



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Meeting of the Parliament (Hybrid)

**Tuesday 19 May 2020**

**Session 5**



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# Scottish Parliament

Tuesday 19 May 2020

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

**The Presiding Officer (Ken Macintosh):** Good afternoon and welcome to this hybrid chamber meeting of the Scottish Parliament, where members will join us both in person and remotely from their constituencies.

Our time for reflection leader today is the Rev Keith Mack, minister at St John's and King's Park church, Dalkeith, who is joining us via videolink. *[Interruption.]* I cannot help but feel that our time for reflection is jinxed these days. I would normally wait, but as the link is not working we will go straight to topical questions.

## Topical Question Time

14:02

**The Presiding Officer (Ken Macintosh):** I know that the Deputy First Minister and Cabinet Secretary for Education and Skills, John Swinney, is also joining us by videolink, so we will pause when we get to that stage.

### Contact Tracing (Confidentiality)

1. **Willie Rennie (North East Fife) (LD):** To ask the Scottish Government, in light of the reported concerns regarding the Nike conference in Edinburgh, how the contact tracing process that is being piloted will balance patient confidentiality and the need to alert people of public health threats. (S5T-02184)

**The Cabinet Secretary for Health and Sport (Jeane Freeman):** Contact tracing involves the person who has the disease identifying people with whom they have had close contact while they may have been infectious. Outbreaks are investigated by means of a risk assessment, which takes into account patient confidentiality, public health needs and individual consent issues. To protect patient confidentiality, only close contacts are informed that they may have been exposed, so that they can be given relevant health information and, in the case of Covid-19, know how to self-isolate in order to interrupt chains of transmission. The index case is always asked for permission to disclose their personal details. The use of information about patients is subject to data protection legislation and all personal health information is held under strict ethical and legal obligations of confidentiality.

In circumstances such as this pandemic, there are difficult balancing discussions between the importance of patient confidentiality and the importance of information to the public. As we move to the scaled-up use of test, trace, isolate and support in the next phase of our response, we are giving active consideration to how that balance should be struck.

**Willie Rennie:** The issue has moved on again today. In addition to the Lloyds staff, the kilt shop and the digital agency, we now know that the Nike delegates were taken on a walking tour of the old town by tour guides, none of whom were contact traced by the incident management team. The issue is confidence in the contact tracing system. The First Minister said yesterday that the process was rigorous, but if that is the case, why were those people not contacted?

**Jeane Freeman:** I believe that, as the First Minister said, the process that was undertaken at the outset and subsequently in contact tracing that we have carried out elsewhere—probably most recently and notably in and around the Home Farm care home in Skye—is rigorous. It is a clinically led process that is governed by Health Protection Scotland, which uses risk and specific infection science.

The member mentioned other contacts. Those will be contacts that the contact tracers were not aware of from their conversation with the index case, which led to the tracing of eight individuals in Scotland and, from memory, 25 individuals globally, and involved other countries and their health protection teams.

I consider the process to be rigorous, and I think that it is the right process. However, a difficult balance has to be struck. Patient confidentiality is an important ethical part of how our clinicians and health service work and it is important that people have confidence that their information is being held confidentially, unless they agree to circumstances in which it should be released. Public health is important, too. Therefore, a difficult balance has to be struck between individual patient confidentiality and public health and the need for the public to understand the situation that they are facing. I therefore understand the concern. As we look to move into the next phase in our response to the pandemic, we are giving careful consideration to what that balance ought to be. We are taking views not only from members and others but from Health Protection Scotland and our clinical teams, including our Caldicott guardians, about what would be the best balance to strike in any given circumstance.

**Willie Rennie:** The tracing process is an important part of keeping us safe as we ease out of the lockdown, and the public must have

confidence in it. If we are meant to be treating the public as adults, should the incident team not have put the information into the public domain? If that had been done, anyone at the hotel, or anyone who was in contact with the Nike delegates, would have been able to take precautions. I want to protect patient confidentiality, but alerting people about an event, or about a building, does not breach that. In hindsight, should the incident have been made public? Looking forward, is there ever a circumstance in which the knowledge of an outbreak would be put into the media?

**Jeane Freeman:** All of us have the benefit of hindsight. With the information that we had at the time, I believe that we took the right decision. However, I recognise the competing calls on protecting patient confidentiality and letting the public know, particularly in relation to this virus or any other virus that causes widespread harm. This is a pandemic. Therefore, we are giving that situation—the balance between the judgments that need to be struck—careful consideration as we move to the test, trace, isolate and support strategy, and at the scale at which we will need to do that.

I agree with the member about the need for the public to have confidence in the process. Their confidence needs to be twofold. An individual needs to have the confidence to reveal all the information that we need them to reveal and to be confident that we will hold that securely. Alongside that there has to be wider public confidence in the whole exercise and strategy, with people being confident that it will be capable of spotting, hunting down and suppressing the virus, where outbreaks occur.

It is not straightforward. However, I recognise the concerns and, as we move forward into the next phase of dealing with the pandemic, we are considering whether there are better ways to strike that balance.

**Neil Findlay (Lothian) (Lab):** Was anyone in the Livingston Nike shop contact traced as part of the post-Nike conference events? Was the shop deep cleaned? Were any other shops in Livingston shopping centre deep cleaned? If so, were staff made aware why that was happening?

**Jeane Freeman:** I cannot answer the specifics of that question, because I do not have the detail of the contacts that were traced as a consequence of the index case that was linked to the Nike conference. I do not have that information—I would not have that information in the normal course of events; it is something that Health Protection Scotland's local contact tracing team would know and pursue. I cannot answer the member's question in any respect.

**Ruth Davidson (Edinburgh Central) (Con):** When the Nike conference infections—Scotland's ground zero of community transmission—occurred, the Scottish Government said that a contact trace team swiftly got to work. We now know that the team did not contact or test staff, guests or other company conferences that were exposed in the hotel when the outbreak occurred. It did not contact or test staff at a kilt fitters who fitted 10 of the delegates at the ground zero conference. It did not contact the company or test staff who shared public areas with Nike staff at the Glasgow headquarters. It did not contact companies or test staff who shared the retail space at Nike's Edinburgh hub. It did not contact or test guides who took the delegates on an Edinburgh walking tour.

This was the first major outbreak, so there was no competition for resources. How many contact tracers were put on the incident and actively spoke to individuals whom they deemed to be at risk in Scotland? How many people in Scotland were contacted by the contact tracers after the outbreak? How many people in Scotland, if any, were tested for Covid-19?

If the minister does not have the answers, can she give them in a written response at her earliest convenience please?

**Jeane Freeman:** I will be happy to provide that written response in due course.

**Daniel Johnson (Edinburgh Southern) (Lab):** Many people in Edinburgh will be struggling with the fact that this outbreak took place in a very busy hotel, in the middle of their city, on the very doorstep of Parliament. Relying on people's memories about who they had contact with as they passed through hotel lobbies and bars is, frankly, an impossibility and very difficult to reconcile with seriousness of the outbreak. The cabinet secretary has said that there is a balance to be struck. Does that mean that the guidelines on publicising outbreaks in public places is changing and will be different if future outbreaks occur in similar public places?

**Jeane Freeman:** It is important to remember what constitutes a contact. It is not someone you pass on the street or in a bar. A contact is someone you have been within 2m of for 15 minutes or more. In that circumstance, we are not being overly reliant on knowing who people passed in a bar—we are not relying on that at all—or who someone passed in the street. The definition of a contact is very specific and it is clinically led for a specific infection to show how the virus was transmitted on the basis of what was known at that time at the beginning of March. That was the definition of a contact and it remains the definition of a contact. It is not as random as the member is suggesting.

On what we will do in future, I will repeat what I have said. I understand the concerns and I understand, as I hope members do, the balance that needs to be struck in these cases. As we look to move into the next phase, in which test, trace, isolate and support will be a central feature of all that we are doing, we are considering whether there is a better way of striking that balance.

### **Covid-19 (Scottish Government Guidance)**

**2. Gordon MacDonald (Edinburgh Pentlands) (SNP):** To ask the Scottish Government what it is doing to ensure that any Covid-19 related information that United Kingdom-wide companies and organisations are issuing to employees, customers and the public in Scotland is reflective of the guidelines from devolved Administrations. (S5T-02182)

**The Minister for Business, Fair Work and Skills (Jamie Hepburn):** We are working with employers, trade unions, regulators and other stakeholders to develop specific sector workplace guidance, which will take into account the UK Government guidance while recognising the needs of Scotland.

Our partnership approach is creating the conditions for businesses, trades unions and regulators to share expertise and work together to develop sectoral guidance. We will shortly publish that guidance, sector by sector. Our initial priority is to give guidance and visibility to those in the construction, manufacturing and retail sectors on how to prepare their business and then how to operate safely when changes to the current restrictions are permitted. That approach will provide assurance and confidence to workers, employers, customers and businesses when the time is right to return to the workplace.

**Gordon MacDonald:** A constituent forwarded correspondence from a well-known website that matches home owners with various trades stating that the Government is now encouraging tradespeople to return to work. The Scottish Government has been clear and consistent in its advice to stay at home except for essential purposes. What dialogue has the Scottish Government had with the UK Government about ensuring that UK companies are communicating and following guidelines from the devolved Administrations now that there are variations between the four nations?

**Jamie Hepburn:** If Mr MacDonald provides me with details of that specific circumstance, I will be happy for us to look into it. Our own guidance sets out that work that is carried out on people's homes, for example by tradespeople on repairs and maintenance, can continue. However, it remains contingent on the tradesperson being well

and not showing symptoms of coronavirus and no one in their household being in self-isolation.

We are in regular dialogue with the UK Government about safer workplace guidance. As a result of the concerns that we and the Welsh Government raised and the representations that we made, the UK Government guidance acknowledges that public health is devolved and that the guidance should be considered alongside local public health and safety requirements and legislation in the devolved Administrations. It also states that businesses in other parts of the UK should see the guidance that has been set by the devolved Administrations. That is a clear message to UK-wide businesses that they must be cognisant of the guidance that we have issued in Scotland.

**Gordon MacDonald:** I have also been made aware by a care home worker that the UK-wide care home company that they work for is allowing visitors into its care homes, including in Scotland, as of Friday. I believe that that might be a result of misinterpretation of UK Government guidelines. Can the Scottish Government clarify what guidance on care home visitors is currently in place?

**Jamie Hepburn:** What Mr MacDonald has laid out is an issue of genuine concern. Health Protection Scotland published revised guidance on those matters last Friday. There is an expectation that all care homes comply with it and with the Government's requirements for protecting the safety of care home residents. Of course we understand the importance of visiting loved ones in care settings, in particular when it might be the final days of the resident in question. The guidance that we have issued allows for such circumstances, but the bottom line is that we need to ensure that that is done in a safe fashion. The bottom line is that care homes must follow the guidance that we have issued.

Again, if he has a specific concern, Mr MacDonald should write to the Scottish Government, and we will look at it quickly. Given the nature of the concern that he has raised, I urge him to do that as soon as possible.

**Mike Rumbles (North East Scotland) (LD):** The Health Protection Scotland regulations state that it is a defence to a charge of committing an offence to show that the person had a reasonable excuse. That includes travelling to work. I cannot find anything in the law that we passed unanimously in this chamber that says that travelling to work must be travelling to essential work. Could the minister identify the law that says that people may travel only for essential work? As far as I can see, that is not the law.

**Jamie Hepburn:** The member will be as well versed as I am or anyone else in the chamber is in the law as it has been passed. We have worked closely with Police Scotland. We have set out very clear guidance and expectations as to the responsibilities of people and how they should be acting. The clear message is that, if people can work from home—we know that many have been successfully working from home—they should continue to do so, and they should travel to work only for essential purposes.

### Reopening Schools

**3. Jamie Greene (West Scotland) (Con):** To ask the Scottish Government whether it has taken a decision regarding reopening schools in the current academic year, in light of the plans in other parts of the United Kingdom. (S5T-02181)

**The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney):** The Scottish Government will publish a route map on Thursday 21 May, which will include consideration of the issues connected with the reopening of schools, as guided by discussions within the education recovery group.

That group has brought together the Scottish Government, local authorities, professional associations, parents and other stakeholders in education. It is considering all practical options that will allow us to address the questions of safety, healthcare, wellbeing and learning that will affect the reopening of schools. It is vital that we conduct that exercise based on the circumstances that prevail in Scotland.

**Jamie Greene:** I thank the cabinet secretary for the update, albeit that it was not an answer to my question. Given that Scotland follows a different academic calendar from other parts of the UK, it seems reasonable and not entirely unexpected that, as most parents have come to accept, schools are unlikely to open meaningfully before August.

The key question on the minds of many parents will be: if schools remain closed for some months to come, how on earth will they be able to plan a route back to work? Parents are currently unable to access childminders, after-school clubs, summer schools or babysitters, or even drop off their children with friends or relatives, such are the current restrictions.

Will the Government produce updated guidance on changes to those restrictions, so that parents can start to have those conversations with their employers?

**John Swinney:** Mr Greene raises a fair and representative range of issues that must be considered around the question of relaxing lockdown in general in Scotland. There is clearly

an interrelationship between access to education and individuals' obligations to carry out employment.

The route map that the Government will bring forward on Thursday will air those challenging and complex issues, which are related and can be difficult to resolve because of the health imperatives with which we have to wrestle. Those questions are actively being considered by the Government and will be set out as part of the route map.

Of course, the Government will be very happy to engage with Parliament on all aspects of the details that are set out on Thursday and to address some of the complex issues that Mr Greene raises.

**Jamie Greene:** Given that the announcement will be made on Thursday, when the Parliament is not sitting, how will the Government ensure that members who are in the chamber today and other MSPs will be able to ask relevant questions of the strategy, rather than just receive a briefing through the media?

We learned in the media today of the potential for schools to reopen early in August—the date given was 11 August—using a form of blended learning, which involves pupils splitting their time between home and the classroom. The First Minister did not rule that out earlier. Can the cabinet secretary shed more light on how that might work in practice? Who was consulted on the approach? How will part-time schooling fit into our plans for an economic recovery, if parents are unable to work full time due to the new, blended approach?

**John Swinney:** It is essential that we are guided by all the scientific and health advice that is relevant to coronavirus. We continue to face a significant challenge with the prevalence of coronavirus in our society. The statistics with which we have all become far too familiar about the level of fatalities and infections that individuals have suffered are reminders of the importance of addressing the health imperatives that we face.

The Government wishes to relax the lockdown as quickly as it can, but we cannot be cavalier about the health implications of so doing. We have to look carefully at the arrangements to deliver schooling in a fashion that is compatible with the health advice that we receive.

Those are the questions with which the Covid-19 education recovery group has wrestled. Mr Greene asked who has been consulted. I deliberately set up the education recovery group to bring together local authorities, professional associations, representatives of the teaching profession and parents to make sure that we had an open conversation about those questions. I am



very grateful to members of the education recovery group for the way in which they have engaged with the issues. It has been part of trying to reach an agreed approach, which is what I am committed to doing. It will serve the interests of every one of us, as has been said, if we can create unity on our education priorities and proceed on an agreed basis.

**Iain Gray (East Lothian) (Lab):** The Government's framework document talks about the possibility of pupils who are transitioning into primary 1 or secondary 1 returning to school for some of June for the school experience. In my constituency of East Lothian, which is a small education authority area, even secondary 1 has more than 1,200 pupils. The Government's suggestion would mean many tens of thousands of pupils going back to school in June. Can the cabinet secretary rule that out or explain how it could be done safely?

**John Swinney:** If that option were pursued, it would have to be undertaken safely and in a way that was consistent with the health advice that is available to us. I assure Mr Gray that the Government and the Covid-19 education recovery group are following closely the scientific advice that is available to us. The Government regularly receives updated advice and I have shared relevant information on the questions that we are wrestling with about education.

Of course, as we consider the issues that the education recovery group raises, the transition experience is at the heart of how we might resolve some of the issues about access to education, recognising the significance that the transition period represents for access to education for young people in Scotland.

**Kenneth Gibson (Cunninghame North) (SNP):** The cabinet secretary mentioned engaging with parents. The majority of parents still support school closure, but with schools opening in England in June, I imagine that it is likely that that will change over the summer. How can we ensure that the majority of parents support the Scottish Government when it does decide to end the lockdown in schools? If schools do not go back in August, how will that impact the attainment gap? All the evidence suggests that the longer schools remain closed as a result of lockdown, the wider the attainment gap gets.

**John Swinney:** In my discussions with the Education and Skills Committee, I have expressly acknowledged the detrimental effect on young people of not having access to full-time education. That detrimental effect takes a number of forms: young people lose out on access to formal learning within schools; and schools are central to acting on vital issues of child protection and wellbeing to protect children and young people

within our society. Mr Gibson raises significant issues that I have openly acknowledged and that run the risk of being detrimental to the interests of children and young people in Scotland.

We must act to build parental confidence about the return to school. It is crystal clear from all the publicly available polling evidence—it has been a consistent trend in that evidence—that parents in Scotland are anxious about their children going back to school. Representatives of the parental body that has been engaging with us on education recovery have certainly expressed that view. It is important that we put information and measures in place that will boost parents' confidence about the return to education so that when children do return to school, that is done in a way that commands parental support and is in the best interests of children and young people within Scotland.

**Jamie Halcro Johnston (Highlands and Islands) (Con):** At the Education and Skills Committee on 6 May, I asked the Deputy First Minister how many pupils in Scotland do not have access to the technology required for online learning. At the time, he was not able to provide that information. I will ask again. How many school pupils are unable to access online learning because they do not have the required technology or broadband? If he still does not know, given that some children will continue to need to be educated at home for some time, even when schools reopen, what is he doing to find that out?

**John Swinney:** One of the priorities of the remote learning strategy that was set out as part of the term 4 guidance that I put in place was to ensure that young people could have access to digital connectivity. As part of the connecting Scotland initiative, the Cabinet Secretary for Communities and Local Government, Aileen Campbell, has proposed to deploy devices and support to individuals who do not have them. Individually, local authorities are taking forward some of those measures to ensure that young people are well supported. I have seen excellent examples of that around the country. Schools and local authorities are focusing on individuals who do not have connectivity to make sure that they can access a remote learning approach.

It is clear that we are going to face disruption to education for some time because of coronavirus and the Government is working with its local authority partners to make sure that young people can access education in the most appropriate way for them and that they can rely on digital connectivity to enable them to sustain their learning.

### Recycling Centres

**4. Mark Ruskell (Mid Scotland and Fife) (Green):** To ask the Scottish Government for what

reason it has not yet published guidance on allowing recycling centres to reopen. (S5T-02183)

**The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham):** As I have previously indicated, decisions regarding the reopening of recycling centres are a matter for individual councils, which need to carefully balance a number of factors, including the ability to operate sites safely and ensure that physical distancing is maintained. We continue to work closely with the Convention of Scottish Local Authorities and local authorities on the issue.

As the First Minister set out today, we will publish a route map for easing the current lockdown measures on Thursday, which will confirm our position on the public health aspects of reopening recycling centres.

**Mark Ruskell:** We discussed the issue two weeks ago in Parliament. Since then, I have written to the Scottish Government to ask for further clarification but have had no reply. Meanwhile, we see escalating levels of fly-tipping in communities. In today's *Dunfermline Press*, it is reported that council chiefs have agreed to work towards a reopening date of 1 June across Scotland. Can the cabinet secretary confirm whether that date has been agreed? If so, what measures will councils implement to ensure the safety of staff and the public at recycling centres?

**Roseanna Cunningham:** I do not want to keep repeating the point that much of the issue is about decisions that will be for local authorities to make. We know that work is under way by councils to prepare for a reopening of household waste recycling centres on 1 June, but we also know that that will not be the case for every council or every recycling centre.

The matter is rather more complicated than people understand at first glance. COSLA has made it clear that the sites will reopen only when it is considered safe for them to do so. As I have said on a number of occasions, local authorities are responsible for the operation of recycling centres, and they will need to consider several factors before they reopen them. We will continue to work closely with councils on the issue.

**Mark Ruskell:** A number of councils say that a national approach is needed to prevent waste from crossing council boundaries and overwhelming certain key facilities. Some councils, such as Fife Council, which have been testing an online booking system for when their centres reopen, have told me that the development by the Scottish Government of a national system to control and record the number of visits to recycling centres would be far preferable.

What discussion has the Scottish Government had with COSLA regarding such a national system and a national approach to reopening? Can the Government commit to that if social distancing measures remain in place in the long term?

**Roseanna Cunningham:** That is the first that I have heard of a demand for a national system for booking slots at recycling centres as and when they reopen. If it is a serious suggestion, I would have to look at it carefully, but I think that it would be extremely difficult to manage. Local authorities run more than one recycling centre within their boundaries. It is for them to make the decisions about how best to control and manage access to recycling centres, and about which ones are the most appropriate to open. That is the conversation that we are having with COSLA. If some local authorities are arguing for a national system, as far as I am aware, that is not yet part of what COSLA is asking the Scottish Government to look at.

**Angus MacDonald (Falkirk East) (SNP):** What engagement has the Scottish Government had with the waste industry since the beginning of the coronavirus outbreak?

**Roseanna Cunningham:** From the beginning of the outbreak, the Scottish Government has had considerable, frequent and regular contact with local authority and commercial waste operators to manage risks and ensure resilience in the sector.

A waste and resources sector forum, which includes representatives from local authorities, COSLA, NHS Scotland, the Scottish Environment Protection Agency, Zero Waste Scotland and the waste industry, has met weekly. There is active engagement with commercial waste organisations and, on 7 May, I met representatives from the waste sector to hear at first hand about key issues, the impact of the measures that have been taken to date and on-going challenges.

**Graham Simpson (Central Scotland) (Con):** The cabinet secretary keeps saying that this is all down to councils, but councils are saying that they will be able to open their recycling centres from 1 June; not all of them will be able to open on 1 June. They are waiting for the green light from the Scottish Government. Is the cabinet secretary prepared to give the go-ahead?

**Roseanna Cunningham:** I am not going to repeat myself. I have said what the position is. The member knows perfectly well that a route map will be published on Thursday. I have already flagged up that there might well be a signal in respect of that; members would not expect me to pre-empt any announcement of that sort. I hope that the member will understand that simplistic questioning and a simplistic approach are not reflective of the reality out there across Scotland right now.

**David Torrance (Kirkcaldy) (SNP):** What concerns have councils raised with the Scottish Government about the need to reopen recycling centres?

**Roseanna Cunningham:** As I have set out, local authorities need to consider a range of factors when reopening sites to ensure the safety of staff and the public, including ensuring that physical distancing can be maintained on site. Managing demand for the service is also an important consideration and, as I have said, I know that local authorities are looking at how to manage that challenge.

Some local authorities continue to experience significant levels of staff absence, and they will need to ensure that other key services on which the public rely, such as residual waste collection, are not affected by their efforts to reopen recycling centres. We are actively supporting local authorities in considering all the issues, including through the development of guidance in partnership with COSLA.

**Annie Wells (Glasgow) (Con):** As we have already heard, some councils could be ready to open their recycling centres at the beginning of June. As the crisis goes on, more and more services will need guidance and the proper protection. Will the cabinet secretary guarantee that staff will get the right personal protective equipment, if required?

**Roseanna Cunningham:** I do not know that that is entirely in my gift; it is for local authorities to make the appropriate operational decisions in relation to the work that they ask their staff to do. I hope that every member in the chamber will understand and acknowledge the importance of allowing local authorities to make those decisions in the current circumstances.

**Andy Wightman (Lothian) (Green):** On a point of order, Presiding Officer. In the answer that the cabinet secretary gave to a question from Graham Simpson, she indicated that the answer to his question would be revealed on Thursday. My understanding is that Parliament is not meeting on Thursday and that the cabinet secretary is referring to a press conference that will be held on Thursday. Presiding Officer, what conversations are you having with the Scottish Government to ensure that important announcements on public policy are conveyed to Parliament before they are conveyed to the media?

**The Presiding Officer:** I thank Mr Wightman for that point of order and assure him that I and the business managers raised that very point with the Government this morning. The business managers, representing all the parties in Parliament, have continued to be co-operative and collaborative in their approach to the Government,

and similarly, the Government is looking into presenting Thursday's announcement as a virtual statement to Parliament that will be examined by leaders' questions. The Parliamentary Bureau will meet again at 4.30 today to consider that very matter, so we will know more by the end of the day.

**Mike Rumbles (North East Scotland) (LD):** On a point of order, Presiding Officer. I am sure that you will agree that the Scottish Government must always operate under the law as decided by the Parliament. Earlier, I asked whether the Scottish Government could clarify that its guidance does not go further than the law as we unanimously agreed it. I wanted to know where in the law it says that people could travel only to essential work. I understand that that is in the guidance and yet, day after day, the First Minister says in Parliament and to the nation, "You may travel only to essential work," giving the impression that she is going beyond the law as decided by members in Parliament. Could you comment on that, please?

**The Presiding Officer:** I understand Mike Rumbles's point. It is a point for debate between himself and the Government, and perhaps other members. It is not a point of order for me to rule on. I suggest that Mr Rumbles continues to ask his questions or write to the Government, and I am sure that he will get an answer.

**Neil Findlay (Lothian) (Lab):** On a point of order, Presiding Officer. In response to Andy Wightman's very legitimate point, I think that you said that there will be some sort of broadcast, followed by questions from leaders. Is that correct? The Parliament exists for all members—not just for leaders and the whips but for back benchers. What opportunity will there be for back benchers to ask questions on Thursday?

**The Presiding Officer:** That issue was very much at the forefront of our minds at this morning's meeting of the bureau. I raised the very point that Mr Findlay has raised.

In the normal course of business, the Parliament and I, in particular, are very strict about making sure that all announcements are made to Parliament first. The Government has abided by that by using methods such as inspired questions and other parliamentary procedures.

In the middle of the Covid outbreak, the Parliament has not been meeting on its regular cycle of three meetings a week with constituency meetings on Mondays and Fridays. There has been an understanding between the Parliament and the Government with regard to the difficulty of making evolving news available to the Parliament first in all circumstances. The Parliament and business managers have been understanding. However, the point has been very much made to

the Government that the Parliament expects major announcements to be made for the benefit of all members.

The Government has yet to come back to Parliament with its proposals for Thursday's announcement. The proposal that is under discussion is that party leaders will have the opportunity to ask questions, and that there will be an opportunity on Tuesday next week—as I understand it—for all back benchers to ask questions. Those are the proposals, and it will be up to the member's business manager—not Parliament—along with all the other business managers, to decide those matters. *[Interruption.]*

I suggest that, when we go without our time for reflection on a Tuesday, things in the Parliament do not get off to a very good start.

**Graham Simpson:** On a point of order, Presiding Officer. I think that this is only the second time that I have made a point of order as an MSP, but I am quite incensed by what I am hearing. The Government answers to the whole Parliament. It should make its important announcements to the whole Parliament, and the whole Parliament—not just party leaders—should have the opportunity to ask questions of the Government on such important matters. When the bureau next meets—which I understand will be later today—will it reconsider that point?

**The Presiding Officer:** I repeat: the very point that the member makes, and that other members who have raised the same point of order have made, has been made to the Government. It was made this morning, first by myself, and then by the business managers. The Government is currently considering how to respond, and we agreed to meet again at 4.30 today.

I did not mean to mislead members about what we are then going to propose to the Parliament. It will be up to the business bureau to make a proposal. It will then be up to Mr Simpson and every other member to vote on that proposal—in the end, the decision is for members individually.

However, the point that members have made will not have been wasted on the Government, nor on the business managers, and we will be discussing the matter later—*[Interruption.]* Mr Findlay!

I hope that we will come back to Parliament with a decision after 4:30.

I will take a very brief point from Mr Findlay.

**Neil Findlay:** How does the independent MSP make his views known?

**The Presiding Officer:** The independent MSP can consult directly with me, as can Mr Findlay and every other member of the Parliament. The

business team makes specific arrangements to ensure that the independent member is informed of decisions and of the information that is circulated.

All members have the opportunity to approach the business team, or me as Presiding Officer, directly at any stage. However, the process is one of collaborative decision making and discussion within the bureau. A proposal is then put to the Parliament, and the Parliament then votes on that proposal. Each individual member has the opportunity to vote.

On that note, we move to the business motion.

## Business Motion

14:44

**The Presiding Officer (Ken Macintosh):** I call Graeme Dey to move business motion S5M-21795. The reason for this business motion is to allow us to have a statement from the Cabinet Secretary for Health and Sport on care homes. There are other items in the motion that members might not agree with, but that can be revisited later.

*Motion moved,*

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

Tuesday 19 May 2020—

after

*followed by* Topical Questions

insert

*followed by* Ministerial Statement: Supporting Care Homes during COVID-19

after

*followed by* Stage 1 Debate: Civil Partnership (Scotland) Bill

insert

*followed by* Financial Resolution: Civil Partnership (Scotland) Bill

delete

5.00 pm Decision Time

insert

5.30 pm Decision Time—[*Graeme Dey*].

*Motion agreed to.*

## Care Homes

**The Presiding Officer (Ken Macintosh):** The next item of business is a statement by Jeane Freeman on supporting care homes during Covid-19. The cabinet secretary will take questions after her statement.

14:45

**The Cabinet Secretary for Health and Sport (Jeane Freeman):** Today I want to set out the steps that we have taken, including the additional action that we set out at the weekend and yesterday, to support residents and staff in care homes across Scotland as they deal with the impact and challenges of Covid-19.

Although the majority of people who contract the virus experience mild to moderate symptoms, for our most vulnerable citizens Covid-19 is a vicious virus. Among those who are most vulnerable to its impact are people who are older, who are frail and who have existing health conditions. Many live in care homes. Care homes are not just institutions, of course—they are people's homes.

Not all care homes are the same. The care home sector in Scotland is provided primarily by private sector businesses, with a smaller proportion of owners from the independent and third sectors and public authorities.

However, there can be no doubt that the staff who work in all care homes and in community social care are, like our staff in the national health service, committed to doing their very best every day, and they are being sorely tested by the risks and challenges with which they are dealing as they care for their residents in the face of this pandemic.

In early March, we issued clinical and practice guidance for care homes that set out what we believed to be the risks and the resultant clinical and practical steps to be taken, including the ending of communal activities, communal dining and unrestricted visiting. That guidance was updated on 26 March and again on 15 May. Each iteration is a reflection of our growing understanding of the virus and the situation on the ground in some of our care homes.

As global supply chains for personal protective equipment became increasingly challenged and the normal private supply routes to the care home sector were disrupted, the NHS National Services Scotland social care triage helpline was launched on 19 March, so that, at national level, we could step in and respond to urgent requests for PPE from social care providers, including care homes. We increased our NSS order volumes to make sure that we could cope with the additional

demand from the social care sector and primary care and pharmacy, as well as the additional demand from acute care.

To make sure that we could get the right PPE to the right people, we created direct distribution routes, including local PPE hubs for social care providers—which covered care homes—and direct distribution, where that was needed. That was and continues to be a remarkable logistical achievement by the people who were involved and I thank NSS and local health and social care partnerships for their considerable and continuing work in the area.

For care homes, as for the NHS, an area of concern was the sustainability of the workforce. Alongside NHS staff, social care workers have been the priority group for testing from the outset. In many cases, staff were absent because a member of their household had Covid-19 symptoms, so the testing was designed to ensure that a positive confirmation or not of the presence of the virus would either confirm the need for absence or allow staff to return to work. That must also mean that there is availability of a back-up workforce, to ensure that rotas are stable. Following the call to social care and NHS staff who had left the profession to volunteer to return, the Scottish Social Services Council national accelerated recruitment portal went live on 29 March, so that people with relevant skills and experience could come forward and be ready for deployment.

By yesterday, 18 May, 895 individuals had been cleared to work in a variety of social care settings, including care homes. Of those individuals, 254 have been matched with employers so far. Several hundred additional checked, cleared and skilled employees are ready to begin work. Today, as I have already been doing, I am urging providers to make full use of that significant additional resource.

We also recognised that it was inevitable that the pandemic would impose additional costs on the social care sector, as it has done on health. Working with the Convention of Scottish Local Authorities, the trade unions, Scottish Care and the Coalition of Care and Support Providers in Scotland, we were able to announce a national uplift of 3.3 per cent in the total hourly contract rate for adult social care providers, starting from 1 April.

We also reached agreement with COSLA to meet other additional costs incurred, including additional payment to third sector and independent care providers who are working on local government contracts, to cover sick pay, in line with terms and conditions, for all staff who are off work because they are ill or self-isolating.

On 12 May, I announced an initial £50 million to support social care provision that is commissioned by health and social care partnerships in care homes and for care-at-home services, to provide resilience in the sector and to deal with increased need as a result of Covid-19.

As I have said, social care workers have been in the priority 1 group of key workers from the outset, and to date, around 30 per cent of key workers tested have been from social care. However, I am also aware that there are social care workers who, because of their employment contract, are anxious about being tested, because if they test positive and go off work—as they should—their weekly income will be reduced to the level of statutory sick pay. For those workers, that is an intolerable position to be in. It is a terrible choice between their commitment to the care of residents, their own health and that of their family, and the risk of a significant and unmanageable reduction in their income. That arises solely from the contract that the employer has put in place, so it is not the case for all social care workers. For those who are affected, however, it is an impossible choice that we need to resolve.

Yesterday, I spoke to Donald Macaskill from Scottish Care, and I know that he and COSLA are meeting today to discuss how the matter can be resolved. I have asked for an update following that meeting, but I have been clear to him and to the unions that have raised it with me that I will help to resolve the matter where I can.

On 15 April, the First Minister announced that all symptomatic patients in a care home would be clinically assessed and offered testing for Covid-19. Two days later, the chief medical officer wrote to ask all health boards to make testing available to all residents and staff in a care home that has an active case of the virus. We have taken steps to ensure that admissions to care homes are tested in advance of admission and, in the case of community admissions and admissions from hospital when the patient was not in hospital for Covid-19, residents are also isolated for a period of 14 days on admission.

Yesterday, I announced that all care home staff will be offered testing, regardless of whether the care home in which they work has a Covid-19 case. That will be an iterative process, with testing undertaken every seven days. We will begin that work from next week, and are working now with our NHS testing capacity, senior NHS staff and Scottish Care to plan the implementation of the process, including the prioritisation of care homes for testing. Every effort will be made to ensure that testing can be undertaken as close to a care home as possible.

Just as the virus is new to scientists and clinicians around the world, it is also new to the

social care sector. Like us, they are having to learn, adapt and improve their response as their understanding grows. That includes increasing the level of clinical oversight and practice expertise that we provide to ensure the welfare of residents and staff during this time. We already have an effective system of inspection for social care in Scotland, and the Care Inspectorate, now with its partners in Healthcare Improvement Scotland, is actively engaged in the direct inspection of individual care homes and providing support and guidance, as well as escalation when that is required.

From 20 April, NHS directors of public health took on enhanced and urgent clinical leadership for care homes in their board area, working closely with the Care Inspectorate, local authorities, general practitioners and district nurses, and being supported by the care homes clinical and professional advisory group, overseen by the chief medical officer and our chief nursing officer, and by the care homes rapid action group.

On 17 May, I set out a further enhancement of those arrangements, including the requirement that each board's medical director and nursing director, each local authority's chief social work officer, and the chief officer of each health and social care partnership should work to provide direct and frequent engagement with each care home in their area. That was to ensure effective infection prevention and control practice; testing in the way that I have set out; the adequacy of PPE, and its appropriate use; and the robustness of staff rotas. It was also to ensure the provision of direct NHS staff support where that was required. Such arrangements are not about medicalising the provision of care in care homes, which, as I said earlier, we should remember are people's homes. Rather, they are a necessary response to a national emergency that has to be centred on public health and clinical need.

Members will be aware of the important amendments to the coronavirus emergency legislation at stage 2 that will be considered by the Parliament today and tomorrow. I will not encroach on that debate, but I will say, firmly, that I consider those amendments to be necessary to provide the necessary level of safety by taking immediate action in particular circumstances to secure the safety, wellbeing and continuity of care of care home residents.

I have set out, as best I can, all the key steps that we have taken to ensure the safety, protection and wellbeing of residents and staff in our care home sector. This is not the end of our work by any means. I am certain that we will have more to do and more improvements to make. When that is the case, I assure members that that is what we will do.

**The Presiding Officer:** The cabinet secretary will now take questions on her statement.

**Miles Briggs (Lothian) (Con):** From the outset of the outbreak, ministers were pressing health boards to discharge vulnerable patients into care homes. Will the cabinet secretary say how many patients have been transferred from NHS facilities to care homes since the start of the outbreak when they were untested for Covid-19, or whose results were unknown at the time of transfer, or who had positive tests without those being followed by clear results?

Given that ministers' most recent clinical guidance suggests only that, ideally, patients should have given two negative tests before they are discharged from hospital, will the cabinet secretary now accept that we have seen a dysfunctional approach to testing in care homes across Scotland? If not, where does she believe that the management of the spread of the coronavirus across Scotland's care homes has gone so wrong?

**Jeane Freeman:** As of last week, the percentage of delayed discharge patients going to care homes was 38 per cent, so 62 per cent of people who were discharged from hospital went to their own homes with appropriate social care packages. *[Jeane Freeman has corrected this contribution. See end of report.]*

I refute the idea that we were forcing people out of hospital in order to clear the way for Covid-19 patients. Actually, the 3,000 bed spaces that we cleared came primarily from the key areas of healthcare that we took the very difficult decision to stop—not least, elective procedures.

From time to time, all members will have made the perfectly legitimate point that our delayed discharge figures need to be reduced. What happened in response to the Covid-19 pandemic, as in many other areas of healthcare, is that we managed to attain changes and improvements that we had spent many years trying to achieve. The use of digital tools is one example of that and the incredible expansion of the NHS near me service is another. The focus of our health and social care partnerships was to reduce the number of delayed discharges in order to ensure that individuals had the best possible care and were not in hospital when they no longer needed the clinical care that is provided there.

I do not accept that our response has been dysfunctional. Mr Briggs has quoted selectively from the guidance. We all know that the right clinical decision for elderly and frail individuals is for them not to be in hospital when their clinical care no longer requires that they be there—it is not the best place for them. Some clinicians, including geriatricians, will go so far as to say that

hospital is positively a bad place for such individuals to stay in. When clinical care in hospital is no longer required, moving people to their home or into a care home is the right thing to do.

We have said that, while a test can be done—48 hours before discharge from hospital if someone is a Covid patient, or 24 hours if they are not, with 14 days in isolation—testing is not the single silver bullet that will prevent transmission of the virus. Quality infection prevention and control, which should exist in our care homes in any circumstance, is the primary way by which we can prevent transmission.

**Rhoda Grant (Highlands and Islands) (Lab):**

The announcement of regular testing for care home staff is very welcome, albeit that it should be happening on a much greater scale. I have continually requested an emergency protocol for care homes. I lodged a written question on 4 April and I subsequently wrote to the cabinet secretary hoping for a faster response, but all that I have received is an acknowledgement and a holding response.

The lack of a clear single protocol has been disastrous. When testing eventually took place at Home Farm care home in Skye, it showed that there had been an overwhelming level of infection. Since the very beginning of the crisis, Scottish Labour has repeatedly highlighted the need for testing in care homes, on the advice of experts in Scotland, the World Health Organization and other international agencies.

Will the cabinet secretary outline exactly what scientific advice has changed? Will the Government now accept the need for regular testing of staff in care homes? The roll-out will start next week, but when does she expect that level of testing to be available in every one of Scotland's care homes?

**Jeane Freeman:** I am grateful to Ms Grant for her question, and I start with an apology for the delay in responding to her. In advance of her receiving a proper response, I am very happy to meet her to discuss what she thinks an emergency protocol should contain, and to consider whether that is something that we can usefully do in addition to what has already been done. My office will be in touch with her to ensure that we have that meeting as soon as possible.

There has been a recent change to offer testing to staff regardless of whether there is a Covid case in the care home in which they work. I will outline what has changed to allow that to happen. As I am sure Ms Grant and other members will recall, at the outset, our understanding of the virus—and indeed the understanding of our scientists and clinical advisers—was that, if someone was not symptomatic, they were unlikely

to be infectious, and that the test was not reliable. That view has changed over the piece and there is now increasing evidence on and debate in the scientific community about the degree to which asymptomatic and pre-symptomatic individuals may be infectious.

Although the test is not as reliable in asymptomatic individuals as it is in symptomatic individuals, the advice has nonetheless changed. It now says that, given that there is a growing debate about the level of infectiousness of individuals who are asymptomatic or pre-symptomatic, use of the test for preventative purposes in a contained area such as a care home—bearing in mind that the test must be repeated every seven days to be sure—is, on balance, the right thing to do. That is why we have changed our position.

**Alison Johnstone (Lothian) (Green):** I welcome the introduction of regular testing in care homes, for which the Greens have long been calling, but it must be expanded to include national health service staff.

Public Health England's research on care homes in London has shown that, in some cases, workers who transmitted Covid-19 had been drafted in to cover for others who were self-isolating. HC-One, which operates Home Farm care home on Skye, has admitted that it brought in temporary staff from outside. Personal protective equipment and regular testing significantly reduce the risk of transmission and are hugely important, but they do not eliminate the risk entirely. What action is the Scottish Government taking with the sector to minimise the movement of staff between care homes?

**Jeane Freeman:** Both areas that the member asks about are important. On the situation in hospitals, our chief nursing officer is, with her clinical colleagues, working through some additional advice that she intends to give on what more we can do in the hospital setting to minimise transmission of the virus there. We already have red and green zones, but there are other steps that it might be wise and useful for us to take, including to minimise as far as possible transmission between staff from one zone to another. Once we have that advice, I will update members on it and on any subsequent decisions.

Alison Johnstone is also right about the importance of not transferring staff from one home to another, and certainly not without testing to ensure that the new staff that are introduced are clear of the virus at that point, bearing in mind that the test tells people only whether they are positive on the day that they are tested.

Another thing that is really important, which is why we have now involved not only our directors



of public health but our nurse directors and medical directors, is to ensure that we can offer NHS staff to those homes rather than have them move their own staff from one care home to another, not least because, in doing that, they might make the home that they take staff from vulnerable in terms of its staff rotas and therefore its capacity to do effective infection prevention and control.

The chief nursing officer has been clear that NHS and care home staff should be tested before they first go into a home. A number of our health boards have already provided NHS staff to care homes in order to backfill their rotas and, in some instances, to increase the level of staffing in a care home where there is an active case.

**Willie Rennie (North East Fife) (LD):** New residents from the community could still be admitted into care homes without first getting the results of a negative test. Can the cabinet secretary fix that? Why is it necessary for the testing of all staff to be iterative? Why not test everyone immediately?

The situation at Home Farm care home in Portree is terrible, and an application has been made to cancel its registration. Is the cabinet secretary planning to cancel the registration of other homes?

**Jeane Freeman:** I apologise to Mr Rennie; I think that I am about to miss the first question that he asked. I will start with the last question.

It is not for me to cancel the registration of any care home. That is a very serious matter. The Care Inspectorate has applied to the court to consider the deregistration of HC-One as the owner and provider of Home Farm care home on Skye. Because the issue is now in the court, it is not appropriate for me to say anything more about it—except to repeat that it is not for ministers to cancel registrations. The Care Inspectorate approves registrations and, if it wants to cancel them, it needs to go through that court process.

The fact that testing is iterative should not be taken to mean that it does not happen now. It means that, if I were to test negative today, that would tell us that I do not have the virus today. However, if a person wanted to be sure that their continued work in a care home was not risking bringing the virus into that care home, they would need to be tested every seven days to make sure that they continued to be negative for coronavirus. The seven-day period relates to the clinical advice on how often the testing should happen. If we went into care home X, it did not have a case, and all the staff tested negative, we would need to go back in seven days' time, otherwise it would be a one-off. My understanding is that our position on

that differs from the approach that Public Health England and the NHS in England are taking.

I apologise if I missed the first part of Mr Rennie's question. If he wants to give me it later, I will ensure that he has the answer.

**George Adam (Paisley) (SNP):** I ask the cabinet secretary to expand on what she said earlier. Do the NHS and local authorities have staff available to support care homes that have insufficient staffing due to Covid-19? Have any been deployed to care homes in recent weeks?

**Jeane Freeman:** George Adam will recall that we made a call to NHS and social care staff who had recently left the profession to volunteer to return. If they are deployed back into the health service or social care, it will be under a proper contract of employment. We had 1,916 expressions of interest for social care roles. In my statement, I provided the number who have gone through all the pre-employment and other checks that are required, and the number who have been deployed into care homes.

The decision about whether those individuals are deployed into care homes rests with care home providers. I cannot tap an individual on the shoulder and send them into a particular care home. That is why, in my statement, I urged care home providers that, if their rotas are fragile or if they need to increase the ratio of staff to residents because they have an active case, there are expert people who are ready, willing and able to be deployed. However, what I can do—I have done this—is ask NHS staff to volunteer to be deployed to provide cover if providers are not coming forward to request returning individuals with social care experience.

**Brian Whittle (South Scotland) (Con):** The Care Inspectorate instigated an unannounced inspection of Home Farm care home on Skye, which, as the cabinet secretary said, resulted in the Care Inspectorate applying for the NHS to take over the running of that nursing home. Unfortunately, there are many tragedies throughout Scotland that have not led to similar action. What are the protocols for such interventions by the Care Inspectorate and the Scottish Government in care homes?

**Jeane Freeman:** The Care Inspectorate is independent, and it is largely responsible for determining which care homes it wishes to inspect, either announced or—this is important—unannounced. It has taken the view that it should do what I would call live inspections of care homes, in which it physically goes to the care home, with the appropriate PPE and so on, and undertakes an inspection. In doing so, it largely looks at two things: the care homes that it has already assessed as having a red-amber-green

status of red or amber; and the care homes in which there is an active case. Whether the inspection is announced or unannounced is for the Care Inspectorate to decide. It has a means by which it did do that, and it is largely independent in acting in that way.

In recognition of its particular role, the Care Inspectorate is actively engaged with us in all the care home work that I described in my statement. For care home inspections, it has formed a partnership with Healthcare Improvement Scotland, which has very particular expertise in infection prevention and control. In many cases, those inspections will be joint inspections by the Care Inspectorate and HIS.

**Jackie Baillie (Dumbarton) (Lab):** I welcome the cabinet secretary's announcement on testing, but it is months late. We have witnessed a lack of testing for staff—there was really nothing in place until the third week in April—the reluctance of care homes to send their staff for testing because of concerns about staff absence, and a lack of PPE, with PPE locked in cupboards while coronavirus raged through care homes. Why was none of that done sooner? Why have we had a patchwork approach to care homes, with constantly changing guidance? Where has the Care Inspectorate been? The truth is that it has been posted missing. Instead of stepping up to the plate, it has stepped back and taken a light-touch approach at a time when people are dying in their hundreds in care homes. Did the Scottish Government agree to the Care Inspectorate stepping back?

**Jeane Freeman:** Part of the difficulty—I mentioned this early in my statement—is that the care home sector is primarily delivered by private business. Some 70-odd per cent of care homes are private businesses, whether they are individual small businesses or part of a much larger chain. There are also, of course, independent, third sector and public authority care homes, but they are in the minority. In such circumstances, my capacity—or any health secretary's capacity—to direct and instruct is limited in a way that it is not in the health service.

As Jackie Baillie will recall, some time ago—in early March, I think—I put the national health service in Scotland on an emergency footing in order to ensure that, regardless of individual board opinion, I could be sure that it was doing the things that I thought that it needed to be doing in a consistent way across the country. The care home sector is not like that, so there is, of necessity, a different approach. Whether that is the right place for us to be and whether we want to be in a different place in the medium to longer term are important issues for debate for a different day. I have to deal with the current reality of the sector.

I would not dispute any of the points about the reluctance of providers to send staff for testing and PPE in cupboards. The point of the significantly enhanced clinical guidance, direction and intervention is to overcome those problems as best I can.

The Care Inspectorate took the view—as it was entitled to—that, in the face of the pandemic, it was safest for residents of the care homes for it to undertake inspections and engagement with care homes that did not involve its directly appearing in the home. It has now changed that position in order to directly inspect what is happening in those care homes, and I am glad that it has done that. That is a welcome change of decision.

**Sandra White (Glasgow Kelvin) (SNP):** Yesterday, HC-One care homes reported 1,002 suspected cases and 207 Covid-19 deaths in its care homes. Considering the number of homes and beds that HC-One has, those numbers seem to me and others to be disproportionately high. Will there therefore be a review of the practices of large care home operators, and does the cabinet secretary agree that the future of elderly care must be a priority for change?

**Jeane Freeman:** The Covid-19 advisory group to the chief medical officer and, obviously, to the Government, which is led by Professor Andrew Morris, is focusing on that area. That involves consideration of emerging views from the Care Inspectorate about whether there is a difficulty in large care homes—that is, physically large care homes as opposed to groups of care homes—compared to small care homes in relation to effective infection prevention and control, and in relation to proper support, training and guidance for staff who work in those care homes. It is important to make clear that that question is not yet decided and that there is not a concluded view. Members need to be aware that the debate has begun, and that some aspects of both sides of that argument are backed by data and evidence.

In relation to whether there should be a review of large care home operators that have more than one care home, as I said to Ms Baillie, there is an emerging and genuine need for consideration in the medium to longer term—by the Parliament and the Government—of what our care home sector should be, how it should be funded, who should provide it and what we require of it in providing care to our older and more vulnerable citizens, which many of us will be at some point.

However, that is for the medium to long term. My focus just now has to be on dealing with the reality that I face given the way in which the sector is constructed as it stands. I need to navigate my way as best I can through that to ensure that, where possible, we maximise the wellbeing, care

and support for residents and staff in the current circumstances.

**The Presiding Officer:** I encourage members to keep their questions brief and ministers to keep their answers concise. There are still a dozen members to go.

**Graham Simpson (Central Scotland) (Con):** I will be very brief. I want the cabinet secretary to clear something up. Have people been moved from hospitals into care homes without knowing whether they had Covid-19 or whether the virus was in the care home?

**Jeane Freeman:** I cannot give the member a definitive answer to that question. I can give an answer with respect to the date from which we required the two negative tests before someone could leave hospital to go to a care home if they were a Covid patient and the single negative test if they were not, and the requirement on community admissions. I will give Mr Simpson details of that after this statement. However, I cannot give him an answer on the situation prior to that.

With your indulgence, Presiding Officer, I will restate the point about why those tests are not always undertaken before the individual moves to the care home. The main reason for that is the clinical view on the balance of risk: that the risk in staying in the hospital is greater than that of moving to the care home, and that the move to the care home can be mitigated while waiting for the test results by the requirement for 14 days of isolation.

**Neil Findlay (Lothian) (Lab):** Why does the cabinet secretary applaud care home workers on Thursday evenings, only to instruct MSPs on the COVID-19 Committee today to vote against amendments that would have made those workers safer and would have improved their terms and conditions?

**Jeane Freeman:** I disagree with those amendments and do not believe that that is what they would do. There are other approaches. I will not get into a debate about that emergency legislation, as that would not be appropriate at this point, but the amendments that we have lodged are the correct ones and I hope that members will support them.

I am sure that my colleague Mike Russell is more than capable of setting out our clear reasons for opposing certain amendments. I do not think, as the member appears to be implying, that there is any contradiction between my long-standing support—from before I was health secretary—for care home workers and NHS workers, having been one myself many years ago, and the occasions when I may disagree with Mr Findlay.

**Maureen Watt (Aberdeen South and North Kincardine) (SNP):** I, too, welcome the changes to the testing criteria in care homes. How will that work in practice? Will test kits be sent out to care homes, particularly those in rural areas, so that a nurse in the home can carry out the testing or will someone from the health board or social care partnership still be required to visit the home to carry out the tests on staff and residents, thereby causing a delay in the process?

**Jeane Freeman:** That is an important point. Much of our country is remote and rural and requires travel over considerable distances in order to reach places. Depending on what will give us the quickest answer, which will vary, there will be a mix of both approaches. On occasion, if the clinical staff in a care home have been trained to undertake the sampling, they will be able to do that, whereas in other circumstances, testing will be carried out through the deployment of the mobile testing units, of which we have 12 in Scotland. In other circumstances, local NHS staff, such as district nurses or local staff from a nearby acute or primary care setting, will be used.

**Jamie Halcro Johnston (Highlands and Islands) (Con):** It has taken nearly three weeks from when a resident of the Glenisla care home in Moray was confirmed as a Covid-19 case for full testing of residents and staff to be undertaken and the results to be processed. Some of the test results took five days to process. So far, that full testing has identified a further three cases, but the management have told me that they will not be offered secondary testing because it is being focused on priority cases. Will the health secretary confirm that the delay of nearly three weeks is unacceptable and that it will have put the safety of residents and staff at further risk? Will she confirm that Scottish Government guidance is clear that secondary testing should happen when there are confirmed cases and that, if NHS Grampian is not offering that testing, it is in breach of that guidance?

**Jeane Freeman:** If the member cares to give me the details of that particular instance, I will investigate it directly this afternoon and tomorrow and get back to him. It is not acceptable for that to take three weeks and it is certainly not acceptable for tests to take five days to process. I need to know which lab was processing those. Our NHS labs are working to a maximum of 24 hours. They do not always meet that at the moment, but they need to get there by the end of this month and they are actively engaged in doing that.

Twenty-four hours is the right time period for us to move into test, trace, isolate and support. In some instances, it takes longer than that, but five days is completely unacceptable, as is the situation that the member described with

secondary testing. I do not understand why that view was given by NHS Grampian or reported by the manager. I will want to look in great detail at what that was and why anybody thought that it was the right thing to do, because it is not.

**Ruth Maguire (Cunninghame South) (SNP):** Residents and families must be assured that they will receive the highest quality of care and that robust action will be taken when that does not happen. How will new powers that are proposed in the Coronavirus (Scotland) (No 2) Bill help to bolster the work of the Care Inspectorate to ensure that that happens in practice?

**Jeane Freeman:** I will focus on one of the amendments that we have lodged, as a way of—I hope—explaining why we believe that the powers are necessary.

I preface my comments by saying that we would use these powers as a last resort, but if the Care Inspectorate's view is that a care home that it has inspected is of such poor quality that it intends to apply to the court to deregister the provider, I do not believe that we can wait for the court to go through its due process—although I am not criticising how long the court may take—before we can step in to ensure that the residents are safe and that infection prevention, cleanliness and the ratio of staff to residents are of the standards that we need.

In those extreme circumstances, it is important that we can provide that additional safety net and, regardless of the provider's view or the fact that the court decision is still to be made, move in straight away to protect the residents in the care home. As the member knows, the amendment will then require us to apply retrospectively to the court for its permission to do what we have done.

**Alexander Burnett (Aberdeenshire West) (Con):** Given the tragedies that are occurring in care homes across the north-east of Scotland, what amount of the £58 million that was pledged last week from the United Kingdom Government will go to the north-east, and how will it be distributed?

**Jeane Freeman:** I am not entirely sure what additional funding the member is talking about. I apologise to him—I did not hear clearly what he said. If he is referring to the additional resource that the UK Government has committed to care home work, the consequentials for that will go to care home work in Scotland.

**Kenneth Gibson (Cunninghame North) (SNP):** I declare that my mother lives in a care home.

Even before the pandemic, many care homes were struggling to survive. In my constituency, care homes have closed in Arran, Largs and

Saltcoats in recent years. Financial support from local authorities for those whom they place has struggled to keep up with the rising costs. Now that the additional costs of personal protective equipment, higher wages and a higher staff-to-resident ratio have arisen, what steps will the Scottish Government take to ensure the continued viability of our care homes as the pandemic recedes?

**Jeane Freeman:** As I am sure that the member knows, many of our care homes survive financially on the same basis as some of those that do not. The standards that are required are the standards that are required, and we have already discussed what needs to be done in circumstances in which care homes fail to meet those standards.

Care homes are subject to a national contract that they negotiate with COSLA through Scottish Care, which sets out the amount that will be paid for each resident whom the local authority asks to be placed in a care home, which is currently done through the health and social care partnerships.

I am sure that, in addition to the continuing discussions between COSLA and Scottish Care on statutory sick pay and ensuring that care home workers are not put in an invidious position as a result of their employer's contract of employment, further discussions will take place between those two parties on the national contract, and that not only will I be advised of what those are, but I will hear from both parties what more they think needs to be done.

As we go through this pandemic, we will be actively engaged, not only on the additional resources that are required to get through the pandemic, which I have touched on and which the Scottish Government has made available, but on the continuing sustainability of the care home sector. Some of that engagement will pick up on questions that Ms Baillie and others have raised.

**Colin Smyth (South Scotland) (Lab):** Does the cabinet secretary accept that simply adding new categories to the list of those who can be tested is, in itself, not enough? We know from our communities that many people who are already eligible—such as carers and residents in homes with an outbreak, and carers who are being told to travel miles to access tests—are simply not being tested.

Will the cabinet secretary consider regularly publishing the numbers of people who are tested by category of eligibility and by health board for each category, so that we can properly scrutinise delivery on the ground? Will she ensure that no one has to travel an excessive distance to access a test?

**Jeane Freeman:** I will commit to publishing what data we have, as best I can. The reason for

that caveat is that we do not have all the data on testing that takes place when an individual accesses UK Government mobile or drive-through testing through the employer or employee portal, which is processed at the lighthouse laboratory in Glasgow. If a care home worker, an NHS worker or an oil and gas worker goes through that route, we do not get the absolute data of every category that has been tested. There is a limit to what I can publish, which is the data that comes through our NHS testing.

We have been consistently clear that NHS and social care workers should be tested by the NHS and their tests processed in NHS labs, which are quicker at turning around test results— notwithstanding the issue that was raised earlier, which I will look at. We have much more direct control over what those labs are doing.

No one should have to travel miles to access tests through NHS labs. That situation happens when an individual goes through the UK Government employer or employee portal and is directed to one of the drive-through testing centres if a mobile testing unit is not nearby. That is why we want health and social care workers to go through the NHS route.

I agree with the member that there is no point in adding testing categories or capacity if we do not use that capacity. The capacity that I can control is that of our NHS labs. Work is under way right now to ensure that we can maximise that for all the groups that we have said are priorities for testing, including care home residents, care home workers, NHS staff, over-70s who are admitted to hospital, and others.

**Sarah Boyack (Lothian) (Lab):** I, too, would like to hear the answer to Graham Simpson's question about test results, as many of us are concerned about that.

It is welcome that the Government is finally adopting the testing advice of experts such as Sir Harry Burns and Professor Hugh Pennington. The latter also suggested that the R number in care homes was likely to be high. Can the cabinet secretary give us an update on the current estimated R number in care homes?

**Jeane Freeman:** No, I cannot. As I am sure that the member knows, there is a range of experts in this area, in addition to the two that she mentioned. Our advisory group, which is chaired by Professor Andrew Morris, has been asked to look at what the R number might be in certain settings, including care homes. It is working on that.

The difficulty that the advisory group has is that not every care home has an active case and not every care home has had an active case since the outset of the pandemic. Looking at the sector as a

whole is a difficult exercise. Some care homes have significant numbers of cases, some have only one and many have none, so it is difficult for the group to look at the R number with any confidence in its modelling. However, it has given us the assurance that it will continue to work on it and see what it can pull in from experience elsewhere.

The R number should be a range, and I, too, would find it very useful to know what it is. At the moment, the advisory group's response is that it is not possible for it to give us an answer with any confidence in its robustness, but we will continue to look at that.

**Richard Lyle (Uddingston and Bellshill) (SNP):** Highgate care home, in my constituency, was one of the first to declare the presence of Covid-19. Many of my constituents want testing to safeguard their loved ones. I have to declare that my brother is a resident of Highgate, and his daughter and grandchild, if they were here today, would surely thank the cabinet secretary for her announcement, as I do.

How often will staff and patients in care homes where Covid-19 is present be tested? Will it be every week?

**Jeane Freeman:** Where there is an active case of Covid-19, all the staff and residents in the care home should be tested. Staff who test positive should stay at home following the guidance that any of us should follow if we test positive, and residents should receive the clinical care that they need, through their primary care provider, which will be the GP practice. All of that is now overseen by the medical and nurse directors of the health board. Under infection prevention and control measures, care homes are actively scrutinised to ensure that any possibility of transmission from one resident to another is broken, as far as that is possible.

The member will know that for many residents in our care homes who suffer from dementia, that degree of isolation in their room is particularly distressing. In those circumstances, a degree of clinical guidance is needed that supports care home staff to minimise that distressing situation while other mitigating measures are taken to prevent infection transmission.

In my statement, I announced that care workers in care homes that do not have an active case will be tested, and that process will repeat every seven days. If, in the first round of testing, any member of staff tests positive, they will be asked to go home and follow the appropriate isolation and clinical guidance that we have spoken about. We would then begin to test the residents in that care home, because we would need to be sure that none of them had contracted the virus.

**Daniel Johnson (Edinburgh Southern) (Lab):**

According to the *Financial Times*, the rate of excess deaths due to Covid-19 stands at 65 per cent in Scotland, which is exactly the same rate as that in Italy and is among the worst in Europe. At the same time, in Scotland, the use of intensive care unit beds peaked at 208 on 12 April, which was just 18 more than the pre-Covid-19 capacity. It is hard to avoid the hypothesis that people have not been admitted to ICU in Scotland who would have been in other countries. The situation in our care homes raises the suspicion that that is even more true for those who are resident in those homes.

What steps is the cabinet secretary taking to interrogate the data, examine the policy and practice, and ask the question whether people have been refused admission to ICU who should have been, and would have been, admitted elsewhere?

**Jeane Freeman:** As the member said, he is talking about a hypothesis. I would be very careful about suggesting that our clinicians at any level in primary or acute care chose not to provide any patient with the appropriate clinical care for any reason at all. Our chief medical officer has been clear in supporting our GPs and primary care practitioners, as have the BMA GP group and the Royal College of General Practitioners, that individuals should be given the right clinical care for them, regardless of their location. I have no reason and no evidence to suggest that that has not been the case.

That applies, too, in the hospital setting, when an individual is admitted. We have clear guidance from the Royal College of Emergency Medicine about the balance in decision making that is undertaken in any circumstance, and not just in the current pandemic, in considering invasive and intrusive treatment that causes pain and may cause long-lasting harm. We have seen some emerging data about the potential long-lasting harm that is caused to individuals who are admitted to ICU and ventilated for any length of time during the pandemic. Clinicians always have to balance the benefits of the care that could be delivered against the risk of damage and the failure of that care. That is a constant balancing judgment that all clinicians have to make. It is a very difficult place to be, and not one that I would wish to occupy.

Our group that is led by Professor Andrew Morris, along with the National Records of Scotland and our senior statisticians, are looking at the excess death numbers here and in the rest of the UK in order to interrogate those numbers further so that we know as best we can exactly what lies behind them. As they reach conclusions

on that, we will of course ensure that members and others are made aware of those conclusions.

## Civil Partnership (Scotland) Bill: Stage 1

**The Deputy Presiding Officer (Lewis Macdonald):** The next item of business is a debate on motion S5M-21778, in the name of Shirley-Anne Somerville, on stage 1 of the Civil Partnership (Scotland) Bill.

15:43

**The Cabinet Secretary for Social Security and Older People (Shirley-Anne Somerville):** Presiding Officer, thank you for the opportunity to address the chamber on the general principles of the Civil Partnership (Scotland) Bill. I express my gratitude to the Equalities and Human Rights Committee for its careful scrutiny of the bill, and I welcome its recommendation to approve the bill's general principles.

As Cabinet Secretary for Social Security and Older People, I consider that the legislation will help to ensure equality and safeguard human rights in Scotland. The bill follows a United Kingdom Supreme Court ruling from 2018 on the law of civil partnership in England and Wales. The court held that, as a result of the introduction of same-sex marriage in England and Wales, it was no longer compatible with the European convention on human rights for access to civil partnership to be restricted exclusively to same-sex couples. That decision on the ECHR implications of the current law has driven the bill.

In light of the Supreme Court ruling, it is right to proceed with legislation that will ensure equality of choice for all couples in Scotland should they decide to enter into a legally recognised relationship, whether that is a marriage or civil partnership. The bill follows a 2018 Scottish Government consultation on the future of civil partnership. In that consultation, we set out two options for a change in the law of civil partnership for Scotland: closure of civil partnership to new relationships from a date in the future or extension of civil partnerships to mixed-sex couples. Having considered all the evidence available to us, we came to the conclusion that the best way forward for Scotland would be to introduce a bill that makes mixed-sex civil partnerships available to couples here.

I consider that making civil partnership available to mixed-sex couples is right for Scotland for a number of reasons. At heart, the approach is about equality and choice: making the same options of marriage or civil partnership available to all couples upholds the equality principle of levelling up opportunities rather than taking options and choice away. If civil partnership had

been closed to new relationships, couples would have had less choice.

In contrast, opening up civil partnership to all will bring clear and much longed-for benefits to couples who feel that this relationship is right for them. I know from letters received by the Scottish Government and responses to our 2018 consultation that some mixed-sex couples feel that marriage simply is not what they want. The common factor with those couples is that they want to deepen their commitment to each other by entering into a civil partnership that they consider to be the best reflection of their beliefs and feelings for each other. I want such couples to have the option and, as a consequence, to be able to benefit from the legal rights that will flow from having a civil partnership.

We also need to think of the bigger picture. Civil partnership was established for same-sex couples in Scotland in 2005, and same-sex marriage legislation was passed in 2014. Of course, mixed-sex marriage has existed in law for hundreds of years. The bill will close the gap and establish a level playing field for all couples who want to enter into a legally recognised relationship. Even without the Supreme Court decision, that gap would have had to have been addressed at some point, and I am glad that it is being addressed now.

I will now explain in a bit more detail what the bill will do. It begins by making a small amendment to the Civil Partnership Act 2004 by removing the words "of the same sex" from the definition of relationship contained in section 1 of the act. The removal of those four words, while seemingly nominal, will constitute a profound and welcome change to the nature of civil partnership in Scotland, expanding equality and choice.

That equality principle is reflected in the fact that, for most purposes, the bill draws no distinction between same-sex and mixed-sex civil partnerships. That means that the same standards will apply for mixed-sex civil partnerships when it comes to eligibility requirements for entering into the relationship, and the same processes and fees will apply for registering the relationship. Authorisation for religious and belief bodies and celebrants who wish to register mixed-sex civil partnerships will be along the same lines as authorisation for those who wish to register same-sex civil partnerships.

The bill also contains provisions that will enable mixed-sex civil partnerships from other jurisdictions to be recognised in Scotland. That means that couples in such relationships will benefit from access to the same packages of rights and responsibilities that will apply to mixed-sex civil partnerships created here in Scotland. Again, we have taken an approach aimed at ensuring equality of treatment.

We have also introduced provisions that will create an interim scheme of recognition that will allow those relationships to be temporarily recognised as marriages in Scotland until mixed-sex civil partnerships are available here. The scheme in the bill is about ensuring that couples do not lose access to the package of rights that flow from entering into a legally recognised relationship. There is a clear risk that that could happen should an alternative approach be taken. As I have said, rights are at the heart of the bill and the interim scheme of recognition is absolutely consistent with that.

The names that we use for ourselves and our relationships are important, and the bill will not alter the ability of a couple to call their civil partnership a civil partnership. It will make clear to couples in mixed-sex civil partnerships that they have legal rights in Scotland and that they will be able to benefit from those rights even before civil partnership is available to Scottish couples. I assure members that I will take steps to ensure that the interim scheme of recognition is in place for as short a time as possible. I would be happy to consider any suggestions made by members on changes to the language in section 3 that would address the concerns that were raised in committee.

The bill also contains provisions on how particular areas of the law will apply to mixed-sex civil partners. As I have said, for the most part, the bill makes no distinction between same-sex civil partners and mixed-sex civil partners. However, there are areas of family law in which the existing provisions for civil partners will not work because they were drawn up on the assumption that the couple was always going to be of the same sex. In such cases, the bill follows what is already in place for mixed-sex married couples.

Like the rest of the bill, that approach is informed by the need to ensure equality of treatment for mixed-sex civil partners, and following existing provisions on mixed-sex marriage will achieve just that. In particular, the bill follows mixed-sex marriage in relation to the presumption of parentage, creating the same presumption where a man is in a civil partnership with the mother of a child as where a man is married to the mother. Other examples include the provision in the bill that will establish how mixed-sex civil partners acquire parental responsibilities and rights and amendments to the definition of “child of the family” so that it includes biological children of mixed-sex civil partners.

Section 11 will establish a new offence of forced civil partnership, to run alongside the offence of forced marriage. We want to close any possible loophole in the law that the introduction of mixed-sex civil partnerships could create, by helping to

provide protection for some of the most vulnerable members of our society.

The bill covers diverse areas. However, as I have mentioned, for the most part it simply follows what is already in place for same-sex civil partnerships or adapts the law where appropriate. That means that the bill is largely an amending bill, which changes other pieces of legislation so as to apply existing provisions that were previously debated and approved by Parliament to mixed-sex civil partnerships. That approach ensures that, once mixed-sex civil partnerships are established in Scotland, mixed-sex civil partners will benefit from the same body of law that already applies to same-sex civil partnerships with no resulting inequality of treatment.

As I have said, I am grateful to the Equalities and Human Rights Committee for its careful scrutiny of the bill. I have written to the committee in response to its report, but I wish also to comment on some of its recommendations.

Should the bill be enacted, I will proceed with guidance for the public on the differences between marriage and civil partnership, in line with the committee’s recommendation in that area. The guidance will provide information that supports couples who have decided that they want a legally recognised relationship, enabling them to make an informed choice about the type of relationship that is right for them.

One key point is that there will be less international recognition of mixed-sex civil partnerships than there is of mixed-sex marriage. We will make that clear to couples in guidance so that they can consider the importance of international recognition to their relationship.

I briefly spoke earlier about the interim scheme of recognition, and we welcome the conclusion of the Equalities and Human Rights Committee in paragraph 74 of its report that it was

“persuaded that because of the current legal landscape, there is no immediate alternative to the current approach”

to interim recognition. As I have said, I am considering how the concerns that have been expressed about the language used in relation to the interim scheme of recognition of civil partnerships from elsewhere could be addressed. On that, I will listen very carefully to the points that members make on the matter during the debate.

In its report, the committee expressed its support for the principle of married couples being able to change their relationships to civil partnerships. I acknowledge that point, and I wish to confirm to the Parliament that I am happy to work with the committee on an amendment allowing marriages to change to civil partnerships.



As I mentioned to the committee, there are some potentially complex aspects to provisions in that area. Given that, along with the need to consult and the need to take into account what may emerge in this area in the rest of the UK, an amendment may need to take the form of a power to make secondary legislation so that marriages can change to civil partnerships. I am confident that we will be able to work together to produce an amendment that effectively tackles the complexities in this area.

I have already written to religious and belief bodies to find out what their views are on the provisions in this area. In the context of a bill that is all about rights and equality, it is important that those organisations are given an opportunity to express their thoughts.

The Scottish Government is committed to extending civil partnerships to mixed-sex couples. That is what the bill does, and I commend it to Parliament.

I move,

That the Parliament agrees to the general principles of the Civil Partnership (Scotland) Bill.

**The Deputy Presiding Officer:** I call Ruth Maguire to speak on behalf of the Equalities and Human Rights Committee.

15:54

**Ruth Maguire (Cunninghame South) (SNP):** I am pleased to open the debate on behalf of the Equalities and Human Rights Committee. The debate comes in the midst of a health crisis facing not just our country but the world and, now more than ever, we must make every effort to uphold and promote equality and human rights. That lies at the heart of the bill.

Since the introduction of same-sex marriage, same-sex couples have had both marriage and civil partnership available to them. However, mixed-sex couples have had only the choice of marriage. In 2018, the UK Supreme Court found that difference in treatment to be incompatible with the ECHR. Scotland is currently the only country in the world where that situation still exists, so we are pressing ahead with the scrutiny of the Civil Partnership (Scotland) Bill to eliminate that inequality in treatment.

The Equalities and Human Rights Committee heard from human rights and family law experts, lesbian, gay, bisexual and transgender groups, faith and belief groups, women's groups and other professional bodies. All welcomed the bill for aligning Scotland's position with that in the rest of the UK, upholding human rights and advancing equality of opportunity.

Early on in the committee's scrutiny of the bill, the Equality Network highlighted an important principle. It said that

"the solution to inequality ... should be to level up, providing ... more extensive rights / choices",

not fewer.

The most powerful evidence that the committee heard came in testimonies showing how the bill, in providing more extensive rights and choices, would affect people's lives. Extending civil partnerships to mixed-sex couples would mean that children would have greater protections through the legal recognition of their parents' relationship. Young LGBT people would no longer live in fear of being outed as gay, lesbian or bisexual if they revealed that they were in a civil partnership, and transgender civil partners who are seeking a gender recognition certificate would no longer need to end their relationship.

The committee's online engagement through its Your Priorities platform allowed individuals' views to be captured through text, audio and video comments. We received many compelling personal testimonies, some of which I will share with members.

We are reminded that cohabiting couples have far fewer and less clear rights than couples who are either married or in a civil partnership. The Equality and Human Rights Commission highlighted the gendered impact of relationship breakdown, as women

"have less access to resources, assets and income due to systemic issues".

One cohabiting woman wished that the bill had come sooner. She wrote:

"My partner died suddenly after 28 years together with two young children. Yet my children and I are not recognised as 'family' because we weren't married. I have had to apply for widowed parent allowance ... and two years down the line ... it's still in the courts and I'm awaiting the next hearing."

Another woman shared:

"I've been with my partner for 9 years and neither of us have a desire to get married ... However, I've recently been diagnosed with cancer and naturally I want my partner to be financially secure when I'm gone."

The legislation would help to formalise that.

The committee recognises that not all couples who cohabit wish to enter a formal legal relationship. As such, it welcomes the Scottish Law Commission's discussion paper on cohabitation reform. However, mixed-sex civil partnerships are necessary to enable couples to access important legal rights that are currently available only through marriage. Although marriage offers those benefits, it is not for everyone.

We heard from many who did not—and would not—marry for a range of symbolic, cultural and emotional reasons. They included divorcees who believed that marriage was a one-time commitment, widowers who felt that remarrying would dishonour their late wives, and women who had experienced domestic abuse and who did not feel comfortable remarrying. A key reason raised by many women and some men who objected to marriage was that, in their view, it had patriarchal and religious baggage. Those people welcomed civil partnership as an alternative institution representing a more equal commitment that allows couples to imprint their own values and beliefs.

One woman put it like this:

“This bill allows us to protect those we love without feeling pressured to have a marriage ... civil partnership ... matches our relationship as equal partners, neither of us above the other ... all couples should have the choice to do what’s right for their relationship.”

For many mixed-sex couples, the choice of either marriage or cohabitation is not real choice. Rather, it is a decision between acting against their own deeply held convictions or accepting a lesser legal position. The bill is about individuals and the choices that they must make. The committee considers that the bill will provide real choice, enabling couples to have their relationship legally recognised in a way that is right for them and which means that they are able to access the important legal rights and protections that flow from that.

The importance of symbolism and choice ran throughout our scrutiny as we considered other issues. I will touch on two of them.

Section 3 provides for couples in mixed-sex civil partnerships formed outside Scotland to be temporarily

“treated as if in a marriage”

until civil partnerships are registrable. That was considered by some to be unsatisfactory for those who do not wish to be treated or seen as being in a marriage. I welcome the cabinet secretary’s commitment to explore whether the language in section 3 can be improved.

I also highlight the Scottish Government’s commitment to implement the bill as quickly as possible. In the current crisis, it is even more pressing for couples in Scotland to be able to access the legal rights and protections that flow from civil partnerships. I ask the Scottish Government to assure members that every effort will be made to prioritise the bill and the tasks that need to be carried out to implement it fully.

Finally, many people think that the bill should have addressed the conversion of marriages to civil partnerships. In light of everything that I have

said, I would like to read out the views of Mr B and Miss L—a couple who married only to protect their financial position as age advanced. They wrote:

“the Bill as introduced would create inequality of opportunity among would-be civil partners, between those who have not married and those who, for whatever reason, have. This seems to conflict with the SG’s laudable aim of societal equality and respect in Scotland.”

The committee supports the principle that it should be possible to convert a marriage to a civil partnership, for those who wish to do so. I thank the cabinet secretary for confirming that she will work with us to explore how to overcome some of the challenges in that area.

On behalf of the committee, I offer my sincere thanks to everyone who gave evidence, shared their experience and helped us to better understand the unquestionable need for the bill and how it might be improved. We think that the bill advances equality and upholds human rights. It provides a necessary alternative to marriage through which individuals can access crucial legal rights and financial protections. As the cabinet secretary said,

“we should not underestimate the importance of allowing a couple to be able to be in the type of relationship that they want to be in and to have that legally recognised.”—[*Official Report, Equalities and Human Rights Committee*, 5 March 2020; c 3.]

The Equalities and Human Rights Committee supports the general principles of the Civil Partnership (Scotland) Bill.

16:01

**Graham Simpson (Central Scotland) (Con):**

The cabinet secretary and the convener of the Equalities and Human Rights Committee have set out why the bill is before us. For thoroughness, I will go over some of that ground—but not too much of it.

I suspect that many speeches in this debate will sound pretty much the same. That is fine; the bill is pretty uncontroversial. However, that does not mean that there are no points to debate or to consider at stage 2—it would be odd if there were no such points. Therefore, although we support the general principles of the bill, I will make constructive suggestions about areas that might be considered. Before I do, I congratulate committee members and clerks on, and thank them for, their work on the bill.

I have a wide brief, which includes equalities, local government, communities and social security. I cannot be everywhere, so I am not a member of the Equalities and Human Rights Committee. However, the ever-enthusiastic Maurice Golden and Alison Harris make up for my absence. We will hear from Mr Golden later in the

debate; we will also hear from Alexander Stewart and a virtual Annie Wells, live from Glasgow.

In some ways, my not being a member of the lead committee gave me the advantage of being able to look at the bill with fresh eyes. When I did that, my first question was, “Is this law necessary?” We have heard that different-sex couples in Scotland who want their relationship to be legally recognised have only the option of marriage, whereas same-sex couples have the choice of getting married or forming a civil partnership. We might ask why a couple would want a civil partnership when they could get married. What is the point? I will come on to that.

Civil partnerships for different-sex couples were recently introduced in England, Wales and Northern Ireland, following a ruling by the Supreme Court that the situation was discriminatory and incompatible with the European convention on human rights. However, I have heard it argued that the court did not take evidence on that point, because the point was accepted, so it did not rule on the matter. In any case, the ruling applied only in England, Wales and Northern Ireland; it did not apply in Scotland.

Therefore, I do not think that, legally, we have to do something in Scotland. For me, the question is a political one, not a legal one. Do we think that inequality should be eliminated, either by abolishing civil partnerships or by extending them to different-sex couples?

The former would be a perfectly legitimate policy position to take. It could easily be argued that there is no longer the need for civil partnerships because same-sex couples can now get married. However, the Scottish Conservatives prefer the latter option. We back the aim of extending civil partnerships to different-sex couples to uphold human rights and provide equality of opportunity. Doing so will also provide parity with the rest of the UK. As the committee’s report says,

“Scotland (and until recently England and Wales), is the only country in the world where same sex couples can choose between marriage or civil partnership, while different sex couples only have the option of marriage.”

That makes us something of an outlier. There is nothing wrong with that, but it is not necessary in this case.

Other than allowing same-sex couples to form civil partnerships, the bill seeks to make consequential changes to Scottish family law; allow for the recognition of certain overseas relationships between different-sex couples; make consequential amendments to legislation concerning gender recognition; and create an offence of forcing someone into a civil partnership.

The bill does not allow a marriage to be converted into a civil partnership, although it

makes provision for couples in a different-sex civil partnership to convert that into a marriage if they wish. Perhaps, as has been mentioned, that area could be explored at stage 2.

I was encouraged by the committee’s view that

“if provisions to allow conversion from marriage to civil partnership are introduced in England and Wales, then Scotland could fall behind on matters of equality. Whilst there are undoubtedly legal challenges in this area, we consider these could be overcome with careful legal drafting.”

I was also encouraged by the cabinet secretary’s earlier comments in that regard.

The bill does not allow for adultery to be used as a ground for ending a civil partnership, unlike in a marriage. If one was being mischievous about it, one could dub the bill a love cheat’s charter, or rename it the open marriage (Scotland) bill. Frankly, most people—except those of a liberal mind—would see cheating to be a perfectly proper ground for ending any relationship.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** Does the member recognise that the ground of adultery in Scottish divorce law is seen as arcane and that unreasonable conduct is a far more appropriate ground for ending any relationship? That is typical of the bill—it tries to drag us into the 21st century when much of Scottish marital law is still stuck in the past.

**Graham Simpson:** I mentioned the issue only because it was covered in the committee’s report. I am not arguing for such an approach; I was trying to be humorous, although I possibly failed on this occasion. *[Laughter.]*

The Faculty of Advocates has also expressed concerns that the decision surrounding civil partnerships does not extend to adultery. It advised the committee to seek clarification, given that

“civil partnership for opposite sex couples is intended to be an alternative to marriage”.

The Law Society of Scotland also suggested that it may be beneficial to consider

“whether to harmonise the grounds for the dissolution of both marriage and civil partnership”.

I therefore say to Mr Cole-Hamilton that it is a serious point to be considered; it is another area that could be looked at. However, I note the evidence taken on the issue and the committee’s view that the matter is one for divorce law.

I will touch on one other issue. Section 3 provides for couples in different-sex civil partnerships formed in England, Wales and Northern Ireland to be temporarily

“treated as if in a marriage”

until different-sex civil partnerships are registrable in Scotland. The committee's report says:

"The Scottish Government developed this policy for interim recognition because civil partnerships for different sex couples are now available in the rest of the UK. Therefore, section 3 of the Bill will allow civil partners who move to Scotland to access the rights and responsibilities that would come from a marriage, until different sex civil partnerships come into force ... A number of written submissions expressed some disappointment with this provision."

I look forward to seeing the bill pass this stage and to engaging with it as it makes its way through the parliamentary process. My colleagues Mr Golden and Mrs Harris will grab the challenge with their usual gusto. For now, we are content to support the general principles of the bill.

16:10

**Pauline McNeill (Glasgow) (Lab):** I vaguely recall the passing of the civil partnership legislation of 2004. It was a major step towards marriage equality for same-sex couples. I was chair of the Justice 1 Committee back then and we did what was known as a Sewel report, which in other words was a report on legislative consent to equalise the law across the UK. Now, 16 years on, we have equal marriage and we require to equalise the law for opposite-sex couples.

Stewart Stevenson, who I know is going to speak in this debate, may recall that we also reformed family law at about the same time, when we accidentally swept away 300 years of Scots law provision for marriage by cohabitation and repute—sometimes known as common-law marriage. We managed to fix that at stage 3 of the Family Law (Scotland) Bill, when we allowed someone to make a statutory declaration if they thought that they were married and were unaware that actually they were not, for some technical reason, perhaps because they had not followed the full customs in another country. That was a relief for me, as I had married in Las Vegas, and for Bruce McFee, who you may remember from the Scottish National Party and who also got married in an exotic place.

It is pertinent that we are discussing the Civil Partnership (Scotland) Bill today. During the meeting of the COVID-19 Committee today, Adam Tomkins's amendment 36, which the committee and the Government supported, highlighted that the ability to marry or enter a civil partnership is an important right, which confers other rights. Rights conferred by civil partnerships were meant to be identical to those conferred by marriage, but there seem to be some differences that I hope ministers will address in their summing up.

One of those is that death in service confers apparently greater rights on people in civil

partnerships than on those who are married. According to the Scottish Parliament information centre, the Pensions Advisory Service noted that, since *Walker v Innospec*, which was a court case on death benefits and pension rights for same-sex couples, it is now the case that surviving partners of same-sex civil partnerships are entitled to the same death in service benefits as widows of opposite-sex marriages. That usually includes a backdating of pensionable service to 1978, whereas widowers are currently entitled to backdate that only as far as 1988. That is a small technical issue. If civil partnership and marriage should have exactly the same legal basis, then those should be identical.

Ruth Maguire covered my next point very ably, and I also want to record my thanks to the Equalities and Human Rights Committee for the sterling work that it has done. The committee said in its report:

"some people do not wish to marry for symbolic, cultural or emotional reasons and consider these important enough to merit the extension of civil partnership."

In fact, civil partnerships may provide a valuable alternative for women and many others who have had negative experiences of marriage, including abusive relationships.

There is a right for same-sex couples to choose between civil partnerships and marriage and the same choice should be available to other couples. That point has been made by many other speakers. It is important to increase people's choices about how they structure their lives.

The bill brings Scotland into line with the rest of the United Kingdom, as civil partnerships for mixed-sex couples have recently been introduced in England, Wales and Northern Ireland.

Clearly, there is a difference between the rights that a couple have from cohabitation and the rights that they would have in a marriage, and the fact that that difference has existed for so long has been the subject of much discussion. The committee's report highlights the rights, or perhaps the non-rights, of cohabiting couples. That is an issue that I have addressed in the past, and is one that the committee might want to return to.

A legally recognised relationship brings with it many financial benefits. More than that, people find security in being married or in a civil partnership. For those who feel that marriage is not for them, a civil partnership offers an important alternative.

I am pleased that the bill will ensure that people can be in a legally recognised relationship and have the benefits that flow from that so that they can live their lives. For example, it will mean that one civil partner can inherit wealth on the death of another civil partner without a tax charge. In

addition, where one civil partner earns £12,500 or less, a proportion of their tax-free personal allowance can be transferred to the other partner if that person is a higher earner, thereby reducing the couple's overall income tax bill.

There is good reason to think that civil partnerships for heterosexual couples will be popular. In France, the *pacte civil de solidarité*—I ask members to forgive my pronunciation—is a registered partnership arrangement. Over the years, it has become increasingly popular, and for every five marriages, there are now four PACS. Based on the international experience, the Scottish Government estimates that there could be 109 opposite-sex civil partnerships registered each year, but the French example indicates that the numbers could rise significantly once the option has been in place for a while.

We are closing an important equality loophole in the law and giving all the citizens of Scotland more choice. There is every reason to support the provision and bring it in to our law.

16:16

**Andy Wightman (Lothian) (Green):** First, I thank the Equalities and Human Rights Committee for its scrutiny of the bill and its helpful stage 1 report. I also thank Ruth Maguire for her very informative insights into some of the evidence that the committee heard. I welcome the debate, as it is important that Parliament continues to meet to deal with business that is unrelated to Covid-19 where it is safe and possible to do so. I record my thanks to Parliament staff for their extraordinary commitment to their job and for facilitating parliamentary business in these difficult times.

Scottish Greens support the bill, and we will vote for it at decision time. Indeed, even before civil partnerships existed, Scottish Green Party policy supported the principle that both marriage and civil partnerships should be available to all, with no discrimination on the grounds of sexuality.

When civil partnerships were first proposed in the UK, Patrick Harvie in 2003 proposed a member's bill that would have created civil registered partnerships on a non-discriminatory basis, with such partnerships being open to mixed-sex couples from the outset. At the time, it was disappointing that other parties decided to use a legislative consent motion, which was then known as a Sewel motion, to have the UK legislate in the devolved area of family law. The UK subsequently created civil partnerships for England and Wales, which was a step forward, but it did so on a discriminatory basis. If we had passed the Greens' proposed bill instead, we would have been fully compliant with human rights legislation right from the start.

Nonetheless, we are where we are, and I am glad that we are here now. The bill extends eligibility to enter into a civil partnership to different-sex couples by amending the 2004 act to remove the reference to same-sex couples, and it also recognises mixed-sex civil partnerships that have been registered outside Scotland.

Different-sex couples can already obtain civil partnerships in England, Wales and Northern Ireland, and—as many members have noted—the Supreme Court, in the 2018 *Steinfeld and Keidan* case, decided that preventing opposite-sex couples from entering into civil partnerships was discriminatory and incompatible with the European convention on human rights. There is therefore a straightforward principle at stake. Parliament has acknowledged that it was wrong that the state created and administered marriage on a discriminatory basis, and surely it is therefore equally wrong that civil partnerships are similarly discriminatory.

The arguments for and against the bill are relatively modest and straightforward, and are set out in the committee's stage 1 report. The reasons that the Scottish Government did not introduce mixed-sex civil partnerships following the 2015 consultation included, among other factors, low demand, limited recognition of such partnerships in the rest of the UK and overseas, the idea that society's understanding of civil partnerships might be limited, the fact that Scots law already provided some rights for cohabitants, the fact that it was already possible to have a civil marriage ceremony, and the increased complexity that might arise.

However, everything changed following the Supreme Court ruling in 2018, and the Scottish Government, in its consultation that year, posed the choice of whether to close civil partnerships to new relationships or extend them to opposite-sex couples. Either approach would, in theory, as Graham Simpson said, overcome the human rights violation that the Supreme Court identified. In the end, ministers took the view that eligibility for civil partnerships should be extended. We welcome that approach, as it provides flexibility and choice, which are principles that should underpin how people choose to live their lives.

We also welcome the committee's recommendation that those couples who are married should be able to convert their legal relationship to a civil partnership. That is a very important issue given the underlying principles of freedom and choice as to how couples wish to relate to each other in law, which are so important. We also believe that any kind of hierarchy in relationships is false, unhelpful and can be stigmatising. People should be able to choose the form of relationship recognition that best suits

them, whether that be cohabitation, marriage or civil partnership—either fully civil or with some sort of religious element. If people choose what is best for them, it is not for anyone else to portray that as a lesser relationship. The bill takes some important final steps towards equal recognition and respect.

Finally, choice and freedoms in relationships should also cover cohabitation. I welcome the committee's recommendations in that regard. I await the Scottish Law Commission's review of that area of law with interest.

16:21

**Alex Cole-Hamilton (Edinburgh Western) (LD):** I thank the clerks and witnesses who have made the collection of evidence at stage 1 enjoyable and seamless in adding to the committee's knowledge. In particular, I thank the Equalities Network, which provides evidence of such depth and quality. I also thank the campaigning groups who have seen the change that we are driving forward today already enacted in England, which has brought equality to mixed-sex couples who want to enjoy the same protections that civil partnership offers. Put simply, if the bill is passed by the Scottish Parliament, it will be another step towards equality.

The bill offers legal and financial protection for both parties in the event of a relationship ending. However, it does so much more, in freeing those couples of the baggage of religious connotations that many attach to marriage. That is an important choice and one that we should extend to Scottish citizens.

I know how long some opposite-sex couples have waited for the opportunity to formalise their relationships and to enjoy the stability, rights and entitlements that other couples enjoy. There are 3 million opposite-sex couples who cohabit but choose not to marry and those couples support 1 million children. However, as it stands, they do not have the security or legal protection that married couples or those in civil partnerships enjoy. That needs to change. The bill will allow more people to formalise their relationship in the way that they choose.

**Andy Wightman:** The member mentioned some figures, including 3 million couples. I presume that that does not relate to Scotland—I just want to clarify that we are not looking at a sudden rush of new civil partnerships.

**Alex Cole-Hamilton:** I am grateful to Andy Wightman for allowing me the opportunity to correct that point. It is, indeed, a UK-wide statistic. I imagine the figure would be in the region of 300,000 in Scotland.

Children in Scotland is fully supportive of the legislation, arguing that

“opening out civil partnerships will have positive implications to the lives of children and young people”.

That is because the bill will not only increase parity for those seeking to engage in a civil partnership, but provide that a man in a civil partnership with the mother of their child will obtain parental rights and responsibilities. That is a vital improvement in the law. That recognition of both parents helps to ensure that children's rights have great protections.

In addition, opening out civil partnerships to everyone would help support LGBT+ communities. Stonewall has highlighted how the extension will ensure that civil partnerships remain an option for LGBT people in same-sex relationships, while widening the options available to people in mixed-sex relationships, including those who are LGBT, such as bi and trans people. Once again, at the core of the bill we see the pillars of equality and fairness.

Last year, we saw civil partnerships become available in England and Wales, so this slight change in legislation—as the minister said, it is such a small change—will make an important shift in our progress as a nation towards equality.

That change followed the UK Supreme Court ruling in favour of Rebecca Steinfeld and Charles Keidan, which stated that the UK's previous law, the Civil Partnership Act 2004, was incompatible with articles 8 and 14 of the European convention on human rights on equality grounds. The judge ruled that current UK laws were incompatible with human rights laws on discrimination and the right to a private and family life.

Equality before the law, irrespective of sex, gender identity, or sexual orientation, is a vital baseline against which further progress towards all human equality and rights can be made. The Equality Network claims that, based on the experience of other countries, roughly one in 10 mixed-sex couples would prefer a civil partnership to a marriage, with demand coming from couples who would otherwise choose not to get married and become unmarried cohabitants.

The impact of the lack of legal rights on the breakdown of a cohabiting relationship is gendered. In its 2015 response to the Scottish Government consultation on civil partnerships, Engender said:

“women have less access to resources, assets and income, due to systemic issues that include unpaid caring roles, the gender pay gap, violence against women and unequal representation.”

My Liberal Democrat colleagues south of the border sought to introduce civil partnerships for all

couples in 2002 through Lord Lester's private member's bill, and in 2013 when they tried to make civil partnerships open to mixed-sex couples. They did not succeed until very recently in England, and we must now follow suit.

I am pleased that this anomaly, which has existed in this country for 15 years, is now on track to be fixed through making marriage and civil partnerships available to couples regardless of sex. The committee has looked at the bill from all angles and the bill is elegant in its simplicity. As such, it is likely to require few, if any, amendments at stage 2, other than those to which the minister has already given voice.

However, I wish to put on record my regrets regarding evidence that we heard during the stage 1 consultation—with which I had great sympathy—on the unfortunate realities of the transition arrangements around implementation. The committee heard compelling evidence from campaigners who voiced concern at the fact that, until the date of implementation, mixed-sex couples who had a civil partnership that was already recognised in England would be regarded as being married for that period in Scotland.

There are real and legitimate reasons why people would reject the institution of marriage and would understandably be angry that, despite the lengths that they had gone to to have a mixed-sex civil partnership realised in England, they should be considered as husband and wife in Scotland, even for just a few months. The committee took extensive legal advice on the matter and it was determined to be unavoidable, so I hope that we can expedite the implementation of the bill.

I see that my time is up, so I thank the clerks and witnesses and I assure the Government of our support at stage 1.

16:27

**Kenneth Gibson (Cunninghame North) (SNP):** Although the bill has been directly influenced by the European convention on human rights *Steinfeld and Keidan* judgment, I believe that we should all have equal opportunities, regardless of sexual orientation, and I am therefore pleased to speak in today's debate. I thank everyone in the Government and on the committee and all those who gave evidence to help bring the bill to stage 1.

Although there are few legal differences, the institutions of marriage and civil partnerships are very different. If civil partnership was introduced to be the closest thing to marriage that is not quite marriage for same-sex couples, it cannot now be argued that to opposite-sex couples it is all the same.

I strongly believe that the way in which partners profess, demonstrate, celebrate or formalise their love and commitment to each other should never be dependent on the sex of either one of them. I enthusiastically voted in favour of same-sex marriage because I want every couple to have the same choices.

For the past six years, heterosexual couples have had fewer options than same-sex couples and we are here today to help resolve that. Some people might ask why it is so important that civil partnership should be accessible to all and whether it has not become obsolete since the introduction of same-sex marriage. I believe such views display a lack of empathy for those with their own reasons for objecting to the institution of marriage or for not wanting to enter into it themselves.

I know couples who see marriage as a religious institution with which they cannot identify; people who associate the institution with personal trauma from their early years or from marriages that they were in before; some who object to its patriarchal tradition in which women are given away by their fathers and, in some ceremonies, promise to obey their husbands. Should people who decide not to enter into marriage have the right to formalise their relationships and give their partners legal rights in life and death? Of course they should.

Civil partnership is between those who wish to make that choice of commitment but—for reasons that are frankly none of our business—do not wish to be married. At this point, it is important to reassure those who object: opening up civil partnership to couples of the opposite sex is not an erosion of the institution of marriage, nor is it a threat, nor a first step to erase the concept of marriage—marriage will, of course, continue to thrive.

Reading the bill, I found few issues with its general principles. However, I want to pick up on a few significant points that must be rectified as the bill progresses to stage 2.

If the bill passes as it is, that would mean that, while it would be possible to convert a civil partnership into a marriage, converting a marriage into a civil partnership would still be precluded. Those put at a disadvantage would include not only people with religious beliefs, who would be precluded from choosing a civil partnership in future, but everyone in the chamber and elsewhere in Scotland who is already married.

More constituents than we might expect have contacted me to express their wish to have a formalised relationship giving rights to their opposite-sex partner. More of them than we might expect are married already, because it was their only option for sharing that legal status with their

partner. To them, having to do that through the institution of marriage has always been the lesser of two evils, and marriage is not what they really wanted. Those couples must be given the opportunity to convert their marriage into a civil partnership, and it should be up to them how they design and frame their relationship and commitment to each other.

Like me, those constituents will be heartened to know that the Scottish Parliament's Equalities and Human Rights Committee has picked up on that inequality, and the cabinet secretary has expressed a willingness on the part of the Scottish Government to explore ways to include the possibility of providing for conversion from marriage to civil partnership at stage 2.

Another issue of inequality between the two institutions is that, in marriage, adultery is a ground for divorce, as was mentioned by Graham Simpson. In civil partnership, however, there is no such ground for dissolution. Technically speaking, that makes civil partnership something other than an equal alternative to marriage.

The committee sympathises with the view that certain aspects of divorce and dissolution law are outdated and untidy and suggests that those issues are for consideration during a wide reform of divorce law and are outside the provisions of the bill. In its response to the committee's stage 1 report, the Scottish Government agrees that

"any wider reform of divorce and dissolution law is not for this Bill but would be for separate consideration."

However, in the same breath, the Government says that there are

"no current plans to review divorce and dissolution law in Scotland",

or to consult on that, leading one to the suspicion that the matter of that missing ground will not be resolved for some years. I am unsure why that ground for dissolution has not been included in the bill as long as we are making laws to improve equality between the two institutions. However, I look forward to having a public consultation on those aspects and more when the time comes.

Although the Parliament has many urgent matters to deal with and the Scottish Government has other priorities to address for the duration of this parliamentary session, a review of divorce and dissolution law will ultimately be required if we really want to iron out the existing inequalities between the institutions and between same-sex and opposite-sex couples. I would like that to happen at some point during the next parliamentary session.

I agree with the principle of the bill, even more so in light of the Scottish Government's intention to explore the possibility of converting marriage

into civil partnership, and I am pleased that something that is so important to many couples in Scotland—and indeed to a number of my constituents—is being progressed.

16:32

**Joan McAlpine (South Scotland) (SNP):** I, too, welcome the bill. Scotland—and, until very recently, England, Wales and Northern Ireland—is the only country in the world where same-sex couples can choose between a marriage and a civil partnership while different-sex couples only have the option of marriage. It is an anomaly that is both unfair and illegal.

If the subject was considered in a superficial way, one might ask why new legislation is necessary, as civil partnerships and marriage confer almost identical legal benefits. Even the Campaign for Equal Civil Partnerships makes that clear on its website, where it states:

"There is very little difference in legal terms between marriage and civil partnerships, with both conferring the same rights on things like tax, inheritance and pension provision."

Of course, some weddings are religious, and some traditional ceremonies have echoes of patriarchy in promises to obey. Many people opt for civil services, and marriage itself is often a secular arrangement, just like a civil partnership. However, we know from the campaign for equal marriage that the perceived difference between marriage and civil partnerships was very real when they were reserved for different groups of people.

Civil partnerships were introduced across the UK for same-sex couples only by the Civil Partnership Act 2004, which was considered by the Governments of the day to be a significant social advance, even though it denied gay people equality. At the time, the authorities spoke openly about the danger of undermining marriage by opening it up to couples of the same sex. That seems quite extraordinary to us now, and the campaign for equal marriage correctly identified the distinction in those two different types of union as discriminatory. Many campaigners understandably felt that civil partnerships were second best, and I was proud to be able to correct that wrong, together with colleagues in this Parliament, by voting overwhelmingly for equal marriage.

That achievement perhaps obscured the fact that some same-sex couples were happy with the pragmatic benefits incurred by their civil partnership with regard to pensions, tax, inheritance and so on, so much so that some mixed-sex couples were keen to access similar arrangements. For those heterosexual couples, civil partnerships were not second best at all but



were preferable and, indeed, something to which they aspired.

The Equal Civil Partnerships campaign states that

“the history, expectations, and cultural baggage of the two institutions is very different. Many couples can make a marriage work, but for some people – especially women – marriage is seen as carrying far too much patriarchal baggage: the idea that the man would own his wife, given away to him by the father of the bride”

is unacceptable. The campaign also states:

“Still today marriage certificates only have space for the names of the fathers of the bride and groom, whereas civil partnerships include the name of both parents. And in the ceremony partners have to say the words “I take you to be my wife ... I take you to be my husband.”

One couple who felt that way were Rebecca Steinfeld and Charles Keidan. Their challenge ultimately led to a Supreme Court ruling on 27 June 2018 that the inability of different-sex couples to form a civil partnership is in breach of the European convention on human rights. The case of Rebecca and Charles was by no means an isolated one. I have been contacted by constituents who feel very strongly about the matter and I know that they will be delighted that we are now setting things right, particularly as mixed-sex civil partnerships are already legal in England and Wales.

I welcome the work on the bill of the Scottish Parliament’s Equalities and Human Rights Committee, which approved the bill’s general principles. The committee’s report notes that, for symbolic, cultural or emotional reasons, some people do not wish to marry. I note that the committee’s call for evidence on the bill received 40 submissions that were overwhelmingly in support of its proposals. Those submissions included one from the Equality and Human Rights Commission, which said that the change to the law would advance

“equality of opportunity for couples who are or who wish to enter into a legally recognised relationship.”

There were also positive responses to the bill from Children in Scotland, Engender and many LGBT groups, as other members have already outlined.

However both the Faculty of Advocates and the Law Society of Scotland pointed out that couples who are married will not be able to change to a civil partnership in the same way that a same-sex couple can currently change their civil partnership to a marriage. I understand that the UK Government has consulted on that matter but no firm conclusions have been reached. I would welcome further exploration of that anomaly.

The bill will affect only a small number of people—an estimated 109 couples in Scotland—but it is the right thing to do. It is clear that the

general public are very supportive of the proposals. A British social attitudes survey found that 65 per cent of people back the change to civil partnership. I am glad to count myself as one of those people and I support the bill’s general principles.

16:37

**Annie Wells (Glasgow) (Con):** I welcome the opportunity to speak in this debate on an important bill that will allow Scotland to continue to promote equality, freedom of choice and fairness. The Equalities and Human Rights Committee did important work in its early consideration of the bill. Although I have stepped back from the committee, I will make sure that Maurice Golden and Alison Harris keep me up to date on the bill’s progress as they ably represent the Scottish Conservatives’ voice on the committee.

The bill’s fundamental principles are sound and there is cross-party support for the bill. However, we must still carefully consider it, and I ask the Scottish Government to be agile in its approach to some of the difficulties raised by the bill as we move forward to stage 2. It is important that we progress the bill through Parliament so that Scotland does not lag behind the rest of the UK on civil partnership. England, Wales and Northern Ireland have already passed the necessary legislation to make civil partnerships legal for different-sex couples, and I am glad that Scotland will join those countries soon in that regard.

As we have heard, the 2018 Supreme Court ruling outlined that the unequal access to civil partnerships for different-sex couples was in breach of the European convention on human rights and that we must therefore adapt our law to take account of that. In 2014, the landmark legislation that legalised same-sex marriage saw the LGBT community take a major step forward in its on-going fight for equality. That equity for relationships regardless of sexual orientation must now be offered to different-sex couples who want to access civil partnership.

The 2018 ruling represented a wider movement in public attitudes that was the catalyst for the introduction of the bill. The British social attitudes survey in 2019 showed that 65 per cent of the public supported the introduction of different sex civil partnerships, while only 7 per cent actively opposed it.

As the Equalities and Human Right Committee scrutinised the bill, it found, time and again, that the central purpose of the bill is to allow couples the right to legitimise their relationship through the route that best represents their cultural values and outlook on the world. I am glad that, today, we are starting to take the first steps to allow that to

become a reality for mixed-sex couples across the country.

The bill is about extending choice. The Equality Network gave evidence that referred to that when it talked about the levelling up that will happen as a result of the bill. Although marriage and civil partnerships represent a similar legal position, they can mean very different things to individual couples. Both come with their own set of symbolic values and their own importance, and I am therefore glad that the bill represents an extension of choice. The alternative to aligning with the European convention on human rights would have represented a limitation to that personal freedom by removing the option of accessing civil partnerships altogether.

The bill, on the whole, is straightforward and uncontentious. There are, however, some important considerations to be made as we approach stage 2. The committee report outlines various areas where further consideration at stage 2 will be needed. For example, the drafting of section 3 will need to be examined to ensure that we respect the decisions of couples who have specifically chosen to enter civil partnerships and, because of that, might be unhappy with their status being likened to a marriage, even if that is only on an interim basis in Scotland. If we do not get that right, we will be sidelining the conscious freedom of couples to be legally recognised in the way that they choose.

Another interesting area of discussion that the committee considered surrounded the matter of converting marriages to civil partnerships. The purpose of converting civil partnerships to marriages was clear when they served a community of LGBT couples who wished to formally transform their civil partnerships to marriages as a result of same-sex marriage becoming law. It allowed them to access the legal recognition that they had always been barred from, and it symbolised a battle won in a wider fight for equality.

Evidence to the committee was overwhelmingly in favour of the bill allowing marriages to be converted to civil partnerships in a bid to recognise cultural preference, as well as to make sure that Scotland did not perpetuate forms of discrimination. I was therefore encouraged when I heard the cabinet secretary say today that he will work with the committee on that point.

I am pleased to see the inclusion of forced civil partnership as a criminal offence. For the first time, that will put same-sex and different-sex civil partnerships on the same level as married couples in relation to protection. That protection acknowledges the legal validity of civil partnerships by outlining that they should never be taken advantage of or used for harm.

The bill underpins the attributes of modern Scottish and British culture that we would do well to protect: fairness, equality and freedom of choice. It will be important that those continue to be upheld as the committee enters considerations at stage 2.

In a time when most of us are missing our loved ones and those who mean most to us and are seeing the fragility of life, I am happy that I can support a bill that allows couples to recognise their love in a way that they have decided represents their values best.

16:44

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** As a member of the Equalities and Human Rights Committee, I place on record my thanks to the clerks, witnesses and all those who gave up their time to get us to this place.

Although I agree with the general premise of the argument that has been made here in recent weeks about the need for us, in these times, to prioritise the Covid-19 response, I think that there are caveats. Of course, we cannot simply carry on as normal while people's lives have been turned upside down, but, at the same time, we need to behave respectfully towards legislation that has already started its progress through Parliament, the witnesses who have given their time and people who are relying on the legislation being passed. I think that the Government has found the right balance in that regard.

Of course, as has been argued today, parts of the Civil Partnership (Scotland) Bill are very relevant to the current situation and to some of the difficulties that people are having. Like some of my colleagues, I have had queries from constituents wondering what will happen to the wedding or ceremony that they had planned for the coming months. They are not all asking for the ability to hold traditional large parties; rather, they want the opportunity to have their ceremony with a minimum number of people, in a safe environment. I welcome the work of the Scottish Government in that area and the cabinet secretary's response on the subject last week in the chamber.

The bill will extend civil partnerships to mixed-sex couples as opposed to restricting them to same-sex couples, as the legislation currently does. That is right and is in line with the European convention on human rights. Couples may not want to enter a marriage, for a range of reasons—symbolic, cultural or emotional. At the end of the day, marriage is a deeply personal life choice. I understand that some regard marriage as carrying patriarchal baggage and that civil partnerships, although they confer the same legal benefits as

marriage, are viewed differently. We heard that clearly when we were taking evidence in the committee. With the passing of same-sex marriage legislation, people in same-sex relationships rightly have a choice of marriage or civil partnership, and it has been ruled that those same options should be available to mixed-sex couples, in order to comply with the European convention on human rights.

As has already been said—Graham Simpson noted that we are probably going over the same lines—the committee took an array of evidence to enhance our scrutiny. Crucially, the bill has widespread support. Stonewall Scotland, for example, feels that the bill would support LGBT people on the whole by opening options up to bi and trans people. In addition, Children in Scotland feels that the legislation would have only positive implications for children whose parents choose to enter mixed-sex civil partnerships and for children born to parents in mixed-sex civil partnerships. As others have said, no real evidence was given against the bill, which shows that the legislation is widely supported.

If the bill passes, couples who are currently cohabiting but do not wish to enter into a marriage will have a new option. On the surface, it might appear that there are few legal differences between a marriage and a civil partnership, but there are major differences between people cohabiting and people being in a marriage or civil partnership. If the bill passes, mixed-sex couples will be able to enjoy the legal protection that is afforded to civil partnerships, which cohabiting couples do not have under the bill, particularly with regard to tax planning and instances of one of the partners predeceasing the other.

Practically, the legislation opens up rights when transferring property or making gifts, and it ensures that capital gains tax will not apply to assets that someone has given or sold to their partner. In addition, currently, if a cohabiting partner dies before their partner without having made a valid will, the surviving partner will not automatically inherit from their estate. However, upon entering into a civil partnership, a partner has a legal right to the estate of their partner, even if they died without leaving a will—the surviving partner would be entitled to claim one third of their partner's moveable estate if they had children at the time of their death, or half if there were no children. Likewise, on inheritance tax, the situation for a civil partner is the same as it is for someone who is married: they are able to transfer the entirety of their assets on death to their surviving civil partner without incurring any tax. Those might be some of the reasons why little evidence was given against the bill, which seems to bring in commonsense changes.

As others have said, Scotland is the only country in the world where same-sex couples can choose between a marriage or a civil partnership while different-sex couples have only the option of marriage—of course, until recently, that was the case in England and Wales, too. The bill will see us join other nations in making civil partnership an option for everyone.

I will conclude with a quote from the Equality and Human Rights Commission's written evidence on the bill. It said:

“the approach of upholding human rights and providing equality of opportunity for all couples who wish to enter into a legally recognised relationship is to be welcomed as progress towards greater equality in Scottish society.”

16:49

**Alexander Stewart (Mid Scotland and Fife) (Con):** I am delighted to be able to participate in this afternoon's stage 1 debate on the Civil Partnership (Scotland) Bill. I pay tribute to the committee clerks, the convener, the members of the committee and everyone who has given evidence or made a contribution to the committee.

As my colleagues have outlined, we, in the Scottish Conservatives, support the general principles of the bill, which will also bring Scots law into line with the position in the rest of the United Kingdom. Although how we got to where we are is understandable—the introduction of civil partnerships for same-sex couples in 2004 being followed by the extension of marriages to same-sex couples in 2014, which also allowed people in civil partnerships to convert their legal status to married—there now exists an inequality between the legally recognised partnerships that are available to mixed-sex couples and those that are available to couples of the same sex. A bill to address that inequality serves as the logical next step to the previous legislative changes that have reflected wider changes in our society and advanced the fundamental principles of liberty, equality and choice.

As my colleague Graham Simpson said, there is a wider question about how best to go about addressing the issue. To a great extent, civil partnerships were an important stepping stone towards marriage for same-sex couples at a time when many legislators—and, perhaps, Scotland more widely—were not ready to take that next step. However, the situation has changed. Although there is an argument to be made that such a stepping stone is no longer necessary, it is clear that there remain couples of all compositions who object to the very institution of marriage on many different grounds but who still wish their relationship to be legally recognised. That is important with regard to equality of choice and equality of involvement. That has been

demonstrated by the court case in England that we have heard members speak about today and, indeed, is noted by the Equalities and Human Rights Committee. That was commented on by my colleague Annie Wells a few moments ago. The simplest solution, therefore, is the one that the bill advocates—namely, allowing mixed-sex couples to enter into a civil partnership should they prefer to do so rather than get married—and that is why we, in the Scottish Conservatives, support the general principles of the bill at this stage.

It is clear that the bill has widespread support from across Scottish civil society. It is good to know that many groups have made a strong commitment to the bill, including many charities and equality groups that have fought long and hard to ensure that their voices are heard. It is important that we recognise that and it is good that they are now getting that recognition. The bill also fulfils the ambitions of the Equality and Human Rights Commission, which set out the changes that it wanted in 2011.

It is important that we talk about the issue of forced formal relationships. Forced marriage is a terrible crime that has often gone unreported, and that needs to be challenged. In recent years, the UK Government has taken an increasingly hard line on that crime, and our previous Prime Minister, Theresa May, introduced legislation in 2014, when she was the Home Secretary, that made it an offence across the United Kingdom. Although forced marriage is an offence, forced civil partnership is not currently an offence. The bill seeks to address that by making a forced civil partnership an offence in Scotland, which is a welcome development, because forced formal relationships are abusive, and we need to recognise that.

Like other members who have spoken in the debate, I am concerned that the bill does not provide a means for a marriage to be converted into a civil partnership although there is the ability for the reverse to happen. Ministers have set out that one of the justifications for the bill is that it advances the principle of choice. It is important that we recognise the principle of choice, but, if that is what the bill is meant to do, why should people who are married not be allowed to convert their marriage to a civil partnership if they want to—or, indeed, vice versa—without needing to fulfil the current condition of showing “equal societal recognition and the same respect as mixed sex relationships”?

There is also a risk that there could be further negative divergence on equalities between Scotland and the rest of the UK. As has been highlighted by the committee, the UK Government is currently consulting on establishing the ability to convert marriages to civil partnerships in England

and Wales. I hope that that discrepancy can be given further consideration at stage 2.

The bill seeks to enhance equality in Scotland and extend the personal freedom to choose whether to enter into a marriage or a civil partnership to the whole population. I am, therefore, happy to support the bill at stage 1 and to see it progress to the next stage, because it will bring choice, fairness and equality.

16:55

**Angela Constance (Almond Valley) (SNP):**

The starting point when considering the extension of civil partnerships to include different-sex couples is that the status quo is incompatible with the European convention on human rights. The UK Supreme Court ruling of 27 June 2018 applied to England and Wales but was nonetheless a clarion call to us that our current situation is discriminatory and time limited. As Ruth Maguire, the convener of the Equalities and Human Rights Committee, and other members have said, Scotland is the only country in the world where same-sex couples have a choice between civil partnership and marriage but mixed-sex couples have only the option of marriage if they do not want to cohabit. It is only right, therefore, that we address and progress that matter today. Other progressive European countries and the rest of the UK have taken that step forward, so we now need to catch up with them.

Yes, this is indeed about equality of choice and opportunity, but it is also about securing the same legal rights: a levelling up, as some members have reflected. There is little legal difference between marriage and civil partnership, although some pension providers will deliver fewer survivor benefits to a civil partner than to a spouse, which is, frankly, outrageous. I am glad that the cabinet secretary will issue guidance around some of the difficulties with respect to international recognition of mixed-sex civil partnership, as that might be important to some individuals.

The biggest anomaly is around the legal rights of cohabittees compared to those of married couples. With regard to death or separation, cohabittees rely on the Family Law (Scotland) Act 2006; whereas, for married people, the protections around pension succession, alimony and financial provision are much clearer and stronger. Some people might say—wrongly—that, in order to maximise legal protection for when a relationship ends due to divorce or death, people should get married. However, that misses two very important points. The first is a very simple point: why should there be a different position for any couple, whether they are mixed sex or same sex?

The second point is perhaps harder to understand if we come from a position of believing in marriage as an institution, which many of us do, and that the only impediment to marriage is not meeting the right person. However, we have to understand and respect that some people have real ideological and very legitimate personal objections to the concept of marriage but nonetheless form long-term, committed and loving relationships that should not be viewed as second rate. Those couples deserve access to the law and should be able to access the same legal rights as married couples to protect and plan their future.

The Equal Civil Partnerships campaign has spoken eloquently about the symbolic, cultural and emotional reasons why some people object to marriage but nonetheless want a legally recognised relationship. For some women, marriage is, indeed, a patriarchal institution, and it is hard to deny that marriage comes with what has been described as baggage of history, culture and expectation, given that the civil and legal premise of a woman being the property of her husband is, sadly, not confined to ancient history. Joan McAlpine tapped into the feeling that opening up civil partnerships to mixed-sex couples will, in many ways, address some unfinished business, which is something that I heard Alex Cole-Hamilton reflect on, too.

With the introduction of same-sex marriage, many countries have either abolished civil partnerships or retained them as a legacy union and have withdrawn them as an option. I firmly believe that, on balance, our having the option of either marriage or civil partnership for same-sex and mixed couples is the right approach—and some two thirds of those questioned in the British social attitudes survey think so, too. As Fulton MacGregor mentioned, the bill has widespread stakeholder support.

Those of us who serve on the Equalities and Human Rights Committee have discovered that there are complexities to unravel and address, and other members, including the cabinet secretary, have touched on those. In particular, the committee has sought to explore with the Government the notion of converting marriages into civil partnerships on the basis of the evidence that we heard. The cabinet secretary's written response walks us through some of the complexities. In essence, the issue is about how not to disrupt legal rights when people change a marriage into a civil partnership. New Zealand and Austria have introduced the ability to do that, so perhaps we can learn from those countries. I am sure that we all very much welcome the cabinet secretary's commitment to explore the issue in more depth with the committee.

This is a small but purposeful bill, and I am glad to have the opportunity to support it today.

17:01

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I apologise to the Presiding Officer and to colleagues for joining the debate late. I am a member of the COVID-19 Committee, and our stage 2 debate on the Coronavirus (Scotland) (No 2) Bill ended just after 4 o'clock. Who said that men cannot multitask?

I will make brief remarks, which I hope will support, and will only to a limited extent duplicate, previous members' contributions. I certainly intended no disrespect to colleagues by not being here to hear their words.

I welcome the bill and support its objectives. Extension of the criteria for civil partnerships will take nothing away from me, nor do I see any demerit for wider society. To legislate in the terms that are set out in the bill will extend benefits to people who, for whatever personal reasons, do not wish to marry. That is proper.

Formal endorsement in law of a relationship is of particular benefit to the children of a couple. It simplifies inheritance and, generally, simplifies the transfer of assets within close family. Marriage and civil partnership have significant benefits. I have been doing the marriage bit for more than 50 years, and hope to get the hang of it sometime soon.

I was delighted previously to work with Pauline McNeill on marriage issues—she referred to the civil partnership legislation on which we both worked. At that time, we made common cause, and I believe that we can do that again. I note that the Jewish community has identified some—fixable—issues in the bill. I hope that we do something about that. In the legislation that Pauline McNeill and I worked on, a significant issue was how divorce works in the Jewish faith. We were able to work together and with others to ensure that that important group in our community got the changes that mattered to them. I am sure that we will be able to do that again—especially as the current issue looks to be rather more straightforward.

The Family Law (Scotland) Act 2006 identified new rights for cohabiting couples, but those rights fall far short of what might be fair to couples and their offspring. If the bill moves on to the statute book, as I believe is likely, that should encourage many cohabiting couples to seek formal recognition of their relationship.

The act of entering into marriage or civil partnership is important recognition by a couple of their commitment to each other, by affirming that it

is not simply a temporary or transient relationship. That commitment is of particular value to the children of those relationships. Although there are financial aspects, the much more fundamental issue is the emotional benefit of a stable family environment, however it is structured. Families can operate in many different ways: it is not for me to comment on anyone else's arrangements.

I wish, for the bill, all support as it moves forward, in particular so that it can benefit children, as much as their parents.

17:05

**Sarah Boyack (Lothian) (Lab):** I start by reiterating Pauline McNeill's affirmation that Scottish Labour welcomes the introduction of the bill to extend civil partnerships to mixed-sex couples, which will bring Scotland into line with England and Wales, and will promote human rights and equality through opening opportunities and providing greater choice.

Ruth Maguire's point that the choice between marriage and cohabitation is not a good enough choice was well made. We also welcome the legal, financial and social benefits that the bill will bring to mixed-sex couples and to several equality groups, as well as the discussion that the bill has opened up on living arrangements, which have evolved at a pace that has far outstripped the law. For example, couples who choose to cohabit have weaker and less-certain rights than those who are in a civil partnership or marriage, which can particularly work against women, as several members have said. Given the long-term trend towards cohabitation, Scottish Labour supports the Scottish Law Commission's proposed review, after the passage of the bill, of the law on cohabitation.

As several colleagues have said, it is important to highlight that civil partnerships allow couples to benefit from the legal, financial and social aspects of marriage, while avoiding an institution that they do not wish to enter for perhaps symbolic, cultural or emotional reasons. Civil partnerships might also provide a valuable choice for women who have had negative past experiences of marriage, including abusive relationships. If we want to be an inclusive and forward-looking country that upholds people's rights, it is right that we ensure that those who wish to formalise or celebrate a relationship are able to do so in a manner that fits with their outlook and values. The extension of civil partnerships allows us to stand in solidarity with others across the world who cannot marry.

In international terms, the bill allows us to follow in the footsteps of nations including New Zealand, South Africa and the Netherlands. Pauline McNeill's comments about the popularity of new choices in other countries were striking. She gave

the example of France where, for every five marriages, there are now four pactes civil de solidarités. I like the title in French, as well as in English.

Although a civil partnership might not be recognised in other countries that do not have that legal option, the bill allows us to continue to help to pave the way towards a more progressive future in which there are greater opportunities for all and a legal system that recognises the evolving needs and preferences of our citizens. The level of public support for civil partnerships for opposite-sex couples is 65 per cent, with only 7 per cent opposing them. With the public being so strongly on the side of the bill, it is time to push forward with it.

There are issues that still need to be addressed. The bill does not address the legal chasm between those who enter into a formally recognised marriage or civil partnership and those who choose to cohabit. As has been mentioned before, cohabiters have weaker and less-certain rights than people in civil partnerships or marriages have—a difference that is particularly gendered and particularly experienced by women. As the long-term trend toward cohabitation and diversifying family types continues, the bill must not be seen as signifying the end of the road in Scotland for creating legal equality in all types of relationships. There is unfinished business and more work to be done, so the Scottish Law Commission's review of the law on cohabitation is, therefore, both welcome and needed.

As Alexander Stewart said, the bill delivers choice, fairness and equality. It is a bill that we should pass—not because we have to, but because it is the right thing to do.

As others have said, the Covid-19 pandemic has truly made us think. It has given prominence to our homes, to how we live and to the importance and quality of our relationships. It has also underscored many equalities issues in our homes—not only in Scotland, but across the world.

Although the bill tackles only a small legal and technical aspect of home life, I hope that it results in a wider discussion of where we will go next. The bill falls into the wider narrative of the changing Scotland in which we live. It is updating the law to recognise the evolution of households and families everywhere, and to provide protection to those who choose paths other than marriage, so it is important.

Scottish Labour supports the bill, and the work that has started on the review of the law of cohabitation. I, too, thank the committee, clerks and witnesses for their contributions thus far. Some changes need to be made to the detail of

the bill, but clearly there is support for its principles right across the chamber—which we cannot say about every bill. From listening to the tone and content of speeches today, I believe that all the issues that people have mentioned can be addressed at stage 2, where they need to be addressed.

I support the bill at stage 1, and hope that it passes with unanimous support today.

17:11

**Maurice Golden (West Scotland) (Con):** This has been an entirely consensual debate. Graham Simpson injected some humour of sorts, as well as some interesting legal commentary. We were joined virtually by Pauline McNeill and Annie Wells, who made interesting speeches, as well as by Stewart Stevenson, who looked as though he was warming up for an operatic show, perhaps by doing some press-ups—probably one armed—and gave a suitably eloquent speech.

Fulton MacGregor and Angela Constance highlighted the extensive evidence that the committee has taken, and suggested that we must address and progress the bill, which I agree with.

Many thanks have been offered to the Equalities and Human Rights Committee and its clerks: I associate myself with those comments.

Overriding themes in the debate have been equality and fairness. Points on those were adeptly made by Alex Cole-Hamilton, who also highlighted that there are 3 million mixed-sex couples who cohabit and who have, to date, chosen not to marry. Andy Wightman clarified that that is a UK-wide figure, but the Scottish figure is high, nonetheless.

Kenneth Gibson explained why marriage is not for some people. He said that although there are many reasons that explain that, they are

“frankly none of our business”.

The creation of equality, through ensuring that people across Scotland have the same choices in their relationships, and fairness, through allowing the law to recognise those choices, are things that we should all support.

When civil partnerships were introduced back in 2004, it was in order to create a more equal footing for same-sex couples. However, in doing so, an inequality was created for different-sex couples, who could not enter into such partnerships. I appreciate that that exclusion was not malign in intent, but the end result was still unfair to different-sex couples who would have chosen a civil partnership, had that choice been open to them.

Scotland is now catching up with the rest of the UK, where civil partnerships for different-sex couples are already recognised. The bill that is before us is an opportunity to correct that and to bring Scotland up to date—a point that Alexander Stewart made well.

Beyond that, the bill should be an opportunity to ensure that we do not repeat the mistake of inadvertently allowing well-intentioned legislation to create more unfairness. Therefore, it is important that the proposed expansion of civil partnerships be indistinguishable from the existing provision for same-sex couples. I therefore welcome the willingness to extend the provision of conversion of partnerships to marriages—a point that was mentioned by Ruth Maguire and Annie Wells, among others—and the recognition of non-Scottish different-sex civil partnerships by allowing registration a second time, when necessary.

It is also welcome that there will now be prohibition of forced partnerships for both same-sex and different-sex couples.

However, although we can all welcome the improvement in the quality of choice, we must also recognise that legislation that intrudes upon the personal and private lives of individuals will have a number of implications. Those must be fully explored as the bill makes its way through Parliament, and I have full confidence in the Equalities and Human Rights Committee and the Parliament to do that.

I will highlight some key themes for Parliament to discuss during the next stages of the bill. We must examine better what we mean when we talk about “equality” and “fairness”. As I said, they have been watchwords throughout stage 1, which will no doubt continue to be the case.

However, the bill seeks primarily to address equality and fairness where they apply to a particular set of people—namely, different-sex couples who, for whatever reason, wish to enter not into a marriage but into a civil partnership. It is entirely right that we address such concerns and create a more equal system for such couples. The cabinet secretary summed up that point when she gave evidence to our committee. She said:

“The Government is obliged to consider what can be done to ensure that those people can be in a legally recognised relationship and have the benefits that flow from that while having an arrangement that fits their personal beliefs and how they want to live their lives.”—[*Official Report, Equalities and Human Rights Committee*, 5 March 2020; c3]

That begs a question: why should the same recognition and benefits not be equally applied? In many jurisdictions, both current and historic, Scots law does not provide for equality of marriage and civil relationships. That would not change under the bill.

The question is whether the bill will add another form of legal relationship to the ever-intensifying complexity of family legal relationships that are open to individuals. We should consider further where we draw the line in terms of respecting the wishes of minority groups that are looking to have their preferred options enshrined in law. Clearly, we cannot satisfy every view, so Parliament must discuss where to draw the line—perhaps not for this bill, although it might be something to consider in the fullness of time.

For those reasons and others, I believe that Parliament must ensure that wider views are represented in the bill. Ensuring that we hear those views is the only way that we can really claim to have delivered as equal and as fair a bill as possible.

I conclude by quoting Sarah Boyack, who said earlier that

“we want to be an inclusive, forward-looking country that upholds people’s rights.”

The bill, broadly, does that within the legal parameters that have been set, therefore the Scottish Conservatives will support its general principles at decision time.

**The Deputy Presiding Officer (Linda Fabiani):** In reference to Mr Golden’s opening remarks, I point out that it might be worth my while to remind all members that if they are contributing remotely they are on screen for five minutes before they have to speak.

17:18

**Shirley-Anne Somerville:** We started off today with Pauline McNeill telling her story about getting married in exotic places—I am not quite sure that my wedding near Dalkeith counts as exotic, but it was certainly a very special day for my husband and me.

Marriages and civil partnerships are equally important steps. They are special, precious ceremonies for those couples who wish to legally recognise their relationship. As Fulton MacGregor quite rightly pointed out, how people choose to do that is very much a personal choice for each couple.

I will address a couple of the points that many members raised during the debate, including the interim scheme of recognition, which was mentioned by Graham Simpson, Alex Cole-Hamilton, Annie Wells and many others.

As I mentioned, I am sympathetic to the concerns of those who would prefer that their mixed-sex civil partnership was not temporarily recognised as a marriage. However, I still believe that temporary recognition as a marriage is crucial, as there is already a full body of law in place

establishing the rights and responsibilities that apply to that relationship. The same will not be the case for mixed-sex civil partnerships until everything that is needed for implementation is in place, which includes a package of Scottish statutory instruments and an order under section 104 of the Scotland Act 1998 at Westminster.

If people in those relationships are to rely on the law of Scotland for recognition, I do not want them to lose any legal rights. Temporary recognition of marriage will achieve that, but I stress that those people will be considered married in law only—nothing and no one will change how they describe their relationship. Our approach on that follows broadly what has been done for same-sex marriages from elsewhere, which were recognised as civil partnerships in Scotland until same-sex marriage was available here. We are following a tried and tested approach and intend to do so for only a short time. However, as I said, I am happy to look, with members of the committee, at how the approach can be improved.

Angela Constance, Alexander Stewart and many other members spoke about the effect of changing marriages to civil partnerships. I listened with interest to what members said about that, particularly the powerful testimony of one couple’s views that Ruth Maguire talked about. In the stage 1 report on the bill, the committee clearly expressed its support for the principle of allowing married couples to change their relationship to a civil partnership. As I said, in line with that recommendation, I intend to take forward discussions with the committee on an amendment that reflects its support for that principle, and that decision has been reinforced by members’ comments today. As many members have said, it is important that we talk about the principles of equality and choice as we discuss the bill. I believe that provisions that allow married couples to change their relationship to a civil partnership would be consistent with those principles and with the bill.

Members spoke a great deal about the benefits of the bill for couples. I have been moved by what many members said about their constituents’ views on how the bill will make a real difference to them. The bill is very much for those people. It will enable them to show their love for each other by entering the form of relationship that they feel is the best expression of their beliefs. I know that the ability to do that will mean the world to those couples.

With that in mind, should the bill be enacted by the Parliament, I intend to take steps to implement mixed-sex civil partnerships in Scotland as soon as possible, while recognising the constraints that are caused by the current pandemic. In making civil partnership available to all, the bill will achieve



more than the benefits for couples who want a mixed-sex civil partnership; it is about making a Scotland where equality matters and where rights are upheld in legislation.

During evidence to the committee, Elena Soper was asked about the benefits of the bill. I will quote an important passage from what she said:

“We know that women have less access to resources, assets and income due to systemic issues such as unpaid caring roles, the gender pay gap, violence against women, domestic abuse and unequal representation.”

She went on:

“Couples who want to have those enhanced legal rights without entering into the institution of marriage ought to have the option of a civil partnership.”

As members have mentioned, they agree with Elena Soper’s belief that that

“would also benefit dependent children.”—[*Official Report, Equalities and Human Rights Committee, 27 February 2020; c 23-4.*]

The introduction of mixed-sex civil partnerships will benefit not only the couples who want one; I believe that there can be broader societal benefits.

Members rightly stressed the importance of moving the bill along quickly and implementing it quickly should it become law. I am not alone in the chamber in wondering what the next few months will bring, and priority must of course be given to measures that are necessary to safeguard life and protect public health. Therefore, it is right that the implementation tasks for the bill, if passed, are reviewed in light of Covid-19. However, as I said, I am fully committed to carrying out those tasks as quickly as possible. A number of implementation tasks need to take place, including the introduction of an order under section 104 of the Scotland Act 1998 at Westminster and a number of Scottish statutory instruments. We will do those as quickly as we can.

I know that couples who are waiting for mixed-sex civil partnerships might feel concerned about the prospect of the implementation taking some time, so I hope that the reassurance that I have given today that I will implement the legislation as soon as possible is some comfort to them.

We heard in evidence to the committee and in correspondence to the Government that the bill is not necessary, because there are relatively few differences between marriage and civil partnership. I disagree with that, and I know that I am not alone in that, given the many contributions today that have picked up on that issue. In its written evidence on the bill, Engender said:

“For many people, particularly women, marriage may be seen as rooted in patriarchal and outdated ideals or closely bound in religious or solemnised processes.”

Engender went on to say:

“Enabling different forms of commitment to be made which provide substantively the same rights and legal protections is a marker of a diverse and pluralistic society which respects these views.”

I wish to be part of such a society, and the bill will contribute to that.

Some have suggested in evidence that mixed-sex civil partnerships are an attack on the institution of marriage. I know that people feel very strongly about the importance of marriage, but I also know that people feel very strongly about the importance of being able to enter into a civil partnership. We know from the evidence that the lead committee received that some people would prefer a mixed-sex civil partnership because they do not see marriage as fitting their beliefs. I do not believe that the institution of marriage is threatened by the beliefs and choices of people who had never engaged in that institution anyway.

A number of specific points have been brought up in the debate, which has touched on other issues. Graham Simpson tried to be humorous about the bill. That was possibly a dangerous point to try humour in the chamber or elsewhere. However, I hope that I can reassure Graham Simpson that infidelity is capable of falling into the category of unreasonable behaviour and that that can be a basis for the dissolution of a civil partnership. We believe that the wider consideration of adultery is best placed in a discussion about divorce and dissolution in general.

Pauline McNeill mentioned death in service and public pensions. The intention is to align survivor benefits for mixed-sex civil partners with those that are available to survivors of mixed-sex marriages.

Many members have spoken about the importance of equality. Ruth Maguire spoke about equality of opportunity; Andy Wightman talked about the importance of recognising that there should be no hierarchy in relationships; Alex Cole-Hamilton spoke about equality for all; Annie Wells spoke about an extension of choice; and Angela Constance spoke about equality of choice. Those points and others that members have made about the importance of equality eloquently summarise why the bill is so important. It is important for people who wish to enter into a civil partnership, and it is an important step for Scotland to recognise its responsibility to be an equal society for all.

On that basis, I commend the motion and the bill to Parliament.

## Civil Partnership (Scotland) Bill: Financial Resolution

17:28

**The Presiding Officer (Ken Macintosh):** The next item of business is consideration of motion S5M-20970, in the name of Kate Forbes, on the Civil Partnership (Scotland) Bill financial resolution. I call Ben Macpherson to move the motion.

*Motion moved,*

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

**The Presiding Officer:** The question on the motion will be put at decision time.

## Agriculture (Retained EU Law and Data) (Scotland) Bill: Financial Resolution

17:28

**The Presiding Officer (Ken Macintosh):** The next item of business is consideration of motion S5M-21684, in the name of Kate Forbes, on the Agriculture (Retained EU Law and Data) (Scotland) Bill financial resolution. I call Ben Macpherson to move the motion.

*Motion moved,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Agriculture (Retained EU Law and Data) (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.—[*Ben Macpherson*]

## Points of Order

17:28

**The Presiding Officer (Ken Macintosh):** I will update members on the points of order that were raised earlier today.

The business managers and the Parliamentary Bureau met a few minutes ago and have agreed on a proposal that the First Minister should make a statement in the chamber in the Scottish Parliament at 12.30 on Thursday. An hour and a half will be put aside for questions from party leaders and all members. That will run from 12.30 to 2 o'clock. The local government questions that were already scheduled for that day will continue at 2.30. Members may put their questions in person in the chamber or virtually in the hybrid way that is currently used.

That proposal will be put tomorrow night by the Government's business manager, Graeme Dey, and members will have the opportunity to vote on it at that stage.

## Decision Time

17:29

**The Presiding Officer (Ken Macintosh):** There are three questions to be put as a result of today's business. The first question is, that motion S5M-21778, in the name of Shirley-Anne Somerville, on the Civil Partnership (Scotland) Bill at stage 1, be agreed to.

*Motion agreed to,*

That the Parliament agrees to the general principles of the Civil Partnership (Scotland) Bill.

**The Presiding Officer:** The second question is, that motion S5M-20970, in the name of Kate Forbes, on the Civil Partnership (Scotland) Bill financial resolution, be agreed to.

*Motion agreed to,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Civil Partnership (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act.

**The Presiding Officer:** The final question is, that motion S5M-21684, in the name of Kate Forbes, on the Agriculture (Retained EU Law and Data) (Scotland) Bill financial resolution, be agreed to.

*Motion agreed to,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Agriculture (Retained EU Law and Data) (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.

*Meeting closed at 17:30.*

## Correction

Jeane Freeman has identified an error in her contribution and provided the following correction.

**The Cabinet Secretary for Health and Sport  
(Jeane Freeman):**

At col 22, paragraph 4—

*Original text—*

As of last week, the percentage of delayed discharge patients going to care homes was 38 per cent, so 62 per cent of people who were discharged from hospital went to their own homes with appropriate social care packages.

*Corrected text—*

As for the month of March, the percentage of delayed discharge patients going to care homes was 38 per cent, so 62 per cent of people who were discharged from hospital went to their own homes with appropriate social care packages.

This is the final edition of the *Official Report* for this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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