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Thursday 7 June 2018

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Scottish Parliament

Thursday 7 June 2018

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

General Question Time

Affordable Housing

1. Kate Forbes (Skye, Lochaber and Badenoch) (SNP): To ask the Scottish Government how many affordable homes will have been built between 2007 and 2021. (S5O-02197)

The Minister for Local Government and Housing (Kevin Stewart): Between April 2007 and December 2017, a total of 72,462 affordable homes have been delivered; of that, 53,465 have been newly built. The next quarterly update, showing affordable housing completions for the whole of 2017-18, will be published on 12 June. Over the course of this parliamentary session, we fully expect to achieve our ambitious target of delivering over 50,000 affordable homes, 35,000 of which will be for social rent.

Kate Forbes: I whole-heartedly welcome that commitment. The minister will know how important affordable housing is in my constituency to everything else—jobs, education and even healthcare—and those figures are very impressive. Would the minister accept an invitation to my constituency to meet key stakeholders to discuss how the Government's target and the Government's previous successful building programme have enabled rural areas to grow?

Kevin Stewart: Local authorities have the statutory requirement to produce a local housing strategy, which I know Ms Forbes will be aware of, and they need to set out their priorities in that. Over the course of the next few years, Highland Council will have been allocated over £184 million for affordable homes.

I would be absolutely delighted to accept Ms Forbes's invitation to visit her constituency. I made a promise to visit to Lachie MacDonald of Lochalsh and Skye Housing Association when I met him recently in Kincardine in Fife. We will therefore arrange a visit, and I will be very pleased to visit Ms Forbes's beautiful constituency.

Graham Simpson (Central Scotland) (Con): In that spirit, I wonder whether the minister would like to visit my region with me and meet some of the stakeholders there. He cannot give an answer to that, but he can give one to my actual question. What analysis has the Government done of whether the money for affordable homes is being

spent in areas of Scotland that are most in need of affordable homes? Further, what analysis has been done of the type of homes being built?

Kevin Stewart: I am more than happy to visit any part of Scotland to see our affordable homes programme delivering for every part of Scotland. Mr Simpson has asked a comprehensive question about analysis. As he very well knows, I keep a close eye on what is being delivered across the country. If he wants to write to me with more specific questions about analysis, I will happily answer his points in that regard. However, as I have made very clear in the chamber on many occasions, I want our affordable housing programme to deliver for all of Scotland and I want local authorities to look at the areas where there are most needs and to deliver for communities across the board.

Elaine Smith (Central Scotland) (Lab): On people in need of affordable homes, is the minister aware that almost 10,000 disabled people are stuck on the waiting list for suitable affordable housing? With demand set to rise by 80 per cent over the next five years, will the Government reconsider setting targets for how many of the 50,000 new affordable homes must be disabled accessible?

Kevin Stewart: I thank Ms Smith for her question, because it gives me the opportunity to reiterate what I said last week, which is that the Government has stated that in terms of subsidy for wheelchair-accessible and specialist housing, we will be flexible so that local authorities and housing associations can build to meet the needs of people in their areas. I do not want to set an arbitrary target, because it is up to local authorities to look at the needs and demands in their areas. Some local authorities, such as Angus Council—if I remember rightly—have set a target of 16 per cent of the housing that they deliver being wheelchair-accessible or specialist homes.

I want all local authorities to not only consider their housing needs and demands assessments, but interrogate their waiting lists to see who is waiting for such homes, and get on with the job of delivering them in their areas. Now is the time to do that. The subsidy is available, the flexibility exists and local authorities must go and meet the needs of people throughout the country.

Andy Wightman (Lothian) (Green): In the light of the fact that many of the homes in Kate Forbes's constituency are second and holiday homes, and in the light of a report that I published yesterday that shows that there are 26,000 such homes throughout Scotland, does the minister agree that second or holiday homes should be subject to planning consent?

Kevin Stewart: We need to look closely at some areas where there is a difficulty with second and holiday homes. However, we must remember that holiday homes bring income into Skye and other parts of Scotland. We need to increase the number of homes that we provide in those places so that people who choose to live and work there have the right accommodation.

Mr Wightman will be aware that local authorities have flexibilities on council tax for holiday homes and second homes. I urge councils to use those powers. It is their responsibility to do so.

Speed Limits (Heavy Goods Vehicles)

2. David Stewart (Highlands and Islands) (Lab): To ask the Scottish Government when it plans to publish the findings of the 50mph speed limit pilot for HGVs on the A9. (S5O-02198)

The Minister for Transport and the Islands (Humza Yousaf): We plan to publish the findings of the A9 HGV pilot later this summer. The research into the performance of the A9 with a higher HGV speed limit in place is currently being evaluated. As the member is probably aware, there is also some data coming from the Department for Transport on uplift in speed limits on the highways in England. We look forward to receiving that in the coming months, too.

David Stewart: Does the minister share my view that the pilot for HGVs on the A9 has been a success? Is this not the time to extend the speed limit for HGVs to 50mph for all single carriageways in Scotland? That would be good news for the haulage industry, safety campaigners and the climate, as HGVs are less polluting when driving at 50mph. If it is good enough for the A9, why is it not good enough for all Scotland?

Humza Yousaf: I am sympathetic to the points that David Stewart makes. I will make a couple of other points to ensure that we put the conversation in context. Every safety campaigner will tell us that any uplift in speed is the biggest contributor to potentially fatal and serious casualties on our trunk road network. We have to be mindful of that.

The uplift in the speed limit on the A9 is being done in conjunction with the fact that we have average speed cameras on that road. We have to consider other parts of the trunk road network—single or dual carriageway—that do not have average speed cameras.

We have the data that is coming from the A9 pilot, which I will publish in the coming weeks. We also have the data from the Department for Transport on its uplift of speed limits, which we expect towards the end of summer or in autumn. If the data shows that we can raise the speed limit in a way that does not compromise safety on our

trunk roads and is not counterproductive for our climate agenda, I will be sympathetic to it.

I know that David Stewart will appreciate those points. I will ensure that he is kept up to date.

Emma Harper (South Scotland) (SNP): I appreciate hearing that response from the minister. Have any assessments been made of, or has any consideration been given to, increasing speed limits for HGVs from 40mph to 50mph on some parts of the A75?

Humza Yousaf: We are looking at the trunk road network as a whole. If we consider it for the A9, we will have to consider other roads that have average speed cameras on them as well, such as the A77 and the A90 Dundee to Stonehaven. However, if there is a compelling case to change the speed limit right across the trunk road network—the Department for Transport data will be important in that—the A75 will, of course, be included in that. I will ensure that the research that we are analysing is made available to Emma Harper.

Waiting Times (Children's Health Services in the Highlands)

3. Rhoda Grant (Highlands and Islands) (Lab): To ask the Scottish Government what it is doing to reduce waiting times for children's health services in the Highlands. (S5O-02199)

The Cabinet Secretary for Health and Sport (Shona Robison): A number of initiatives are under way to improve waiting times for children's health services in the Highlands. They include improved workforce planning, staff development, case load management and better use of technology. However, recruitment to some specialties continues to be a challenge.

Rhoda Grant: Due to staffing difficulties, a total of 151 children and young people in Highland are waiting more than 18 weeks for services such as speech and language therapy, occupational therapy and dietetics. There is also a shortage of school nurses, with more than seven vacancies—in addition, two retired last month. The risk to health visiting is reported as being high, and the shortage of health visitors means that children are not receiving many of the visits that are laid down in the health visitors' home visiting pathway. What is the cabinet secretary going to do to make sure that those children get the best start in life?

Shona Robison: Highland Council has advised that staffing continues to be an issue, particularly for speech and language therapy, but it has recruited to a number of occupational therapy posts recently, so it expects waiting times to decrease.

The allied health professional workforce that Rhoda Grant refers to is crucial, and it is expanding. Of course, it provides that really important support in the early years. The Highlands have tried some quite innovative ways of improving services. For example, Rhoda Grant might be aware of the telephone consultation and triage that is being developed to give people quicker access to advice and support, and the building of greater universal resources for parents and professionals to support self-management for those children with lower levels of need, in line with the national model for children's AHP services.

The health visiting services are expanding. We are on track to deliver the additional 500 health visitors that we have committed to, and Highland is getting its share of them.

School Estate

4. Jenny Gilruth (Mid Fife and Glenrothes) (SNP): To ask the Scottish Government what its role is in maintaining the school estate. (S5O-02200)

I remind members that I am the parliamentary liaison officer to the Cabinet Secretary for Education and Skills.

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): Under the Education (Scotland) Act 1980, it is the responsibility of all local authorities to maintain the school estate. However, the Scottish Government's £1.8 billion school building programme is helping to replace the schools in the worst condition across Scotland.

Jenny Gilruth: What the young people of Glenrothes really need in the town's 70th year is school buildings that are fit for learning, yet both Glenrothes and Glenwood high schools' buildings have a "poor" rating in the most recent Scottish Government data, which was published in 2016. Will the Scottish Government work with Fife Council to ensure that Glenrothes schools are prioritised to allow improvements to be made?

John Swinney: I record my good wishes for Glenrothes on the 70th anniversary of the establishment of the new town.

Fife Council was awarded significant funding of over £57 million towards the construction of a number of schools under our schools for the future programme. One of those is in Glenrothes: Auchmuty high school, which was opened in August 2013. I have committed to announcing further details of the enhancement of the learning estate later this year, and the development work for that is under way. We will discuss the matter with local authorities in due course.

Stuart McMillan (Greenock and Inverclyde) (SNP): Can the cabinet secretary provide details of the number of schools that have been renovated and had asbestos removed from their buildings and the number of school buildings that still contain asbestos?

John Swinney: The Government does not hold that information. In my answer to Jenny Gilruth, I made the point that local authorities are responsible for the maintenance and management of the school estate.

We take issues relating to asbestos very seriously, and we expect local authorities to follow the strict guidelines and recommendations from the Health and Safety Executive in that respect, ensuring that they maintain an asbestos register at local authority level and that all risks that are inherent in the handling of asbestos are fully assessed as part of their management responsibility.

Daniel Johnson (Edinburgh Southern) (Lab): The Deputy First Minister knows of my personal interest in the school estate in my constituency, where Liberton high school is in desperate need of replacement. Throughout the whole of devolution, the Scottish Government has had a critical role to play in financing new schools, and the Government keeps saying that the new scheme is coming. Does the cabinet secretary accept that, given that it takes many years to plan, design and build new schools, it is now the Scottish Government that is holding back vital improvements to the school estate, including at Liberton? The rumour up the road is that there will be no Scottish Government money for the wave 4 schools in Edinburgh. Can he confirm or deny that?

John Swinney: I do not accept the fundamental premise of Mr Johnson's question. The Government has fully committed to the schools for the future programme until 2021, which is three years away. That is long-term planning. I have always said that the revised programme will be announced later this year, which will give local authorities plenty time to adjust their plans.

I remind Mr Johnson that, when this Government came into office, we inherited a legacy from the Labour Party of only 61 per cent of schools being in a satisfactory condition. That figure is now 86 per cent under this Government, following our investment. Mr Johnson has no grounds for complaint.

Employment

5. Bill Bowman (North East Scotland) (Con): To ask the Scottish Government what steps it will take to reduce the number of people who have never been in employment. (S5O-02201)

The Minister for Employability and Training (Jamie Hepburn): The Scottish Government's employment programme called fair start Scotland was launched in April and will support at least 38,000 people over a three-year referral period. The programme is targeted towards those who face barriers to entering employment, including people who have disabilities and the long-term unemployed.

In March, I announced the publication of "No One Left Behind—Next Steps for the Integration and Alignment of Employability Support in Scotland". That document sets out the next steps that the Scottish Government will take to deliver more effective and joined-up employability support across Scotland. It also starts a wider discussion with our partners about how we should do that. It contains a range of activity that we will develop and implement collaboratively with our partners, with a specific focus on integrating employability provision with health, justice, and housing support and services to help those people who are further from the labour market.

Bill Bowman: There are many reasons why some people cannot work, but that can explain only partly why more than one in 10 Dundonians has never had a job of any sort. Given the fact that that has been the case for a decade under the SNP Government and an SNP-run council, will the minister explain what he will do about it?

Jamie Hepburn: We will take forward our fair start Scotland programme, which, unlike the UK Government's approach to employability, will not threaten people with sanctions. As we know from the paper that the Economic and Social Research Council published in May,

"Benefit sanctions do little to enhance people's motivation to prepare for, seek, or enter paid work"

and they lead to

"Recurrent short-term movements between various insecure jobs, interspersed with periods of unemployment",

which are described as "routine". We will take a different approach to support people in Dundee and across Scotland into employment.

Ivan McKee (Glasgow Provan) (SNP): Does the minister agree that the Scottish Government's approach to helping those who are furthest from the labour market to return to work is more effective than the actions that are being taken by the UK Government?

Jamie Hepburn: Indeed, I do. I refer to the point that I made a moment ago. The ESRC paper says:

"Welfare conditionality within the social security system is largely ineffective in facilitating people's entry into or progression within the paid labour market over time."

Those are not my words or those of the Scottish Government; they are the words of the Economic and Social Research Council in a study that was assisted by the University of Glasgow and Heriot-Watt University. I therefore think that our approach is much better than that of the UK Government.

Stirling City Centre (Business Closures)

6. Dean Lockhart (Mid Scotland and Fife) (Con): To ask the Scottish Government what action it can take to prevent further business closures in Stirling city centre. (S5O-02202)

The Minister for Business, Innovation and Energy (Paul Wheelhouse): The Scottish Government is supporting inclusive economic growth across Scotland, including in Stirling. Just last week, the Cabinet Secretary for Economy, Jobs and Fair Work, Keith Brown, signed heads of terms for the Stirling and Clackmannanshire city region deal, committing £45.1 million over 10 years to a range of projects that will benefit Stirling and the entire region. The overall investment package in the city region deal is expected to deliver more than 5,000 new jobs across the region and leverage additional private sector investment worth more than £600 million. That is alongside an additional £5 million for the Kildean business park and infrastructure at Callander, taking the Government's funding to £50.1 million.

Since 2017, the Scottish Government has also supported the successful establishment of Stirling's city centre business improvement district. That will run for five years and will enable local businesses to invest, through a levy, to improve their economic opportunities, agree and deliver improvements and take charge of the regeneration needs of their area.

Dean Lockhart: Notwithstanding the steps that the minister has outlined, a number of businesses in Stirling have been forced to close during the past year, with five closing in the past two weeks alone. On top of that, 1,600 businesses across Stirling have had rates appeals outstanding for more than a year. Those businesses employ thousands of people and, for many of them, the decision on their rates appeal will mean the difference between their staying in business and their being forced to close. What steps will the minister take to address that situation urgently and obtain clarity for the future of those businesses?

Paul Wheelhouse: Dean Lockhart should recognise that we are already committed to a £720 million package of non-domestic rates relief that covers more than 100,000 premises across Scotland, including 2,868 in the Stirling constituency. A Federation of Small Businesses survey explains that 18.9 per cent of businesses in receipt of small business bonus that it sampled might have closed their operations in its absence,

while for 19.9 per cent it would have prevented investment in their businesses and 18.3 per cent would have amended their plans for growth. It would be good to hear Mr Lockhart recognise the contribution that this Government is making to sustaining existing businesses.

He might also want to reflect on the chaos that has been caused by his own party's Government through Brexit, which we now know—*[Interruption.]* Mr Lockhart might want to listen to this. Mark Carney, the Governor of the Bank of England, has said that £900 per household has already been lost across the UK before we have even left the European Union. How about Mr Lockhart recognising that and his party's contribution to the destruction of our high streets?

First Minister's Question Time

12:00

Home Detention Curfew

1. Ruth Davidson (Edinburgh Central) (Con):

Can the First Minister tell the chamber how many criminals on home detention committed offences while out on release in the past three years?

The First Minister (Nicola Sturgeon): I do not have to hand the figure that would answer that specific question. However, I can tell the chamber that, since it was introduced in 2006, 21,000 people have been released on home detention curfew. Of that total, 0.3 per cent are people who are currently unlawfully at large. At any one time, around 300 people are on home detention curfew, which is about 4 per cent of the prison population; and 99.7 per cent of those will be prisoners who have been sentenced to a term of less than four years.

I assume that the entirely understandable reason for Ruth Davidson's question is the case of James Wright that has been reported this week. First, I say that that is an appalling case. James Wright committed a dreadful crime and I want to take this opportunity to express my deepest sympathies to Mr McClelland's family and to his friends.

The chamber will be aware that the Cabinet Secretary for Justice has asked both Her Majesty's chief inspector of prisons for Scotland and Her Majesty's chief inspector of constabulary in Scotland to conduct a review of home detention curfew, which will look at the process of assessing whether someone should be placed on such a curfew and will also review the process for investigating breaches of home detention curfew terms and apprehending individuals who breach them.

The final point that I would make is that I think that all members across the chamber would accept that systems such as home detention curfew are an important part of preparing individuals for release; they are about reintegrating prisoners into society, which helps to reduce the risk of their reoffending. However, home detention curfew is not an entitlement for prisoners, who should be eligible for it only if they are assessed as being at low risk of reoffending.

If there lessons to be learned from this case—as undoubtedly there will be—I am determined that they will be learned.

Ruth Davidson: In this case, a man with 16 previous convictions and who had twice been caught carrying a knife went on to stab another

man to death. However, the First Minister could not answer the question that I asked her. The reason for that is that no one can, because the data is not collated and the figures are not released. In fact, the only time that we find out about such cases is in a week like this one, when a criminal such as James Wright turns up in court having murdered father of three, Craig McClelland. I think that that is unacceptable. If criminals are being released from jail, tagged and then going on to commit violent crimes, does the public not have a right to know how many do so?

The First Minister: I should say that I will not stand here today and defend any aspect of what happened in the particular case that we are talking about—and I do not think that anyone would expect me to do so. That is why it is right that there is to be a full review by both the chief inspector of prisons and the chief inspector of constabulary. If the issue that Ruth Davidson has raised is one of the recommendations that emerges from one of those reviews, of course the Government will respond to that.

We have discussed such issues before in the chamber, and I think that we all recognise that they are some of the most difficult and sensitive ones that we, as politicians, discuss in this Parliament. Most MSPs across the chamber accept that it is important to have in place systems that help to rehabilitate prisoners. It is not in society's best interests if prisoners are released before steps have been taken to ensure that they can be properly reintegrated into it. That will increase, not reduce, the risk of their reoffending.

Such systems are important, but it is also extremely important that the right safeguards are in place. The vast majority of people who are released on home detention curfew—76 per cent, to be precise—successfully complete the curfew. We know that around 20 per cent of prisoners are recalled due to a breach of their conditions. If there are lessons to be learned and if changes to the process require to be made, I am determined that those changes will be made, but it is important that we continue to focus on what we need to do to ensure the rehabilitation of prisoners, because that is in the interests of the safety of society as well.

Ruth Davidson: The First Minister is right that the justice secretary has instructed an investigation into why James Wright was free to kill, six months after he had breached his home detention curfew. In doing so, the justice secretary has admitted that the system is flawed yet, under the Government's new Management of Offenders (Scotland) Bill, it is proposing to move to a system that puts far more reliance on criminals being tagged in the community, not less. We do not know how many criminals on home release are

committing crimes and the Government accepts that there is a problem, but we are going to have more electronic tagging anyway. Would it not make sense to put those plans on hold, at least until we can reassure the public that the system actually works? Is it not time to put victims first for once?

The First Minister: Such systems are about trying to put victims first, in making sure that we have processes in place that are about effective rehabilitation of prisoners. I am not trying to defend what happened in the case that Ruth Davidson raises, and I never would try to do so, but such cases, appalling though they are—this case is absolutely appalling—do not necessarily mean that the whole system is not working. Something went badly wrong in this case, and it is important that we look carefully at it and, if there are wider lessons to be learned, that we learn those wider lessons.

The extension of tagging is about people who would be on community orders, and it is important that the Parliament debates that. I do not want to politicise the issue, as it is not appropriate to do so but, if we listen to what some of Ruth Davidson's colleagues south of the border are saying about Scotland's approach to community sentences, we find that they think that there is a lot to be learned from what Scotland is doing. We must look carefully at such appalling cases, but we must do so properly and we must apply any lessons sensibly, and that is exactly what we will do. Any future reforms and changes are for the Parliament to debate and decide in the normal way.

Ruth Davidson: I have listened to three answers, and the First Minister has repeated the word "rehabilitation" like a mantra, as if that were the reason for extending tagging. However, I have here the policy memorandum for the Management of Offenders (Scotland) Bill, and the reason for that bill, as stated by the Government, is that the introduction is

"to make the use of electronic monitoring more appealing to sheriffs as an alternative to custody."

So it is instead of custody and not just for rehabilitation.

The case has rightly drawn the focus to home release, but the issue goes far deeper than that and is about not just home release but parole and sentencing. We say that it is simply wrong that someone with 16 previous convictions, including two for knife crimes, should be let out with a tag; that it is wrong that victims and their families do not have the right to speak at Parole Board for Scotland hearings; and that it is wrong that victims cannot challenge the decision to let criminals out on parole. Scotland's justice system is tilted far too much in favour of those convicted of crime and too

often turns a deaf ear to the victims of those crimes. It is long past time that we had action from the Government to correct that basic injustice, so we ask the Government to widen the parole review and to allow the victims to speak. When will we finally see those actions being taken?

The First Minister: I will deal with the part of the question about parole first. As Ruth Davidson knows, the Parole Board for Scotland is an independent judicial body and its processes are kept continually under review. We are already in discussions with the Parole Board on possible future development of its rules in light of the review of the Worboys case south of the border.

On the more general issue, I preface my remarks by saying that I am not referring to the individual case that has been raised this week, which is an appalling case that is subject to the reviews that the justice secretary has outlined. More generally, it is not the case that our justice system is tilted towards criminals rather than victims. Scotland has one of the highest prison populations anywhere in western Europe. Part of the problem is that we know that prison is not the most effective sentence in reducing reoffending for some of those who commit offences.

Listen to what the United Kingdom Secretary of State for Justice said only recently. The Tory UK justice secretary said:

"The evidence shows that when a person has been inside for less than 12 months the re-offending rate is about 66%, but the re-offending rate for those who get a non-custodial sentence is lower."

Therefore,

"Short sentences should be a last resort."

Ruth Davidson: It was a murder.

The First Minister: Ruth Davidson is saying that this was a murder. I actually said that I was not referring to the individual case. I am making a wider point, which is what Ruth Davidson went on to do.

We need to ensure that sentencing is as effective as it possibly can be and has the best possible chance not just of punishing—although punishing is important—but also of reducing reoffending, because by reducing reoffending we help to keep the public safer as well. That is the motivation behind the reforms that we are taking forward. Ruth Davidson's colleagues south of the border think that they are sensible reforms. I respect the views that Ruth Davidson is putting forward, but let us debate the issues properly and maturely as a Parliament. That is what the public deserve, and what they expect of us.

Delayed Discharge

2. Richard Leonard (Central Scotland) (Lab): On Wednesday 25 February 2015, the Cabinet Secretary for Health and Sport told the BBC's "Good Morning Scotland" programme:

"I want over the course of this year to eradicate delayed discharge out of the system ... I am absolutely determined to do that."

First Minister, how did that go?

The First Minister (Nicola Sturgeon): Actually, we have seen a reduction in the number of bed days lost to delayed discharge. In 2017-18, there was a reduction of 7 per cent on the previous year. That built on a 3 per cent reduction in the year before that and a 9 per cent reduction the previous year. That is what has happened since the date of the quote that Richard Leonard has just read out. In fact, under Shona Robison as health secretary, there has been a 24 per cent reduction in the number of bed days lost to delayed discharge. That is equivalent to 435 extra beds in our national health service. Progress is being made, and we are determined to continue that progress in the months and years ahead.

Richard Leonard: To be absolutely clear, more than three years ago, Shona Robison made a promise to the people of Scotland

"to eradicate delayed discharge out of the system"

and we are still waiting. I know that the First Minister understands that this is a matter of serious concern, because back in 2011 she explained to the Scottish National Party conference that delayed discharges

"waste NHS resources"

and

"rob older people of their quality of life".

Delayed discharge was, she said,

"equivalent to a large acute hospital being occupied all year by people who don't need to be there. And it costs £50 million."

Can the First Minister tell us today exactly how much three years of Shona Robison's broken promises on delayed discharge has cost our national health service?

The First Minister: We know that, because people are living longer—which is a good thing—there are greater demands on our health service. That is why we are investing more money in our health service and why we have higher funding per head of population than other parts of the United Kingdom. There are nearly 13,000 more staff in post in our NHS and we are also investing more money in social care.

Let me go back to the specific issue of delayed discharge. I would be the first to accept that

tackling delayed discharge is challenging, but it is very clearly on a downward trend. There has been a reduction of nearly 40,000 bed days lost to delay between 2016-17 and 2017-18 and, as I said earlier, that builds on reductions in the two previous years. In April, 10 of the partnerships across the country had the number of standard delays over three days down to single figures and just four partnerships account for almost half of the total delays, so we are focusing on reducing the delays there.

As I said earlier, since Shona Robison became health secretary, the number of bed days lost to delayed discharge is down 24 per cent—that is more than 40,000 bed days and equivalent to more than 400 extra beds. It is going in the right direction. It is tough and challenging, and that is not just the case in Scotland. Governments across the UK, Europe and the world struggle with the issue, but in Scotland we are making progress because of the investments that we have made, because of the integration of health and social care, and because we are increasing the number of staff working in our NHS. We will continue to focus on doing exactly that.

Richard Leonard: The question that I asked was how much Shona Robison's broken promises on delayed discharge had cost the health service in Scotland since 2015. The answer is £392 million, Presiding Officer.

This week, the Government was forced to admit that it has not met its accident and emergency waiting times target for eight consecutive months. Hundreds of operations are being cancelled every single month; waiting times are up year on year; and our hard-working NHS staff are overstretched and undervalued. They deserve better than that. Patients deserve better than that. The people of Scotland deserve better than that, and they deserve a health secretary who is up to the job. When will the First Minister finally put patients before party and accept at long last that the time has come for her health secretary to go?

The First Minister: Richard Leonard has just exposed that he does not really care about the patients; this is all about politics, as far as he is concerned.

Let me talk about A and E, as Richard Leonard raised it. It is very positive news and a real credit to those working in our NHS that, for three years in a row now, Scotland has had the best A and E performances in the whole of the United Kingdom—including Labour-run Wales, of course.

The figures for cancelled operations that came out earlier this week show a reduction from the previous ones in the number of operations that were cancelled for capacity or non-clinical reasons, down to just over 2 per cent.

As I have said twice now, there has been a 24 per cent reduction in the number of bed days lost to delayed discharges since Shona Robison became health secretary. I am always frank about the challenges that we face in the health service as demand rises. That is why we will continue to carry out the reforms that are necessary and why we will continue to put in the investment that is necessary and to support the extra people who are working in our NHS under this Government. That is what we will get on and do and we will leave Richard Leonard to worry about the politics.

The Presiding Officer (Ken Macintosh): There is a lot of interest in asking supplementary questions today. We will see how many we get through.

Crummock (Scotland) Ltd

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): Crummock (Scotland) Ltd, a civil engineering company in my constituency, went into receivership on Friday 1 June, with the loss of 287 jobs. PACE—partnership action for continuing employment—was there last Friday and I have been in contact with both PACE and the official receiver. I found out that, because of the publicity, prospective employers have been in touch with the receiver looking for employees.

That would seem to be good news. However, although the receiver has the contact details for all employees, PACE does not, and under data protection regulations, those details cannot be shared. The receiver is obliged only to contact employees about redundancy pay, which has been done. We have potential employers on the one hand, employee contact details on the other, and PACE with none of the above.

What can the Scottish Government do to remedy what seems to be a preposterous situation, which is preventing some of those who have been made redundant from walking straight back into employment? For example, could an online facility be set up to enable those employees to access those potential employers?

The First Minister (Nicola Sturgeon): I will return to Christine Grahame on the specific point that she has raised but, on the general issue, I was very concerned to learn that the Crummock construction group has ceased trading, making 287 employees redundant. I know that this is a difficult time for those employees, their families and the local area.

Our immediate priority is to provide all the support that we can to the individuals affected. As Christine Grahame said, PACE was on site last Friday to offer its support to affected employees who were present. PACE is also working with the

Civil Engineering Contractors Association to develop a facility on the CECA website that will allow any Crummock employee to upload a CV, which can be accessed by any CECA member that is looking to recruit staff.

I know that Christine Grahame has been in contact with Skills Development Scotland and with the receiver, Johnston Carmichael, and I hope that my answer gives her some reassurance about what the Scottish Government can do. However, I will look into the specific issue that she has raised and get back to her. She may also be interested to know that Scottish Enterprise has made initial contact with the receiver to find out what support it can offer at this time.

V&A Dundee

Jenny Marra (North East Scotland) (Lab): A board paper from V&A Dundee says that our new museum needs more cash to cover operating costs, including a £500,000 bank loan and, potentially, further Government grants. It is my understanding that costs have been underestimated or missed and that there is no clear plan for where revenue will come from to run the museum and service the bank loan after the initial opening phase. The V&A has been consulting KPMG.

The V&A is a flagship project for Dundee and everyone in the city really wants it to work. Can the First Minister assure me today that her Government is doing everything to ensure that the V&A Dundee can be on a firm financial footing? Given the millions of pounds that her Government has invested on behalf of Dundonians, can she also assure me that she is keeping track of the business plan, audit and expenditure on this important project for our city?

The First Minister (Nicola Sturgeon): First, it is important to point out that the project is not a Scottish Government-led project. The Scottish Government is not on the board of the project. That said, we are big supporters of the V&A museum. We think that it is a fantastic addition to Scotland's museums and the flagship of Dundee's waterfront development.

The Scottish Government has provided £38 million towards the construction of the V&A in Dundee, through a mix of traditional capital grant and growth accelerator funding. We have also, to date, contributed £5.5 million in revenue funding, to support development costs in the run-up to the opening in September.

I can also tell the Parliament today—I do not think that this is in the public domain yet, although I will be corrected if I am wrong—that we have agreed a further package of revenue support, which will be worth £1 million a year and will

support the museum in the first 10 years of its operation.

The Scottish Government is committed to supporting this fantastic new development for Dundee. Of course, we will keep close to Design Dundee Ltd and Dundee City Council and ensure that we do everything that we can do to support the project. I think that for many years, decades and generations to come, the new museum will be one that people not just in Dundee but throughout Scotland will be thoroughly and very rightly proud of.

Prestwick Airport

John Scott (Ayr) (Con): The First Minister will agree that it is good news for Scotland that it is proposed to build a third runway at Heathrow airport. Will the First Minister support Prestwick airport in its bid to become the Scottish logistics hub that supports the building of the new runway at Heathrow?

The First Minister (Nicola Sturgeon): The Heathrow development is not a decision for the Scottish Government or indeed for the Scottish Parliament. In all the discussions that we have had with Heathrow, we have focused on ensuring that, if the development is to go ahead, there is maximum economic benefit for Scotland. Of course, that includes supporting Prestwick to benefit as much as possible, through the logistics hub. We will continue to ensure that we carry forward those discussions in the most constructive way.

House of Fraser (Store Closures)

Alison Johnstone (Lothian) (Green): In light of the news that House of Fraser is seeking to close 31 of its 59 shops, including its Edinburgh store, with the loss of 2,000 House of Fraser jobs and 4,000 more jobs in brand and concession roles, what action is the Scottish Government taking to support workers in Scotland who are employed by the company?

The First Minister (Nicola Sturgeon): I was concerned this morning, as I am sure that everyone was, to hear of recent developments in relation to House of Fraser's plans to close stores. As we understand it, the store at the west end of Princes Street is to close, which is likely to affect 127 jobs. It is welcome, however, that, as far as we know, the current restructuring plans do not involve the other Fraser stores in Scotland, including Jenners in Edinburgh and the flagship Glasgow store.

This will be a difficult time, obviously, for staff who work in the west end store, so the partnership action for continuing employment national team is monitoring developments and will approach the

company to offer whatever support it can. The Scottish Government will do whatever we can to offer support at this time.

Aberdeen Western Peripheral Route (Safety)

Lewis Macdonald (North East Scotland) (Lab): The First Minister will be aware of the publication of internal safety reports from the Aberdeen western peripheral route that suggest that incidents on the project have been chronically underreported. What does she make of Transport Scotland's figure of 23 accidents in a single year, when we now know that in that year there were 27 cases of overturned vehicles, 39 cases of machinery striking pipes and cables underground and cases of work being carried out within yards of major oil pipelines without the operators being notified?

If the First Minister shares my concern about those discrepancies, will she order an inquiry into the management of safety on the AWPR and ensure that no short cuts are taken in achieving completion of this vital project?

The First Minister (Nicola Sturgeon): We expect any contractor on any project for which we are responsible to work to the highest standards of health and safety, and that applies to the AWPR. There is a dispute by Transport Scotland about the way in which some of those figures have been presented, and I would be happy to ask Transport Scotland to contact Lewis Macdonald to discuss those concerns in more detail. That said, we take all allegations seriously, and we have raised the matter with the contractor. It is also important to stress that responsibility for health and safety on site rests with the contractor. As I understand it, the Health and Safety Executive visited the site in April 2017 and was content with the processes in place, but we will continue to discuss any concerns directly with the contractor. As I said, I am happy to ask Transport Scotland to contact the member directly.

Educational Institute of Scotland (Survey Results)

3. Patrick Harvie (Glasgow) (Green): We all know that teaching can be, and needs to be, a fantastic career that is rewarding and that attracts and retains talented people, but the First Minister will have seen reports of an Educational Institute of Scotland survey of teachers this week that shows that Scotland is a long way from achieving that, with the majority of teachers unable to recommend the career to others. Why does the First Minister believe that is the case?

The First Minister (Nicola Sturgeon): Teachers work under significant pressure, and we all recognise that. I also recognise that, for teachers and for all public sector workers, the past

few years of pay restraint have been difficult, for teachers in particular. We know that teachers have had particular concerns about workload. That is why, over the past couple of years, the Deputy First Minister and Cabinet Secretary for Education and Skills has been working hard to reduce the workload pressures on teachers, including clarifying and simplifying the curriculum framework, for example by reducing mandatory unit assessments from national 5, higher and advanced higher qualifications. Those are all things that the EIS and others told us were significantly contributing to unnecessary workload. We will continue to work with teaching unions to take such action as we consider appropriate.

We are working hard to boost teacher recruitment. As we know from the latest statistics, which were published at the end of last year, teacher numbers increased for the second year in a row, and our attainment programme is having a significant impact on that as well.

Patrick Harvie: Despite all that work, nearly 60 per cent of teachers are unable to recommend the profession and only 2 per cent say that they are very likely to do so. Eighty-five per cent of those surveyed said that workload has increased in the past year, despite the Government promising to address that. There are complaints about staff shortages and about teachers not having enough time to develop their own learning and skills, yet the Government continues to focus on preparing an education bill that it knows teachers oppose, because it will not address the real problems that they face.

Will the Government now, as the EIS is meeting today in Dundee for its annual general meeting, commit to changing its plans for the education bill and working with teachers instead of against them? Will it commit urgently to meeting the demand for a fair restoration of pay for a profession that is critical to our young people's future, but which has seen real-terms pay eroded far too much for far too many years?

The First Minister: A number of related issues were raised in that question. First, on pay, I assume that Patrick Harvie is aware that teachers' pay is a matter for the Scottish negotiating committee for teachers. Negotiations for 2018-19 are currently under way. I know that the negotiating committee has had positive discussions over recent weeks. The Scottish Government takes an active role in those negotiations and we urge everyone around the table to take a constructive approach. We were the first Government in the United Kingdom to commit to lifting the 1 per cent public sector pay cap, and I am proud that we have done that. It recognises that pay restraint of that order is no longer appropriate for public sector workers.

On workload, we will continue to work with the EIS and other teaching unions. In response to Patrick Harvie's question about the AGM, I can confirm that we will, of course, continue to listen to teachers and to work with them as collaboratively as possible. One of the most significant changes that we have made in education over the past year or so is the pupil equity fund, which gives teachers in our classrooms and headteachers control over how that money is spent. The teachers I speak to are incredibly positive about the transformational impact of that in our education system. I have made clear our determination to raise standards and to close the attainment gap. We will work with teachers to do that, but we will continue to take the action that we think is necessary in order to deliver for young people across the country.

National Health Service

4. Willie Rennie (North East Fife) (LD): Delayed discharge numbers are far too high. Mental health waits for young people are up 60 per cent. Consultant vacancies are up 24 per cent. Nursing vacancies are up 27 per cent. The number of nurses who have quit the national health service is 4,300. NHS staff sickness rates are well above the target yet again. Accident and emergency targets have been missed for 10 months in a row. Will the First Minister just admit that her Government is failing patients and NHS staff?

The First Minister (Nicola Sturgeon): Let me take the issue of staffing. The number of staff in post—so, not including vacant posts—in our NHS has gone up by 12,900 since this Government took office. That is a 10 per cent increase. In each of the past six years, more people have joined the NHS than have left it. In the past year alone, there were almost 500 more staff in post in the NHS. The nurse vacancy rate has not increased in the past year; the number of vacant posts has, but that is because there are more posts overall. The nurse vacancy rate in Scotland is less than half of the nurse vacancy rate in England. The consultant vacancy rate has increased under the Scottish National Party by 0.5 percentage points, but the consultant establishment in our NHS has increased by 45 per cent. In the past year, medical agency spend has gone down by 8 per cent and nurse agency spend has gone down 4 per cent.

Yes, there are challenges in our health service, and rightly we talk about them regularly in the chamber. We know the reasons for the challenges, which are not unique to Scotland, and we are increasing funding and the number of people who work in our NHS. We are undertaking reform through integration of health and social care; we are putting more money into primary, community, social care and mental health services; and we will continue to do the hard work

to deliver for patients the length and breadth of the country.

Willie Rennie: So, if we half close our eyes, things are fine. It is time for the First Minister to open her eyes.

The British Medical Association has made the situation clear: it described it as a "lack of substantive progress". The Royal College of Nursing says that there are not enough nurses to provide safe care. The Royal College of Radiologists has said that the radiology situation is now "desperate" and warned of "collapse". Has not the time come for the First Minister to admit the scale of the problem and to replace the Cabinet Secretary for Health and Sport, who cannot control it? For goodness' sake, will the First Minister take the summer to replace her health team, or will Parliament have to do it for her in the autumn?

The First Minister: Listening to Willie Rennie, I can only assume that he bitterly regrets that it was his party, in coalition with the Tories, that kick-started austerity in this country.

Since the SNP took office, numbers of qualified nurses and midwives are up by almost 3,000, consultant numbers are up by 48 per cent and A and E consultant numbers have more than tripled. The number of doctors in training is up by 8 per cent and paramedics are up by 19 per cent.

We are introducing safe staffing legislation, which we are working on with the Royal College of Nursing. In radiology, we have a recruitment campaign under way, to which there has been a positive response. Offers of appointment are already being made in some boards, we have a 100 per cent fill rate at the end of round 1 of recruitment for training places, and we have 10 extra radiology trainees a year.

I do not deny the challenges in our health service—every health service in the United Kingdom, Europe and the world is facing those challenges—but this is a Government that is doing the hard work, in terms of both reform and investment, to meet those challenges. We will continue to get on with that job.

The Presiding Officer: There are still a lot of interesting supplementaries. I encourage members to keep questions a bit shorter than they were earlier.

Abortion and Human Rights (Northern Ireland)

Kezia Dugdale (Lothian) (Lab): In Northern Ireland, some women have received longer jail sentences for having had an abortion than were given to the men who raped them in the first place. *[Kezia Dugdale has corrected this contribution. See end of report.]* This morning, the Supreme Court ruled that Northern Ireland's almost

complete ban on abortion is incompatible with human rights legislation. Does the First Minister intend to raise the issue with Arlene Foster when she visits Scotland later this month? Can I urge her to address the barriers that women face when boarding ferries in Belfast and accessing services here, by introducing a travel bursary for as long as Northern Irish women are denied their basic human rights?

The First Minister (Nicola Sturgeon): I have no plans to meet Arlene Foster when she is in Scotland in July.

With regard to abortion, I am absolutely in support of ensuring that all women have access to safe abortion services. That includes women from Northern Ireland. We have opened up access to abortion services in Scotland for women from Northern Ireland and we will continue to consider how to make those services easier to access. We are doing what I consider to be right.

I hope that we will see a Government up and running in Northern Ireland again as soon as possible. That would, for a host of reasons, be in the interests of the people of Northern Ireland. When that Government is up and running, I hope that one of the things that it will address is the current law on abortion, which is deeply unfair and unjust to women. It was heartening to see the Republic of Ireland vote so overwhelmingly to make positive changes to its law. I hope that for not much longer will we see Northern Ireland being the country in the United Kingdom and the Republic of Ireland that is out of step, not just on abortion but on equal marriage.

HIV Scotland (Funding)

Alex Cole-Hamilton (Edinburgh Western) (LD): HIV is growing in Scotland. A fresh outbreak that began in Glasgow in 2015 continues, and 13 per cent of Scots who are infected with the virus do not know that they have it. Against that backdrop, HIV Scotland has been in the vanguard of raising public awareness, doing research and aligning public policy for the best part of a quarter of a century. However, we learned this week that most of its Government funding, which it has enjoyed for 25 years, will be taken away. Does the First Minister not regard HIV as a problem any more? If she does, will she instruct officials to revisit that decision immediately?

The First Minister (Nicola Sturgeon): The presentation of the issue in the media this morning, which has fed through into the presentation of that question, is somewhat misleading. It is important to set out the background. *[Interruption.]* Alex Cole-Hamilton might welcome some of what I am about to say, if he is prepared to listen to it.

In 2017, there was an open round held for sexual health and blood-borne virus funding, when organisations including HIV Scotland were able to apply for funding. It is important to stress that there was no cut in the amount of money that was available—at £1.9 million, the amount was the same as it had been in previous years. A number of organisations applied for that funding: HIV Scotland was one of them, but unfortunately it was not successful. Decisions were based on advice from an assessment panel that included independent members from NHS Highland, NHS Lothian and the third sector organisation, the Health and Social Care Alliance Scotland.

At that point, the Scottish Government could have done nothing, but that is not what it chose to do. I made sure that officials worked with HIV Scotland, and we have already provided it with transition funding to meet its costs in the first four months of this financial year. We are providing advice to HIV Scotland to help it to develop a new business plan that might open up additional Scottish Government funding, and we are advising it on how to attract funding from alternative sources. The Scottish Government is already working actively with HIV Scotland to try to ensure that it can have a sustainable future, and will continue to do so.

If the Government had interfered in the funding round that I spoke about, that would have meant funding being taken away from organisations that had already been successful in that open application process. In that case, members would, I am sure, have been asking me why the Government had done that. That is the situation, and we will continue to work positively with HIV Scotland.

Import Tariffs

5. Clare Adamson (Motherwell and Wishaw) (SNP): To ask the First Minister what impact the proposed import tariffs on European steel and aluminium by the United States could have on the steel industry in Scotland. (S5F-02432)

The First Minister (Nicola Sturgeon): Scottish steel is a quality product that is exported to many overseas markets including the United States of America. We are extremely disappointed by the imposition of tariffs on steel and aluminium, which is a completely unjustified and unjustifiable decision. Blanket tariffs of 25 per cent on steel exports and 10 per cent on aluminium imports are a seriously retrograde step that will have wider unintended negative impacts across a range of industrial sectors. We have been in contact with the United Kingdom Government since the issue first arose in order to minimise any impact that the ill-conceived tariffs may have on Scotland's steel and aluminium producers.

Clare Adamson: The industry body UK Steel has said:

“It is difficult to see what good can come of these tariffs”

and that

“UK steel producers are going to be hit hard”.

I attended the European Union steel summit in 2016, and the message then was—as it is now—that global overcapacity can be solved only by multilateral discussions through established international channels.

In the face of Brexit uncertainty and the potential trade war that flies in the face of the Brexiteers’ trade optimism, does the First Minister agree that the importance of the European Union and access to the single market are imperatives for the steel industry both in my constituency and in the UK?

The First Minister: The member is right to raise the matter from her constituency perspective. Scottish steel is a quality product, and that includes the specialist heavy plate that is produced by Liberty Steel Dalzell in Lanarkshire. The issue affects parts of the country very seriously.

I agree with Clare Adamson’s comments. It is a cliché—many people say it—but it is still true that nobody wins in trade wars; there are only losers. The decision by the US Administration to impose tariffs on exports from the EU and other countries is completely unjustified. It is also at odds with World Trade Organization rules.

As we have said consistently and will continue to say, the only way to protect our economy in Scotland and in the UK is through continued single market and customs union membership. We still hope that that is the position that the UK Government will eventually adopt, once it stops imploding as it is doing at the moment.

In all seriousness, the situation underlines how utterly ill advised it is for the UK Government to be withdrawing the UK from the single market and customs union and pinning all its hopes on a trade deal with the current US Administration. If it did not know that that was ill advised before, it should certainly know that now.

Clare Haughey (Rutherglen) (SNP): As the First Minister is aware, Clydebridge steel plant is situated in my constituency, so I share the deep concerns of my colleague Clare Adamson. Can the First Minister advise whether the Scottish Government has had any conversations with Liberty, in particular, regarding the effects that such tariffs may have on the future operations and the viability of its Cambuslang site?

The First Minister: Clare Haughey is right to raise her constituency interest in Clydebridge. The Scottish Government has regular discussions with

Liberty Steel. We have an excellent relationship with it, and it is a member of the steel sector round table, which meets regularly. The subject of US tariffs was discussed in detail at the most recent meeting of that group, at the end of March, which was chaired by the Minister for Business, Innovation and Energy and was attended by representatives of Liberty Steel.

My officials had further discussions with Liberty on the issue of tariffs and their impact just this week. We will continue to speak to Liberty Steel and will make representations to the UK Government, raising its concerns.

Budget 2018-19

6. Murdo Fraser (Mid Scotland and Fife) (Con): To ask the First Minister how the Scottish Government’s 2018-19 budget will be affected by the Scottish Fiscal Commission’s downgraded forecasts for tax receipts. (S5F-02430)

The First Minister (Nicola Sturgeon): It will not be. As I thought Murdo Fraser would have been aware, the revised Scottish Fiscal Commission forecast will have no impact whatsoever on the Scottish Government’s budget for 2018-19.

The income tax policy that was agreed by the Parliament in February will raise an additional £219 million this year to support public services, tackle poverty and support our economy. The outturn figures for income tax revenues in 2018-19 will be available in July 2020. At that time, the block grant adjustment will also be recalculated and the appropriate reconciliation applied to the 2021-22 Scottish budget.

Murdo Fraser: The First Minister is correct in saying that there will be no immediate impact on the Scottish Government’s budget from the downgraded forecasts. Nevertheless, if the Scottish Fiscal Commission’s projections turn out to be accurate, tax revenues will be down by £1.7 billion over the next five years from the previously predicted figures, and there will be an estimated gap in the current financial year of nearly £400 million, to be confirmed in 2021. That picture stands in contrast to the position of the public finances UK wide, whereby, thanks to relatively stronger growth, the Chancellor of the Exchequer is currently exceeding his targets for deficit reduction. How does the First Minister explain that disparity in performance?

The First Minister: If Murdo Fraser had read the SFC’s report, he would not need me to explain the GDP situation to him, because that report explains it. Basically, the gap in overall GDP growth in Scotland is down to lower population growth. As the SFC says, when we take that out, Scottish growth is actually much closer to UK growth. Why am I mentioning that? Because what

affects Scottish population growth is UK immigration policy, and it is because that policy is so wrong for Scotland that we need to see changes and more control for this Parliament.

It is important to say—because Murdo Fraser forgot to say this—that the SFC's forecasts show that revenues from devolved taxes, except landfill tax, are increasing each year, and that our 2018-19 income tax changes will raise £1.2 billion to protect public services over the next five years on top of the £800 million that we will receive in additional receipts because we chose not to pass on the Tory tax cut to the richest people in our society. That is £2 billion that, if we had followed Tory policy, would have been lost to our national health service, social care, the police, public services and the economy across Scotland. We will continue to take action to boost our economy, get productivity improving and improve those revenues in the future.

A final word. We have had great news about the Scottish economy, so the Tories will not like this. According to figures from Her Majesty's Revenue and Customs that were released just this morning, goods exports from Scotland are outstripping those from anywhere else in the UK. Why can we not, therefore, have a bit of cheer from the Tories on the Scottish economy?

The Presiding Officer: That concludes First Minister's question time. We will have a short suspension to allow those in the public gallery who wish to leave to do so and to allow our new guests to arrive.

12:46

Meeting suspended.

12:50

On resuming—

Onshore Wind Energy (Community Benefit)

The Deputy Presiding Officer (Linda Fabiani): The next item of business is a members' business debate on motion S5M-12167, in the name of Richard Lochhead, on ensuring appropriate community benefit from onshore wind farm developments. The debate will be concluded without any question being put.

Motion debated,

That the Parliament welcomes the reported growth in renewable energy production in Moray and throughout Scotland; recognises what it sees as the importance of renewable energy for a low-carbon future; considers that renewable energy presents a unique opportunity to use local renewable resources to create regeneration, empowerment and financial benefits for communities; understands that, according to Local Energy Scotland, over £15 million in community benefit has been paid in 2018, up to 9 May, averaging over £5,675 per MW for recent projects; considers that these financial resources empower communities; notes that, although community benefit can be delivered in various forms, the national standard for community benefit from onshore wind farm developments is £5,000 per MW; recognises that some companies deliver or exceed this but many others do not, resulting in a very inconsistent picture across Scotland, and notes the reported concerns of communities at these inconsistencies and issues, such as the need for written agreements and management of funds, including retrospectively, to recognise that the exploitation of natural resources to produce renewable energy must adequately benefit and empower communities.

12:50

Richard Lochhead (Moray) (SNP): I thank colleagues for signing the motion and staying behind for the debate.

Scotland's transformation into a renewables powerhouse has been one of this Government's and this Parliament's biggest success stories. It was tremendous news when ministers recently announced that 2017 had been a record year for renewable electricity and that 68.1 per cent of gross electricity consumption had been met by renewables.

As the most commercially viable technology, onshore wind has led the way and now employs 8,000 people in Scotland. As a result, many communities have found themselves being neighbours to wind farms, which are sometimes controversial but are often widely supported. Community benefit funds have been set up to achieve community buy-in and to provide a share of the benefits from such developments.

Our natural resources belong to us all and, when they are exploited, we should all benefit,

particularly communities that are adjacent to developments. We will all be familiar with groups that have benefited over the years from grants that have made a difference by supporting rural development and good causes. Such funds have allowed communities to invest in local projects that benefit everyone. I was pleased last week to hear from Keith & Dufftown Railway Association in my constituency, which has benefited from local wind farm funds, too.

Following the industry's protocols, the "Scottish Government Good Practice Principles for Community Benefits from Onshore Renewable Energy Developments" was published in 2014, and that policy is now being reviewed. Ministers were quite right to state that

"no one size fits all when it comes to community benefits"

and to promote a national rate for benefits from onshore renewables. That was needed because the success of communities in negotiating community benefits was variable in Scotland, to say the least. Some communities negotiated significant amounts, but others did not. Whether a decent level is secured often depends on a local community's capacity or the presence of strong personalities and community leaders, which is why a national standard was established, along with a voluntary register that is managed by local energy Scotland to help equip communities with the appropriate knowledge to strengthen their arms in negotiations.

Many developers take their obligations to communities seriously, but communities always need to drive a hard bargain. Some developers have managed to get off scot-free or to avoid paying the recommended level of at least £5,000 per megawatt. The landowner might strike gold and the operator might generate significant profits, but the local community can be left with the crumbs off the table or nothing at all. Energy is a multibillion-pound business and all that our communities are asking for is their fair share.

That is why it is a great shame that, to give just one example, the massive French company EDF Energy has found itself in dispute with representatives of communities in my constituency that are affected by the Dorenell wind farm.

The Moray community associations covering Dufftown, Glenlivet and Inveravon, Glenrines and the Cabrach have come together as a group—the united communities impacted by the Dorenell wind farm—to seek the recommended £5,000 per megawatt. EDF told me that it does not believe that it has to deliver the national standard, as the previous owner of the development agreed a lesser amount, which it claims that the community accepted at that time.

However, the local community disputes that, and there is no written agreement in place that anyone can find. EDF is paying £2,000 per megawatt to a fund and argues that when non-monetary benefits are added to that, it rises to £4,000 per megawatt. EDF originally claimed in an email to me in December that the benefits amounted to nearly £5,000, but it is now saying that it is £4,000.

However, the community argues that some of the non-monetary benefits that are part of that calculation were linked to planning conditions; and it is worth noting that they include the refurbishment of properties owned by the landowner, London-based Christopher Moran, who—I might add—has often been criticised for not investing in those properties at his own expense to help attract people to live and work in the Cabrach. So, it is a win-win for the landowner because he gets rent from EDF for the land that he is told happens to be in a windy area and, according to the Scottish Parliament information centre, the annual accounts for Glenfiddich Wind Ltd showed annual profits amounting to nearly £43 million between 2015 and 2017 alone, and Christopher Moran Energy Ltd, which I think is a subsidiary, shows a handsome profit, too. The landowner probably cannot believe his luck in getting his properties refurbished at someone else's expense, which is then classed as a community benefit.

It has to be said that onshore energy is a licence to print money for many landowners in Scotland. In today's world, money makes money, but local communities deserve to have their share guaranteed as well. There are clearly many variables at play in estimating EDF's income from Dorenell over a timeframe as long as the next 25 years, but I have seen estimates of anywhere between £1 billion and £1.5 billion. We do not know what the figure will be but, whatever it is, it is safe to say that EDF and the landowner will make significant profits. Can anyone wonder why the local community feels that it is getting a poor deal? Can anyone wonder why, to quote ministers' aspirations, in some parts of Scotland the

"creation and strengthening of mutual trust and relationships"

that

"should be regarded as integral to the overall process"

is severely lacking?

I am not saying that private companies that carry the risk, invest millions and make projects happen should not make a good profit; I am not saying that all benefits need to be monetary; and I am not saying that the wider benefits for the Scottish supply chain are not very important. EDF tells me that it has spent £40 million in the Scottish

supply chain, which is of course extremely welcome for the Scottish economy. However, we need more consistency across Scotland in terms of community benefit, which should be on a statutory footing, transparent and retrospective for projects that received Government subsidies, and communities deserve a greater share of the benefits.

My key ask is that ministers work with the sector to ensure that all developers deliver the national recommended standard. The Scottish Government has made great progress in promoting community benefit. Local energy Scotland's website says that communities have benefited from nearly £15 million in the past year. However, there is still some way to go, because the same website says that the average payment is £3,454, excluding community projects, and I understand that 50 projects—that is about 26 per cent—are not paying any community benefit or the available data on them is incomplete.

It is a better story for community-owned projects and I am delighted that there are now 40 such projects in Scotland. I have long supported a nationally owned energy company to have joint ventures with private companies and to work with communities as well.

Until we sort this situation out and have the national standard adhered to and full transparency, Scotland's communities will continue to lose out on millions of pounds a year that could be put to good use in these difficult times. That is especially the case for rural communities that, ironically, pay more for their electricity and suffer higher rates of fuel poverty. I urge the minister to intervene to deliver the national standards and to seek the necessary powers from the United Kingdom Government and ministers to regulate community benefit and ensure the transparency that is required and that our communities enjoy a fair share of revenues from the renewables revolution.

12:59

Alexander Burnett (Aberdeenshire West) (Con): I thank Richard Lochhead for bringing this topic to a members' business debate and I note my entry in the register of interests around the renewable energy sector.

As the motion notes, it is great to see that renewable energy production is up and that communities across Scotland are benefiting from it. As members will know, the Scottish Conservatives support onshore wind where it is appropriate and when local communities support and want it. We therefore believe that it was correct that the onshore wind subsidy existed to kick-start projects across Scotland, but we feel

that it is appropriate to remove that subsidy now that projects can be funded on their own. Onshore wind farming can bring real opportunities for local communities, with new playing fields, village halls and more. The communities that benefit exist in all our constituencies, including my own.

My wife sits on our local primary school's parent teacher association board, which is currently submitting an application to get funding for a trim trail. I am not sure whether that counts as a registrable interest, but it should certainly count as a plug for the PTA's application.

Mid Hill Wind Ltd, which is based in Fetteresso Forest, set up a community benefit fund as part of its continuing commitments to communities in the vicinity of its wind farm. The purpose of the fund is to enable communities to carry out improvements to their local area in any sphere, including the environment, local amenity or tourism. Each year, it gives approximately £5,750 to the Crathes, Drumoak and Durris community council, which in turn administers its disbursement to the community.

Another example in the constituency of a wind farm successfully supporting the community is the Huntly and District Development Trust. Set up in 2009, it is a community-owned company and can make £65,000 a year from its wind turbines. The income goes towards social projects, which vary from running car clubs to tackling mental health issues and building new footpaths.

Although those are not large companies, lessons can be learned from organisations such as the Huntly and District Development Trust. It is important that, if a community chooses to, it can share in the benefits of the onshore wind industry and be empowered by having the choice of investing in what matters most to it, whether that is a new sports field, a community hall or a trim trail.

Neil Findlay (Lothian) (Lab): Does Alexander Burnett agree that it would be better if communities had a stake in the ownership of such projects so that, rather than getting the crumbs from the table, they got a bigger bit of the cake?

Alexander Burnett: That was the point that I just made about the Huntly and District Development Trust, which has a considerably larger stake in its project and makes £65,000 a year. That kind of model is certainly possible and, I am sure, desirable for many communities.

We continue to believe that the Scottish Government should not overturn wind farm decisions, especially if communities are against a development being in their area. However, we encourage the Scottish Government to ensure that consistent levels of community benefit are paid out across Scotland. As Richard Lochhead notes in his motion, some companies are delivering £5,000

per megawatt to the local area, but the picture is inconsistent, with some delivering well above or well below that average. Therefore, the Scottish Government should carry out a study with a view to introducing minimum funding per megawatt for community benefit to create some consistency in the framework, although that should be caveated with the consideration of community impact. A low-carbon future is important to us all, but we must ensure that communities benefit fairly, too.

13:02

Graeme Dey (Angus South) (SNP): I congratulate my colleague Richard Lochhead on securing the debate on a topic that impacts on a sizeable number of communities throughout Scotland. As the motion rightly highlights, because of our energy needs and owing to climate change, we need to embrace renewables. As we have heard, Scotland has a good track record in that regard. Developments must, of course, be in the right places and local communities should, in turn, benefit financially from them. Therefore, I note with concern the situation at Dorenell that Richard Lochhead highlighted and suggestions that community benefit over the 25-year lifespan of the project could amount to £11 million rather than £27.5 million.

It might surprise members to learn that there is only one wind farm in my constituency. It is at Ark Hill and is operated by Green Cat Renewables. The Glamis and Area Community Trust exists to distribute the funds from the Ark Hill wind farm windfall revenue scheme, which was set up voluntarily by Green Cat, as the Ark Hill site was granted planning consent before the time when it became the norm for such benefit to be derived locally. Applications are invited from within the boundaries of the Glamis community council area, and the trust seeks to support projects that promote citizenship and community benefit; the arts, culture, heritage or science; the provision of recreational facilities; and environmental protection or improvement.

An annual contribution is made to the trust and a number of projects within the local area have been supported by that funding. They have included a grant to the Glen Ogilvie residents association for two defibrillators and to Charleston Village Hall for a wheelchair access ramp. The trust has also grant aided the Saddle Up! Ranch, which has a project to improve horse-riding facilities at Glamis for the disabled and recovering persons. Those projects are worthy of support.

We need to be mindful, however, that companies should not be too restrictive when they draw up the terms of their community benefit schemes. I do not say that in relation to Ark Hill.

The western part of my constituency runs along the border between the areas of Angus Council and Perth and Kinross Council. As I said, there is only one wind farm in my constituency, but Drumderg wind farm, which is only a couple of kilometres from the Angus boundary, is both seen and heard from properties in Glenisla and Kilry. Despite it being so close, however, no community benefit is provided to my constituents there. I am told that Alyth in Perth and Kinross has had significant benefits from Drumderg, yet people who live there can neither see nor hear it. That has rightly caused some consternation among my constituents in the locality and I contend that the matter requires attention.

Given that onshore wind farms are largely located in rural areas, the potential funding for local projects will become even more important due to the uncertainty surrounding the future of the LEADER scheme after Brexit. As I highlighted in a members' business debate a few months ago, LEADER has been a lifeline for many projects in Angus South.

However, even if we set aside the concerns over what Brexit will mean, the LEADER funding that is available in Angus is fast running out, partly through Angus Council and its arm's-length leisure and culture organisation Angus Alive having been awarded funding—wrongly, in my view. I accept that the rules allow for that, and the provision of, for example, mobile library services to those in rural areas is important, but should public bodies really be able to access such funding to the detriment of community groups and small local businesses? I believe that community groups and small businesses that seek to develop and help their local areas should be at the front of any funding queue. As LEADER cash runs out, with no certainty over future replacements, moneys that are derived from wind farms in the form of community benefit will become critical.

I thank Richard Lochhead again for highlighting the topic and bringing it to the chamber for debate. I endorse his motion and support his call for the national standard for community benefit to be placed on a statutory footing.

13:06

Neil Findlay (Lothian) (Lab): I, too, thank Richard Lochhead for bringing the subject to the chamber and for his excellent speech, in which he summarised the issues that are at stake. I raised the issue in one of my first members' business debates when I came to Parliament, so I am delighted that, seven years later, other people are catching up. I say that with tongue in cheek, of course.

I apologise to you, Presiding Officer, that I will have to leave after my speech in order to prepare for the policing statement.

I was interested to hear Graeme Dey say that he has one wind farm in his constituency. I have seven or eight, with well over 100 turbines within three or four miles of my house. Wind energy and the onshore sector is one of the biggest missed opportunities for decades. This natural resource that should be providing years of clean energy and finance for a host of communities has instead become a Klondike for speculators. Organisations submit planning applications and take their chance, often in the hope that the Government will call the applications in if they are rejected by local authorities. Many of those organisations are driven not by environmental concerns but by hard cash and would just as readily invest in coffee beans, widgets or whatever as long as they provided the same returns. I am not generalising about all of them, but that is true of a number of them.

In my area and across many parts of Scotland, the development of wind farms is dominated by multinational companies and venture capital firms that see Scotland's wind as just the latest commodity, and they will do whatever it takes, including trampling over local communities' concerns, to take advantage of the significant profits that are available to them. Those companies often set up a local company as a front for their project. They will call it "Fluffy Animals Renewables" or "Nice Green Forest Renewables". They get their planning application and then the mask is suddenly whipped away and we see who is really behind the project.

For miles all round my home, I see turbines turning and another bunch of £10 notes fluttering off to Danish, Dutch, Austrian, French and Spanish bank accounts and boardrooms. Community benefit schemes exist, but the sums involved are a drop in the ocean compared with the cash that is being generated by the big companies that dominate the scene.

A robust community benefits strategy could result in significant cash, as well as the energy being generated, for communities and local services. Public bodies should own and develop onshore wind. Local authorities or the Forestry Commission could be doing it. Scottish Water and others could be doing it to generate money to go back into services, but that is not happening. We are seeing a few crumbs from the table going into communities in an attempt to buy them off.

Before entering Parliament, I led a group of negotiators from West Lothian Council that was negotiating a deal on behalf of a community development trust in my then council ward. That deal was with Scottish Power, which is now Iberdrola. We struck a decent, six-figure deal in

circumstances in which we had very little guidance or information to draw on because we were in the very early days of community benefit. In the final round of negotiations, having taken them through about six stages, the owners withdrew the ownership option. We wanted ownership, not crumbs from the table; however, ownership was withdrawn at the last minute and the council was compensated with additional cash.

Ownership is key. Communities should have ownership so that they have a real stake in the assets and they can generate significant money, not crumbs. That money could be invested by community development trusts, for example, in local housing projects, local youth facilities, environmental projects and the rest. It should not be substitute funding. I fear that Graeme Dey's example of mobile libraries is substitute funding. Libraries are a local authority function, and it should not be for the money that I am talking about to fill the gap.

I am about to finish, Presiding Officer.

If communities were in control and were in a genuine partnership, there would be less resistance to wind energy projects.

The Deputy Presiding Officer: Mr Findlay believes that if he does not draw breath, I will not be able to get in to tell him to hurry up.

13:12

Mark Ruskell (Mid Scotland and Fife (Green)): I join members in thanking Richard Lochhead for securing this debate on onshore wind.

We have seen significant growth in onshore wind over the past 15 years, and we have probably seen some missed opportunities, too. Some credit is due to the Scottish Government, particularly as it was elected in 2007 on a manifesto that promised a moratorium on onshore wind. Despite that, we have seen some sensible decisions from Government and councils, and the right projects have appeared in the right places in Scotland, by and large. I hope that we can now look forward to the extension and repowering of projects by taking down the older turbines from 10 to 15 years ago and putting in place more efficient turbines that can produce more power while reducing the footprint of wind farms on the landscape.

There are opportunities through the new repowering initiative, particularly if we take a landscape-scale approach and start to embed more community benefits. Some of the early negotiations that many members have talked about included either no commitment to community benefit or a commitment to some,

perhaps at £1,000 per megawatt. We now have the opportunity to renegotiate those deals and ensure that communities get a much more significant amount of the benefit.

It is important to recognise that financial benefits are not compensation; they mean the communities that host the wind farms sharing the financial benefits. They might be crumbs off the table, but they are not compensation. If we class community financial benefits as compensation, the logical conclusion is that that becomes a material consideration in the planning system, which could create an unhelpful precedent, particularly if it were extended to fracking. Planning decisions should be made on the basis of not the size of the financial benefits that are being offered but the merits of the development and whether it is the right development in the right place.

The elephant in the room in today's debate is land reform. The best way for communities to share in the rewards of these projects is for them to own the land. If they cannot get ownership of the land, they should at least be able to take a financial stake in a project through a joint venture. That would ensure that they did not just get the crumbs off the table but got the cake and probably the bakery.

The fantastic growth in wind power that we saw in Denmark in the 1990s was driven by landowning farmer co-operatives coming together to develop wind power in their communities and making a huge contribution. We have seen impressive growth in Scotland but, by and large, it has come from estates working with large corporations.

For example, in my area, Moray Estates is the big landowner—it probably owns most of Richard Lochhead's constituency as well—and it worked with corporations to develop Braes of Doune wind farm early on. Since 2006, ownership of that wind farm has been passed around, and the original level of community benefit, which was £1,000 per megawatt, has never gone up but has remained the same. Although wind the farm has made a significant contribution to the community—worth about £72,000 per year—that money is not transformative. It buys play equipment and kit for the playgroup, but it does not allow the playgroup to buy its own building, which it desperately needs to do.

We need transformative opportunities, an example of which we can see by looking across the Forth Valley. Earlsburn wind farm was an early joint venture in which the community bought into a project. By the time that it has paid off its share, it will be earning about £400,000 every year.

My last point is about how we can unlock capacity in the future. At the moment, dozens of

megawatts of onshore wind power is stuck in the system because it cannot find a route to market. I say to Alexander Burnett that the Westminster Government needs to realise that the onshore wind farm is the cheapest source of renewable energy. We must allow onshore wind to compete on price in contracts for difference. Allowing it to compete for subsidy-free market support will see more appropriate development coming through, and only by doing that will we start to unlock future community benefit. Communities will need a greater stake in that: they will need land ownership and project ownership as well. If we just collapse the industry and do not allow growth, we will not see opportunities emerging.

13:16

Kenneth Gibson (Cunninghame North) (SNP): I congratulate Richard Lochhead on securing today's debate and on giving members the opportunity to discuss an aspect of Scotland's role in renewable energy production that is rarely at the forefront of discussions on our low-carbon future.

Scotland is already a world leader in renewable energy, helping to reduce greenhouse gas emissions and ensuring that we benefit from the creation of green jobs. Scottish Renewables estimates that 8,000 people are directly employed in the onshore wind sector.

Some benefits of wind farms are less obvious. For example, farmers and other local landowners receive rent for turbines that are erected on often fairly unproductive land, thereby repurposing it to provide a sustainable income. Much of that money will then be spent locally, further reinforcing the wind farm's enduring legacy of investment.

The benefits of wind farms in Scotland do not end there. Beyond creating sustainable employment and clean energy, wind power also generates opportunities for local regeneration and community empowerment. However, more can and should be done by actively encouraging community ownership of turbines whenever and wherever possible so that more people and communities can benefit from having them in their areas.

In Cunninghame North, many local initiatives have benefited from the release of wind farm community funds. Since it became operational in June 2006, Dalry community wind farm has generated enough electricity per annum to power approximately 11,800 homes, thereby displacing around 20,300 tonnes of carbon. In addition, the wind farm provides annual community benefit funding equivalent to £2,500 per megawatt of its installed capacity, which totals £45,000 per annum. By the time that the wind farm's 25-year

operational period comes to an end, the local community will have benefited by more than £1.13 million. Of course, if the recommended amount of £5,000 per megawatt were to be spent, the community benefit would be £2.26 million. In my constituency, Kelburn wind farm community fund provides financial support to Largs, Fairlie and Cumbrae, with a focus on projects that deliver social sustainability and environmental and energy efficiency. Its board publishes annual reports on the value of grants made, the community groups that benefit and the nature of its projects, and such information is freely available.

Other renewable sectors should also bring community benefits. At SSE'S Hunterston national offshore wind turbine test site, £238,000 has been invested in its community fund since it began in 2013, with grants having been made to 102 local projects. In Fairlie alone, those grants ranged from £3,000 to help the primary school parent council to fund a children's adventure trail to £2,340 to support organic growers and £6,000 to help the bowling club to refurbish its car park.

Not all areas of Scotland are suitable for wind farms—for example, national and regional parks and other areas of outstanding natural beauty. Nevertheless, Richard Lochhead's motion raises the important point that community benefit is spread unevenly across Scotland and, as Graeme Dey and others have touched on, communities often do not see it in their localities.

In 2014, a North Ayrshire Council report revealed that communities receive only 20 per cent of the £5,000 that the Scottish Government recommends that developers invest per megawatt, with the maximum benefit paid by any wind turbine development being just £1,570 per megawatt. Also, the ad hoc nature of contributions does not optimise resources for community projects. New onshore wind farms will not have access to UK Government subsidies, and the Scottish Government will not be able to oblige payment of community benefits or determine how funds are spent.

Although developers are encouraged to follow the good practice principles that were set out in 2014, some communities and campaigners have called for more transparency and accountability around how funds are spent. Unease over the transparency and auditing of the actual developer contributions breeds hostility and mistrust of energy companies and may increase reluctance among residents to support future developments. If a local community has questions about significant discrepancies between the reported community spend and the stated benefit per megawatt installed, it should be able to receive clarification and hold developers to account.

I look forward to the report of the steering group that is reviewing the good practice principles and the outcome of the formal consultation that is to be undertaken this year. It is right that communities and industry stakeholders shape the process, and it is vital that funds for community benefit are distributed fairly and prudently. I support the call from Scottish Renewables for a flexible and holistic approach to community benefit packages and re-emphasise the need for more transparency and accountability in the sector.

13:21

Maurice Golden (West Scotland) (Con): We all understand how onshore wind has been used to deliver environmental benefits by helping to replace fossil fuels, to the point at which it accounted for two thirds of our renewable electricity generation in the last quarter of 2017. However, coupled with the environmental benefits is the potential for huge economic gains, particularly at a local level. We can already see that enviroeconomic success in action. UK emissions are down by two thirds since 1990, while the British economy has increased by a third. In Scotland, emissions are down by over 40 per cent since 1990 and renewables, particularly onshore wind, have provided significant economic benefits for our communities.

For example, the motion notes how communities have already received millions of pounds from onshore wind projects in this year alone. In addition, almost half of all British onshore wind jobs are in Scotland. That is thousands of high-quality jobs that will positively impact communities through increased spending and tax revenues. Scotland-wide, we benefited from £1.5 billion in revenues from onshore wind in 2015, and it is estimated that, over its lifetime, every turbine is worth more than £0.5 million to the Scottish economy and over £100,000 to local economies. That is capitalism and environmentalism working hand in hand to protect our environment, create jobs and boost our economy.

Mark Ruskell: On that basis, does the member believe that there should be more onshore wind farms in Scotland and, if so, where should they be?

Maurice Golden: There certainly should be onshore wind farms where communities support them. There is a compelling case that, where local communities are advocating onshore wind, we should allow them to receive the benefit that it undoubtedly provides.

Overall, as good as the numbers are, they are in some ways divorced from the practical day-to-day needs of people who are asking where their share of the renewables boom is. It is a fair question,

because not every community can easily access the rewards. Some communities, such as high-density urban areas like Paisley, cannot easily accommodate wind farms and must settle for indirect benefits or rely on others to share the proceeds of their projects. Alternatively, communities might find themselves competing against one another or facing requirements to access funds, as is the case with the East Renfrewshire renewable energy fund, which is an important and welcome funding source but one over which individual communities do not have full control. Furthermore, cash payments are not the only socioeconomic benefit. For example, having a say in how projects are run might be of greater importance to particular areas.

I recently raised that matter with the Minister for Business, Innovation and Energy and I was encouraged to find that he recognised its importance. Ensuring that everyone can benefit is key to maintaining wide support for further carbon reduction. Current support for renewables is overwhelmingly strong. It was 79 per cent in a recent UK Government survey, but we risk squandering that good will if only some people reap the rewards while others bear the costs.

It is for those reasons that the Scottish Conservatives are calling for the introduction of a renewable energy bond—an opportunity to ensure that the rewards of our renewable future are distributed more evenly by pooling and sharing ownership. Just as we want every individual to feel that they have a stake in the success of the country, so too do we want communities to have that same aspiration: something to work towards, invest in and empower themselves through. The task for us all is to make sure that that actually happens.

The Deputy Presiding Officer: Mr Macdonald will be the last contributor in the open debate. If we are going to allow the minister to respond at all, we will have to extend the debate slightly. I am minded to accept from Richard Lochhead a motion without notice under rule 8.14.3 to extend the debate by up to 30 minutes.

Motion moved,

That, under Rule 8.14.3, the debate be extended by up to 30 minutes.—[Richard Lochhead]

Motion agreed to.

The Deputy Presiding Officer: I am pleased that we want to hear from the minister.

13:26

Lewis Macdonald (North East Scotland) (Lab): I thank Richard Lochhead for raising the debate on an issue that was topical when I was

the minister responsible for consenting wind farms some 15 years ago and is still topical today.

As Neil Findlay said, the most direct community benefit, now as then, comes from community ownership, and Udney in Aberdeenshire provides a very good example. Udney Community Trust Company owns the local wind turbine, supplies electricity to local homes and business and uses the proceeds to support local development and good causes. I have seen for myself the buy-in of local people, from the farmer who owns the site to the volunteers who get together to decide where best to spend the revenue that has been generated in order to benefit their local area.

I am also familiar with plans for a community enterprise on a larger scale, in the Isle of Lewis, where the Stornoway Trust was one of Scotland's first community landowners as long ago as the 1920s. The trust is the landlord of crofts and common grazings across the parish of Stornoway, and is now working on the Stornoway wind farm project, which is one of several consented major wind projects in Lewis—in its case, in partnership with EDF.

We have seen the vital role that renewable energy can play in community land buyouts—to which Mark Ruskell referred—from the hydro scheme on the river Don in Aberdeen to single wind turbines in islands like Gigha and Eigg. If having a share in ownership brings the most direct benefits to communities, then the interconnector to take power from Lewis to the mainland will be an enabler of community benefits. It must be built with enough capacity to take power from projects that already have consent—such as Stornoway—and to stimulate community-led projects across the islands by allowing them to sell their surplus power to the grid as well.

Not every community enterprise can have ambitions on the scale of the Stornoway Trust, and that is where local authorities can also be vital enablers. Aberdeen renewable energy group was set up by the city council and helped to attract European Union funding, and now the Swedish energy company Vattenfall has built on that work by deploying the world's largest wind turbines in Aberdeen bay. They are due to be commissioned later this month and I was delighted to be able to visit Scotland's newest wind farm just a few days ago. It is truly a scheme of scale, and it comes with community benefits to match.

This week, Vattenfall announced a £3 million scheme involving investment of £150,000 a year for the next 20 years. Ten per cent of that will be ring fenced for communities nearest the point where the power comes ashore at Blackdog, while the rest will be open to bids from communities right across Aberdeen and Aberdeenshire. Projects will have to demonstrate both community

benefit and environmental sustainability, but there is clearly great potential there.

It seems to me that, in different ways, all of those wind projects point in the right direction. Wind energy generation at farm scale and at community-owned small scale bring benefits to the whole of rural Scotland, as in the examples of Udhay and others mentioned today.

Scotland's islands—Orkney and Shetland as well as the Hebrides—offer a whole new platform for both wind and marine renewables, with community enterprise as one partner, as in the Isle of Lewis. However, they need the right connections in order to succeed, and I hope that the minister will agree with that, and that the Western Isles need a 600MW connection if they are to maximise the economic benefits from wind for communities there.

Aberdeen has been the oil capital of Europe for forty years, and is now developing renewable energy on a European scale, with millions of pounds in benefits for local communities. We want more projects such as these, and they need to have community benefit and support, adequate infrastructure, and political backing. We want a diversity of co-operative and community enterprise and an active role for local councils too. I hope that that is the positive message that we will send from this debate.

The Deputy Presiding Officer: I call Paul Wheelhouse to respond to the debate—you have around seven minutes, minister.

13:30

The Minister for Business, Innovation and Energy (Paul Wheelhouse): Thank you, Presiding Officer. I was worried that you were going to say that I would have to use the half hour by which the debate had been extended.

I thank Richard Lochhead, as others have done, for securing a debate on a very important issue. I am aware that over the years he has taken a keen interest in the issue and is active on it locally in his Moray constituency. Indeed, Mr Lochhead has corresponded with me on the matter a number of times. Colleagues across the chamber will not be surprised to hear that it is also an issue in which I take a particularly strong interest. I will say more about that shortly.

I am pleased that the motion gained cross-party support. That is important—it demonstrates that we broadly share a common view that communities near onshore wind developments, or any renewable energy project, should have the opportunity to share in the rewards from their local energy resource.

Before I respond to members' contributions, I would like to set out what this Government has done, what it is doing, and our plans for the future. It is important to emphasise that due to reservation of powers in the Scotland Act 1998, the Scottish Government has no direct powers to oblige developers to pay community benefits or to determine how funds are spent. In the absence of clear powers, we have focused on developing a coherent and ambitious energy strategy for Scotland, and on driving new standards of good practice in community engagement and community benefit. The latter, in particular—the subject of today's debate—has been effective in helping to transform industry practice in recent years, and has brought transparency and openness into a system that I know some people have viewed as being secretive and divisive. We may not be entirely there yet, but I hope that members will acknowledge that progress has been made.

It is important to stress that community benefit payments remain a valuable source of income for communities. Graeme Dey made that point in the context of decreasing LEADER funding in his area. Community benefit payments support a wide variety of projects, including health and wellbeing activities, training and student support, and employment opportunities. Other examples have been given today by members from across the chamber.

If we focus only on projects that are not wholly community owned, we see that in the past 12 months almost £15 million—about £3,400 per megawatt of installed capacity—has been given to communities that have direct links to renewable energy projects through hosting commercial development. Such projects can make a real difference to communities, and in many cases can be transformational.

The payments typically continue to be made each year of a project's lifetime. For example, last year, social housing providers including Berwickshire Housing Association in my home area of the Scottish Borders and, more recently, Fyne Homes in Argyll have developed projects that will invest in new social housing while paying the community benefits to the host communities, in line with our good practice principles. I understand that in the case of BHA, its three-turbine Fishermen Three wind farm at Cockburnspath will generate £20 million in new revenue for BHA to help to fund an additional 500 affordable homes over the 25-year lifetime of the site, while also meeting good practice principles on community benefit.

The publication in 2014 of our "Scottish Government Good Practice Principles for Community Benefits from Onshore Renewable

Energy Developments” has been crucial to our success and it has provided a benchmark for the sector. It has fairly quickly become an invaluable tool, particularly for communities that have little or no experience—a point that Neil Findlay and other members made. The Welsh and UK Governments have also adopted the document for their own use.

Scotland is very much leading the way across the UK in how we deliver renewable energy projects, and in ensuring that communities are front and centre. I welcome the fact that, on the whole, developers and communities have adopted the good practice principles, which has helped to increase trust and credibility.

Richard Lochhead: In light of the fact that no wind farms in my constituency pay anywhere near the national standard, and that solar farms are now being built in my constituency—ironically by a company called Elgin Energy that I think is based outside Scotland—can the minister confirm that the principles and guidance apply to all onshore renewables, and not just to onshore wind, and that solar farms and other forms of renewable energy should therefore also be paying towards community benefits?

Paul Wheelhouse: That is certainly the intention. We started, as I think Mr Lochhead knows, by looking at projects that took place on Government land—principally Forestry Commission Scotland land—and seeking to ensure that good practice was maintained in terms of payments per megawatt of installed capacity. However, I acknowledge the point that Mr Lochhead has made. With regard to the recent consent for the solar farm to which Mr Lochhead referred, unfortunately, community benefit is not part of material consideration in planning applications.

The relationship between the developers and the local community is critical to ensuring a positive experience and outcome for all parties. I acknowledge that there have been examples of developers not adopting the good practice principles, and examples of relationships between developers and communities breaking down. I am aware of a number examples in which that has happened at the point of sale of a farm, not the least of which is the example that Mr Lochhead has given. We want to look at such issues in the context of the review that has been mentioned.

I am also aware that we need to work hard to explain that sites that were developed prior to 2016 do not benefit from the policy that is now in place. The policy has kicked in from 2016, with developers now taking on board the good practice principles. I am glad to say that the vast majority of projects that we have encountered since 2016 follow the good practice guidance, although some do not, which is disappointing.

Looking to the future, I want to ensure that the next generation of onshore renewables, including onshore wind, continues to have positive and valuable relationships with local communities. However, we must also accept that there has been a profound change in the support mechanism, to which Mark Ruskell referred, and that investment conditions are more challenging, particularly for new onshore wind projects. Changes to UK Government policy over the past few years have resulted in greater uncertainty around funding a route to market. That has been highly frustrating, to put it mildly, so we continue to argue constructively that the UK Government should rethink that position and develop a price stabilisation mechanism to provide a route to market for the sector. As Mark Ruskell said, that could be done through the contract for difference auction pot, which does not require subsidy and would allow onshore wind to compete to provide electricity at low prices.

I stress that I continue to expect developers to offer meaningful community benefits. Richard Lochhead summed that up, and others including Lewis Macdonald referred to community-owned projects. There are, in effect, three key players in the negotiations: the landowner—sometimes the land is owned by the community—the developer, and the community that surrounds the site. A fair result for all three parties is needed. Sometimes, the community is the landowner and is in the immediately affected area, which means that we can maximise the benefits through community ownership.

However, in developer-led projects there needs to be balance and fair allocation of benefits to all three parties. Community benefits should continue to be an integral part of all new projects, although we recognise that such projects might be packaged in different ways—for example, there might be more shared ownership, to which members have referred.

Last December, I published “Scotland’s Energy Strategy: The Future of Energy in Scotland” and an accompanying detailed onshore wind policy statement, which included a commitment to review our good practice principles during 2018. As I have mentioned in correspondence to Mr Lochhead, the time is right to undertake that review. I am pleased to say that it is not my intention to make wholesale changes, but instead to enhance and amend some aspects in order to reflect better the lessons that have been learned, and current and future investment conditions. That process has started.

Lewis Macdonald: Will the minister take an intervention?

Paul Wheelhouse: Do I have time, Presiding Officer?

The Deputy Presiding Officer: Oh, why not?

Lewis Macdonald: Does the minister agree that, in order to fulfil the potential of Scotland's islands in terms of energy production and community benefit, there needs to be adequate interconnection between the islands and the Scottish mainland?

Paul Wheelhouse: I wholly endorse Lewis Macdonald's view. We have put forward a strong argument in the consultation on remote island wind, and we are thankful that we were successful in that technology being included in the forthcoming contract for difference pots. We maintain that it is essential that all three islands authority areas have the required island connections.

The process has started: we have established a steering group, as members have said. The membership of the group includes representatives of developers and, importantly, communities that will oversee the process. I thank them all for their participation. To date, the group has met twice. It has been reviewing feedback from a number of stakeholder workshops that have been held, and more workshops are planned for later this month. A formal consultation on any proposed changes to the good practice guidance is planned for later this year or early next year.

I will finish by referring to points that have been made by members. In terms of our planning aspirations, we have a target that, by 2020, at least half of newly consented renewable energy will have an element of shared ownership. Shared ownership will play a key part in helping us to meet our target of 1GW of community and locally owned energy being produced by 2020 and 2GW by 2030. I am pleased to say that, by June 2017—we are due to receive updated figures in the near future—666MW of such energy had been produced, so we are making good progress towards the targets.

Mention has been made of renewable energy bonds, which we raised in the context of our energy strategy. I acknowledge Maurice Golden's interest in that area. He mentioned the high degree of public support for renewables, which stands at 79 per cent, according to a survey that was commissioned by the UK Government. As he knows, there is in Scotland an even higher level of public support for renewables. Community benefit has played a large part in creating a more positive attitude to onshore wind development in our country.

Over the years, we have transformed our approach to community benefit. We are making the whole process more transparent by publishing national guidance. We argue that that has been to the benefit of the industry as well as of local

communities, because although community benefit is not a material planning consideration, it has helped to build higher levels of community support for such projects.

However, the time is now right, as we embark on a new chapter for onshore renewable energy, to take stock and to ensure that our good practice principles remain fit for purpose. In the debate, a number of issues have been raised that I am happy to ask the steering group to consider in the course of its deliberations.

I reiterate that I am committed to ensuring that Scotland's communities continue to benefit from local renewable energy projects and that they derive a fair share of the benefits from the projects, so we will work with all interested parties to make that happen.

13:41

Meeting suspended.

14:30

On resuming—

Miners' Strike (Impact of Policing on Communities)

The Deputy Presiding Officer (Christine Grahame): The next item of business is a statement by Michael Matheson on the impact of policing on communities during the miners' strike. The cabinet secretary will take questions at the end of his statement, so there should be no interventions or interruptions.

The Cabinet Secretary for Justice (Michael Matheson): I am pleased to come to Parliament to address members about the Government's plans to initiate an independent review of the impact of policing on affected communities in Scotland during the miners' strike.

Last September, in answer to an oral parliamentary question, I advised that the Scottish Government was addressing various issues around proposals for a review of policing of the miners' strike of 1984-85. I committed to announcing my decision in due course. I know that this statement has been keenly awaited by interested parties, not least individuals and communities from our mining heartlands, and I thank them for their patience. I am also grateful for their role in getting to this point today.

It is generally understood that the 1980s represented an extremely turbulent and difficult time for many communities throughout Scotland, particularly mining communities. I know from the conversations that I have had that, although more than three decades have passed since the main miners' dispute, the scars from the experience still run deep. In some areas of the country that were most heavily impacted, the sense of having been hurt and wronged remains corrosive and alienating. That is true of many who were caught up in the dispute and its aftermath: those employed in the mining industry at the time, of course, but also their wider families and communities. The miners' strike was also a difficult period for the police, with many individual officers finding themselves in extremely challenging situations, and police and community relationships coming under unprecedented strain. Although things have moved on considerably in the decades that have followed, the question of how best to learn from this period remains. How best can we aid understanding, reconciliation and inclusion?

One approach is the "let sleeping dogs lie" approach; in other words, to do nothing. That is, some might say, the approach that has been adopted by various Governments in the past, but if the hope had been that the sense of injustice and division would heal naturally, without intervention,

it seems to have been misplaced. Ignoring the issue does not make it go away.

I understand, therefore, the great disappointment that arose in October 2016 when the then Home Secretary, Amber Rudd, announced that the United Kingdom Government was ruling out an inquiry into events at the Orgreave coking plant in South Yorkshire—the battle of Orgreave, as it became known, which was one of the most notorious flashpoints in the miners' strike. I made it clear at the time that I thought that that was the wrong decision, not least because it seems clear that key elements that were in the mix and that needed to be understood were the attitudes and perhaps actions of the then UK Government.

An alternative to the do nothing approach that was put to me strongly by campaigners is to honestly address some of the key issues through a focused investigation specifically into the policing of the miners' strike in Scotland. When I met campaigners—including Neil Findlay, whose commitment to this matter I readily acknowledge—I agreed to explore that option as sympathetically as possible, within the constraints placed on ministers in this Parliament by the devolution settlement.

A key issue is what kind of review is possible and, crucially, what value would it add, given where we are today. It is important to recognise, for example, that there is already effective provision available for anyone who considers that they have experienced a miscarriage of justice in terms of a criminal conviction. The Scottish criminal justice system has established procedures to deal with alleged miscarriages of justice and, as I made clear to the campaigners, the Scottish Criminal Cases Review Commission is the appropriate route if anyone believes they have suffered in that particular way.

However, wrongful conviction is just one form of injustice. The question is how we might better address wider but equally distressing forms. That has come home to me in my dealings with campaigners. I have been struck, as I said, by the continuing deep feeling and sense of injustice: a sense that our fellow citizens feel they have been misrepresented and ill treated, and that they wish their side of the story to be told and wish that any appropriate lessons are learned, to avoid unnecessary division and distress in the future.

I have given that careful consideration. In particular, I have had to look closely at a significant number of technical challenges. I want to ensure that anything we do is robust, proportionate and fair. I have concluded that doing nothing is not an option. Although what I can do is limited by the powers devolved to Scottish Ministers, I am determined that the Scottish

Government should do what it can to do right by those affected by the dispute.

Consequently, I can announce that John Scott QC has agreed to undertake an independent review of this matter. His remit will be to investigate and report on the impact of policing on affected communities in Scotland during the period of the miners' strike, from March 1984 to March 1985.

I can also announce that John Scott will be assisted by an advisory panel, comprising our former colleague Dennis Canavan, former assistant chief constable Kate Thomson and Professor Jim Murdoch of the University of Glasgow. The group will bring real authority and a balanced insight into the issues raised.

Their work—which will begin with some preparatory activities over the summer—will include a review of the publicly available files held at the National Records of Scotland and the National Archives in London. It will also include gathering evidence from those directly affected by, or having knowledge of, the dispute, and reporting the findings. To allow effective engagement and consideration of the issues, I have asked for an interim report in early 2019. A final report, setting out lessons learned and making recommendations for any other action required, will follow by June 2019 and will be made publicly available.

I hope that my decision to establish this review underlines the importance that the Scottish Government attaches to this issue and our understanding that there are questions about the impact on communities that remain to be answered.

I am pleased to say that Nicky Wilson, President of the National Union of Mineworkers, gave his wholehearted backing to this approach when I spoke to him this morning. He said:

"Following the Justice Secretary's earlier meetings with the NUM, I really welcome the leadership being demonstrated by the Scottish Government on this issue. Rather than a potentially costly and drawn-out public inquiry, we will have a time-limited and focused independent review which I hope will really get to the heart of the injustice experienced by mining communities at that time. We have good relations with the police and no wish to pursue a vendetta, but it is high time that what mining communities endured during the strike is properly understood."

My expectation is that the process and outcome of the review will help to bring a degree of closure—crucially, of a positive kind—through openness, disclosure and understanding, in keeping with the truth and reconciliation approach that was suggested by the Scottish Police Federation.

Of course, that does not remove what I see as an obligation on the UK Government to fully

explore the extent of any political interference by the UK Government at that time. I have therefore written to the new Home Secretary to renew my call—first made in November 2016—for the current UK Government to institute an inquiry. Although my earlier plea was rejected, I remain of the view that it would be better for all concerned if, in a spirit of transparency, justice and reconciliation, the UK Government now followed our example.

Through the independent review, Scotland will certainly lead the way in ensuring that the experiences of those affected by the dispute in the 1980s are properly recognised. Some of our communities have been blighted by the shadow of that time for too long. I hope that members will join with me in both encouraging those affected to engage with the review and welcoming the work of John Scott and the advisory panel as an opportunity to acknowledge those difficult times and truly learn from them.

The Deputy Presiding Officer: The cabinet secretary will take questions on the issues that were raised in his statement. I intend to allow up to about 20 minutes for questions, after which we must move to the next item of business. Time is very tight.

Liam Kerr (North East Scotland) (Con): I thank the cabinet secretary for advance sight of his statement. Where there are questions and issues that remain unresolved in the minds of the public and those who were directly involved in and affected by a dispute, it is always important that we look to understand and learn from the lessons of the past. Given the importance of the inquiry, people will be interested in the composition of the advisory panel. Can the cabinet secretary clearly detail what the selection criteria were for those members?

I note the cabinet secretary's point that the miners' strike was also a difficult period for the police, with many individual officers finding themselves in challenging situations. What guarantees can he offer to police officers, past and present, who might be concerned about the results of the review?

Michael Matheson: The panel has been put together for the purposes of the independent review to ensure that we have sufficient expertise. Jim Murdoch is a professor of law at the University of Glasgow, and his legal expertise will help to support the group in its work; Kate Thomson has policing expertise; and Dennis Canavan has a long-standing connection with mining communities across Scotland. Of course, John Scott has outstanding recognition with regard to his ability in relation to criminal matters and in the field of human rights. On that basis, I think that the

membership of the advisory panel, working with John Scott, gives us the right balance.

As I said in my statement—and as Ricky Wilson stated—this is not a vendetta against the police, and the Scottish Police Federation believes that the truth and reconciliation approach will be helpful in addressing the underlying concerns.

The independent review that I am sanctioning will help to address some of the long-standing issues of trust that continue to exist. However, I hope that the member recognises the United Kingdom Government's role in addressing the matter. I have written to the Home Secretary today to say that the UK Government needs to do more on the matter, and I ask the member today to show his support for that and to write to his party colleagues in the UK Government, asking them to do exactly the same thing.

Neil Findlay (Lothian) (Lab): I thank the justice secretary not just for sight of his statement, but for its content. I do not often praise ministers of this Government, but today I am delighted to make an exception.

Thirty-three years after the strike, following three decades of campaigning by a great many people who are far better than me, we now have an independent review, which is, I hope, the first step to a full UK-wide inquiry. Today's announcement is significant in the fight for justice for so many individuals, families and communities across the former Scottish coalfield and I hope that it reverberates all the way to 10 Downing Street.

The release of the Cabinet papers under the 30-year rule and the fallout from the Hillsborough inquiry exposed how the police and judiciary acted under the centralised political direction of the then Thatcher Government and were instructed to defeat the strike, no matter the cost. Scottish miners suffered disproportionately from the impact of that policing strategy. Many lost not just their jobs, but their relationships, homes and mental and physical health. Many were blacklisted and others went to their graves as the victims of that miscarriage of justice.

I hope that the review avoids the errors of the mesh review, and that it is thorough and inclusive. It must provide an opportunity for those who were involved to come forward with their legal advisers to give evidence so that we can finally shine a light on that enormously important period in our country's recent history. I hope that we leave the door open to a full public inquiry, if one is deemed necessary.

I thank all those people, some of whom are no longer with us, who have given me unstinting support in pursuing this campaign in Parliament, and I thank those who are in the public gallery today. More important, I put on the record my

admiration for and thanks to those who, for more than 30 years, have never given up the fight for truth and justice. This is their victory. Now, after 33 years, let the truth be told. *[Applause.]*

The Deputy Presiding Officer: I understand why those in the public area are applauding, but I say to them gently that applause by those in the public area is not permitted.

Michael Matheson: I welcome Neil Findlay's comments and I recognise his long-standing interest in and commitment to pursuing the matter over an extended period of time.

Mr Findlay said that he wanted to ensure that the review is thorough and inclusive, and I assure him that that is the intention behind and the purpose of establishing the independent review. The individuals who have been appointed to the review are people of significant integrity and they will ensure that the matter is pursued in an open and transparent fashion.

I have discussed with John Scott QC the approach that could be taken to ensure that the affected communities have an opportunity to participate in the process. Some of the early work that the members of the review will undertake will be to engage with relevant stakeholders, including politicians who have an interest in the matter, to look at how they can frame their work to ensure that those who were and have been affected over many years by the dispute have an opportunity to engage in the review process. I was very encouraged by the discussion that I had with Nicky Wilson earlier today about the NUM's commitment to supporting the work of the group in reviewing the matter.

I assure Neil Findlay that the review will be thorough and inclusive, and I hope that it will help to bring closure to these long-standing issues that have been left for far too long.

The Deputy Presiding Officer: There are 10 members who wish to ask questions, but there are only 14 minutes before we must move to the next item of business, so please try to make your questions crisp.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I remind members that I am the parliamentary liaison officer to the cabinet secretary.

The cabinet secretary will be aware that my constituency of Coatbridge and Chryston has a rich mining heritage, and that many of the former mining communities remain active, such as the community of Moodiesburn, home of the Auchengeich mining disaster. Will the cabinet secretary reiterate his assurance to those communities and the nation as a whole that the inquiry will be full and transparent?

Michael Matheson: It will be open and transparent and, as I have mentioned, its members have been appointed specifically to enable that. That is also why I have appointed the advisory panel to work alongside John Scott QC.

If it assists members to consider some of the work that John Scott has already conducted on behalf of the Scottish Government, one of the pieces of work that he undertook was on the issue of stop and search, and he had a very inclusive approach to allowing people to express their views and concerns on that matter. I expect that that will be the approach to be taken by the independent inquiry that he now leads.

Maurice Corry (West Scotland) (Con): The cabinet secretary spoke of significant technical challenges. Can he outline to members what those challenges are?

Michael Matheson: Ensuring that matters are within devolved competence.

Clare Haughey (Rutherglen) (SNP): Can the cabinet secretary explain why the review that he has announced will not look at wider-ranging issues?

Michael Matheson: There have been a number of significant disputes over many years across Scotland and the whole of the UK. However, the nature of the miners' dispute meant that it affected communities right across the country in a significant way. In my view, the nature and scale of the miners' dispute and the impact that it had on mining communities merit the independent inquiry being taken forward.

Daniel Johnson (Edinburgh Southern) (Lab): I commend the minister not just for this initiative but for the considered tone of his statement, which was very welcome indeed. Will the independent review have the power to compel witnesses, and will those who have been affected and their families have access to legal support should they wish to give evidence?

Michael Matheson: The review will not be in a position to compel witnesses, because it is not being undertaken as a public inquiry. However, I have no doubt that, if the independent review is taken forward appropriately, willing parties will be prepared to engage in that process. It is an opportunity to bring individuals together to explore and consider matters. Given the backgrounds of the members who have been appointed to the advisory panel and given the background of John Scott QC, I have no doubt that those who have an interest in the issue will engage with the review in a purposeful way that will support the work that the review will undertake in its investigation.

John Finnie (Highlands and Islands) (Green): I am grateful to the cabinet secretary for what is

very good news. He alluded to a previous report by Mr Scott and will recall that he said that the police should be at the forefront of defending citizens' rights. During the period that the review will look at, the special demonstration squad was active. Will the cabinet secretary write to the Home Secretary, seeking co-operation from the Pitchford inquiry to help the review to discover the extent of undercover policing from south of the border and—to use the cabinet secretary's words—the “corrosive and alienating” impact that that might have had in aggravating what was already a difficult situation for mining communities?

Michael Matheson: The member will be aware of my view on the issues relating to the Pitchford inquiry and the reasons why I believe that it should be extended to Scotland and Northern Ireland, given the nature of the SDS's work as part of the Metropolitan Police.

In relation to the specific points that the member makes regarding the review that will be undertaken by John Scott QC and the advisory group, if there are issues in the six-month report that I receive from them that demonstrate that there is a requirement for greater co-operation from the UK Government, or if such issues are flagged up to me at an earlier stage, I will certainly make representations to the UK Government to request that co-operation.

Clare Adamson (Motherwell and Wishaw) (SNP): I was a teenager when my community was affected by the issues in question and I vividly remember the Government-manufactured social tension between miners, steelworkers and the police. Does the cabinet secretary agree that it is essential that we learn from what has happened to ensure that such failures are never replicated and that no trade union faces an attack from the Government such as was experienced at that time?

Michael Matheson: I was at school when the dispute took place, and I can still remember scenes from the miners' strike during that period. Although I was brought up in the south of Glasgow, the miners' strike reached even into our community through those who had family and friends who were affected by it and through the trucks that were going to Ravenscraig passing through our local area during the dispute.

I agree with the member that there are real issues of concern around how the UK Government acted to undermine trade unions at that point and the impact that that had on local communities. I hope that, through the instigation of this independent review and the greater transparency that is provided by the work that is undertaken over the year, we will get a greater understanding of how the Government's actions impacted on mining communities right across Scotland.\

Liam McArthur (Orkney Islands) (LD): I, too, pay tribute to Neil Findlay for his efforts on the matter and thank the cabinet secretary for his statement, which I very much welcome. Indeed, the fact that John Scott is chairing the review is good news. His work not only on stop and search but on biometrics should offer some reassurance to the mining communities and the police that he will be thorough and even handed.

The cabinet secretary referred to procedures for dealing with alleged miscarriages of justice. Is he aware of any such cases being brought or of steps being taken to build such a case?

Michael Matheson: I am not aware of any such individual cases. However, there is a legal mechanism for anyone who believes there to have been a miscarriage of justice. Subject to legal advice from their own legal agent, they can lodge a request with the Scottish Criminal Cases Review Commission if they believe that they have a miscarriage of justice case. I always advise any individual who is considering using that legal mechanism to take legal advice first, before they make an application, so that they make best use of the mechanism.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Will the cabinet secretary explain why the independent review will not consider political interference?

Michael Matheson: One of the technical challenges that I mentioned is the nature of the responsibility for the issues. Our ability in the area is limited because of the UK Government's involvement and the fact that, because the Scottish Parliament was not established at the time of the dispute, the policing of the dispute was the UK Government's responsibility. That limits our scope for considering the matter. Even if we were to establish a public inquiry under specific legislation, we would be extremely curtailed in what we could consider, given the nature of reserved and devolved matters.

Notwithstanding that, I have no doubt that the independent review that we are establishing will consider matters thoroughly and in detail and that it will listen to evidence from affected communities on the impact that they believe the dispute had on them and how political interference may have happened at that point.

Johann Lamont (Glasgow) (Lab): In welcoming the statement, I reflect that even those of us who were supportive of the miners were, at the time, led to believe that there was widespread criminality in the mining communities. That was an absolutely shocking use of the power of the state.

Given the recent history of independent reviews such as the one into the use of mesh implants, which failed completely to secure the victims'

confidence, what steps is the cabinet secretary taking to secure the review's independence? Will he confirm that the review has the authority to go wherever the evidence takes it? It would be helpful if he could confirm that he is not absolutely ruling out holding a full public inquiry, if necessary, when the review reports.

Michael Matheson: I have just mentioned the reasons why there would be limited—if any—difference between a public inquiry in Scotland and the independent review. We will wait to see the outcome of the review first.

Johann Lamont makes a good point about the injustices that are felt by the communities that were affected by the dispute. I confirm that the review, acting independently, will be able to follow the line of evidence and engage with communities and individuals as it considers appropriate in carrying out its inquiry over the coming months.

Rona Mackay (Strathkelvin and Bearsden) (SNP): John Scott has said that he is

"keen to listen to individuals and communities directly affected."

Can the cabinet secretary assure us that there will be a wide variety of ways for people who have been affected by the dispute to have their views heard?

Michael Matheson: In the discussions that I had with John Scott when I approached him to take on the role, he reassured me that he would seek a range of ways in which to engage with communities, whether through individual meetings, public meetings or other community-based approaches. He is keen that as many people as possible who are interested in expressing their views are facilitated to tell their stories in the evidence taking on the matter. I have no doubt that engagement with a range of stakeholders from the NUM and its members will shape the approach that the review takes to allowing as many people as possible to express their views and tell their stories when it takes evidence in different parts of the country in the coming months.

The Deputy Presiding Officer: That concludes questions to the minister. I thank all members for the way in which they asked their questions, as we managed to get every question in.

Hate Crime Legislation: Bracadale Review

The Deputy Presiding Officer (Christine Grahame): Time is tight, so I am moving straight on. The next item of business is a debate on Lord Bracadale's independent review of hate crime legislation. This is a debate without a motion.

15:00

The Minister for Community Safety and Legal Affairs (Annabelle Ewing): Tackling hate crime is central to building the Scotland that we all want to see—a Scotland free from hatred, prejudice, discrimination and bigotry, and a country where trust, respect and understanding underpin the way we live our lives.

Sadly, although Scotland is an open and inclusive nation, we are not immune from hateful behaviour or prejudicial attitudes, for it is a sad reality that people in our communities sometimes face discrimination and abuse. I know that every member across the Parliament would condemn the deliberate targeting of our minority communities with hate-filled prejudice, and I am sure that we are all agreed on the importance of offering our communities robust protection in law to ensure that they have access to justice when they are subjected to such vile and unacceptable behaviour.

Although legislation in and of itself is not the solution to these issues, it is part of the backbone that runs through our society. Through legislation, we have a set of clear standards for what is and is not acceptable. That ensures that those who cross the line into criminality can be dealt with through appropriate and proportionate penalties.

Being a victim of a crime is a dreadful experience for anyone. However, it is even more invidious for someone to be a victim of a crime because of their race, religion, disability, sexual orientation or transgender identity, which are of course protected characteristics. It is completely and utterly unacceptable for anyone to be motivated to perpetrate a crime to traumatisate and frighten people simply for being who they are.

All communities, including minority and vulnerable communities, must be able to count on the law when they are targeted by hate crime. That is why, in January 2017, I announced to the Parliament that I had appointed Lord Bracadale to conduct an independent review of hate crime legislation in Scotland.

Members will recognise that Lord Bracadale was appointed as one of the most experienced criminal law judges in Scotland. His remit was to look at the adequacy of hate crime law and what

improvements, if any, could be made to the existing suite of legislation to ensure that we have hate crime legislation that is fit for the 21st century. We needed an independent view by someone with expertise in the application of the law to ensure that any proposals that emanated from the review would be workable.

Lord Bracadale published his findings and recommendations on 31 May. The review has been placed in the Scottish Parliament information centre and I hope that, by now, all members will have had an opportunity to have a look at Lord Bracadale's report and his recommendations.

I thank Lord Bracadale for his comprehensive report on the very substantive body of hate crime legislation that exists in Scotland, and I extend my thanks to the advisory team that worked with him to support the development of his conclusions and recommendations.

As part of his review, Lord Bracadale ran an extensive stakeholder engagement programme, which included a number of community events. He also met many interested parties and those who are responsible for applying the law, including Police Scotland, the Crown Office and Procurator Fiscal Service and sheriffs. Of course, he also met some members of the Scottish Parliament to discuss his review. That engagement and consultation helped to influence the conclusions and recommendations in his final report, and I thank all those who took the time to participate by attending an event or submitting comments.

Lord Bracadale's review provides a robust set of recommendations that we will now consider in full. We have accepted the basic proposal that a consolidated hate crime statute would be beneficial and that such an approach has the potential to resolve some of the issues that arise from Scottish hate crime legislation having developed in what can be termed a piecemeal way over a period of time.

Lord Bracadale consulted widely on key issues relating to the operation of hate crime law in order to develop his recommendations, and it is only right that a full consultation process is undertaken on them. We will therefore use the recommendations as a basis for wider engagement and discussion with a view to proceeding with a consultation in due course.

We recognise at the outset that many organisations will have particular views on the recommendations and the final content of a consolidated statute. As I say, I am therefore keen to engage widely and hear people's views. The consultation findings will be used to inform the policy detail of what should be included in a new consolidated hate crime bill. Such a bill will help us with the operation of the law by putting it all in one

place, which users of the law will find useful. It is our intention to report back to Parliament in the autumn and set out specifically how we intend to move forward with the development of the bill.

Today, we are discussing how to make improvements to existing hate crime legislation, but it is important to note that Lord Bracadale found that our hate crime laws were generally in good order. There are, however, some points to note.

I have already referred to the development of hate crime legislation being rather piecemeal over the years. We have to look to many different statutes to find what it is and that makes it less user-friendly, so we very much support consolidation. That view was supported by many who responded to Lord Bracadale saying that consolidation would bring clarity, transparency and consistency of approach to the law. For example, it could bring together all the statutory aggravations and provisions relating to the incitement and stirring up of hatred that are covered by part 3 of the Public Order Act 1986, section 96 of the Crime and Disorder Act 1998, section 74 of the Criminal Justice (Scotland) Act 2003, and the Offences (Aggravation by Prejudice) (Scotland) Act 2009, as well as any new provisions recommended by the Bracadale review that are subsequently agreed to.

However, as Lord Bracadale has done, in taking forward our consultation on the introduction of a single hate crime statute we will also need to consider wider questions about whether the current legislation is as effective as it could be, what would be the effect of making changes, and how we can ensure that communities understand what is and what is not acceptable and what protection will be available to them.

We are clear that the law must uphold the rights of others, particularly our most vulnerable citizens. We will always seek to strike the right balance between protecting the public and freedom of expression. We must, however, be clear that freedom of expression is not an absolute and it is not unfettered. It must sit with the right of others not to be subject to prejudicial and hateful behaviour.

Lord Bracadale made particular recommendations, including the introduction of new statutory aggravations based on gender and age hostility. He also recommended making hate crime legislation more accessible and easy to understand by updating the language that is used to describe hate crimes. He proposed the extension of offences of stirring up hatred to cover not just race—the only protected characteristic that is currently covered by a specific statutory stirring-up offence—but to cover each of the

protected characteristics, including any new ones that Parliament agrees to.

Lord Bracadale also recommended that the exploitation of perceived vulnerabilities should be considered as a specific aggravation in its own right. Similarly, he recommended repealing the offence in section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995, covering racially aggravated harassment, and was in favour of using the approach envisaged elsewhere in his review, which is to have a baseline criminal offence and a statutory aggravation reflecting identity hostility. In the instant case, that would mean employing a statutory racial aggravation.

We understand that Lord Bracadale's recommendations will generate a lot of debate, and we also understand that not everybody will agree on all aspects of it. However, we wish to engage as widely as possible. This debate affords the opportunity to hear the initial views of members and how they feel that the way forward should be pursued. I stress that we genuinely want to engage in the debate and to listen to what people have to say, including a number of stakeholders who have expressed a bit of disappointment with some of the recommendations and with what was not in Lord Bracadale's report.

We hope that encouraging people to have a mature discussion will result in our having a hate crime statute that is world leading, and we will ensure that we do everything that we can to protect the most vulnerable in our society.

Hate crime has a damaging effect not just on victims but on the communities to which people belong and in which they live. I believe that it undermines society as a whole, because it makes people fear each other and creates barriers between communities. Therefore it is a problem for all of society and one that we all need to play a part in resolving. We know that inclusive and cohesive communities that embrace diversity provide a better quality of life for everyone. Communities thrive when they feel a shared sense of belonging, can learn and grow together and feel able to live their lives in peace. Therefore we must challenge the behaviour of those who are abusive, and we must ensure that those who have been abused are offered support. Our endeavours on that should lead to the work on a consolidated hate crime statute with which we will now proceed.

As a Government, we have worked tirelessly to promote equality and to tackle discrimination. We have done much good work, but there is always much more to do. We can never be complacent, and we never will be. Across Government, we continue to strive to ensure that all the work that we do feeds into tackling this insidious element in our society.

I am very much looking forward to this afternoon's debate. The publication of Lord Bracadale's report marks an important stage in this process in which we are all engaged. As I have said, while legislation on its own will not solve hate crime, a good, substantive law will certainly be at the heart of our efforts to build a country in which everyone—regardless of background—feels valued, respected and at home.

The Deputy Presiding Officer: I call Liam Kerr to open the debate for the Conservatives. You have up to eight minutes, please, Mr Kerr.

15:11

Liam Kerr (North East Scotland) (Con): I am very pleased to open for the Scottish Conservatives in this debate without a motion on Lord Bracadale's independent review of hate crime legislation.

Lord Bracadale's remit was to

"help ensure we have the right legislative protection in place to tackle hate crime wherever and whenever it happens".

and it was right to do so. Last year, there were nearly 6,000 hate crime charges in Scotland, roughly two thirds of which were racial—and those are just the ones that were reported. It is widely accepted that the real level of hate crime is far higher than is reported in official statistics, because a significant number go unreported to authorities. Intolerance, bigotry, racism and prejudice of any kind should not be accepted anywhere in a civilised society, so we must do all that we can to challenge them.

Lord Bracadale has produced a considerable document that will form the basis for wide-ranging and useful discussion and debate long after today's debate. He makes 22 recommendations, many of which the Scottish Conservatives are pleased to endorse, as will be detailed by my colleagues throughout the afternoon.

I will start from the back of the report, recommendation 20 of which says simply:

"All Scottish hate crime legislation should be consolidated."

I agree absolutely. As the minister correctly identified, many crimes currently fall into the category of hate crime and there are some overlaps—but there are also some gaps. I acknowledge concerns about the dangers of an unwieldy or oversimplified approach being taken or of focus being lost. However, I accept the argument that is made by Lord Bracadale in paragraph 9.9 of his report that that is unlikely to be the case. From experience, I look for support for that position to other consolidating acts such as

the Employment Rights Act 1996 or the Equality Act 2010. *[Interruption.]*

The Deputy Presiding Officer: I am sorry, Mr Kerr. Somebody's phone is ringing, but they should not have it on—either in the gallery or in the chamber. On you go, Mr Kerr.

Liam Kerr: Thank you, Presiding Officer.

On that, a related matter that merits further discussion is how to approach the report's recommendation 2, on updating language. Simplification and accessibility are always to be encouraged, but as Gordon Lindhurst will say later, a phrase such as "malice and ill-will" may not be identical to the term "hostility", so we must be very careful on such points.

Annie Wells will review recommendations 9 and 10 of the report, which are that age hostility and gender hostility should become recognised categories of hate crime. We are eager to look closely at any proposals that the Scottish Government might choose to make on that. They are really important areas, so we have to get that right, which will necessitate open, honest and frank discourse. Annie Wells will talk about the importance of public awareness and understanding, and about striking a balance between tackling hate crime at its root, without diluting the goals of existing legislation, and recognising the profound harm that such crime causes and standing up for communities.

In relation to age as well as to disabilities, recommendation 11 suggests that the Scottish Government

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

Inclusion Scotland particularly welcomes that recommendation, and I found its reasoning to be persuasive. As Action on Elder Abuse has said, in relation to crimes such as theft, fraud and assault, older people are often specifically targeted because of their actual or perceived vulnerability. That might be based on physical frailty, mental capacity, memory difficulties, loneliness and isolation or dependency on others for basic care needs.

As Lord Bracadale's report says,

"a proportion of offences committed against disabled persons are based, not on hostility, but on perceived vulnerability."

We can send a message that we will not tolerate those who target the most vulnerable people in our society. Criminals must know that they will be additionally punished with tougher sentences for such callous and inhuman behaviour. I call on the minister to waste no time in introducing proposals

to implement that recommendation. In so doing, she will have our full support.

We were also pleased to note that the report recognises the role that restorative justice can play in dealing with hate crime. As members will know from my members' business debate just two weeks ago, restorative justice is, in essence, voluntary, facilitated and constructive dialogue between a victim and an offender in order to seek to make amends. Restorative justice puts victims first and allows them to be part of putting things right after a crime has been committed.

I particularly commend to Parliament the example that Bracadale cites at paragraph 10.42 of an anti-Semitism case in which the affected family wanted the offender to study the effects of the Holocaust as part of his community sentence. The offender later reflected:

"I had ... no idea that being antisemitic had this kind of impact. I had no idea that all these people died during the second World War".

As researcher and social work practitioner Rania Hamad notes,

"developing an understanding of the harms caused by hate crime ... is viewed as an important facet of any rehabilitative intervention with hate crime offenders. Many offenders are potentially not fully aware of the harm caused by their actions at the time of committing the offence. As such, a restorative justice ... approach may be well-placed to address the harms of hate crime."

There is a compelling case for utilising restorative justice in relation to hate crime, and I commend recommendation 22 to the Parliament.

Finally—I shall not major on this point, because I suspect that others might do so—the report devotes a whole section to the impact of the repeal of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. In what can only be described as a humiliation for some people here, Bracadale clearly states that there is no need for a replacement for the hated football act. We have been told repeatedly in the chamber that there will be a gap in the law.

Annabelle Ewing: I point Liam Kerr to page 63 of Lord Bracadale's report, where he says in paragraph 5.30 that

"The repeal of section 6"

of the 2012 act

"has left a gap in the law."

Liam Kerr: We acknowledged that point about section 6 at the time, and we talked clearly about it in committee. The minister said clearly in the stage 3 debate on the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill, over and over again, that there would be a gap in the law in relation to the first sections of the 2012 act.

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

Liam Kerr: No, I will not, I am afraid. That would be the third intervention from the Scottish National Party, including the phone that went off earlier.

The reality is that, during the stage 3 debate, the minister was adamant that there would be a gap in the legislation, but the report states in black and white that

"hate crime offences committed in the context of a regulated football match held in Scotland could be prosecuted in Scotland under pre-existing criminal law."

Lord Bracadale goes on to say that he is

"satisfied that there is no gap in the law"—

which is what I and so many others pointed out at the time. It is unlikely that an apology—no matter how much it is merited—will be offered, but a degree of contrition and reflection on past and future choices of words by some members is perhaps warranted.

Hate crime is particularly harmful to victims and communities. As Rania Hamad has said,

"research indicates that the emotional and psychological trauma caused by hate crime is heightened compared with other types of crime due to the offending often being related to the 'core' of the person's identity, and vicarious trauma can be experienced by those who share the same identity characteristics as the victim such as family or community members."

Therefore, it must be countered. The first step to achieving that is to know and understand what we are dealing with. The report enables that, and I again thank Lord Bracadale for compiling it.

I said at the beginning of my speech that we must have the legislation that we need to tackle hate crime. We must tackle prejudice at its root, adequately punish and deter offenders and stand up for victims of hate across Scotland. We may disagree about some of the recommendations in the report, but I suspect that we can all agree on that. I look forward to hearing members' views.

The Deputy Presiding Officer: I let you make up your time. Technically, a telephone ringing might be an interruption, but it is not an intervention, Mr Kerr. I know that you are a man who is very careful with the words he uses in here.

15:20

Daniel Johnson (Edinburgh Southern) (Lab): I pay tribute to Lord Bracadale—not just for his excellent report but for how he conducted his inquiries in compiling it. When I became Labour's spokesperson for justice, I was told what a complex and varied brief it was, so it was somewhat intimidating that one of the first

meetings that I had was with Lord Bracadale as part of those inquiries. I thank him for an excellent and very interesting conversation; it was considered, principled and very useful. The report very much reflects the considered and holistic approach that he has taken to this very important work.

These are incredibly important issues: we are discussing crimes that are driven by hatred that is directed at a victim's identity. However, that begs a question: why should we treat crimes differently based on their motivation? One could hold that the severity of the crime, rather than what motivates it, should determine treatment of its perpetrator.

The report answers that question very well, in three distinct ways. The first answer concerns

"The harm which hate crime causes".

Hate crime has profound effects on the victim, but it also harms the community group to which that person belongs: an attack on one is an attack on all. Further, such attacks damage society as a whole's moral framework. They can sour community relations and breed tension in otherwise well integrated multicultural and multi-identity societies. Breaking those social bonds can have long-lasting impacts well beyond the individual act.

Secondly, hate crime legislation has a symbolic function. We in Parliament must remember that the power of the laws that we pass is not only in their operation, but is in the messages that they send. Nowhere is that more true than in criminal law, where a symbolic message is sent to the victim that he or she will be protected by society; to the perpetrator or potential perpetrator that he or she will be punished severely; to victim groups in the community that we stand with you against such attacks; and to wider society that prejudice and inequality will not be tolerated.

Thirdly, hate crime legislation has practical benefits. If we do not measure something, we cannot know whether the problem is growing or shrinking over time. That is how we know that crimes that are driven by race hate have fallen in recent years—although at over 3,000, such charges are still the most common, and represent two thirds of the charges, as Liam Kerr said. The legislation helps to measure the problem and to provide consistency in sentencing when cases of such crimes are heard in court.

I turn now to Lord Bracadale's recommendations. Scottish Labour welcomes the positive recommendations that will help to improve the hate crime legislation landscape. Most fundamentally, Lord Bracadale recommends consolidation of the legislation that has been passed in both the United Kingdom and Scottish Parliaments over more than 30 years. That is not a

small undertaking, but Lord Bracadale makes well the argument that consolidation will bring clarity, transparency and consistency to the law. It will also allow changes—for example, new protected identities—to be made more easily in the future if we provide flexibility and consistency when we consolidate.

The recommendation for consolidation is supplemented by proposals to ensure consistency between the various protected identities. Using statutory aggravations as the way to ensure that hate crimes are punished more severely seems to me to be a sensible and reliable approach to this area of law. The new test for hate crime becomes whether an existing offence was motivated by hostility towards someone based on their identity. The hostility by itself would not be a crime, which I believe strikes the balance. However, the recommendation includes new offences regarding stirring up of hatred, which is important because, as Lord Bracadale states, "stirring up hatred" towards groups based on their identity is "morally wrong". Moreover, it causes harm both to the group and to society as a whole. It is therefore right that such offences should cover not just race hate but hatred of other identity groups.

The report also proposes a number of modernisations, most notably around the language for transgender people, which now looks very outdated, and the introduction of intersex as a stand-alone identity, which is welcome.

Perhaps the recommendations that have most consequences are the proposals to introduce new age and gender aggravations. Those are to be welcomed. I note that there are groups outside Parliament who have made a compelling case for specific laws to be introduced on misogynistic harassment. The case for that is well made; Scottish Labour will look closely at those arguments and will seek to have them robustly debated as the Scottish Government introduces proposals to put Lord Bracadale's recommendations into law.

It will perhaps not surprise colleagues to learn that James Kelly will cover the aspects of the report which talk about the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. I will leave it to him to cover that in more detail. However, I say to the Government that it is worth reflecting on how to take forward such legislation. With all the complexity and nuance in these debates, surely what we have today would have been a better starting point—an independent report, backed by wide consultation. Any legislation that comes out of this report will start from a position of strength and thoughtfulness, which is in marked contrast to the Government's knee-jerk reactive legislation

regarding sectarianism in the form of the 2012 act. I hope that ministers will reflect on that.

I would like to close by welcoming this important report. Its proposals are sensible and proportionate. Most important is that the report initiates an important debate and serves as an invaluable foundation and platform for us to have the debate that we need to have in Parliament.

The Deputy Presiding Officer: I call John Finnie to open for the Greens. As you have split your time, you have three minutes, Mr Finnie.

15:27

John Finnie (Highlands and Islands) (Green): I, too, welcome the report. I also welcome the briefings, one of which, from the Law Society of Scotland, says that hate crime can and does affect us all. I very much associate myself with Daniel Johnson's point that, if we can adopt the approach that an attack on one is an attack on all, that will mark out the sort of approach that we want. This is about communities, and I welcome the minister's comments about wider consultation with communities and having a keenness to engage in debate, because I think that that will be a positive contribution.

This is a fast-moving situation, as ever. Deputy Chief Constable Iain Livingstone talked today about returning from Srebrenica and wanting to put into practice for Police Scotland the lessons that he learned from his visit there.

Earlier, in a question on the ministerial statement on the miners' strike, I referred to John Scott QC, who said in a previous report that the police should be the front-line defenders of the public's human rights. Of course, the primary purpose of policing is prevention. This report is a response to hate crime; prevention will be dealt with through education. That is the key to this in the long term.

It is important to say that we should not be in any way complacent—that certain aspects are a generational matter—that some things have always been like that and will not change for a new generation. There has been an unwillingness to challenge, some of which has emboldened the far right across Europe, and messages can spread far and wide through social media, as we know.

There has been an unwillingness to challenge the abuse that has been consistently heaped on women, including women in our profession. The abuse that female politicians get and the levels of misogyny are utterly unacceptable. Like others, we are interested in Engender's proposal regarding misogynistic hate crime and we are keen for the proposal to be widely debated. I think that the starting point for debate would be Engender's

point that hate crime perpetuates existing hierarchies.

We want what Lord Bracadale wants—a system that is

“clear, consistent and easily understood”.

I note that there is a role for the Scottish Sentencing Council when it comes to the development of the new guidelines.

I will talk briefly about recommendation 6. Lord Bracadale said:

“I do not consider it necessary to create a statutory aggravation to cover hostility towards a political entity.”

We thoroughly agree with that. It means that we can criticise the apartheid state of Israel and that we can commend boycott, divestment and sanctions. I hope that, as a result, the Scottish Government will consider the negative implications of its adoption of the International Holocaust Remembrance Alliance's definition of anti-Semitism, which is seen as unhelpful.

On the stirring up of hatred, members mentioned underreporting, which is clearly an issue. We must look at methods of reporting, to ensure that the maximum information is there and we can address the issue.

We welcome the opportunity for consolidation and many of the recommendations. Most of all, we look forward to the debate that will take place.

The Deputy Presiding Officer: Well done, Mr Finnie, you kept to three minutes.

15:30

Liam McArthur (Orkney Islands) (LD): As other members have done, I pay tribute to Lord Bracadale for the valuable work that he and his small team have carried out. None of us underestimates the complexity or the sensitivity of the task that he agreed to take on. His report and recommendations lay a solid foundation for ensuring that the law in relation to hate crime, in all its forms, is more coherent, consistent and effective.

I know that Lord Bracadale consulted extensively in the course of his review and I am particularly grateful to him for taking time to meet me and other spokespeople, to seek views and to share some of his initial thinking.

Of course, Lord Bracadale's report is not the end of the process. Rather, it is a means of informing the debate that must now take place about the reform that we need to see. That is a debate that we are having and will continue to have here in the Parliament; it must also take place among the wider public. The report provides an excellent basis on which to stimulate debate,

raise public awareness and educate people about what hate crime is, the effect that it can have and how it should be curbed.

This will not always be an easy debate. The Law Society of Scotland rightly observed that this is

“a highly emotive topic which will evoke vastly differing attitudes”.

As much as we all condemn crimes that are motivated by hatred or prejudice towards aspects of a victim’s identity, we will no doubt have different views about how best to tackle such hatred or indeed how to balance those efforts with, for example, the protection of fundamental freedoms, not least freedom of speech.

The process will be difficult. There will be strongly and sincerely held opinions and fiercely argued positions. I hope that we can conduct the debate with respect—to be frank, with more respect than was shown at times during the recent repeal of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. I have to say that the opening speech in the stage 3 debate on the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill was not the minister’s finest hour. It did neither the minister nor the Government any credit. Indeed, by starting with a litany of examples that illustrated perfectly how ineffective the 2012 act had been, Ms Ewing’s speech did the substance of her argument no favours either.

In light of Lord Bracadale’s findings, I wonder whether the minister now regrets the approach that she took and the language that she used. I assume that she would not accuse Lord Bracadale of “manifest irresponsibility” and of giving succour to those who are guilty of engaging in offensive or threatening behaviour. She would not accuse him of being an apologist for sectarianism, of foolishly exposing vulnerable communities to abuse, or of being naive and ignorant of the law.

None of us has the monopoly on caring about hate crime and prejudice; none of us condones or is anything other than repulsed by crimes that are motivated by hatred or prejudice, wherever they take place; and none of us underestimates the damage that such crimes do to the victims. Let us therefore conduct this debate in a way that reflects those facts and avoids descending into the hyperbolic and malicious misrepresentation that characterised the debate on the repeal of the football act.

In the limited time that is available this afternoon, I want to talk about consolidation, which lies at the heart of Lord Bracadale’s review. The proposal to consolidate hate crime legislation has given rise to anxieties in some quarters, but it seems to me to be an inherently sensible approach to take. The current body of hate crime

legislation is fragmented and reflects the piecemeal way in which it has come into existence, as the minister rightly acknowledged. Although there are legitimate reasons for that, in that legislation often responded to high-profile cases that gave rise to public expectations of action, the current piecemeal approach is not helpful in creating a wider understanding about what hate crime is or ensuring that we address it consistently.

Of course, the circumstances that surround each hate crime will be different and will require a tailored and proportionate response. However, having a baseline offence and a statutory aggravation reflecting hostility to different aspects of an individual’s identity, as well as provisions on stirring up hatred, seems a reasonable way of achieving consistency while at the same time allowing flexibility to respond appropriately to different types of crime.

There are concerns that that might reduce the focus on the specific needs of certain protected groups, but I think that there are other ways of achieving that focus. Moreover, if we shy away from consolidation, there is a risk that we are seen arbitrarily to prioritise some hate crimes over others, which cannot be a helpful message to convey. Clearly, the prevalence or seriousness of some hate crimes will determine the amount of attention and resources that they attract. However, if the essence of what we are talking about is the right of everyone to be treated equally, whatever their characteristics or identity, creating a baseline offence seems to make sense. I appreciate that others take a different view, and I look forward to engaging in that debate as we go forward.

Hate crime too often blights our society. Lord Bracadale has given us a sound basis on which to ensure that our laws are up to the task, and I look forward to engaging in the debate on how we can ensure that that happens when the Scottish Government comes forward with its proposals in the autumn.

15:35

Rona Mackay (Strathkelvin and Bearsden) (SNP): In an ideal world, there should be no need for hate crime legislation, but we all know that this is not an ideal world, and Lord Bracadale’s “Independent Review of Hate Crime Legislation in Scotland” is much needed and timely.

Why do we need legislation? We need it because hate crimes cause depression, anger, anxiety and trauma. They may well cause social isolation and fear of public spaces. They wreck lives. They undermine society’s moral values, democracy and the right to live in a civilised country. When I was growing up in the 1970s and

1980s, certain words and attitudes prevailed that would not be tolerated now, and rightly so. Hate crimes are born out of ignorance and prejudice and there is no place for them in a modern Scotland.

Lord Bracadale was tasked with quite a challenge in his remit, to consider whether the current law deals well with hate crime behaviour, whether new statutory aggravations should be created in relation to age and gender or religious statutory aggravation, and whether hate crime laws could be made simpler by amalgamating them, and to identify gaps in the framework to ensure that the law protects human rights and equality.

Gathering evidence from people who had experienced hate crime was crucial, so a huge listening and learning exercise was launched. The recommendations in the report span a variety of hugely important issues, but I will focus today on hate crimes towards women. Lord Bracadale found that there was widespread support for legislation to deal with online and physical hate crimes towards women and he recommended a statutory aggravator in that regard. His report quotes from a consultation response:

“Crimes motivated by hatred of women are well documented and including this as an offence would be a progressive step in tackling misogyny.”

Misogynistic hate towards women and girls in the workplace, at school, in the street and online has reached epidemic levels. The past year has blown the cover on that with the #MeToo and time's up campaigns. As a member of the sexual harassment working group in the Parliament, I have been working on a zero tolerance approach as the first step in making our workplace abuse free and a place where women can work without being harassed or intimidated. It is incredible that we have to address that in 2018, and our generation must eradicate it for our daughters and granddaughters.

I ask members to listen to these statistics, which were helpfully supplied by Engender Scotland, a fantastic organisation that promotes equality for both men and women. In the UK, 52 per cent of women have experienced sexual harassment, with one quarter experiencing unwanted touching, and one fifth experiencing unwanted sexual advances. Twenty-nine per cent of girls aged 16 to 18 have experienced unwanted sexual touching at school. More than one in 10 girls have experienced street harassment before the age of 10. Those figures are shocking and unacceptable at every level.

Engender has called for standalone misogynistic hate crime legislation in Scotland as a way of halting that epidemic. It believes that to respond to the epidemic levels of misogynistic hate in Scotland the gender dimension must be captured.

Given that Scotland has rightly been lauded for the boldness and ambition of its violence against women strategy, equally safe, and that it has received international commendation for the Domestic Abuse (Scotland) Act 2018, Engender argues that it wants the same innovation to be applied to tackling misogynistic hate crime.

I understand the benefit of consolidating hate crime and the well-made points that Liam McArthur has just articulated, but I believe that, unless we experience a sea change reversal of misogynistic attitudes towards women, and quickly, we should consider going down the road that is recommended by Engender.

There is much more in the review that I could focus on, but time does not allow me to. In conclusion, I welcome the report and the direction that it takes us in—towards a Scotland that is free from prejudice, bigotry, intolerance and hate.

15:39

Maurice Corry (West Scotland) (Con): I join colleagues in thanking Lord Bracadale for putting together his review of hate crime legislation. In a civilised society, hate crime of any kind—whether the result of intolerance, bigotry, racism or prejudice—must not be considered acceptable. It is a black mark on the conscience of the nation that, in this day and age, it continues.

Hate crime legislation is always difficult to create effectively, because we need adequately to weigh the need for freedom of expression against the need to tackle hate crime. Lord Bracadale's report acknowledges the importance of striking that balance and includes the recommendation:

“A protection of freedom of expression provision ... should be included in any new legislation relating to stirring up offences.”

Lord Bracadale ruled out an aggravator of

“hostility towards a political entity”

on the ground that

“The freedom of speech to engage in political protest is vitally important.”

That recommendation is very important. Freedom of speech is one of the things that makes living in this country special, and it is a value that we need to protect while ensuring that hate crime legislation in this country is tough.

I move on to the issue of criminal aggravators. In his report, Lord Bracadale acknowledges that the elderly population is often preyed upon, primarily not because of hatred of their age but because they are perceived to be an easy target for criminals. It is the same for those who are disabled. Lord Bracadale noted that

“a proportion of offences committed against disabled persons are based, not on hostility, but on perceived vulnerability.”

The criminal law should acknowledge that those are particularly horrid and serious offences because they aim to take advantage of the most vulnerable in our society. We need to stand up for them and give them greater protection under the law. I believe that there would be wide support among stakeholders and the public for the idea of making an aggravator of the exploitation of vulnerable groups.

In its submission to Lord Bracadale's review, the Coalition for Racial Equality and Rights said that

“it may be better to create a vulnerability related aggravation which is separate from the offences motivated by malice and ill-will.”

Action on Elder Abuse stated:

“In relation to crimes such as theft, fraud or assault (any many more), we know that older people are often specifically targeted due to their actual or perceived vulnerability. This may be based on physical frailty, mental capacity, memory difficulties, loneliness and isolation, or dependency on others for basic care needs.”

I hope that the Government takes on board those comments and makes that issue a top priority in the coming months. There should be no delay in introducing an aggravator of the exploitation of those who are, for example, elderly or disabled. The Government should get tough on the criminals who are targeting vulnerable members of our communities.

I took part in the stage 3 debate on the bill to repeal the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, and I remember hearing from various SNP ministers and members that there would be gaps in the legislation if that piece of poor legislation was repealed. Annabelle Ewing said that repealing the act

“will leave a gap in legislation.”—[*Official Report*, 15 March 2018; c 108.]

She made that point numerous times, although I and other colleagues made the point that it would not leave a gap in the legislation. I am glad that, in his report, Lord Bracadale agreed with us.

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

Maurice Corry: I am sorry, but I am in my last minute.

The minister even went as far as to dismiss the statement of the Law Society of Scotland by saying:

“I do not think that the author of the Law Society of Scotland paper for stage 3 ... got things quite right.”—[*Official Report*, 15 March 2018; c 71.]

That is further evidence that the SNP was scaremongering during the lead-up to the repeal of the 2012 act to cover up the fact that it had created bad legislation that was unnecessary and unworkable. I wonder whether we might hear the SNP apologise for that today.

I thank Lord Bracadale again for his review and look forward to hearing from Government ministers which recommendations from the review they will be taking forward. I genuinely hope that they will include recommendation 11, on an aggravator for vulnerability.

15:44

Fulton MacGregor (Coatbridge and Chryston) (SNP): I remind the chamber that I am the parliamentary liaison officer to the Cabinet Secretary for Justice.

I welcome the report and thank Lord Bracadale for carrying out an extensive review of all current hate crime legislation in Scotland. Hate crime is a real issue in this country and we need robust legislation to deal with it appropriately. To demonstrate that, I cite the case of a couple in Coatbridge who were recently subjected to a homophobic attack while on a night out to celebrate their engagement. I ask the minister, in summing up, to give me and my constituents who were the victims an assurance that such crimes will be dealt with swiftly and severely. I know that my constituents would take great comfort from that assurance.

The review is timely, given the recent incidence of and publicity about hate crimes. Just yesterday, we passed the Historical Sexual Offences (Pardons and Disregards) Bill, which stands alongside the Scottish Government's on-going work to tackle bullying, prejudice and discrimination and to provide protections against bigotry and hatred. We must all continue to send the message that there is absolutely no place for hate crime or any prejudice in Scotland. The Scottish Government is committed to promoting equality and tackling discrimination, which is why it has invested more than £202.4 million in that since 2007.

The report recognises that many parts of the current hate crime legislation work well and should be retained. However, where the evidence points to a need for change, Lord Bracadale has made 22 recommendations, as other members have said. One recommendation includes the repeal of the current racial harassment law to allow all hate crime legislation to be combined into a single act. That is a good recommendation. The review also recommends that there should be a new statutory aggravation based on gender and age hostility. That recommendation also comes at a good time,

as we are seeing a shift and cultural change in society towards standing up to harassment, abuse and behaviour that may have been tolerated in the past, as Rona Mackay pointed out, but is no longer acceptable.

I note that Lord Bracadale did not propose new offences for elder abuse or misogyny, and I am aware that campaigners have been disappointed by that. However, as the minister said, she is keen to hear views from across the chamber and from wider civic Scotland.

The report found no need to create new laws to deal with hate crime online, and it said that no statutory replacement was required for section 1 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. I agree with that finding, on balance, as that was probably the more difficult aspect of the legislation to scrutinise when I was a member of the Justice Committee. However, Lord Bracadale recommends that we reintroduce an element of the 2012 act by concluding that the repeal of section 6

“has left a gap in the law”

regarding offences of stirring up hatred apart from those that relate to race, which is the only area that the law now covers.

Liam Kerr: Will the member take an intervention?

Fulton MacGregor: I am going to come to Liam Kerr's comments.

When the Justice Committee scrutinised the bill that repealed the 2012 act, a majority of witnesses agreed with that point. I was quite surprised by Liam Kerr's earlier remark that the repeal of section 6 of the 2012 act could mean a gap but he still voted for its repeal, which means that, unlike elsewhere in the UK, Scotland now has no specific offence of stirring up religious hatred.

Liam Kerr: Fulton MacGregor and his colleagues have made some pretty robust—and now incorrect—comments about the Conservatives behaving irresponsibly during the repeal of the 2012 act. Will he apologise for that scaremongering and apologise to the Conservatives?

Fulton MacGregor: I do not think that Liam Kerr heard what I just said. I made it quite clear in my speeches during stage 1 and stage 3 that there were issues with section 1—I think that everybody accepted that—but that, on balance, I felt that it should be kept. However, with regard to section 6, Liam Kerr has said today that there could be a gap in the law.

I must move on, as I have only minute left.

Just a few months ago, members called on the Scottish Government to recognise an increase in anti-Catholicism in Scotland, citing shocking statistics that showed a disproportionate number of incidents. If we act on the report's recommendation, the offence of stirring up hatred that is connected to religion will be set out in the act, reintroduced and extended.

It is also clear that there is underreporting of hate crime, so we might consider that further improvements should be made in the responses of the police, the prosecutors and the courts. I am the convener of the cross-party group on racial equality, which has paid the issue a lot of attention, including with presentations from the police.

It is essential that a consistent process be adopted across Government and that all criminal justice partners work together to drive up the reporting of all hate crimes, to give victims more confidence and to remove inconsistencies in the recognition and prosecution of different crimes.

That brings me to a recent case that involved one of my constituents, who is the man who was found guilty of a hate crime for filming a dog's Nazi salute. The defender said that it was intended to be a joke. As the constituency MSP, I received representations from both sides of the argument, who made their cases strongly and passionately. In many ways, although clearly different—

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

Fulton MacGregor: I will just finish this point.

Although the context is different, that reminded me of the evidence-gathering sessions on the bill that repealed the 2012 act. The issue split public opinion into two camps.

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

Fulton MacGregor: One camp agreed with the verdict and one did not. That case highlights the need for clearly defined hate crime legislation.

15:49

Anas Sarwar (Glasgow) (Lab): I thank Lord Bracadale for his report. It is a balanced report and one that should be welcomed by all members across the chamber. I am particularly pleased that he has included both gender and age aggravations, although there will be debates to come on what further measures can be taken. In the time that I have, I will raise a few issues that remain outstanding from the report and some issues that require further discussion and debate.

One of those issues is the legal framework itself. Although it is right that the inquiry will look at the

legal framework, consideration must be given to how that framework is used in practice. What does it mean for individual police officers? What does it mean for the procurator fiscal when the service is implementing legislation? What does it mean for individual lawyers or judges? What does it mean for any potential victims or, indeed, perpetrators? Such things need to be looked at much more in the round.

There is a feeling among certain sections of our communities that there are not equal protections in law for people of different communities, faiths and backgrounds. A close look at Lord Bracadale's review and our legislation shows that, although we do have equal protections in law, perhaps we do not have equal actions in how the law is implemented for different communities. That needs to be looked at in much greater detail.

It will be no surprise to members that I raise the issue of Islamophobia. Much more work needs to be done around defining Islamophobia. I hoped that Lord Bracadale would consider that as part of the review, but perhaps it was outwith the remit. The First Minister wrote to me, saying that I would be put in touch with Lord Bracadale in advance of the publication of the review to discuss the definition of Islamophobia. Unfortunately, that did not happen, but I hope to have a conversation with Lord Bracadale and his team soon, to discuss the issues around the definition of Islamophobia. We need to define Islamophobia because Islamophobia is on the rise and we must recognise that for our communities.

There are four key reasons why we need a definition of Islamophobia. First, a failure to define Islamophobia risks allowing those with ill intent to define it for us. Secondly, in the valid debate about freedom of speech, which I will come back to in a moment, it is important that we define Islamophobia so that it cannot be mischaracterised as the restricting or questioning of theology. We should be allowed to question theology as well as different opinions and beliefs; what we should not be allowed to do is hate someone for having a belief.

Thirdly, it is important that we define Islamophobia so that there is a clear reference point for the legal system when considering any hate crime or cases of incitement. Fourthly, defining Islamophobia will help to demonstrate to our diverse communities that we, as lawmakers, recognise that Islamophobia exists, that it impacts on communities and that we take seriously the need to challenge it.

Fulton MacGregor spoke about freedom of speech, and a lot of people will see hate crime legislation as an attempt to curb freedom of speech. I believe in the protection of freedom of speech. What we are talking about is the freedom

to offend, to abuse and to hold prejudiced views that impact on individuals' life experiences, life chances and life outcomes. That cannot be allowed to happen.

We must get the balance right. Part of that is accepting that there will be a hard-core group of individuals who will always claim that any attempt to develop hate crime legislation is an attempt to curb freedom of speech, no matter what is agreed or how it is applied. Surely, the test must be whether it passes the test with the fair-minded majority. In order for that to happen, any definition of Islamophobia must not be an attempt to stifle debate or disagree on theology; it must be focused solely on prejudice and bias, and it must be focused on Muslims—the followers of Islam—and those who are misrecognised as Muslims rather than on Islam itself.

There must be a broad recognition that we still have a problem in our society with everyday sexism, everyday homophobia, everyday racism, everyday anti-Semitism and everyday Islamophobia. We must also recognise that we can have the greatest legal framework in the world but the vast majority of prejudiced views will not be criminal. Prejudice is not something that people can go to a police officer about or report, and they it is not something that they can get a judgment on; nevertheless, it still impacts on people's life chances and opportunities. Prejudice impacts on their employability and their education, and there is a gendered nature to it. It impacts on access to public services and how people feel in their own communities.

I was hoping to speak in detail about the online experience and social media, but I will have to leave that for now. Social media was meant to open up the world but, in many cases, it is helping to spread hate and prejudice and is creating echo chambers for them.

All of us who believe in creating a society that is free of hate, division and abuse must see the fight against all forms of prejudice as a fight for all of us.

15:55

George Adam (Paisley) (SNP): Before I start, I want to say that I appreciate the tone that Anas Sarwar adopted during the debate. That is the tone that we should maintain in this debate as we move forward. Lord Bracadale's report gives us that opportunity.

I know that we say this all the time, but I am extremely pleased to be speaking in this debate and discussing this report, because any mature democracy needs to be able to look at itself and ask the difficult questions. Simply put, those questions are whether we are a nation that

accepts people regardless of their background; whether those from Scotland's diverse populations and communities feel safe and wanted; whether those with extremist views are dealt with when their attitudes offend others; and whether our laws are robust enough to answer those questions. Those are not all the questions that could be asked, but they are a good start. It is my view that that is what Lord Bracadale's review is all about.

Lord Bracadale was asked to consider our current hate crime laws, how well we deal with hate crime behaviour and whether there is a need for new or further legislation on hate crime. One of the points that stand out for me is the need to make hate crime laws simpler and bring them together in one place—I know that the minister mentioned that.

Another point that stands out for me is that Lord Bracadale said that there are gaps in the law. There is no way that we could have this debate without mentioning the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. My opinion on that legislation is already on the record and I do not wish to go through that debate again. Today, therefore, I will consider only what Lord Bracadale suggested. One of the gaps that my colleagues and I pointed out would exist following repeal concerned section 6 of the act, on threatening communications. I am therefore pleased that the report agrees with that opinion. We are currently the only part of the United Kingdom that does not have legislation on that matter.

That brings me to another part of the report, which concerns an issue that we must address. The 2012 act was passed for a specific reason and to address a specific problem, and that problem has not gone away—the act might have gone, but the problem is still there. As I have said, I accept the decision of the Scottish Parliament to repeal the act, but we must consider ways to ensure that our laws on religious intolerance are robust and find a way to deal with the very difficult problem that exists in our communities. My reading of Lord Bracadale's recommendation in that regard is that we must create a law that protects our communities from those who wish to stir up religious hatred, in effect reintroducing the parts of the 2012 act that deal with that and extending them to cover areas other than simply football. Those are issues that we can debate here and all over the country as we discuss this matter further in the coming months.

Updated hate crime legislation must have balanced protections for human rights, freedom of speech and civil liberties. However, part of the balance must involve protecting our communities from hate.

The type of future Scotland that I want for my children and grandchildren is one that is free of hate. In the immortal words of John Lennon—I blame my mother for this—you may say that I am a dreamer, but I believe that this is the way forward, because there is no place for hate crime in Scotland.

The Scottish Government is clear that any form of hate crime or prejudice is completely unacceptable and will not be tolerated in 21st century Scotland. We must celebrate and embrace Scotland's diversity. Everyone in Scotland must feel empowered, regardless of their race, faith, sexual orientation, gender identity or disability. On that point, I should say that disability is one of the issues that we sometimes forget about. Obviously, members will know about my circumstances, with Stacey having multiple sclerosis. Stacey will quite gladly say to people that, as a disabled person, she sometimes feels as though she is invisible. However, everyone must feel safe and secure in their communities. What we do in our Scottish Parliament influences the tone with regard to the type of nation that we want to be.

I and many other members want a Scotland with a tolerant society, but that will not be easy to create. We will stumble along the road and have difficulties along the way but, when setting off on such journeys, the destination is the most important thing. The Lord Bracadale report gives us a starting point for a mature discussion and to decide what type of Scotland we want.

16:00

Annie Wells (Glasgow) (Con): I am pleased to have the opportunity to speak today on Lord Bracadale's independent review of hate crime legislation. With 22 recommendations, there is a lot to cover, so I will quickly give my thanks to Lord Bracadale and his team for the extensive work that they have carried out.

Hate crime of any kind should not be accepted in a civilised society, which is why I look forward to working with the Scottish Government to frame how the recommendations are taken forward. Looking at the review in the context of statistics on hate crime in Scotland, we know that there is still much more work to be done. Although overall hate crime levels have fallen in the past year, the number of crimes with a sexual orientation aggravation is up by 5 per cent and the number of charges with a religious aggravation is up by 14 per cent.

When considering whether current hate crime law represents the most effective approach for the justice system to deal with crime that is motivated by prejudice, intolerance and hatred, we need to consider whether the current legislation needs to

be simplified and rationalised, and whether new categories of hate crime need to be created for characteristics that are not currently legislated for.

Notably, the report recommends that age and gender should become categories of hate crime. Rather than having stand-alone offences, age and gender would operate as aggravators to other offences in much the same way as other protected characteristics such as religion or race. Rape Crisis, Scottish Women's Aid and Engender stated that they want a stand-alone offence of misogynistic harassment, and they said that adding gender to a "laundry list of groups" might lead to underreporting.

As Liam Kerr stated in his opening speech, the need for open and frank discourse is particularly important on those points. We must do all that we can to tackle hostility that is motivated by a person's gender or age, but we should remain open to the potential implications. As a party, we would carefully consider any legislation that the Scottish Government brings forward but, in expanding categories and creating new offences, do we run the risk of undermining public understanding of the issue? Is there a possibility that we dilute the original goals of recognising crimes against groups such as ethnic minorities and disabled people?

As Lord Bracadale suggests, improved public understanding is required, regardless of what proposals are taken forward. There is a need to promote and enhance the public understanding of hate crime, including its role in sentencing, which might encourage a better response from those who become involved in or are affected by such crimes in reporting them to the police.

Akin to that, the report suggests the creation of an aggravator, aside from hate crime, for the exploitation of vulnerable people, which would give courts the ability to increase sentences for offenders who target victims because of their age or disability. The Scottish Conservatives wholeheartedly support that recommendation as the SNP must make it a priority to get tough on criminals who target the vulnerable.

The Scottish Conservatives continue to support the existence of hate crime as a special category, recognising the profound harm that it causes to the victim and the community to which they belong. As research has shown, the emotional and psychological trauma that is caused by hate crime is heightened due to the offending being related to the core of the victim's identity, which has an impact on the entire community. We also agree with the review's recommendation that statutory aggravations should remain as the method of prosecuting hate crime.

I stress the importance of Lord Bracadale's work. It can shape how, as a society, we tackle hate crime in Scotland for years, and it can help to educate the younger generation. That said, I call on the Scottish Government to tackle the root causes of hate crime. Although the levels of hate crime have gone down over the past year, we must not get complacent and must ensure that that downward trend continues. With early intervention, I hope that hate crime can be consigned to history.

16:05

Clare Adamson (Motherwell and Wishaw) (SNP): I, too, put on record my thanks to Lord Bracadale for his report. I also thank all those who co-operated with and responded to the extensive consultation and contributed to what is a comprehensive review.

Scotland is an inclusive, forward-thinking country, and that should be reflected in our law. Although we have seen a downward trend in hate crime statistics in Scotland more widely, we must not be complacent and it is vital that our law is capable of dealing with the minority of people who continue to perpetrate hate crimes in Scotland. As members have said, we might decide to take a different route from the recommendations, but the review is nonetheless a starting point. I was pleased to see that the review recommends new statutory aggravations, including one for crimes that are motivated by hatred of gender, which Rona Mackay talked about earlier.

In the age of the #MeToo movement, we should rightly recognise that many of the crimes that are perpetrated on women are hate crimes that should be recognised in court and taken into account when a sentence is applied. On the theme of accessibility and transparency, which Lord Bracadale seems to be looking for, effectively labelled offences send out a message to society and to those who are found guilty because they lay out the harm that is done to the victim. That clarity is simply not provided by the common-law offence of breach of the peace, unless one of the existing aggravations attaches to that offence, but even on occasions when it does, an offence as wide as breach of the peace can be inappropriate in cases of targeted hate crime. The Law Society of Scotland has said that it fully supports the development of a hate crime offence.

There is no place for hate crime in Scotland. Alongside legislation, it is important that we as a society are taking the correct steps to stamp out hate crime. I am pleased that the Scottish Government has launched a tackling prejudice and building connected communities action group, convened by the Cabinet Secretary for Communities, Social Security and Equalities, and

that there have been successful initiatives such as the Government's hate has no home in Scotland campaign in partnership with Police Scotland.

The Bracadale review has also noted an underreporting of hate crime in Scotland, which many members have spoken about in the debate. The report describes the underreporting as a "serious problem", and I agree that it is. The underreporting is partly attributed to a lack of awareness of what hate crime is and an acceptance within certain communities that abusive conduct is just part of daily life and people should put up with it. That is shocking and completely unacceptable for 21st century Scotland. We need to address those concerns through clear legislation and education programmes that raise awareness of hate crime and encourage communities to come forward to the police and to exercise their rights. I am pleased that the action group is considering the issue of underreporting as part of its remit and I look forward to seeing what comes out of the group's work in that area.

I want to live in a Scotland that is an inclusive and safe place for all who choose to make our country their home. We can help keep Scotland inclusive by ensuring that our legislation is up to date and fit for purpose, by educating our citizens on what is unacceptable and how they are able to exercise their rights, by reaching out to disengaged communities and by all of us standing up and condemning hate wherever we see it in our society, whether that hate is based on gender, race, sexuality, nationality, religion, disability, age or transgender identity, which are the diverse characteristics that make our country so wonderful.

The people of Scotland should have confidence in their law and their justice system. We are an outward-looking, inclusive society, and I look forward to the Scottish Government taking forward the review's proposals in a manner that reflects that modern Scotland.

16:09

James Kelly (Glasgow) (Lab): I thank Lord Bracadale for his report and the review that he carried out. It is a considerable body of work that has been seriously researched. As Daniel Johnson said, it is a fine example of how a platform for legislation should be developed and taken forward. Everyone agrees that hate crime is abhorrent. It has no place in modern Scotland. Therefore, the review is much needed to ensure that our laws are fit for purpose.

Some of the recommendations will engender a fair bit of debate. For example, I can see the logic for the consolidation of hate crime legislation. In a

practical sense, that is helpful for prosecutors and members of the public. However, I also acknowledge the point that Rona Mackay made that there have been some reservations about that. I hope that there will be a considered debate about it. The same is true in relation to aggravations. Whereas there is broad support for extending the aggravations to include age and gender, there has been some criticism that the recommendations do not go far enough. However, the report allows us to explore those issues and move on.

I welcome the report's conclusion that no new legislation is required in relation to football-related offences and, indeed, that there was no gap in the law in relation to football. That reinforces the arguments that were advanced during the repeal of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. It does not do the credibility of the Government or SNP MSPs any good to try to hold on to parts of that act. The reality is that it was discredited during the parliamentary process not only in the Parliament but in the country.

John Mason (Glasgow Shettleston) (SNP):

One of the arguments against the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 was that symbolism in law was not important. Does James Kelly now agree that symbolism is important? Lord Bracadale says that it is.

James Kelly: The most important thing is that law must be effective. The Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 was badly drafted. It was an example of a Government that was reaching too far. Unfortunately, that reach went all the way out into how the police operated. Football fans were treated like second-class citizens.

The amount of money that was used in pursuit of people under the act was wasteful. There were instances of the wide-scale use of closed-circuit television to film innocent football fans going into matches. That CCTV footage was then reviewed and police officers turned up, in some cases mob handed, at people's doors at 6 o'clock in the morning to arrest them. That legislation took many people into the criminal justice system for the first time and many of those cases ended up not reaching the courts or people were ultimately found not guilty.

My final point concerns the sectarianism working group. I welcome the setting up of that group because definitions are important. That was one of the flaws of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. However, the Government has a real problem with the membership of that

group because no formal member of the Roman Catholic Church—

Annabelle Ewing: Will James Kelly take an intervention on that point?

The Deputy Presiding Officer (Linda Fabiani): No, Mr Kelly is just finishing.

James Kelly: I am sorry. The Roman Catholic Church has no formal membership of that group.

Annabelle Ewing: Margaret Lynch—

James Kelly: The minister is saying “Margaret Lynch” from a sedentary position. With all due respect to Margaret Lynch, she is not an official member of the Roman Catholic Church. *[Interruption.]* By that, I mean—

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

James Kelly: By that, I mean a bishop, a priest or somebody appointed by the church. I believe that to be a major flaw, and—

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

James Kelly: Sure. I say this seriously to the minister. You really have to address the flaw in that group, because if you want to take forward serious work on sectarianism—

The Deputy Presiding Officer: You must come to a close, Mr Kelly, and you should always speak through the chair. Please close.

James Kelly: —you must properly involve an official member of the Roman Catholic Church.

16:15

Ivan McKee (Glasgow Provan) (SNP): I will not comment on that.

Scotland prides itself on its tolerance. Our embracing of diversity is at the core of our society and our values and, although we are far from perfect in this regard, it is important that we continue to work hard every day to tackle intolerance wherever we find it. Hate crime has a hugely damaging effect on both victims and communities, and everyone has the right to be safe and to feel safe. That is why the review of hate crime legislation is so important. It allows us to make clear which behaviours are unacceptable.

The work that we do in this Parliament is about much more than just legislating. We are able to influence culture across society, reinforce existing trends and impact on the direction of others. The review recognises that, stating that the law has the potential to contribute to long-term cultural change and the acceptance of diverse communities.

In terms of the characteristics that are covered and the range of issues that it raises, the review is broad. Much has already been said on many of those aspects, and I will not repeat that. In the limited time that is available, I will focus on three issues in particular. The first concerns the interaction between definitions of hate crime and political expression, particularly in relation to whether criticism of a political entity should be defined as a hate crime.

Hate crime is often concerned with spoken or written communication. That forces us to define other boundaries, and specifically those that separate hate speech from free speech. The review comments on that, recognising that

“The right to engage in legitimate political protest is fundamental in a democratic society. There is a tension between ... freedom of expression, which protects legitimate political protest, and ... conduct which is racially aggravated.”

In particular, the review considers political protests in that context and makes it clear that it does not consider criticism of a political entity to be a hate crime. In fact, it considers that such an approach would extend the concept of hate crime too far and dilute its impact. It concludes that it would be open to interpretation and abuse for political ends, and that it would be open to change over time depending on the political climate. I am glad that the review comes to that conclusion, making it clear that hate crime legislation should not be used to stifle legitimate political expression.

The second issue concerns the position that the review takes with regard to differentiating between those of faith and those of no faith with respect to hate crimes. There is evidence that people of no faith, and particularly those who have left a faith, face targeted violence solely on the basis of their belief position. However, the review concludes that, although in principle hostility towards members of a group based on non-theistic beliefs could give rise to hate crime, it does not believe that such an extension is required. The result of what the review proposes would be that someone who had changed their religion from one faith to another could be a victim of a hate crime, but someone who was similarly targeted for leaving a faith and moving to a position of non-belief could not be considered to be a victim of hate crime. I would have preferred the review to have reached a different conclusion and offered the same protection to those of no faith that those with faith will enjoy.

Thirdly, I note that the blasphemy laws are still on the statute book, although they have not been used for some time. They focus on a narrow definition of religion and they hamper efforts to challenge blasphemy laws that are used in many countries around the world. Individuals have faced

persecution, imprisonment and even threat of execution by states that still have active blasphemy laws, but international efforts to convince those states to rescind such laws have faced challenge because countries including Scotland still technically have blasphemy laws. In that context, steps to remove blasphemy laws from the statute book as part of the wider review would be welcome.

The review contains much that is to be welcomed. It makes it clear that hate crime has no place in the Scotland that we want to live in, that we are a diverse and tolerant society and that the laws that we pass in this place reflect those values. Despite all the work that we do here and the prevalent attitudes of the vast majority of our citizens, pockets of racism, Islamophobia, anti-Semitism, homophobia and other forms of prejudice still exist. We need to continue to work tirelessly to challenge those attitudes and make it clear they have no place in a modern, tolerant Scotland.

The Deputy Presiding Officer: Thank you for your brevity, Mr McKee. That is useful.

16:19

Oliver Mundell (Dumfriesshire) (Con): I am pleased that today's debate is taking place. It has been a useful debate so far and members are aware of how important it is that we adequately tackle and address hate crime in Scotland. We all want to live in a tolerant society, and in an ideal world it would not be necessary to legislate in this area. However, we have to recognise the persistent and deeply unpleasant problem that continues to plague our society and make so many people's lives a misery.

The kind of offences and instances that members have identified this afternoon are not just a problem for the individual victims; they are problems for us all. Whatever we think of the review's recommendations and whatever our differing opinions, there can be no downplaying of or dismissing how severely impacted those directly affected are and how devastating the consequences of discrimination and hate crimes are. Hate crimes are motivated by prejudice, and Parliament must continue its work to stamp them out.

In doing so we must also recognise the broader cultural harm and make sure that it is not forgotten. We cannot allow inaction. Although I recognise that we are going to implement these specific recommendations, we should not forget that other interventions are at our disposal that can be just as effective and just as pressing.

This substantial and detailed report is welcome. It provides the opportunity that several members

have talked about to progress the debate and look at how we can go further. The 22 recommendations focus our attention on a number of key areas and priorities and it is important that we debate and discuss the best way to take them forward.

I am particularly keen to hear the views of wider stakeholders because, if this conversation is going to be successful, it cannot be held just in Parliament, nor should the Government take these decisions in isolation. In that spirit, I welcome the approach that has been taken and our chance to have this debate.

As we have already heard, there are sincere and informed perspectives on a number of the recommendations, and there will be areas about which people will be concerned and have differing opinions. Liam McArthur made some important points about how we should go about having those disagreements.

At the heart of many of the differences is a difficulty in addressing the balance between how people feel and the harm that is caused to them and how the legal process works in practice. Everyone in Parliament is committed to addressing the problem, but the challenge will be in how we achieve that. I would like to highlight two key areas there.

First, I understand that recommendation 8 has raised some concerns, including from Inclusion Scotland, which does not agree that there should no longer be an express requirement to state the extent to which a sentence being imposed is different to that which would have been imposed in the absence of an aggravation. That concerns me because it sends out the wrong message and it might make the sentencing process less transparent for the victim, the offender and wider society. It might also have unintended consequences when sentences are appealed and compared. The area requires some more thought. From reading the review report, I understand that there are legitimate concerns about the complexity of the sentencing process, but I remain somewhat unconvinced that the task in question is too complicated for sentencers, especially given what we ask of them and the other requirements that are placed upon them.

Secondly, I was pleased to see restorative justice feature so significantly in the report, with Lord Bracadale encouraging practitioners to learn from developing practice in this area. From taking part in the recent members' business debate, I know that there is wide support across the chamber for developing restorative justice. It has an important role to play in helping to find the balance that I talked about.

I am pleased that Parliament has had this opportunity to look at some of the recommendations in detail. There could be much more debate on what is a substantive report. I look forward to seeing the details when the Government brings forward its proposals in response to the report. I am sure that many of the points that have been raised today will be reflected upon closely before then and that there will be a further chance to debate them.

16:24

James Dornan (Glasgow Cathcart) (SNP): When Lord Bracadale's report was published, I was preparing for a trip to Srebrenica. I was able to digest some of it quickly, but I look forward to going over it meticulously to ensure that every recommendation is considered before we discuss it further.

I would be derelict in my duty if I did not start my contribution by talking about my trip to Bosnia. Nothing could possibly make me more aware of the need to combat the insidious planting of hate at an early stage than seeing how Bosnia, and particularly the area around Sarajevo, went—apparently overnight—from being a cosmopolitan, integrated, welcoming place to one in which long-term friends turned into murderers, which culminated in genocide in Srebrenica and Prijedor. People just could not conceive how something like that could happen in Bosnia, but, of course, such events do not just happen overnight. There was a slow, calculated process of dehumanising people of different faiths or backgrounds, manufacturing grievances from a mythical past and blaming any and all present woes on neighbours, work colleagues or friends.

During my trip, I and others in my group had a look at Remembering Srebrenica's stages of genocide. When it comes to the issue of sectarianism, Scotland—or at least certain parts of it—might be seen as being at stage 3. Not for a second do I say that that means that we are heading for a similar situation. All I say is that we must always be vigilant.

We had the great privilege—and I do consider it a privilege—of meeting and listening to the stories of four heroes of Sarajevo and Srebrenica. At the age of 19, our guide and host, Resad Trbonja, went from being a long-haired student to fighting on the front line along with four other young men, with five AK-47s and 15 bullets between them on their first day, simply to defend their city. Hasan Hasanović lost his twin brother and his father on the march from Srebrenica to Tuzla and now spends his life telling his story to others. I believe that he has been to visit the Scottish Parliament—he has certainly come over to Scotland. Bakira Hasečić was raped, as were her daughter and

sister—who was eventually killed—and her house was taken over to be used as a rape centre. Finally, we met one of the mothers of Srebrenica, Fadila Efendić, who lost her husband and son. Her husband's remains were found, identified, returned to her and buried. The authorities then identified some of her son's bones, which she held on to for years because she was waiting to see whether they could find more of him. After a number of years, she buried everything that she had of him, which was two shin bones. To keep her son's memory alive, she made 273 T-shirts, onto which she copied his signature, and then gave them to people. Why were there 273? That was the number of young men born in 1975—just like her son—who were found in mass graves in Srebrenica.

Members might ask why I have spoken about Srebrenica for so long. It is because the description of it before the war sounded so much like the Scotland that we all know. We have political and personal difficulties but, generally, we get on and we certainly do not hate because of our differences. More than any other example that I can think of, Srebrenica highlights how easy it is to take our eye off the ball and let things escalate until it is perhaps too late to stop them.

In its report at stage 1 of the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill, the Justice Committee noted that the scrutiny process had sparked a new debate on sectarian behaviour. I certainly intend to continue that debate. Members should be aware that I am in the process of establishing a cross-party group on combating sectarianism in Scottish society. Our initial meeting is set to take place at 6 pm on 27 June. I have had interest from Labour and Conservative members, and I hope to have the group formalised after the summer recess. Having such a group is important because we must show the people of Scotland that when it comes to tackling hate crime there is no party-wide division. I ask any member who is willing to join the group to contact me by email.

My intention is that the cross-party group should build upon Lord Bracadale's report. However, we will not seek to define sectarianism—we have already heard about the working group that will be dealing with the report's recommendations—and, of course, it will be for the group and not just me to decide what our work will be. I hope that the group will take a holistic approach, and will speak to religious groups, academics, charities, organisations, educators and other stakeholders to build on the recommendations in Lord Bracadale's report.

I am delighted with the report, but, having lived in the west of Scotland all my life, I feel saddened

that we are still having to debate such issues. In 2016-17, a shocking total of 719 charges were reported to the COPFS with a religious aggravation under either section 74 of the Criminal Justice (Scotland) Act 2003 or sections 1 and 6 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012.

Therefore, there is no way that we can rest on our laurels in the hope that sectarianism will go away on its own, because the evidence shows that it is not going away, and we cannot allow it to get worse. There is a religious divide that to this day vibrates through certain parts of Scottish society and, while that exists, I will do anything within my power as an elected member to combat it.

I may look to amend the recommendations around sectarianism after reading the report more closely, but my main message to the Parliament is that we must be careful with our use of language and that we should never be complacent. We should remember that, if the events that I described can happen in 20th century Europe, they can happen anywhere.

16:30

John Mason (Glasgow Shettleston) (SNP):

Like other members, I very much welcome the report. Hatred is not a good thing, although it is an attitude and, as such, it is not easy to deal with by legislation. Lord Bracadale quotes Martin Luther King, who said:

“Well, it may be true that morality cannot be legislated but behaviour can be regulated. It may be true that the law cannot change the heart but it can restrain the heartless.”

Lord Bracadale makes it clear that he received a range of responses, including some from individuals who opposed the very concept of hate crime. However, I believe that we need to deal with hate crime, as we see it happening in present-day Scotland. Black and minority ethnic folk, Gypsy Travellers, Muslims, Jews and disabled people are all the object of hate at times. However, freedom of speech is important, too, and getting the balance right is not easy. Lord Bracadale deals with that in his report. In chapter 2, he makes the important point that people are free to think what they like and to express their views, even if they might be offensive to many people, but that, at some point, regulation of conduct becomes necessary.

There is a lot of good stuff in the report, but I will focus on chapter 5, which is about stirring-up offences. Currently, we have an offence of stirring up hatred only in relation to race. The Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 attempted to widen that, specifically to religion, but it has been repealed. The question is whether we should have

an offence of stirring up hatred, perhaps covering all the protected characteristics. That would mean that there would not need to be a baseline offence of, for example, assault or vandalism with a statutory aggravation; instead, the stirring up of hatred in itself would be an offence. Lord Bracadale puts forward the arguments in favour, which include the points that stirring up hatred is considered morally wrong and that it can lead to actual harm by, for example, creating a social atmosphere where prejudice and discrimination are accepted as normal.

Stirring up hatred would be an offence only if it was serious enough. For example, that might apply to the punish a Muslim campaign or someone seeking to rid Europe of Jews. Interestingly, Lord Bracadale puts the case for law having a symbolic function, even if the number of prosecutions was not great compared to a baseline offence plus an aggravation. He says that there is a gap in the law, especially where the hatred is aimed at a group rather than an individual and that, depending on the circumstances and context, it could be more appropriate to proceed with a charge of stirring up hatred.

Freedom of expression is clearly hugely important to most of us. For example, we want to allow discussion and criticism of religions. I accept that some of the church or other Christian input has emphasised the need to protect freedom of speech almost to the exclusion of all else. However, I also accept the argument that freedom of speech is not absolute and that, as the report suggests, it should be possible to frame legislation that distinguishes between rational argument and rabble rousing. Lord Bracadale refers to article 10 of the European convention on human rights, which protects freedom of expression, but he points out that the courts have decided that that protection does not include speech inciting violence against the general population, so it is not a completely unrestricted freedom.

Lord Bracadale refers to the fact that the European Union and the United Nations have made the point that religion and race can be linked in practice. Thus, hatred of Catholics and the Irish can be connected, even though not all Irish people are Catholics and not all Catholics are Irish. Similarly, it can be difficult to distinguish between hatred of Israel and hatred of the Jews.

The report also compares Scotland to the rest of the United Kingdom, Canada and most of Australia, and says that Scotland has the least provision for offences of stirring up hatred. Lord Bracadale argues against a hierarchy of protected characteristics and says that, therefore, all should have a stirring-up offence. The point about a hierarchy came up when the Equality Act 2010

went through, when the UK Government of the time refused to include either a statement that there was hierarchy or a statement that there was not one. In recommendations 13 to 16, Lord Bracadale concludes that we should introduce stirring up of hatred offences and they should be based on conduct that is threatening or abusive where there is either an intention to stir up hatred or where hatred is likely to be stirred up. I find Lord Bracadale's arguments in chapter 5 very persuasive.

I suspect that there will be a lot more debate on this topic, but my initial reaction to the work of Lord Bracadale and his team is very positive. I wholeheartedly endorse it as a strong basis for moving forward.

The Deputy Presiding Officer: We move to the closing speeches. I call Patrick Harvie, who has up to four minutes.

16:35

Patrick Harvie (Glasgow) (Green): I am grateful for the chance to contribute to the debate, and thank those who have contributed to the report and produced it for us to consider.

I found myself considering the debate in the context of what has come before. Parliament has debated these matters long and hard, and many times, pretty much since the beginning of devolution, when Donald Gorrie made a number of points about the need to address sectarianism. My colleague Robin Harper joined that with calls for a wider approach to hate crime, including homophobic hate crime, back in session 1.

Following that, a working group on hate crime was established during session 2. It reported early in the session, but its recommendations were not taken forward. In session 3, I introduced a member's bill to implement the key recommendations on aggravated offences in relation to sexual orientation, trans identity and disability. There was strong consensus about taking those steps, but there was also a strong consensus that the landscape of hate crime legislation was becoming cluttered and that consolidation was the next thing that should happen.

Then, in session 4, we had the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. I do not think that we should rehearse the arguments on the OBFA again. We need to live with the fact that we had a sincere disagreement across Parliament about it, and move on, taking forward some of the positive ideas that are before us. I commend members including Anas Sarwar, Ivan McKee and Oliver Mundell who have approached today's debate in that spirit.

Now, a number of years later, we are beginning to consider the option of a consolidation bill. I want to draw out two themes against that historical backdrop. Until the OBFA, legislation on incitement to hatred had been proposed and considered, but never pursued by Parliament, which repeatedly took the view that, notwithstanding the existing UK legislation on racial hatred, we should use aggravated offences as the core argument.

The Bracadale report recommends that that continue to be the core concept in our hate crime legislation. To me, aggravated offences are not just about getting tough on crime or having more severe sentences, but about getting the right sentence for the right circumstances, and about public recognition of the context in which an offence has been committed and its impact.

Bracadale also recommends new stirring-up offences. It seems to me that he is recommending a softer version of incitement to hatred, to be applied generally throughout society rather than in specific circumstances, such as football. It may be that we can find a way to make that work well, but we need to be conscious of the fact that it would be a departure from what has so far worked well since devolution.

There is also the theme of stand-alone offences. During sessions 1, 2 and 3, there was a lack of consensus among women's organisations in Scotland about forms of hate crime. Many of them wanted to remain focused on getting domestic violence legislation right. Now things have moved on, and there seems to be more consensus among those organisations that a stand-alone offence of misogynistic abuse should be considered. We need to listen seriously to people's concerns, and to look not just at whether existing offences have failed to capture certain circumstances, but at new forms of offensive and abusive behaviour, including online misogyny.

Those are not contradictions; a single piece of hate crime legislation can both consolidate our existing laws and address the need—where it exists—for new stand-alone offences. I look forward to the debate that we will have on the matter over the coming months.

16:39

Rhoda Grant (Highlands and Islands) (Lab): I, too, welcome Lord Bracadale's report. Hate crime is a blight on our society that causes people to live in fear and to feel disengaged from their communities. Daniel Johnson pointed out that that does not just apply to the direct victim of abuse; it also means that people who share the same protected characteristic become fearful of attacks.

It might just be my perception, but anecdotally such abuse seems to be becoming more common. When times are hard, people need someone to blame, and the people whom they blame will always be people they see as being different from themselves, whether because of gender, ethnicity, sexuality, disability or any of the other excuses that people find to hate others and blame them for their own troubles. An enlightened society must not buy into that and we must challenge it when it happens, both culturally and legally. The Bracadale report is a starting point for enabling us to do that, which we can build on.

Although the report has been widely welcomed, there are concerns that it misses out on addressing misogyny. That requires greater scrutiny. I read carefully what Lord Bracadale said about a gender aggravation. What is clear is that offences against men by women are not perpetrated on the basis that the person is a man. Therefore, recognition of misogyny and violence against women appears to me to be missing from the report. Rona Mackay, John Finnie and others talked about Engender's submission on that point: we need to have regard to that submission.

I was also alarmed because the report appears to dismiss calls for a stand-alone offence to tackle misogynistic behaviour because women accepted such behaviour in the past. They did not: it is only now that women are more empowered that the calls have grown louder and such abuse is in the spotlight. Misogynistic behaviour was wrong then and it is wrong now.

That said, we need to look at what is being proposed and how it will protect women. Daniel Johnson talked about extending the "stirring up hatred" definition to all protected characteristics. We especially need to examine closely whether a new crime of stirring up hatred would cover misogyny or whether we need to be more specific.

Many aspects of violence against women are already crimes, but hatred of women due to their gender is still all too common. We have seen a growth in the number of men who call themselves incels, or involuntary celibates, who preach hatred for women and people who have relationships with them.

Anas Sarwar talked about the rise of Islamophobia; it is deeply worrying. Terrorism that is carried out in the name of Islam is used as an excuse for the extreme form of Islamophobia. However, we did not blame Christianity—Catholic or Protestant—for the terrorism that came out of Ireland. Islamophobia is rooted in racism and hatred and must be stamped out.

There is sexism involved in Islamophobia too, because it often manifests itself in criticism of women who choose to wear a burka or a hijab.

This week, Denmark became the latest European country to ban women from wearing face coverings. It is surely for women to decide what to wear, whether it is a burka or a mini skirt. It is a matter for women, and women's choices should not be commented on or used to make assumptions about them. We have no parallel in respect of men's clothing. Although there is male religious attire, it is always women's attire that men feel they can dictate or comment on.

I turn to recommendation 19 in the report, which states:

"No statutory replacement for section 1 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 is required."

That recommendation vindicates James Kelly's position and a number of members, including Liam Kerr and Liam McArthur, talked about that. The tone of the debate on the repeal of the 2012 act was hostile, and some of the abuse that was directed at James Kelly was not enlightening. It is sad that some of that was repeated in this debate.

James Dornan: Can Rhoda Grant tell us what abuse was directed at Mr Kelly today? Would she like to balance the abuse that Mr Kelly got with the abuse that I received during the debate on the repeal of the 2012 act?

Rhoda Grant: I think that there was a problem with the tone of that whole debate. This debate was a really good debate until we touched on recommendation 19, when there was a degree of hostility that was not edifying. I suggest that we listen to what Patrick Harvie said about letting go and moving on.

In that spirit, I ask the minister to consider the membership of the working group on sectarianism. Concerns have been expressed about it, and if people do not have confidence in the group they will not have confidence in what the group comes out with. I ask the minister, in the spirit of this debate, to take that point away and to look again at membership of that group.

Lord Bracadale recommended that consideration be given to a general aggravation covering exploitation of vulnerable people. That would be a worthwhile addition to our legislation. Inclusion Scotland has welcomed the proposal. We are always hearing stories about older people and disabled people being victims of theft and fraud, so a general aggravation would go a long way towards making such exploitation as unacceptable in the courts as it is in society. Inclusion Scotland told us that crime against disabled people is increasing and that crime rates in that regard can be double or three times the rates that able-bodied people experience.

I hope that the report provides a foundation for legislation that tackles hate crime. We need to

build on it, in order to create the inclusive society that we all want.

16:45

Gordon Lindhurst (Lothian) (Con): Before I make my speech in closing for the Scottish Conservatives, I remind members of my entry in the register of members' interests: I am a practising advocate.

The report of Lord Bracadale's review of hate crime legislation was much anticipated and has generated a number of ideas and recommendations that have been debated here this afternoon. As members said, although hate crime overall dropped in the past year, the issue arose in more than 5,000 charges in Scotland, and although some protected characteristics featured less, it is unfortunately the case that others featured more. Those are the statistics, but the issue arises in many unreported instances, too.

How the legislation works goes right to the heart of the review. Whatever people's views are on the desirability of having particular focuses in criminal law, rather than a single focus on the overarching principle that all should be treated fairly and equally under the law, recommendation 20, which is that the various pieces of hate crime legislation should be consolidated into a single statute, seems entirely sensible.

Such an approach will enable us to review where we are and to make appropriate amendments to the law. An ironing out of the provisions is overdue. If the Government pursues that approach in the Parliament, that could help to raise awareness among the public—awareness that I am sad to say is still needed when we consider, for example, the anti-Semitism case that Lord Bracadale cited, which Liam Kerr mentioned in the debate.

I want to talk about recommendation 2. In paragraph 3.10, Lord Bracadale briefly comments on the use of language in statute and recommends that the English phrase, "demonstrating hostility" be used instead of the Scottish phrase, "evincing malice and ill will." In doing so, he says that he is not suggesting that there be any change in the meaning or legal definition of the thresholds.

I doubt that anyone who finds themselves in the unpleasant circumstance of being the victim of a crime, particularly an aggravated crime, immediately reaches for the statute book to determine whether and how to report what has happened to them. A lawyer might do that, but lawyers form a small percentage of the population. Rather, in reporting to the police what has happened, a victim rightly relies in the first place

on the police to identify the nature of the crime that has been perpetrated.

Changing the legal definition would be unlikely to address the perceived confusion that Lord Bracadale identifies or to make it more likely that people would report or challenge their experience. I note that Lord Bracadale talks about

"the confusion which surrounds the concept of hate crime",

when he talks about aggravations, so it might be that, as judges often point out to counsel during submissions, this is not his best point in what is otherwise a thorough and carefully written report.

It is surely the nature of the issues that are involved in this area of the criminal law that make it difficult to pin down the concept, as lawyers try to do. A change of language is unlikely to help on that point. My concern is simply that the use in legislation of the word "hostility", as the word is commonly understood in Scotland, would water down the standard that is required. What, after all, is "hostility"? It is an extremely subjective word and not one that is likely to provide clarity. That is just something to think about as we move forward, to avoid uncertainty in legislation.

As Lord Bracadale himself accepts, legislation on its own is unlikely to be the whole answer. Sadly, when law is created in the wrong way, it can have the opposite effect and can turn people against not only those who make the law but those who implement it, and even those whom it is meant to protect—that point was well made by Annie Wells.

As Maurice Corry pointed out, the badly formulated Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 has had its final nail in the coffin. Recommendation 19 of the review directly contradicts what the First Minister and her colleagues have been saying about a void in the law being left by the repeal of that act. Lord Bracadale clearly concludes that no such void has opened up. He also says that the same approach that we were able to use in football without the act can be adopted in relation to sectarian behaviour outside of football.

George Adam: It is interesting to listen to the member, because Lord Bracadale's report states, on page 5:

"I invited representatives from each of the opposition parties in the Scottish Parliament to meet me and discuss the work of the review. As a result, I met with the justice spokespersons for the Labour Party and the Liberal Democrats and the co-convenor of the Scottish Green Party."

However, there was no representation from the Tories. Why is that? Why did the Tories not engage with this important review?

Gordon Lindhurst: The Conservatives have engaged actively on this matter and Lord Bracadale, as an excellent lawyer, managed to come to the correct conclusions without comprehensive engagement. The point that Mr Adam raises is about section 6. One merely needs to read the whole report, because at paragraph 6.19 Lord Bracadale makes it perfectly clear that the Communications Act 2003

“can be (and is) used in relation to a wide range of online content”.

In other words, we do not need an act with the word “football” in the title directed at football supporters. We can use the other act, which applies to everyone, to deal with the issues raised. Indeed, paragraph 6.23 of the report points to sections 38 and 29 of the Criminal Justice and Licensing (Scotland) 2010. In fact, Lord Bracadale deals with all those points and deals with them very well.

Having concluded that the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 will not be missed, there are many other aspects of Lord Bracadale’s review that we have touched on. Liam Kerr emphasised the importance of protection for the vulnerable, and I echo what he said about that. Oliver Mundell raised some important points about sentencing and restorative justice.

I conclude by referring to John Mason’s point about whether there should be an offence of stirring up hate crime. I urge caution on that, because freedom of expression is an important right in a democracy, and any possible or suggested provision would have to be looked at extremely carefully to ensure that it would not send out the wrong message, as John Mason suggests law should be used for.

16:53

Annabelle Ewing: I welcome the many positive contributions to the debate today. There is a clear recognition that hate crime must be tackled effectively if we are to become the Scotland that we all want. We cannot build an open and inclusive society if we allow bigots and bullies to peddle hatred and set community against community.

As I said in my opening statement, although legislation is not the only element to tackling hate crime, it is an important aspect of the agenda and, importantly, it is an element that this chamber can deliver. By working together, we can ensure that Scotland’s ability to tackle hate crime is the best we can make it.

We have accepted the principle that Lord Bracadale set out that we should work towards the delivery of a consolidated hate crime statute, but

the detail of what will be included in the final hate crime bill will be decided only once we have engaged widely with relevant stakeholders, had the conversations and proceeded with the consultation.

A number of members raised the important issue of misogyny and the concerns that were raised subsequent to the publication of Lord Bracadale’s review by, in particular, Engender, Scottish Women’s Aid and Rape Crisis Scotland. I acknowledge the significant concerns that those organisations have and would be very willing to have a meaningful and detailed engagement with them to hear first hand their concerns and discuss the best way forward in terms of any proposals that we make.

Lord Bracadale’s report presents us with a number of recommendations that will, as has been said, provide a strong basis for consulting on the content of a consolidated hate crime bill. I hope that that process will be positive and constructive, and that all of us engage in it recognising that we need to provide robust protection for all vulnerable individuals and communities in Scotland. That is notwithstanding what we have said today—none of us in the chamber is complacent. Scotland is a multifaith and multicultural society. That is a strength and not a weakness, and we want to be ready to welcome new individuals who seek to make Scotland their home—a place where they will feel safe, secure and welcomed. That is why we have never tried to downplay the impact of hate crime or claim that the problem does not exist in Scotland. That would be patently untrue. However, we recognise that we have something to build on.

There is the potential for any of us to be a victim of hate crime at different times in our lives and therefore we all have a role to play in tackling hate crime. From simple acts of kindness to those who are different from ourselves, to ensuring that those who indulge in criminal acts of hatred are prosecuted and held accountable for their actions, we will make it clear that we will not allow our society to be undermined by those who thrive on hatred.

I wish to clarify a matter with regard to the membership of the working group on sectarianism. Group members will be individuals who have a track record of involvement or legal expertise in tackling sectarianism; they will not be there to represent an organisation, be it a church or any other body. When the group has reached its conclusions, there will be full engagement, which will take place with all interested bodies, including churches.

James Kelly: Will the minister give way?

Annabelle Ewing: I have very limited time, Mr Kelly, and I would like to move on.

We cannot afford to be complacent. To take forward work to build an approach to hate crime with consolidated legislation at its heart is a clear signal that we have adopted a zero tolerance approach to hate crime. As many members have said, one incident of hatred is one too many. To achieve that approach, we need to encourage more people to report hate crime in the first place. That important point was raised by many members.

On the reporting of incidents, we know that many victims and witnesses do not feel comfortable about going to the police. Many feel more comfortable reporting the incident to someone they are familiar with. That is why Police Scotland works with a wide variety of partners, ranging from housing associations to victim support offices and voluntary groups, to allow reports to come to them through a third-party reporting centre. Staff in those centres are specially trained to provide support and assistance in submitting a report to Police Scotland on behalf of victims and witnesses. Police Scotland has recently reviewed the effectiveness of third-party reporting centres and is implementing an improvement plan, which includes measuring effectiveness. We will be looking at the need for additional development to ensure that third-party reporting centres respond well to the improvements proposed to the legislation.

Anas Sarwar made an important point, which is that we should not just have a law in place—it has to be a living reality for every citizen of our country. James Dornan talked about his delegation's visit to Srebrenica this week. As John Finnie said, DCC Iain Livingstone was a member of the delegation. He said on his return:

"The lessons I have taken from Srebrenica must be reflected in Police Scotland's ongoing approach to upholding human rights and combating hatred."

That is a very important statement indeed.

I see that I do not have much time left—less than I thought.

Although some hate crime figures have decreased, recent statistics show that others have increased. Data that is held by Police Scotland will add another piece to the jigsaw of our understanding of hate crime, which is why we are working with Police Scotland on a new publication on police-recorded incidents with a hate element, which will be produced later this year.

I conclude by making one point as strongly and as clearly as possible. The Scottish Government is fully committed to tackling all forms of hate crime, wherever and whenever they occur. We believe that robust hate crime legislation that is fit for 21st

century Scotland is central to that. We want all our diverse communities to enjoy equality in a meaningful sense. Hateful behaviour is insidious and corrosive and it diminishes each of us. It has no place in modern Scotland, and it is time for us all to be vigilant and to stand united against hatred.

Decision Time

17:00

The Presiding Officer (Ken Macintosh): There are no questions to be put as a result of today's business, so I thank members for their contributions and their attendance and I close this meeting.

Meeting closed at 17:00.

Correction

Kezia Dugdale has identified an error in her contribution and provided the following correction.

Kezia Dugdale (Lothian) (Lab):

At col 22, paragraph 8—

Original text—

In Northern Ireland, some women have received longer jail sentences for having had an abortion than were given to the men who raped them in the first place.

Corrected text—

In Northern Ireland, women can receive longer jail sentences for having an abortion than would be given to the men who raped them in the first place.

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