of BEMIS, put it well when he said that police officers

"are not anthropologists, sociologists or political commentators, so the act is a difficult piece of legislation for them to implement".—[*Official Report, Justice Committee,* 24 October 2017; c 13.]

The same would apply to most of us, I think. Jeanette Findlay, of Fans Against Criminalisation, said:

"It should raise alarm bells that police officers have to be trained to discover what might be offensive."—[*Official Report, Justice Committee,* 3 October 2017; c 41.]

Those complexities result in instances such as we have heard about in the debate. Another example is the arrest of a Rangers fan for holding a banner that read "Axe the Act". Such interpretations place us in dangerous waters; we are already in the realms of restricting free speech.

How are fans to know what the 2012 act does and does not criminalise? Supporters Direct Scotland said:

"there is generally a lot of ambiguity about what constitutes a criminal offence under the act."—[*Official Report*, *Justice Committee*, 3 October 2017; c 44]

We can say that again.

Inventing a reasonable person and thereby an arbitrary threshold as to what is offensive is itself, in this context, an unacceptable limit on freedom of expression. Indeed, Dr Stuart Waiton said that the 2012 act criminalises "words and thoughts".

Section 1 is a hideous construction. Repeal of the 2012 act would not be a "crafty goal" for James Kelly, as Ben Macpherson suggested. Rather, the refusal to repeal is an own goal for the SNP. It is time to scrap the act.

16:41

Annabelle Ewing: Today we have heard a lot about the supposed problems with the 2012 act and a great deal of enthusiasm for repealing it, with scant regard for the impact that that would have.

Repealing the act will have consequences—and not just in relation to the ability to charge people for their behaviour at and around football matches. The real consequences will be felt by the people who fear attending football matches because they feel exposed to people who will interpret repeal as freedom to be abusive in a football environment. Stonewall Scotland told us that 46 per cent of LGBT people feel unwelcome at sporting events. The real consequences will be felt by the whole of society, because unchallenged offensive language wears away the sense of identity and belonging that our communities should rightly feel, with fear of abuse undermining cohesion and isolating one community from another. Hateful and prejudicial behaviour has a corrosive impact on the people and communities who are targeted. Offensive behaviour is not harmless and it is not victimless.

On 18 January, an editorial in *The Scotsman* said:

"Changing any society's values for the better is a hard thing to do, but it is important for democratically elected politicians to recognise they have a leadership role and to make the direction of travel clear. If the Scottish Parliament does decide to repeal the Act, MSPs will need to think very carefully about the presentation of this decision. No one should be left in any doubt that offensive, sectarian behaviour at football will not be tolerated."

Much of the discussion on the 2012 act focuses on its impact on a minority of football supporters and their right to sing and do as they please during a match, but what about the vast majority of football supporters and the rest of society? I add that it is rather insulting to suggest that it is working-class people who want to sing sectarian songs, as Mr Findlay did.

As I have said before, football is not separate from everything else in society: it is not an island on its own, where no one has to worry about what happens. It is absolutely built into the fabric of

Scottish society; it is Scotland's national game, which means that it has responsibilities beyond the stadium. The influence of football cuts across the whole of society, and what happens there influences how people behave towards each other in other areas of society. When abusive language and behaviour go unchallenged, they simply become the norm, and that is harmful to all of society.

The Justice Committee's report on the bill highlighted the widespread support for the legislation from key groups. It is worth reminding ourselves of some of the comments. Chris Oswald of the Equality and Human Rights Commission said:

"we must note that protections for disabled people and trans people would be lost if the act were to be repealed, and there is at this point no prospect of their reintroduction."—[*Official Report, Justice Committee,* 7 November 2017; c 4.]

Colin McFarlane from Stonewall Scotland told the Committee that the act sends a clear message that abusive behaviour at football is not acceptable and that

"Repealing the act without putting other measures in place could undermine work that has been undertaken by organisations such as Stonewall Scotland, the Equality Network, football clubs, Police Scotland and the criminal justice agencies to increase LGBT people's confidence not only in reporting hate crime but in attending sporting events such as football."—[*Official Report, Justice Committee*, 24 October 2017; c 9.]

Liam McArthur: The minister is right about the evidence that she relates from Stonewall and others. She is ignoring, however, the evidence we heard from ACC Higgins that, in the absence of the act, other laws would be used to enforce the law and to crack down on such behaviour. Has she no confidence in ACC Higgins?

Annabelle Ewing: It is clear from the evidence that Liam McArthur is well aware of that was submitted to the committee that there are concerns that there will be constraints on what can be done in terms of the ability of the prosecuting authorities to tackle some behaviour. That evidence is very clearly set forth in the *Official Reports* of Justice Committee meetings. The Reverend Ian Galloway of the Church of Scotland said:

"We think that there is a danger of sending the message, by the simple repeal of the act, that we are not taking seriously enough such behaviours and attitudes".—[*Official Report, Justice Committee,* 7 November 2017; c 3.]

Much of the criticism of the act centres on criminalisation of behaviour that is

"otherwise offensive to a reasonable person".

Since April 2012, there have been a total of 196 charges under this category. The majority of the charges under the act—823—have been for threatening behaviour; that is, people fighting and engaging in violent behaviour. There have also been 405 charges for hateful behaviour, which includes racist, homophobic or sexist abuse.

As I said in my opening statement, if the will of Parliament is to support the principles of the repeal bill, it is incumbent on the Scottish Government to look at how the impact of this foolhardy action can be minimised to ensure that communities that are currently protected by the act do not suddenly find themselves with no protection.

If any party wishes to move forward by amending the act, my door remains open and I am happy to consider how the act can be improved. If Parliament wishes to repeal the act, the Government's primary focus needs to be on ensuring that people remain protected from those crimes, and that vulnerable minority communities do not feel that they have been sidelined and marginalised.

Ensuring protection to minority communities would be something that everyone in the chamber can agree with. It is therefore something that we hope we can work to build consensus around, so that we arrive at a practical and workable way forward.

Delaying commencement is one option that would allow us to ensure that we have the time to put necessary protections in place, and in particular to look at how the protection that is offered by section 6—an important provision, as we have heard in the debate this afternoon—can be maintained in relation to threatening communications.

We are prepared to explore all the available options to find a secure way forward that will address the concerns that have been raised by religious organisations, equality groups and organisations including Victim Support Scotland, the Scottish Women's Convention and others, about the negative message that repeal will send—a message that can only realistically be addressed by ensuring continuity of protection to such communities.

I say to those who support repeal that they should reflect very carefully about the impact of their decision to repeal the act. What is the message that is being sent to minority communities and victims of hatred and discrimination? There is a danger that the message is that the rights of an abusive and bigoted minority are more important than the rights of the majority who are fed up with hateful and prejudicial behaviour.

Saying that we need to stand up to abusive behaviour at football is no good without action, and repealing the act with no alternative to offer,

no plan to ensure continuity of protection to vulnerable communities, is worse than taking no action. It is dragging us back to where we started and will completely fail to make the match-day experience one that really is open to all.

16:49

James Kelly: I echo what Johann Lamont and Fulton MacGregor said. I am sure that every member of this Parliament agrees that hateful or sectarian behaviour, whether it takes place in the street, in local communities, outside a religious venue or at a football ground, is completely unacceptable and should be tackled. As the debate has worn on, there have been sharp disagreements. We all agree that hateful or sectarian behaviour is unacceptable; the disagreement lies in how that behaviour should be tackled.

One of the contributions from the SNP benches was from Mairi Gougeon. I did not agree with her, but I thought that she argued her case very well.

Various strands came through in the debate, one of which was the argument that football fans are a problem and that we need to deal with them. It is that attitude that resulted in the act in the first place.

James Dornan: Will the member take an intervention?

James Kelly: Not yet.

I have been a football fan since 1969 and I have watched the way that things have progressed through the years. I do not seek to gloss over any recent events or public disorder, but since 1969 there have been dramatic improvements in fan behaviour and the issue of sectarianism. I was at the 1980 Scottish cup final, where fans fought on the pitch and ran down the terraces. I could not get back up the terracing for people running down to get on to the pitch. We are not living in those times, when people threw bottles in the ground or fought in the streets. Some members on the SNP benches, who clearly do not have any experience of football, should remember that things have moved on.

We heard a lot about the supposed gap in the law but, as John Finnie and others pointed out, the Law Society of Scotland evidence was explicit about the charges that

"could have been prosecuted under pre-existing legislation".

Mairi Gougeon: The one question that has failed to be answered throughout the debate relates to section 6. If we repeal the act, how will we resolve the grey area in the Communications Act 2003 that section 6 was designed to resolve, and the issues of gaps in sentencing, extra-territorial jurisdiction and related powers?

James Kelly: I will reflect on all the points that have been raised in the debate. However, when a section of an act has resulted in only one conviction, in 2015-16, the section's provisions are clearly not working. It is all very well standing up and making a point about extra-territorial application of the law but, as police officers have told us, if the threshold is too high, it is just a law on paper and not a law in practice. That clearly has to be addressed.

Ben Macpherson said that I should not rush ahead with the bill. I had my first meeting with the non-Government bills unit in the first week of June 2016, so I have been working on the bill for more than 18 months. As I outlined earlier, there is quite a robust process to go through. It is not a case of rushing the bill through.

James Dornan: If Mr Kelly has been working on the bill for the best part of two years, why does he not have an answer to Mairi Gougeon's question?

James Kelly: If Mr Dornan had actually been listening, he would know that I gave a direct answer to the point that Mairi Gougeon raised.

Ben Macpherson said that I should not rush ahead with the bill, and others—

Ben Macpherson: Will James Kelly take a constructive intervention on that point?

James Kelly: No. I am sorry, but I need to make progress.

Others have suggested that we should wait for the outcome of the Bracadale review of hate crime legislation. That review has an important role to play, but, as Liam McArthur has pointed out, the Justice Committee is currently considering the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill, and that is a result of the Taylor report, which was produced in 2013. I do not think that we can wait for four years to deal with the 2012 act, particularly given that it is so discredited and weak. It needs to be taken off the statute book.

The minister and others repeatedly made a point about the need for amendments to the 2012 act. I was quite amused by that because, throughout the previous session of Parliament, SNP members were not interested in any amendment and repeatedly told us that we needed the legislation. However, the minute that they get into trouble, the door is suddenly open to amendment. Despite all the speeches from SNP members in which they accepted that the act needs amendment, none of them was prepared to articulate the problems with the act or to put forward any concrete ideas based on evidence.

Annabelle Ewing: I gently suggest to the member that surely, then, there is reason to consider how we, working collectively and with consensus, can improve the act to provide the protections that people need, rather than simply take away all those protections with Mr Kelly's bill.

James Kelly: I have made it absolutely clear that I think that the act is discredited because it does not work as law—that is the central point that members have made. There are confusions around interpretation, which, as the Law Society pointed out, could result in further legal challenge. The act does not work as law and needs to be taken off the statute book.

I have been asked what the alternative is, although I have outlined an alternative previously, and I did so in my opening speech today. However, for those who were not listening, I will go through it again, while picking out some of the strands in what we have heard. The law sends out a weak message. In this debate, no Opposition politician has supported the act, although SNP members have done so. What sort of message does that send out? It is clear that the act has no credibility and is not working so, if we take it off the statute book, that will be more effective. If people commit hateful action in the street, outside a religious venue or at a football ground, that should be tackled, but we need one law to do that; we do not need two laws.

As John Finnie said and as Sacro pointed out at the Justice Committee, we should look at alternatives to prosecution. We need investment in education to tackle sectarianism. We need a different approach, because the current approach is clearly not working. Only 7 per cent of charges involving religious aggravations involved behaviour around football grounds. We need to bring fans, police and football clubs together, as the Scottish Football Supporters Association has suggested.

Mr Dornan described me as a "compliant politician", and I found that remark to be deeply insulting. I have consistently opposed the 2012 act. If the Parliament passes bad law, it is the responsibility of members of that Parliament to call out that bad law, so what I am being compliant in is calling out an ineffective and unfair law. There is an onus on the Government to try to bring people together, which is what we need now. The case for the 2012 act is completely discredited. We need a more unified approach that brings together politicians, fans and groups outside Parliament to tackle sectarianism and that does not hide behind a law that does not work.

With that final point, I submit my view in support of the general principles of the repeal bill.

Presiding Officer's Statement

17:00

The Presiding Officer (Ken Macintosh): Before we move to decision time, I want to say a few words following this afternoon's First Minister's questions. I was very disappointed by the behaviour that was displayed this afternoon at FMQs and I want to make it clear that it is never acceptable to use words such as "lies", "liar" or "lying" in this chamber, particularly when describing another member.

I expect the best from every member in this chamber and I am rarely let down. I understand that passions sometimes run high and that in the heat of the moment, intemperate language can be used. I will not hesitate to do so when necessary, but I do not see my role as primarily one of rebuking or chastising members; rather, it is one of standing behind you and allowing you to be the best that you can be.

On these occasions, I try to allow members the opportunity to reflect on their behaviour rather than escalate matters. It was noticeable that the First Minister did exactly that and used the opportunity of her final answer to reflect on the importance and power of words. I would perhaps urge Mr Rennie to show the same maturity.

Decision Time

17:01

The Presiding Officer (Ken Macintosh): There is one question to be put as a result of today's business. The question is, that motion S5M-10072, in the name of James Kelly, on the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill at stage 1, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Balfour, Jeremy (Lothian) (Con)
Ballantyne, Michelle (South Scotland) (Con)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Bowman, Bill (North East Scotland) (Con)
Briggs, Miles (Lothian) (Con)
Burnett, Alexander (Aberdeenshire West) (Con)
Cameron, Donald (Highlands and Islands) (Con)
Carlaw, Jackson (Eastwood) (Con)
Carson, Finlay (Galloway and West Dumfries) (Con)
Chapman, Peter (North East Scotland) (Con)
Cole-Hamilton, Alex (Edinburgh Western) (LD)
Corry, Maurice (West Scotland) (Con)
Davidson, Ruth (Edinburgh Central) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Green)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Golden, Maurice (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Greene, Jamie (West Scotland) (Con)
Greer, Ross (West Scotland) (Green)
Griffin, Mark (Central Scotland) (Lab)
Halcro Johnston, Jamie (Highlands and Islands) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Harris, Alison (Central Scotland) (Con)
Harvie, Patrick (Glasgow) (Green)
Johnson, Daniel (Edinburgh Southern) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
Lamont, Johann (Glasgow) (Lab)
Lennon, Monica (Central Scotland) (Lab)
Leonard, Richard (Central Scotland) (Lab)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Mason, Tom (North East Scotland) (Con)
McArthur, Liam (Orkney Islands) (LD)
McNeill, Pauline (Glasgow) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)
Mundell, Oliver (Dumfriesshire) (Con)
Rennie, Willie (North East Fife) (LD)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Rumbles, Mike (North East Scotland) (LD)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Sarwar, Anas (Glasgow) (Lab)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Graham (Central Scotland) (Con)
Smith, Elaine (Central Scotland) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Smyth, Colin (South Scotland) (Lab)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Tomkins, Adam (Glasgow) (Con)
Wells, Annie (Glasgow) (Con)
Whittle, Brian (South Scotland) (Con)
Wightman, Andy (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Arthur, Tom (Renfrewshire South) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Denham, Ash (Edinburgh Eastern) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Gougeon, Mairi (Angus North and Mearns) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harper, Emma (South Scotland) (SNP)
Haughey, Clare (Rutherglen) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Martin, Gillian (Aberdeenshire East) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKee, Ivan (Glasgow Provan) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McMillan, Stuart (Greenock and Inverclyde) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robison, Shona (Dundee City East) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Somerville, Shirley-Anne (Dunfermline) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Todd, Maree (Highlands and Islands) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 65, Against 61, Abstentions 0.

Motion agreed to,

That the Parliament agrees to the general principles of the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill.

The Presiding Officer: That concludes decision time.

Meeting closed at 17:02.

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