



OFFICIAL REPORT  
AITHISG OIFIGEIL

# Meeting of the Parliament (Hybrid)

Wednesday 9 September 2020

Session 5



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# Scottish Parliament

Wednesday 9 September 2020

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

## Presiding Officer's Statement

**The Presiding Officer (Ken Macintosh):** Good afternoon, colleagues. Following my decision to suspend voting at decision time last night, I wanted to bring members up to date with how we will resume proceedings today and, in particular, how we will deal with those votes.

I will begin, if I may, with an apology. Yesterday's debate on the Baroness Cumberlege report was a powerful, compelling and emotive discussion of issues of real significance to the people of Scotland, not least to the women affected by the issues that the report dealt with and those who have campaigned so persuasively on the issue of transvaginal mesh implants. Not to be able to conclude our debate in a satisfactory manner was a disservice to everyone who followed the debate and to all those who follow Parliament. It is important that I apologise for that to them and to members.

I want to update members on the difficulties that arose at decision time. I have written to all members, who will have received that letter in the past few minutes, but I want to put the content of that letter on the record.

Taking the issues in order, the first issue that we experienced yesterday related to the personal identification number code being changed. That was an accidental administrative error, and I fully recognise how much confusion it caused. However, we can confirm that members using any of the PIN codes issued were still able to access the system and I can offer the further reassurance that we have since taken action by adding an extra authorisation process, which will avoid that happening in future.

Turning to the vote itself, I have now had the opportunity to consider all the information about members who did or did not record votes. That analysis shows that only one member who was entitled to vote was unable to do so at decision time last night. If that member's vote had been recorded, the result of the vote would have been: yes 58, no 58, abstentions 0. In those circumstances, I would have used my casting vote and, in line with convention, I would have voted against the amendment. The outcome of the vote would, therefore, not have been different had that member been able to cast their vote.

On the basis of that information, I am confident that the result of the vote is reliable and, as such, the vote on Neil Findlay's amendment stands. I appreciate and acknowledge that not all members will be happy about my decision, but I believe that to rerun the vote would be even more unfair.

That said, I understand that the earlier administrative error, followed by a lack of clarity in explaining what was happening, has had the effect that some members are starting to lose confidence in the system. I take this opportunity to apologise unreservedly for that.

The decision to go live at the earliest opportunity with the remote voting system that was developed over the short summer recess was taken in the knowledge that we would all be learning as we go along, and I know that we have some way to go to build more confidence in the system. The Parliamentary Bureau is, therefore, meeting again tonight to discuss how we can do just that.

In the meantime, we will take care to ensure that the messaging and communication about what is happening during the votes, both in the chamber and on the BlueJeans system, is clear. Importantly, learning the lessons of last night, we will also build in additional pauses to allow members—particularly those participating on the videoconferencing platform—to communicate any issues to the chair.

My letter to all MSPs this afternoon also highlights key issues from the remote voting guidance that I hope will be helpful to colleagues as we all continue to familiarise ourselves with the system.

Finally, I assure you that the Parliamentary Bureau is actively pursuing all options to ensure that we can iron out any remaining issues and work hard to rebuild your confidence in the voting system. Thank you for your patience.

**Neil Findlay (Lothian) (Lab):** On a point of order, Presiding Officer. I thank you for that explanation. I have spoken to a number of members today, and a number have come to speak to me. Not one of those members is of the view that last night's vote should have stood. With the greatest of respect to you, Presiding Officer, I find it inexplicable that that decision was made and I have no idea how the vote was allowed to stand. The issue that was at stake last night was very important and I believe that the decision that was made will have a negative impact on some women in Scotland and their health.

However, let us put that issue aside. This is about the integrity of the Parliament in taking decisions and having them correctly recorded. Yesterday was a shambles; that cannot be allowed to happen. As I said yesterday, rather than building it, every vote sucks more credibility

out of the system. With respect to you, Presiding Officer, today I will lodge a motion to express members' lack of belief in the system. I appeal to members across the chamber to support that motion, so that our collective view can be put across to the Scottish Parliamentary Corporate Body, the Parliamentary Bureau, the Presiding Officer and officials that we have no confidence in the system that is being operated.

**The Presiding Officer:** I thank Mr Findlay for the point of order and for the manner in which he raised it; I know how passionately he feels about the subject matter that was voted on last night. Members are at liberty to lodge any motions that they wish. I urge all members to bring any concerns they have to their business manager, the business team or directly to me. I assure you that it matters to me and all members that the voting system has the confidence of this Parliament.

The alternatives to the remote voting system are perhaps equally—if not more—unpalatable, and in the middle of the coronavirus pandemic, we have to work out how we ensure that all members are able to vote and participate fully in proceedings, despite the fact that they cannot attend in person.

**Daniel Johnson (Edinburgh Southern) (Lab):** On a point of order, Presiding Officer. Further to Mr Findlay's point of order and further to my point of order yesterday, are you able to advise how your ruling today fits with standing orders rule 11.7.3, which I read out yesterday? In my understanding, when

"the electronic voting system has produced an unreliable result,"

the standing orders state quite clearly that the vote must be repeated, and that, if that is not successful, a roll-call vote must be taken. The rule does not state that the results should be deliberated on or analysed; it says that the vote should be retaken. Likewise, it strikes me that a roll-call vote is perfectly possible using videoconferencing—members could register their votes. Members used that technology to communicate directly with you, Presiding Officer. Could you please advise how your ruling fits with that standing order? With the technology that we are currently using in the chamber, is a roll-call vote possible?

**The Presiding Officer:** I thank Mr Johnson for his point of order and I commend him for his knowledge of standing orders or his ability to Google them quickly. Mr Johnson is absolutely right and that was the correct standing order. Without commenting on the roll-call vote option, which is always open to the chair, the key point that Mr Johnson highlighted is whether the vote was reliable. I have looked at the vote. We are able to analyse all those who are eligible to vote

and all those who voted. I assure you that all those who were eligible to vote, except for one person, used their vote. That information has been circulated widely to all members, so there is no doubt about the reliability of the vote. If Mr Johnson can name any member or bring any evidence that the vote was unreliable, I will look at that matter, but I am very certain that we are very sure about who is eligible and who voted; therefore, the vote will count. To rerun the vote would be more unfair than leaving it to stand.

**Edward Mountain (Highlands and Islands) (Con):** On a point of order, Presiding Officer. I will reiterate some comments that have been made. The voting system brings the Parliament into disrepute. As a parliamentarian, I find that difficult to stomach. I also find it difficult to stomach that we have, on numerous occasions, been told that the system is robust. It is clearly not robust.

Presiding Officer, if you look back at the record, you will see that after a stage 3 division—I cannot remember exactly which division it was—you said that, if the vote had been close, you would have had no option but to rerun the vote. I think that those were your exact words. The vote in question could not have been closer, so will you reflect on whether it would be appropriate to rerun it, as you previously said you would do in such circumstances?

**The Presiding Officer:** I thank Mr Mountain for the point of order. I am very much aware of the advice that I gave members at that time, and I assure him that I was aware of it when I looked at the current matter. The key fact in this situation is that had the member who was eligible to vote voted, that would not have affected the outcome of the vote. That is the crucial factor.

**Bruce Crawford (Stirling) (SNP):** On a point of order, Presiding Officer. My points of order relate to the others. First, I welcome your apology and I accept the ruling that you have made. I think that you have made the right decision.

However, I am concerned about a wider issue that people need to bear in mind when we are talking about remote voting systems. There are members in the chamber who are more elderly than I am—even though I am getting on a bit—and they are very concerned daily about being here. Therefore, as we go through the pandemic, it is essential that we have a remote voting system that operates effectively, so I hope that we can iron out all the problems.

I would like to raise another matter that concerned me yesterday. Many of the support staff who were trying to support MSPs who could not access the system had to come into pretty close contact with MSPs. My concern is for their safety, as well as ours. That issue about support

staff, and people who are trying to help members to access the system when it does not work for them, needs to be reviewed. As we probably all recognise, the problem on many occasions is not down to the system, but to human error.

**The Presiding Officer:** I thank Mr Crawford for both his very constructive points of order. The point about the proximity of support staff has been noted, and we will issue reminders to MSPs and staff.

**Neil Findlay:** On a point of order, Presiding Officer. I want to follow up on Daniel Johnson's point of order. First, I note that Bruce Crawford has made a very good point. Everybody wants a system that works. Everybody understands the circumstances that individuals are in.

Presiding Officer, you said that it would be more unfair to rerun the vote today. With respect, that is your opinion. Others have a different opinion: I certainly do. Daniel Johnson referred to standing orders. Nowhere in the rule that he read out does it say that, if such circumstances prevail, you can go away for 20 hours, consider what has happened, have an investigation and come back to make a decision. My understanding of the standing orders is that the vote should take place immediately after there has been confusion. Are we now saying that, if such circumstances prevail again, we will have a similar situation to yesterday, when we went away, had a stewards inquiry then came back the next day to find out what happened?

**The Presiding Officer:** I thank Mr Findlay for his point of order. I note the points that he has made.

## Point of Order

14:13

**The Presiding Officer (Ken Macintosh):** Patrick Harvie has given me advance notice of an entirely different point of order.

**Patrick Harvie (Glasgow) (Green):** I am sorry to take up chamber time after very important points of order. My point of order relates to a separate issue.

Presiding Officer, as you will be aware, the United Kingdom Government introduced the United Kingdom Internal Market Bill today. The bill is extremely politically contentious, because it drives a coach and horses through the devolution settlement and has resulted in huge objections not only here, but in relation to devolution elsewhere in the UK and, of course, in relation to the Northern Ireland peace process. The bill is also, as has been admitted by the UK Government on the record in the House of Commons, in breach of international law.

Presiding Officer, I ask for your guidance on rule 9B of our standing orders, which deals with legislative consent. How is Parliament to be protected from having unlawful legislation put before us? As you will be aware, if the Scottish Government were to introduce a bill that breached, for example, the European convention on human rights, it would be your job to protect Parliament, so you would have to make a decision on whether the bill was competent to be introduced. If we consider legislation that is ultimately found to breach the ECHR, the legislation is no longer, in that respect, law.

What similar provision exists to protect this Parliament from being asked to take, or to be complicit in, unlawful action through scrutinising and potentially casting a vote on legislation that the UK Government admits is in breach of international law?

**The Presiding Officer:** I thank Mr Harvie for advance notice of that point of order. That is clearly a very important and topical matter today. In this case, when the UK Parliament decides to legislate in a devolved area or to alter the devolution settlement, it is quite clear that the legislative consent memorandum process applies. I suggest that Parliament would fully take into account the points that Mr Harvie has raised in deciding whether to withhold or to grant consent during that LCM process.

## Portfolio Question Time

14:15

### Environment, Climate Change and Land Reform

#### Flooding (Inverclyde)

**1. Stuart McMillan (Greenock and Inverclyde) (SNP):** To ask the Scottish Government what discussions it has had with Inverclyde Council, Transport Scotland and Scottish Water regarding their plans to eliminate flooding in Inverclyde. (S5O-04557)

**The Minister for Rural Affairs and the Natural Environment (Mairi Gougeon):** We are all acutely aware of the problems that are faced by many communities that are at risk from flooding. A flood strategy group comprising representatives from Inverclyde Council, Scottish Water and Transport Scotland operates in Inverclyde to manage and reduce the risk of flooding.

The Scottish Government provides £42 million per year to local authorities to fulfil their flood risk management functions, and our recent programme for government included a commitment to provide an additional £150 million for flood risk management. That is over and above the £42 million per year that we provide to local authorities to fulfil their flood risk management functions. The Scottish Government works with all relevant agencies that are involved in trying to reduce the impact of flooding on communities.

**Stuart McMillan:** Although efforts will undoubtedly have been impacted by Covid-19 this year, these issues are not new; the problems have gone on for decades. Further localised flooding on the A8 yet again blocking the main eastward vehicular route in and out of Inverclyde ultimately highlights the failure of those agencies to work to eliminate the issue. Does the minister agree that this historical issue should not continue to plague my constituency year in, year out, and can she ensure that those organisations provide the solutions that my constituency demands?

**Mairi Gougeon:** I completely understand the member's concern and frustration at the on-going situation. We share the desire to see effective and co-ordinated action to minimise the impact of surface water flooding on Stuart McMillan's constituents and everyone who uses the local trunk road network.

Responsibility for surface water resulting from severe rainfall sits with Inverclyde Council; Scottish Water manages problems that are caused by flooding sewers; and Transport Scotland has a

role in managing drainage of major trunk roads. Different public bodies have different responsibilities for those issues. Priority areas of surface water flooding are expected to be addressed by Inverclyde Council as part of its surface water management plans. The Scottish Government encourages all those parties to work closely together to achieve reductions in the scale and frequency of local surface water flooding incidents.

**The Presiding Officer (Ken Macintosh):** Thank you. Joan McAlpine.

**Joan McAlpine (South Scotland) (SNP):** To ask the Scottish Government what help is available to farmers and crofters to support them to cut emissions.

**The Presiding Officer:** Sorry—Ms McAlpine had pressed her request-to-speak button, and I thought that she wanted to ask a supplementary question that related to question 1, but she asked question 5. We will come back to question 5 later.

#### Vacant and Derelict Land

**2. Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** To ask the Scottish Government, in the light of the impact of vacant and derelict land on the environment, what action it is taking to tackle this. (S5O-04558)

**The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham):** We committed to consider the recommendations of the vacant and derelict land task force and to explore opportunities to invest in our local blue and green infrastructure, targeting problematic long-term vacant and derelict land. We expect that national planning framework 4 will strengthen our policies in that area, building on experience and innovation from across Scotland. We will publish an update on NPF4 later this year and will lay a draft in the Parliament in 2021.

**Willie Coffey:** I thank the cabinet secretary for her helpful answer, most of which I heard.

She, like me, will be aware that many vacant and derelict land sites are found in urban settings. What can the Government do about that? Is that something that the vacant and derelict land task force, which was established in 2018, could look at more closely so that it can help with the problem?

**Roseanna Cunningham:** Later this month, the Scottish Land Commission will publish the recommendations of the vacant and derelict land task force, which have been developed over a period of time and with extensive stakeholder input. We welcome the work of the task force and we will consider its report and recommendations in detail when we receive them. We will publish a response in due course and will continue to work

with the Scottish Land Commission to tackle the legacy of vacant and derelict land in urban and rural areas across Scotland.

**Claudia Beamish (South Scotland) (Lab):** [*Inaudible.*—the Government's commitment to identify vacant and derelict sites for green infrastructure initiatives be targeted at those in depressed areas, given that research has shown that half of Scotland's population in those communities live within 500m of such sites? I note what the cabinet secretary says about the task force, but I hope that the point I have raised will be taken into account.

**Roseanna Cunningham:** I am not sure that I got all of that question. I think, from what I could hear, that Claudia Beamish is asking about those people who live nearest to vacant and derelict land sites. The 2019 survey on that issue identified that just four Scottish councils contain between them over 50 per cent of all recorded derelict and vacant land. We are conscious of the issues for the communities living closest to that land.

It is regrettable that, because of what has happened this year, we have not made the progress that might have been made. Some communities are beginning to look at the possibilities offered by the right to buy, and I would encourage all the communities that are considering that. I would also encourage any members who represent such communities to assist them in developing proposals for taking over local vacant and derelict land sites.

### **Flooding (Urban Drainage)**

**3. Daniel Johnson (Edinburgh Southern) (Lab):** To ask the Scottish Government what discussions it has had with Scottish Water regarding upgrading and improving the maintenance of urban drainage, in light of instances of heavy flooding. (S5O-04559)

**The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham):** In the investment period 2015-21, the Scottish Government tasked Scottish Water with investing in its sewer infrastructure, primarily to reduce the risk to customers of internal flooding. Scottish Water estimates that it will invest up to £190 million in measures to reduce sewer flood risk. I have also discussed with Scottish Water its surface water policy, which aims to significantly reduce the amount of surface water entering the sewer network. That will further protect customers from flooding, particularly given the context of an increase in intense storm events.

**Daniel Johnson:** My question follows on from that of Stuart McMillan. Polwarth, in my constituency, experienced recent heavy flooding. A wall collapsed—an event that could, in different

circumstances, have caused injury or even death. August's severe weather was analysed by Scottish Water and was determined to have been a once-in-1,000-years event. Unfortunately, such events are occurring ever more frequently.

In her answer to Stuart McMillan, Mairi Gougeon pointed out that responsibility is shared between three agencies: Transport Scotland, Scottish Water and local authorities. My constituents' experience is that that leads to a never-ending dispute about where responsibility lies. What action is the Scottish Government taking not just to support dialogue between those agencies but to ensure that outcomes are arrived at and infrastructure is upgraded and invested in so that we can respond to these excess weather events?

**Roseanna Cunningham:** I think that I have outlined the investment and the on-going work to deal with the infrastructure problems. Daniel Johnson is correct, however, about the nature of the problem, which is becoming more acute. I am aware of the situation in Polwarth Grove, in his constituency, which has no history of sewer flooding. I think that Scottish Water has written to him to confirm that the flooding was primarily rainfall driven. That is one of the issues that we have to ascertain.

I have some sympathy with the direction of Daniel Johnson's question, and I know that a number of members will be experiencing situations in which the multi-agency response does not always seem to be as co-ordinated as it might be. I will certainly go back to the Polwarth issue to see whether it could have been better handled.

However, we have real issues confronting us all at the moment as we see climate change beginning to have an impact on how our weather is developing and the enormous impact that that is having on an infrastructure that was not designed to cope with it. The investment that we are putting into that will gradually help, but I appreciate that that does not necessarily answer the more immediate questions of people who are suffering from flooding events right now.

**Edward Mountain (Highlands and Islands) (Con):** I have written to the cabinet secretary about a constituent who cannot go out after heavy rain because of what he finds on the path and in his garden. The cabinet secretary referred just now to internal flooding, but will she be able to prioritise as a matter of urgency works to drainage that causes sewage to flow up into people's gardens? That is just not acceptable.

**Roseanna Cunningham:** I am aware of the case that Edward Mountain raises, and I think that Scottish Water has already been directly in contact with his constituent. Certainly, in the first instance,

the best way forward is to open dialogue directly with the organisations concerned.

#### **Littering (Highlands and Islands)**

**4. Donald Cameron (Highlands and Islands) (Con):** To ask the Scottish Government what action it is taking to tackle littering in the Highlands and Islands. (S5O-04560)

**The Minister for Rural Affairs and the Natural Environment (Mairi Gougeon):** First, I want to make our position absolutely clear: littering is unlawful and unacceptable. To help combat recent issues, we have, with partners Zero Waste Scotland and Keep Scotland Beautiful, developed an anti-littering campaign that includes bespoke materials for 21 local authorities, including Highland Council. We continue collective efforts to encourage everyone to respect their surroundings and are working with the relevant public agencies to deliver a co-ordinated approach, including raising awareness about behaving responsibly when out in the countryside.

**Donald Cameron:** Highland Council is backing Zero Waste Scotland's new campaign—"Scotland is stunning, let's keep it that way"—and is placing posters at popular tourist sites that ask visitors to "leave no trace". However, given the severe problems of littering across the Highlands and Islands this summer, causing significant concerns for local communities, what further support can the Scottish Government provide to local authorities to help them to promote that message?

**Mairi Gougeon:** I am aware of the issues that have been faced, particularly in the Highlands and Islands but also in other parts of Scotland. The Cabinet Secretary for Rural Economy and Tourism met Highland Council and a few of the community councils in July this year to see what more could be done and what further action could be taken. I believe that a national summit is to be held on Monday, which will be chaired by the cabinet secretary and has been convened by VisitScotland, to look at what more can be done to tackle the situation and what can be done in the short, medium and longer terms to fully address those issues.

**David Torrance (Kirkcaldy) (SNP):** I welcome the commitment in the programme for government to a £70 million fund to improve local authority refuse collection and infrastructure. How will the Scottish Government work with local authorities to enable us to meet waste and recycling targets for 2025?

**Mairi Gougeon:** As David Torrance says, the programme for government outlined a £70 million fund that we will establish to improve local authority collection infrastructure and to develop a new route map to reduce waste and meet our

ambitious targets. We are committed to working with the Convention of Scottish Local Authorities to evaluate the household recycling charter and its code of practice, which will be a key step in developing a future model of recycling collections. That work will be led by the circular economy and waste strategic steering group, which we established earlier this year. The group includes senior representatives from COSLA, the Society of Local Authority Chief Executives and Senior Managers, local authorities and Zero Waste Scotland.

**Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP):** What more can the Government do to ensure that visitors boarding ferries to the islands, the great majority of whom are law abiding and responsible, are given clear information about best practice for disposing litter and waste when camping?

**Mairi Gougeon:** Our islands are beautiful and we want them to stay that way. They are often fragile landscapes and everyone who visits them should behave responsibly and with respect to the people who live on the islands.

NatureScot is promoting the Scottish outdoor access code around the whole country. Its online campaign to raise awareness has already resulted in more than 250,000 visits to the Scottish outdoor access code website. VisitScotland and Zero Waste Scotland have also undertaken activities to address litter and waste issues. Local authorities, including island authorities, are playing a vital role in that work.

Our ferries are key to getting guidance to travellers, and I am more than happy to consider what more work might be done on that. We get good feedback from the ferry companies and work closely with them on such matters.

Local MSPs and MPs are engaging on the issue and supporting activity locally. I welcome that work and very much hope that it continues into the future.

**The Presiding Officer:** We now have the opportunity to hear Joan McAlpine's question.

#### **Emissions Reduction (Farms and Crofts)**

**5. Joan McAlpine (South Scotland) (SNP):** To ask the Scottish Government what progress it is making in meeting its climate change targets and, to help achieve this, what support it has made available to reduce emissions on farms and crofts. (S5O-04561)

**The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham):** Scotland is halfway to meeting our world-leading target of net zero emissions by 2045 from the 1990 baseline, which is good long-term

progress. In western Europe, we are second only to Sweden in long-term emissions reductions. Farming and crofting are playing their part in that progress. Last month, we established a £1.5 million fund to create more woodland and small farms and crofts. In the programme for government, we announced a new £10 million pilot sustainable agriculture capital grant scheme to support farmers and crofters to address climate change.

**Joan McAlpine:** Will the cabinet secretary offer specific detail on the help that is available for small farms and, in particular, tenant farmers to cut emissions?

**Roseanna Cunningham:** The new fund of £1.5 million for small farms and crofters to create small-scale woods and shelter belts on their landholdings is the applicable support in this case. The funds will also support the purchase of specialist forestry equipment for those small-scale operations; the funds will be available to tenant farmers, as well as owners and crofters.

I want to ensure that the small farms grant scheme works more effectively, so a review will be commenced shortly.

I know that there are many tenant and small farmers in Dumfriesshire and the rest of the south of Scotland who are already playing their part in cutting emissions, and there are more who want to do so. We—by which I mean the whole Scottish Government but, in particular, my colleague Fergus Ewing and me—want to ensure that such farmers can access support that will help them contribute to our climate change targets.

**Liam McArthur (Orkney Islands) (LD):** The ban on burning plastics on farms and crofts is aimed at reducing emissions. The cabinet secretary will be aware of the particular difficulties in complying for farmers and crofters on our smaller islands. Given the financial and environmental cost of shipping plastics, will she again consider the case for a targeted exemption, perhaps under the Islands (Scotland) Act 2018?

**Roseanna Cunningham:** I would be happy to discuss directly with Liam McArthur the issue that he has raised. I am conscious that our islands face particular challenges in respect of a number of areas, of which that is one. I will engage directly with the member on that issue.

### **United Nations Climate Change Conference of the Parties (COP26)**

**6. Sandra White (Glasgow Kelvin) (SNP):** To ask the Scottish Government when it last met the United Kingdom Government to discuss the COP26 conference due to take place in Glasgow in November 2021. (S5O-04562)

**The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham):** I spoke to COP26 president Alok Sharma regarding the decision that was taken on 1 April to postpone COP26. He has since visited Scotland, but he declined to meet either me or anyone else from the Scottish Government. I hope to engage with him again soon to discuss COP26 and our Governments' shared ambition to deliver net zero economies. My officials are, of course, in regular contact with their UK Government counterparts on COP26, covering areas such as policy, strategic communications, safety, security and resilience, and transport planning.

**Sandra White:** I thank the cabinet secretary for her reply, although it is very disappointing. Does she intend to have further discussions, particularly on the UK Government's commitment to provide financial support to ensure a safe, secure and successful COP26? Has an agreement been reached—or is one likely to be reached—on a suitable venue for the Scottish Government to host events throughout COP26?

**Roseanna Cunningham:** The Scottish ministers have already made clear their expectation that all costs arising from the decision to hold COP26 in Glasgow will be borne by the UK Government. Core costs must include funding for the police, fire and ambulance services and other key stakeholders both to prepare for and to deliver a safe, secure and successful event. In the spirit of partnership, we offered Glasgow Science Centre to the UK Government, on the provision that the Scottish Government secured an alternative venue. However, finalising the arrangements for that has been delayed due to the Covid-19 pandemic.

**The Presiding Officer:** Question 7 has not been lodged.

### **Green Economy**

**8. James Dornan (Glasgow Cathcart) (SNP):** To ask the Scottish Government how its programme for government aims to tackle climate change through support for the green economy. (S5O-04564)

**The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham):** The programme for government has the net zero aim at the heart of its focus on new jobs, good jobs and green jobs. For example, our groundbreaking £1.6 billion commitment will transform heat and energy efficiency as part of an enhanced green new deal. It will drive Scotland's green recovery, and could directly support up to 5,000 green jobs while tackling fuel poverty and rapidly accelerating decarbonisation of an area that generates a quarter of Scotland's emissions. Additional investment of £500 million will be made

in Scotland's natural economy, including an extra £150 million to deliver a 50 per cent increase in woodland creation targets by 2024, and £150 million for flood risk management to achieve a more climate-resilient Scotland.

**James Dornan:** Those announcements are all welcome—in particular, those on multiannual funding, which will create the certainty that is required.

In addition to the 5,000 jobs connected with the heat and energy efficiency investment programme that she mentioned, will the cabinet secretary outline what else the programme for programme will deliver on green jobs, which will be so central to our recovery from Covid-19?

**Roseanna Cunningham:** We are aligning our commitments to green skills and training to well-targeted investments in heat, housing, active travel and natural infrastructure that will drive demand in green markets and deliver those green jobs. To support that work, the youth guarantee, in which we have invested £60 million, will include green apprenticeships, and our £25 million national transition training fund will support retraining to enable people to access green jobs. We are also investing £100 million in a green jobs fund, which will support businesses that provide sustainable and/or low-carbon products and services, to help them to develop, grow and create jobs.

**Liz Smith (Mid Scotland and Fife) (Con):** On the same theme, and given the evidence that was taken at yesterday's meeting of the Parliament's Environment, Climate Change and Land Reform Committee, at which green jobs were very much the centre of attention, will the cabinet secretary outline what formal discussions the Scottish Government is having with the business community about extending the programmes that she mentioned in her reply to James Dornan?

**Roseanna Cunningham:** We are having those discussions across Government and directly with those in all our relevant portfolio areas, as the member might expect. I regularly discuss the issue of green jobs, as does my colleague Fergus Ewing, and I know that other colleagues do so as well. If there is a register of all those discussions immediately available, we will try to flag as much as possible to Liz Smith. However, those conversations are happening regularly, as we would expect.

## Rural Economy and Tourism

### Fishing Industry (Wind Farms)

1. **Beatrice Wishart (Shetland Islands) (LD):** To ask the Scottish Government what recent

engagement it has had with the fishing industry in relation to wind farm developments. (S5O-04565)

**The Minister for Rural Affairs and the Natural Environment (Mairi Gougeon):** The Scottish Government has been working closely with fishers and stakeholder organisations to help to ensure good relationships between the fishing and renewable energy sectors. That has included undertaking considerable engagement with the fishing industry and representatives, including from Shetland, in relation to offshore wind farm developments. In particular, we have consulted widely on future planning of offshore wind farm developments, consented wind farm projects and related research.

**Beatrice Wishart:** I thank the minister for her answer, but some parts of the fishing industry are frustrated that fisheries organisations have not been approached about proposed sites for offshore wind farm development.

The fishing industry is not against renewable energy, but it needs to be included in discussions early on. Fishermen with historical ties to fishing grounds know the sea bed and can help with offshore wind farm location in appropriate areas. What assurances can the minister give that there will not be a negative impact on the sea bed and spawning stocks from those developments, and does the Scottish Government recognise the concerns of the fishing industry?

**Mairi Gougeon:** I thank Beatrice Wishart for that question and I assure her that I take those concerns seriously. She mentioned that fishers want to be involved as early as possible in any discussions that are taking place. We are always looking at ways to try to improve engagement and communication between the renewables and fishing sectors.

My officials in the sea fisheries team, the Marine Scotland licensing and operations team and the marine planning and strategy team work together to ensure that relevant fishing organisations are contacted at all stages of offshore wind development. I know that my officials would be happy to engage with wider fisheries interests if Beatrice Wishart thinks that that would be helpful.

**The Presiding Officer:** Jamie Halcro Johnston is next, to be followed by Stewart Stevenson.

**Jamie Halcro Johnston (Highlands and Islands) (Con):** To ask the Scottish Government what assessment has been made of the impact of the Covid-19 outbreak on tourism businesses in the Highlands and Islands.

**The Presiding Officer:** I am sorry, Mr Halcro Johnston, we have made a mistake again. I assumed that you had a supplementary to question 1, but yours is a later question.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** Given that the fish processing industry is the biggest sector by turnover and by employment, what assurances has the Scottish Government had from the United Kingdom Government that the ability of that industry to continue to export to its major markets in the European Union and beyond will be preserved in the event of the no deal that we see looming in a week's time?

**Mairi Gougeon:** I absolutely share the member's serious concerns about that issue, particularly in relation to the processing sector. The Brexiteers put fishing front and centre in their campaign, insisting that leaving the EU would mean a boom time for our fishing fleets. We have to look out for our processing sector as well as our fishers and look at what no deal means for it.

We are constantly working to try to get those assurances from the UK Government, but as yet we have not received them. As the member said, the clock is ticking. We need to have those assurances because we want to protect the sector in Scotland. It is a sector that the Scottish Government is standing up for and will continue to stand up for in the negotiations.

#### **Covid-19 (Agricultural Shows and Fairs)**

**2. Alexander Burnett (Aberdeenshire West) (Con):** To ask the Scottish Government what support is available to the agricultural shows and fairs that have had to cancel due to the Covid-19 pandemic, and the rural communities and charities that rely on the income these generate. (S5O-04566)

**The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing):** There is no doubt that the loss of agricultural and Highland shows and fairs this year has been acutely felt in rural communities, not least given the loss of the social interaction and economic activity that they provide and create.

Some show committees have moved their events online, while others have postponed or cancelled them completely. A few have gone ahead with events after undertaking appropriate risk assessments and putting in place distancing and hygiene measures. We have published guidance for running outdoor events. We expect organisers to strictly adhere to the guidance and to use it as a supporting document to ensure that their show or fair can go ahead safely.

**Alexander Burnett:** I thank the cabinet secretary for that answer and ask him to join me in welcoming the virtual Highland games that will take place this Saturday, 12 September. Has he come across any other alternative and innovative ways for such events to continue?

**Fergus Ewing:** I am happy to join the member in welcoming that event, and I pay tribute to the organisers for their imagination. Other virtual events have taken place in Scotland. The Scottish Rural Network has launched a Covid-19 information hub, and the Scottish smallholder festival has moved online for 2020.

We all miss shows and events—I have been attending my local events for more decades than I wish to remember. They are a fulcrum of rural and social activity in our country, and they really are sorely missed, so we all look forward to seeing them resume next year.

**Angus MacDonald (Falkirk East) (SNP):** The impact of Covid-19 clearly highlights how vital the agricultural sector is, not just to the economy but to ensuring that the nation is fed. Can the cabinet secretary outline how the Scottish Government will work to maximise the local promotion and purchase of fresh, healthy Scottish produce?

**The Presiding Officer:** That question is quite broad, but Fergus Ewing can answer it briefly.

**Fergus Ewing:** I agree with Angus MacDonald. During Covid, many individuals have revisited their eating habits and cooking arrangements, and there has been a marked move towards local food in many different ways. In this year's programme for government, I have committed to developing a local food strategy for Scotland, and I am working as part of a ministerial group on the matter to publish a statement of national policy. As Mr MacDonald well knows, there are many ways in which we can celebrate and encourage the increased consumption of high-quality local Scottish produce.

**Gillian Martin (Aberdeenshire East) (SNP):** I share Alexander Burnett's concern about the effects of the cancellation of agricultural shows, but that is just one aspect of the pain that the rural economy is feeling. The end of the United Kingdom Government's furlough scheme is in sight, and the scheme is likely to be masking current and potential rural unemployment levels.

What support and assurance can the cabinet secretary offer the sectors in the rural economy in particular that have been worst affected by Covid? They are struggling to recover, given that the UK has so far refused to extend the scheme beyond October.

**The Presiding Officer:** Again, that is a quite broad interpretation, but Fergus Ewing can answer briefly.

**Fergus Ewing:** We have provided support to alleviate hardship in numerous sectors, including the sea fish and shellfish sectors and the tourism sector—all the sectors that have been most affected by Covid.

Gillian Martin is absolutely right. When the furlough scheme expires in October, it will leave hundreds of thousands of people in Scotland, and millions across the UK—millions—facing potential redundancy. That is why I have urged Nigel Huddleston, my counterpart as the UK tourism minister, to make the strongest possible representations to the Treasury to urge it to revisit its refusal to extend the furlough scheme or at least to replace it with a job support package. Otherwise, I fear that there will be unemployment that is unprecedented in our joint lifetimes, Presiding Officer, which is quite a few years.

**The Presiding Officer:** I thank you for that vote of confidence, Mr Ewing.

### Domestic Tourism

3. **Jeremy Balfour (Lothian) (Con):** To ask the Scottish Government what action it is taking to encourage domestic tourism. (S5O-04567)

**The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing):** We are clear that, where it is safe to do so, visitors from Scotland and across the United Kingdom are welcome to holiday in Scotland. We simply ask that people who holiday in or visit Scotland do so in a responsible way that respects our people, communities and environment. To help with that, VisitScotland launched a £3 million marketing campaign that encourages Scots to travel in Scotland and appreciate what is on offer in their own country. VisitScotland also worked with its counterparts across the UK on the good to go industry standard, which has allowed businesses across all sectors to demonstrate that they are adhering to the Government and public health guidance, and are safe to visit.

**Jeremy Balfour:** The cabinet secretary will be aware that, in the Scottish Conservatives' recently published job plan, "Power Up Scotland", we say that domestic tourism is vital to Scotland's economy, especially while international tourism is largely reduced due to the virus. Will the Scottish Government take on board our proposal of a marketing campaign for the rest of the UK, and on what date will it be implemented?

**Fergus Ewing:** We have to be mindful of the position with regard to Covid, and all exert due vigilance. We are welcoming to people who come to Scotland, but we have to be extremely careful about the precise position that Scotland and the rest of the UK are in at the moment, and each make decisions with regard to our personal responsibilities.

I am happy to work with anyone and everyone in order to promote tourism across these islands, but if the Conservatives wish to do something positive, clear, decisive and influential to help us all, it

would be to indicate now that they will review their refusal to extend the furlough scheme. Beyond doubt, that is the most important thing to do.

**Kenneth Gibson (Cunninghame North) (SNP):** Does the cabinet secretary agree that it is the height of hypocrisy for Tories to demand more action of this Government on tourism in the very same week that recently ousted leader Jackson Carlaw called for an end to the furlough scheme? Clearly, the cabinet secretary agrees that extending furlough through winter is absolutely crucial if we are not to see thousands of job losses in our tourism industry, so will he again approach the UK Government with further demands that furlough be maintained for the winter?

**Fergus Ewing:** I have sympathy with Mr Gibson's remarks. Of course, I will continue to advocate the path of providing support for people who face almost certain redundancy towards the end of this autumn.

I have constructive relations with my UK counterpart, Nigel Huddleston; however, the question of what influence he will have with the UK Government remains. The problems are affecting tourism all over the UK, particularly cities, and particularly hotels in cities, not least in London. In some ways, it is surprising that there has not been a more timely response. The problem is that the matter is time sensitive. Large companies have to, quite rightly, issue redundancy notices in advance. The longer that the UK Government delays a proper, commensurate and sufficient response to the impending tsunami of unemployment, the greater the human misery will be. The matter is time sensitive and really important.

**Claire Baker (Mid Scotland and Fife) (Lab):** Visitor attractions are an important part of domestic tourism. I am interested to hear the cabinet secretary's response to calls from representatives of visitor attractions that distancing be reduced to 1m, as is the case in the hospitality sector. Even though they have been able to open for a brief time, visitor attractions will face a difficult time over the next few months and need to increase their income to get them through to next season.

**Fergus Ewing:** I have much sympathy with that call. I have had numerous conference calls with the Association of Scottish Visitor Attractions, which is led very ably by Gordon Morrison and Susan Morrison. I am acutely aware of the fact that the 2m rule, which still applies to some visitor attractions, is making it extremely difficult for some businesses to operate viably. Indeed, the reduction may be the biggest ask that they have at the moment.

Some of those businesses have received financial support but, with a reduced number of

clients or visitors due to the 2m requirement, it is difficult for some to operate. We are looking at that issue carefully, but we have to balance the public health issues against the industry issues, which is difficult. Sadly, over the past few days, we have all seen the rising number of people who have been found to have Covid. Therefore, as the First Minister has outlined, we need to be extremely careful.

Claire Baker raises a very serious point; it is one that I am considering constantly, as are my officials. As soon as it is safe to do so, we would all want to see a reduction of the social distancing requirement from 2m to 1m for visitor attractions, as well as other establishments.

### Tourism (Dundee)

**4. Shona Robison (Dundee City East) (SNP):** To ask the Scottish Government what plans it has to support Dundee and its tourism sector to ensure that the city can safely welcome back visitors. (S5O-04568)

**The Minister for Rural Affairs and the Natural Environment (Mairi Gougeon):** Dundee has featured in each phase of VisitScotland's strategic marketing recovery activity, and Dundee's tourism businesses have also benefited from our wide range of financial and other support.

Looking ahead, VisitScotland will continue to work with partners in the city through the Dundee tourism leadership group and other fora to support the recovery of the sector. That will involve sharing insights, ensuring that the city is represented in their own activities and supporting business support and development opportunities.

**Shona Robison:** Will the minister join me in paying tribute to V&A Dundee, which is leading a campaign to raise £1 million to aid the city's economic recovery from Covid-19? The campaign has already received sizeable donations of £500,000 from the Northwood Charitable Trust and £200,000 from donors including Alasdair Locke and Tim Allan, who chairs V&A Dundee. Will the minister welcome the campaign, but also say what further support the Scottish Government can give visitor attractions such as the V&A, Discovery Point and others in the city?

**Mairi Gougeon:** Absolutely—I join Shona Robison in paying tribute to V&A Dundee and I welcome the willingness of the V&A, the Northwood Charitable Trust and all the other organisations that have been involved in establishing that excellent initiative in Dundee. It is a fantastic example of how different institutions and charities can come together to try to find innovative solutions for recovery. I really hope that people and businesses in Dundee will get behind the campaign.

The Scottish Government is committed to doing all that we can to help our world-class culture sector in what are very challenging and uncertain times. We have provided significant support to cultural organisations across Scotland, including in Dundee. The latest £59 million funding package, which we announced on 28 August, will protect elements of our critical cultural infrastructure by helping organisations to stave off insolvency, protect jobs and create the best possible conditions for recovery.

### Dirty Camping (Loch Lomond and the Trossachs National Park)

**5. Dean Lockhart (Mid Scotland and Fife) (Con):** To ask the Scottish Government what action it is taking to tackle so-called dirty camping in the Loch Lomond and the Trossachs national park. (S5O-04569)

**The Minister for Rural Affairs and the Natural Environment (Mairi Gougeon):** The Loch Lomond and the Trossachs National Park Authority is responsible for protecting the national park and reducing the impact of visitor and recreational pressures. It is working closely with Police Scotland, local authorities and other agencies to address instances of irresponsible behaviour.

More broadly, the Scottish Government is working with public sector partners including NatureScot to promote responsible use of the outdoors. As I mentioned in a previous answer during environment questions, the Cabinet Secretary for Rural Economy and Tourism will convene a round-table meeting of public sector agencies on Monday 14 September to look at a co-ordinated approach to dealing with these issues.

**Dean Lockhart:** Since lockdown restrictions have been eased, the number of people visiting the area has increased substantially. The vast majority do so responsibly, but a significant minority cause damage by leaving behind litter and abandoned campsites and damaging trees and the natural habitat.

The national park authority, the relevant councils and Police Scotland do not have sufficient resources to ensure that there is effective enforcement of the byelaws that the minister mentioned. Will the minister outline what further actions the Scottish Government can take to make enforcement of those byelaws more effective and avoid further damage in the area?

**Mairi Gougeon:** As I have said, I understand that this is a very important issue. It has been raised by a number of members across the Parliament and we will discuss it in tonight's members' business debate.

As Dean Lockhart rightly says, it is a minority of people who undertake such behaviour, but they are determined to try to ruin things for everyone else.

The park authority together with Police Scotland have the appropriate powers to address the sort of antisocial and irresponsible behaviour that has been experienced in the national park over the summer. However, as I said in my initial response and in answering previous questions on the matter, we take these issues very seriously. That is why the cabinet secretary will hold the meeting on Monday, which I believe the national parks will take part in as well, so that we can look at the issues and at what more can be done to fully address and tackle them.

**Mark Ruskell (Mid Scotland and Fife) (Green):** We need to be solutions focused here. Alongside education and enforcement, we need a discussion about appropriate facilities to deal with the demand. What progress has been made with the Forestry and Land Scotland trial to allow camper vans to use empty car parks at night, away from residential areas, in spaces where they can be monitored—a trial that picks up on the model of visitor management that is adopted in the French Alps?

**Mairi Gougeon:** The project that is under way continues and seems to have operated positively so far. We will continue to monitor the situation and if we need to learn lessons from it and are able to roll out matters, we will do exactly that. The summit on Monday will be vitally important and will be about finding solutions and considering what we can do in the short, medium and longer term to really tackle the problems.

### Wedding Guidance

**6. Maureen Watt (Aberdeen South and North Kincardine) (SNP):** To ask the Scottish Government when it will provide updated guidance regarding weddings, in light of the importance of the wedding sector to tourism and the economy of the north-east. (S5O-04570)

**The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing):** The Scottish Government is aware of the difficulties that the wedding sector faces throughout Scotland and we are conscious of the contribution that it makes to the economy and people's lives.

Throughout August, I met representatives from the sector to listen to their concerns and we are working with the sector to finalise guidance. Following the First Minister's announcement on 20 August, I hope that we can provide any further detail soon.

**Maureen Watt:** Once venues are able to operate, many people who have postponed plans

for weddings will come back, which will probably lead to unprecedented demand for venues, caterers, bands, florists and many others. Does the minister believe that special consideration—through an increase of the furlough period or indeed specific discretionary funding—should be given to the wedding sector?

**Fergus Ewing:** Maureen Watt is quite right and I am acutely aware of the devastating impacts on the sector. I have spoken individually to businesses about the situation and, although the outlook is different for each, they have all been impacted really severely. Our total package of financial support—now more than £2.3 billion—has helped many businesses. We believe that the furlough should be extended and we will continue to push the UK Government to provide the support that is required for the sector.

**Colin Smyth (South Scotland) (Lab):** The First Minister told Parliament on 20 August:

“we hope that from 14 September, wedding and civil partnership receptions ... will be able to take place with more attendees”—[*Official Report*, 20 August 2020; c 5.]

and that guidance would be issued “shortly.”

Does the cabinet secretary really think that it is acceptable that, days before 14 September and three weeks after that statement, we still have not seen any guidance? Couples will elope from Gretna Green to England to get married, instead of the other way around.

**Fergus Ewing:** I just point Mr Smyth to—[*Laughter.*] I will not comment about the elopement—I will just avoid that.

In all seriousness, we have seen the numbers of those who are infected with the virus increase all over Britain since 20 August, which none of us expected or wanted. However, all of us have to respond to that, and that consideration must be given preference at this time.

**Oliver Mundell (Dumfriesshire) (Con):** I am glad that the cabinet secretary is not bothered about elopement. Gretna Green will not be recognisable for people to get married in, because the Government has failed to deliver for the wedding industry and has left couples in limbo—people have had to put off a major life event. Why has it taken so long to put guidance in place? I raised those issues with the cabinet secretary before the summer recess; we are now months further on and people do not have details. That situation is costing jobs and costing people the chance to get married.

**Fergus Ewing:** I have been in regular contact with businesses, not least in Gretna Green, that have had devastating impacts. I have sought to maintain that contact and will do so. I say to the member to try to bear in mind that we are in the

middle of a pandemic. We have to take decisions in Government that involve people's lives as well as their livelihoods, which is an extremely difficult balance. We are not saying that we get everything right—the First Minister has made that absolutely clear—but I ask the member to please give us credit for taking those matters extremely seriously.

#### **Covid-19 (Glasgow Tourism Venues)**

7. **Johann Lamont (Glasgow) (Lab):** To ask the Scottish Government what support it is providing to tourism venues across Glasgow that are facing financial hardship due to the Covid-19 pandemic. (S5O-04571)

**The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing):** We completely understand the severe impact of the pandemic on tourism in Scotland, particularly in our cities, and we have acted quickly to provide financial support, which now exceeds £2.3 billion in total.

We have provided a range of different grants and rates relief tailored to the differing needs of tourism and hospitality businesses throughout Scotland. We recently launched our £14 million hotel recovery programme to help to secure up to 3,000 jobs at Scotland's larger hotels, and we are supporting the events industry with additional funding of £10 million.

We are working hard with industry to identify further action, with the tourism task force central to that process.

**Johann Lamont:** The tourism industry is vital to Glasgow's economy, delivering hundreds of millions of pounds every year. Will the cabinet secretary review the take-up rate for the hardship fund to ensure that all Glasgow venues that request support receive it?

**Fergus Ewing:** Of course we want to ensure that businesses that suffer financial hardship as a result of the Covid pandemic get what assistance they can. That has been the watchword and the approach here. The approach is not to compensate for all lost revenue or income, which is impossible; rather, it is to identify financial hardship and seek to alleviate it.

I am very happy to work with Johann Lamont and, indeed, all other members who identify any particular business that they believe is in a situation of financial hardship and has not received support. However, I believe that, at this particular point in the pandemic, we have close to exhausted the funding that is available to us to meet those compensations. I appreciate that the situation is extremely difficult for Ms Lamont's constituents and many businesses around Scotland, and we will continue to do everything that we can in practical and pragmatic terms to alleviate the

financial hardship that has been caused to tourism businesses by the Covid pandemic.

**The Presiding Officer:** My apologies to Sandra White and, in particular, Jamie Halcro Johnston, who waited patiently to ask his question a second time. I am afraid that we have overrun and gone too far, and we now have to move on to the next item of business. There will be a short pause while we do so.

## Hate Crime and Public Order (Scotland) Bill

**The Deputy Presiding Officer (Lewis Macdonald):** Yesterday evening, we had the return of members' business. This afternoon, we have the return of Opposition business.

The next item of business is a Conservative Party debate on motion S5M-22636, in the name of Liam Kerr, on the Hate Crime and Public Order (Scotland) Bill.

15:08

**Liam Kerr (North East Scotland) (Con):** The debate is on a motion that opens by acknowledging that we, as a Parliament, must address the pernicious and vile hate crimes that remain all too prevalent, and which closes by proposing one possible solution that seeks to ensure that Parliament can pass robust and unambiguous law that will achieve what we all want it to achieve without serious unintended consequences.

The Government finds itself in something of an invidious position, having proposed a bill and—no doubt in good faith—having sent it out for consultation with a view to improving and amending it before introducing an effective and clear proscription on hate crime. The bill has been proposed by the Cabinet Secretary for Justice, whom I believe when he says that he understands the lived experience of hate crime, and that he has a deep desire to change that. I know that he wants to get this right, as we all do.

Around 2,000 people have responded to the consultation. That is the highest number of responses in this session of the Scottish Parliament. Although not all the responses have been published yet, it is clear that a significant number of them have raised serious concerns about the stirring-up offences and the potential chilling effect on freedom of speech—but not about those exclusively. There are concerns about other aspects of the bill, some of which I will flag up shortly. Those concerns are all equally deserving of being aired, scrutinised and interrogated, if we are to make good law that will protect those who are impacted on by hate crime.

In late October, the Justice Committee will commence taking evidence from witnesses on their views of the bill, with members seeking to inform themselves on the key issues and likely amendments. It is intended that the committee will have interrogated all the points and issues that are raised in order to bring us to stage 1 by late December. That is an extraordinary timetable for a

bill that has produced an unprecedented number of responses.

As Fergus Ewing just said in the previous item of business, we are in the middle of a pandemic. Faced with the biggest crisis since the war, the Scottish Parliament is making unprecedented decisions daily, and we do not know how the pandemic will impact on our operations over the next four months.

**The Cabinet Secretary for Justice (Humza Yousaf):** I would like clarification, because I am obviously not on the Justice Committee. Did Liam Kerr not know the number of submissions that had been received before he agreed to the timetable that has been outlined by the Justice Committee?

**Liam Kerr:** I am not sure that we did know that. We do not know exactly how many submissions there are yet because of the sheer volume of them. I understand that a number of the individual ones might be collated because they say similar things, so we do not know the exact volume of responses that we will be dealing with.

My point, which I will make more fully later, is that with such a heavy focus on part 2 of the bill, there is a serious danger that we will not do justice to the other parts of bill, or ensure that they receive effective scrutiny. I listened to the cabinet secretary on "Good Morning Scotland" this morning, when, perhaps inadvertently, he made my point for me. He was interrogated about the bill and ended up spending most of the time, for understandable reasons, talking about the chilling effect of the stirring-up offences in part 2. Later, I will make the point that that is a real risk that arises from the bill.

Given the context that I have set out—the burden on the committee—that weighs heavily on my mind, as I consider the bill. In the programme for government, the First Minister told us that

"we need to ensure that we have laws in this country that are capable of tackling hate crime because it is pernicious and horrible and we should have zero tolerance for it."—  
[*Official Report*, 1 September 2020; c 46.]

She is right, so we must do all that we can to ensure that part 1, which deals with statutory aggravations, is not only

"capable of tackling hate crime"

but does so completely and unambiguously. That means subjecting the bill to intense scrutiny.

We need to ask whether simply consolidating is the right approach, and whether there would be merit in adopting the approach that has been adopted in New Zealand and Canada, which is concerned with forms of hatred that are based on any differences in characteristics.

We need to ask about the exclusion of sex. It is worth exploring the suggestion that that exclusion could be seen as sending the message that sex-based hatred is of less importance than that which is based on the other characteristics.

We need to ask whether the working group to consider an offence of misogynistic harassment is the best way to proceed on that because, for example, the Law Society of Scotland says that

“if the policy intention is for the list of characteristics to mirror those in the Equality Act 2010, there

is merit in including

“sex at this stage”,

and also to ask whether issues of misogyny and, indeed, misandry are too important to be left to secondary legislation. It has been suggested that substantive changes to criminal law must be included in primary legislation, through which the policy intentions can be fully and publicly debated.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Does the member agree that women’s organisations and equality organisations are supportive of a stand-alone offence?

**Liam Kerr:** Yes, I do. From what I have seen, there is a broad range of opinion on the matter, as I am sure Rona Mackay will agree. That is exactly my point. We need to have the debate and consider what is the right thing to do in relation to a sex-based aggravator. Should that be part of the bill—should it be considered by a working group, brought back later or dealt with now in primary legislation?

Similar concerns have been raised on the definitions, such as those in part 3 on the inclusion of “variations of sex characteristics”. DSD Families, which is a charity that supports children and families with difference of sex development, states:

“Singling out a biological condition in this way reinforces stigma rather than working towards understanding and societal acceptance.”

That is a highly sensitive area involving rare medical conditions and its consideration must not be rushed.

Finally, despite the stated aim of clarifying and modernising legislation, and despite Lord Bracadale’s recommendation, part 1 uses archaic language such as “evinces malice and ill-will”. The Law Society specifically suggests that the argument that that wording is needed to ensure that there is no change to the aggravation threshold is “not particularly convincing”. Is it right? I do not know—but that is why parliamentary scrutiny will be so important.

The bill contains welcome and important proposals, but those are not without potentially

serious challenges that must be aired, debated and amended if we are to ensure proper protections against hate crime. If we look at the published submissions, the articles written on the bill and the commentary, we see that the overwhelming focus is on the offences of stirring up hatred, which many groups and individuals across Scotland have said will have a chilling effect on freedom of speech.

I know that colleagues across the chamber will express their concerns about that area, so I will not explore them in depth at this stage. Suffice it to say that there seems to be a very real concern, which is held by a significant number of those who have made submissions to the consultation, including the Law Society, the Faculty of Advocates, the Scottish Police Federation, the Scottish Newspaper Society, the Humanist Society Scotland and the Catholic Church, that the provisions threaten freedom of expression. They have raised issues about the vague language of the provisions, the fact that one does not need to prove intent to show that a crime has been committed, and the low threshold of behaviour or communications being threatening or abusive, with the Association of Scottish Police Superintendents suggesting that

“it may capture people expressing relatively mainstream views”.

**Patrick Harvie (Glasgow) (Green):** Will Liam Kerr at least acknowledge that pro-equality organisations are largely arguing in favour of the provisions and that nobody has, as far as I am aware, argued that the existing stirring up hatred offence in relation to racism should be repealed? Why should we allow an unlevel playing field when the pro-equality organisations are asking for promises to consolidate the legislation to be kept?

**Liam Kerr:** Of course I acknowledge that, because there are all their submissions. My point is very clear: those are all opinions and views that have been very carefully thought through and deserve airing and consideration. I take Mr Harvie right back to the point that I made at the start of my speech: we are on a very tight legislative programme, and the committee has to produce a stage 1 report by late December.

I was talking about part 2, and the issues that had been raised in summary. I will give one example. Forwomen.scot said:

“Had the Bill been law during the period of consultation on reform of the Gender Recognition Act 2004 ... Many women would have been terrified to voice their concerns under threat of possible prosecution”.

The justice secretary’s stated position is that

“it will rightly be a matter for our independent courts to determine whether an offence has been committed on the basis of an independent, objective assessment of the available evidence.”

However, it is not good enough to say that the courts will decide, without any case law, where the threshold for criminality is. There is no basis on which judges can take such decisions, unless and until people find themselves in court having to prove their innocence.

Roddy Dunlop QC is right to question whether, for example, comedians will feel comfortable telling jokes that some people might find offensive. In relation to whether a person's behaviour would have been likely to stir up hatred, the Sheriffs Association concluded that

"It will be exceptionally difficult to direct a jury on these matters."

All that is before we even have a full investigation of the costs. I know that the justice secretary is well aware that the Scottish Police Federation has said that the financial memorandum's estimated cost of the bill is grossly underestimated. It also said that several policing costs are unaccounted for in the memorandum, including the costs of investigating complaints against officers.

All that gets us to the final part of my motion, and the solution for which I seek Parliament's support today. The justice secretary states that he wants to create

"robust laws"

that

"will ensure action can be taken against perpetrators and send a strong message ... that offences motivated by prejudice are not tolerated."

However, the bill is not robust; it is vague in the extreme. I have a real concern that properly investigating, scrutinising and making these complex changes in the context of there being 2,000 written submissions is not possible in a crowded parliamentary timetable. The situation has been further complicated by the coronavirus pandemic.

The bill has been introduced with the best of intentions—to address a pernicious and malevolent presence in society—but as drafted, it risks undermining those intentions. I desperately want to ensure that the committee has the time to scrutinise the bill properly, but the unprecedented response to it means that time is not on our side.

The MurrayBlackburnMackenzie collective says that we have barely begun to work through the evidence and do not know what further points relating to part 1 have been made. I fear that part 2 will suck all the oxygen out of the debate and will polarise us, thereby stifling debate around the real and difficult challenges in other parts of the bill.

The Faculty of Advocates said that, in light of the difficulties that exist in the current text, it

"considers that there is no alternative but to reconsider the draft bill".

That is the solution that I propose in my motion: to withdraw the bill and immediately begin work with stakeholders and others to draft and bring forward as quickly as possible the legislation that is needed to tackle hate crime in Scotland, without threatening freedom of speech.

The legislation is far too far-reaching and important to risk getting it wrong. Bad legislation is not the way to stop bad behaviour. By pushing ahead with the bill as drafted, the Government might lose the chance to achieve an updated and fully modernised approach to legislating for hate as an aggravator, which people on all sides of Parliament could pass with pride, and which would command strong public support and the support of those who would be putting the law into practice.

For all those reasons, I move,

That the Parliament believes that hate crimes are a blight on society in Scotland and must be dealt with robustly; notes that the right to freedom of expression is the cornerstone of democracy and must never be compromised; believes that the significant number of responses to the Scottish Government consultation on its proposed Hate Crime and Public Order (Scotland) Bill highlight the significant and valid concerns that the Bill would be an attack on free speech, and urges the Scottish Government to accept these criticisms, remove its proposed Bill and immediately begin work with stakeholders and others to draft the legislation that is needed to tackle hate crime in Scotland, while not threatening to make free speech a crime.

**The Deputy Presiding Officer:** I remind members that time is not on our side this afternoon. I urge them to stick to their time as far as possible.

15:21

**The Cabinet Secretary for Justice (Humza Yousaf):** I thank Liam Kerr and the Conservatives for lodging the motion, because it is always important that we talk about how we intend collectively to tackle hate crime.

Even though I know there will be disagreements around the bill, its interpretation, what it seeks to do and its possible unintended consequences, I do not doubt for one second the sincerity of every member—those I know well and have dealt with and those I do not know so well—in their desire to tackle hate crime. We have demonstrated time and again in this Parliament that we stand united as one against that pernicious crime.

The Scottish Government will work tirelessly to engage with colleagues across the chamber, external stakeholders and anyone else who wishes to contribute to the bill and the debate, and, if necessary, we will amend and improve it. What we cannot do—I am not suggesting that

anyone is doing this—is be complacent about the nature of the challenge. In 2017-18, more than 5,600 hate crimes were reported to the Crown Office and almost 7,008 hate crimes were reported to Police Scotland—I emphasise the word “reported” because, as all of us recognise, hate crime is not always reported to the police, often out of fear. Being a victim of hate crime is undoubtedly a dreadful experience for anyone.

Let me again reflect on the fact that it was less than three months ago that this Parliament came together to debate the Black Lives Matter movement, to speak in solidarity and to rededicate ourselves to taking a stand against hatred.

Although legislation in itself is not enough to build the inclusive and equal society that Scotland aspires to, hate crime legislation is a vital component of that society. In particular, it makes it clear to victims, perpetrators, communities and wider society that offences that are motivated by prejudice will not be tolerated.

The need for modernised legislation has only become more apparent as social media has continued to permeate our daily lives. The internet has brought with it challenges that we did not have in the past, by providing a platform for people who wish to share hateful abuse. I am not talking only about unsettling words, although, of course, words can have an impact. Members will be aware that, as Liam Kerr noted in his opening remarks, I have received hateful abuse throughout my life, and particularly during my political career. Most recently, that abuse took the form not just of harmful words but of threats to me and my family—threats to fire bomb my house, to stab me and to kick me in the face until I bled—all because of the colour of my skin. I am afforded protection in law from people stirring up hatred against me due to the colour of my skin—my race. Should the same protection not be afforded to other people due to protected characteristics? Should someone who is disabled, gay or Jewish not be afforded the same protection in law and have the law recognise an offence of stirring up hatred against them in the same way as I am protected?

**Liz Smith (Mid Scotland and Fife) (Con):** The cabinet secretary is absolutely right—of course, those protections should be in place. The Parliament respects him as an individual for the way that he has handled the many horrible things that have happened to him and his family.

At the base point of the debate is language—the words that matter in a bill and the interpretation of that wording in law. The concern on this side of the chamber is that that interpretation is open to so much chance and dispute that the bill as it stands—particularly part 2—is in danger of inciting some of the worst aspects of human behaviour. Is it not right that we remove the bill and start again?

**Humza Yousaf:** The racial stirring-up offence has existed since 1986—for 34 years. In my reading of it—I am happy for anybody to challenge me—I have not been able to find a single case in which there has been a controversial prosecution of that stirring-up offence. All that we are doing, in essence, is replicating the language, although we are actually not quite replicating the language, because we are making the threshold even higher. We are removing the insulting threshold that currently exists. I see Liz Smith shaking her head, but that is what we are doing. If that protection has worked for 34 years without much controversy as far as I can see—as I say, I am happy to be challenged on that—why would it suddenly become controversial if it applied to someone because they were disabled or because of their sexual orientation, for instance?

I do not dispute that the Parliament should have time to debate the bill. It has been three years in the making, from when Lord Bracadale began his review. He spoke to many stakeholders, there was a Government consultation and roadshows went across the country—I attended a number of them myself. We now have six months of this parliamentary session remaining, with three months until we are due to have the stage 1 report. I think that that is enough time.

However, I put on record that, if we have to work during the recesses, I will make myself available during the recesses and that, if it means working at weekends, I will make myself available to work at the weekends. We should not delay the bill any further, because the vital protections that it will guarantee and afford people in law are not something that can be waited for.

One particularly powerful contribution that I read in preparing for today’s debate came from Kate Wallace, the chief executive of Victim Support Scotland. She has said clearly that victims who are targeted by hate cannot afford to wait another parliamentary term for those protections. That is hugely important.

**Patrick Harvie:** As well as victims and potential victims of hate crime wanting that clarity, there is a good argument that everybody who fears that they might be accused of the offence also needs clarity. Does the minister agree that the stirring-up offence, which has been used for more than 30 years, gives clarity whereas aggravated breach of the peace, which is the only way—at least, the main way—to prosecute such offences at the moment is much vaguer than what is in the bill?

**Humza Yousaf:** There is certainly an argument to be made to that effect. I say to all members that I am not attempting to rush the parliamentary process. I think that the timetable for the Justice Committee is a very good one, and it has been agreed by all members. From all the commentary

that I have seen, I would say that the stirring-up offences are gaining the most attention, and they will probably gain the most scrutiny in the course of the Justice Committee's oral evidence sessions.

I do not doubt that there are some legitimate concerns. There has been some incredibly sensational reporting about the offences, too, but, putting that aside, people clearly have legitimate concerns about the stirring-up offences. I will absolutely listen to the evidence that the Justice Committee produces in that regard, and I will listen to external stakeholders. I am constantly engaging with stakeholders, and I give an absolute assurance for the record that I am actively looking to see where we may be able to find compromise.

**Liam Kerr:** Will the cabinet secretary give way?

**Humza Yousaf:** I will give way to Liam Kerr in just a second. Before I do so, I note that Lord Bracadale said that the extension of the stirring-up offences would not "seriously hinder robust debate."

**The Deputy Presiding Officer:** The cabinet secretary is into the last minute of his speech, so please make this intervention very brief.

**Liam Kerr:** I shall be brief, Presiding Officer. Does the cabinet secretary not accept that he has made my point for me? There is a danger that part 2, the stirring-up offences, will take all the oxygen and scrutiny, to the detriment of some very important points elsewhere in the bill.

**Humza Yousaf:** I do not accept that. There is enough time for us to give due attention to the stirring-up offences and to some of the other points that the member has legitimately raised.

I am aware of the time, so I will end by saying to the Liberal Democrats and the Greens, in particular, that I will listen. Their amendments to the motion make some valid points, and, as I have said, I intend to come back to Parliament before the oral evidence sessions take place at the Justice Committee, to give further details of how I wish to take the bill forward.

To the Conservatives, I simply say that, as parliamentarians and legislators, we have an important job to do in scrutinising the bill, debating it and amending it when necessary to improve it. I hope that they will not attempt to torpedo the bill during the current parliamentary session but that they will instead work with the Government. If we have to put extra sessions on, let us do that.

Let us send a strong message to the victims and targets of hatred that we will not abandon them or walk away from the bill. We are looking to get a robust piece of legislation that will protect them.

I move, as an amendment to motion S5M-22636, to leave out from second "believes" to end and insert:

"agrees that tackling hate crime is central to building the Scotland that all people want to see, a Scotland free from hatred, prejudice, discrimination and bigotry; acknowledges the importance of ensuring that hate crime legislation in Scotland affords sufficient protection for those that need it; agrees with the unanimous decision of the Justice Committee to afford the Bill rigorous and detailed scrutiny over the coming months; recognises that there are concerns about aspects of the Bill, including in relation to the stirring up of hatred offence provisions, which will benefit from further engagement with stakeholders and Parliamentary scrutiny; further recognises that there is a clear need to tackle misogyny in Scotland, and that the Scottish Government is committed, in principle, to developing a standalone offence of misogynistic harassment and is establishing a working group to take this forward, and agrees to seek common ground and compromise to ensure that effective legislation can be agreed that protects those affected by hate crime and prejudice in Scotland while respecting freedom of expression."

15:30

**Rhoda Grant (Highlands and Islands) (Lab):** Hate crime has no place in a modern Scotland; it is simply wrong. No one should be subject to hatred. To subject people to hatred because of their race, gender, sexuality, disability, or indeed some of the other characteristics, is wrong. However, these are some of the things that people choose to use to single out others and to subject them to hatred. It is absolutely senseless.

Sadly, hatred seems to have been unleashed by social media—the cabinet secretary made that point in his opening remarks. Hatred has always been there, but there has never been a platform that gives the haters so much protection and allows them to spread their bile unchallenged.

As a woman, I know what hatred looks like. Most women have been subject to misogyny, and have been disregarded, ignored, demeaned, and hated just because they are a woman. Because of that, violence against women is endemic. I welcome that the proposals for a separate offence of misogyny have been accepted, but why do women have to wait for so long for that? Bracadale published his review more than two years ago and we are getting to legislation only now. The Scottish Government is only setting up a working group to look at misogyny, and it is taking far too long.

Being a woman and being subject to misogyny does not lead me to hate or even resent other groups who face similar abuse; it makes me want to make common cause to work with them to stand up against hate crime. That is what we in this Parliament should be doing. We should be trying to build consensus against hatred and

promoting tolerance. I believe that we all welcome the Bracadale review and want it to tackle hate crime in our society, but we cannot breed tolerance without knowledge and debate, and freedom of speech must therefore be protected. How else can we debate issues and see each other's points of view? That is how we find common ground, but we must do it without hatred.

Inciting someone to hatred is altogether different from debate. We all recognise incitement to hatred when we see it. We do not want to shut down debate and simply hear whoever shouts the loudest; rather than creating greater understanding, that closes off other people's positions.

Those of us who have been subject to hatred have a duty to come together and fight it, and that is where the legislation is welcome. However, as it stands, it is not fit for purpose. It will pitch the very people it sets out to protect against each other.

Part 2 of the bill is where the greatest concern lies. The language and terminology stray into covering behaviour and material that is merely insulting, contrary to the Bracadale review and contrary to what is the case elsewhere in the United Kingdom. It will catch much more than hate crime, and it will breed intolerance and resentment, which is the opposite of what it aims to achieve.

When forming new laws and criminal offences, the Government and Parliament have a duty to ensure that the law is clear and fair, and that it is not open to abuse or manipulation.

Serious concerns have also been raised about the threshold for criminal liability—namely, the lack of intent required for criminalising behaviour or material.

Lord Bracadale's review recommended extending the "likelihood test" to stirring-up offences related to protected groups other than race.

**John Mason (Glasgow Shettleston) (SNP):** I thank the member for giving way. Would she accept that, first, intent is extremely difficult to prove and that, secondly, there is room to improve the wording with alternatives, such as "significant risk", suggested by the Law Society of Scotland?

**Rhoda Grant:** I welcome John Mason's intervention and I hope that that is a sign that Government back benchers are looking to amend the legislation.

As I was saying, Lord Bracadale stated that "Stirring up hatred is conduct which encourages others to hate a particular group" and that

"the intention of the perpetrator is that hatred of the group as a whole is aroused in other persons. Hate is primarily relevant, not as the motive for the crime, but as a possible effect of the perpetrator's conduct."

The need for intent is an important principle in criminal law and it cannot be easily cast aside, especially in such serious matters as these. In England and Wales, there must be an intention to stir up hatred in offences relating to religion and sexual orientation.

Under the Criminal Justice and Licensing (Scotland) Act 2010, the general offence of "threatening or abusive behaviour" requires both that "a reasonable person" would "suffer fear or alarm" and that the person must intend the behaviour to cause that fear or alarm or "be reckless" as to whether it would do so.

Under the current drafting, part 2 of the bill includes a general defence of reasonableness. However, contrary to specific defences previously provided for in the Public Order Act 1986, the bill has only a general defence of reasonableness, which is more wide ranging and open to interpretation.

Part 2 also contains provisions for the protection of "freedom of expression" with regard to religion and sexual orientation, although some people have pointed out that needing to reference that protection says more about the potential impact of the bill than it offers reassurance.

Where the door is left open to use the law to stymie debate, the law will not protect those who it is meant to protect. We need not just a law on hate crime but a good law on hate crime.

I welcome the cabinet secretary's commitment today that he will work with others, because the Scottish Government cannot dig its heels in. It must listen to concerns and act on them.

The checks and balances in this Parliament must be used to the full in order to scrutinise the legislation and make sure that it works for all Scots. It will be unacceptable for the Government simply to use its committee members to nod through legislation; to do so does us all a disservice.

Government back benchers have a job to do and they have to get it right. Their job is not to defend defective drafting; it is to defend the national interest. They must listen to the concerns expressed and find ways of making the legislation work. If they cannot do that, we will withdraw our support; if the bill proceeds, there are two further occasions when the Parliament can vote it down. It would be our duty to do that if the legislation was defective.

I move amendment S5M-22636.3, to leave out from " , remove" to end and insert:

“; has serious concerns about Part Two of the Bill as currently drafted and considers that it will require substantial revision if it is to be fit for purpose, and urges the Scottish Government to work with stakeholders and the Parliament throughout the legislative process to amend the Bill so that it does deal robustly with hate crime, protect individuals while protecting the privileges that people enjoy with regard to free speech and builds consensus that prejudice and hatred have no place in Scotland.”

15:38

**John Finnie (Highlands and Islands) (Green):** I will talk about the specifics of the amendment in my name, such as the “piecemeal” nature of

“the development of hate crime law”,

which has resulted in “fragmented legislation”. It is a simple matter of fact that, for more than a decade, there have been calls for consolidation. The principle of consolidation seems to be widely welcomed and has benefits, as we have seen with legislation on sexual offences.

The amendment refers to the belief that

“freedom of expression is a critically important human right”.

That is a fundamental human right but, of course, it is not an unqualified one. It also says that

“Article 10 of the European Convention on Human Rights (ECHR) protects”

freedom of expression

“within the context of factors such as the prevention of crime and protecting the rights of others”.

The amendment also recognises that

“stirring up racial hatred has been the basis of criminal offences since 1986.”

We have heard that a couple of times and, as is reiterated in our amendment, that is “clearly compatible with ECHR”. As the Scottish Parliament information centre briefing says, paragraph 5.28 of Lord Bracadale’s report concludes that

“extending the stirring up offences in Scotland would not infringe the article 10 right to freedom of expression”.

**Liam Kerr:** That is a very important point. I hear what John Finnie says about Lord Bracadale’s report, but does he not accept that, in the implementation, there is a danger that there could be an infringement of human rights? If there is, is its practical impact not that we will end up with a bill that does not work, so we should take a step back?

**John Finnie:** I am grateful to the member for the intervention. I will come on to that, and I will cover the competing arguments on the issue.

As far as we are concerned, there is unfinished work on misogynistic harassment. Toxic

masculinity must be addressed, and we look forward to that work progressing.

As the amendment says, we commit to listening to

“all serious views on ways to improve”

the bill. We will do that

“as part of the normal process of parliamentary scrutiny”.

We will also consider

“how best to ensure that all forms of hate crime are taken seriously.”

I agree with the cabinet secretary in thinking that all members are behind the thrust of wanting to address such pernicious crime.

The bill seeks to modernise the system, and we welcome the proposals in section 14 to update and improve the definition of transgender identity. The issue of sex has been raised, which is important, and Lord Bracadale made proposals in that regard. We will also come to the issues of age and consolidation.

In relation to consolidation and the extension of hate crime provisions, sections 3 and 5 relate to stirring up hatred and the possession of inflammatory material. The existing offences, in sections 18 to 23 of the Public Order Act 1986, apply to race only. Is it the view of those who do not support the proposals that the provisions should not be extended to include religion, despite the support of Jewish faith groups and Interfaith Scotland for the bill? Is it their view that the provisions should not be extended to include disability? Inclusion Scotland tells us that there are a million disabled people in Scotland today, and that there has been a steady increase in the number of reported hate crimes against disabled people in Scotland in recent years. Is it their view that the provisions should not be extended to include sexual orientation, transgender identity and variations in sex characteristics? The Equality Network tells us that

“Hate crime is part of the wider societal issue of marginalisation and it good to see that ... the Scottish Government recognises that tackling this problem needs to include both legislative and non-legislative solutions.”

An important aspect of the bill is the strengthening of protections for people who might be a victim of hate crime because of their association with others, perhaps as the partner of a disabled person; we all know of such issues from our casework.

The court has an important role in stating and recording offences and taking the aggravation into account, which will help statistically. That is a minor detail, but it has been alluded to.

I come to Mr Kerr’s point. The SPICe briefing tells us that

“The Bill includes specific provisions seeking to protect freedom of expression in relation to religion and sexual conduct or practices.”

#### Police Scotland tells us that

“The inclusion of a freedom of speech provision is to be welcomed ... The absence of such a clause could result in Police Scotland being burdened with vexatious reports of ‘crimes’”.

I am grateful to all the organisations that have provided submissions, including the Faculty of Advocates, which takes a slightly different approach. It says:

“The Scottish Government acknowledges the existence of concern about the impact on Article 10 ... which guarantees freedom of expression. The Faculty has reservations about the position of the Scottish Government that the proposed sections 11 and 12 meet those concerns.”

#### The faculty goes on to say:

“It is accordingly for the Government to justify any interference with freedom of expression under reference to Article 10(2).”

Very helpfully—someone with Mr Kerr’s legal background will appreciate this—the faculty points us in the direction of guidance that is set out by Lord Rodger. At paragraph 25 of its submission, the faculty asks:

a) Is Article 10 engaged?

b) If so, what is the basis for the interference under Article 10(2)?

c) What is the ‘legitimate aim’ being pursued in restricting freedom of expression?

d) Does that pass the test of necessity?

e) Is the restriction proportionate to achieving the legitimate aim?”

Those are not the faculty’s sole concerns; there are others.

Where is the locus for airing, scrutinising and interrogating—I think that those were the terms that Mr Kerr used—those concerns? In a unicameral set-up such as ours, it is the committee. I have every confidence that the Justice Committee will look at the issues.

We know from past experience that deficiencies in legislation have always been highlighted in stage 1 reports and have always been responded to. If the Government does not lodge amendments, I assure members that I—and, I suspect, Mr Kerr—will do so. We know the competing interests that exist when we consider legislation. That is the case with the Defamation and Malicious Publications (Scotland) Bill, which is about balancing increased freedom of speech against the legal profession wanting to retain the position of people whose reputations might be damned. I have every confidence in our system of

parliamentary scrutiny, and I hope that Mr Kerr eventually will, too.

I move amendment S5M-22636.2, to leave out from “notes” to end and insert:

“considers that the development of hate crime law in Scotland has been carried out in a piecemeal fashion, resulting in fragmented legislation; notes that calls have been made for the consolidation of hate crime law for more than a decade; believes that freedom of expression is a critically important human right, and that Article 10 of the European Convention on Human Rights (ECHR) protects it within the context of factors such as the prevention of crime and protecting the rights of others; recognises that stirring up racial hatred has been the basis of criminal offences since 1986 and is clearly compatible with ECHR; welcomes the Scottish Government’s commitment to examine the development of an offence on misogynistic harassment and looks forward to the working group on misogynistic harassment’s output on this matter, and commits to listen to all serious views on ways to improve the Hate Crime and Public Order (Scotland) Bill as part of the normal process of parliamentary scrutiny and to consider how best to ensure that all forms of hate crime are taken seriously.”

15:45

**Liam McArthur (Orkney Islands) (LD):** I, too, welcome today’s debate on the Government’s Hate Crime and Public Order (Scotland) Bill. I thank Liam Kerr for enabling it, although I regret the Tories’ last-minute decision to move to a position that is more intemperate and, I believe, wrong. However, I hope that the amendments to the motion reveal a growing acceptance that the bill needs urgent and, in places, radical surgery.

When we see debate in the political and social sphere being dragged to the extremes, when we consider the extent to which social media and the internet empower individuals and groups to reach ever-wider audiences with whatever hateful views they may hold and as we reflect on all forms of hate crime appearing to be on the increase, I think that it is fair to conclude that now is not a bad time to be checking whether our laws in this area are fit for purpose, not least in protecting the rights and freedoms that we hold to be most important. As BEMIS points out,

“Scotland is not immune to racism or prejudice”.

As legislators, we must tread with care. After all, without freedom of speech—what philosopher, John Milton described as

“the liberty to know, to utter, and to argue freely according to conscience”—

our other fundamental freedoms are devalued and diminished.

Of course, freedom of speech is not and should not be an unfettered right; indeed, it would be irresponsible to act as if it were. Therefore, in the bill, as with so much else we do in Parliament, balances must be struck.

As a liberal, I was rather taken by a quote from Lord Justice Sedley, which was referred to in the Law Society of Scotland's submission to the Justice Committee on the Hate Crime and Public Order (Scotland) Bill. He argued that

"free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative ... Freedom only to speak inoffensively is not worth having."

However committed I am to measures that robustly confront and tackle hate crime—and I most certainly am—I agree with Lord Justice Sedley.

I do not take issue with the need to update the law in relation to hate crime, nor the motivation of the Scottish Government in wanting to do so.

**Patrick Harvie:** I agree with the sentiment that the member has expressed. However, does he also accept that freedom of speech does not include the protection of threatening or abusive behaviour, which the bill is explicitly aimed at? Article 10 of the ECHR clearly says that freedom of expression comes with "duties and responsibilities".

**Liam McArthur:** That is a fair comment. However, we need to take seriously the concerns that have been expressed about the way that part 2 of the bill engages with those freedoms.

I will come on to the point about the timetable in a second. We cannot afford to make the moves that will be required to deal with part 2 through the stage 2 process. I welcome what I thought I heard the cabinet secretary say about introducing proposals ahead of our taking evidence at stage 1, so that we can test them as part of our scrutiny at stage 1.

The process has exposed the difficulties and risks, despite the best efforts of Lord Bracadale in laying the foundations for legislation that we want to see. Unfortunately, what has emerged since Lord Bracadale produced his report has not done justice to his efforts or, I believe, to the collective desire within and outwith the Parliament to update our laws in such a way as to provide legitimate and proportionate protections against the worst examples of hate crime.

Anything that manages to unite in common cause the Humanist Society of Scotland, the Catholic church, Police Scotland and the great and good of our arts and cultural community boasts impressive powers of cohesion. That is the claim that the justice secretary can now make of his bill. Indeed, the response to the Justice Committee's call for evidence—some 2,000 submissions—lays bare the extent of the concerns felt by an impressively wide cross-section of stakeholders, many of whom made the same points in response to the Government's earlier consultation.

The criticisms are largely focused on the impact that part 2 of the bill would have on freedom of expression. Few, if any, back the Tories' calls for the bill to be ditched entirely. Indeed, I am not even sure that that position is backed by all those on the Tory benches who will speak in today's debate.

How has the Government managed to antagonise so many so profoundly? It has done so by presenting to Parliament a bill that combines vagueness with mission creep. That bears uncomfortable echoes with what we saw at times with the now repealed Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, in which the Government blundered into a complex area of law with an apparent lack of either care or understanding about the pitfalls and consequences. The intentions in the Hate Crime and Public Order (Scotland) Bill are undoubtedly more laudable, but the outcome could be even worse.

The Law Society of Scotland has expressed alarm at the creation of "unduly wide" new offences that will "restrict freedom of expression" and that lack clarity or "policy justification". Scottish PEN warns of a

"substantial expansion in the criminal law."

[*Interruption.*] No, thank you. In addition, the Scottish Police Federation has deep misgivings at the prospect of officers having to police speech.

Introducing stirring-up offences without any requirement to prove intent, unlike with similar laws elsewhere in the UK, risks creating a catch-all offence with the genuine potential to catch all. It is little wonder that artists, authors and journalists are so dismayed and warn that the bill risks "stifling freedom of expression". They argue that

"The right to critique ideas, philosophical, religious and other must be protected to allow an artistic and democratic society to flourish."

That theme is repeated by the Scottish Newspaper Society and the Humanist Society Scotland.

The justice secretary insists that he hears the concerns, and I believe him, but he must do more than that. I see him nodding. I think that I heard him commit earlier to come back to the Justice Committee before it begins its stage 1 oral evidence to set out his proposals in response to the objections. We need those proposals so that the committee can take evidence from witnesses—witnesses who have made plain what they consider must change and who expect changes to be made.

Yes, the Government could lodge amendments at stage 2, but by that point it will be too late to take the detailed evidence that we need. The

matter is too important to shoehorn into a process that is already tight for time.

Unless we see substantive changes to part 2 in the coming weeks, the Scottish Liberal Democrats cannot support the bill. However, unlike the Tories, I believe that changes are possible—there are ways to provide more clarity of language and purpose, while removing the elements in part 2 that pose unnecessary risks. That would help to preserve the elements of the bill that are welcome and deserve to be passed into law.

In the recent words of one recent commentator: in an attempt to make bad people nicer, we should not risk making good people villains.

I move amendment S5M-22636.1, to leave out from second “believes” to end and insert:

“recognises the significant number of responses to the Justice Committee’s call for evidence on the Scottish Government’s proposed Hate Crime and Public Order (Scotland) Bill highlighting serious and substantial concerns in relation to its potential impact on free speech, and calls on the Scottish Government to set out the steps that it plans to take to address these concerns, specifically in relation to Part 2 of the Bill, in time for the Committee to hear evidence and give them due consideration.”

**The Deputy Presiding Officer:** We now move to the open debate.

15:52

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** I welcome the opportunity to speak and to address the Conservative motion, which makes it clear that the Conservatives believe that hate crime should not be tolerated in a modern, inclusive nation like Scotland. That is agreed across the chamber.

The motion proposes working with stakeholders and organisations to draft alternative legislation. I am puzzled as to why that should be the route that we take. Why can we not make an immediate start by working with the Government to amend the existing bill?

The bill should be no different from any other. It should, and will, be subject to rigorous scrutiny and will be amended if there are concerns. This debate is the start of that process. I hope that it can be carried out in a respectful and meaningful way as we try to resolve some of the issues causing concern that we have heard about. We can do that only by working together, as the cabinet secretary has said, not by instigating sweeping measures to scrap the bill, as the Conservative motion calls for.

Figures show that the number of hate crimes is rising. Doing nothing cannot be an option in a modern and civilised nation such as Scotland. The bill will bring Scotland’s hate crime legislation into one statute, making the law easier to understand

and more user friendly. It will implement the findings of the extensive and independent review of hate crime that was carried out by Lord Bracadale two years ago.

The final part of the Conservative motion asserts that the bill would “make free speech a crime”. I do not believe that that is the case. We will always be free to disagree. The bill does not seek to stifle rigorous debate or criticism or to inhibit freedom of expression, which is a human right. The bill does not say that an insult constitutes a hate crime.

Liam McArthur’s amendment calls on the Government to set out its plans to address concerns about free speech. I understand that the cabinet secretary has agreed to do that. We have heard concerns about the definition of stirring up hatred. The courts will decide whether someone has behaved in a threatening or abusive manner. That must be proved beyond reasonable doubt in court. If that definition requires improvement, that area can be focused on.

**Liam Kerr:** Does the member not see that there is an issue on that point? If she were a comedian, actor or some such person, would she not be concerned that the words that she spoke might result in her ending up in a court environment having to defend herself on issues that we are looking at in this debate?

**Rona Mackay:** The point is that a court would take into account the context in which someone was accused of stirring up hatred. Comedians should not be inhibited in what they say and do—that has always been the way. The bill’s provisions would not affect that.

John Finnie’s amendment states that

“stirring up racial hatred has been the basis of criminal offences since 1986 and is clearly compatible with”

the European convention on human rights. The bill simply highlights that expressions of hate against people on the basis of religion, age, disability, race, religion, sexual orientation, transgender identity and variations of sex characteristics are simply not part of a tolerant society.

I will quote some experts and various stakeholders on the bill. The Equality Network says:

“We agree with those who say that it is important that these offences do not impinge on legitimate free speech ... the existing stirring up racial hatred offence has not done that and neither have, in England and Wales, the offences there of stirring up hatred on grounds of religion or sexual orientation.”

The Equality and Human Rights Commission Scotland welcomes

“the bill and the Scottish Government’s aim of ensuring Scotland’s hate crime legislation is fit for the 21st century.”

There are many more endorsements but, frankly, I do not have time to go through them, as I have just looked at the clock.

I am extremely pleased that the principle of a stand-alone offence of misogynistic harassment will be developed, which is widely supported by women's equality groups. A working group will be established to take that forward and consider how the criminal justice system deals with misogyny, including whether there are gaps in the law that could be filled with a specific offence of misogynistic harassment.

Scotland is a place where there must be zero tolerance of hate crime—I think that we all agree on that. The bill, after consultation and negotiation, will aim to strike the right balance between respecting freedom of speech and tackling the scourge of hate speech.

15:57

**Murdo Fraser (Mid Scotland and Fife) (Con):**

Right now, while we are meeting in this chamber, in a courtroom in Paris 14 people are on trial over the deadly attack on the satirical magazine *Charlie Hebdo*. In January 2015, the world was shocked when 12 people were brutally shot dead in and around *Charlie Hebdo*'s Paris office. The attack followed the publication by the magazine of satirical cartoons of the Prophet Mohammed, which caused great offence in the Muslim world.

Following that horrific attack, there was an outbreak of mass solidarity, with millions of people across the world taking part in support marches. They—and we—were proud to display the slogan “Je suis Charlie” in defence of the principle of free speech. The French President, Emmanuel Macron, has been absolutely clear in his defence of the freedom of the press and, indeed, the freedom to blaspheme, which is linked to freedom of conscience.

Those incidents are relevant to us today in our consideration of the Scottish Government's Hate Crime and Public Order (Scotland) Bill. I believe that there is much in the bill that is worthy of support. I have written for years about why I believe the blasphemy law in Scotland, which has fallen into disuse and was last prosecuted in Scotland in 1843, should be abolished. As a church-goer, it has always seemed to me bizarre that the power of the Christian message would require man-made laws to protect or defend it. However, there is a huge concern that part 2 of the bill would, in effect, try to reintroduce a blasphemy law under a different guise with its provision that it will be a criminal offence

“to stir up hatred against”

a protected group, that being any group “defined by reference” to race, age, disability, religion, sexual orientation, transgender identity and variations in sex characteristics.

Crucially, for any prosecution to succeed, it would not be necessary to prove that there was an intent on the part of an accused person to stir up hatred; rather, it would be necessary only to prove that, having regard to all the circumstances, hatred in relation to a particular characteristic is “likely” to be stirred up thereby. That is where the real problem arises. *[Interruption.]* I will not take an intervention at the moment.

The *Charlie Hebdo* case is relevant to the bill. *Charlie Hebdo* produced a series of satirical cartoons, which were offensive not just to those of the Muslim faith, as there were depictions of the father, son and holy ghost that were crude, appalling and likely to cause outrage among Christians. Many commentators have made the point that it is entirely conceivable that, if the *Charlie Hebdo* magazine were to be published in Scotland once the proposed law came into force, it could face prosecution—and, undoubtedly, a police inquiry—for stirring up hatred against a protected group, namely, the followers of a particular religion. *[Interruption.]* I will not take an intervention just now.

Indeed, under section 5(2), it would be an offence simply to be in possession of inflammatory material, so having in one's home a copy of an offensive publication could lead to prosecution.

It would be a rich irony if, just five years on from us marching in solidarity with the *Charlie Hebdo* victims and proudly proclaiming, “Je suis Charlie”, we introduced a law that could result in a prosecution in Scotland for publication of the same material.

**Humza Yousaf:** I am listening carefully to what Murdo Fraser has to say. Why does he think that the racial stirring-up offence, which has largely the same thresholds—some argue that it has lower thresholds, because it includes the insulting threshold—has not caused the mass jailing of journalists or comedians over the course of 34 years? Why would extending protection to other protected characteristics do that?

**Murdo Fraser:** The cabinet secretary will know that there are debates around other issues—gender, for example—that are likely to provoke responses that we do not see around racial issues. That is the difference.

There is a fundamental issue here of free speech. In any open, liberal and democratic society, citizens should have the right to discuss, criticize and refute ideas, beliefs and practices in robust terms. Some of that might lead to

individuals being offended, but there should not be in law a right not to be offended.

I have grave concerns about what is now termed “cancel culture”, which is the attempt to close down debate and to silence those whose views are deemed unacceptable. *[Interruption.]* Thank you, but I will not give way.

We see feminists such as Germaine Greer and J K Rowling becoming victims of a mob that is not prepared to permit debate, even when what they are saying is simply a biological fact on the question of gender.

Free speech is important, not least because society will advance only if it can openly discuss ideas. The views that we hold today in society on a range of issues—human rights, the rights of women, human sexuality, animal welfare and a host of other topics—would be regarded as outlandish, if not offensive, to those who lived 100 years ago. Societal change came about only because people were prepared to champion, and openly debate and discuss, what were, at first, heresies and ideas that caused offence at the time.

George Orwell famously wrote:

“If liberty means anything at all, it means the right to tell people what they do not want to hear.”

The freedom to hear only opinions with which we agree is no freedom at all. As parliamentarians, policy makers and leaders of public opinion, we must be prepared to defend the right to express unpopular opinions, whether we agree with them or not.

Jim Sillars, formerly the deputy leader of the Scottish National Party, said:

“Freedom of thought, articulated by one’s speech, is so fundamental to the civic and intellectual life of our nation that any attempt by the Government to restrict that freedom has to be robustly opposed.”

He is right, and a host of other voices—those of academics, writers, comedians, faith groups and human rights campaigners—agree with him.

For all those reasons, the Scottish Government needs to think again when it comes to this bill. If “Je suis Charlie” meant anything more than empty words, we should support the motion in Liam Kerr’s name.

16:04

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** We can all agree that there is no room in 21st century Scotland for prejudice, hatred, discrimination or bigotry. Like my colleague Rona Mackay, I am a wee bit puzzled by the Tory motion, because it comes at the issue from the wrong angle. I know that individual Tories

are very much committed to tackling prejudice, but I cannot help but question their position when they lodge a motion that seeks to take the bill out, which no other party is recommending. I cannot say that I am not puzzled by that.

We can all acknowledge that there are concerns regarding the bill. However, following due parliamentary process will enable us to debate those. As a member of the Justice Committee, which will examine the bill, I am looking forward to hearing and scrutinising the evidence that will come before us. I assure my constituents who have been in touch with me, and also my colleagues from across the chamber, that I will work to make changes to the proposals where there are concerns. I will also help to deliver legislation that the whole Parliament can have faith in—legislation that is strong and will help to prevent members of our society from being subjected to hate based on their race, disability, gender, religion or sexual orientation.

I thank all those who have made the great number of submissions to the Justice Committee that we have heard about. Meeting stakeholders at stage 1 will allow the committee to understand their concerns better and to seek common ground. It is clear that the creation of a new offence of stirring up hatred is proving to be the most controversial aspect of the bill. However, as other members have said earlier in the debate, long-standing offences on stirring up racial hatred have operated effectively in Scotland since the mid-1980s, and England and Wales have equivalent laws.

I do not believe that the bill is an attack on free speech. As we have heard, even with the bill in place, it would still be acceptable to express controversial, challenging or even offensive views as long as that was not done in a threatening or abusive way that was intended or likely to stir up hatred. A high bar would have to be reached before conduct would be criminalised. However, as Patrick Harvie mentioned, with our right to free speech comes responsibility. In order to protect that powerful right we must also allow the passing of specific laws to ensure that it is used responsibly. As most speakers have already said, none of us should seek to politicise the subject; instead, all members of the Parliament should come together to make the legislation workable and as good as it can be.

I cannot begin to imagine the physical and mental distress that victims of hate crime have to go through—many on a regular basis—on which we heard the cabinet secretary’s own powerful testimony in his opening remarks. We must show that crimes that are motivated by hatred will not be endured in our modern Scotland.

However, sadly, research shows that such crime—particularly racial crime—is on the rise. Such behaviour is not the norm and should never be accepted as such. By updating our existing laws and ensuring that they are made more cohesive, by combining them in one statute, the bill would send a clear message to society that hate will not be tolerated. Whatever deficiencies might be in the bill, surely all of us can agree on that.

Although it is important to consider and take into account the submissions that raise concerns about the bill—I reiterate that there were a lot of them, and I say well done to the Justice Committee's clerks for bringing them together—we must also be mindful that the bill is supported by a large number of stakeholders, many of whom support vulnerable groups day in, day out. They include the Equality and Human Rights Commission, YouthLink Scotland and Age Scotland, to name but a few. The Equality Network has also welcomed the bill: it does not believe that it infringes the right of free speech, and it asserts that existing offences on the stirring up of racial hatred have not done so.

Victim Support Scotland has made the important point that the bill now makes hate crime and its impact visible and that passing it would form part of a zero-tolerance approach. I take this opportunity to wish that organisation a happy 35th birthday, which it celebrated recently. I also thank members who supported my motion on that subject, which reflected the fact that the organisation was born in Coatbridge in my constituency.

Many racial equality organisations—including BEMIS Scotland, which was mentioned earlier in the debate—say that killing the bill would be a retrograde step, but they have raised concerns. The Coalition for Racial Equality and Rights has stated that the bill would send a clear message regarding what society finds to be intolerable attitudes and beliefs, and would provide consistency across the legislation. Such organisations are working day in, day out to tackle prejudice, so we should listen to what they say. The parliamentary process will allow us to do that.

The Scottish Conservatives' motion does not seem to be in line with what every other member who has spoken in the debate has said. Is the bill perfect? No—we all agree on that, and the cabinet secretary has said as much. I guarantee to my colleagues and constituents that I will work to improve it. Let us hope that if their motion is defeated tonight, the Tories will respect that result and will do all that they can to improve the bill through the parliamentary process and will not spend that time trying to wreck it or undermine it.

**The Deputy Presiding Officer (Linda Fabiani):** We are way behind time this afternoon, so if people could be as brief as possible, that would be useful for all of us.

16:10

**Mary Fee (West Scotland) (Lab):** Let me be clear from the outset that hate crime must be tackled and that, along with my Scottish Labour colleagues, I am supportive of the overall principles that are contained in the Hate Crime and Public Order (Scotland) Bill. Minority and protected groups have been facing growing attacks year on year and it is right that we say loudly and clearly today that an attack based on someone's race, religion, sexuality, disability or gender identity is unacceptable and abhorrent.

It is an important step in tackling hate crime that we consolidate hate crime legislation into one single act of Parliament. However, as it stands, the bill is far from ready for enactment in this Parliament. With that in mind, I must say that the Scottish Conservatives' proposal to scrap the bill is unwarranted. It is up to this Parliament to amend and improve legislation. The Scottish Conservatives must engage properly with the parliamentary procedures to amend and scrutinise the bill and the Scottish Government must listen to and work with stakeholders who share the concerns of many regarding part 2 of the bill.

As with any legislation of this scope, there must be a balance—in this instance, a very careful balance—with regard to safeguarding protected groups from hatred, abuse and discrimination while also safeguarding the right to freedom of speech. Sadly, as currently drafted, the bill is unbalanced. However, it should not be confined to the bin just yet.

I understand the support that the bill has received from organisations such as BEMIS, Victim Support Scotland, Stonewall Scotland and the Equality Network. I want to see a modern, effective and single piece of legislation that protects people from hatred. The modernising of the language around protected groups and the addition of age as a characteristic are welcome. I support those additions, as well as the overall principles of the bill, and I support those changes, as do a variety of equality organisations, yet those changes are not what this debate is about.

Negatively impacting the right to free speech is a line that no democratic government should cross. Part 2 of the bill appears to create more problems than it tries to solve. Criticisms are vast and wide ranging, and critics must be listened to. Academics, the Scottish Police Federation and the Law Society of Scotland are just some of the voices highlighting the problems with part 2. The

bill also unites religious, humanist and secular groups in opposition to it.

There are many groups and individuals with whom I share concerns. However, there are also a small minority of views that I cannot agree with. I do not believe the bill to be “sinister” or “illegal”, as some have suggested to me. It is simply open to misinterpretation. No bill that is going through this Parliament should be open to misinterpretation. We have already seen that happen with the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. I do not want to see a repeat of that, but I fear that we may be seeing that. The Scottish Police Federation has warned that the bill would force officers to police “what people think or feel”.

Police officers were routinely criticised for enforcing the 2012 act. We must not place them in a similar situation now.

In closing, I repeat Scottish Labour’s call that the Parliament must use its procedures to effectively scrutinise and amend the bill. Our amendment is justified, and it is considered.

In my time as an MSP for West Scotland and throughout my working life, I have stood up and campaigned for equality and social justice. If the bill progresses, as my time in the Parliament comes to an end, I want to ensure that one of my last votes will be to enact legislation that protects people effectively from hatred based on who they are or what they believe, and which does not impede legitimate freedom of speech.

16:15

**Ruth Maguire (Cunninghame South) (SNP):** While doing everything that we can to ensure that Scotland is a place where there is zero tolerance of hate crime, we must strike the right balance in respecting, protecting and upholding all rights, including the right to free speech. That is not an easy or simple task, but the bill provides us with the opportunity to do that by consolidating, modernising and extending hate crime legislation in Scotland.

Given the complex problems and contentious issues and challenges, it is helpful to start with principles and areas of agreement. I do not think that any member would disagree with the statement that hate crime is a blight on our society that requires a criminal justice response. Crimes that are driven by hatred and prejudice have deep social consequences, causing physical and psychological damage not just to the victim of the crime but to the group to which the victim belongs and to our wider community as a whole.

For example, when disabled people do not feel that they can go out at all, or when they avoid

places such as town centres, leisure facilities or public transport, that seriously impacts on their physical and mental health and wellbeing and, in turn, on our wider community, as their talents and contributions are missed.

I agree that freedom of expression is a cornerstone of democracy and that we should not be complacent about its protection. Freedom of expression is protected by article 10 of the ECHR. As John Finnie said, that freedom

“carries with it duties and responsibilities”,

and it can legitimately

“be subject to ... conditions, restrictions or penalties ... in the interests of”,

among other things, public safety and the prevention of disorder or crime.

A number of my constituents have raised concerns about freedom of expression, particularly in relation to their faith. I understand their anxiety, as there are those who consider themselves to be progressive and inclusive yet who appear to be entirely intolerant of those with different faith and beliefs. Nevertheless, with regard to the stirring-up provisions, I agree with the Humanist Society Scotland, which says that charges for stirring up that were brought under the bill as it is currently drafted would not take into consideration intention. Consequently, behaviour that should be protected under the right to free expression could unintentionally be criminalised, which could seriously hinder important discourse about emotive subjects such as religion, race and sexual identity, halting progress and stifling free expression.

In order to progress as a country, we must have that discourse. At present, women who are campaigning to uphold their sex-based rights are routinely accused of hate and told that their words are violence. As the bill progresses, they will require reassurance that their right to organise, gather, speak and campaign will not be criminalised.

Sex-based hate is excluded from the bill. I appreciate the complexity and differing views around how best to approach misogyny from a criminal justice perspective, and I welcome the Scottish Government’s commitment to the principle of developing a stand-alone offence of misogynistic harassment. However, it would be reassuring for women if the cabinet secretary could say, in his closing speech, when the group will begin its work and who will be on it. How long will female victims need to wait for that?

**Liam Kerr:** I can assist Ruth Maguire, because I asked that very question recently. On 27 August, the cabinet secretary answered by saying:

“The priority for the Scottish Government at this time is to respond to the Covid-19 pandemic, therefore the work to establish the working group is currently paused.”—[*Written Answers*, 27 August 2020; S5W-31270.]

Does that not make my case that very important issues are being postponed, which we need to get back to dealing with here and now?

**Ruth Maguire:** I thank Liam Kerr for that intervention. I will come to that point in a moment. However, in short, no—I do not think that that does make his case.

Human rights are not a hierarchy. They can and do come into conflict, and it does no one—let alone those who are at risk or vulnerable—any favours if we try to pretend otherwise. When and where that happens, we, as parliamentarians, have a duty to do the difficult and sometimes uncomfortable work to ensure that we have legislation that protects all our citizens and upholds rights. Our parliamentary process is the place for that to happen. I do not accept that the large number of responses to the Justice Committee’s consultation is a sign that we should abandon that work. To do so would be a dereliction of duty. It is quite the opposite: the volume of interest and engagement is an indication of the importance of the bill, cross-party committee working and the bill process. All members of all parties need to put their shoulder to the wheel and do the work that we are sent here by our communities to do.

16:20

**Liz Smith (Mid Scotland and Fife) (Con):** Last year, when this Parliament marked its 20th anniversary, several political commentators focused on how well they felt that the Parliament had functioned in its short life. Generally, but by no means universally, it was a good report, but I remember one particularly interesting debate between journalists and academics about whether the institution had delivered good law.

In jurisprudence, good law is the concept that decrees that a legal decision is both valid and able to hold legal weight, and not one that has to be overturned or is rendered obsolete. Good law is the basis for effective policy making and, as such, it requires certain fundamental principles: a clarity of purpose; to be understood in simple language; to be strong in its evidence base; to be workable; and to be accepted by the public. In short, it should balance the requirement for simplicity with legal precision. Those are surely the criteria by which we should be judging the Hate Crime and Public Order (Scotland) Bill.

I ask members to cast their minds back to 2013, when the Children and Young People (Scotland) Bill was presented to Parliament. The bill was

generally popular because it was doing so many good things—for example, in relation to kinship care, by improving children’s services and in introducing a presumption against the closure of rural schools. At its core, the bill’s central principle was getting it right for every child, which was a concept with which no parliamentarian or right-thinking member of the public could possibly disagree. However, the bill, which later became an act, had one central problem: the named person policy. Whatever people think about the named person policy—whether it was right or wrong—the real problem was that it was not workable. At the time, stakeholders told us, very forcibly, that it would not be workable. Teachers, people in the health service, the Law Society of Scotland and advocates all told us that it would not work.

The legislation was passed, and, after six whole years and at great expense in civil service time and taxpayers’ money, it was proven that the named person policy was not workable. In fact, it had to be struck down by not only the people who had said that it would not be workable but—due to one legal principle—by the Supreme Court, which ruled that it was against article 8 of the ECHR. That was a very specific point that was made by the Supreme Court, which otherwise said that the proposal to have a named person was benign. However, the proposal turned out not to be workable. [*Interruption.*] I will not take an intervention, if the member does not mind.

I draw members’ attention to the comparison between the named person proposals and the Hate Crime and Public Order (Scotland) Bill. The bill will not do what it says on the tin. Despite all the good intentions, part 2 is illiberal, intrusive and deeply flawed. It is not intended to be that way, but, because of the way in which it is structured and the language that is used, it is open to misinterpretation, just as was the case with some aspects of the Children and Young People (Scotland) Bill. Just like the named person policy, the bill is deeply unpopular with the public because they can see those glaring flaws all too clearly. Just as with the named person policy, the legal responsibilities are confused and unclear. Just as with the named person policy, the Scottish Government does not appear to be listening to the legal advice, the police or the many stakeholders who feel that it will be an intrusion into privacy and personal choice as well as against free speech.

Those things all matter desperately, because, if we proceed with the bill as it is, we will be making bad law, and it is bad law that we cannot accept. That is why we, on the Conservative benches, would like the bill to be withdrawn and to start again, so that we are fully listening to what the vast majority of stakeholders are saying.

We need to have something that is not only good law but that is workable and accepted by the public. That is the key thing, and that is the message that the Scottish Government needs to take to its heart very quickly. I support the motion in the name of Liam Kerr.

16:25

**John Mason (Glasgow Shettleston) (SNP):**

Thank you for the opportunity to speak on this subject, Presiding Officer. I have been taking quite an interest in the Hate Crime and Public Order (Scotland) Bill and I have made my own submission to the Justice Committee.

From a Christian perspective, we have a lot in the Bible about God's love for us, and it says that we should reflect that by loving each other. Ultimately, that requires our hearts and attitudes to change on the inside, but I believe that we as a Parliament and as parliamentarians have a duty at least to restrain hatred in society, even if we cannot actually force anyone to love their enemy.

Loving each other does not mean that we are expected to agree with each other all the time, but God does want us to love each other, and that means that we should want the best for the other person. That certainly includes, for example, Catholics and Protestants, who believe 95 per cent of the same things as each other. They are two parts of the one Christian faith. Jesus prayed that his followers would all be one, but sadly we have not always seen that.

For me, one of the saddest aspects of modern Scotland is the continuing level of sectarian hatred, especially in Glasgow and the west of Scotland. We see a considerable level of hatred around Rangers and Celtic football matches, as well as connected to the many orange or loyalist and similar marches and the smaller number of Irish republican marches. Some of those appear to me to be attempting to stir up hatred against Catholics, the Irish and other communities.

Sectarianism is a mixture of religion, race, history, politics and culture. I am comfortable enough that the bill does not use the word "sectarianism" but deals with the characteristics of race and religion separately rather than together. However, this is a real and present-day area of hatred in our society and we need to tackle it.

I find it slightly disappointing that some Christian organisations seem to be more concerned about vague potential threats to their own rights somewhere in the future than about helping to tackle expressions of actual hatred that we are seeing in our society today.

Having said that, it seems to me that much of the bill is more about consolidating the existing law

and does not change things very much. As has been said, phrases such as "stirring up" have been in the law since at least 1986 and they do not seem to have caused a problem.

I think that having to prove intent to stir up hatred is far too high a bar, but the Law Society of Scotland has suggested a possible improvement that involves the use of words such as "significant risk", and that would seem to be a positive way forward.

I agree with the proposed abolition of the offence of blasphemy. The church and the state should be separate, in my opinion. They should each have respect for the other and they should not seek to interfere in each other's affairs.

Looking specifically at the Conservatives' motion, I struggle to see what they actually want. They say that

"hate crimes are a blight on society",

but also that

"freedom of expression ... must never be compromised".

Surely that is self-contradictory. At some time, there has to be compromise on freedom of expression. Surely they are not saying that it is acceptable for someone to stand up in our public square, state how much they hate black people, Jews, Muslims, Catholics or Gypsy Travellers and demand that those people be removed from our country, or something worse than that. That is freedom of expression taken to an extreme, and it must surely be curtailed.

Other countries have made denying the Holocaust a crime. We have not gone that far, but the point is that we have to draw a line somewhere between, on the one hand, protecting freedom of expression and, on the other, restricting expressions of hatred that go too far.

In sections 11 and 12, the bill specifically protects freedom of expression, so Patrick Harvie and I can continue to debate who should or should not have sex with whom. We can discuss and criticise each other's ideas even though we strongly disagree with each other. That is a sign of a healthy society and a healthy democracy. What we must not do is seek to have the other and their views removed from the public square.

There has to be compromise on both sides of the issue. We need to protect freedom of expression, but we need to protect our vulnerable minorities. That is what the bill tries to do and the cabinet secretary has repeatedly said that he is open to improvements and amendments, so I am left to wonder what the Conservatives actually want. How do they envisage this

"legislation that is needed to tackle hate crime in Scotland"?

I think—*[Interruption.]*

**The Deputy Presiding Officer:** Mr Mason is just closing.

**John Mason:** I do not have time to take any interventions, sorry. Is it legislation that allows anyone to say anything? We need to hear more detail of what they actually want.

I believe that we have to tackle some of the extreme hatred that we see in our society today and that we also need to protect freedom of expression. The bill makes a fair attempt to get the balance right; therefore, I am more than happy to see it progress, because its removal would send a signal that hatred is acceptable in modern society.

16:30

**Adam Tomkins (Glasgow) (Con):** We are well under way in this Parliament with stage 1 scrutiny of an important piece of legislation that seeks to both protect and limit free speech. That legislation is the Defamation and Malicious Publication (Scotland) Bill, which poses a question that it is not at all easy to get right: to what extent should we protect the freedom to speak in such a way as damages another's reputation?

Freedom of expression is a monumentally important value, but it is not the only one that we need to hold dear and cherish. The right to privacy is likewise core to our sense of human dignity. The law of defamation deals with one aspect of what happens when those two fundamental values clash. Where does my right to free speech end and where does your right to protect your reputation begin?

I have not long been a member of the Parliament's Justice Committee, but since I became its convener last month, I have been hugely impressed—if I can say this without embarrassing them—with the way in which the committee members have been going about their job of scrutinising the Defamation and Malicious Publication (Scotland) Bill. Their questioning of witnesses has been forensic, diligent, informed and has been designed throughout to shine light on the issues that the bill raises, rather than to generate heat about them.

I say all that for reasons that I hope are obvious. As with the Defamation and Malicious Publication (Scotland) Bill, the Hate Crime and Public Order (Scotland) Bill raises extremely sensitive questions about where and how the Parliament wants to set the limits on freedom of expression.

The Justice Committee will commence its stage 1 scrutiny of the Hate Crime and Public Order (Scotland) Bill after the October recess, once we have completed our work on the defamation bill. I hope that the committee and indeed the whole

Parliament will consider and debate the issues of free speech in that bill in exactly the same spirit as we are doing with the defamation bill. Let us be forensic, diligent and informed and try to shine light on the issues rather than simply turn up political heat. I will certainly take that approach on the Hate Crime and Public Order (Scotland) Bill.

I want to make two further points. The first is a general one about how we should legislate on rights. Rights should be broadly and generously construed and limitations on the exercise of our rights should be narrowly and tightly construed. The burden of the argument always rests on those who wish to curtail rights and the test is one of necessity.

Unless and until it can be shown that it is necessary to restrict our fundamental liberties, that restriction should not be enacted. The Human Rights Act 1998 and the European convention on human rights demand that approach, and that is the one that we, as responsible lawmakers, should take to the Hate Crime and Public Order (Scotland) Bill.

That leads me to my final point. If we fail to adopt that approach of putting rights first and insisting that any curtailment of our rights is as narrowly confined as possible, we will find that our legislation on hate crimes suffers the same fate as the previous Parliament's legislation on named persons and offensive behaviour at football. The named persons law was killed off in the courts and this Parliament reversed and repealed the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012.

Let that not be the legacy that we bequeath to our successors. Should the Hate Crime and Public Order (Scotland) Bill fail to give sufficient protection to the fundamental right of freedom of expression, it will fail in the end—either being quashed in the courts or repealed by a more enlightened Parliament in the future. We can do better than that and get it right the first time.

Let us learn the lessons of named persons and offensive behaviour at football, and let us bring to the Hate Crime and Public Order (Scotland) Bill the same open-minded but clear-headed, robust and forensic scrutiny that we are already bringing to the Defamation and Malicious Publication (Scotland) Bill. That way, we can do what we have all been sent here to do—make good laws for the people of Scotland.

16:35

**Shona Robison (Dundee City East) (SNP):** As a member of the Justice Committee, I am pleased to be able to take part in this debate on the Hate Crime and Public Order (Scotland) Bill.

It is important to remember the origins of the bill: it is a response to the recommendations that were made in Lord Bracadale's "Independent Review of Hate Crime Legislation in Scotland". The Scottish Government consulted the public on Lord Bracadale's recommendations. It is worth noting that, at that point, none of the concerns that are being raised today were raised—in particular, they were not raised by Conservative members. I wonder why that is.

Furthermore, at the time of publication of the Bracadale recommendations, Liam Kerr, as the Tory justice spokesperson, welcomed the recommendations. He said:

"He makes 22 recommendations, many of which the Scottish Conservatives are pleased to endorse",

and that he agreed absolutely that

"All Scottish hate crime legislation should be consolidated."

He also said that

"many crimes currently fall into the category of hate crime and there are some overlaps—but there are also some gaps."—[*Official Report*, 7 June 2018; c 63.]

We have gone from a position of fairly broad consensus to where we are in this debate, and that puzzles me, somewhat. The Conservatives are, in effect, calling for the scrapping of the bill, which is a very great a pity.

**Oliver Mundell (Dumfriesshire) (Con):** The fact that Shona Robison is puzzled should point to the fact that a problem has occurred with the bill. We supported the principles, but something has gone badly wrong in how the matter has been taken forward.

**Shona Robison:** I do not agree with that. If Conservative members had concerns, they should have been expressed at the beginning of the process. They seem to have suddenly developed concerns. I wonder whether that is not more of a reaction to some of the publicity around the bill, and whether it has seemed somewhat convenient to jump on that bandwagon.

Having said that, I say in a spirit of consensus—there has been a large degree of consensus in the debate—that there are problems with the bill. No one is saying otherwise, and it has been acknowledged not least by the Scottish Government. It has engaged extensively with more than 45 organisations, and it has said that it will pay close attention to the responses to the Justice Committee's call for evidence.

That is how legislation has always been dealt with in the Parliament. There is nothing new or different about the bill. Many bills have gone through a process of quite extensive revision. That is what we are here to do, is it not? That is what the Justice Committee is here to do.

The Scottish Government has said that it will reflect on whether changes to the bill are required and that it wants to

"seek common ground and compromise"

to ensure that effective legislation can be agreed that protects those who are affected by hate crime. Given that, why would it be necessary to remove the bill? Are we not able to do that work collectively and make the bill one that we can all agree with? I think that we should do that, because there is enough collective expertise in the Parliament to do it.

**Liam McArthur:** I agree with the sentiments that Shona Robison has laid out. Does she agree that it would be helpful for the committee if those changes were laid out before we embark on oral evidence at stage 1, so that we can test the proposals to destruction, along with what is already in the bill?

**Shona Robison:** I think that the Cabinet Secretary for Justice has said all along that he is very prepared to engage with the committee at all the bill's stages. It is in no one's interests not to try to build consensus on the bill. However, we must remember that at the heart of the matter is a debate about hate crime. The cabinet secretary reminded us that hate crime is on the rise and that there is an expectation outside Parliament that we do something about that. That is the responsibility that we carry and we need to remind ourselves, when we get into some of the technical detail of the bill, that what lies behind it is people suffering from hate crime day in and day out, here in Scotland.

What should we do, going forward? We should do what happens with any piece of legislation in this Parliament. Our job as legislators and parliamentarians is to get on with scrutinising the detail and to listen to all sides of the debate—not just to the voices that happen to be louder than others. We need to listen to all the voices in the debate—not least, those of people who are at the receiving end of hate crime, here in Scotland.

I end with the comment that was made by Kate Wallace of Victim Support Scotland, who said:

"If this bill is scrapped and is not allowed to proceed through Parliament, it may be years before victims of hate crime have another chance to be given the protection that they deserve."

We cannot allow that to happen. That would be us failing in our duty as legislators and parliamentarians. Therefore, I speak in favour of Humza Yousaf's amendment.

16:41

**Johann Lamont (Glasgow) (Lab):** I welcome the opportunity to contribute to the debate. The bill

is clearly contentious, and we should acknowledge that serious people have looked at it and have serious concerns. I am pleased that the cabinet secretary resisted the temptation to focus simply on parliamentary concerns and to suggest that those are motivated entirely by party-political considerations—perhaps Shona Robison did not get the memo. It is important that he did not go to the comfort zone of supporting the bill by saying that people who are raising concerns should be delegitimised. The reality is that the concerns go way beyond Parliament and are not so easily dismissed.

I urge the cabinet secretary to resist the people who are framing the debate on the bill as a false binary by saying that people who oppose the bill oppose equality and support hate crime. If the bill falls, it would not be beyond the wit of Parliament to produce another piece of legislation that would address the concerns of Victim Support Scotland. To create that false binary closes down the debate on some very significant issues and insults many people who are committed to a fairer society, but are concerned about the unintended consequences that might well result from the bill.

I trust that the Scottish Government will, during scrutiny of the bill, allow its back benchers to follow the evidence and to recognise that the role of the Opposition is to be challenging. There is no shame in getting a proposal wrong, but there is shame in digging in when problems are highlighted, as we saw so clearly in the past, with the way in which the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 was dealt with.

In this Parliament, we have a long history of passing legislation to “send a message” or “give a signal”. That is not good enough. We should recognise the damage that is done if rights appear to exist but are not enforceable. Legislation might be one part of changing lives, but a bill on its own will never be a substitute for education and investment in community organisations and support that can challenge attitudes, create community safety and allow people to live free from fear, while supporting people to have their voices heard. Sadly, many of the organisations at local level that support the victims of hate crime are disappearing. I ask the cabinet secretary to consider the budget choices that have led to that problem.

I note the argument about the exclusion of misogyny from the bill. As someone observed, if it was in the bill the courts would be overrun. However, that quip is underpinned by a fundamental truth: here and across the world, women continue to experience violence and the denial of their rights to education, employment and far more. We would be deluding ourselves if we

were to believe that a working group or an amendment to the bill at stage 2 will address the continuing inequality that women face in all aspects of their lives.

The concerns around the bill about stirring up hatred are in the real world and in real time. I shall give one example. Women MSPs from across the parties gathered in Parliament to host meetings to discuss the implication for women’s sex-based rights—as enshrined in the Equality Act 2010—of proposals to reform the Gender Recognition Act 2004. I was proud to be involved in that. Those meetings were conducted inclusively and with the greatest civility, thoughtfulness and respect.

Yet, Patrick Harvie still felt free to denounce the women who were involved, as creating a situation in which the Scottish Parliament was

“used as a platform for transphobic hatred and bigotry”.

Being lectured by a man is not unusual for a woman of my age, but in those circumstances a fellow MSP sat as judge and jury on our actions. I presume that his perception of our actions would, under the bill, be sufficient for their investigation—and people wonder why the stirring up hatred provisions create anxiety, and why women feel silenced in the face of potential court action. It is not good enough to say that those women would be able to make their case in court.

**Patrick Harvie:** I fear that Johann Lamont has listened to the people who lodged spurious complaints accusing me of inciting violence against lesbians, when I made that speech at the Pride Edinburgh event. There are absurd arguments on both sides of the debate. Let us dismiss all of them and listen only to those who bring sensible arguments to bear, not those who make such spurious allegations.

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

**Johann Lamont:** It was not just a spurious allegation to be accused of “transphobic hatred and bigotry”. If this bill was an act, I might have been facing a charge in that regard.

The fact is that the matter is not so simple. When does legitimate debate, disagreement and robust exchange of views become hatred? It cannot be sufficient to assume that there is a commonsense view that is self-evident. The law must be precise, if we are not to see the very engine of change—the ability to debate and argue—being silenced.

Yes—the bill has problems. There are huge things that need to be addressed. The main message that we should understand is that addressing hate crime in our community is about far more than passing a bill. It is about ensuring

that support exists in our community for the people who live with such things daily.

16:46

**Sandra White (Glasgow Kelvin) (SNP):** I would not say that I am delighted to speak in this debate, but I am fortunate to speak in it. I have listened carefully to all the contributions, which have covered a fair amount. On the whole, it has been a pretty good debate. No matter what political party we belong to, I genuinely believe that we all agree that legislation needs to be brought together to reflect the kind of Scotland that we all want to live in: one that is free from hatred, bigotry, discrimination and prejudice.

Many of my fellow MSPs have quoted various agencies that have said that they are supportive of the bill. Various organisations and individuals whole-heartedly agree with the measures being proposed, such as Inclusion Scotland, which kindly prepared a briefing—I think that all members got it—laying out the stark reality for people who have been victims of hate crime. It stated:

“Hate speech is not free speech. It has consequences for people who share the characteristics subjected to it. It impacts on their health and wellbeing and their human rights, including being able to go about their daily life to participate in society safely, without fear of intimidation or harassment, in the same way as everyone else.”

I do not believe that anybody here can argue with that statement.

I do, however, have great sympathy with those individuals and groups who fear that, as it stands, the bill does not provide clarity in certain areas. I have had many constituents email and write to me to raise concerns, as I am sure that other members have. It is my duty as an MSP and my constituents’ representative to raise those concerns in the Parliament today. I will read you some of the views that they have sent me. One said:

“Although the bill is probably well intentioned, I believe in its current format it is flawed. According to this bill, one could easily be accused of stirring up hatred with absolutely no intention of doing so.”

Another said:

“I have no doubt that the legislation is well intentioned, but its attempt to criminalise the use of words that could be deemed abusive and likely to stir up hatred would have a chilling effect on free speech.”

**John Finnie:** Does the member accept that Lord Bracadale, who has put a lot of work into this, said in his report that

“extending the stirring up offences in Scotland would not infringe the article 10 right to freedom of expression”?

**Sandra White:** I take on board what John Finnie has said, and I am sure that my

constituents who are listening to the debate or who have written to me will also take what he has said on board.

I have genuine concerns about the bill. I have listened to what has been said and asked questions of various ministers. My concern is about who defines stirring up or intention. I have a lot of problems with that particular issue. I know that other members have also mentioned the fact that it would be a judge and the matter would go to court. However, nobody has said what would happen to somebody who is accused of that offence but is innocent. It is not a matter that is over in a couple of days; it can take months.

Those are my concerns, as well as those that I have read out from my constituents. I thank the cabinet secretary for listening to the concerns that have been raised by every party and by me, particularly about the intention to stir up hatred and respecting freedom of speech. It is mentioned in the Government’s amendment, which

“recognises that there are concerns about aspects of the Bill, including in relation to the stirring up of hatred offence provisions, which will benefit from further engagement with stakeholders and Parliamentary scrutiny”.

That is a pretty honest statement, and I look forward to that parliamentary scrutiny, during which issues that my constituents have raised and questions that I have asked can be put to the test in the committee and Parliament.

We are at the early stages of the proposed legislation. I believe that the Scottish Government genuinely wants to work with the other parties to find consensus to provide robust legislation that protects us against hate crime. We all need to come together to ensure that we produce legislation that is fit for purpose. There is one thing that we should not do—we should not ditch the bill.

16:51

**Graham Simpson (Central Scotland) (Con):** As a former journalist I am extremely alarmed by the bill. My view is that, as the Scottish Newspaper Society says, it

“poses a serious threat to freedom of expression.”

Parts of the bill are fine. The section removing the blasphemy offence from the statute book is sensible, but the overall direction of travel in the bill is troubling.

Let us be clear: hatred is wrong and hate crime is wrong. However, we cannot legislate for what people feel or think. We can legislate for their actions, their spoken or written words and their deeds. We cannot take away the fundamental right to express our opinions, even if it offends some people.

I believe that we should be free to say and write pretty much what we like and be dealt with by the law if we defame someone or stir up hatred. People have prejudices; it is part of being human. We like some people; we dislike others. Some people are to your liking and others are not. Sometimes, we might tell someone what we think of them. The right to insult people and to be insulted is surely something to hold on to but, under the bill, a really good insult could see someone jailed.

Under the section 3, “Offences of stirring up hatred”, the bill says:

“A person commits an offence if—

(a) the person—

(i) behaves in a threatening, abusive or insulting manner, or

(ii) communicates threatening, abusive or insulting material to another person”.

We could safely shut down the comedy sector in that case, because I am afraid there is no such thing as woke comedy and, if there was, I would not like to see it.

The bill is an attack on what people can say and what they can write. It is an attack on free speech, and that is sinister. We are in danger of heading towards an Orwellian state in which everyone has to think the same. As Murdo Fraser said, we saw that recently with the attacks on J K Rowling just for daring to express her view on gender issues. Well, good for her. That is why I believe that the bill should be scrapped and the Government should go back to the drawing board.

Humza Yousaf has achieved the extraordinary. He has managed to get lawyers, judges, the police, journalists, actors, writers and even the broadcasters of the First Minister’s daily party-political sermon, BBC Scotland, against the bill. He has produced a deeply illiberal bill, using woolly words such as “abusive”, “inflammatory” and “insulting” which, as the Media Lawyers Association points out, are open to wide and subjective interpretation.

When I worked in newspapers, everything that I wrote was, rightly, subject to legal restrictions. The Scottish Newspaper Society gives an example of how the bill could be used. The society refers to a column written about 10 years ago by Jan Moir in the *Daily Mail*, which referred to the death of Boyzone singer, Stephen Gately. The Press Complaints Commission rejected 25,000 complaints on the basis of freedom of expression. Miss Moir’s views that day were undoubtedly offensive, but they should not have resulted in her being hauled before the courts, as could be the result of the bill before us.

I agree with the Scottish Newspaper Society when it says:

“Only with absolute exemptions can legitimate journalism escape the scope of this legislation and even then there are no guarantees. Even if absolute exemptions created loopholes, we believe they would not outweigh blocking a legal route to close down controversial or unpopular opinions.”

I agree that the bill represents a clear threat to the freedom of the press. Newspapers should be free to publish without fear or favour. Columnists have to be free to offend, and editors have to be free to upset people, especially politicians, to get things wrong and to publish headlines—you would not do this now—such as *The Sun*’s “Hop Off You Frogs” in a row with the French over British lamb.

It is time to call a halt to the bill and go back to the drawing board. I support the motion in Liam Kerr’s name.

**The Deputy Presiding Officer:** Before we move on to the closing speeches, I should remind members that I said earlier that it would be necessary to move decision time, as the debate was oversubscribed. I would therefore like to take a motion without notice, under rule 11.2.4, to move decision time today to 5.30 pm.

*Motion moved,*

That, under Rule 11.2.4 of Standing Orders, Decision Time on Wednesday 9 September be taken at 5.30 pm.—  
[*Miles Briggs*]

*Motion agreed to.*

**The Deputy Presiding Officer:** Thank you. We now move to the closing speeches, starting with Willie Rennie.

16:57

**Willie Rennie (North East Fife) (LD):** The professor—Adam Tomkins—set us the test. He said that, unless and until necessity is proven, rights should not be curtailed. For most of the afternoon, we have been considering that point seriously. Actually, it has been quite an enlightening debate. It could have been divisive, but I think that it has brought the chamber together in many ways.

The issue is not really about the proposition to scrap the bill altogether, which, I suspect, was mostly for headlines. I think that there is now a consensus on amending the bill, which is a good thing.

BEMIS summed up the position well when it said that we should not be complacent and that

“Scotland is not immune to racism or prejudice.”

It should be clear that, if anybody wants to indulge in hateful speech to incite those things, they should not draw comfort from this debate. There

are no excuses in Scotland for such activity: those people should stop it, and they should know that the Parliament is united against it.

Hate is poisonous, degrading and oppressive, and it stabs at the heart of a liberal society, whereas free speech enhances it. Liam McArthur drew inspiration from Lord Justice Sedley, who said:

“free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative”—

and he was not talking about Mike Rumbles by himself. Lord Justice Sedley continued:

“Freedom only to speak inoffensively is not worth having.”

Liam McArthur summed up the issue well when he said that,

“in an attempt to make bad people nicer”,

we should not make good people criminals. That sets the context for the debate.

I must give the cabinet secretary credit, as I think that he deserves it. He has come to the chamber today accepting that his bill might not be perfect and that people have “legitimate concerns”, as he said. He is right to acknowledge that, as there have been 2,000 submissions on the bill—a humongous number of people have made submissions. If, as been said, the bill can unite the humanists with the church and comedians with the Faculty of Advocates and the Scottish Police Federation, the Parliament must sit up, pay attention and acknowledge that the bill might not be right and that we might need to seek to change it.

Humza Yousaf said that the bill represents a simple transfer to hate crime of a provision that has been in law in relation to the issue of race for some time. However, we heard that a number of organisations have deep concerns about how that transfer is happening, so we need to scrutinise that in much greater detail. Although it is right to try to consolidate all the various pieces of legislation in regards to hate, something is obviously concerning a considerable number of people.

Murdo Fraser made a good and considered speech. He contrasted proving intent with proving the likelihood to stir up hate. That contrast is another thing at the heart of this debate that we need to consider seriously. John Mason, in an intervention, highlighted that there are possible ways of dealing with the issue, and talked about using the term “significant risk” instead of the terminology in the bill, and that might be something that the committee needs to consider.

Rhoda Grant talked about the possibility that using loose or vague language might be result in the law catching more than just hate crime. Again, that was a good contribution and a point that needs to be considered. The Law Society has said that the provisions are unduly wide with regard to the consideration of new offences, potentially restrict freedom of expression and lack clarity and policy justification. Those are specific concerns that we should address. Further, Scottish PEN said that the bill represents a substantial expansion in the criminal law. Therefore, it seems that this is not a tidying-up exercise and is more a major change in the law.

The debate is about the way forward. I do not think that Liz Smith was right: the fact that we got it wrong on the named person legislation does not mean that we will get it wrong on every other law. We can get it right—we can actually use the committee process to improve bills. I do not think that, because we got it wrong on something that could be seen as being similar, we are going to get it wrong on the bill as well.

**Liz Smith:** My point was that one of the reasons why we got the named persons legislation wrong was that we did not listen to the advice that we were given at the time. I am advising that, this time, we listen properly to the advice, so that we do not make bad law.

**Willie Rennie:** I absolutely agree with that, but that does not mean that we have to scrap the whole bill. I think that we can use the committee process to improve it. I do not think that the proposal to dump the bill would be a constructive way ahead, because it would be years, not months, before we returned to the issue. The bill has been years in the making, through the Lord Bracadale process. Are we going to wait even more time in order to try to get it right?

John Mason and Sandra White gave me some inspiration, because they made suggestions about how to improve the bill. They had an open mind about changing the bill to make it better. We should take encouragement from the fact that the misogyny provisions might come forward in a standalone proposition and offence.

Our party supports changing part 2 substantially, and we want that to be done before stage 1 concludes, because such a major change to the bill would require substantial scrutiny before we go forward to the other stages. It cannot be shoehorned into stage 2. My final plea to the cabinet secretary is that he address that in his summing up.

**The Deputy Presiding Officer:** I do not want decision time to be any later than 5.30, so I ask John Finnie to keep his speech to six minutes, please.

**Patrick Harvie:** I was expecting to close for my party, Presiding Officer.

**The Deputy Presiding Officer:** Oh, sorry. That took you by surprise, Mr Finnie, didn't it? I call Patrick Harvie.

16:04

**Patrick Harvie (Glasgow) (Green):** The Conservative position today is clearly contradictory. Liam Kerr talks about the volume of submissions that have been made on the bill and says that they deserve proper scrutiny, while Douglas Ross has been quoted as saying that he wants the bill to be scrapped “once and for all”, which would not give us the opportunity to take any of the submissions seriously. Further, of course, that comes from a party leader who is notorious for having said that, if he were Prime Minister for a day, getting tough on Gypsy Travellers would be his top priority. Let us just recognise where some of these arguments are coming from.

I do not have much interest in hearing Murdo Fraser's concerns about others being silenced when, just this week, he has been questioning the funding of pro-equality organisations in Scotland—the same organisations that have campaigned for my human rights and equality, which he has consistently voted against, pretty much every time those matters have come up in the chamber. I have no more interest in hearing that argument than I do in having a debate with John Mason about whom consenting adults should or should not have sex with. That is not my business; nor is it John Mason's—and thank goodness for that.

The Labour position goes slightly too far. The Labour amendment says that “substantial revision” is necessary for the bill to be “fit for purpose”. There is scope for constructive amendments to the bill, but I contrast that with the position taken by James Kelly when he was Labour's justice spokesperson. He said that the bill was an “attack on free speech” and that it was more of a threat than a benefit to society. He also promoted absurd *Daily Mail* claims that a US religious right lobbyist was a United Nations human rights expert commenting on the bill. I am glad that today some Labour members took a different position in their speeches, including Mary Fee, whose excellent speech struck the right, nuanced approach that we should all bear in mind.

Of course, there are areas in which the bill can be improved, of which the issue of misogynistic harassment is an obvious example. For many years, as Rhoda Grant and Liam Kerr acknowledged, there has been a wide range of views about misogynistic harassment or misogyny as aggravated grounds in relation to other

offences—indeed, there are other approaches. For many years, the range of views, including those from the women's and feminist movement in Scotland, has been broad, but that has not prevented us from legislating with consensus on hate crime. If we are now moving towards a consensus, with those organisations supporting a standalone offence, I welcome that, but killing off the bill would close down the opportunity that we have to debate that.

The language in the stirring-up offence has been subject to a lot of debate—members including Liz Smith mentioned that issue. Some members suggest that the language in the stirring-up offence is new but, as my colleague John Finnie made clear, it is not new; it is decades old. If we are going to use as a model legislation that clearly works, has not been overused or misused and is ECHR compliant, I think that we are on broadly safe ground. We can look at varying how the wording is set out and at caveats that might be debated, but it is not reasonable to suggest that the wording is a radical departure from what we have already been doing for decades.

The point that came from almost every speaker and certainly from every political party was a general statement to the effect that we all take hate crime seriously and we all want to tackle and challenge it. We also need to recognise and acknowledge that that consensus is not universal. There are people who perpetrate racism, misogyny, religious hatred, homophobia and transphobia. Those phenomena are real and there are organisations that actively seek to propagate them.

It has been said that some of this is open to misinterpretation; perhaps it is, but perhaps some of that is wilful misinterpretation. In relation to Johann Lamont's comments, if we are concerned with freedom of speech and someone—who has already been excluded from social media platforms for hateful conduct—is called out for transphobia, both parties have exercised their freedom of speech. As others have said, freedom of speech is a democratic cornerstone, but is it absolute? No—it never has been. In any case, article 10 of the ECHR protections will still be there. I do not expect this to happen, but if we pass the bill—or something like it—and it is found in future to breach the ECHR, it can be struck down, because this Parliament has the protection, which Westminster does not, that we cannot pass legislation that is unlawful. I hope that we would not have a Government that sought to introduce legislation that was unlawful, even if in only a specific and limited way. I remind colleagues that it is the UK Government—not the Scottish Government or the Scottish Parliament—that, in the past week, has been subject to a level 2 alert on press freedom.

This has been a long story, from pre-devolution legislation to the sectarianism work in session 1; the working group on hate crime in session 2; my bill on aggravated offences in session 3; the Offensive Behaviour at Football and Threatening Communication (Scotland) Act 2012 in session 4, which was rushed and not subject to consultation and which left a cluttered and fragmented landscape even more cluttered and fragmented; and, finally, the Bracadale review in session 5, which did the consolidation work that is now more than a decade overdue. It is important that we take forward that scrutiny.

The bill is overdue already. Douglas Ross might want to kill it off for shallow, partisan reasons, but we should not. I support the amendment in my colleague John Finnie's name.

17:10

**Alex Rowley (Mid Scotland and Fife) (Lab):** Despite the difficulties with the bill, the debate has been fairly positive. There is consensus in the chamber that our country is no place for hate, and we should work towards being an inclusive and welcoming nation to all races, religions, genders, sexualities and abilities. Prejudice has no place in 21st century Scotland, and we all need to work together to play our part and to educate current and future generations on why it is wrong to discriminate. The Labour Party has always been at the forefront of making our country a more equal place, and we will continue to support measures that highlight inequality and tackle discrimination in all forms.

However, although we are in agreement that there is no place for hate in society, the bill in its current form is not fit for purpose. We welcome the commitment to consolidate hate crime offences but, in our view, part 2 of the bill will require substantial revision before being acceptable. I hope that the Government and the cabinet secretary will take on board the many concerns, some of which I will highlight.

We support the principle of the bill, but we urge the Government to get back to the table and involve all the stakeholders that have raised concerns, in order to fix the many problems that have come to light during the passage of the bill so far.

Although we want the bill to deal robustly with legitimate hate crime, it must protect the right to free speech that we enjoy; that has been highlighted by a considerable number of members and in the submissions received following the call for views on the bill.

In broader terms, it is useful to consolidate our legislation on hate crime. As the Equality Network,

LGBT Youth Scotland and Stonewall Scotland pointed out:

"It is currently inconsistent, with less protection for some groups of people who face hate crime than others, and in places, the language and definitions are outdated."

Bringing together the various offences and updating the language into a modern working piece of legislation must be welcomed. The bill should not have become so controversial and, had the Government listened to the many stakeholders who expressed deep concerns, we might not be in the position that we are in today.

The problematic areas in the bill are casting a shadow over the good elements that it contains and that, in turn, is creating confusion around the commitment to tackle hate crime, with which I am sure we all agree. For example, the Law Society of Scotland has raised concerns about the new offences that the bill will create. It stated:

"These provisions seem unduly wide without any specification provided as to the actual type of offending conduct that is intended to be criminalised. Criminal law must have certainty about the offending conduct it prohibits and intends to sanction by way of penalties. That is because the effect of a criminal conviction regarding any individual's life such as career and plans to travel may be significant."

The Scottish Police Federation said:

"We are concerned the Bill seeks to criminalise the mere likelihood of 'stirring up hatred' by creating an offence of threatening, abusive or insulting behaviour, such offence to include both speech and conduct. This complicates the law and is in our opinion, too vague to be implemented."

The National Secular Society has simply called the new law on stirring up hatred "unnecessary." I urge the Government to listen to all the views that are being expressed on the bill and to be open to making amendments so that the legislation can be considered fit for purpose and achieve support across the country. The useful parts of the bill that have support from most organisations should not be lost as a result of the poorly worded and poorly conceived elements.

I hope that the bill, once amended, can achieve the support that a bill on tackling hate crime deserves. However, that will not happen unless the Government makes considerable changes and helps to alleviate the genuine concerns that are being raised. I also pick up on a point that Liam McArthur made, and ask the cabinet secretary to consider when he will propose the changes so that the committee can consider them.

I close by quoting from the Equality Network briefing, which I think sums up the position fittingly. It states:

"Now is the time for MSPs of all parties, who agree that hate crime needs to be addressed, to use the process of debating and amending this bill, so that we end up with an act that deals with the blight of hate crime while preserving

our freedom of speech. Freedom, and protection from hate crime, are not opposites; they can and should go hand in hand.”

With the spirit that is in the chamber today, I hope that that is what we can achieve.

17:16

**Humza Yousaf:** When I learned that Opposition business today would be on hate crime, I was afraid that there would be more heat than light, and I am pleased that those fears were unfounded. It has been a very good and illuminating debate, during which we have discussed some very lofty principles of legal jurisprudence—inspired by Liz Smith—and some very important philosophical principles, raised by a number of members across the chamber. That is right during such debates.

My other concern when I heard that the debate would be on hate crime was that there would be a lot of division. Again, I am pleased to say that those fears were unfounded; there has been a huge degree of consensus. Members can challenge me if they think that I am wrong, but there are some areas on which I feel that there is consensus. One of those is that, by and large, we agree with the need for hate crime legislation to protect those who are often the target of hate. Therefore, we agree generally with the principles of the bill.

We all agree that challenges and concerns have been expressed about the bill, most of which focus on the stirring-up offences; however, that is not exclusively the case, therefore there is an onus on the Government to express and articulate what it can do to try to mitigate some of those fears. Although there may not be unanimity, I think that there is general consensus that the Government should come forward and articulate the areas on which it is prepared to compromise, and that it should do so before the committee takes oral evidence. I am happy to give that commitment.

Again, there is general consensus—but not unanimity, because the Conservatives are not quite in this space—that we should absolutely not withdraw the bill and that ultimately we have faith in ourselves as parliamentarians and legislators to work through those difficult challenges and stakeholder contributions, and to come out at the end of that with a bill that will protect both the cornerstone of democracy that is freedom of speech and people’s right not to be the target of hatred. The two are not mutually exclusive.

**Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP):** The cabinet secretary touched on a point that I was going to touch on, which was to point out—as he will be aware from his time as Minister for Transport and the Islands—how important

religion is to many of my constituents. Can he give an assurance that the bill, in its final form, can and will protect people from hatred and also protect their rights to hold and express differing religious views?

**Humza Yousaf:** I can give a categorical assurance. Alasdair Allan is right. The last time that I was in his constituency, he and I travelled to the first mosque to be built on a Scottish island. I know the importance of the many religions that are practised on our islands. I am a person of faith.

Nobody should be criminalised for their religious beliefs. That is why the tests for the stirring-up offences in the bill are very high. The behaviour or communication must be threatening or abusive. That does not apply to the racial stirring-up offence, which has been around since 1986, but it applies to the other offences that we intend to create. The behaviour must be threatening or abusive and must have the intention or likelihood of stirring up hatred.

That brings me to the idea of likelihood. A number of members have raised concerns about the “likely” threshold. Stakeholders, too, have raised concerns about that. It is not unique in the United Kingdom. Although Liam McArthur suggested that it is not used in the UK at all, the threshold is used in Northern Ireland, where, if my memory serves, there are stirring-up offences in connection with race, religion, sexual orientation and disability.

I recognise that there are concerns about the threshold for “stirring up”. John Mason pointed out that it can be challenging for a court to prove someone’s intent. I give a clear indication: I will reflect on that area and see whether I can provide some assurances.

**Liam Kerr:** Will the cabinet secretary give any timescale for that? Liam McArthur made the point that the sooner we have that movement, the better that will be and the happier members will be.

**Humza Yousaf:** I am working on that at pace. I have had a number of discussions with stakeholders. I will do that as soon as I can and before the committee takes oral evidence. I promise the member that I will do that.

It is also important to give some assurance regarding the points made by Ruth Maguire, Johann Lamont and others about the issues raised by a potential sex aggravator. We use the term “sex aggravator” because that aligns with the Equality Act 2010. There were strong representations from national women’s organisations, for which I have great respect, and from some local feminist organisations and groups that work with women. They held the view that the best way to address the issue of misogynistic harassment was not through an aggravator or a

summing-up offence but through a standalone offence.

I say to Johann Lamont and Ruth Maguire that simply to express a view that some people may find offensive or insulting would not meet the threshold for prosecution. To meet the test for a stirring-up offence, behaviour would have to be threatening or abusive and would also have to have the intent or likelihood to stir up hatred. The behaviour would have to meet both those tests. All of us have engaged in robust debate during our time in Parliament. Most of us would recognise whether our behaviour was threatening or abusive, or if it had the intent or likelihood of stirring up hatred. I give Johann Lamont and Ruth Maguire, and the others who have raised that point, a clear assurance that I will reflect further on that issue.

I am almost out of time. We have had an excellent debate. I say to the Conservatives that it is barely three months since we stood here, united, and rededicated ourselves against racism and prejudice. It is important that we do not withdraw the bill. I believe in our ability to scrutinise the bill, to amend it where necessary and to bring forward a piece of legislation that will protect freedom of speech and also protect those who are often the targets of hatred.

17:24

**Donald Cameron (Highlands and Islands) (Con):** I refer members to my entry in the register of members' interests, which notes that I am a member of the Faculty of Advocates.

The phrase "freedom of expression" is used the world over. Like many well-worn phrases, it perhaps suffers from overuse, with its meaning sometimes being lost. Freedom of expression is something that we all support but do not often debate. What does it mean? I would say this, but in my view the best exposition is a legal one and is found in article 10 of the European convention on human rights, which says this:

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

It is not an unlimited right—Patrick Harvie was right to say that—because, like many fundamental rights, it is qualified and there are circumstances in which the state can impose restrictions. In short, there is a balance to be struck between allowing free expression and constraining it at certain moments. However, the right's purity as both a guiding principle in any democracy and an essential liberty that we all enjoy is paramount. It is a human right in the original, basic sense of those words and a fundamental freedom to be cherished by every human being. Given that, we

have to be cautious and careful about legislating in that area, as it is difficult territory.

In recent years, there have been a number of public protests in Scotland that illustrate those difficulties, whereby the conduct of protesters might have been abusive or threatening and intended or likely to stir up hatred. For example, we have seen banners at the border saying "ENGLAND get out of Scotland" and banners at independence marches saying "Tory Scum Out". The former example could, arguably, be caught by the bill, given that it is related to race. However, the latter example would not be caught because, as I would be the first to accept, the bill does not seek to criminalise conduct by reference to political opinion. I, for one, would defend to my dying day the right of those people to carry that banner without threat of criminal sanction, notwithstanding the offensive message that it contains to someone of my political persuasion. However, they are examples that reveal not just the importance of freedom of expression but the complexities of the legislation when it is applied to real life. The problems of enforcement that they would bring make it clear that we are sailing close to the wind here.

The strength of feeling about the bill is palpable, and we have heard criticisms of it from many. The free to disagree campaign has conducted opinion polling on the bill and says that over two thirds of Scots agreed that, for a criminal offence to be committed, there must be a proven intention to stir up hatred, which is a point that I will return to shortly. As others have noticed, there are widespread concerns among many in civic society about the impact of the bill. The Faculty of Advocates, a body whose detailed response on the bill I commend—I note that John Finnie quoted from it—has warned that the bill will restrict freedom of expression and might cause the invasion of privacy and domestic life. The Scottish Police Federation has said that the bill could affect the legitimacy of the police in the eyes of the public. That is a stark comment. Those are not anxieties from the fringe and they are not minor worries; they are serious, legitimate, credible concerns posed by many in society.

As others have said, there are some parts of the bill that are not objectionable. The bill attempts to consolidate the plethora of hate crime offences into one act and seeks to abolish the common law of blasphemy, which are sensible measures. However, the issues in part 2 of the bill are many and, in our view, are fatal to the bill's prospects. They fail the test of being simple and clear; they are, instead, vague and confusing.

Forgive me for veering into some of the more technical legal issues, the first of which is that the offence can be committed by intention but also if it

is likely that hatred can be stirred up. In other words, it is an offence that can be committed without the requisite mens rea: the mental element that the criminal law usually requires. That is not terminal, because Scots criminal law contains several offences that have no mental element. However, given the absence of the statutory defence that the 1986 act contains, it is a concerning omission. Both Willie Rennie and Murdo Fraser made that point, and I note the cabinet secretary's commitment in that regard. *[Interruption.]* I am sorry, but I am already limited in my time.

Secondly, there is the fact that stirring up hatred in terms of race includes the word "insulting" but stirring up hatred in terms of other characteristics does not include it. The bill must be consistent; that is one of the Bracadale review recommendations that, I regret, the Government has ignored.

Thirdly, the reasonableness defence reverses the burden of proof, which is a significant step in terms of the criminal law because the onus is placed, albeit partially, on the accused to prove that they acted reasonably. As others have said, that is inappropriate.

Fourthly, the references to freedom of expression in sections 11 and 12 are insufficient. Why are only two protected characteristics—sexual orientation and religion—singled out? Why does the Faculty of Advocates say:

"The current wording does not appear to afford any significant protection"?

There were many good speeches in the debate, including those of Rhoda Grant, Johann Lamont, Liam McArthur and Ruth Maguire, to name but a few.

I take entirely at face value the Scottish Government's motivation behind the bill. I have read carefully what the Cabinet Secretary for Justice has said and written about his own experiences, and I acknowledge that, above and beyond his personal experiences, he rightly sees hate crime as a blight that exists across wider society—as do we all.

Willie Rennie said that hate is poisonous and that hate crime is pernicious and intolerable and causes deep harm to its victims and the wider communities that are indirectly affected.

I have never doubted the sincerity with which Humza Yousaf has pursued the issue, and I have never questioned his commitment to wanting to eradicate hate crime from Scotland. It is in that spirit that members on the Conservative benches make the appeal for the Scottish Government to reconsider at this stage, before we enter the mechanics of parliamentary process, which, as

Liam Kerr pointed out, might be rushed and affected by a number of external factors. It might simply be that the time left before dissolution is inadequate.

We appeal to the cabinet secretary to pause, draw breath and pull back from the brink, because, as drafted, the bill goes too far. It is, undoubtedly, an attack on free speech. The bill is too broken to fix. Public confidence in it is critical, and a damaging narrative has built up around it that, sadly, has obscured the good intentions behind it. Ultimately, the bill has lost the confidence of the public, which is why we must start again.

## Fisheries Bill

17:31

**The Presiding Officer (Ken Macintosh):** The next item of business is consideration of legislative consent motion S5M-22670, on the Fisheries Bill, which is United Kingdom legislation.

*Motion moved,*

That the Parliament agrees that the relevant provisions of the Fisheries Bill 2020 introduced in the House of Lords on 29 January 2020 relating to provisions on fishing, aquaculture and marine conservation and connected purposes so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.—[*Fergus Ewing*]

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

## Business Motions

17:31

**The Presiding Officer (Ken Macintosh):** The next item of business is consideration of business motion S5M-22655, in the name of Graeme Dey, on behalf of the Parliamentary Bureau, setting out a business motion.

*Motion moved,*

That the Parliament agrees—

(a) the following programme of business—

Tuesday 15 September 2020

2.00 pm Time for Reflection

*followed by* Parliamentary Bureau Motions

*followed by* Topical Questions

*followed by* Scottish Government Debate: Migration and Care Workers

*followed by* Committee Announcements

*followed by* Business Motions

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business

Wednesday 16 September 2020

2.00 pm Parliamentary Bureau Motions

2.00 pm Portfolio Questions:  
Justice and the Law Officers;  
Constitution, Europe and External Affairs

*followed by* Scottish Labour Party Business

*followed by* Business Motions

*followed by* Parliamentary Bureau Motions

*followed by* Approval of SSIs (if required)

5.10 pm Decision Time

*followed by* Members' Business

Thursday 17 September 2020

12.20 pm Parliamentary Bureau Motions

12.20 pm First Minister's Questions

2.30 pm Parliamentary Bureau Motions

2.30 pm Scottish Parliamentary Corporate Body  
Questions

*followed by* Portfolio Questions:  
Economy, Fair Work and Culture

*followed by* Scottish Government Debate:  
Employment Support

*followed by* Business Motions

*followed by* Parliamentary Bureau Motions

5.05 pm Decision Time

Tuesday 22 September 2020

2.00 pm Time for Reflection

*followed by* Parliamentary Bureau Motions  
*followed by* Topical Questions  
*followed by* Standards, Procedures and Public Appointments Committee Debate: Complaints Against MSPs – Amendment of the Scottish Parliamentary Standards Commissioner Act 2002  
*followed by* Scottish Government Business  
*followed by* Committee Announcements  
*followed by* Business Motions  
*followed by* Parliamentary Bureau Motions  
 5.00 pm Decision Time  
*followed by* Members' Business

Wednesday 23 September 2020

2.00 pm Parliamentary Bureau Motions  
 2.00 pm Portfolio Questions: Education and Skills; Health and Sport  
*followed by* Scottish Government Business  
*followed by* Business Motions  
*followed by* Parliamentary Bureau Motions  
*followed by* Approval of SSIs (if required)  
 5.10 pm Decision Time  
*followed by* Members' Business

Thursday 24 September 2020

12.20 pm Parliamentary Bureau Motions  
 12.20 pm First Minister's Questions  
 2.30 pm Parliamentary Bureau Motions  
 2.30 pm Portfolio Questions: Communities and Local Government  
*followed by* Stage 1 Debate: Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill  
*followed by* Business Motions  
*followed by* Parliamentary Bureau Motions  
 5.05 pm Decision Time

(b) that, for the purposes of Portfolio Questions in the week beginning 14 September 2020, in rule 13.7.3, after the word "except" the words "to the extent to which the Presiding Officer considers that the questions are on the same or similar subject matter or" are inserted.—[*Graeme Dey*]

*Motion agreed to.*

**The Presiding Officer:** The next item is consideration of business motion S5M-22656, in the name of Graeme Dey, on behalf of the Parliamentary Bureau, on a stage 1 timetable for a bill.

*Motion moved,*

That the Parliament agrees that consideration of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill at stage 1 be completed by 23 December 2020.—[*Graeme Dey*]

*Motion agreed to.*

## Parliamentary Bureau Motions

17:32

**The Presiding Officer (Ken Macintosh):** The next item of business is consideration of nine Parliamentary Bureau motions. I ask Graeme Dey to move, on behalf of the Parliamentary Bureau, motion S5M-22657, on designation of a lead committee, and motions S5M-22658 to S5M-22661 and S5M-22663 to S5M-22666, on approval of Scottish statutory instruments.

*Motions moved,*

That the Parliament agrees that the Equalities and Human Rights Committee be designated as the lead committee in consideration of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill at stage 1.

That the Parliament agrees that the Abertay University and Robert Gordon University (Change of Names) (Miscellaneous Amendments) (Scotland) Order 2020 [draft] be approved.

That the Parliament agrees that the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2020 [draft] be approved.

That the Parliament agrees that the Scottish Parliament (Disqualification) Order 2020 [draft] be approved.

That the Parliament agrees that the Greenhouse Gas Emissions Trading Scheme Order 2020 [draft] be approved.

That the Parliament agrees that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 11) Regulations 2020 (SSI 2020/241) be approved.

That the Parliament agrees that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 12) Regulations 2020 (SSI 2020/251) be approved.

That the Parliament agrees that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 9) Regulations 2020 (SSI 2020/242) be approved.

That the Parliament agrees that the Representation of the People (Electoral Registers Publication Date) (Coronavirus) (Scotland) Regulations 2020 [draft] be approved.—[*Graeme Dey*]

**The Presiding Officer:** The questions on the motions will be put at decision time.

## Decision Time

17:33

**The Presiding Officer (Ken Macintosh):** Before calling the votes on today's business, I will call the outstanding votes from yesterday, Tuesday 8 September.

The first question is, that amendment S5M-22635.2, in the name of Alison Johnstone, which seeks to amend motion S5M-22635, in the name of Jeane Freeman, on Baroness Cumberlege's report, be agreed to.

*Amendment agreed to.*

**The Presiding Officer:** The second question is, that motion S5M-22635, in the name of Jeane Freeman, as amended, on Baroness Cumberlege's report, be agreed to.

*Motion, as amended, agreed to,*

That the Parliament welcomes the recommendations made by Baroness Cumberlege in her report on the independent medicines and medical devices safety review; notes the review's assertion that there is a 'widespread and wholly unacceptable labelling of so many symptoms as 'normal' and attributable to 'women's problems'; acknowledges that the review's findings highlight the repeated dismissal of women's pain and discomfort; is concerned by the failure to obtain informed consent from many of the women affected by Primodos, sodium valproate and transvaginal mesh; agrees that, without the campaigning of these women and their families, many of the issues cited in the review would not have come to light; acknowledges the Scottish Government's apology to women and families affected by Primodos, sodium valproate and transvaginal mesh; welcomes the Scottish Government's commitment to establish a Patient Safety Commissioner; notes the actions taken by the Scottish Government to offer improved services for women who have suffered complications as a result of transvaginal mesh, and believes that this must include the early prospect of full transvaginal mesh removal surgery being undertaken by surgeons who enjoy the full confidence of the women affected, fully funded by the NHS.

**The Presiding Officer:** Turning to today's business, I remind members that, if the amendment in the name of Humza Yousaf is agreed to, the amendments in the names of Rhoda Grant and Liam McArthur will fall.

The question is, that amendment S5M-22636.4, in the name of Humza Yousaf, which seeks to amend motion S5M-22636, in the name of Liam Kerr, on the Hate Crime and Public Order (Scotland) Bill, be agreed to. Are we agreed?

**Members:** No.

**The Presiding Officer:** There will be a division.

We will have a short technical break to ensure that all members, both in the chamber and in remote settings, have the voting app open and are ready to vote.

17:34

*Meeting suspended.*

17:45

*On resuming—*

**The Presiding Officer:** I remind members that the question is, that amendment S5M-22636.4, in the name of Humza Yousaf, be agreed to. Members may now cast their votes.

This will be a one-minute division. Following the division, there will be a big pause to allow any member who thinks that their vote has not been registered to make that point known to me.

The vote is now closed. I encourage any member in the chamber who believes that their vote was not registered to let me know now by making a point of order. Similarly, I encourage any member who is participating online who believes that their vote has not been recorded to make their views known in the chat room. I will get that message and ask them to make a point of order.

I have allowed as much time as possible to allow all members, online and in the chamber, to make it clear if they think that they have not registered their vote.

**For**

Adam, George (Paisley) (SNP)  
 Adamson, Clare (Motherwell and Wishaw) (SNP)  
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)  
 Arthur, Tom (Renfrewshire South) (SNP)  
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
 Campbell, Aileen (Clydesdale) (SNP)  
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
 Constance, Angela (Almond Valley) (SNP)  
 Crawford, Bruce (Stirling) (SNP)  
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)  
 Denham, Ash (Edinburgh Eastern) (SNP)  
 Dey, Graeme (Angus South) (SNP)  
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)  
 Dornan, James (Glasgow Cathcart) (SNP)  
 Ewing, Annabelle (Cowdenbeath) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)  
 Gougeon, Mairi (Angus North and Mearns) (SNP)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Harper, Emma (South Scotland) (SNP)  
 Haughey, Clare (Rutherglen) (SNP)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (SNP)  
 Lyle, Richard (Uddingston and Bellshill) (SNP)  
 MacDonald, Angus (Falkirk East) (SNP)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)  
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)  
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)

Maguire, Ruth (Cunninghame South) (SNP)  
 Martin, Gillian (Aberdeenshire East) (SNP)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McKee, Ivan (Glasgow Provan) (SNP)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McMillan, Stuart (Greenock and Inverclyde) (SNP)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Paterson, Gil (Clydebank and Milngavie) (SNP)  
 Robison, Shona (Dundee City East) (SNP)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Somerville, Shirley-Anne (Dunfermline) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Stewart, Kevin (Aberdeen Central) (SNP)  
 Swinney, John (Perthshire North) (SNP)  
 Todd, Maree (Highlands and Islands) (SNP)  
 Torrance, David (Kirkcaldy) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Yousaf, Humza (Glasgow Pollok) (SNP)

**Against**

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Balfour, Jeremy (Lothian) (Con)  
 Ballantyne, Michelle (South Scotland) (Con)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Bowman, Bill (North East Scotland) (Con)  
 Boyack, Sarah (Lothian) (Lab)  
 Briggs, Miles (Lothian) (Con)  
 Burnett, Alexander (Aberdeenshire West) (Con)  
 Cameron, Donald (Highlands and Islands) (Con)  
 Carlaw, Jackson (Eastwood) (Con)  
 Carson, Finlay (Galloway and West Dumfries) (Con)  
 Chapman, Peter (North East Scotland) (Con)  
 Cole-Hamilton, Alex (Edinburgh Western) (LD)  
 Corry, Maurice (West Scotland) (Con)  
 Davidson, Ruth (Edinburgh Central) (Con)  
 Fee, Mary (West Scotland) (Lab)  
 Findlay, Neil (Lothian) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Golden, Maurice (West Scotland) (Con)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Greene, Jamie (West Scotland) (Con)  
 Halcro Johnston, Jamie (Highlands and Islands) (Con)  
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)  
 Harris, Alison (Central Scotland) (Con)  
 Johnson, Daniel (Edinburgh Southern) (Lab)  
 Kelly, James (Glasgow) (Lab)  
 Kerr, Liam (North East Scotland) (Con)  
 Lamont, Johann (Glasgow) (Lab)  
 Lennon, Monica (Central Scotland) (Lab)  
 Leonard, Richard (Central Scotland) (Lab)  
 Lindhurst, Gordon (Lothian) (Con)  
 Lockhart, Dean (Mid Scotland and Fife) (Con)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Mason, Tom (North East Scotland) (Con)  
 McArthur, Liam (Orkney Islands) (LD)  
 McNeill, Pauline (Glasgow) (Lab)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Mundell, Oliver (Dumfriesshire) (Con)  
 Rennie, Willie (North East Fife) (LD)  
 Rowley, Alex (Mid Scotland and Fife) (Lab)  
 Rumbles, Mike (North East Scotland) (LD)

Sarwar, Anas (Glasgow) (Lab)  
 Scott, John (Ayr) (Con)  
 Simpson, Graham (Central Scotland) (Con)  
 Smith, Elaine (Central Scotland) (Lab)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Smyth, Colin (South Scotland) (Lab)  
 Stewart, Alexander (Mid Scotland and Fife) (Con)  
 Stewart, David (Highlands and Islands) (Lab)  
 Wells, Annie (Glasgow) (Con)  
 Whittle, Brian (South Scotland) (Con)  
 Wishart, Beatrice (Shetland Islands) (LD)

#### Abstentions

Finnie, John (Highlands and Islands) (Green)  
 Greer, Ross (West Scotland) (Green)  
 Harvie, Patrick (Glasgow) (Green)  
 Johnstone, Alison (Lothian) (Green)  
 Ruskell, Mark (Mid Scotland and Fife) (Green)  
 Wightman, Andy (Lothian) (Green)

**The Presiding Officer:** The result of the division is: For 58, Against 55, Abstentions 6.

*Amendment agreed to.*

**The Presiding Officer:** Pre-emption means that the amendments in the name of Rhoda Grant and Liam McArthur fall.

Therefore, the next question is, that amendment S5M-22636.2, in the name of John Finnie, which seeks to amend motion S5M-22636, in the name of Liam Kerr, as amended, be agreed to. Are we agreed?

**Members:** No.

**The Presiding Officer:** There will be a division. Members may cast their votes now.

The vote is now closed. I remind members in the chamber and online that, if they believe that their vote has not been registered, they should let me know now. There will be a pause to allow members to do so.

I have given members as long as I can to make it clear if they think that their vote was not recognised or registered.

#### For

Baillie, Jackie (Dumarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Cole-Hamilton, Alex (Edinburgh Western) (LD)  
 Fee, Mary (West Scotland) (Lab)  
 Findlay, Neil (Lothian) (Lab)  
 Finnie, John (Highlands and Islands) (Green)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Greer, Ross (West Scotland) (Green)  
 Harvie, Patrick (Glasgow) (Green)  
 Johnson, Daniel (Edinburgh Southern) (Lab)  
 Johnstone, Alison (Lothian) (Green)  
 Kelly, James (Glasgow) (Lab)  
 Lamont, Johann (Glasgow) (Lab)  
 Lennon, Monica (Central Scotland) (Lab)  
 Leonard, Richard (Central Scotland) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 McArthur, Liam (Orkney Islands) (LD)

McNeill, Pauline (Glasgow) (Lab)  
 Rennie, Willie (North East Fife) (LD)  
 Rowley, Alex (Mid Scotland and Fife) (Lab)  
 Rumbles, Mike (North East Scotland) (LD)  
 Ruskell, Mark (Mid Scotland and Fife) (Green)  
 Sarwar, Anas (Glasgow) (Lab)  
 Smith, Elaine (Central Scotland) (Lab)  
 Smyth, Colin (South Scotland) (Lab)  
 Stewart, David (Highlands and Islands) (Lab)  
 Wightman, Andy (Lothian) (Green)  
 Wishart, Beatrice (Shetland Islands) (LD)

#### Against

Balfour, Jeremy (Lothian) (Con)  
 Ballantyne, Michelle (South Scotland) (Con)  
 Bowman, Bill (North East Scotland) (Con)  
 Briggs, Miles (Lothian) (Con)  
 Burnett, Alexander (Aberdeenshire West) (Con)  
 Cameron, Donald (Highlands and Islands) (Con)  
 Carlaw, Jackson (Eastwood) (Con)  
 Carson, Finlay (Galloway and West Dumfries) (Con)  
 Chapman, Peter (North East Scotland) (Con)  
 Corry, Maurice (West Scotland) (Con)  
 Davidson, Ruth (Edinburgh Central) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Golden, Maurice (West Scotland) (Con)  
 Greene, Jamie (West Scotland) (Con)  
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)  
 Harris, Alison (Central Scotland) (Con)  
 Halcro Johnston, Jamie (Highlands and Islands) (Con)  
 Kerr, Liam (North East Scotland) (Con)  
 Lindhurst, Gordon (Lothian) (Con)  
 Lockhart, Dean (Mid Scotland and Fife) (Con)  
 Mason, Tom (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Mundell, Oliver (Dumfriesshire) (Con)  
 Scott, John (Ayr) (Con)  
 Simpson, Graham (Central Scotland) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stewart, Alexander (Mid Scotland and Fife) (Con)  
 Wells, Annie (Glasgow) (Con)  
 Whittle, Brian (South Scotland) (Con)

#### Abstentions

Adam, George (Paisley) (SNP)  
 Adamson, Clare (Motherwell and Wishaw) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Arthur, Tom (Renfrewshire South) (SNP)  
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
 Campbell, Aileen (Clydesdale) (SNP)  
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
 Constance, Angela (Almond Valley) (SNP)  
 Crawford, Bruce (Stirling) (SNP)  
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)  
 Denham, Ash (Edinburgh Eastern) (SNP)  
 Dey, Graeme (Angus South) (SNP)  
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)  
 Dornan, James (Glasgow Cathcart) (SNP)  
 Ewing, Annabelle (Cowdenbeath) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)  
 Gougeon, Mairi (Angus North and Mearns) (SNP)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)

Harper, Emma (South Scotland) (SNP)  
 Haughey, Clare (Rutherglen) (SNP)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (SNP)  
 Lyle, Richard (Uddingston and Bellshill) (SNP)  
 MacDonald, Angus (Falkirk East) (SNP)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)  
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)  
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)  
 Maguire, Ruth (Cunninghame South) (SNP)  
 Martin, Gillian (Aberdeenshire East) (SNP)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McKee, Ivan (Glasgow Provan) (SNP)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McMillan, Stuart (Greenock and Inverclyde) (SNP)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Paterson, Gil (Clydebank and Milngavie) (SNP)  
 Robison, Shona (Dundee City East) (SNP)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Somerville, Shirley-Anne (Dunfermline) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Stewart, Kevin (Aberdeen Central) (SNP)  
 Swinney, John (Perthshire North) (SNP)  
 Todd, Maree (Highlands and Islands) (SNP)  
 Torrance, David (Kirkcaldy) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Yousaf, Humza (Glasgow Pollok) (SNP)

**The Presiding Officer:** The result of the division is: For 31, Against 30, Abstentions 58.

*Amendment agreed to.*

**The Presiding Officer:** The next question is, that motion S5M-22636, in the name of Liam Kerr, on the Hate Crime and Public Order (Scotland) Bill, as amended, be agreed to. Are we agreed?

**Members:** No.

**The Presiding Officer:** There will be a division.

I see that Ms Boyack has an issue. Do you wish to make a point of order about the way that you voted?

**Sarah Boyack (Lothian) (Lab):** I do not think that my vote has been counted, Presiding Officer.

**The Presiding Officer:** Will you clarify which way you voted in the division?

**Sarah Boyack:** I voted for the amended motion.

**The Presiding Officer:** I will make sure that your vote is added to the total.

**Daniel Johnson (Edinburgh Southern) (Lab):** On a point of order, Presiding Officer, I am not convinced that my vote was registered. I voted for the amended motion.

**The Presiding Officer:** Very well. Daniel Johnson has also made a point of order to ensure that his vote his recorded.

When members vote, they should see a page that says, "You have voted".

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** On a point of order, Presiding Officer, I do not think that my vote was registered, either.

**The Presiding Officer:** I beg your pardon. Will Daniel Johnson clarify whether he voted for the amended motion?

**Daniel Johnson:** I did.

**The Presiding Officer:** Okay. Did Rona Mackay also vote for the amended motion?

**Rona Mackay:** Yes.

**Neil Findlay (Lothian) (Lab):** On a point of order, Presiding Officer, you are making a sweeping assumption that, if members did not vote, it was due to the technical problem. They may have not voted for another reason, as many members have done, including me, over the years. That has been my error. We have no idea whether members have not voted because of a technical problem. Every time you do this, the integrity of what we are trying to do is being eroded. We cannot proceed on this basis. This is madness.

**The Presiding Officer:** I thank you, Mr Findlay. That is not a point of order for this vote. However, your points are noted.

I stress that Rona Mackay's and Daniel Johnson's votes had been recorded. However, Sarah Boyack's vote had not been recorded. The vote is now amended.

**For**

Adam, George (Paisley) (SNP)  
 Adamson, Clare (Motherwell and Wishaw) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Arthur, Tom (Renfrewshire South) (SNP)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
 Campbell, Aileen (Clydesdale) (SNP)  
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
 Cole-Hamilton, Alex (Edinburgh Western) (LD)  
 Constance, Angela (Almond Valley) (SNP)  
 Crawford, Bruce (Stirling) (SNP)  
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)  
 Denham, Ash (Edinburgh Eastern) (SNP)  
 Dey, Graeme (Angus South) (SNP)  
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)  
 Dornan, James (Glasgow Cathcart) (SNP)  
 Ewing, Annabelle (Cowdenbeath) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Fee, Mary (West Scotland) (Lab)

Findlay, Neil (Lothian) (Lab)  
 Finnie, John (Highlands and Islands) (Green)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)  
 Gougeon, Mairi (Angus North and Mearns) (SNP)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Greer, Ross (West Scotland) (Green)  
 Harper, Emma (South Scotland) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Haughey, Clare (Rutherglen) (SNP)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Johnson, Daniel (Edinburgh Southern) (Lab)  
 Johnstone, Alison (Lothian) (Green)  
 Kelly, James (Glasgow) (Lab)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lamont, Johann (Glasgow) (Lab)  
 Lennon, Monica (Central Scotland) (Lab)  
 Leonard, Richard (Central Scotland) (Lab)  
 Lochhead, Richard (Moray) (SNP)  
 Lyle, Richard (Uddingston and Bellshill) (SNP)  
 MacDonald, Angus (Falkirk East) (SNP)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)  
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)  
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)  
 Maguire, Ruth (Cunninghame South) (SNP)  
 Martin, Gillian (Aberdeenshire East) (SNP)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McArthur, Liam (Orkney Islands) (LD)  
 McKee, Ivan (Glasgow Provan) (SNP)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McMillan, Stuart (Greenock and Inverclyde) (SNP)  
 McNeill, Pauline (Glasgow) (Lab)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Paterson, Gil (Clydebank and Milngavie) (SNP)  
 Rennie, Willie (North East Fife) (LD)  
 Robison, Shona (Dundee City East) (SNP)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Rowley, Alex (Mid Scotland and Fife) (Lab)  
 Rumbles, Mike (North East Scotland) (LD)  
 Ruskell, Mark (Mid Scotland and Fife) (Green)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Sarwar, Anas (Glasgow) (Lab)  
 Smith, Elaine (Central Scotland) (Lab)  
 Smyth, Colin (South Scotland) (Lab)  
 Somerville, Shirley-Anne (Dunfermline) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Stewart, David (Highlands and Islands) (Lab)  
 Stewart, Kevin (Aberdeen Central) (SNP)  
 Swinney, John (Perthshire North) (SNP)  
 Todd, Maree (Highlands and Islands) (SNP)  
 Torrance, David (Kirkcaldy) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wightman, Andy (Lothian) (Green)  
 Wishart, Beatrice (Shetland Islands) (LD)  
 Yousaf, Humza (Glasgow Pollok) (SNP)

#### Against

Balfour, Jeremy (Lothian) (Con)  
 Ballantyne, Michelle (South Scotland) (Con)  
 Bowman, Bill (North East Scotland) (Con)

Briggs, Miles (Lothian) (Con)  
 Burnett, Alexander (Aberdeenshire West) (Con)  
 Cameron, Donald (Highlands and Islands) (Con)  
 Carlaw, Jackson (Eastwood) (Con)  
 Carson, Finlay (Galloway and West Dumfries) (Con)  
 Chapman, Peter (North East Scotland) (Con)  
 Corry, Maurice (West Scotland) (Con)  
 Davidson, Ruth (Edinburgh Central) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Golden, Maurice (West Scotland) (Con)  
 Greene, Jamie (West Scotland) (Con)  
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)  
 Harris, Alison (Central Scotland) (Con)  
 Halcro Johnston, Jamie (Highlands and Islands) (Con)  
 Kerr, Liam (North East Scotland) (Con)  
 Lindhurst, Gordon (Lothian) (Con)  
 Lockhart, Dean (Mid Scotland and Fife) (Con)  
 Mason, Tom (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Mundell, Oliver (Dumfriesshire) (Con)  
 Scott, John (Ayr) (Con)  
 Simpson, Graham (Central Scotland) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stewart, Alexander (Mid Scotland and Fife) (Con)  
 Wells, Annie (Glasgow) (Con)  
 Whittle, Brian (South Scotland) (Con)

**The Presiding Officer:** The result of the division is: For 89, Against 30, Abstentions 0.

#### *Motion, as amended, agreed to,*

That the Parliament believes that hate crimes are a blight on society in Scotland and must be dealt with robustly; considers that the development of hate crime law in Scotland has been carried out in a piecemeal fashion, resulting in fragmented legislation; notes that calls have been made for the consolidation of hate crime law for more than a decade; believes that freedom of expression is a critically important human right, and that Article 10 of the European Convention on Human Rights (ECHR) protects it within the context of factors such as the prevention of crime and protecting the rights of others; recognises that stirring up racial hatred has been the basis of criminal offences since 1986 and is clearly compatible with ECHR; welcomes the Scottish Government's commitment to examine the development of an offence on misogynistic harassment and looks forward to the working group on misogynistic harassment's output on this matter, and commits to listen to all serious views on ways to improve the Hate Crime and Public Order (Scotland) Bill as part of the normal process of parliamentary scrutiny and to consider how best to ensure that all forms of hate crime are taken seriously.

**The Presiding Officer:** The next question is, that motion S5M-22670, in the name of Fergus Ewing, on the Fisheries Bill, which is United Kingdom legislation, be agreed to.

#### *Motion agreed to,*

That the Parliament agrees that the relevant provisions of the Fisheries Bill 2020 introduced in the House of Lords on 29 January 2020 relating to provisions on fishing, aquaculture and marine conservation and connected purposes so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.

**The Presiding Officer:** I propose to ask a single question on the nine Parliamentary Bureau motions. No member objects, so the question is, that motions S5M-22657 to S5M-22661 and motions S5M-22663 to S5M-22666, in the name of Graeme Dey, on behalf of the Parliamentary Bureau, be agreed to.

*Motions agreed to,*

That the Parliament agrees that the Equalities and Human Rights Committee be designated as the lead committee in consideration of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill at stage 1.

That the Parliament agrees that the Abertay University and Robert Gordon University (Change of Names) (Miscellaneous Amendments) (Scotland) Order 2020 [draft] be approved.

That the Parliament agrees that the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2020 [draft] be approved.

That the Parliament agrees that the Scottish Parliament (Disqualification) Order 2020 [draft] be approved.

That the Parliament agrees that the Greenhouse Gas Emissions Trading Scheme Order 2020 [draft] be approved.

That the Parliament agrees that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 11) Regulations 2020 (SSI 2020/241) be approved.

That the Parliament agrees that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 12) Regulations 2020 (SSI 2020/251) be approved.

That the Parliament agrees that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 9) Regulations 2020 (SSI 2020/242) be approved.

That the Parliament agrees that the Representation of the People (Electoral Registers Publication Date) (Coronavirus) (Scotland) Regulations 2020 [draft] be approved.

**The Presiding Officer:** That concludes decision time. There will be a short pause before members' business. I ask members leaving the chamber to do so quietly and to observe social distancing while doing so.

## Dirty Camping

**The Deputy Presiding Officer (Christine Grahame):** The final item of business is a members' business debate on motion S5M-22367, in the name of Murdo Fraser, on tackling dirty camping. The debate will be concluded without any question being put. I ask members who wish to speak to press their request-to-speak buttons now, and I call Murdo Fraser to open the debate.

*Motion debated,*

That the Parliament understands that there has been a recent increase in incidents of so-called dirty camping across Mid-Scotland and Fife and the rest of the country; notes that this sees people set up camp near lochs, beaches and forests and carry out irresponsible actions such as cutting down trees, lighting fires and leaving abandoned tents, litter and waste; believes that these abhorrent practices have led to substantial expense to local authorities and landowners, who are left to clean up the mess; acknowledges that it is unrelated to traditional wild camping, which involves leaving no trace of one's presence; notes that Perth and Kinross Council has established a multi-agency approach to tackle dirty camping, which involves Police Scotland, the Scottish Fire and Rescue Service and communities, and sees action taken where necessary and runs a communication campaign to promote good behaviour; and notes the calls for similar approaches to be adopted across Scotland and for solutions, such as local permit schemes, to be explored.

18:03

**Murdo Fraser (Mid Scotland and Fife) (Con):** Thank you, Presiding Officer—it is good to finally get to the start of the debate. I thank members from all sides of the chamber who signed my motion to allow the debate to take place.

Although dirty camping is an issue in my local area of Perth and Kinross and across Mid Scotland and Fife, I know that it is a national problem. I am sure that members will want to comment from their different local perspectives on what has been a significant issue during this summer, in particular.

I will start by putting the debate in context. There is a long Scottish tradition of what we know as wild camping, in which individuals—singly or in groups—go into the countryside to camp, taking everything with them and taking everything away at the end of the trip, leaving no trace of their presence but footprints. Wild camping has been going on in Scotland for decades, if not centuries. I have done it myself in the past, braving bugs, rain and midges—a lot of midges. It is important to stress that that is not what tonight's debate is about. I want genuine wild camping to be able to continue without restriction.

We are talking tonight about something quite different: the relatively recent phenomenon of what we call "dirty camping". That is where groups of

individuals—often large groups—camp at the roadside, on a loch shore or at a beauty spot, taking a large amount of equipment with them. They cut down trees and light fires, and they often play loud music and disturb local residents. At the end of their stay, they do not tidy up but leave a mess behind them—a mess of litter and human waste. They often leave behind some of the camping equipment that they brought with them—in some cases, entire tents and sleeping bags have been abandoned.

In my area, there has been a significant problem with dirty camping over many years, and this summer it seems to have got a lot worse. It is particularly acute on lochsides in highland Perthshire—around lochs such as Rannoch, Tummel, Tay and Earn—and in attractive glens such as Glen Shee and Glen Lyon. Local residents in those areas are both concerned and distressed by the explosion in dirty camping. Passing places on narrow roads are blocked by parked cars, field gates are obstructed, litter is left for someone else to clear up and there can often be a problem with noise nuisance into the very early hours of the morning.

Earlier this summer, there was a horrific incident at the Loch of Clunie, just outside Blairgowrie. A local estate worker went down at 3 am to remonstrate with a group of men who were dirty camping and playing loud music, which was disturbing local residents. He ended up being stabbed and seriously wounded—fortunately, not fatally—and individuals have been charged with the offence. That is an extreme case, but it illustrates what can go wrong if the issue is not addressed.

As I mentioned, dirty camping has been an issue for some years, but the numbers seem to have exploded this summer, in particular. That may well be because of Covid-19 restrictions on overseas travel, which mean that many more people are taking their holidays closer to home. Whatever the reason, it is fast becoming a crisis in rural Scotland, and it needs to be addressed.

What needs to be done? First, we need to consider whether the laws in this area are adequate. The law on access to Scotland's countryside, which currently provides for a right of responsible access, permits wild camping, but it is clear that the dirty camping to which I have referred is already unlawful. The problem is that the law is, in effect, unenforceable. The only remedies that are available to a landowner would involve going through the civil courts, which is an inefficient, bureaucratic and expensive way of trying to resolve the problem, and it would mean trying to identify the individuals involved. The law as it stands is simply not working.

The problems with dirty camping around the shores of Loch Lomond led the Loch Lomond and the Trossachs National Park to experiment some years ago with the introduction of a permit scheme for campers in the area. That was hugely controversial at the time, and it was vigorously opposed by groups such as Ramblers Scotland. I remember at that time raising concerns that the scheme would have a displacement effect, pushing people who had previously camped around Loch Lomond to camp at other sites further afield, outside the restricted zone—and there is a great deal of evidence to show that that is exactly what has happened.

One possibility would be to look at extending permit camping zones to other parts of the country, beyond the existing scheme in the Loch Lomond and the Trossachs National Park. However, the creation of an exclusion zone is a lengthy and expensive business that involves the introduction of byelaws by local authorities or by the relevant national park authority. Some people make the reasonable argument that the money that would be required to do that might be better spent in other ways.

Beyond the legal issues, there are two areas that need to be addressed: education and enforcement. It is a sad fact that many of the people who indulge in dirty camping may not actually realise that they are doing anything wrong. People see what looks like an empty piece of land in an attractive rural spot and they do not appreciate that there are restrictions on how they might behave while they are there.

**Maree Todd (Highlands and Islands) (SNP):** Will the member take an intervention?

**Murdo Fraser:** Yes, of course.

**The Deputy Presiding Officer:** I call—I have forgotten the member's name.

**Maree Todd:** It is Maree Todd. [*Laughter.*]

**The Deputy Presiding Officer:** It has been such a long day. I am hearing that the member is Mairi Gougeon or Clare Haughey—it is neither of them. It is Maree Todd.

**Edward Mountain (Highlands and Islands) (Con):** I will take over from you, Presiding Officer, if you would like me to.

**The Deputy Presiding Officer:** No, thank you, Mr Mountain. That is very gentlemanly of you, but I am embarrassed enough.

**Murdo Fraser:** Maree Todd has forgotten her intervention now.

**The Deputy Presiding Officer:** Are there any names that I have forgotten to mention, Ms Todd? I am sorry about that. Please continue with your intervention.

**Maree Todd:** To help you remember my name, Presiding Officer, I will set the context. My name is Maree Todd, and I was named after Loch Maree. You will be aware of the recent wildfire that was started by a camp fire on Loch Maree.

Does the member agree with me that the Prime Minister, who recently visited Wester Ross, where I live, should be condemned for camping in an enclosed field and lighting a camp fire rather than using a stove, both without the crofter's permission and in contravention of the Scottish outdoor access code—

**The Deputy Presiding Officer:** This is supposed to be an intervention, Ms Todd.

**Maree Todd:** Does the member agree with me, or does he believe that there should be one law for the Prime Minister and another law for the rest of us?

**The Deputy Presiding Officer:** That was not an intervention. There was a wee hiatus that I was not expecting.

**Murdo Fraser:** I am sorry, Presiding Officer, that you had to wait for so long for such a tiresome party political point from the member, which was—to be frank—not worthy of her.

I was talking about people who camp perhaps not being aware of the restrictions or that their waste might have an impact on water courses that might be needed to serve animal troughs or even human dwellings. They might not realise that there are families living nearby, whose quality of life will be impacted by their playing music or making excessive noise. We need much better education for those who use the countryside on how they should behave responsibly. We also need much better enforcement of the laws as they currently stand, whether or not we consider that they need to be improved.

In my area, Perth and Kinross Council has established a new initiative, working with local countryside rangers and the police, to try to address the problem. Those who are camping at popular spots are visited and reminded of their responsibilities. Where necessary, enforcement action will be taken, although that is by no means a simple matter. It is an approach that could be followed elsewhere in Scotland.

There is, in all of this, a real problem with stretched resources, not least because issues will often arise at weekends or outwith normal working hours. Leadership from the Scottish Government is required to assist both local authorities and the police in ensuring that they have what it takes to address the problem when there are so many other demands on their time.

A final point for consideration is whether adequate facilities in the form of more informal

camping sites might be established, with the provision of toilet facilities and rubbish bins, so that those who want to camp informally have more safe and secure places in which to do so.

I have tried to summarise briefly what I believe is a significant problem affecting rural Scotland and what more needs to be done to tackle it. I am sure that other members will want to speak from their own perspectives about the issue and how it impacts on their constituents.

The key point is that the Scottish countryside should be there for all of us to enjoy, but that needs to be done in a responsible manner, and we need to take account of the interests of those who live and work there.

**The Deputy Presiding Officer:** I remind all members who wish to speak that they must press their request-to-speak buttons. I am not naming anyone in particular, but I hope that they have pressed the button now.

18:12

**Bruce Crawford (Stirling) (SNP):** I am grateful for the chance to speak in the debate, and I thank Murdo Fraser and congratulate him on bringing the debate to the chamber.

I proudly represent a constituency that I consider to be the most breathtakingly beautiful part of the country. Indeed, rural Stirling is home to some of the most spectacular scenery and locations in the world, from the Devil's Pulpit at Finnich Glen to the Falls of Dochart in Killin, and from the majestic mountains of the Trossachs to the spectacular slopes of the Fintry hills. The area is also the site of some of Scotland's great lochs, including Katrine, Venachar, Ard, Lubnaig and Lomond. Is it any wonder, then, that rural Scotland is a prime destination spot for visitors?

I am the first to encourage people to visit my constituency, to enjoy its surroundings and support its businesses, and that has not changed. However, the Covid-19 outbreak has meant that fewer people have taken a holiday abroad and have instead looked to alternative staycations. That has resulted in some days—particularly when the weather has been fine—when people in towns and villages such as Callander, Aberfoyle, Killin, Balmaha, Drymen and a good few others have felt under siege. At times, local communities have struggled to cope with the pressure that a huge influx of visitors has brought.

We have seen local shops virtually emptied of goods; car parks filled to dangerous levels and cars parked in dangerous locations; and litter bins overfilled, with litter strewn over wide areas. Often, to the deep concern of locals, there have been too many people concentrated in one place, contrary

to social distancing rules. We have also heard alarming reports of people behaving recklessly and entering dangerous areas such as the Mugdock quarry and the Carron Valley reservoir.

However, people are coming to the area not only for day trips. Rural Stirling is a great place to go camping, and as soon as the 5-mile travel restriction was lifted, that is exactly what people, understandably, came to do.

Much of my constituency is within the Loch Lomond and the Trossachs national park, where the local camping byelaws that Murdo Fraser referred to are in place. Disappointingly, as restrictions were lifted, reports flooded in of people abandoning large amounts of litter, including tents, sleeping bags, barbecues and other paraphernalia. It was not long before 20 people were charged in one weekend with having broken those local byelaws. The photographs in the press were devastating, showing widespread littering as well as severe damage to woodland and—disgustingly—human waste.

The images of how a few thoughtless people treated our beautiful area filled me with anger and sadness. How dare they? Stirling is a welcoming place. If you are going to behave like that, stay away.

With my colleague Alyn Smith MP, I have been involved in a series of meetings with the national park, Police Scotland, community organisations and Stirling Council to try to find a solution to the challenges that many communities face. I thank those communities and the officers and staff of Police Scotland, the national park and Stirling Council for all their efforts during the summer.

Wider education will be vital in future, but communities in rural Stirling must know that those who break the law will be prosecuted and that they will not be left to pick up other people's litter—or worse. Rural communities such as the one that I represent are the most welcoming places imaginable, but a small minority of people have made their lives difficult in recent weeks. All that they want, and all that I ask for, is a bit of respect.

I apologise, Presiding Officer—I must leave before the end of proceedings because of the lateness of the hour.

**The Deputy Presiding Officer:** I understand that Mr Crawford, and I understand about late hours.

18:16

**Finlay Carson (Galloway and West Dumfries) (Con):** I thank Murdo Fraser for securing the debate.

The £3 million VisitScotland scheme to encourage holidays at home in Scotland has resulted in more staycations, but communities have largely been left to clean up the consequences. In my constituency of Galloway and West Dumfries—the most beautiful constituency in Scotland and the perfect location for our next national park—some of our most loved areas have been violated. That has left them unsafe for visitors, with habitats destroyed and, in some instances, damage caused to the environment, which will take years to recover.

Despite the good work that is being done organisations such as the Loch Ken Trust, which has tried to address dirty camping around Loch Ken, it is clear that we need a national strategy for tackling a range of rural issues, including dirty camping, fly-tipping, wildlife crime and—as the recent NFU Mutual report suggests—rural crime.

The Land Reform (Scotland) Act 2003 introduced the new right of responsible public access to the land and countryside. Importantly, the right of access applies only when it is exercised responsibly. The Scottish outdoor access code sets out the rights and responsibilities of those exercising that right.

It is not good enough for the minister to say that violations of that code are taken seriously, or that the issue is the responsibility of Police Scotland, as she has said previously. In 2003, we had around 350 countryside rangers in Scotland. In 2017, a survey estimated that 141 jobs had been lost in the preceding nine years. Approximately 54 per cent of those job losses were in local authorities, which have responsibility for upholding and managing access.

Local authorities have faced huge pressure, both financially and from the added burden of managing thousands of new core path miles. Scotland's ranger services were supported by funding that was managed by Scottish Natural Heritage. However, two fiscal measures were implemented that had an impact on that support, particularly for local authorities.

Indirect funding of local authorities was stopped, which meant that SNH could not give them grant aid. That was mitigated by ring fencing funding for the ranger service, to be held in local authorities' block grants. A few years ago, that ring-fenced protection was also removed, a policy that had a significant and detrimental effect on local authority ranger services.

To compound that, SNH made a unilateral decision to phase out grant aid to ranger services outwith local authorities, which affected non-governmental organisations, private estates, charities and community-led initiatives and led directly to more ranger job losses. Those policies

have been robustly challenged by the Public Petitions Committee and I am pleased that, as a result, a review of the countryside ranger service will be published soon.

To bring members right up to date, we have sadly also lost 15 out of 35 ranger posts in the National Trust for Scotland. As we can see, the national trend is very much downwards.

There is some good news. ScottishPower Renewables has funded two part-time rangers on the southern upland way and other renewable energy organisations have employed a handful of rangers as part of community benefit, which shows that a public-private funding model can be followed in some areas.

The countryside ranger service brings a whole host of benefits to the area that it supports, managing land and water conservation and supporting recreation. Rangers provide a link between visitors and local communities, businesses and agencies, farmers, gamekeepers, foresters, access officers, biodiversity officers, Police Scotland and many other bodies. They help directly to look after the landscape and wildlife in our forest, coastal and urban areas. That will not continue as we face the loss of that expertise. I call on the Scottish Government to consider funding a countrywide countryside ranger apprentice scheme through its green recovery fund to ensure that we do not lose the knowledge that our rangers have built up over the years.

This debate may be on dirty camping, but a range of problems are caused by irresponsible access and the blot that that leaves on our natural environment. We demand more from our Government. I urge ministers to meet me and stakeholders to look at how we can provide urgent funding that will reinvigorate our much-loved and invaluable countryside rangers network.

18:21

**Emma Harper (South Scotland) (SNP):** I welcome the opportunity to speak in this debate on tackling dirty camping. This is only our second members' business debate since March, and I congratulate Mr Fraser on securing it.

Dirty camping has become a big issue for Scotland's rural communities, including in my South Scotland region, since the lockdown restrictions were eased on 15 July. I restate that the debate is not about wild camping, which Mr Fraser ably described; it is about dirty camping.

The rise in the number of people taking staycation holidays in Scotland is welcome. Supporting our local economy, our small and medium-sized tourism businesses and villages and towns throughout Scotland's rural areas is

welcome. However, when enjoying staycations, and particularly when camping, people must respect our natural environment and be familiar with the Scottish outdoor access code. It was interesting to hear in the minister's response to questions in the chamber earlier today that more than a quarter of a million people have accessed the outdoor access code online since lockdown.

In Dumfries and Galloway, we have seen a number of unfortunate incidents involving a small minority of visitors who do not respect the local area, our natural environment or the staff and volunteers who look after our areas of fantastic natural beauty. That has been a major issue in the area around Loch Ken near Castle Douglas, which Mr Carson also mentioned—the members of the Loch Ken Trust have obviously contacted us both.

When I met Loch Ken Trust members—outdoors, in a socially distanced way—with my colleague Councillor Dougie Campbell, we heard about their problems and experience. It was troubling to hear about the verbal abuse experienced by volunteers, fishing-permit staff and members of the community when they attempted to support and help visitors to find the optimal way to enjoy the beauty of our area. One staff member was threatened with physical abuse and, as I mentioned, other volunteers were verbally abused. That is not acceptable.

In recent weeks, I have raised the issue of fly camping—now widely known as dirty camping—with the First Minister, the Cabinet Secretary for Rural Economy and Tourism, Dumfries and Galloway Council and Police Scotland to seek a positive way forward as soon as possible.

The constituents I engaged with from the Loch Ken Trust have some key asks of the Scottish Government, the local authority, the police and other agencies. They are interested to know whether the Scottish Government can provide a pathway that would allow local police divisions to supply community organisations' staff and volunteers from our areas with a radio link that would connect them to the police, allowing easier quick contact. They are interested in whether the Scottish Government can offer de-escalation training to community groups and staff to help them address challenging or aggressive behaviour, providing those individuals with the confidence to better deal with adverse situations that may arise. They are also interested in whether funding can be offered to those who are entrusted with looking after our areas of natural beauty so that they can buy equipment such as body cameras—

**Finlay Carson:** Will the member take an intervention?

**The Deputy Presiding Officer:** The member is coming to a conclusion—she is in her final minute.

**Emma Harper:** I am sorry; I would have taken an intervention from Mr Carson if we had more time.

**The Deputy Presiding Officer:** Well, all right—seeing as I made such a mess of things earlier, I will allow the intervention.

**Finlay Carson:** Does Emma Harper agree that bringing all such services together could best be facilitated through the likes of a countryside ranger service? The countryside ranger service that was provided by Dumfries and Galloway Council was very successful. Would she back the calls for funding for a nationwide countryside ranger service?

**Emma Harper:** I was just coming to the point that partnership working is critical. Obviously, budgets are really challenged at the moment. The minister would need to respond to that suggestion, but I would support engagement with local authorities, the police and the community agencies out there.

We know that the asks that I mentioned might make a huge difference to how we manage our countryside and our beautiful, bonny Galloway. When we talk about how we look after our countryside, there is a well-known phrase that we should use: take only pictures and leave only footprints.

18:26

**Claire Baker (Mid Scotland and Fife) (Lab):** I thank Murdo Fraser for securing the debate, and Ramblers Scotland and Mountaineering Scotland for the helpful briefings that they have provided.

It is important to recognise that although members have described awful reports of dirty camping, the behaviour of the vast majority of campers is responsible. Wild camping and roadside camping are lawful practices, provided that they are carried out responsibly, and I welcome the actions of the many campers who abide by the “leave no trace” ethos of the outdoor access code. It is not the case that informal camping in itself is disrespectful or antisocial, but the pollution and the debris that so-called dirty campers are creating is risking the reputation of the many responsible campers.

Camping is an opportunity to get out and see the natural beauty of Scotland and to stay in remote and rural places in an affordable way. It is also an opportunity for rural businesses and communities to welcome visitors and showcase what their local area has to offer. It brings economic benefits, as well as having the positive

health impacts that are associated with being in the outdoors.

In the summer in Scotland, it can be difficult to find official places to camp, especially on the rare occasions on which the sun comes out, and doing so often requires forward planning, which does not necessarily fit in with the impulse to throw everything into a bag or the back of a car and head off. However, this year, the closure of many campsites and the restrictions on the use of other accommodation has resulted in an increase in the number of people who are camping off site and, unfortunately, an increase in so-called dirty camping.

The reasons behind that are various. Restrictions on overseas travel, reductions in household income, concerns about travelling and staying in large groups, and the cancellation of festivals and other events have all contributed to an increase in the number of people who are looking to camp, many of whom are inexperienced in doing so. To that end, it is vital that the responsibilities that we all have when enjoying access to the outdoors are communicated clearly. Many members have talked about the importance of education. While all campers have a responsibility to clean up and dispose of litter and debris, such as barbecues and equipment, that applies even more so when they are away from designated facilities.

Dirty camping in rural locations is not a new phenomenon. Outdoor groups have previously highlighted its impact on reservoirs, woodlands and beaches, and I understand that the Public Petitions Committee has looked at the issue. In the past, measures such as camping restrictions and permit schemes have been introduced in some locations, but they have had limited success, with activity often just being displaced to other areas, as Murdo Fraser said. Police Scotland has enforcement powers in relation to antisocial behaviour and threatening or aggressive behaviour, but we all recognise that its resources are limited and that the police cannot be the only tool in addressing the problem.

Related issues stem from pressure on local government funding and the financial decisions that are being taken at a local level as a result. Closure of public toilets, limited car parking and path networks, and reduced litter collections, warden and ranger services all follow from council underfunding and are leaving some communities without the infrastructure that would help to alleviate some of the negative impacts that are being highlighted in the debate. We should all be better at supporting the delivery of infrastructure that benefits campers and the wider access to the outdoors, while recognising the wider benefits that it can bring to mental and physical wellbeing, as

well as the economic benefits for rural communities.

I welcome the actions taken by Perth and Kinross Council. By working across agencies and involving Police Scotland, the Scottish Fire and Rescue Service, as well as local communities, the focus is on communicating the importance of respectful and responsible behaviour. I would like to see such an approach being adopted more widely so that a clear message is sent out across the country about the importance of leaving no trace.

I welcome the news that the cabinet secretary will discuss the issue at a meeting next week with the national parks and others. I hope that some positive action comes from that.

As we continue to move through the stages of the pandemic, we are more than ever aware of the importance and value of getting outside to experience the nature and scenery that Scotland has to offer. We need to ensure that responsible and respectful access means that it can continue to be enjoyed by all.

18:31

**Andy Wightman (Lothian) (Green):** I thank Murdo Fraser for bringing the debate to the chamber. The matter is of great concern to many of our constituents, especially those who live in the Highlands and Islands, Perthshire, the Borders, and local beauty spots.

I start by agreeing with Murdo Fraser that there have been serious problems and a significant amount of careless, reckless and antisocial behaviour by those camping by roads and in scenic areas. I unequivocally condemn that kind of behaviour.

However, I do not want us to overreact to this, and there is a concern that we might. We must keep the problem in perspective. For example, this Friday, an interim paper is going to the Cairngorms National Park board that looks at the summer visitor experience. It says, for example that

“Early August was very busy with large numbers of visitors to the park ... Despite a noticeable increase in irresponsible behaviour the vast majority of visitors have been reacting favourably to information offered by the Rangers with few, but significant, occasions of difficult behaviour.”

A more detailed analysis of Badenoch and Strathspey, Deeside and the Atholl and Angus Glens says that the data in annex 2, to which I just referred

“shows a relatively small (by total visitor numbers) but noticeable increase in irresponsible behaviour.”

It is vital that we do not get the framing of this debate wrong. Indeed, punitive action involving police, permits, and permissions might be appropriate in particular cases, in the short term, and in particular locations, but the problem highlights wider questions about the relationship between land and people, and it also signals wider opportunities for a renaissance in outdoor recreation. From conversations that I have had with rangers and outdoor activities instructors, I know that many who have engaged with the so-called dirty campers say that they are doing things like cutting live wood and leaving litter because of genuine ignorance. Who is responsible for that ignorance?

For centuries, the law has sought to punish those who camp; to punish those who travel; and to punish those who use land for recreation. Luckily, we now have some of the best access legislation in Europe: it is a statutory right to camp responsibly in Scotland.

We should react to the situation, but rather than reacting solely to the most extreme examples, we should also ask how to encourage people to act responsibly, how to educate, and how to inspire a love of the outdoors in a generation that is more used to Mediterranean beaches and music festivals.

Scotland has woeful outdoor infrastructure, woeful basic camping facilities, and a woeful lack of toilets. It was mentioned that, at Loch Lomond National Park, byelaws restrict camping to designated sites, but there are no basic toilet facilities there and then there is surprise that people are doing what they need to do. That was the intention when the byelaws were introduced. Photomontages were presented about it.

I have cycled in the Netherlands, Germany, and Denmark. Those countries take outdoor recreation very seriously. They provide appropriate facilities, even in the midst of some of the most intensively managed landscapes in the world.

We therefore need to democratise our countryside, and that means a vastly expanded programme of infrastructure provision, significant media and education programmes, proper resources for outdoor education centres, and an expansion of ranger services, as Finlay Carson said. It means that we must ensure that such services have sufficient funding to protect fragile landscapes and communities, and educate visitors. We should be accelerating the hutting movement to levels that have been the norm in Germany and Finland for decades.

Land around cities should be managed primarily for recreation, community food projects and recreational hutting rather than for low-output, publicly subsidised agriculture, so that the public

have easy access to high-quality, low-impact leisure opportunities. The Cairngorms National Park Authority interim paper notes that, over the summer, there appears to have been

“a shift towards a younger demographic, with an increase in visitors under the age of 35”,

so what an opportunity to turn around centuries of prejudice and hostility to those who want to enjoy the fresh air. This is the moment to transform the countryside, to embrace the newfound interest in the outdoors and put in place the infrastructure and management that is taken for granted in any normal European country.

18:35

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I was 22 years old when I first stayed overnight on holiday in a hotel. Up to that point, all our family holidays were under canvas. The first of them, in the early 1950s, might have been in Finlay Carson’s constituency, although it might have been in Oliver Mundell’s—I am a little uncertain. Picking up on what others have said, I have camped on the shores of Tummel, Tay, Lubnaig and Morlich, although Morlich is not in the Highlands—[*Interruption.*] Loch Morlich—that is correct. I have also camped on the shores at Rosemarkie, Fortrose, Achmelvich and many other places in the Highlands. Minister, I have also camped at St Cyrus, where I went with the boy scouts. Claire Baker might care to note that my first boy scout camp was inland from Anstruther. Therefore, I have spent a couple of years under canvas.

I was trained and brought up in the boy scouts by people who knew what they were doing, so I hope that, as a Stewart—one of Scotland’s great travelling families—I have sustained the traditions but behaved in a proper manner. That goes to the heart of the issue. Yes, we can do things with legislation and facilities, but we need to change what goes on inside the minds of many of these people, who have little respect for the environment or for the people who live in the environment.

**Edward Mountain (Highlands and Islands) (Con):** Will the member take an intervention?

**Stewart Stevenson:** Yes.

**The Deputy Presiding Officer:** I call Edward Mountain.

**Edward Mountain:** Thank you, Presiding Officer—I am pleased that you remembered my name.

I ought to declare an interest in land. A lot of people who camp around where I live do so with huge responsibility. Sometimes, they make the mistake of leaving behind things such as the stones that they have had their fire pits in, which

damage farm machinery. Some people are well intended, but could education take those well-intended people to the next step, so that we can all get on without any conflict and without damaging each other’s enjoyment of the environment?

**The Deputy Presiding Officer:** Tread carefully, Mr Mountain.

**Stewart Stevenson:** Edward Mountain speaks some very good common sense. None of us is perfect in anything that we do, and we can all improve.

It was slightly surprising to hear Finlay Carson say that the Government should be telling councils what to spend money on. Fine—he might be correct.

Incidentally, the first time that I visited what is now my constituency I went to Sandend in, I think, 1963. I was camping, of course. The last time that I went camping—I had the misfortune to marry a spouse who does not like camping—I was in Wadi Rum, in Jordan, so that we could watch the sun rise over the desert, but she did not feel that she wanted to repeat the experience after that.

The bottom line is that camping is enjoyable—people enjoy the natural world—but we have to do it responsibly. I was an MSP when we passed land reform legislation, as others who are sitting here were—I see Murdo Fraser nodding sagely. That certainly created the idea in too many people’s minds that they, in quotes, “owned the country”, which, of course, is not true. We all owe a responsibility to the country, which is the important point that we want to take from the debate.

The role of country rangers has been emphasised. I have met many of them, and I know the valuable contribution that they make, in quite a mannerly way, to help people to understand their responsibilities.

At the end of the day, if people simply have no regard to others’ sense of what is right and proper and others’ peaceful enjoyment of where they stay, we have a problem that will not be solved by laws or trebling the number of rangers. We simply have to address that much earlier in people’s careers. Maybe we should subsidise the Boys Brigade and the boy scouts, because that is a good training ground; it is where I learned to cook and camp.

**The Deputy Presiding Officer:** Thank you. Before I call Ms Smith, due to the number of members who wish to speak in the debate, I am minded to accept a motion without notice, under rule 8.14.3, to extend the debate by up to 30 minutes.

*Motion moved,*

That, under Rule 8.14.3, the debate be extended by up to 30 minutes.—[*Murdo Fraser*]

*Motion agreed to.*

18:40

**Liz Smith (Mid Scotland and Fife) (Con):** I am grateful to Murdo Fraser for securing the debate, because there is no doubt that dirty camping has become a serious issue in many parts of rural Scotland; it is part of the triple blight that has developed of litter, fly-tipping and irresponsible camping. Not only is it costing local communities and authorities huge sums of money, it is leading to significant aggravation and inconvenience. In some areas, the problem has become so bad that it is turning away tourists, who we badly need. In many local communities, people's everyday lives are being upset, because they feel threatened by the activities of the dirty campers. Nobody should have to put up with that.

A couple of weeks ago, with the local councillor, I was taken to the shores of Loch Earn in Perthshire to meet many members of St Fillans community council, and I was astonished at what we were shown. Branches had been ripped off trees, and those that could not be burnt had been left strewn across the ground. There were old cans, broken glass, old tents, significant amounts of human waste and discarded plastic. It was positively revolting. I accept the good point that Andy Wightman made about the need to balance the law with educating people. Stewart Stevenson made very good remarks about what people learn about self-discipline by being part of the boy scouts or the Boys Brigade.

**Stewart Stevenson:** To be clear, I do not seek for that opportunity to apply only to males; females should equally have that opportunity.

**Liz Smith:** I would never have thought anything else of Mr Stevenson.

I also want to flag up to the Scottish Government the pending closure of and threat to a lot of the outdoor centres that are at the core of inculcating the self-discipline that Mr Stevenson and Mr Wightman referred to, because that is an extremely important aspect.

There is a very small but increasing number of people who are totally irresponsible and for whom self-discipline does not come into it at all. They are selfish individuals, who have no care for the local community. I do not think that they want to understand what is happening there. They are pitching up at Loch Earn late afternoon on a Friday and despoiling the countryside; there is no other word for it. They are bringing expensive kit with them, such as television sets, music systems and

camping equipment, so we should not pretend that those people do not have some sense of responsibility. However, I do not think that they care about the damage that they inflict on all those other communities. We have to balance the law with education; it is important that we look towards what we can do. Mr Wightman made another interesting point; it is not just about younger people but about getting people to understand their responsibilities when they visit our countryside.

However, there is a legal aspect, and Finlay Carson raised interesting issues to do with the byelaws, some of which are not strong enough and are not working well enough; if they were, we would not have such an extensive problem. I go back to the point that Mr Fraser raised earlier: to be able to enforce that law, you have to first be able to detect dirty camping properly. We have to support the police, local environment agencies and local authorities to enable them to identify, apprehend and punish the individuals who cause the problem. As things stand, I am not convinced that the law is as balanced as it should be. Local authorities have some limited powers, but there is no compulsion on them to report the incidents.

I want to make another couple of points. Technology has a role to play. A couple of weeks ago, I visited countryside conservationists who talked about a promising new app that could be used to direct the police and various people to where wildlife crime is committed. The app's technology is promising, and it could be helpful in identifying where a criminal offence takes place. Claire Baker raised an interesting point about Perth and Kinross Council, which makes use of a hub and its information process, into which St Fillans has been pitched. We should perhaps harness technology in the future.

The question is about the balance of the law with rights and responsibilities. It is all very well to have our rights—everybody wants them—but with rights come responsibilities, and we need to understand that legislation has to balance the two. If we do not do that, we will not solve the problem.

**The Deputy Presiding Officer:** As we cannot have notes passed to the chair, members can indicate to me if they require to leave for another commitment because we are sitting late. Is that the case for Ms Baker? That is fine—just go. It is difficult in the chair now—we used to take notes if we ran late—but members can indicate if they have another commitment. That is perfectly fine and we will understand. Is any other member in that position? I hope that the class does not completely disappear—I am letting them off early.

18:47

**Gordon MacDonald (Edinburgh Pentlands)**

**(SNP):** I thank Murdo Fraser for bringing the debate to the chamber. Dirty camping in the Pentland Hills regional park has been an issue that, sadly, many of us have dealt with for a number of years. We previously had to deal with three main issues: litter, poachers and groups of camping youngsters in the summer. However, we are seeing dirty camping on a different scale this year mainly as a result of the current pandemic. In the past three weeks in the Pentlands alone, the police have engaged with 89 campsites and had to disperse groups of people on six occasions.

Police Scotland reported that, unfortunately, the increase in visitor numbers has led to an increase in littering and antisocial behaviour, which includes that of those who camp with little regard for the local environment or wildlife and who leave litter, cause damage to trees and light fires.

Littering is an on-going problem and I have on a number of occasions helped members of the Friends of the Pentlands to carry out litter picking around the car parks and paths across the regional park. Littering happens in the Pentlands. Cameron McNeish describes the Pentlands as “Edinburgh’s lungs”, yet some people are still prepared to pollute that natural asset by not taking their rubbish home.

Illegal fishing during the night at a number of reservoirs, including Cubbiedean and Threipmuir, also has a major impact on the viability of local angling clubs. Environmental damage also happens as saplings are cut down to provide firewood for camp fires. The Pentland Hills park rangers recently highlighted that fires that spread in sensitive habitats, barbecues that are not properly extinguished or are not controlled, and fire pits that leave scorch marks in the ground are causing environmental damage. We need to see a change of legislation to ban people from lighting fires when they use the regional parks for leisure.

We are also seeing increased traffic and inconsiderate parking around the Pentland Hills—people who park across junctions and access roads or narrow the carriageway—which creates major problems for farmers and local residents. On a positive note, I am pleased that, following my representations to City of Edinburgh Council roads department, we will have double yellow lines around the access roads to Threipmuir car park. However, we must encourage people not to use their cars when travelling to the Pentlands. The Scottish Government recently gave the City of Edinburgh Council £5 million to provide new walking and cycling routes. I ask that the council uses some of that money to provide a path to the Pentlands from Balerno.

I am pleased that there has been a multi-agency approach in tackling the issues that are impacting on the regional park. Local groups such as Balerno community council, Friends of the Pentlands, Mallyen Angling and Youth Vision, as well as NFU Scotland, the police, local councillors and the regional park manager, are all working to stop those who are camping with little regard for the local environment or wildlife. However, due to the lack of funding, they are tackling the problem with one hand tied behind their backs.

The Scottish Government sets the budgets for national parks, but regional parks such as the Pentland Hills regional park are dependent on local authorities allocating funds each year. It is clear that there is a need for long-term funding to be made available specifically to Scotland’s regional parks. Such investment would allow path improvements to be made, giving responsible access to all users and preserving sensitive habitats.

We need to tackle the issues that I and other members have raised before they become the new norm. I do not want a repeat of what happened to a constituent of mine earlier this year. When carrying out his water bailiff duties, he was attacked and suffered severe facial injuries.

We need action and I hope that the Scottish Government will work with me and other members to find successful, long-term solutions to the problems that are associated with the Pentland Hills regional park.

18:51

**Jackie Baillie (Dumbarton) (Lab):** I, too, thank Murdo Fraser for bringing the debate to the chamber. Like him, I have a constituency that people travel great distances to visit, due to its beauty and all that it has to offer. That has a number of positive effects on our community, but it also has its downsides, and irresponsible camping is one of them. Dirty camping, as it has been called, has become a challenge for communities and must be addressed at local and national levels in order that we can put an end to it, once and for all.

I feel incredibly lucky to have Loch Lomond in my constituency. It is, undoubtedly, the most stunning and scenic natural landmark in Scotland—MSPs are nothing if not competitive, Presiding Officer. However, the presence of abandoned tents, left-behind litter and scorched ground from camp fires has tainted the beauty of the loch, just as it has done right around the national park area.

I want to make a distinction between dirty camping and wild camping, as other members have done. Wild campers often pitch their tents

overnight during walking holidays and, in the main, they treat the area in which they camp with respect, and leave without a trace. As Mountaineering Scotland has pointed out, the ability to camp and the legal right to do so do not give anyone the right to be disrespectful or antisocial.

As Bruce Crawford said, Loch Lomond and the Trossachs National Park Authority put in place camping byelaws in order to enhance the experience for campers and to respect the local communities, which has worked reasonably well—although there is room for improvement. I do not wish to lower the tone in the chamber, but I note that only last week, the national park had to shut down one of its camping permit areas because of the amount of human waste that had been left. That is completely unacceptable, but I cannot help thinking that a number of immediate small changes could be made to address that particular problem. For example, public toilets should be open in the car parks and public spots in the permit areas. I do not care much whether they would be the responsibility of the council or the national park; it is a relatively easy solution that could be put in place. In the car park for the Cobbler, which is a hill that attracts thousands of walkers every year, there is not a single toilet. That has resulted in people being left with no choice but to go to the toilet along the footpath of the Cobbler. That is unhygienic and extremely unpleasant for all involved.

Similarly, with regard to the large amount of bottles, cans, wrappers and used barbecues that are left, bins being situated in the most popular spots would at the very least encourage people to clear up after themselves. Some of the antisocial behaviour that comes with dirty camping is inexcusable, however, and I am under no illusion that just having bins and toilets will solve it. For the majority of people, however, having such facilities will undoubtedly be welcome. I know that the national park authority has invested money in Portaloos. I never thought that I had come into politics to talk about toilets, but there you go. Provision of those toilets has been extraordinarily helpful.

I was at Duck Bay a few weeks ago. Argyll and Bute Council closed the toilet there some years ago and is being intransigent about moving it into community ownership, or into the ownership of the local hotel. The litter and waste that was left around there was incredibly sad to see.

Some issues go beyond litter and loos. I completely agree with Scottish Land & Estates, which has called for increased education and awareness on the rights of land access and the responsibilities that come with them. There is a multi-agency approach on the ground locally,

involving the national park authority, councils, Police Scotland and others. The full extent of existing powers must be used when cracking down on antisocial dirty camping, and the Scottish Government needs, as a matter of urgency, to provide additional financial support for the national park and councils so that they can put facilities in place.

I encourage the national park authority and local councils—in particular, Argyll and Bute Council in my area—to continue to engage with local people on the issue. The communities and businesses in the areas concerned are suffering. I commend groups such as Friends of Loch Lomond & The Trossachs, that have a huge amount of local knowledge. Their knowledge of the problems and their views on how best to address them are invaluable, and I look forward to continuing to work with them to protect and support our beautiful national park.

18:56

**Gail Ross (Caithness, Sutherland and Ross) (SNP):** I, too, thank Murdo Fraser for bringing this important debate to the chamber. “Dirty camping” is a relatively new term. It is a descriptive term, and it is an accurate term. As has been mentioned already, it is different from the well-used term, “wild camping”.

We all know that lockdown has been one of the most difficult experiences that many of us have had to endure. The lifting of restrictions on 15 July has meant that people from all over the UK have flocked to my glorious and beautiful constituency to holiday there—and very welcome they are, too. However, it seems that a minority of campers are ruining the reputation of the sector by disrespecting our countryside, abusing the locals and generally behaving in a manner that is completely unacceptable.

The influx of visitors, whether they have come with motor homes, caravans or tents, has taken us all a bit by surprise. I have been inundated with emails from locals saying that camper vans and tents are parking up everywhere and anywhere—in lay-bys, car parks, fields and even in private driveways. There have been accounts of fires and of litter including nappies and human waste, which is disgusting. Communities should not have to put up with that.

Jackie Baillie was right to say that if we have more litter, we need more bins. Highland Council has been closing toilets, whereas it should possibly have been opening new ones—or, at least, considering some kind of system for charging for their use.

Tourists have also been rocking up in hired motor homes, thinking that they could get a space

at a site at short notice. Some thought that they could just park wherever they liked, but they cannot do that. They need somewhere to dump their waste, too. I absolutely agree with everyone who has said that education is necessary.

I can understand why some campsites are nervous about opening, and why some have remained closed, or are only partially open, but we are now at a turning point in the services that are available for tourists, and the issue definitely needs to be addressed. Tourism is a huge sector for us, so we need to ensure that it is managed correctly. People should always feel welcome to visit my area, but they should treat it and its communities with respect.

Some kind of joint action is needed, because more than one body is involved. That action needs to be taken soon, because the problem is going to get out of hand and our communities are going to be forever disillusioned with a sector that has become essential for many people's survival.

We want people to visit our constituencies and areas, and Scotland as a whole, because we have so much to share and promote. However, we do not want locals being unable to walk their dogs for fear of stepping in human excrement, we do not want emergency services putting out wildfires and we do not want swathes of caravans in car parks.

Recently, I met representatives of the north coast 500 route, and have received assurances that the NC500 working group will be reconvened to address the issues—which I accept is relevant only to my constituency. There has been a suggestion that representatives of communities along the route be called on to inform the public message through official channels, and to feed back suggestions for possible solutions.

I urge apps and websites that promote certain areas as being “perfect for wild camping” to ensure that the term is used correctly, and that the areas that are being promoted are not farmland, common grazings or other inappropriate sites.

As has been said already, campers should follow the Scottish outdoor access code and leave an area as they found it. I end by thanking all the volunteers and locals who have helped to clean up their communities' roadsides, woods and beaches, and I say to my pals in the Ullapool Sea Savers that their work has not gone unnoticed.

19:00

**The Minister for Rural Affairs and the Natural Environment (Mairi Gougeon):** This has been a brilliant and interesting debate, and we have had a good chance to tease out some of the issues, so I thank Murdo Fraser for bringing the matter to the chamber. In debates such as this, we always have

a competition about which is the best constituency. Although it is unfortunate for everyone else in the room, I have the last word and, of course, the best constituency is Angus North and Mearns. There we are. I am glad that I have settled that for everyone.

I echo Bruce Crawford's thanks to the rangers and all the people in communities who have been involved in clearing up the mess and who have been at the forefront of dealing with people causing problems. I give massive thanks to everyone who has been working hard to keep our communities safe and clean throughout the coronavirus period. They have done a massive piece of work.

The issue is of huge interest and concern to members across the chamber, as we heard during the debate and in the environment portfolio question time earlier this afternoon. Issues around dirty camping, littering and fly-tipping have been increasingly raised in the media as well as directly with the Scottish Government. A number of questions have rightly been asked of the Government today because we are all concerned about the issue, as are our constituents and communities. Everyone wants the problems to be tackled effectively.

**Finlay Carson:** Does the minister agree that the Government bears a large part of the responsibility for the issue? Since 2003, when access rights were, quite rightly, given to everyone, there has been a continued reduction in the amount of money that the Government makes available to local authorities and countryside rangers to deal with the increasing number of visitors. The Government has encouraged people to go to the countryside without realising the impact that that would have on communities. For example—

**The Deputy Presiding Officer:** No, not “for example”. That was a good intervention, but you are starting on another wee speech.

**Mairi Gougeon:** I do not entirely agree that that was a good intervention, Presiding Officer, because it is one that I entirely disagree with. If I have time later, I will address some of the points that Mr Carson made. I also want to come back to some of the important issues that Stewart Stevenson raised.

In my community, there has been increased littering and fly-tipping. We need to think about the mentality of people who think that it is acceptable to do that. How do we prevent that mentality developing in the first place? That is one of the key considerations. It is vital that we do that, because, although we could put all the resources in the world into enforcing the rules, it would be better to prevent that behaviour occurring in the first place. That is an important issue to tackle.

**Michelle Ballantyne (South Scotland) (Con):**

The minister makes an important point. As a youth leader who works with children from deprived areas, I would say that the biggest issue is education. That was mentioned by Liz Smith and Stewart Stevenson. As youngsters, we learned through our outdoor education in scouts, cadets and school, and that provision is being massively eroded. Netherurd in the Borders region is being closed, but it is in such places that we learned how to treat the countryside, how to behave, how to camp, where to walk and not to litter. Will the minister commit to improving funding for outdoor education?

**The Deputy Presiding Officer:** I let you have a long intervention, Ms Ballantyne, because you have been here for the whole debate.

**Mairi Gougeon:** I will come to those points about education as I continue my speech.

Although it might be convenient to categorise all the issues that we have discussed today under the term “dirty camping”, that can be an oversimplification that masks a more complex array of issues, many of which we have covered today. The coronavirus and the long periods of lockdown have had a social impact, but we also need to recognise that many of the issues predated the pandemic, and we need to understand them better if we are going to deal with them.

A generation of people have grown up since the introduction of our groundbreaking access rights, and there is a wider group who appear to have forgotten the specific responsibilities that come with those rights—as Murdo Fraser suggested when he opened this evening’s debate. Some people may not realise what they are doing or are completely ignorant of the wider impact that their actions have. We have to consider those issues against the backdrop of the extraordinary challenges that we have all faced over the past few months and the limitations on leisure, social and recreational activities, particularly in our centres of population, which have coincided with a much-reduced range of options for travel and holidays.

In general terms, we have seen problems from two types of issues. One issue relates to an increased volume of motorised or roadside tourist campers congregating, usually independently, at roadside locations. The capacity of facilities and services is sometimes insufficient to meet the growing demands that are placed on parking and on litter and waste disposal. Although many of those issues are not entirely new, they have been much more acute this year because of the particular combination of circumstances that we have faced during the phased exit from lockdown. The second phenomenon is high-impact party

campers, whose activities appear to be focused on alcohol consumption and who often have a complete disregard for the environment and the people and communities that they are affecting.

It is important to stress that reports from those who are managing such issues on the ground confirm that most people are trying to behave responsibly—that point was highlighted by Andy Wightman. We have already made the distinction between wild camping and what is known as dirty camping, which are very different. The latter terminology has recently been adopted to describe the anti-social behaviour, the negative actions and the complete disregard for Scotland’s outdoor access code that are being exhibited by a small minority of individuals when they are irresponsibly accessing Scotland’s countryside and environment. It is vital that we remember that the vast majority of visitors to our countryside are respectful and responsible.

We want people to be outdoors and enjoying our countryside. Beyond that, Scotland’s natural landscape is a vital component of our tourism appeal. Around 50 per cent of our visitors come for our landscape and scenery, and another 23 per cent just want to get away from it all. To achieve a safe and strong recovery for tourism, it is crucial that we maintain our beautiful locations for future visitors. The impact of the pandemic on our tourism sector has been challenging, so the Scottish Government and agencies such as VisitScotland are working hard to share the message of responsible tourism.

I will highlight some of the actions that we have taken because we take the issue very seriously. We are working with the motorhome hire industry, through the Campervan and Motorhome Professional Association, to promote appropriate behaviour among those who hire such vehicles, which includes proper arrangements for waste disposal and driving. To combat the littering issues, we have worked with Zero Waste Scotland and Keep Scotland Beautiful to develop an anti-littering campaign, which includes bespoke materials for 21 local authorities, including Highland Council, and which launched earlier this summer. Through our rural tourism infrastructure fund, we have already committed £9 million to projects across Scotland, and the third round of the fund is currently on-going, with an extra £3 million for 2020, which will help to fund more community toilets, car parks and motorhome facilities. Such facilities are vital—as several members have highlighted, the lack of such facilities is a major issue.

We have also established the Scottish tourism recovery task force, which will assist with the ongoing reset of the sector. As I mentioned during portfolio question time, on Monday a national

summit will be chaired by the Cabinet Secretary for Rural Economy and Tourism, which will bring together public authorities in an attempt to find solutions to the issues that our communities face.

Finlay Carson mentioned the countryside ranger service and the need for an increase there, and Murdo Fraser highlighted the significant impact of the joint approach that is being taken by countryside rangers and Police Scotland. We are having the summit on Monday because we recognise the issues that exist and how serious they are, and we want to find short, medium and long-term solutions so that we can tackle those issues in a meaningful way.

**Andy Wightman:** Will the minister take an intervention?

**The Deputy Presiding Officer:** I am being very light touch, but I am afraid that the minister has already had nine minutes. [*Interruption.*] Och, well—all right, but it has to be brief, because we want to get home sometime tonight.

**Andy Wightman:** Thank you, Presiding Officer.

The minister mentioned the summit on Monday, and she spoke about the role of public authorities and the Scottish Government. Can she explain why a number of campsites, including Glenmore campsite in the Cairngorms, are leased on a 75-year lease that will not expire until 2081 to Camping in the Forest LLP, which is based in Coventry? One of the officers on the board is the Forestry Commission.

**The Deputy Presiding Officer:** No, no, no. Oh—

**Andy Wightman:** Will the ministers use their powers—

**The Deputy Presiding Officer:** I hope that you heard that sigh.

**Andy Wightman:** —to reopen that campsite, which will be shut till April 2021?

**Mairi Gougeon:** I would like to give Mr Wightman a considered answer on the issues that he has raised, so I undertake to write to him with a full response.

My final key point is on education, which was raised by members across the chamber. Stewart Stevenson got to the nub of it and hit the nail on the head with regard to some of the issues that are evident. Andy Wightman, Liz Smith and Jackie Baillie made the same point. Everyone should be aware of the Scottish outdoor access code and the important advice that it gives on how to enjoy access rights responsibly and how to respect the needs of other people and act in a way that keeps everyone healthy and safe.

We already have considerable experience of managing impacts of the type that we are discussing. That is highlighted in the guidance on managing tent-based camping that is produced by the national access forum, which is based on practical experience in busy areas such as Loch Lomond and the Trossachs national park.

In addition, we are actively transmitting information to raise awareness of how to behave responsibly. As part of that effort, NatureScot is running a campaign to promote the Scottish outdoor access code, which Emma Harper highlighted. So far, the campaign has had a combined reach of at least 3.5 million on Facebook and Twitter and has driven more than 250,000 visits to the Scottish outdoor access code website. That has been accompanied by the campaigns to encourage responsible camping and combat litter that have been led by VisitScotland and Zero Waste Scotland.

This has, of course, been an extraordinary year, and we are all keen to learn from it in planning for the next one. Although it is understandable that the headlines accentuate the issues, we should not lose sight of the benefits of such outdoor activity. The points that Andy Wightman made in that regard are very important. Most people have behaved responsibly.

We must also recognise the role that the staycation is playing in helping Scotland's tourism economy back to its feet. Amidst the huge pressures that we, the countryside, communities, landowners and agencies have had to deal with, more people than ever have connected responsibly with the outdoors, enjoyed Scotland and engaged in healthy activity. That is hugely important for our capacity and resilience to deal with the current pandemic and, indeed, any crisis.

*Meeting closed at 19:13.*



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