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Tuesday 8 December 2020

Session 5



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Scottish Parliament

Tuesday 8 December 2020

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

Time for Reflection

The Presiding Officer (Ken Macintosh): Good afternoon, colleagues. We begin this afternoon's business with time for reflection. Our time for reflection leader today is the Rev Robert A Hamilton, who is the minister of the New Wellwynd parish church in Airdrie.

The Rev Robert A Hamilton (The New Wellwynd Parish Church, Airdrie): Thank you, Presiding Officer. Good afternoon.

As Covid-19's grip on the world was intensifying and more and more countries were going into lockdown, President Macron said that we would need to learn to reinvent ourselves, and we have had to do just that in so many different ways, to keep ourselves safe, to keep others safe and to learn to do a lot of what is familiar and part of our everyday routine in quite different ways.

As a minister, I have seen how that has brought out so much good in so many people who have looked out for one another, especially neighbours on their own with no one to turn to. I have also seen the challenge of it and the heartbreak that goes with it.

When my father-in-law died in May, what should have been a service in a packed church was held instead at the crematorium, with a handful of people present and his son unable to be there because of where he lives in Somerset. Yes, technology helped, as the service was streamed. Yes, knowing that people were watching from a distance and thinking and praying helped. In other instances, neighbours stood dressed in their finest funeral clothes to support a grieving family, and safely distanced villagers lined the streets as the cortège drove past.

Even with all of that, the grieving process has been stifled, because what helps is the gathering of family, friends and communities, not just joining together to celebrate someone's life but joining together to lament and to weep with others who weep. When he was Moderator of the General Assembly of the Church of Scotland, Professor Jim Whyte preached at a national memorial service for the victims of the Lockerbie air disaster. What he said then resonates now:

"when we walk through the valley of the shadow, we are not helped by smooth words spoken from a safe distance, but by those who have known the darkness and are

prepared to share it with us, and hold us till we see the light."

"Brother, sister, let me serve you;
I will weep when you are weeping;
When you laugh I'll laugh with you;
I will share your joys and sorrows
Till we've seen this journey through."

What can we do as individuals and as a nation, not just sometime in the future but here and now, to serve our sisters and our brothers?

Thank you, and blessings.

The Presiding Officer: Thank you very much indeed, Rev Hamilton.

Topical Question Time

Covid-19 (Care Home Visiting)

1. Neil Findlay (Lothian) (Lab): I declare an interest, as my mum is a resident in a care home. To ask the Scottish Government what action it is taking to ensure that safe care home visiting can take place. (S5T-02571)

The Cabinet Secretary for Health and Sport (Jeane Freeman): We continue to take a number of steps to support safe visiting. On 3 December, we issued guidance for care homes and visitors over the festive period, which reiterates that care homes should support indoor visiting where it is safe to do so. We are introducing asymptomatic testing for designated visitors as an added measure alongside personal protective equipment and infection prevention and control. The roll-out of 14 early adopter care homes started this week, and lateral flow testing kits will be delivered to all care homes across Scotland during the course of next week. Where a home cannot make initial use of the lateral flow devices, polymerase chain reaction—PCR—tests will be made available.

In addition to that, in consultation with directors of public health, Public Health Scotland and the chief medical officer, we now recommend that the period of closure to new admissions and to visitors following an outbreak is reduced from 28 to 14 days.

Neil Findlay: At the weekend, families of care home residents, health and social care workers, trade union representatives, MSPs from all the Opposition parties, lawyers, journalists, and public figures wrote to the First Minister about the lack of contact between families and their loved ones in care homes. Despite assurances that we can have regular visits of up to four hours and close contact including holding the hands of our loved ones, for the overwhelming majority of families, that bears no relation to reality. Families have even less contact than they did before the cabinet secretary's announcements. This situation cannot continue.

Families have had enough of press releases about enhanced visiting and they are not prepared to tolerate being separated any longer. The cabinet secretary has claimed that she is powerless to act and that only care home owners and Public Health Scotland can do so. Will the cabinet secretary agree to immediate all-party talks so that we can consider whether we need to bring emergency legislation before the Parliament in order to facilitate safe and regular contact with our family members in care homes?

Jeane Freeman: I am always willing to talk to all parties and do so regularly. I am happy to have

the conversation that Mr Findlay talked about. The latest information that I have—before we roll out the lateral flow devices—is that about 40 per cent of care homes in which there is no outbreak are facilitating indoor visits, and a number of them will be facilitating four-hour visits.

As Mr Findlay said, however, what I can do is issue continually improving guidance. The guidance that we issued for Christmas and new year is significantly improved in making it really clear what care homes can do, what visitors can do, and what precautions people need to take along with the roll-out of regular asymptomatic visitor testing. All of that is designed to give care homes that are unsure about the risks that they might be taking more confidence in following the guidance on visiting. We also intend to continue our work with Scottish Care and others to look at specific care homes that have specific problems. Nonetheless, as I said, I am very happy to meet members from across the chamber to discuss that further.

Neil Findlay: That is excellent—I am delighted that the cabinet secretary has accepted that. I hope that her office can facilitate that meeting later today or tomorrow morning, because this is an absolute emergency for families. The cabinet secretary quoted a 40 per cent figure. Perhaps she could provide us with evidence of that at the meeting, because care home residents who have done surveys report fewer than 10 per cent of care homes providing that type of access.

We heard in October that indoor visits would be extended from 30 minutes to up to four hours. However, I know nobody who has had anything like a four-hour visit. We also heard about outdoor visits with up to six visitors and increased personal interaction, including hugs and hand holding, as long as PPE and infection prevention and control measures are met. That is fantasy for most families. I certainly dream of that happening.

Keith Brown (Clackmannanshire and Dunblane) (SNP): Question!

Neil Findlay: I will ask a question when I get around to it. Do not be so ignorant. This is an extremely important issue.

The Presiding Officer: Excuse me. Order, please.

Neil Findlay: If he thinks that this is not an important issue, he needs to have a word with himself. Clown.

The Presiding Officer: Order, please. Let us not have bad-tempered comments or exchanges across the chamber. That goes for you in particular, Mr Findlay. You are on the floor and you have the microphone—nobody else has the microphone. Please continue.

Neil Findlay: Absolutely, Presiding Officer.

It is really important for families. Over the weekend, I have spoken to families who are prepared to take action that they really do not want to take, including legal action and the withholding of care home fees. I ask the cabinet secretary not to force families into doing that. We should have those talks, this afternoon or tomorrow, to see how we can remedy the situation, because it is absolutely critical.

Jeane Freeman: I do not disagree for a minute with Neil Findlay on how important it is to families and to residents. I hear it when I meet the care home relatives group, as I did, most recently, last week. I also hear it from my constituents and from my family, so I absolutely understand it.

I am very happy to see what more we as a Government can do, but we should also be straight with people about the limitations regarding timeframe and action. I am happy to discuss that, but in circumstances in which care homes do not wish to follow the guidance and open up for visiting, we must not pretend that we could force them to do that, as that would need to be considered. Nor can we pretend that if we wanted to do it, we could do it quickly.

I am happy to look at and discuss that, but we must not set it up as some kind of binary position, in which people are on either the right or the wrong side. I think that Mr Findlay and I are on the same side. I might not be moving fast enough for him and I might not be doing everything that he wants, but we should have the discussion to see what more is possible.

The Presiding Officer: Stuart McMillan joins us remotely.

Stuart McMillan (Greenock and Inverclyde) (SNP): We know that testing is no substitute for other vital layers of protection against Covid-19, the most important of which is following the FACTS guidance. In the light of that, will the guidance that is published following the trial phase include specific instructions for visitors on how to follow infection prevention and control measures?

Jeane Freeman: The guidance already includes that, as well as information for care homes and their staff about how to help visitors follow the right procedures on personal protective equipment and hand hygiene. As Stuart McMillan knows, the point about PPE is not just about the PPE that is used; it is about the safe way to put it on and, in particular, to take it off, and the setting in which that should be done. He is absolutely right: testing is an important additional measure, but is not sufficient on its own. It needs to be surrounded by all those other aspects, such as PPE—absolutely—and good quality infection prevention and control in the care home or hospital setting.

Donald Cameron (Highlands and Islands) (Con): I spoke to a group of care home relatives yesterday. It is clear that, as time goes on, their anguish and frustration grow. One issue that they mentioned was delays in the processing of risk assessments from care homes by health boards' public health departments. Does the cabinet secretary acknowledge that problem? What can she do to solve it?

Jeane Freeman: Care home relatives have raised directly with me two issues on risk assessment. In some instances—it would not be fair to think that this is the case across the whole country—the risk assessment takes a bit too long to be completed. In other instances, people feel that the guidance that they receive on a comparable issue is inconsistent between areas.

We have begun and we continue conversations about what we can do to address those issues with our directors of public health, bearing in mind that they are senior clinicians and have to exercise their professional and clinical judgment on individual circumstances. They need the room and the flexibility, within the overall approach, that allow them to do that. That discussion is under way in order to see whether there is anything more that we can do to improve that position.

Willie Rennie (North East Fife) (LD): Care home managers and operators are scarred by what happened in March. That is why it is really important that all members stand with them as they seek to make that difficult decision about allowing residents to meet their families in the care homes.

A person's being safe and well is about not just the normal things that we think about to do with the virus but quality of life, which is why I want residents to meet their families as often as possible. I am sure that the health secretary agrees. What more can we do to build the confidence of care home operators and managers to make those difficult decisions?

Jeane Freeman: I have consulted Scottish Care and I have met a number of care home providers directly, to hear what more they think that they need. They all said that they needed two things: additional support for the additional administrative work that they need to do, such as when they book in visitors or use our safety huddle tool, which gives them more work to do, and testing for visitors. I have responded to both requests. We have provided additional financial support so that staff can be recruited to take on additional administrative and other work, and we are rolling out lateral flow devices to provide testing.

Now that care homes have answers on what they said would help them to feel safer and more confident about people visiting—and longer

visits—including in the circumstances that Mr Findlay described, we will follow that up, to see whether that comes to pass or there is more that they need to do or that we need to do to support them.

Covid-19 Vaccination Programme

2. Donald Cameron (Highlands and Islands) (Con): To ask the Scottish Government whether it will provide an update on the roll-out of the Covid-19 vaccination programme. (S5T-02576)

The Cabinet Secretary for Health and Sport (Jeane Freeman): The first vaccinations began across all mainland national health service boards today. NHS Orkney will begin tomorrow, NHS Western Isles will begin on 10 December, and NHS Shetland will begin on 11 December.

Initial vaccinations are for national health service and social care staff, as I set out in my statement last week. Those vaccinations will take place in 21 sites, close to the vaccine deployment centres. From next week, we will begin to vaccinate care home residents and people aged 80 and over who are in-patients.

Three webinar training sessions, led by our deputy chief medical officer, Dr Steedman, have been held for the Pfizer vaccine. There were 4,035 attendees, who were a mix of vaccinators, pharmacists and other clinical colleagues.

The vaccine management tool went live from Tuesday 1 December and all cohort data for over-80s, care home residents and health and social care workers has now been community health index—CHI—matched and shared with boards, so that we can manage the data flow as people are vaccinated.

The freephone Scottish Covid-19 vaccination helpline went live today, on 0800 030 8013.

Donald Cameron: I thank the cabinet secretary. Last week, she and the First Minister committed to publishing the Covid-19 vaccination plan that was reviewed at Cabinet, as well as a national list of vaccination centres and information on how many storage freezers are in each health board. Can the cabinet secretary give a fixed date for the publication of that information? If not, can she give an indication of when the data will be published?

Jeane Freeman: I can, indeed. The information will be sent to all members of the Scottish Parliament and lodged with the Scottish Parliament information centre tomorrow. It will include other information that I hope will assist members in answering their constituents' questions about the safety of the vaccination, the regulation process and so on. We will follow that iteratively.

A point that I want to make, which I ask members please to hold on to, is that, as supplies arrive and as new vaccines are approved, as they might be, the information that we send them will need to be updated. We will be very clear in the information that we give members and the timeframe that it covers. Members should expect updates as more information becomes available to us.

Donald Cameron: We know that we have enough vaccine to vaccinate approximately 32,000 people. Approximately how many people will be vaccinated this week? Will the 32,000 number be reached by the end of December? Will the Government commit to publishing a rolling update on the number of people who are vaccinated each week?

Jeane Freeman: We hope that, towards the end of this week, we will be able to give an indication of the number of people who have been vaccinated in this first week. Members should remember that the first week will not be comparable to any other week, because our vaccinators are handling a new vaccine and need to be sure about how they do that, which, in part, is why vaccination is taking place in centres near the deployment sites.

We are considering the frequency with which, thereafter, we will publish data that is robust and therefore publishable. I am happy to let members know the timeframe in which we will operate that. Again, information will be sent to members once we are confident about its robustness and accuracy.

As I heard Matt Hancock say this morning on "Good Morning Scotland", although we have an indication of the volume of supply, we need to remember that Pfizer's 174 approval for the vaccine—the approval to supply—means that every single batch needs to be batch tested. That will streamline over time, but, initially, that will create an extra element in the delivery chain. We therefore need to be confident that, as the vaccines arrive in the United Kingdom, are tested and so on and are on their way to us, we can say at that point how many additional doses we have. As we get to those various points throughout this month and into the next, we will make sure that members are aware of that.

The Presiding Officer: I am going to squeeze in a couple of supplementary questions, if the questions can be brief.

David Torrance (Kirkcaldy) (SNP): What plans does the Scottish Government have to encourage maximum uptake of the vaccine by eligible groups?

Jeane Freeman: A number of plans are in train, not least to supply proper information for informed

patient consent. As I said last week, information will go to every household in Scotland at the beginning of March. There will be other aspects of marketing and public information. As we finalise the overall information plan over this month and the next, and probably into February, we will make sure that it is issued to members so that they know what to expect. However, in order that members can answer constituents' questions, I would say that a lot of the initial plan concerns safety, the regulatory process, what to expect and so on.

Monica Lennon (Central Scotland) (Lab): I thank all the staff involved in the vaccination programme.

I was concerned to hear that some staff phone lines were jammed yesterday with front-line workers trying to book appointments for their vaccine. I know that NHS Lothian has apologised. What resources are in place to ensure that we do not get jammed phone lines? Will all the helplines and phone lines be free of charge? NHS Lothian has said that it will reimburse workers who had to queue for a long time for an appointment.

Jeane Freeman: We are talking about one board out of 14 that had that difficulty. As Ms Lennon said, that board has apologised and has ensured that it has additional resources.

Boards are more likely to issue appointments and information to staff by email, because we prioritise within the patient-facing group of NHS employees to ensure that we see those NHS employees first who are most at risk from the virus. Understandably, perhaps, NHS staff are enthusiastic about the vaccine—that is good—and are contacting their board to book an appointment.

We ensure that the phone lines, which are the right source for staff or anyone else, are adequately resourced. Our national helpline certainly is.

It is important that NHS staff know that patient-facing NHS staff, particularly in Covid red areas—I am talking about intensive care units, high-dependency units, Covid wards and so on, and also primary care and our ambulance service—will be contacted first. That will often be by an email to their work account. In the initial stages, that may be done at relatively short notice, when we know that supplies are arriving. Boards need to know for sure that a supply is arriving before they issue appointments.

All of that will smooth out over the coming weeks. Initially, we will have those glitches and interruptions, but we will make sure that, every time that we have supplies of the vaccine, we are ready to vaccinate those who need it, in the order of priority that the Joint Committee on Vaccination and Immunisation has set out for us.

Business Motion

14:24

The Presiding Officer (Ken Macintosh): The next item of business is consideration of business motion S5M-23633, in the name of Graeme Dey, on behalf of the Parliamentary Bureau, setting out changes to this week's business.

Motion moved,

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

(a) Tuesday 8 December 2020—

after

followed by Ministerial Statement: Brexit Readiness

insert

followed by Ministerial Statement: Education COVID-19

delete

6.00 pm Decision Time

and insert

6.30 pm Decision Time

(b) Wednesday 9 December 2020—

delete

followed by Ministerial Statement: Coronavirus Legislation

and insert

followed by Ministerial Statement: Budget Update

after

followed by Scottish Conservative and Unionist Party Debate: Economy

insert

followed by Ministerial Statement: Coronavirus Acts: Fourth Report to the Scottish Parliament

delete

5.40 pm Decision Time

and insert

6.10 pm Decision Time

(c) Thursday 10 December 2020—

delete

followed by Stage 3 Proceedings: Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill

followed by Stage 1 Debate: Scottish General Election (Coronavirus) Bill

and insert

followed by Stage 1 Debate: Scottish General Election (Coronavirus) Bill

followed by Stage 3 Proceedings: Forensic Medical
Services (Victims of Sexual Offences)
(Scotland) Bill.—[*Graeme Dey*]

Motion agreed to.

Covid-19

The Presiding Officer (Ken Macintosh): Our next item of business is a statement from the First Minister, Nicola Sturgeon, on Covid-19. The First Minister will take questions at the end of her statement. I encourage all members who wish to ask a question to press their request-to-speak buttons.

14:25

The First Minister (Nicola Sturgeon): As the Cabinet Secretary for Health and Sport has just discussed, I am pleased to begin by confirming that, earlier today, the first vaccines against Covid were administered in Scotland. That is a milestone we have all longed for—it offers hope, at long last, that we may now be at the beginning of the end of the pandemic. I want to thank everyone involved, now and in the months ahead, in delivering what will be the biggest vaccination programme in our history.

Today, we should all allow ourselves a smile—this is a good day and a good moment—but we must not drop our guard. For now, the virus and the risks that it poses to health and life unfortunately remain with us; indeed, we can expect the winter period ahead to be especially tough. As the vaccination programme rolls out across the country, the national health service will be coping with the impact of Covid and other winter pressures, and of course we may also be dealing with any disruption caused by Brexit, the terms of which are still unclear. So, we have no grounds at all for complacency about the months ahead, and we still have every good reason to do everything that we can to keep ourselves and our loved ones safe.

The levels approach is one of the main ways that the Scottish Government seeks to achieve that. We have just completed our weekly review of the levels of protection for each local authority area, and I will shortly confirm the outcome of that review. However, I will start with a brief summary of the latest Covid statistics.

The total number of positive cases reported yesterday was 692. That represents 5.5 per cent of all tests carried out, and takes the total number of cases to 101,475. There are now 983 people in hospital, which is an increase of nine from yesterday, and 57 people are in intensive care, which is a decrease of two from yesterday.

I regret to report that in the past 24 hours, a further 33 deaths have been registered of patients who first tested positive over the past 28 days. The total number of deaths, under that daily measurement, is now 3,950. Those figures remind us yet again of the toll that Covid continues to take

right across Scotland. Once again, my deepest condolences go to all those who have lost a loved one.

Let me turn to the outcome of this week's review. In summary—I will come on to the details shortly—I can confirm today that all 11 local authorities currently in level 4 restrictions will move to level 3 from Friday. I also confirm that five other local authority areas will move down to a lower level from Friday. Before I set out those changes in detail, I will briefly update the chamber on some of the additional measures that the Scottish Government is putting in place to help us manage the pandemic in the months ahead.

Community mass testing has been, or is being, trialled in eight different locations across west and central Scotland. Early results from those trials will be published tomorrow, with further detail available next week. The purpose of that testing is to identify cases of Covid in people with no symptoms or before they display symptoms to help break more chains of transmission. University students are also being tested, using lateral flow devices, to help them return home more safely at the end of term. Further detail on that testing will be published tomorrow. We have also considered how and when students should return to campus after the holiday period, and the Deputy First Minister will set out details of that in a statement to Parliament later this afternoon. Walk-in testing centres continue to be established in towns and cities across Scotland, and by the end of next week, 22 walk-in centres will be in place.

As we expand accessibility of testing, we are also extending NHS Scotland's laboratory testing capacity. The first of three new NHS Scotland regional hubs for processing tests is due to become operational on Saturday and will be located at Gartnavel in Glasgow. By the end of this month, NHS Scotland's testing capacity will have increased from almost 12,000 tests a day at the moment to almost 30,000 tests a day, and our total daily testing capacity, including Scotland's share of the United Kingdom-wide Lighthouse laboratory programme, will be 65,000 tests a day.

I confirm that, from next week, the Protect Scotland app, which is currently available for use only by people who are 16 or over, will be available to everyone across Scotland from the age of 11.

All those developments will be important in the months ahead in helping us to manage the pandemic as effectively as possible but, unfortunately, restrictions on how we meet and interact will remain essential for some time yet.

Our levels approach ensures that the restrictions that apply in different parts of Scotland are proportionate to the prevalence of the virus in

each area. Over the past three weeks, 11 local authority areas have been under the very severe level 4 restrictions. I am pleased to say that prevalence in all 11 of those areas has fallen significantly—for example, in the week to Friday 13 November, Glasgow recorded 281 new Covid cases for every 100,000 people in its population, and by Friday 4 December, that number had fallen to 150. In East Dunbartonshire, case numbers per 100,000 of the population have more than halved—from 224 to 104. In both North Lanarkshire and South Lanarkshire, case numbers have fallen by well over a third.

The fall in infection rates in those areas, which are the most highly populated in the country, has contributed to an improvement in the situation across Scotland. In the week to 13 November, we recorded 142 new cases of Covid for every 100,000 people. Last Friday, that figure had fallen below 100—for the first time in a long while—to 99. Although it fluctuates daily, the national average for test positivity in the week up to last Friday was back under 5 per cent—the threshold that the World Health Organization uses to determine whether an outbreak is under control.

I am relieved to say that that progress is reflected in our hospital and intensive care statistics. When I made a statement to Parliament three weeks ago, 1,249 people were in hospital with Covid and 95 people were in intensive care. Now, as I just reported, those figures are 983 and 57 respectively.

All that puts us in a much better position to cope with the inevitable difficulties of winter. I thank people across the country for their compliance in recent weeks. However, although the improved position is positive, it does not remove the need for a cautious approach. The risks and challenges of the next few months are clear. That is why, in reaching decisions today, we have had to consider the potential overall impact of moving to a lower level of restrictions at the same time as the Christmas period begins in earnest. That has led us to a proportionate but still cautious set of conclusions.

I turn to the detail of the decisions. I remind the Parliament that all the decisions are informed by input from the national incident management team, our senior clinical advisers and an assessment of the four harms. Given the welcome decrease in Covid rates across the level 4 areas, I confirm that Glasgow City, Renfrewshire, East Renfrewshire, East Dunbartonshire, West Dunbartonshire, North Lanarkshire, South Lanarkshire, East Ayrshire, South Ayrshire, Stirling and West Lothian will all exit level 4 on Friday.

We hope that case numbers in those areas will continue to decline for another week or so as a result of the level 4 restrictions. However, there is

no doubt that the easing of restrictions that the exit from level 4 involves will give the virus more opportunities to spread.

In the light of that, we have decided to take a cautious approach and apply level 3 protections to all those local authority areas for a period. We will observe the data carefully before determining in the weeks ahead whether and when those 11 local authorities should move to level 2.

When we introduced level 4 restrictions, we said that they would be lifted at 6 pm on Friday 11 December. That remains the case, with one exception. Retail premises that have been closed under the level 4 restrictions will be permitted to reopen from 6 am on Friday. That is intended to help stores and shopping centres better manage the flow of customers after the period of closure.

I appeal to everyone who lives in level 4 areas to continue to exercise care and caution. As we know from our experience of Covid so far, progress can easily go into reverse, so please continue to abide by the rules—in particular, that means not visiting other people's houses. As I will confirm later, travel restrictions will remain in place for the next period, so travel into and out of level 3 areas will still not be permitted.

Ten local authority areas are in level 3—Angus, Clackmannanshire, Dundee, the City of Edinburgh, Falkirk, Fife, Inverclyde, Midlothian, North Ayrshire and Perth and Kinross.

Seven of those areas will remain at level 3. They are Clackmannanshire, Dundee, the City of Edinburgh, Fife, Midlothian, North Ayrshire and Perth and Kinross.

I make a particular brief mention of Clackmannanshire. Case numbers there have risen sharply in recent days, although its case positivity remains well below the national average. We are confident at this stage that the rise in case numbers can be attributed to the mass testing pilot that has been under way there. In other words, the issue is more cases being identified, rather than a rise in transmission. Obviously, we will keep that under review, but we have decided that a change of level would not be merited at this point.

However, I am pleased to say that three areas will move down to level 2 from Friday. They are Inverclyde, Falkirk and Angus. All three of those areas have reduced, and now relatively low, rates of transmission, and although Falkirk's rate has increased very slightly in recent days, that has not changed our judgment that all three meet the criteria for moving into level 2.

We have also looked very carefully at whether Edinburgh should move to level 2 at this stage. Edinburgh is currently recording 68 cases per 100,000 people, which is below the Scotland-wide

average, and its test positivity levels are also relatively low. However, cases in Edinburgh have risen slightly in recent days, and there seem also to have been increases in East Lothian and Midlothian.

The imminence of the Christmas period has also had an impact on our thinking. A move to level 2 in Edinburgh would mean opening up significantly more services in our second biggest city in the two weeks before Christmas. That move would carry significant risk of increased transmission, and for that reason we want to have as much assurance as possible that the situation is as stable as possible before we make that move. For that reason—this has been a difficult decision—we have decided not to move Edinburgh to level 2 this week, but we will consider that again next week for both Edinburgh and Midlothian.

At the moment, there are six local authorities at level 2—Aberdeen City, Aberdeenshire, Argyll and Bute, Scottish Borders, Dumfries and Galloway and East Lothian. Both Dumfries and Galloway and the Scottish Borders have had consistently low levels of Covid for some weeks now. In Dumfries and Galloway there were 23 cases per 100,000 people in the past week, and in the Borders there were 35 cases per 100,000. We have therefore concluded that both of those areas will move from level 2 to level 1 from 6 pm on Friday.

I said in last week's statement that we were looking closely at both Aberdeen and Aberdeenshire following an increase in cases in both areas. In the past week, cases have fallen in both areas. Aberdeen has gone from 89 new cases per 100,000 people to 74 per 100,000, and Aberdeenshire's case numbers by the same measure have decreased from 95 to 80. Case positivity in both areas has also fallen and is at or slightly over 4 per cent.

For that reason, at this stage, we intend that both areas will remain at level 2. It is worth stressing, though, that cases have not fallen in either area by as much as we would want, and there is still evidence that the levels of infection are due to transmission in the community rather than solely being due to outbreaks in workplaces and care homes. We therefore continue to monitor the situation in both local authority areas very carefully, and I cannot rule out a move to level 3 for one or both of them in the weeks ahead.

My message to both areas is—as, indeed, it is for all parts of the country—that the only way to stay at the current level and then possibly, hopefully, move down further is to suppress the virus as effectively as possible. Both local authorities have assured us that they will continue to work with local public health teams to do that. The Scottish Government, of course, will do all

that we can to help, and it is also vital that local businesses and local communities continue to play a full part in those efforts.

East Lothian and Argyll and Bute will also both remain at level 2 for now. It is worth mentioning that Argyll and Bute has also seen a very sharp rise in cases in recent days. We are confident at this stage that that reflects a large workplace outbreak and is not indicative of wider community transmission. Again, however, we will continue to monitor that situation carefully.

Lastly, I confirm that Highland, Moray, Orkney, Shetland and the Western Isles will all remain at level 1—of course, from Friday, the Borders and Dumfries and Galloway will also go to that level.

From Friday, there will be a relatively small change to the rules for household gatherings on some islands in the level 1 local authority areas. At the moment, the island local authority areas—Orkney, Shetland and the Western Isles—are the only places in Scotland where it is permitted for six people from two households to meet in houses. From 6 pm on Friday, that will be extended to other inhabited islands in the level 1 local authority areas, with the exception of islands that are connected to mainland Scotland by road, such as Skye.

However, those of us who live in the rest of the country should continue to stay out of each other's houses. I know that that is really tough, but it remains the most effective way of stopping the virus spreading from one household to another.

The overall result of today's changes is that 16 local authorities will move to a lower level of restrictions from Friday, and the rest will remain at the same level. That is good news. It reflects the fact that the number of cases in Scotland has been falling in recent weeks. However, I know that it involves real and continued difficulties for many businesses, particularly those in the hospitality sector. I can therefore confirm that, tomorrow, the Cabinet Secretary for Finance will set out a further package of business support, which is intended to provide additional help over the winter. In the next couple of weeks, we will also consider whether any changes to the content of different levels, particularly as they affect hospitality, can safely be made.

More generally, as I have said previously, moving any area down a level is not a neutral act. Given that it allows some restrictions to be lifted, it presents more opportunities for the virus to spread, so it presents real risks. I ask everyone—especially people in areas that are moving down a level—to continue to do everything that they can to keep themselves and their loved ones safe. Be careful and cautious, follow all the rules that are in place, and please still try to limit your interactions

with others as much as possible. It might be counterintuitive but, as restrictions ease, caution becomes more important, not less.

Travel restrictions, which will remain in place, continue to be a vital part of keeping the country safe, with a targeted and proportionate approach to restrictions. Nobody in a level 3 area—or, until Friday, a level 4 area—should travel outside their local authority area, except for very specific purposes, and no one should travel into level 3 or 4 areas unless it is for essential purposes. I am afraid that that means, for example, that people from outside Glasgow must not travel to the city to do Christmas shopping when retail premises open on Friday.

Today—the day when the first people have been vaccinated against this horrible virus—is, and should be, a day of optimism for all of us. It marks, we hope, the beginning of the end of the pandemic. Unfortunately, the end is not quite with us yet, so all of us must continue to think about how we keep ourselves and each other safe in the meantime.

In the weeks ahead, many of us will face choices about when or whether we meet friends indoors in a pub or cafe, and about how we celebrate Christmas. Some people will decide that their wellbeing, or the wellbeing of someone they love, is best served by meeting indoors. I understand that. That is why the rules over the Christmas period recognise that inevitability and give advice on how to stay as safe as possible. However, some of us will decide to take other options—for example, by seeing loved ones outdoors or by postponing a family Christmas gathering until the spring or summer of next year.

There is a beautiful statement by the Irish poet, Seamus Heaney, that was much quoted in the early days of the pandemic and which, I think, sums up extremely well the situation that we are in now. He said:

“If we winter this one out, we can summer anywhere”.

I suspect that that sentiment resonates with many of us more strongly now than at any previous time in the pandemic.

The route back to something much closer to normal life is clearer and closer now than it has been at any time since March, and we are all looking forward to reaching that point, but we are not quite there yet, so our priority must be to do everything that we can to ensure that, when we reach that point, all our loved ones are there with us. That means taking extra care to stay safe now, so please continue to be very cautious in the weeks ahead.

All of us should think about how we can avoid creating opportunities for the virus to jump from

one household to another. We must all continue to stick to the current rules and guidance. Unless you live on an island that has no road connection to the mainland and is in a level 1 area, you should not meet in someone else's home. If you meet outdoors or in public indoor places, please stick to the limit of six people from a maximum of two households. Stick to the travel restrictions that I have just outlined.

Finally, remember FACTS—the five rules that will help to keep all of us safe in our day-to-day lives: wear face coverings; avoid crowded places; clean hands and surfaces; keep a 2m distance; and self-isolate and get tested if you have symptoms.

Sticking to those rules continues to be the way in which we can protect our NHS and help our health and care workers. It is how we will look after ourselves and our loved ones, and it is how we will get through the weeks and months ahead, as we look ahead to the spring and the better times that definitely lie ahead.

Ruth Davidson (Edinburgh Central) (Con):

Today's news that 90-year-old Margaret Keenan has become the first person to receive the Covid-19 vaccine is good news for us all. It marks the first step on the road to our national recovery and feels like a big step forward. When that is coupled with the news that 11 local authorities that are under the most severe restrictions will see them being loosened, there is a real sense that there is light at the end of the tunnel.

However, we must be cautious. For people who are still unable to see relatives, who have to work at their kitchen table or who watch as the doors of their small business remain firmly bolted, the difficulties that have been brought on by tackling Covid persist. For businesses in local authority areas in which the number of cases, and every other indicator, gave them hope that they should have been placed in a lower tier, it is a bitter pill to have been told today that they will not because it is Christmas and—ironically—they might get too much trade.

News of continued restrictions means that not only does support need to be announced, but it needs to be delivered—quickly. Therefore, tomorrow's announcement from the Cabinet Secretary for Finance will be welcome, particularly because the Scottish hospitality trade has had lower levels of support than the trade in England and Wales, but support needs to reach its intended targets.

Three weeks ago, the First Minister unveiled a £30 million discretionary fund to help people who have fallen through the cracks of Covid support, such as taxi drivers and people in the supply chain who were not forced to shut but whose business

has dried up due to other closures. That fund was to be administered by local authorities and would consider applications from across the piece.

Fast forward to last week, when the First Minister repeated to Parliament that the fund's money would flow in the near future. She went on to confirm that councils had signed off how the money would be split up last month. However, as of today, local authorities still have not received the funds and are not able to open applications. The fund is designed to help people who do not qualify for other grants and who are on their knees. They are watching the clock and are aware that many council workers will be going on Christmas leave, which means that the time for processing applications will be reduced.

The First Minister announced the fund three weeks ago, with a promise to get it up and running soon. Is she now able to give hard-pressed taxi drivers and supply-chain workers a date for when her Government will release the funds to local authorities, and when they can start applying for that support?

The First Minister: The allocation of the fund has been agreed with local authorities. Tomorrow, the finance secretary will give an update on the support that is available. As I said, she will set out details of additional support that will be made available to help businesses—in particular, during the winter period.

We want and are determined to do as much as we can to help businesses—especially in sectors such as hospitality, but also across the economy more generally—and to help businesses that might hitherto have fallen through the cracks during the pandemic. We have in place a comprehensive grants scheme, to which the announcement by the finance secretary tomorrow will add.

I looked carefully at the figures that were published yesterday by the Scottish hospitality group. It is important to say that the levels of support in the different nations of the UK in some respects reflect the severity and impact of restrictions. In some parts of the UK, restrictions have been significantly more severe than they have in others, and there have been national lockdowns—which, of course, has not been the case in Scotland. That will be reflected when support is averaged out.

Nevertheless, we recognise that we need to do more and we are determined to do it. As I said in my statement, and have repeated, the finance secretary will set out more detail on that tomorrow.

More generally, today brings good news to individuals and businesses across the country. There will be parts of the country, and businesses in those parts of the country, that feel disappointed

and frustrated. I acknowledge that, but in trying to strike the right balance we have to take difficult decisions. I have said all along that it will do businesses no favours if we move too quickly—although I understand why they want us to move quickly—because that can risk setting areas back and doing deeper and longer-lasting damage.

I hope that we will continue to see all of the country move in the right direction in the weeks to come, but we should not underestimate the challenges during Christmas and the need for all of us to continue to comply with all the restrictions.

Scotland is in a comparatively strong position within the UK. However, we cannot afford to take anything for granted. We have to continue to work hard to keep the virus under control.

Richard Leonard (Central Scotland) (Lab):

There is no question but that the decisions that are made about levels are complex. However, having seen some of today's data, we know that people will find it difficult to understand how the First Minister and the Cabinet have arrived at some of their conclusions.

The most recent data shows that there are 81 cases per 100,000 people in Stirling and 76 cases per 100,000 people in West Dunbartonshire. Those areas have both been moved to level 3. However, in Argyll and Bute, there are 165 cases per 100,000 people and that area has been in, and will stay in, level 2. Why is Edinburgh staying at level 3 when the data clearly shows that infection is under greater control in that city than it is in other parts of the country?

People want to see the evidence. Public co-operation during the pandemic operates on the basis of public trust and confidence, which have not been helped by the confusion that was generated at the weekend by the Cabinet Secretary for Health and Sport, which left businesses, workers and communities unsure whether the level 4 restrictions would end on Friday.

Can the First Minister give us a clear assurance that there will be no last-minute Midlothian-style U-turn later this week, and that businesses, workers and communities, especially those in all level 4 areas, can plan for easing of lockdown on Friday?

The First Minister: I know that Richard Leonard is perfect at public communication, but the rest of us are mere mortals. On Sunday, the health secretary communicated something that she realised was not as clear as it should have been. She immediately clarified it, which was a reasonable thing to do. I am sure, however, that we will all continue to take lessons from Richard Leonard.

On the substantive issues that he raised, it is complex to apply a system of levels; it would be much easier to put the entire country on a set of national restrictions. It would be much easier, but it would be fundamentally wrong, because differing levels of prevalence do not justify it.

We deliberately and rightly go through a complex process every week to judge the best level for each area. That is, to a large extent, informed by the indicators that we publish every Tuesday. As I said from the first day when we published the information, the approach must also involve contextual judgments.

Take, as an example, three local authorities—Stirling, South Ayrshire and West Dunbartonshire—that will come out of level 4 on Friday. If we look only at the indicators we could make a case that those areas should go straight to level 2, but it would actually be overly risky to take an area directly from level 4 to level 2, at the moment. Such easing could very quickly put those areas into reverse. Therefore it is better and steadier, and is in the long-term interests of those areas, to take them more steadily down the levels.

Those are the judgments that we make. People can decide whether they agree, but the judgments are made for the best possible reasons, in trying to get the best outcomes for areas.

I went into the case of Argyll and Bute in my statement. On the face of it, Argyll and Bute has had a sharp increase in cases, but as Jackie Baillie will be aware, there has been one significant workplace outbreak in Argyll and Bute, which is what lies behind the figures—not wider community transmission. If we were to take Argyll and Bute up a level for that reason, we would be putting the wider population under levels of restriction that are not merited because we know what lies behind the figures.

Such are the complex decisions that we make in trying to ensure that what we do is as proportionate and targeted as possible. We will continue to the best of our ability to make those decisions.

I understand the particular frustration that will be felt in Edinburgh. The Cabinet agonised over some decisions—those for Aberdeen, Aberdeenshire and the City of Edinburgh. There has been a recent rise in cases. In the breakdown of today's cases, the number in Lothian is—from memory—second only to Glasgow. There is a need for some caution. All Governments are struggling with the decisions. Cases are starting to rise again in some parts of the UK, and that might also happen in Scotland, as we ease up over the next few weeks: we cannot guarantee that it will not. We are taking a cautious approach in order to mitigate that risk.

Lastly, on Richard Leonard's characterisation—"last-minute" U-turns—I need to remind him, again, that we are dealing with an infectious and unpredictable virus. All the areas that I have referred to will come out of level 4 on Friday, but we must remain flexible in facing the virus. If I were to stand here right now and say that, no matter the trajectory of the virus, we will not change any of our decisions, people across Scotland would take a very dim view of that, because I would not properly be doing my job of trying to keep the country as safe as I can.

The Presiding Officer: Patrick Harvie joins us remotely.

Patrick Harvie (Glasgow) (Green): Obviously, any reduction in the prevalence of the virus is to be welcomed, but it is clear that the reduction that we have seen over the weeks when Glasgow and other parts of the country have been in level 4 is nothing close to the level of suppression that we saw during the summer. It therefore remains unclear to me whether alternative approaches that the Government is being advised about would achieve that more significant level of suppression.

The First Minister said that there is a risk that cases will rise again and she knows that education is one of our areas of concern there. Elsewhere in the UK, it has just been announced that schools will be allowed to close early, specifically in order that no teacher will be contact-traced on Christmas eve or Christmas day. Does the First Minister agree that that is a reasonable protection for teachers to be able to expect to ensure that they can have the break that they need and deserve?

The First Minister: On the first part of Patrick Harvie's question, it is a simple fact that a very severe lockdown will suppress levels of the virus more and faster than less severe restrictions will, but the more severe the lockdown, the greater the harms in other areas, such as harms to the economy, education, social wellbeing and isolation. We have to strike a balance.

We have been analysing our levels system generally and we think that, overall, the levels in the system are reasonably effective, but we will review the fine detail of those over the next couple of weeks. We think, for example, that there might be a differential effect in the impact of the levels between urban and rural areas and that the same level of restrictions might not have the same impact in an urban area as they will in a rural area. We are also looking at whether the restrictions on hospitality could be modified in any way to get the same effect while making things easier for hospitality, for example, by changing the hours of restriction and allowing alcohol at other times of the day. We therefore continue to try to suppress the virus in as proportionate a way as possible,

because I think that everybody accepts that we cannot live indefinitely under the kind of lockdown restrictions that we were under earlier this year.

In terms of the prevalence of the virus and confirmed cases, we have the lowest level in the UK right now, which again does not give me any room or grounds for complacency but suggests that the measures that we have been taking thus far have had an impact. The challenge and priority now is to ensure that that continues to be the case. The Deputy First Minister set out last week the reasons for the decisions around the school holidays; again, like all these decisions, they are finely balanced. Arrangements are in place to take the burden of contact tracing off teaching staff and headteachers in those final days of term. The Deputy First Minister will set out more details of that in due course.

Willie Rennie (North East Fife) (LD): First, I thank the brilliant scientists who have made this vaccine. Science might be expensive year in and year out, but it is at times like this that we truly value the work that those brilliant people do.

I can understand the cautious easing of the levels—just doing one level at a time—but there are some puzzling decisions today that have already been referred to. People have been told that, if they did the right thing, if infections fell enough and if there was enough hospital capacity, the restrictions would be eased. However, several councils have lower infection numbers but are stuck in higher levels: Midlothian, which has already been talked about; Edinburgh, for which an explanation has been provided; Perth and Kinross; and Fife. They have consistently had level 2 indicators, but they are stuck in the higher levels of restrictions, which begs a question. I understand the need for judgment on top of the raw numbers—I get that—but the numbers seem to have been abandoned in favour of judgment only. Is the First Minister considering reviewing the indicators to bring them more in line with the judgments that she is making?

The First Minister: With the greatest of respect, I think that any genuine reasonable look across every local authority area would show that the indicators have not been abandoned.

Yes, as we review the content of the levels, we will also be looking at the indicators to make sure that we are learning from the weeks in which the level approach has been in place and to consider whether any modifications are necessary. That process will be under way into and during the Christmas period, so that is a legitimate question to pose.

Willie Rennie mentioned various local authority areas. If we take Midlothian for example, in the most recent seven days, the number of cases

there has increased by 16 per cent and the test positivity has gone up by 1.3 per cent which, again, cautions us against taking it down a level. In Fife, in the most recent seven days, we have seen a 3 per cent increase in the number of cases. In Perth and Kinross, although there has been a bit of a fluctuation, there is no significant reduction in the number of cases. Our judgment is that taking those areas down a level at this stage—remember, doing that is not neutral; it opens things up and therefore gives the virus opportunities to transmit—would be too risky to do. We need to see more sustainable progress.

That is the judgment that we try to bring to all these decisions. They are not straightforward or easy decisions; often, they are not absolutely black and white decisions. However, it is important that we try our best to get them right.

On the other side of this, a few weeks ago, we took a precautionary decision to put Angus into a higher level at the same time as we put Perth and Kinross into a higher level. Angus has come down a level today. Therefore, areas should not see themselves as being stuck. We review the situation every week, and a number of local authorities are coming down a level today. It is important that we try to get the decisions as right as possible, because the last thing we want to do is to take an area down prematurely and then have to put it back up again almost immediately because we have triggered an increase in the number of cases because its position was not sustainable.

As I said to Richard Leonard, it would be much easier to apply a blanket set of restrictions across the country, but that would not be right. That is why I think that this system, albeit that it is more complex, is the better one to have.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): The First Minister has, I am thankful to say, indicated that Aberdeen City and Aberdeenshire have avoided moving up to level 3. What commitments has the city council given to bring down the virus? What encouragement has it been given to be more proactive in taking steps to drive down the virus, including reminding people that they should be working from home, that they should not be car sharing and that they should not be meeting in the homes of others, and deploying local environmental health officers to ensure that that is the case?

The First Minister: The local authority has indicated that, working in close partnership with the local director of public health and other local agencies, it will be intensifying its focus on priority areas, notably transport, particularly car sharing, ensuring compliance with restrictions in and guidance on workplaces and retail settings, and

stepping up public communication. That is welcome and important.

I have said before that the virus is no one's fault. It is not the case that, because it is going down in one area and going up in another, that means that people are doing things wrong. However, it is a reminder that getting levels of the virus down takes concerted effort and local leadership. I pay tribute to local authorities across the country for the leadership that they are showing.

We have been worried and are still concerned about Aberdeen and Aberdeenshire. There appears to be a background increase in community transmission. We thought carefully about putting the areas up to level 3 this week. However, because there has been a slight decline in recent days, we have decided to give more time to the local authorities to work with public health experts locally to try to stem that increase more sustainably. I hope that we will see that progress in the weeks ahead.

Donald Cameron (Highlands and Islands) (Con): I listened carefully to how the First Minister distinguished between inhabited islands on the one hand and mainland areas on the other in relation to household mixing in some level 1 local authority areas. Has the Scottish Government considered making the same distinction in Argyll and Bute? That area remains in level 2 for the reasons that she gave, but it also contains many inhabited islands, and some island communities feel strongly that they are in too high a level.

The First Minister: Yes, we have. I assure the member that a voice in the Government regularly raises such points on behalf of people in Argyll and Bute. It is a serious and legitimate point, which we considered in this week's review. Because we are confident that the situation in Argyll and Bute involves a workplace outbreak and there is not wider community transmission, we did not think it right to put it up a level. However, we also thought that the higher level of cases just for this week merited not opening up any more, but we will keep that under review in the weeks to come.

Tom Arthur (Renfrewshire South) (SNP): Although confirmation that Renfrewshire and East Renfrewshire will move to level 3 on Friday is welcome, among my constituents there is an understandable desire that that should be a stepping stone to level 2 and not an indefinite holding position. What role could mass testing of asymptomatic people of the kind that has been done in the scheme piloted in Johnstone over the past week play in supporting areas to progress down the levels?

The First Minister: I agree 100 per cent that we do not want level 3 to be anything other than a

stepping stone to level 2, just as we do not want level 2 to be anything other than a stepping stone to level 1. We want the trajectory to be downwards. However, if cases are rising, we cannot ignore that, and we must take precautionary action when we deem it necessary, especially as we know that we are going into a period in which the risks of transmission will be greater. Three or so weeks ago, one factor in our decision to put those local authority areas into level 4 was that it seemed that, without such greater action, they might have been left in level 3 for a lengthy period. Although such areas are about to go back into level 3, it is to be hoped that the period that they spent in level 4 will mean that they will be in level 3 for a shorter period than they might otherwise have been.

The point about mass testing is an important one. As I think I said earlier, we will publish the initial results of the mass testing pilots tomorrow, and more results will be issued next week. Early indications are that that approach has picked up cases of the virus that would not previously have been identified, which will enable us to break the chains of transmission. Although such testing is not the whole answer to getting the numbers of cases down in high-prevalence areas, it gives us another tool in the toolbox, which will make a big difference to areas such as Renfrewshire.

Jackie Baillie (Dumbarton) (Lab): I welcome the declining number of new cases and the lower positivity rate in West Dunbartonshire, which is now lower than the Scottish average. I hope that it will not be long before that area moves from level 3 to level 2 at a future review. However, there is a spike of cases in Helensburgh and Lomond, which is part of Argyll and Bute, and measures are being taken to control that. For my constituents, though, it remains troubling that large numbers of people are travelling across the central belt, from level 3 and level 4 areas to level 2 areas such as Helensburgh, to eat, drink and shop. What additional measures can be taken to discourage such travel between areas?

The First Minister: I agree with Jackie Baillie that that is a big issue. I was therefore surprised and disappointed that her Labour colleagues—I am not sure whether she did so—voted against the travel restrictions when we debated them in Parliament a couple of weeks ago. Those are difficult for people, but they are an essential part of trying to stem the flow of people from high-prevalence to low-prevalence areas.

In many parts of the country, there are concerns that people might be travelling in that way. I will raise the particular issue with the chief constable and will ensure that Police Scotland is aware of it. Of course, it is for it to decide operationally how to police the travel restrictions. A number of fixed-

penalty notices have already been issued. However, particularly now that some areas are coming down a level, I again appeal to people to remember that such restrictions are a vital part of our being able to maintain our targeted approach across the country.

Annabelle Ewing (Cowdenbeath) (SNP): As Fife is to remain in level 3, I look forward to hearing the finance secretary's statement tomorrow on the further support that might be available to businesses, because that will be much needed. As the member for the Cowdenbeath constituency, I know that businesses there will also be keen to know what possible changes they can expect in the weeks ahead. Could the First Minister therefore clarify her intention with regard to the weekly review processes? When will be the final one in advance of Christmas, and when is the first one after Christmas likely to take place?

The First Minister: Annabelle Ewing raises a very important question and I will give our current planning assumption but, before I do that, I will again say that I am very reluctant to give 100 per cent certainty around anything like this, because the virus is not going to take Christmas off. It is possible that we will see developments in parts of the country that necessitate action over the Christmas period; I cannot rule that out and it is important to be frank about that.

However, subject to that caveat, in relation to the levels that we announce as part of the decisions that we take a week today on 15 December, we would seek to maintain those levels over the Christmas and new year period, along with the temporary relaxation that we announced a couple of weeks ago for the Christmas period from 23 to 27 December. What we announce next week, barring any of the unforeseen developments that I spoke about earlier, will continue until the first Cabinet meeting of 2021, on 5 January, when we will have another review. I hope that we will have that period of stability from 15 December through to 5 January but, of course, we have to be prepared to act should the picture show that that is necessary.

Jamie Halcro Johnston (Highlands and Islands) (Con): The First Minister will be well aware of the real pressure on Scotland's important tourism sector and the frustration that the support that is available from the Scottish Government has, so far, been inadequate, with many operators struggling just to stay afloat. Even with the roll-out of the vaccine, there is real concern about the next few months and little confidence among some operators and others that the next summer season will be much better.

Can the First Minister offer any encouragement to our important tourism sector that her Government recognises that the sector will need

support up to and possibly through next summer and that the sector's concerns will be addressed in the finance secretary's statement tomorrow?

The First Minister: Yes and yes are my answers. First, yes, we recognise that the tourism sector will need support for a significant period of time, up to and including next summer, and perhaps after that as well, as it recovers from what has been a deeply damaging and traumatic period for the sector.

Last Tuesday, the Cabinet discussed the outcome of the tourism task force and the recommendations from that. Some of those deliberations will feature in the finance secretary's announcement tomorrow, which will set out further support for the tourism sector in the short term. Of course, we recognise that that obligation and responsibility will be there over the longer term as well.

Bruce Crawford (Stirling) (SNP): Will the First Minister join me in recognising the sacrifices that citizens and businesses in the Stirling Council area have made to ensure a reduction in levels of infection? Will the First Minister also agree that, although that reduction is welcome, further progress is still required and that, although it is good news for non-essential shopping that Stirling is moving into level 3, long-suffering hospitality businesses still face operating restrictions? Can the First Minister therefore please tell me what conditions need to be met to enable Stirling to enter into level 2? How soon will the Government review the situation again in that regard?

The First Minister: I join Bruce Crawford in paying tribute to people across Stirling and, indeed, across the whole of the country for the sacrifices that they have been making for several months now. Every day, I stand and announce decisions that are difficult for people, and I do not want anybody to think that we do not fully appreciate and understand the degree of sacrifice and difficulty that people have faced and continue to face. I will probably never find the words to thank people enough for everything that they are doing to help us to suppress the virus.

Progress in Stirling has been encouraging, but we understand—I have already indicated this today more generally—that the situation is leading to continued difficulties for businesses, particularly in hospitality. Therefore, in addition to the strategic framework business support fund that has already been rolled out, the finance secretary has been developing a package of tailored support for a range of specific sectors. As I have indicated, she will set that out shortly.

We will review Stirling's position—as we review the position of every local authority area—on a weekly basis, and we will announce the outcome

of the next review next week. As I have just said to Annabelle Ewing, we hope that next week's decisions will last through the Christmas period, but, of course, we will continue to respond to developments as they happen.

Pauline McNeill (Glasgow) (Lab): Glaswegians will welcome any progress in moving down the levels. I note that the First Minister has said today that retail can open from 6 am on Friday. I think that that is news to them, but I am sure that it will be welcome.

Does the First Minister agree that it is a harsh moment for Glasgow's retail sector if those who live outside Glasgow are unable to come in to it to shop? I am sure that the First Minister recognises that Glasgow depends on shoppers and trade from outside the city. Given that, does she agree that, with her ministers, she should begin to engage with Glasgow politicians and businesses to discuss a plan to prevent lasting damage to Glasgow's economy?

The First Minister: The Scottish Government engages closely with the local political leadership in Glasgow and with the business community, including retail, in Glasgow and across the country. In fact, the decision to enable retail to reopen at 6 am on Friday as opposed to 6 pm was the result of a specific request from the retail sector, which I think was sensible. The sector judges that the measure will enable it to manage any potential rush back to the shops better than it would if shops opened at 6 pm and the first full day was a Saturday, when people are less likely to be at work. It was a sensible suggestion and one that the Scottish Government has responded to.

I know how devastating the impact is on every part of the country but particularly, with regard to retail, in areas such as Glasgow. Glasgow is my home and I know how much the retail sector in the city centre matters to the health of the city. However, it simply would not be sensible to encourage or allow people from all over the country to come and shop in Glasgow in the run-up to Christmas. Like me, many members will have seen the scenes involving crowds of people in certain London shopping streets at the weekend. I certainly hope that we will not see that replicated here. That is why we have to manage the situation carefully. We will continue to discuss with the local leadership in all council areas and with local businesses how we ensure that support is available not just in the immediate term but as we go into the recovery phase.

Rona Mackay (Strathkelvin and Bearsden) (SNP): It looks increasingly likely that we will crash out of the European Union with no deal or a low deal in a matter of weeks. What assurances has the First Minister had from the UK Government that its reckless decision not to extend the

transition period will not have an impact on the supply of the vaccine from January?

The First Minister: Obviously, the end of the Brexit transition period is a key issue in all of our thinking and planning right now. That is increasingly the case the closer we get to that date, and the closer we get to it without there being any clarity on whether there is a deal, or whether, if there is a deal—as I hope there will be in the next couple of days—it will be a fairly minimalist one.

We are discussing with UK colleagues across the other nations the supply of the vaccine, which we are assured is there and will continue to flow, although obviously that is subject to the pace of manufacturing. We have taken certain other contingencies to ensure that we have supplies of other vital medicines and medical devices. However, I think that we all hope that a deal will emerge in the next couple of days that, although it might not take away all the problems that will be faced at the turn of the year, might help to mitigate them.

Annie Wells (Glasgow) (Con): The Covid-19 vaccine requires two doses per person. How will people be told about their appointment for the second vaccine, which is a booster, after they have received their first?

The First Minister: When someone gets the first dose of the vaccine, they will be given the date for the second dose—that is part of the planning. One complication of the Pfizer vaccine, although we expect that it is not peculiar to it, is that it requires two doses rather than one. In the fullness of time, that might change. The health secretary and I had helpful discussions late yesterday afternoon with the senior management of Pfizer, at which we discussed supply and what they might hope for in terms of development of the vaccine in the longer term. However, what we have right now is very welcome, and we are working hard to overcome any of the logistical challenges that are associated with its characteristics.

The first people have been vaccinated already today, and we will publish figures over the course of the coming days and weeks as the programme develops.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Last week, I was contacted by a 27-year-old constituent who says that he has now experienced symptoms of Covid for more than 40 days since his diagnosis. Although he says that his initial symptoms were mild, he tells me that he is now constantly fatigued, his smell and taste have left him and he is experiencing brain fog. As he was previously very active, that is having a major impact on his life. I have also

spoken to a nurse from my constituency who was on the front line in the Covid wards in the earlier part of the pandemic and who is still suffering from long Covid after many long months.

Both of my constituents want to highlight the fact that the virus can affect younger people, but what they have asked me to raise today is the issue of support for those who are suffering. Is there any update on research and treatment guidelines to support people who are struggling with what has become known as long Covid?

The First Minister: The issue that Fulton MacGregor raises is a really important one, and it is a reminder of the fact that the virus does not affect only older people and does not result only in some vulnerable people, in particular, losing their lives; it can affect younger people, and it can do so on a long-term basis. We do not yet fully understand the issues and the factors behind what has become known as long Covid, but we all need to address that in the months to come.

The NHS already delivers care that is tailored to the needs of people who are experiencing long Covid across a range of specialisms. We are also working with the Scottish Intercollegiate Guidelines Network, the National Institute for Health and Care Excellence and the Royal College of General Practitioners to develop a clinical guideline on the persistent effects of Covid, which will be published shortly. That will support clinicians to better identify symptoms and any treatments that people need and might benefit from.

In addition, we have launched a call for research to improve understanding of the longer-term effects of Covid on physical and mental health and wellbeing. Thereafter, we will develop clinical interventions to better support recovery and rehabilitation. It is an area in which we all need to understand more, and there is no doubt that much will need to be done to address the longer-term impacts.

Sarah Boyack (Lothian) (Lab): I want to share my concern about the handling of the decision regarding Edinburgh and the uncertainties that it has caused for businesses. I ask the First Minister to comment on how we can reduce the sources of virus transmission in the city.

Yesterday, Jason Leitch identified the issue of car sharing. Will the First Minister highlight the advice on car use? In particular, will she say what the advice is for employers who still expect staff to share vehicles even when staff are concerned about their personal safety?

The First Minister: We advise against car sharing whenever possible. Obviously, there will be circumstances in which it is necessary and essential, as is the case for travelling from one

part of the country to another, but we advise against it.

We say to all employers that they should be very sensitive to the concerns of their staff. If staff have concerns about anything that they have been asked to do in their workplace, particularly if they are workers with health conditions or worries in that regard, employers should try to come to agreements there.

The virus transmits in a range of ways, but, to put it simply, it transmits when people come together. Therefore, hard though it is—this has been the hardest part of the whole process—what we have to do to get levels of the virus down is to reduce the circumstances in which people come together. Obviously, the enclosed spaces of cars and vehicles are one environment in which the virus may well take the opportunity to spread.

John Mason (Glasgow Shettleston) (SNP): I very much welcome the fact that Glasgow is moving to level 3. If the worst came to the worst, would it be possible that Glasgow could go back to level 4 again?

The First Minister: I cannot rule out Glasgow or any part of the country having to go to level 4 for the first time or again. I would dearly love to be able to do that, but I cannot.

However, I know that, if all of us continue to follow the rules and the guidance and to do the really difficult things—to stay out of the houses of our friends and loved ones, to abide by the travel restrictions, to reduce our interactions with other people as much as possible and to not go into crowded places, especially when retail opens again in Glasgow on Friday—all of us, collectively, can mitigate and reduce the risk of Glasgow or any other part of Scotland going back to level 4.

We are making real progress at the moment, and I do not want that to be lost in our discussions today. When I stood here three weeks ago, we were really worried that the levels of infection were just not coming down in areas such as Glasgow. They have come down significantly. That is down to the sacrifices of so many people across the country. However, we need to stick with it. Today is an optimistic day, but we are not out of this yet. The more we stick with it, the fewer people will get the virus, the fewer people will die of the virus and the more of us will come out the other end of it—hopefully, sooner rather than later.

The Presiding Officer: I apologise to those members I could not call, but we have to move on to the next item of business. There will be a short pause while members and ministers change seats.

Brexit Readiness

The Deputy Presiding Officer (Christine Grahame): The next item of business is a statement by Michael Russell, the Cabinet Secretary for the Constitution, Europe and External Affairs, on Brexit readiness. The cabinet secretary will take questions at the end of his statement, so there should be no interventions or interruptions.

15:25

The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell): It is utterly incredible that, some 1,629 days since the European Union referendum, I should rise to make a statement on the final details of withdrawal with still no clarity about how the United Kingdom will trade with the EU in just 23 days' time.

The one thing that we do know, however, is that the choice remains—as has been the case since the extremists finally took over the Tory Party and the UK Government—between no deal and a low deal, either of which will be damaging and harmful. They will be damaging and harmful to all sectors of the Scottish economy, to every community in Scotland and, indeed, to every Scottish citizen.

Of course, Scotland did not vote to leave the EU and the issue of how we rejoin as an independent member state is very live. The option of independence is now the majority choice of not only this chamber but also, in the last 15 opinion polls, the people of Scotland. However, that is for another day. What we need to do now is to find a way to mitigate—as much as we are able, although we will not be able to do so completely—the damaging and harmful consequences of the UK Government's ineptitude and ideological obsession with a past that never was: a mythical past that is corroding any prospect of a prosperous future.

Of course, to add insult to injury, the irresponsible refusal by the UK Government during the summer to extend the transition period means that our exit could not come at a more challenging time. The concurrent challenges of dealing with the end of transition, the impacts of Covid-19 and our normal winter pressures mean that our public services, businesses and communities will be stretched in a way that has never been experienced before.

That is now simply a fact, and it is why the Scottish Government is putting in place a comprehensive set of arrangements based on our existing and well-established resilience processes. We will use those arrangements to oversee and manage—as best we can—our response to the concurrent challenges, together with a wide range

of partners. Yesterday, the Scottish Government resilience room for those concurrent risks was activated on a seven-day-a-week basis, and the phased stand-up of the national co-ordination centre and a single Scotland-wide multi-agency co-ordination centre was commenced. The MACC is led by Police Scotland as part of the national co-ordination structure and works with national and local partners such as the Scottish Fire and Rescue Service, the Scottish Ambulance Service, the Scottish Environment Protection Agency, the Maritime and Coastguard Agency, local authorities and health boards, as well as through the local resilience partnerships.

All those arrangements will build over the next four weeks and will include ministerial oversight through a winter preparedness group, convened by the Deputy First Minister, which has been meeting for some time. Meetings of a smaller ministerial group will start shortly and will become daily after Christmas. Those arrangements will become a 24-hours-a-day operation in the last week of the month and will remain at that level for as long as required.

The Scottish Government has of course been working with the UK Government to scope and exercise the arrangements and scenarios that exist. Attendance by devolved Administrations at meetings of the UK Government EU exit operations committee is by invitation only, but that occurred three times last week. After a long period in which there was limited sharing of the information needed for us to liaise effectively and to ensure that all our plans were complementary to those of the other Administrations, I am glad to say that that problem appears to have eased. Last week, we secured access to the daily dashboard, and we will be feeding into it.

We should be mindful of the fact that all those in the front line of our public services have been working at full tilt or beyond since the start of the pandemic. What is happening now will put a further strain upon them, which was another good reason for the UK to have accepted the extension of transition that was on offer this summer. I express my concern for all those staff, which I have raised at UK level.

Let me dig down a little deeper into the actual areas of activity. Along with standing up our emergency response structures, the Scottish Government has intensified preparations across the board. We are prioritising substantial work around the key themes of protecting people, protecting imports and exports of essential goods, minimising economic impact and ensuring necessary legislative changes.

As ever, it will be those who can afford it least who will be hit hardest. We know that there is a risk that households who are already struggling

financially will find life even harder after EU exit, with increasing inequalities and a greater demand on local government and the third sector. That is why the First Minister announced at the end of November a £100 million package of measures to support vulnerable people, communities and the third sector, in order to help those on low incomes, children and people at risk of homelessness or social isolation cope with the economic impacts of Brexit, coronavirus and the winter weather. Work is under way, led by my colleague the Cabinet Secretary for Communities and Local Government, to ensure that the money goes to where it is needed.

We are aware that the security of international supply chains has never been so important, so we have launched a new £5 million fund to help Scottish wholesale food and drink businesses, many of which have been affected by Covid-19, in order to support food supplies across the country, especially into our hospitals, care homes, schools and prisons. The Cabinet Secretary for the Rural Economy and Tourism is maintaining the effective liaison with the retail sector that he undertook at the start of the first lockdown and had put in place for earlier no-deal preparations. We are particularly sensitive to issues arising at the end of food chains, many of which terminate in rural Scotland, even though they start at the short straits. Food Standards Scotland is a key partner in that activity.

Working with the other Administrations, we are doing all that we can to make sure that patients get the medicines and other medical supplies that are needed, and to ensure the continuity of those supplies. Additional freight capacity has been contracted in order to ensure that the most critical goods can reach the UK mainland without interruption.

Pharmaceutical companies have been building up stocks of medicines to mitigate potential disruption at ports. In addition to those arrangements, and in response to lessons learnt from the first wave of Covid-19, we are building a stockpile of around 60 medicines for critical care in intensive care units and supportive care at end of life, as well as supplies of Covid-19 treatments. We have in place arrangements for managing potential shortages, including the Scottish medicines shortages response group, which is clinically led. We will also be making use of new information technology reporting tools to gather real-time data on medicines stockholding and stock usage in hospitals.

Supply issues in Scotland for medical devices and clinical consumables are being managed by NHS National Services Scotland's national procurement arm, which is building up stocks of main items at the national distribution centre.

Eighty-eight per cent of products are already at the target of six weeks or above, and the remaining items are expected by mid-December.

The Cabinet Secretary for Health and Sport is fully engaged in ensuring that those actions are taking place, even though she is also fully engaged in the response to the pandemic. I pay tribute to her extraordinary commitment and resilience, given the demands on her.

Scotland benefits enormously from the contributions of EU citizens who work in the health and social care sectors, as well as in other sectors, and to lose them would be disastrous for all of us. EU citizens who are currently resident and working in Scotland have the right to remain, under the withdrawal agreement. We encourage all such EU citizens to apply to the Home Office's settled status scheme in order to exercise that right.

We understand that businesses across Scotland have been put under immense strain over the past year, and that many are struggling with the prospect of dealing with the great complexities that EU exit will bring. The Cabinet Secretary for Economy, Fair Work and Culture is therefore implementing a wide range of measures to support businesses across all sectors of the Scottish economy. The building resilience steering group provides strategic leadership and co-ordination across our enterprise agencies to ensure effective delivery of the joint EU exit and Covid-19 response for Scottish businesses.

Our enterprise agencies have developed mechanisms to identify companies that we anticipate will encounter operational and financial challenges as a result of both EU exit and Covid-19, and are proactively contacting 500 such companies to provide targeted advice and guidance. In addition, our multi-agency Prepare for Brexit website, which is hosted by Scottish Enterprise, provides advice, sources of financial support and online self-assessment toolkits. Enterprise agencies are also working jointly with the UK Government on its field force programme, to provide advice to business.

We are working with seafood exporters, Scottish local authorities and logistics companies to provide an export health certificate signing service at a number of existing logistics hubs in central Scotland. In addition to relieving some of the growing Brexit and Covid burden on local authority environmental health departments, that approach, which relies on a risk-based approach to certification, will provide improved access to those certificates for our exporters.

We will continue all that work throughout the end process of the transition period and beyond, but the stark truth is that we simply cannot avert

every negative outcome. All sectors of society must now do what they can to prepare, by using the resources and support that we have put in place.

Finally, there will be an increased legislative burden as a result of the current situation. This Parliament will have to be ready to meet that challenge, first in looking at requests for legislative consent motions for any bills that the UK Government finds it necessary to introduce in the coming days. That issue is being considered by the Minister for Parliamentary Business and Veterans, who will consult the Parliamentary Bureau.

It is with profound and deep regret that we find ourselves in this position of uncertainty. In the midst of a pandemic and the worst economic recession of our lives, Scotland is having to cope with the end of the transition period. The UK Government has pressed ahead with its hardline negotiating position, refusing to listen to Scotland's voice. This catastrophic situation must be entirely owned by the ultra-Brexiters who have taken over the Conservative Party.

We were told in 2014 not to leave but to lead. What has happened is that we have been led, not into a more equal relationship but into a cul-de-sac of insularity and insecurity. Scotland did not vote for any of this. We must now do our best to help our fellow citizens through it; we must also redouble our efforts to give the people of Scotland the choice to leave this chaos behind.

The Deputy Presiding Officer: I have 20 minutes and no more for members' questions. There is no spare time. Please make your questions succinct—I ask the cabinet secretary to do the same with his answers. I ask that particularly of members who are working remotely, because it is more difficult for you to realise that you are going beyond your time.

Dean Lockhart (Mid Scotland and Fife) (Con): I thank the cabinet secretary for the advance copy of his statement.

Negotiations continue with the EU, and I remain hopeful that a deal can be reached. In the past few hours, it has been announced that agreement has been reached on the protocol governing Ireland and Northern Ireland. I noticed that the cabinet secretary did not welcome that.

Committees of Parliament have heard that large parts of the Scottish economy are ready for Brexit. The financial services sector, for example, has taken all the necessary steps to be ready, the farming sector is looking forward to shaping agricultural policy to the needs of Scottish farmers, and Scottish fishing communities want to secure access to our seas. The majority of EU free-trade

agreements with third countries have been rolled over.

All that is despite, not because of, the efforts of the Scottish National Party. The SNP wants to return to the common agricultural policy and the common fisheries policy, and has failed to support every trade deal over the past 15 years, including free-trade agreements with Canada, Japan, Singapore and South Korea.

Is it the cabinet secretary's policy to force fishing communities to return to the common fisheries policy, amended or otherwise? Is it his policy to return Scottish farming to the common agricultural policy, reformed or otherwise? Will he explain why the SNP failed to support every trade deal over the past 15 years? Is it because the reality is that the SNP is, deep down, an anti-trade party? Is that the real reason—

The Deputy Presiding Officer: No, no. You have had your—

Dean Lockhart: Is that the real reason why the cabinet secretary has refused—

The Deputy Presiding Officer: No. I did ask. When I say "Stop", stop.

Dean Lockhart: —to support any deal with the EU?

The Deputy Presiding Officer: Sit down. You have had 1 minute and 30 seconds.

Michael Russell: Thank you, Presiding Officer. That was a merciful ending.

It should astonish every member in this chamber that that is Dean Lockhart's response, 23 days before we leave the EU, which will, however we leave, be damaging and harmful. When, for example, in the farming sector in my constituency—I am a constituency member—the sheep and lamb trade is facing ruin, it is utterly shameful that that is the response of the Scottish Conservatives.

No—the SNP is not anti-trade. We are pro-Scotland, and if we had a Conservative Party that was pro-Scotland we would not be in this mess.

Anas Sarwar (Glasgow) (Lab): I thank the cabinet secretary for advance sight of his statement.

I share the cabinet secretary's frustration and anger. This is a mess of Boris Johnson's and the Tories' making. That it is happening in the midst of a global pandemic in which thousands of people have lost their lives, and when people's lives and livelihoods are still at risk, is completely unforgivable.

At this late stage, we still need to avoid no deal, but I accept that any deal will be far from ideal.

Does the cabinet secretary accept that our collective focus must be on Covid recovery, rather than the two Governments focusing on their ideological obsessions? We must bring our people together, rebuild our economy, protect and create jobs, fix our education system and deliver a national health service that never again has to choose between treating patients who have a virus and treating patients who have cancer. Should not that be our collective national mission?

Michael Russell: I am glad that Anas Sarwar agrees that the situation is a complete Tory mess, and I hope that he will continue to oppose that Tory mess. Undoubtedly, a deal of some sort is better than no deal, but there is no doubt that, whichever one is chosen, it will be very bad. That is the result of Tory ideology and Tory incompetence. Mr Sarwar may take his pick of which is more damaging.

I also accept that rebuilding is absolutely essential after the pandemic. It is wrong to talk about advantages, but there are things that we should be talking about doing—and are talking about doing—to make a much better society. We should be focused on the green recovery. We should be focused on the phrase—much abused by the UK Government, but much used across Europe—"building back better". The key question on that is, of course, whom we trust to build back better. That is the problem that Mr Sarwar must face. Would he trust a Tory Government at Westminster to build back better or would he trust Scotland to make choices? I know which I would choose: I would choose Scotland to make the choices to build a better country and a better society.

The Deputy Presiding Officer: There are 11 more questions and about 11 minutes. That is the warning.

Annabelle Ewing (Cowdenbeath) (SNP): Regardless of whether we see a UK Government very, very bad no deal, or a UK Government very, very bad deal, significant concerns have been raised about the additional burdens that will be involved in transporting to market premium Scottish products such as salmon, beef and lamb. Does the cabinet secretary share those concerns, and has he received any assurance whatever from the UK Prime Minister, Boris Johnson?

Michael Russell: No, I have not, and I share those concerns. The assurances that we need are not just about seamless trade but about lack of bureaucracy at the border. Whatever happens, even if there are no tariffs there will be a major increase in bureaucracy at the border. I refer Annabelle Ewing to Jimmy McMillan of Lochfyne Langoustines, and his illustrating of that recently by demonstrating on Twitter the amount of paper that he is going to have to deal with.

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

The UK Government has given the Scottish Government some £214 million in Barnett consequential, plus an additional £20 million to deal with Brexit preparedness, making a total of £234 million. Has every penny of that been spent on preparing Scotland for Brexit, and when will we see a full accounting?

Michael Russell: We keep giving money to the Treasury and we have, undoubtedly, had some money back. However, the full accounting for that money, when it is shown, will illustrate, for example, that the promises that were made to the Scottish Government and the Scottish people about there being no detriment have been utterly false. Brexit will cost each one of us vastly more than anything the Treasury has given back—vastly more.

Kenneth Gibson (Cunninghame North) (SNP):

Three weeks ago, I asked about the impact of Brexit on road haulage and logistics. The UK Tory Government's chaotic handling of arrangements has been described as a "shambles", "incomprehensible", "nonsense" from the start, "sleepwalking to disaster" and "bonkers". Given the critical importance of the logistics sector, which employs 2.54 million people in the UK, and on which we all depend for goods and services, are we any nearer to a resolution?

Michael Russell: It is immensely illustrative that the two Conservative questions that we have heard so far were attacks rather than examinations of the facts. The Road Haulage Association has given Parliament evidence in which it pointed out that the situation is shambolic. We have heard road hauliers say that not only do they not know how they are going to operate, but they fear that hauliers from the continent will not come in because they are so concerned about the problems. Those are facts; all that we have had from the Conservatives is propaganda—propaganda to disguise the fact that an appalling thing for which we did not vote has been foisted on Scotland. That fact alone needs to be repeated every single day, so that the people of Scotland understand what damage is being done by the Conservatives and their friends—or masters—south of the border.

Ross Greer (West Scotland) (Green): At present, to verify that an EU citizen has settled status, banks and landlords can access a UK Government web portal. Many EU citizens are concerned that that system and the lack of a physical token of their status will exclude the most vulnerable people for a variety of reasons, and will result in incidents of discrimination.

Assuming that the Scottish Government can access that portal, will the cabinet secretary consider operating an on-demand service whereby

the Government would provide a letter, certificate or some other physical token to EU citizens who have settled status?

Michael Russell: That is an important question, and I am glad that Ross Greer has raised the matter with me. We have considered that approach on a number of occasions, but there are difficulties in doing so because of the artificial recognition that it might give, and because some people might not apply for or have it. The right thing was to have given people physical proof of settled status, so we should continue to argue strongly for that to be put in place. The UK Government has stepped back from illegality today, and according to Dean Lockhart, I should be celebrating that and dancing in the streets, but it has not stepped back from the poor—indeed, shameful—way that it is treating EU citizens.

Willie Rennie (North East Fife) (LD): We were told that Brexit was over, but the pain just goes on and on. As the First Minister—sorry, the cabinet secretary—raised independence, I say gently to him that I cannot imagine that breaking from the United Kingdom would be any less painful than this.

What specific emergency measures from the long list that he has provided to us this afternoon is the cabinet secretary most concerned about?

Michael Russell: I am grateful to the First Minister—to the leader; we are both getting it wrong. Maybe there is something in the air today that is misleading us both.

I am glad that the member recognised the range of things that are under way—and the range is comprehensive. I do not want to single out issues that I am particularly concerned about, but there are issues such as business preparedness that are not in the gift of the Government. We can encourage people to be prepared, we can go out and talk to people and we can tell people what is available; indeed, I indicated that the enterprise agencies have been doing that. However, business preparedness also relies on businesses themselves. Many businesses are not at fault, because they have been so preoccupied with Covid that it has been difficult for them to move forward on this—I have heard that argument several times.

I know that Mr Rennie is a man who likes detail. I encourage him to imagine a better future, because that better future is independence.

Gillian Martin (Aberdeenshire East) (SNP): I am concerned about what the situation means for our farmers. About a third of Scottish lamb is exported—98 per cent of it to the EU. What is the forecast cost to and effect on Scottish sheep farmers of the low deal that is being negotiated or of a no deal, once the transition period has

ended? What are the implications for food processors more generally of the lorry queues that are expected for customs checking cargo at ports?

Michael Russell: I share the member's concern. There is no doubt that, in a no deal, food exporters would be faced with tariffs—in the case of lamb, for example, pretty ruinous tariffs—which would certainly make Scottish hill farming uneconomic.

With a low deal, the difficulty is the act of exporting and the additional cost that would come from additional paperwork—for example, somebody being required to undertake that task. People cannot get a customs agent for love nor money now because they are so busy. The real problem will be that exporting will be much more difficult. If it is more difficult, people will also be more reluctant to buy, because they will not want to jump through lots of hoops to buy. In the circumstances, both sets of problems will be concerning. We are trying to provide as much support as we possibly can, and I know that Fergus Ewing is working very hard with the agricultural sector and the fishing sector to help.

The environmental health officers issue that I mentioned is important—reducing the bureaucracy as much as we can is important, but it will not be possible to reduce it. That also shows the problem of concurrent risk, because environmental health officers are under a lot of pressure to assist with inspections of premises for Covid. The demands on those people are great and there are not enough of them.

Trying to change the system has been difficult; we have made some progress, but the situation will not be easy over the next few months.

Pauline McNeill (Glasgow) (Lab): Does the cabinet secretary agree that the admission by the UK environment minister that there will be a modest increase in food prices exposes the blasé approach of the Tories to the impact on ordinary people of rising food costs? How can the Scottish Government help to mitigate the cost of food to ordinary people?

Michael Russell: I accept that point, which again illustrates the refusal of the two Conservative questioners from whom we have heard so far to accept or acknowledge the fact that the UK Government has accepted that there will be an increase in prices. When the UK Government says that a price increase will be modest, I am not inclined to believe it. There will be difficulties.

The UK Government has also admitted that there will be difficulties in the supply of some items, although it has argued that there will be no shortage of food. That will greatly affect poorer

families, because of the many items that will be affected.

We will do our best to guarantee support for the supply chains, where issues arise. As I said, we have made moneys available for third sector organisations and other bodies, some of which will go to help with food resilience in communities.

We must also say to people, as Pauline McNeill said openly, that the situation is unacceptable. It is the poorest—those who are furthest from society—who will suffer most greatly. We must make it clear that that is the result of a deliberate Conservative policy. That is where the problem comes from and that is what we must resolve.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): Does the cabinet secretary agree that no politician who opposes Brexit could vote for any deal that the UK Government presents, because to do so would be to give our consent to an outcome that Scotland did not vote for and which will do untold damage to our country?

Michael Russell: Given the circumstances, I cannot imagine that any politician who finds Brexit as unacceptable as we and many others do would vote in favour of that. It is absolutely no argument to say that we had better just do it to get it over and done with. We have heard that argument too often.

It is interesting that polling evidence suggests that a considerable majority of people are now against Brexit, yet, at the UK and Scottish levels, the Tories continue to pursue it as if it were the will of the majority, which it is not. Any sensible Government would have stepped back from this complete nonsense a long time ago. It is unfortunate that we do not have a sensible Government.

The Deputy Presiding Officer: I call Liz Smith. *[Interruption.]* I will take the next person and come back to Liz Smith, whose microphone is not on. You cannot shout, as that cannot be recorded for the *Official Report*—you might have to move to another seat.

Stuart McMillan (Greenock and Inverclyde) (SNP): What additional resource has the UK Government provided to the Scottish Government and the port authorities to assist with the shipping of goods to and from Scottish ports?

Michael Russell: There has been a lot of discussion about additional moneys for ports, but none has come into Scotland yet from the UK Government. Cairnryan is a difficult problem, with which today's interim agreement on the protocol might assist, although I have not yet heard whether that will be the case.

As the situation has developed, the promise of no detriment and the argument that moneys would be provided have been false. Detriment is occurring and emerging in almost every area. One of the most serious outcomes of Brexit is that less money will come to Scotland. Given the scale of investment from programmes such as Erasmus+, there will be a rude awakening about the financial cost of what is taking place.

Liz Smith (Mid Scotland and Fife) (Con): Will the cabinet secretary confirm that, on food standards, which he mentioned in his statement, good progress has been made in recent weeks between the UK and Scottish Governments? Food standards are a reserved matter on the export and import side of things, whereas the rest is devolved. Does he acknowledge the good progress?

Michael Russell: I am not sure to what the member refers. If she refers to the United Kingdom Internal Market Bill, the lack of progress has been appalling. Any standards that this Parliament sets will be able to be fatally undermined by the UK Government. That is not good progress; it is a further undermining of devolution.

If the UK Government approached the bill in the way that it has done today, by finally agreeing not to implement illegality, to withdraw clauses and to support amendments from people such as Lord Hope, we might see progress. I would like progress, but the bill has so far been a big obstacle to it.

Claire Baker (Mid Scotland and Fife) (Lab): At a meeting of the Culture, Tourism, Europe and External Affairs Committee last month, the cabinet secretary said that Scottish Enterprise would contact 500 businesses by the end of November and, in his statement, he again referred to 500 businesses. Has a target been missed or are we still on course to meet the commitment to contact 1,200 businesses by the end of the year?

Michael Russell: I understand that contact is still being undertaken, but I will ask the business secretary and the enterprise agencies to update the member.

The Deputy Presiding Officer: That concludes questions on Brexit readiness. I thank members and the cabinet secretary for managing to get through all the questions.

Covid-19 (Education)

The Deputy Presiding Officer (Christine Grahame): In order not to waste time, we will move straight on to the next item of business, which is a statement by John Swinney on education and Covid-19. The cabinet secretary will take questions at the end of his statement, so there should be no interventions or interruptions.

15:55

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): Throughout the school year, the Government has sought to safeguard the health and wellbeing of everyone—pupils, teachers, staff and students—in the education system, and we have sought to protect the importance of learning, recognising the benefit that lies in teaching and the harm that comes from its withdrawal. That approach has been led by the public health advice and science but, despite the clarity and strength of that advice, it inevitably remains the case that a judgment must be made as to the best way forward.

Today, I will provide an update on the judgments that we have made across a range of issues for schools and universities. I confirmed last week that there would be no change to the Christmas school holidays. That decision was driven by the expert public health advice that I received, which was published alongside my decision, and it will ensure greater continuity of learning. The evidence makes it clear that school closures result in significant harms to our children and young people. That is why we want to keep our schools, colleges and universities open. However, we must also keep people safe. That is why we keep our safety guidance under close review to ensure that measures remain robust and effective.

Recent Office for National Statistics data shows no evidence of any difference between the positivity rates of teachers and other school staff relative to other worker groups of a similar age, and there is no current direct evidence that transmission in schools plays a significant contributory role in driving increased rates of infection among children, although we continue to scrutinise all such evidence carefully.

That is reassuring news, and it is down in no small part to the extraordinary efforts of teachers and staff in keeping our schools safe. I reiterate our thanks for that work, but I am also conscious that many staff still have understandable anxiety. To address that, we have already put in place arrangements to allow members of school staff to get a coronavirus test whether or not they have

symptoms. We are currently the only part of the United Kingdom that provides that routine access.

We will now go further. As the Cabinet Secretary for Health set out last week, after the schools return in January, we will begin piloting routine asymptomatic testing of school staff. The details are under discussion with interested local authorities, and I will provide further details to the Parliament in due course.

I turn to our colleges and universities. I know that this year will have been incredibly tough for many students, particularly those who are living away from home for the first time, and I express my thanks to students and staff for their resilience. Last month, the higher education minister set out our plans for ensuring the safe return home of students who wish to go home at the end of term. Our universities and colleges have already delivered over 20,000 rapid-result tests to students who are looking to return home.

I will now update the Parliament on our plans for ensuring the safe return of students following the winter break. College students, who largely do not move away from home to go to education, should return as planned, in line with the protection level for the area that their college is in at that time. However, universities are in a different position. As a result of the high numbers of people moving around the country, changing households and mixing as they return to university, we have to take a different approach.

At the start of the new term, universities' returns will be staggered over at least six weeks. With some limited exceptions, undergraduate students will restart their studies at home at the normal beginning of term, and they should return to campus and their term-time accommodation only when they are asked to do so by their university. We will keep our approach under review to ensure that it remains in line with the most up-to-date scientific advice.

As with our guidance for the end of term, we are also asking students to voluntarily restrict their social interaction for two weeks before they return to university and two weeks following their return, and we will build on our experience of offering asymptomatic testing to students before the end of term. Students will again be offered lateral flow testing as part of their return, and we are working with universities and student representatives to build on the systems that have already been established, to deliver the second phase of testing.

Those arrangements will carry Scotland's education system safely into the new year. The challenge after that will be the exams.

When I addressed the Parliament on 7 October, I said that cancelling the national 5 diet was a way to secure more time and, therefore, enhance the

chances of a higher and advanced higher diet proceeding. We had dual priorities of safety and fairness. If exams were to take place, they had to be made safe and fair for all pupils. The prospects for public health have improved immeasurably due to the development of a vaccine. We know, however, that it will unavoidably take time for a vaccine to be rolled out and pupils have already lost significant learning time. First, they lost weeks of teaching time at the end of the last academic year, when pupils normally start to study for the following year's qualifications. That has now been compounded by the disruption that many have suffered when they were obliged to self-isolate, had to learn from home or even saw their school closed.

We know that the level of disruption to learners has not been equal. Almost 40 per cent of pupils in secondary 4 who were not in school for a Covid-related reason, for more than one fifth of school openings, are from our poorest communities. For pupils in S5, that figure is 33 per cent. For those in S6, it is 26 per cent. Although we hope that public health will improve in the coming months, we cannot guarantee that there will be no further disruption to pupils' learning.

In the light of that, the question is less whether we can hold exams safely in the spring and more whether we can do so fairly. There is no getting around the fact that a significant percentage of our poorest pupils have lost significantly more teaching time than other pupils have. Changing the exams for all does not, and cannot, address that. Instead, we need a model that is more flexible to the specific circumstances of individual pupils. That model exists; it is the model that we plan to use to award qualifications for national 5s this year.

A group that is led by the Scottish Qualifications Authority, and which involves directors of education from our councils, members of the Educational Institute of Scotland, members of Colleges Scotland and others, has been working to develop that model. Under the plan, all schools and colleges are working with the SQA to understand the standards that are required for qualifications. They will then apply that to specified pieces of evidence, such as course work. Provisional results for individual pupils will be submitted to the SQA by 28 May, before certificates are awarded on 10 August.

Details of the model for national 5 will be published by the national qualifications 2021 group today. The model focuses on the work and performance of young people during the year. Let me be clear that no algorithm will be used in that exercise. The model will be based on learner evidence and will be subject to quality assurance at local and national levels in order to deliver a

credible and fair set of results. The model has achieved a broad level of support among Scotland's education professionals.

I am therefore announcing today that there will be no higher or advanced higher exams in 2021. Instead, we will adopt the new model that has been developed and base awards on teacher judgment of evidence of learner attainment. That approach is safe and fair, and it better recognises the reality of the disruption that so many pupils have had to their learning in the past few months.

I have previously taken action to support schools to respond to Covid by providing £135 million of additional investment, which includes the recruitment of more than 1,400 additional teachers, and I have temporarily suspended inspections. However, in acknowledgement of the additional workload required to assess national qualifications in the absence of exams, in this unique academic year, I intend to make an exceptional one-off payment to teachers and lecturers who are critical to assessing and marking national 5, higher and advanced higher courses this year. We will progress that work urgently with partners and employers, which will include discussions about when and how the payment will be delivered.

In addition, I ask that secondary schools prioritise all remaining in-service days to work together on the alternative model of certification for national qualifications. Many schools still have two or three of the five annual in-service days left.

I will not stake the future of our higher pupils—whether they get a place at college, university, training or work—on a lottery of whether their school was hit by Covid. Exams cannot account for differential loss of learning and could lead to unfair results for our poorest pupils. That could lead to pupils' futures being blighted through no fault of their own. That would simply not be fair.

Education is the greatest antidote to poverty that we have. That is why we have sought to protect learning, even in the midst of a pandemic. We pledged to keep people safe, to protect schools, colleges and universities and keep them open, and to fairly recognise the hard work and achievement of all. I believe that the measures that I have announced today make good on all those pledges.

The Deputy Presiding Officer: Thank you, cabinet secretary. We now have 20 minutes for questions. I ask for succinct questions and answers, if possible.

Jamie Greene (West Scotland) (Con): I thank the cabinet secretary for advance sight of his statement. We also thank teachers for their hard work this year. Conservative members called for a debate asking that a decision be made, after

months of dithering and delay that caused so much upset for parents and thousands of pupils. The decision to cancel higher exams will come as a disappointment to those who believe that they offer consistency, fairness and a level playing field.

Today's statement is far from one that makes good on promises. Instead, it is an admission of complete failure. We were told in October that cancelling national 5 exams would save higher; it failed. We were told that the safety of exams sat at the heart of the decision making; it failed. We were told that home learning was delivering for every pupil in every part of Scotland; that, too, failed. We were told that teachers would not bear the brunt of the assessment workload; again, that failed.

Many unanswered questions result from today's statement. Will teachers and their estimates still be moderated? If they will be, how? Will the appeals process this year be robust and fair to young people, and what role will the SQA have in all of that?

The mistakes of 2020 cannot be repeated in 2021. A promise must be made—today—that we will not let that happen.

John Swinney: I listen with great care to Mr Greene, but I do not think that he listens to what I say in Parliament with great care. I made it clear in October that there remained significant vulnerability around the higher and advanced higher exam diet because of the potential for disruption to learning for young people.

I point out to Mr Greene that I have come to this conclusion two months earlier than I said was the latest point at which this decision could be taken. Therefore, there is no delay. I have looked carefully at the evidence and have become persuaded that there has been disruption for young people to the access to learning that gives them an equal chance at exams.

The point I made in my statement is that an exam, or changes to it, cannot take account of the differential in disruption to learning between a pupil who has had to self-isolate and one who has not. An exam and its composition cannot possibly be expected to do that.

Teacher estimates will be at the heart of the model that we take forward, and the detail of that has been set out by the national qualifications 2021 group. It is a robust model that is based on the gathering of evidence during the year to ensure that young people are able to have due account taken of the learning that they have accomplished, and I am certain that it will deliver strong results for those young people.

My last point relates to the question about the appeals system. The Priestley review asked for

enhancements to the appeals system to be undertaken, and the SQA is working on those propositions.

Iain Gray (East Lothian) (Lab): In my view, the decisions that have been taken make sense. However, yet again, they have been made very late. Students are already returning home, and many have had to do so unsure—until now—of how or whether they would be able to return. School pupils are preparing for, or even sitting prelims for, exams that will not now happen. In both cases, pupils, teachers, students and universities have been pleading for clarity for weeks. They need it urgently.

A staggered return for students could lead to significant demand for refunds of university accommodation rent. What agreement has the Deputy First Minister reached with universities on that potential loss of funding?

Given that we are already in December, can the Deputy First minister say when the higher and advanced higher scheme will be published? Can he assure us that it will have teacher judgment at its heart, that it will take full consideration of disruption to learning and that it will not simply be a version of the exam only administered and marked in the classroom, as many teachers believe the national 5 scheme to be?

John Swinney: The guidance from the SQA has been clear: prelims are not a necessary part of the assessment model this year. If schools are undertaking prelims, that contributes to the evidence base upon which teachers can make judgments. They are not prelims for the final exams; they are assessments of the learning that young people have undertaken.

Regarding staggered returns to university, we made a judgment in consultation with Universities Scotland about the importance of avoiding the situation that we faced in the autumn. We are spreading the return of students, and it is for universities to establish the implications of that decision for their own arrangements.

The assessment model for schools will be anchored on teacher judgment and based on teachers' assessment of the potential of young people. As I said in my statement, guidance for national 5 is being issued today by the national qualifications 2021 group. Guidance about highers will follow as quickly as possible to ensure that there is every opportunity—months earlier than was the case in the 2020 exam diet—for teachers to familiarise themselves with the basis of the judgments that they must make.

Clare Adamson (Motherwell and Wishaw) (SNP): The Deputy First Minister said in his statement that a significant number of pupils who have been absent from school for more than 20

per cent of the time for Covid-related reasons come from our poorest communities. What support has been provided to those pupils to continue their education from home in the absence of face-to-face teaching to ensure that we continue to build on the work to narrow the poverty-related attainment gap?

John Swinney: A range of measures have been put in place. Those are supported by individual schools and also by the national digital arrangements that come through the partnership between Education Scotland, directors of education, local authorities and e-Sgoil. For example, 27 study support courses are available through e-Sgoil this week. Thousands of pupils across the country have signed up for those and receive additional support outwith the school day.

Digital access is required. During the pandemic, more than 50,000 devices have been made available to pupils from the poorest backgrounds and about 9,000 connectivity packages have gone out with those.

We are providing educational and digital support to young people around the country, which will help to address the issues of equity of access to education and will help young people to overcome the poverty-related attainment gap.

Oliver Mundell (Dumfriesshire) (Con): I listened to the answer that Mr Swinney gave to Iain Gray, and I am still none the wiser. Will university students have to keep paying for accommodation that they cannot access if they are not able to return? How will those measures impact on students—often the poorest ones—who have to work during term time?

John Swinney: Any accommodation issues are for universities to address with the students who are affected. It is crucial that students have the opportunity to access learning. There will be a dialogue between the universities and students to ensure that all of their access to learning is supported as effectively as possible.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I welcome today's announcement. I know that many young people will be disappointed although many others will be relieved. I have had contact from students in my constituency who have already had to self-isolate two, three or even four times and who are worried about the impact that that could have on their exams.

We know that self-isolation can be more common and more profound in areas of higher deprivation, such as North Lanarkshire. What impact has that had on the cabinet secretary's decision, and how will the assessment models further safeguard students who may have been

impacted by periods of self-isolation during the school year?

John Swinney: The emerging pattern of impact—particularly the disproportionate impact on young people from areas of deprivation—has affected my judgment, because it is at the heart of ensuring that there is fairness to all candidates from all backgrounds in relation to access to exams. That question has been fundamental to my decision making.

Obviously, there are a range of views about this particular question. I discussed the issue personally with a range of young people from a host of different geographies around the country last week. Different views were expressed in that conversation, but there was a pretty consistent expression of concern by young people about the differential in disruption to educational opportunity because of periods of self-isolation. It is for that reason that we must take this early action to ensure that young people are certain of the opportunities that will be available to them during the course of this school year.

Ross Greer (West Scotland) (Green): The Greens have called for all 2021 exams to be cancelled since it became clear that the level of disruption would make a fair exam diet impossible, so we welcome today's announcement. The education secretary cannot let the SQA repeat its approach to national 5 assessments with higher and advanced higher, though. Despite his categorical assurances earlier this year, the SQA has created a system that has significantly added to teachers' workload, including expecting them to take on the large additional work of an SQA marker. Given that Scotland's school system was already dependent on teachers doing an average of 11 hours' overtime a week pre-pandemic, does the education secretary think that that additional workload is a fair ask of teachers?

The Deputy Presiding Officer: Before you rise, cabinet secretary, I remind members to ask short questions. There are still members who want to ask questions and I want to give them the chance to do so.

John Swinney: First, the model that has been created was created through collaboration. Yes, the work was led by the SQA, but it was done in collaboration with directors of education on behalf of local authorities, the professional associations, the Educational Institute of Scotland and Colleges Scotland. The model is therefore not a product of the SQA alone but a system-wide product to ensure that there is system-wide agreement on the best way to proceed on the issue.

Secondly, the model was designed to align it as closely as possible to the on-going assessment work that teachers would undertake as part of their

routine activities in preparing young people to have command of a particular course.

Thirdly, in my statement I referenced the fact that I wanted to see—we will discuss this with our local authority partners—the remaining in-service days in the secondary sector used to enable teachers to prepare for the task involved. We will also recognise their additional workload through a unique one-off payment to reflect their contribution to the process.

Willie Rennie (North East Fife) (LD): The decision to cancel exams was inevitable. It would have been unfair to proceed when thousands of young people have faced massive disruption to their schooling while others have had none. However, just because the pupils will not face exams, that does not mean that they should miss out on a good educational experience. What additional catch-up support will be made available for those pupils?

Further, will university students be tested for the virus before their return to campus? If not, does that not risk bringing the virus back to the universities?

John Swinney: On Willie Rennie's first point, I set out in my answer to Clare Adamson some of the additional study support that has been made available through e-Sgoil. I assure Willie Rennie that that is an available and expanding proposition. There are 27 different study-support opportunities this week and there will be other arrangements like that in due course, as well as the work that individual schools are undertaking to support young people and their learning.

I understand the reasons underlying Willie Rennie's second point, but I do not think that there is a practical way to deliver testing to students other than when they return to campus. However, in my statement I said that we asked students to voluntarily reduce their social interactions two weeks before they come back to university and two weeks after they come back to try to minimise the risk that Willie Rennie correctly highlighted. However, I cannot see any way of delivering that testing approach other than doing so on campus. Thankfully, much to my relief, that has been done quite smoothly in the past couple of weeks. Obviously, we want to replicate that in the new year.

The Deputy Presiding Officer: I remind members to ask a question, not questions, which means that the cabinet secretary must take longer to answer. Some six people are still waiting to get in, so I want single questions.

John Mason (Glasgow Shettleston) (SNP): Employers, colleges and universities all want consistency and to know what a pass means. How

will an A pass in 2019 compare with an A pass in 2020 and 2021?

John Swinney: Obviously, there are differences in the certification model but, fundamentally, the test that we want to ensure is passed is that young people have undertaken the necessary learning for all their courses and been certificated accordingly. As a consequence, employers and other institutions can be assured that standards have been maintained in the process.

Daniel Johnson (Edinburgh Southern) (Lab): Following the moderation controversy in 2020, will the cabinet secretary commit to publishing in full whatever system is used to verify and alter grades awarded this year, in a repeatable and transparent methodology?

The Deputy Presiding Officer: Thank you, Mr Johnson—an ideal question.

John Swinney: The material that has been published today gives a clear and transparent explanation of the approach that will be taken at the heart of the alternative certification model. I think that that gives the clarity and information that Mr Johnson is seeking. Of course, that has been the product of dialogue involving a range of educational stakeholders to maximise agreement and support. I think that that addresses the issue that the member has raised. Obviously, we will communicate further information in relation to the process for highers and advanced highers in due course.

Rona Mackay (Strathkelvin and Bearsden) (SNP): What discussions has the Government had with key stakeholders, particularly in the college and university sectors, to ensure that the widening access agenda remains a priority for all, so that we can continue to see more pupils from disadvantaged backgrounds gaining a place at college or university in 2021?

John Swinney: There has been extensive dialogue with stakeholders on the developments. I take this opportunity to compliment our universities on the commitment that they have demonstrated to the widening access agenda. We have made significant progress in a relatively short space of time as a consequence of their engagement and participation in the process. I know from my discussions with the university sector and those of the Minister for Further Education, Higher Education and Science that universities are committed to that agenda.

Johann Lamont (Glasgow) (Lab): As has been acknowledged, young people living in poverty, disabled young people and care-experienced young people are disproportionately affected by the pandemic crisis. Many of those people have become more distant and less engaged with learning since the virus hit. What assessment has

been made of the extent of that disproportionate impact? What specific support measures will be put in place? How will support be targeted to ensure that those who are most at risk of falling out of the education systems altogether will benefit?

The Deputy Presiding Officer: That was three questions when I asked for one, but please answer if you can, cabinet secretary.

John Swinney: But very important questions, Presiding Officer.

At the heart of the questions that Johann Lamont raises is the importance of ensuring that every child, no matter their background or circumstance, is able to access education as their pathway to their future life. Many of the measures that are utilised are supported by the investment that the Government has made through, for example, the attainment Scotland fund, and in ensuring that schools with young people who are significantly affected by barriers to learning are properly resourced and supported to assist in that challenge.

I have cited the additional opportunities of digital engagement and learning to reach young people, and there is good information about the availability of those mechanisms.

In all my interaction with schools, I see that they are all utterly focused on reaching all their learners, no matter their circumstances. I know that that will lie at the heart of the approach that schools will progress in light of the announcements that I have made today.

The Deputy Presiding Officer: If members are brief, Liz Smith will be followed by Gillian Martin.

Liz Smith (Mid Scotland and Fife) (Con): What guidance will be given to the small number of college students who live in halls of residence and not at home?

John Swinney: We will certainly work on such questions with Colleges Scotland to ensure that the advice is clear. Only a limited number of students are in such circumstances, hence the significance of their return is much less than, for example, that of students to the University of Edinburgh. We will also work with individual colleges to provide guidance. I add the important caveat, which I mentioned in my statement, that the restriction level in a particular local authority area is meaningful in determining the manner in which young people return to college at a particular time.

Gillian Martin (Aberdeenshire East) (SNP): I have whittled my questions down to one, which is about the priority that will be given to getting students who are on placements or whose studies contain a large practical element back to university

campuses. What guidance is being given to universities in that regard?

John Swinney: In my statement, I referred to certain exemptions to the situation on staggered returns. That question is central to the judgments that universities will have to make about which students might need to return earlier to ensure that they can fulfil the practical elements of their courses, which form part of their education. That issue therefore lies at the heart of the exemption that we have put in place.

The Deputy Presiding Officer: That concludes members' questions. I again thank all members and the cabinet secretary for their brevity. Everyone has managed to ask their questions.

There will be a short pause, after which it will be time to move on to the next item of business.

Parliament's Evolving Scrutiny Function

The Deputy Presiding Officer (Lewis Macdonald): The next item of business is a Finance and Constitution Committee debate on motion S5M-23565, in the name of Bruce Crawford, on Parliament's evolving scrutiny function. I ask all members who wish to speak in the debate to press their request-to-speak buttons now, and I invite Bruce Crawford to open the debate on behalf of the Finance and Constitution Committee.

16:27

Bruce Crawford (Stirling) (SNP): This has been a quite extraordinary year and, rightly, the focus of the Scottish Government, our Parliament and its committees has been on dealing with the impact of the on-going Covid-19 emergency. However, as we near the end of the Brexit transition period, the Finance and Constitution Committee has also been focusing on the constitutional impact of the United Kingdom leaving the European Union on devolution—or, more specifically, its impact on our Parliament's powers and what that means for how we conduct scrutiny.

At the outset, it is important to recognise that my contribution will not be about whether that might involve a power grab or a power surge. Brexit itself neither directly increases nor decreases the powers of the Scottish Parliament; any such change to its powers would require UK legislation. For example, the United Kingdom Internal Market Bill rereserves subsidy control, which means that the UK Government will be able to introduce state aid legislation without the need to seek consent from the devolved legislatures. The Scottish Parliament has, of course, refused its consent, but it is likely to be imposed regardless of its strongly held views.

However, the main impact of Brexit on devolution is to remove the obligations on the Scottish Parliament to implement changes to EU law in devolved areas and not to legislate in any way that is contrary to EU law. It is such constraint that is being removed.

All else being equal, from 1 January 2021, this Parliament would have had legislative autonomy in any devolved policy area that was previously within EU competence. However, the reality is a bit different, because other constraints will replace the existing requirements to comply with EU law and will essentially limit our legislative autonomy.

Unfortunately, with only three weeks to go until the end of the transition period, the extent of those

constraints remains highly uncertain. There are essentially two levels of constraint: external and domestic. External constraints include the requirement to comply with international treaties agreed by the UK, including trade deals. The level of regulatory alignment with the EU as part of any trade deal will therefore be of critical importance in determining this Parliament's level of legislative autonomy after Brexit.

The extent of domestic constraints such as common frameworks on the use of Parliament's legislative powers also remains unclear. That is partly because the UK Government and the devolved Governments cannot fully agree on how that should work. There is, nevertheless, broad agreement on developing common frameworks consensually, as that is the most effective way of delivering an appropriate level of regulatory coherence across the UK. However, there have been specific problems with the emissions trading scheme framework, for instance, which I am sure we will hear more about this afternoon.

The UK Government continues to press ahead with its internal market bill, which, as I have said, does not have the consent of this Parliament. With the exception of our Conservative colleagues, the committee's view of the bill is that it undermines the whole basis of devolution. In essence, the market access principles in the bill mean that regulatory standards agreed by the UK Parliament could be imposed on the devolved nations. As such, it in effect imposes new reservations on devolved competences. Common frameworks might also constrain legislative autonomy in certain policy areas but that, at least, will be with the agreement of the Scottish Government.

Given those external and domestic constraints, a key question for the committee is the extent to which they will, in turn, limit the use of the keeping pace power in the UK Withdrawal from the European Union (Continuity) (Scotland) Bill.

That brings me to the critical question in this debate—what is the impact on our Parliament's scrutiny function and how do we need to evolve to meet the challenges that I have just outlined? It was on that key question that we sought the views of other committees. The committee believes that there is a need to ensure that, as a Parliament, we facilitate engagement in the policy-making process in areas that were previously subject to EU law.

That is primarily because there will no longer be any formal democratic engagement in the EU policy-making process by the UK Government and devolved Governments. However, it is also because there is a risk that the EU policy-making process is replaced by an Executive-driven process that allows for significant levels of ministerial discretion—for example, in deciding which EU law to keep pace with or in deciding

areas of policy convergence in common frameworks.

The responses that we have received from other committees confirm that there is a recognition across the Parliament that we need to evolve our scrutiny process to address the risk of an overly Executive-driven process. However, it is also clear from the responses that we have received that that raises significant resource implications.

Those implications are threefold. First, it is essential that all members, especially the new intake next May, are sufficiently supported in understanding the on-going complex constitutional implications of Brexit on our Parliament's powers. It is also essential that we are able to provide the public with an understanding of how policy making in areas such as the environment and food standards will work after Brexit. However, that will not be easy, as the constraints are not static and, in many respects, will be agreed at an intergovernmental level.

Secondly, the situation perhaps leads to the need to develop an interparliamentary approach in all policy areas that were previously within EU competence.

Finally, it is clear from the responses that we have received from other committees that there is not sufficient capacity in the existing committee structure. Therefore, there is a need for the Parliament at a strategic level to consider its scrutiny priorities in addressing the complex and dynamic impact of Brexit on devolution. The past few years have seen a significant increase in the complexity, volume and diversity of policy areas that the Parliament needs to scrutinise to ensure that they work for the people of Scotland.

As the committee responses that we received confirm, that requires resourcing, if the Parliament is to continue to deliver a high-quality and participative approach to scrutiny of policy and legislation in the future and, critically, to ensure that members are supported to deliver robust scrutiny in a post-Brexit constitutional landscape. Given the tight fiscal environment, that might require difficult conversations about reprioritising existing resources, but that needs to start now, before the next session of Parliament begins.

In moving the motion in my name on behalf of the Finance and Constitution Committee, I take this opportunity to thank very much the clerks of the committee for all their support in the process.

I move,

That the Parliament notes the Finance and Constitution Committee's recent consultation with other committees regarding the impact of Brexit on devolution and how the Parliament's scrutiny role will need to evolve to address this impact.

16:36

The Minister for Parliamentary Business and Veterans (Graeme Dey): I thank Bruce Crawford and his committee for securing this important debate, because there is nothing more central to the role of a Parliament than scrutinising, on behalf of the people whom it represents, the actions of Government—in this instance, that is the Scottish and UK Governments. That is borne out by the participation of five different committees in the debate that we are conducting.

As Bruce Crawford highlighted, Brexit has raised a number of challenges around the exercise of that crucial scrutiny function. Before considering those in detail, it is essential that we establish context. Brexit was not the choice of the people of Scotland, and we now face the most damaging form of Brexit that can be imagined—a choice between no deal or a very limited future relationship agreement—thanks to the approach of the UK Government.

The UK Government's approach is similarly crucial in considering the challenges that we face in some of the specific matters that we are debating—notably, UK frameworks and the United Kingdom Internal Market Bill, but also future international negotiations beyond those with the EU.

On the subject of approach, let me outline that of the Scottish Government to the topic before us. Let me be clear that we want to take all practical steps to support and encourage scrutiny by the Parliament and, alongside that, consultation with stakeholders. It might be that we will not agree with the Parliament, or some of the parties represented here, on what “all practical steps” are but, with good will and the right intent on all sides, I am certain that we can ensure that scrutiny is proportionate and that it balances proper and thorough questioning with the need to progress business within the finite limits of parliamentary time.

The Government and Parliament established protocols for scrutiny of the substantial range of secondary legislation that is already in place for leaving the EU. Now we must build on that for the new challenges ahead. On Bruce Crawford's important point about resource to deliver that scrutiny, the Government will of course listen to any reasoned financial ask from the Parliament via the Finance and Constitution Committee.

There are three immediate relevant issues facing us: UK frameworks, the UK Government's United Kingdom Internal Market Bill and our UK Withdrawal from the European Union (Continuity) (Scotland) Bill.

The negotiation and agreement of UK-wide frameworks in devolved areas is a largely new

exercise in the UK. The four Administrations have had to create principles and structures to allow us to negotiate and agree common approaches to issues, where we agree that that is in our best interests. The Scottish Government and the Parliament have always been clear that UK frameworks must be agreed, not imposed, and must respect devolved powers.

We are now moving to the detail of individual frameworks and the scrutiny by subject committees of the Parliament of those frameworks.

The proposals for scrutiny are intended to secure effective scrutiny of an intergovernmental process, as they would require agreement across all four Executives and legislatures. I reiterate the Scottish Government's commitment to enabling effective scrutiny of the frameworks by the Scottish Parliament.

However, it is clear that agreement of frameworks and proper democratic accountability require respect and trust between all four Administrations and, regrettably, recent events concerning the proposed emissions trading scheme framework again call into question the UK Government's commitment to that approach.

It would be wholly unacceptable—and it would undermine the common frameworks process—if UK ministers unilaterally introduced an alternative carbon tax regime against the wishes of the other UK Administrations, and I am sure that that view will find support across this Parliament.

Of course, the UK Government has already severely damaged the frameworks process through its United Kingdom Internal Market Bill. Although the bill's many flaws are well rehearsed, it is worth reflecting on its specific implications for the UK frameworks. Put bluntly, the bill removes any need for the UK Government to agree frameworks if it does not like the outcome of negotiations. The market access principles will ensure that there will be no need for the UK to conform to our regulations if they are different from those in England. That would also be true if the UK Government decided unilaterally to withdraw from any UK framework that had already been agreed.

There is no protection in the internal market bill for matters under negotiation for UK frameworks or for matters in agreed frameworks. Therefore, the bill not only undermines devolution and common frameworks, but undermines scrutiny by this Parliament in the discharge of its democratic responsibility.

The Scottish Government's UK Withdrawal from the European Union (Continuity) (Scotland) Bill also raises new issues of scrutiny for the Parliament, as Bruce Crawford has set out. In

essence, the Parliament will rightly want to examine the proposals that the Government makes to maintain alignment in devolved areas with the high standards of EU law. The normal processes of secondary legislation will provide the Parliament with the opportunity to approve individual exercises of the powers in the bill.

However, stage 2 consideration of the bill showed that members have a range of other proposals to ensure that there is wider scrutiny of the Government's plans in this area. I know that Michael Russell is reflecting on those proposals and that he will listen to any further points that are made today as the Government considers its approach to stage 3 of the bill later this month.

Brexit has focused attention on parliamentary oversight of the negotiation of international treaties. Again, the approach of the UK Government has shown clearly the flaws in the current system. The Westminster Parliament is excluded from any role in shaping negotiating positions. The devolved Administrations and legislatures are shut out, too, despite the fact that many devolved matters are directly affected by the UK Government's position and the negotiations. That is clearly unacceptable in a modern democracy. Rightly, the Parliament would not accept such an approach from a Scottish Government, so why would it accept it from a UK Government?

Although the circumstances of Brexit are not of our making, as a responsible Government and Parliament, we must face up to those new challenges. We should be proud of the work that has been done so far to fulfil our duty to provide a functioning legal system that is suitably scrutinised and approved. I am sure that by working together, we can ensure that future measures, such as common frameworks and alignment with EU law, are developed properly by the Government and rigorously examined by the Parliament, always with the best interests of the people of Scotland as our aim.

16:43

Dean Lockhart (Mid Scotland and Fife) (Con):

I, too, thank the clerks and advisers to the Finance and Constitution Committee, who have worked tremendously hard on an ever-increasing volume of primary and secondary legislation and parliamentary reports.

I agree with Bruce Crawford that this is the beginning of a very important debate—a debate about the future role of the Parliament in scrutinising the exercise of powers in a post-Brexit settlement. The backdrop is that, next year, after the transition period, the Parliament will have more powers than ever. Following the transition period,

more than 100 new powers will come directly to the Parliament in a number of areas, including air quality, animal welfare, land use, harbour regulation and energy efficiency. The Parliament will also have oversight of substantial new powers in areas that are the subjects of common frameworks, including agriculture, fisheries, procurement and food packaging.

In addition to all that, new legislation in the form of the UK Withdrawal from the European Union (Continuity) (Scotland) Bill and the United Kingdom Internal Market Bill will generate yet more regulatory change that will require scrutiny and stakeholder consultation.

How those significant new powers will be scrutinised by Parliament is being considered by the committee as part of its legacy inquiry, and it will be for members who are returned in the next session to determine exactly how that will all work in the years to come. However, it is important that we start the debate now about how the powers will be used and scrutinised, and how the Scottish Government will remain accountable to this Parliament.

I will touch on some of the common themes that have emerged from the responses that have been received from the various committees. It did not come as a surprise that most committees had questions surrounding use of the keeping pace powers under the continuity bill, or that they raised a number of important challenges to which the legislation will give rise.

Committees noted that the task of monitoring changes to EU laws was previously done at UK level and that, after the transition period, we will have no formal role in influencing or amending future EU laws. That reflects evidence that was given to the committee at stage 1 of the bill by Professor Aileen McHarg, who cautioned, on the keeping pace powers, that this Parliament will become a passive rule taker and that

"In those circumstances, it seems very hard to justify putting such an extensive power into the hands of ministers".—[*Official Report, Finance and Constitution Committee*, 26 August 2020; c 4.]

The committee's stage 1 report reflected those concerns by concluding that

"It is, therefore, essential that the Parliament gives serious consideration to the level of scrutiny of the keeping pace power".

That is part of what we are debating today, so it is welcome that a number of committees looked at that question and responded by calling for Parliament and stakeholders to be able to scrutinise Scottish Government decisions on whether to keep pace with particular EU policy developments, and by suggesting that committees of this Parliament should have a role in those

decisions. In fact, the Delegated Powers and Law Reform Committee went as far as to recommend that primary legislation would be the most appropriate vehicle for keeping pace with developments at EU level.

Those committee responses were reflected in a number of the amendments that we lodged at stage 2 of the continuity bill, which were designed to address concerns. First, we suggested that Parliament or, if it is more appropriate, a relevant committee should have the ability to consider the relevant procedure that should apply to keeping pace regulations that are brought forward by Scottish ministers—in particular, the power to decide whether the keeping pace regulations should be subject to negative, affirmative or super-affirmative procedure, or be in primary legislation.

If Parliament or, if relevant, a sifting committee were to decide that the super-affirmative procedure should apply—for example, if the keeping pace provisions require a significant change in Scots law or in Scottish Government policy—that would require the Scottish Government to undertake impact assessments and stakeholder consultations. The amendments were all based on submissions from the NFU Scotland and a number of other stakeholders.

I will accept the minister's invitation. Given that not all the amendments were agreed to at stage 2, I am very happy to work with the minister, the cabinet secretary and other parties to agree amendments at stage 3 that will address the concerns that have been raised by various committees.

The second common theme that emerged from committee responses centred on the need for a much more active and detailed scrutiny process for common frameworks. There is recognition that although the common frameworks themselves will not alter devolution, they will constrain—albeit voluntarily and subject to continued agreement—this Parliament's ability to agree policy divergence in a number of areas. The consensus across the committees is therefore that development of the common frameworks must involve a higher level of transparency and an opportunity for Parliament to scrutinise the powers that are subject to common frameworks.

However, the Environment, Climate Change and Land Reform Committee identified a number of serious concerns, including about Parliament being asked to consider legislative elements of frameworks without having sight of the relevant framework itself, and with a real failure to engage stakeholders and the wider public in the process of developing common frameworks.

Those concerns relate to the processes that are undertaken by both the Scottish and UK

Governments. It is worth highlighting that the Rural Economy and Connectivity Committee noted that there is a structural problem that relates to how the intergovernmental process operates—in particular, in relation to the emphasis on confidentiality. The REC Committee went on to say that there is a real concern that if that is not addressed, common frameworks

“could represent a shift towards a greater degree of intergovernmental decision-making where the scrutiny role of parliaments is significantly diminished”.

I am sure that all members will want to avoid an outcome in which that process is driven by the Executive and does not involve a relevant amount of Parliamentary scrutiny. The Scottish and UK Governments, and the Parliament, should be looking to address that.

I conclude on an issue for which I think there is support across the chamber. All the committees highlighted significant resource implications for the Parliament as a consequence of the additional powers that I have mentioned, and of the additional scrutiny functions that will be vested in the Parliament from the beginning of next year. I think that that issue will become increasingly urgent, so I urge that cross-party consensus be reached on what additional capacity and resources will be required for the Parliament and its committees to address the issues that I have outlined.

16:50

Anas Sarwar (Glasgow) (Lab): I start by thanking Bruce Crawford and his committee for bringing forward the debate. Previously, I was acting convener of the Public Audit and Post-legislative Scrutiny Committee, which was able to respond. Having left that committee, and having joined the Finance and Constitution Committee, I look forward to serving under Mr Crawford's chairmanship.

I am saddened that the UK is leaving the EU. My view on Brexit is clear, as is the case for many members; I wish that we were not even having the debate. I did not support Brexit—I do not believe that it is good for the UK or for Scotland.

However, whatever our views on it, we, as members of the Scottish Parliament, have to deal with the here and now of what Brexit means for the Parliament and how it functions, both as a legislature and, which is important, as a body that is able properly and timeously to scrutinise and hold to account the Executive—the Scottish Government—of whatever political shade it might be. That is the approach that Scottish Labour will be taking.

In some ways, therefore, the debate should not be party political—although it is, of course,

political. I am sure that having Murdo Fraser second the motion is to Bruce Crawford's eternal shame, but it is a good indication that we are trying to find consensus on what should happen next.

In addition, I do not want the debate to be dominated by the much more political debates about the rights and wrongs of Brexit itself, its impact on Scotland, the UK Withdrawal from the European Union (Continuity) (Scotland) Bill, the Internal Market Bill, and the impact on devolved policy areas and devolution. Of course those are important, but they are probably for a different debating opportunity.

Those matters are not the subject of today's debate, which is about the role of Parliament, scrutiny by it and the resources that will be available to it for holding the Executive to account. I hope that every MSP believes that there should be a properly resourced and functioning Parliament, with the necessary capability to pass legislation and to scrutinise the Executive.

In addition, I think that there is a discussion to be had about how we can take some of the party politics out of committees. That, in itself, would help with scrutiny. I say that having come off the Public Audit and Post-legislative Scrutiny Committee. I have to give credit to all my colleagues who have served on that committee with me. I think that they would all agree that we have been very good, as a committee, at avoiding party politics, and in uniting in our scrutiny work on issues that are relevant to the Scottish people.

I think that a level of consensus can be seen from committees' responses to Bruce Crawford's letter. That is a good thing, because the Parliament has changed since 1999 and I am sure that it will want to continue to change and adapt in the years to come.

Although some new scrutiny processes that have been established by the Scottish Government are working well, committees are already struggling through lack of capacity and lack of timely information from the UK Government—and, consequently, from the Scottish Government—for example, on common frameworks. That is not good enough, and it prevents Parliament from doing its job.

Without getting into the politics of the withdrawal bill, it is problematic for two reasons when it comes to scrutiny. It gives much power to ministers, which requires adequate scrutiny. Responding to the keeping pace powers is currently beyond the current capacity of our parliamentary committees. Scottish ministers will be able to make regulations corresponding to EU regulations, tertiary legislation or decisions. The regulations will also be able to enforce the laws

and implement the directives, or modify any retained law, of the EU.

It would be incomprehensible if the Executive and ministers had such powers without corresponding parliamentary scrutiny. That is why the Government must work with committees and the Parliament, as a matter of urgency, to ensure that changes in our laws and governance structures can be adequately scrutinised by the Parliament. Mr Dey gave that commitment in his speech. I hope that the commitment is matched with action. It is for all of us in this Parliament to work collectively to make that happen.

There have, in recent months, been too many instances of the Scottish Government seeking to sideline, or ignoring, the will of the Parliament. I do not mean that in a partisan sense. If a Labour Executive was the Government of the day and the Parliament as a whole directed it, I would expect it to listen to the will of the Parliament. I would expect that of a Labour Administration, an SNP Administration or an Administration of any other political colour. That has to be the case, if we are to respect this Parliament and the people who elect us to come here.

The committee noted that the Scottish Government is using the UK Withdrawal from the European Union (Continuity) (Scotland) Bill to legislate for some Scottish laws to keep pace with EU laws, as a default position. The role of the Scottish Government in monitoring EU developments in devolved policy areas will be a new one, so there will be a need for scrutiny of whether the Scottish Government chooses to keep pace with EU policy developments.

The Health and Sport Committee—the Deputy Presiding Officer, as convener of that committee, is acutely aware of this—said that it and, perhaps, other committees should have a role in decisions on whether to keep pace, in order to provide democratic engagement in Scottish Government ministers' decisions on such matters.

There is also concern that mutual recognition of standards could result in standards being imposed on Scotland, thereby undermining devolved powers. In the committee's view, parliamentary involvement and meaningful stakeholder engagement at the earliest opportunity are vital in internal market policy development.

The Finance and Constitution Committee also identified the need for the Parliament and its committees to consider how it needs to evolve.

I must close. As Bruce Crawford said, this is about not just today's members of the Scottish Parliament, but the MSPs who will follow in the next session and the sessions after that. It is incumbent on us all to make sure that our Parliament is true to the values of democracy

through accountability and active scrutiny, regardless of who is in a position of power, who is on a committee and who is a back bencher. There is a collective interest, for all of us, in the democratic rights of the Scottish people.

16:57

Patrick Harvie (Glasgow) (Green): I am grateful to all the committees that contributed their perspective, but I fear that issues are being raised that the Scottish Parliament itself will not be able to resolve satisfactorily.

The events of 2020 have inevitably taken a huge amount of public attention away from the Brexit crisis, but the public health crisis that we have been living through should be a reminder that the way in which power is exercised, and the way in which people are held accountable for that in a democracy, must be capable of operating not just in good times but in challenging times and even in an emergency.

I would have liked to think that even the most extremist anti-European would have thought twice about proceeding with Brexit in the middle of a global pandemic if they had known that that was coming. However, given how the UK Government has refused every opportunity to think again, it seems clear that it puts its ideological obsession ahead of everything—ahead, even, of life and death.

It should therefore be no surprise that the UK Government puts its ideological obsession ahead of Scotland's right to govern itself. That right, albeit that it is limited in its current form, was reasserted in the final years of the previous century. We voted for a devolved Parliament, which was created on the basis that whatever was not explicitly reserved was devolved, and on the basis that changes to the devolution framework, including the powers that this Parliament exercises, would require the consent of this Parliament.

Those principles are now under sustained and systematic assault by a UK Government that clearly holds them in contempt. That is the context in which we are forced to consider important questions about the impact on devolution of a Brexit crisis that Scotland rejected and the implications for parliamentary scrutiny.

The issue of policy divergence is not new, though. In my first years as an MSP back in 2003-04, I was involved in debates on issues from charity law to the protection of the marine environment in relation to which Scottish and UK Governments and Parliaments were legislating in areas that involved significant cross-border issues. They were legislating separately but in parallel, each jurisdiction taking account of its different

circumstances, while also seeking to achieve a coherent overall approach.

To me, that is the right and most democratic way to achieve what we now call a common framework. It is also the simplest way to ensure that parliamentary scrutiny takes place in the way that Parliament thinks that it should. Any other approach raises serious questions—questions that are about not only parliamentary scrutiny but the balance of power between Parliament and Government. Any Government will inevitably be drawn to arguments that protect its ability to make decisions. Every Parliament should be focused on the need to hold the Government accountable for those decisions. That balance of power issue is even more important in a Parliament with a fair voting system, where single-party majorities can be expected to be rare.

If we accept the principle that the UK and Scottish Governments, and others within Great Britain or the UK, will reach agreement among themselves about common approaches, the challenge of parliamentary scrutiny becomes significant but manageable. We should avoid, for example, arrangements that allow the Scottish Government to decide for itself the correct level of scrutiny, such as saying that it will not normally adopt a position without parliamentary approval. Such language would echo the weak and undefined legislative consent principle, and we have seen how a Government that has no respect for that principle can abuse it to the extent that it is rendered meaningless.

More challenging than scrutiny of common frameworks, though, is the question of power. Once a common framework has been agreed between the Governments, even with the consent of the Parliament of the day, how much power will the people of Scotland have to elect a Parliament that will end that framework and seek a different agreement? How much power will a future Parliament have to ensure that changes are made to common frameworks, or indeed to ensure that changes are resisted, if a minority Government disagrees with a parliamentary majority? I cannot see any satisfactory answers to those questions.

Worst of all, of course, is what is to happen if the UK Government continues with its wrecking ball approach to devolution—its internal market bill. While some in the Conservative Party try to maintain that the bill poses no threat to devolution, their colleagues, such as Jacob Rees-Mogg, have a habit of saying the quiet bit out loud and making the Conservatives' true intentions very clear.

If the UK Government imposes its own decisions in devolved areas in the way that is so clearly threatened, how will those decisions be held up to scrutiny? UK ministers are notoriously unwilling to appear before this Parliament's

committees, and they cannot answer questions in the chamber from MSPs who are elected to hold those exercising devolved power accountable—and they will never face the judgment of the Scottish electorate.

The example of the European emissions trading scheme is of critical importance but it is, in truth, only one of a huge range of environmental, social and economic issues in which this Parliament's role must be respected. That respect appears entirely absent from the UK Government's approach.

Ultimately, such issues must be resolved by the people of Scotland. They are sovereign in their country. If the UK Government and those who want Scotland to choose to remain part of the UK want the people of Scotland to be able to exercise their sovereignty by electing people to their Parliament, they must end the threat to overturn the fundamental basis on which that Parliament operates. If the UK Government instead continues with its current course, the people of Scotland will have only one option left by which they can continue to assert their right to self-government, and that is to complete the journey, take our place as an independent member of the international community and rejoin the family of European nations.

17:04

Mike Rumbles (North East Scotland) (LD):

There is no doubt that Brexit is having and will have a major impact on how the Scottish Parliament operates. The paper produced by the Finance and Constitution Committee and this debate are a welcome part of the process of examining how this devolved Parliament responds to changing circumstances.

Time allows me to concentrate on only one of the five major areas of concern: that of how the Scottish Parliament will hold the Scottish Government to account over the keeping pace power in the Scottish Government's UK Withdrawal from the European Union (Continuity) (Scotland) Bill, which has completed the stage 2 process and comes before the whole Parliament in two weeks' time.

I believe that anything that makes trade between Scotland and the rest of the UK—and, indeed, with the continuity bill, trade between Scotland and our European neighbours—easier must be a good thing. It is on that basis that I voted for the general principles of the bill at stage 1.

However, when it came to stage 2, I was disappointed, to say the least, to find that the Scottish Government opposed any change to its proposed use of regulations for the keeping pace

power. The sole use of regulations for the keeping pace power means that, unlike with primary legislation, the Scottish Parliament will have no power to amend the Government's legislative proposals when it introduces them. I see Mike Russell, who is the cabinet secretary responsible, shaking his head, but that is the truth.

Unfortunately, the role of Parliament will be somewhat neutered under the proposals. Let me explain what I mean. All Governments use regulations, but they are meant to be used for uncontroversial minor adjustments or keeping our laws up to date, and they are usually nodded through up to 28 days after they come into effect. However, over the past nine months, regulations have been used to bring in quite drastic and controversial measures. Although those measures can be justified, my concern is that ministers seem determined to expand their use of regulations through the keeping pace powers in the bill.

If major changes are to be made to our laws, the proper way to do that is with primary legislation, so that Parliament can properly interrogate and improve our laws rather than, simply accepting or rejecting regulations, which is what has to be done with regulations.

I am concerned, and MSPs across the chamber should be concerned, with two specific subsections in section 4 of the bill. Subsection 4(2)(d)

"creates, or widens the scope of, a criminal offence",

and subsection 4(2)(e)

"creates or amends a power to legislate"—

all by regulation. The Government's defence of those provisions is that, rather than relying on regulations under the bill, Parliament can at any time go down the route of primary legislation, if that is what Parliament decides that it wants to do. That is a truism if ever there was one, and I am afraid that the argument is not valid. The bill gives the Government power to use regulations rather than primary legislation to make major changes—such as creating a criminal offence—to our law.

If Governments have the power to use regulations, they are extremely unlikely to want to use a lengthier but more appropriate process. Parliament's ability to amend legislation will be curtailed. This is not only a party-political issue; it is a parliamentary issue. We happen to have an SNP Government, but I have made the same point about the Labour-Liberal Administration: MSPs should guard against the tendency of Governments of whatever colour to use legislation in such a way to curtail Parliament's proper power to amend legislation.

The role of Parliament is to ensure that, with major legislation, the Government gets it right. If

Parliament loses its power to amend major legislation, as it will with the keeping pace power, we will be on a slippery slope.

I hope that, when we look at stage 3 amendments to the continuity bill in two weeks' time, the Scottish Government will accept that there are issues with what some people call the Henry VIII powers in those two small subsections of section 4. If the Scottish Government is willing to seek consensus in amending those two subsections—I know that my colleague Liam McArthur is trying to find a solution to that with the Government—I will look forward to voting for the bill at stage 3 so that Parliament can move forward with the Government.

I have concentrated on the keeping pace power because that is what is of concern to me, and I have used this opportunity to highlight my concern. I am glad that the minister responsible for the bill is really listening to the debate—that is encouraging. However, that is only one of the five areas of concern identified by the Finance and Constitution Committee. I look forward to hearing the contributions of other members on the other four.

The Deputy Presiding Officer: I call Gordon Lindhurst to speak on behalf of the Economy, Energy and Fair Work Committee.

17:09

Gordon Lindhurst (Lothian) (Con): The debate is about a new, post-Brexit world, in which our committees will have new challenges. We must take time to consider our approach—but not too much time.

I am pleased to take part in the debate on behalf of the Economy, Energy and Fair Work Committee. I thank members of the Finance and Constitution Committee for their diligent work and for initiating the debate.

The Finance and Constitution Committee's letter raised important constitutional issues; I will limit my comments to just a few of the questions that it set out. My committee highlighted three key points: consultation, transparency and time.

Eisenhower said:

"I assure you that it is our desire and intention to keep the doors of consultation always and fully open. There must never be a final word between friends."

He highlighted an important point, which is the need for consultation and transparency—and for having friends.

A key principle of the Parliament is that it should be open and encourage participation. Eisenhower was right that the doors of consultation should be open. The Economy, Energy and Fair Work

Committee believes that any policy-making process, including that in areas that were previously subject to EU law, should include consultation of those the policy will affect. That is explained by the famous constitutionalist and author Montesquieu, who said:

"Pour devenir vraiment grand, il faut se tenir avec les gens, pas au-dessus d'eux."

For the benefit of my colleague Graham Simpson, who might be listening, I will translate. Montesquieu said that, to become truly great, one must stand with people, not above them.

There should be clear and transparent processes for facilitating consultation engagement. The need to engage those who will be affected applies to many areas of post-Brexit policy making, including common frameworks. The committee expects both the UK and Scottish Governments to consult on common frameworks, and consultation responses should be published. Changes to common frameworks as a result of consultation should be made clear to lead committees, which would help them to gauge the response and plan their scrutiny.

Committees need time for scrutiny. The Economy, Energy and Fair Work Committee believes that information on and timescales for forthcoming common frameworks should be made available well before they are referred to committees.

Like most committees, the Economy, Energy and Fair Work Committee has a full work programme and requires notice to scrutinise common frameworks. The protocol that was produced for scrutinising Brexit-related subordinate legislation that is being dealt with at Westminster was helpful in setting out the parameters of scrutiny. In most cases, the timescales that the protocol set out have been adhered to. However, if common frameworks cover wider and more complex matters, adequate time must be given for proper scrutiny of them.

Our committee has liaised with its counterpart at Westminster. Time is needed to explore the possibility of joint working when that is appropriate. Some common frameworks are likely to be highly technical—many of the Brexit-related UK statutory instruments that the committee has considered fall into that category. Consideration should be given to developing a sifting process to enable committees to have a proper perspective on the scrutiny work that they carry out on frameworks.

As for resources, we note the additional work that is welling up from the increased volume of Brexit-related subordinate legislation that has been referred to the committee. I thank Scottish Parliament information centre officials for the

excellent briefings that they provide on those instruments, often to challenging timescales. Increases in the work that arises from such matters for committees require proper resources.

Consultation, transparency and time are all key ingredients of good policy making and scrutiny. At this time of change, those three things should be uppermost in the minds of the UK and Scottish Governments.

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

17:14

Ruth Maguire (Cunninghame South) (SNP): I congratulate the Finance and Constitution Committee on securing this significant debate.

Like many other committees, the Equalities and Human Rights Committee has been sighted on Brexit and how it might affect the areas in its remit since the committee was established in 2016. We have worked hard over the past four years to bottom out the issues so that we have a clearer view of what leaving the EU will mean for the protection and advancement of equal opportunities and human rights in Scotland.

Our early work identified the main risks. At the end of any transition period, the Charter of Fundamental Rights of the European Union will cease to apply across the UK. Our report "Getting Rights Right: Human Rights and the Scottish Parliament" looked at the importance of the charter. The charter brings the fundamental rights of everyone who lives in the EU into an overarching human rights framework. It includes the convention rights, some in updated form, as well as additional, specific rights that are not in the convention, such as certain social and economic rights, which the UK has agreed to guarantee either in EU law or in other international treaties.

The charter was designed to permit the development of new rights and new means of protecting rights. Those benefits will be lost when the charter can no longer be relied on in the UK courts. It is crucial that we keep up to date with human rights to ensure that they are not eroded in Scotland and that opportunities to enhance protections are grasped by the Government of the day.

Our current Government has committed to the creation of a new statutory human rights framework for Scotland in the next parliamentary session. Developments in the area will need to be closely monitored. That will require stakeholders to help the committee with the task to ensure, first, that there is no regression from rights that were previously guaranteed by membership of the

European Union; secondly, that Scotland keeps pace with future rights developments in the European Union; and thirdly that leadership in human rights continues to be demonstrated.

Moving on to the equalities part of our remit, I note that being out of the EU will mean that there is no ability to seek the opinion of the European Court of Justice. It is notable that many of the decisions that have been made by the European Court of Justice have been influential in expanding and improving our equality legislation.

Equal treatment legislation has been defined as a policy area where no common framework is required. It bans discrimination and harassment in employment on the grounds of sex, race, age, disability, sexual orientation and religion or belief. It also bans discrimination in the provision of services on the grounds of sex and race, and it requires the existence of an equalities monitoring board such as the Equality and Human Rights Commission.

Many of those aspects are reserved. However, devolved competence intersects with EU equal treatment legislation through the Government's role in acting to encourage equal opportunities. It will therefore remain a key area of work for the committee to monitor what happens at the EU level and how the Scottish Government works with the UK Government.

The committee sees a sizeable task ahead of it. Much of the Equalities and Human Rights Committee's scrutiny of Brexit in the current and coming parliamentary sessions will focus on the keeping pace power. As such, the committee agrees that whether the Parliament should be dependent on the Scottish Government in identifying what might and might not be suitable for the keeping pace power is an important consideration. The committee asks for early engagement in the policy development process.

I will touch on two emerging issues that an Equalities and Human Rights Committee will have to grapple with—the UK internal market and trade deals. There is currently limited information on how those policy areas will affect equalities and human rights, but we note that there is potential for them to do so. Work will be required to establish the extent to which that will impact on the committee's remit.

As other speakers have mentioned, additional work comes at a cost. Our experience when human rights was added to our remit was that stakeholders raised concerns that the committee would not cope with the increased workload and that areas of the remit could become neglected. Although we have managed that test, I do not feel so certain that the committee would cope with another increase in its workload unless additional

clerking and research resources were made available. I end my contribution on that note.

The Deputy Presiding Officer: I call Gillian Martin to speak on behalf of the Environment, Climate Change and Land Reform Committee.

17:19

Gillian Martin (Aberdeenshire East) (SNP): The Environment, Climate Change and Land Reform Committee has played a substantial role in the parliamentary scrutiny of EU-exit matters to date. We were the secondary committee scrutinising the UK Withdrawal from the European Union (Continuity) (Scotland) Bill, reporting on part 1. We have undertaken a considerable degree of work on common frameworks and have scrutinised a significant number of Brexit-related statutory instruments. We considered the environmental implications of the UK Agriculture Bill and the UK Fisheries Bill, and we also considered the legislative consent memorandum for the UK Environment Bill.

That scrutiny will not end at the end of the transition period—far from it. During the committee's evidence taking on the withdrawal bill, concerns were expressed about the opportunity for parliamentary scrutiny when the Scottish Government decides to exercise its powers and align its policies to EU law. The setting of EU environmental standards is now a policy and law-making process that does not include any involvement of UK and Scottish interests. On the whole, members believe that that process has improved environmental standards in Scotland over the years of EU membership, and that those standards are an important benchmark for the future, particularly as the UK makes its own trade deals outwith the EU.

We do not believe that it is practical or realistic for a parliamentary committee to have a role in continually monitoring the EU policy-making process within its remit. For one thing, the committee does not have sufficient capacity to forensically monitor the EU policy-making landscape. However, we recommended that the withdrawal bill be amended to require the Scottish Government to report to the Parliament regularly on developments in EU environmental law. We also recommended that the Government include information about whether it intends to use the keeping pace power to align with each development, and that, when it decides not to align, the Government should provide reasons for that decision.

It is essential for committees to have a complete understanding of how the EU-exit process impacts on the governance and constitutional landscape within their policy areas. For that to happen, we

believe that the capacity within the Scottish Parliament information centre, the clerking teams and legal services should be enhanced accordingly.

The committee expressed serious concern about the impact of the Brexit process on the operation of the devolution settlement in its report on the legislative consent memorandum for the UK Environment Bill. We have subsequently outlined our serious concerns about the consequences of the proposals in the United Kingdom Internal Market Bill for the operation of the devolution settlement.

As Bruce Crawford mentioned, we have serious concerns about the emissions trading scheme framework. We had anticipated scrutinising the related framework before the end of 2020, but recent suggestions that the framework might no longer be progressed and might, in fact, be replaced by a carbon emissions tax by the UK Government are deeply worrying. That issue is a microcosm of our general serious concerns about the process of developing and agreeing UK-wide frameworks, including the fundamental issue of the views of devolved Governments and Parliaments, in effect, being ignored. Those concerns highlight the point that UK policy decisions could have a detrimental impact on devolved ambitions, particularly those relating to tackling climate change.

Other UK common frameworks seem to be nowhere near the state of completion that we would have expected by this 11th hour. We highlighted significant concerns about being asked to consider legislative elements of frameworks without having sight of the related frameworks. To date, we have very little information about the timetabling of frameworks, which makes it difficult for us to protect space in our work programme for parliamentary scrutiny.

The frameworks will have to be monitored by the Scottish Parliament well beyond the end of the transition period, and we note that any such scrutiny is likely to be very technical and complex. The committee agrees that, when aspects of a UK trade agreement relate to devolved competence, the Scottish Parliament should be able to scrutinise the Scottish Government's position.

The committee also has a role in scrutinising the new body, environmental standards Scotland. Indeed, we met the board nominees this morning. As ESS issues improvement notices, the Parliament will need the tools to scrutinise those decisions, too.

As everyone in the chamber is aware, it takes collaboration with clerks, researchers and legal services for such issues to be adequately scrutinised by members. I put on record my thanks

to the Environment, Climate Change and Land Reform Committee clerks and our researchers, who have put in a power of work to assist us through those processes and beyond.

Effective scrutiny takes a substantial amount of time. The impact of the UK's exit from the EU represents a significant challenge to the Scottish Parliament's scrutiny function. To meet that challenge, we must be sufficiently resourced in terms of time and expertise.

The Deputy Presiding Officer: I call Joan McAlpine to speak on behalf of the Culture, Tourism, Europe and External Affairs Committee.

17:24

Joan McAlpine (South Scotland) (SNP): I, too, begin by thanking Bruce Crawford and the Finance and Constitution Committee for embarking on this process, consulting other committees and securing this very important debate.

The debate is timely, with 23 days to go until we leave the regulatory framework of the customs union and the single market. In addition, there are specific arrangements for Northern Ireland, the operational detail of which is not yet entirely clear given today's developments regarding the protocol. However, all evidence suggests that there will be a border in the Irish Sea. That the future relationship between the EU and the UK Government remains so unclear on the cusp of the transition period ending and in the middle of a global pandemic is quite astonishing.

This afternoon, I am speaking as convener of the Culture, Tourism, Europe and External Affairs Committee. The committee—with the exception of our two Conservative members—agreed our response to the letter from the convener of the Finance and Constitution Committee, and I will address the issues raised in that letter.

Membership of the European Union formed a key pillar underpinning the devolution settlements in Scotland, Wales and Northern Ireland. The process of leaving the European Union necessitates the restructuring of the territorial governance of the UK.

The European Union has an open and democratic decision-making process that allows for stakeholder engagement and relies on the democratic consent of member states and the European Parliament. The critical governance question for the UK is what similar democratic processes will be put in place post-Brexit that provide for decision making that is not confined to governmental actors.

To that end, the committee has highlighted a number of key principles—drawn from the

operation of the European Union—that we consider should inform the territorial governance in the UK post-Brexit. The principles are: transparency, consent, trust and respect for existing constitutional arrangement for jurisdictions, including Scotland, that are subject to so-called internal market provisions.

As it is drafted, the United Kingdom Internal Market Bill, which is currently being considered at Westminster, will significantly constrain the exercise of devolved competences by this Parliament, with some of our witnesses pointing out that certain pieces of legislation that cover devolved areas might be impossible to enforce effectively.

In addition, the committee considers that, although the internal market bill seeks to appropriate the language of the European single market, the substance of the bill lacks the checks and balances that are central to the operation of the European single market. In particular, the bill lacks the principles of proportionality and subsidiarity as well as what are known as flanking measures, which seek to ensure that wider social, environmental and public policy objectives are able to constrain the operation of the market when appropriate. Those vital checks and balances are all absent from the UK Government's proposals for an internal market.

The committee emphasised that robust governance mechanisms alongside opportunities for genuine debate and scrutiny—including with individuals and non-governmental actors—are essential and central to the operation of the EU single market. Those governance mechanisms are absent from the UK Government's proposals.

The committee also highlighted the potential for trade agreements to impact on devolved competences. At present, there are very limited formal powers to scrutinise those arrangements with the UK Parliament, and there is no formal role for the Scottish Parliament.

The committee has taken evidence from trade experts, including formal international trade negotiators, who observed that the complex nature of modern trade agreements requires that legislatures and stakeholders should be engaged at an early stage—ideally before a negotiating mandate has been agreed. Expert witnesses consistently stressed that non-tariff barriers are at least as important an area of scrutiny as tariffs. That will represent a new area of scrutiny for the Scottish Parliament, and it therefore raises a series of resource challenges for the next session of Parliament.

The committee also emphasised that tracking the process of EU legislation that the Scottish Government decides to keep pace with and,

indeed, not to keep pace with will also represent a significant scrutiny challenge during the next session of Parliament.

Lastly, the committee noted that the Brexit process will not conclude at the end of the transition period. In many respects, the end of transition marks only the beginning of the Brexit process. To leave with no deal might put relations between the EU and UK in a negative place in the short term. Even with a deal, there will be a substantial process of adaptation and change.

Scrutiny is on-going. The evolving relationship between the EU and the UK and the implications for the devolution settlement will be a challenge.

The Brexit process has exposed the weakness of the democratic safeguards that will operate in the UK after the regulatory framework that is provided by the EU is removed. Brexit has profound implications for the devolution settlement and the committee stresses that those are likely to be particularly acute in the months following the end of the transition period. The committee has sought to emphasise a set of principles that can underpin the devolution settlement after Brexit and which have been central to our membership of the EU. I therefore welcome the opportunity that the debate has provided to begin to explore, on a cross-committee basis, the implications of Brexit for devolution.

17:31

Bill Bowman (North East Scotland) (Con): I am grateful for the opportunity to speak as convener of the Delegated Powers and Law Reform Committee and I thank the Finance and Constitution Committee for bringing the debate.

Before I turn to what we are here to discuss, it is perhaps helpful to explain to those outwith this place, and to remind those within it, that one of the key roles of my committee is to scrutinise primary legislation, be that Scottish Government bills, members' bills or—via legislative consent memorandums—UK bills that confer powers on the Scottish ministers. We are here to advise Parliament whether it is right to give the Scottish ministers the powers to legislate in the future—often with no end date—and, when that is appropriate, to advise what level of future scrutiny Parliament should have over the exercise of such powers.

The Delegated Powers and Law Reform Committee takes that role seriously. We are purists on scrutiny. Regardless of subject or policy, we believe that members of the Parliament must have the opportunity to scrutinise secondary legislation at the appropriate time and at the appropriate level, which must balance the amount of delegation with the practicalities of running an

Administration as well as the risks of ministers—of whatever Government—being unchecked in what they do.

As Anas Sarwar said, the committee also takes pride in looking in a collegiate fashion at the questions that are posed by legislative scrutiny. All of the committee's recommendations on the scrutiny of legislation relating to the exit from the EU were agreed unanimously. That is not to say that we do not have lively discussions; we always seek to get to the heart of an issue. Rather, it is because we have a shared desire to protect the Parliament's scrutiny role for this and any future Government. It is in that light that I turn to the substance of the debate.

The committee has been considering UK Government bills in light of the UK departure from the EU for a number of years, from the initial European Union (Withdrawal Agreement) Bill to the current United Kingdom Internal Market Bill. The common theme in the committee's scrutiny of each of those UK bills is that the Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.

The committee also believes that, as a minimum, all powers under those bills that are exercisable by UK ministers in devolved areas should be subject to the process that is set out in the new statutory instrument protocol, which covers powers exercised by UK ministers in devolved areas arising from EU withdrawal.

This is the third protocol that the Parliament and Scottish Government have developed since the UK voted to leave the EU. The protocols have already been mentioned. Each has been jointly agreed to help ensure effective and proportionate scrutiny of legislation. Although they may not make front-page news, they have ensured some vital checks and balances in the Parliament's scrutiny function and should be applauded.

Some earlier contributors raised the keeping pace power in the current UK Withdrawal from the European Union (Continuity) (Scotland) Bill. In its stage 1 report, the committee highlighted that primary legislation is the most appropriate vehicle for keeping pace with significant new policy developments in future EU law where those have no equivalent in retained EU law. The committee looked at the bill again today, as amended at stage 2, and will report shortly.

I am grateful for the time that I have been granted to speak in the debate. I take the opportunity to thank my past and present fellow committee members for their excellent work. Each of us on the committee wants to ensure that the Parliament continues to have a proper scrutiny role for both today and tomorrow.

The Presiding Officer (Ken Macintosh): We enter the open part of the debate.

17:35

John Mason (Glasgow Shettleston) (SNP): Clearly, in this debate we are looking at specific pieces of legislation, such as the continuity bill and the United Kingdom Internal Market Bill. We are also thinking ahead to trade negotiations with other countries as well as common frameworks within the UK, and how all those will develop over time. However, I will start with some more general points. There are wider and deeper issues to do with what Parliament's scrutiny function means. I looked up "scrutiny" in the dictionary and it showed up definitions such as "a searching study, inquiry, or inspection", "examination", "a searching look" and "a close watch".

Here we are with a minority Government, and all of us have responsibilities if we are not in government. Parliament, including the committees, must scrutinise Government, and the Scottish Government and Parliament must scrutinise the Westminster Government. Related to that is the fact that the Westminster Parliament, where we all have colleagues, should be scrutinising the Westminster Government too.

It seems to me that scrutinising does not mean automatically supporting or opposing either Government. We all have party affiliations and loyalties, but if we are to fulfil our role of scrutiny, we need to draw to some extent a distinction in our minds between our responsibilities to our parties and our responsibilities to whichever Parliament we are members of. Personally, I think that that is more important than whether we have one chamber or two chambers. Both models are perfectly acceptable means of scrutiny and there are examples of both around the world. However, we have to be prepared to scrutinise Governments even if we are in the same party as them, which will certainly include questioning and challenging them.

Moving on to some of the more specific issues that we face, I was particularly interested in the section of the Finance and Constitution Committee's letter of 30 October on governance. It made the point that the EU has a range of institutions in place, including the European Commission and the European Court of Justice. Of course, we did not always agree with or like the decisions of those bodies, but they were broadly seen to be independent and not under the influence of one particular Government or country.

Now we have new bodies being set up, including the office of the internal market and the trade remedies authority. I remain a little unclear about what the relationship will be between the

office of the internal market and the Competition and Markets Authority. Time will tell how those bodies will develop and relate to the devolved Governments and Parliaments. However, there has to be concern about how independent they will truly be and whether they will be unduly influenced by the UK Government.

We continue to have the fundamental weakness in the UK of having no written constitution and therefore there being no real way for Scotland, Wales and Northern Ireland to challenge UK Government legislation and UK institutions in the courts in the way that, in a proper federal system, the states in the US or the Länder in Germany ultimately have legal rights that the courts will protect. Our experience of UK institutions such as HM Revenue and Customs and the Office for Budget Responsibility is patchy, and it can depend on particular office-holders whether they treat devolved Administrations seriously. However, that should not depend on the good will of individuals. Solid principles and requirements need to be in place, for example for the TRA to lay its reports directly in Parliament and not just with the Scottish Government.

There was concern from a number of committees that the common frameworks should be widely consulted on and that committees, presumably in all four Parliaments, should have sufficient time to influence them before they are finalised. It certainly remains a concern of mine that informal agreements between ministers are made over the phone with minimal input from anyone else, which I think happened with the Scottish fiscal framework to some extent. That does not inherently have to be a bad thing and it can break logjams in negotiations. However, the inevitable downside of it is less scrutiny and less parliamentary involvement. The Rural Economy and Connectivity Committee response on that is good. It says:

"the introduction of common frameworks could represent a shift towards a greater degree of intergovernmental decision-making where the scrutiny role of parliaments is significantly diminished."

I thought that the Environment, Climate Change and Land Reform Committee's response, which shares some of its experiences, is helpful. The example that it gives of the emissions trading scheme framework is concerning and shows that there could be cases in which, although everyone is moving ahead in good faith, the UK Government might suddenly decide to take a completely different line, as is potentially the case with a carbon emissions tax. It is not so much the decision that concerns me as how it has been carried out.

In that regard, where all Parliaments are potentially, to some extent, excluded by all

Governments, I think that we should be looking at doing more joint working with committees in the other three places. The Economy, Energy and Fair Work Committee mentions interacting with its counterpart committee in the House of Commons, which is good.

On trade deals, we heard evidence that the provinces in Canada are heavily involved all the way through the process, so such an approach clearly can be taken if there is a requirement and a willingness for that to happen.

Overall, this has been a helpful process. The Finance and Constitution Committee is grateful for the considered input from the other committees. Clearly, this is a topic on which we need to keep a focus in the new year and in the new Parliament.

17:40

Donald Cameron (Highlands and Islands) (Con): I welcome the opportunity to speak in the debate for the Scottish Conservatives.

I note that the letter from the Finance and Constitution Committee that was sent to consult committees on their views on the future scrutiny role of the Parliament was sent before the pandemic occurred. Therefore, the COVID-19 Committee that I convene has not had an opportunity to participate. Naturally, we all hope that the pandemic will be over as soon as possible, and that there will not be a long-term need for the COVID-19 Committee.

I do not speak tonight as the convener of the COVID-19 Committee. However, I want to comment briefly on the work of the committee because, in my view, it shows the strength and the ability of the Parliament to innovate when necessary in response to events.

Recently, the COVID-19 Committee has had challenges in working out exactly how it should scrutinise emergency legislation, given the timeframes of made affirmative legislation. I hope that we have reached the correct position in that we are now able to scrutinise changes in, for example, Covid restriction levels that apply nationally in the weeks that they happen.

I accept that the COVID-19 Committee's remit has little to do with Brexit, but, as I have said, it is an example of the Parliament adapting and creating an effective scrutiny mechanism, and I commend the Scottish Government for its input into that. However, I state that it is for Parliament, not Government, to determine the correct procedures. As John Mason said, that applies as much to Westminster as it does to Holyrood, and it should be the case regardless of political affiliation.

I will try to give more general observations on the issue, having listened carefully to other members' comments. I was especially impressed by the many measured contributions from the conveners of the subject committees. Many commented on resources. If anything, both Government and Parliament need to take away that point from the debate.

I do not intend to add much to what others have said about the politics of the UK's exit from the EU. That is well-trodden ground, and, as Anas Sarwar said, that is not for today.

Dean Lockhart and Mike Rumbles mentioned the keeping pace issues and raised concerns about the UK Withdrawal from the European Union (Continuity) (Scotland) Bill. Bruce Crawford made the point that following Brexit, there is no democratic input into EU policy making, and there are fewer limits on ministerial discretion. In my view, all Scottish parliamentarians should be concerned by that combination.

Members have spoken about common frameworks. In my view, there is bound to be disagreement about such frameworks. We heard from Graeme Dey and Gillian Martin about disputes over the emissions trading scheme framework. However, only this morning, the Health and Sport Committee saw an example of a common framework working well. The Scottish Government minister who was attending commended all four nations for their work on the common framework on food labelling. Common frameworks can work well, and there are examples of all the devolved Administrations co-ordinating and collaborating quickly and effectively.

Next I want to cover trade deals, which other members have mentioned. Given the terms of its convener's letter inviting input, I know that the Finance and Constitution Committee had concerns about the role of the Government in future trade deals. Bruce Crawford made the argument that the SNP Government could

"assist the UK Government in the formulation, negotiation and implementation of policy regulating to regulation of international trade issues regarding devolved matters."

That is a fair remark, and a number of other members, including Gillian Martin and Joan McAlpine, have made the same point in the debate. However, it must be balanced against the fact that, as a matter of law, that is a reserved area, and the UK Government has already secured new trade deals, many of which will benefit Scotland. For instance, it has signed a free trade agreement with Japan, which goes beyond Japan's agreement with the EU, meaning that 99 per cent of UK exports will be free of tariffs. Part of that agreement included the protection of more UK geographical indicators than was previously

agreed under the deal between the EU and Japan, including those protecting Scottish products such as Stornoway black pudding, Scotch beef and Shetland wool for the first time ever in Japan. In my view, that has been of indisputable benefit to Scotland.

I turn briefly to comments made by the Health and Sport Committee in its letter to the Finance and Constitution Committee, because they provide an example of day-to-day interaction between the Scottish Government and the Scottish Parliament on scrutiny. One of the Health and Sport Committee's criticisms was about how the Scottish Government had engaged with it on the consideration of statutory instrument notifications. It said that there had been several occasions on which such notifications had led to the committee having to seek further information and clarification on what a particular instrument was trying to achieve, and it had required such additional information before the committee could take an informed decision. In addition, timescales are not set out in the protocol for scrutinising proposals. That might be a technical issue, but it is about how the scrutiny process works in reality.

I hope that the Scottish Government will take note of all the points that have been made in the debate, which has been largely consensual. There are clearly differing views on Brexit, the United Kingdom Internal Market Bill and the continuity bill, but the fact remains that in the years ahead, we will have a real challenge if the Scottish Parliament is to scrutinise the Government. I repeat my earlier point that that is for the Parliament to determine, and it is not for the Government to make such decisions.

17:47

Keith Brown (Clackmannanshire and Dunblane) (SNP): I welcome the opportunity to speak in this important debate. I was both surprised and pleased to hear Gordon Lindhurst's reference to Montesquieu, the French liberal thinker. At first, I thought that that was down to the usual Tory obsession with barons and baronesses, but then I realised that Montesquieu is best known for his theory on the separation of powers, which is appropriate to the debate. However, it is worth noting that the Westminster establishment has never been too keen on the separation of powers. Members might recall that the Lord Chancellor was formerly both head of the judiciary and head of the House of Lords in the legislature, and also sat in the Cabinet that forms part of the Executive. The debate therefore does bear on where power should properly lie.

As the UK leaves the EU against the wishes of the overwhelming majority of people in Scotland, it is crucial that the Scottish Parliament and the

other devolved legislatures should develop their roles in response to evolving circumstances, to ensure continued scrutiny of the creation and on-going operation of common frameworks in the UK, as well as on how to engage with the negotiation of any new international agreements by the UK Government.

Not many consequences of Brexit can be expected to impact on Scotland without directly affecting the devolution settlement—for example, the regrettable end of freedom of movement. Just as many areas will impact on the competences of the Scottish Parliament, such as food safety, public procurement and environmental standards. As we have heard, it is therefore right that the Scottish Parliament's committees have considered its evolving scrutiny in the context of the impact of Brexit on devolution. The Scottish Parliament's ability to scrutinise and either consent to or disagree with legislation proposed by the UK Government that impacts on matters devolved here is at the heart of the devolution settlement. Members will be aware of the Sewel convention, the principle of which is laid out in section 28(8) of the Scotland Act 1998, which states that

"it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament."

Members will also be aware that, during the passage of the European Union (Withdrawal) Bill, the UK Government sought the Scottish Parliament's consent, in line with the Sewel convention, and they will recall that the Scottish Parliament voted overwhelmingly to refuse such consent. The UK Government then took an unprecedented decision and, for the first time since devolution, chose to continue with the bill and legislate for matters within or affecting the responsibilities of the Scottish Parliament without its agreement.

Since then, this Parliament has also refused consent for the internal market bill; again, the UK Government has turned its back on the Sewel convention in a move that can be seen only as an attack on devolution. It is a move that will allow Westminster to undermine democratic decisions made by this Parliament, which could force Scotland to accept standards set by Westminster in devolved policy areas such as public health measures, the environment and food safety—a move that even the House of Lords could not condone.

It is worth remembering that back in 2014, we were told that this would be the most powerful devolved Parliament in the world. Then we saw Lord Keen arguing in the Supreme Court that the Sewel convention was merely a self-denying ordinance. As we have heard from the committee conveners, committees of this Parliament have

identified a number of areas worthy of note. I am particularly drawn to the principles that the Culture, Tourism, Europe and External Affairs Committee feels should underpin governance in the UK post-Brexit: transparency, consent, trust and respect for existing constitutional arrangements for jurisdictions that are subject to internal market provisions. That is certainly not what the UK Government has demonstrated thus far.

The submissions from committees highlighted several common areas such as monitoring EU developments in devolved policy areas, which may or may not be kept pace with. Given that such monitoring has previously been done at the UK level, there was a consensus that that would be a challenging task, which the Parliament and its committees would not currently have the capacity to perform, and on the importance of building in sufficient time for parliamentary scrutiny and wider engagement with stakeholders and those affected by the policy proposals in question. That would also be challenging, given what are already very busy workloads.

Increased workloads could be expected for colleagues in clerking teams, SPICe and legal services as a result of the consequences of Brexit, and Bruce Crawford quite rightly made the point that resources need to be made available to support the requirement for increased scrutiny. Those are resources not just for members of this Parliament but for those who support the work of the Parliament. It is important that the Parliament takes that point on board as soon as possible.

The content and operation of any common frameworks or trade agreements will undoubtedly have important implications for Scotland. The crucial point is that they should not be imposed. Respect for the fact that different Parliaments have different powers should be what underlies the approach in all the different Parliaments and legislatures across the UK. Agreements must be developed in partnership and agreed on. It is vital that this Parliament is fully involved and has a strong and effective scrutiny role to ensure that we work in the interests of Scotland, as well as the interests of those other Parliaments, when we are talking about their powers.

17:52

James Kelly (Glasgow) (Lab): The issue that has been brought before us by the Finance and Constitution Committee is that of scrutiny for devolution powers post-Brexit, and there can be no doubt that the massive transfer of powers that will take place is going to transform the devolution landscape. In that respect, it is absolutely crucial that there is a proper and constructive working relationship between the UK and Scottish

Governments. In my speech, I will argue that both have more work to do. I will draw on two legislative examples and make two political points.

On the legislation aspect, substantial reference has been made to the United Kingdom Internal Market Bill throughout the debate. There are two particular problems with the bill in terms of the Tory Government's approach to the Scottish Parliament. First, by setting up an office for the internal market to, in effect, dictate standards throughout the different devolution aspects of the United Kingdom, it overrides some of the powers of the Parliament and does not respect the views of different parts of the UK. The other problem is that there is no proper arbitration process to settle disputes. Clearly, with the significant transfer of powers that we are going to see, there will be disputes and disagreements, but no other format of settling those disputes has been set in the United Kingdom Internal Market Bill. As long as that situation continues, we will have serious problems.

As Mike Rumbles highlighted, in the continuity bill that the Government has introduced in the Parliament, there is a problem with the balance between the powers that are conferred on ministers and the powers of the Parliament vis-à-vis committees. There needs to be redress in that regard. A number of the committee conveners have made important points not only about resources for committees but about how the Government interacts with them. For that process to work, there needs to be greater interaction.

Turning to the wider political points, the Tories have run into real difficulty in their approach to devolution. They have been on a journey on devolution. Obviously, their party opposed it and the setting up of the Scottish Parliament, but, to be fair, I have seen many Conservative MSPs make genuine and sincere speeches in support of the Scottish Parliament and devolution. However, recently, that was trashed by Boris Johnson's comments that he regards devolution as a "disaster". I understand that he made the comments on a Zoom call. There is no doubt that, after that, he will be known as Zoomer Johnson, because he basically threw the Scottish Tories under a bus. All the work that the Scottish Conservatives have genuinely done to interact with the devolution process has been trashed. That will tarnish and damage the Scottish Conservatives in the coming period.

On the subject of this afternoon's debate, which is parliamentary scrutiny, the minister, Graeme Dey, said at the start that

"there is nothing more central to the role of a Parliament".

John Mason said that he looked up the word "scrutiny" in a dictionary before the debate to learn

a bit about it. I suggest that the Government needs to look more into what “scrutiny” means, given its recent attitude.

During the pandemic, the Presiding Officer has, at times, had to intervene because statements that should have been made in the Parliament have been made outwith it in press conferences. The Parliament has not been given its proper place and has been treated with disrespect.

Allied to that, in relation to the Alex Salmond inquiry, we have twice had debates recently in which we have requested that legal advice be provided by the Government and, twice, the Government has not accepted a vote in Parliament. If the Government is going to have that attitude to scrutiny, instead of coming to such debates, we would all be better just going for a run round Holyrood park. The Government needs to learn more and work more stringently on that.

To sum up, there are big issues for scrutiny post-Brexit. The UK Government has to do a lot to repair the damage of Boris Johnson’s comments and the United Kingdom Internal Market Bill. The Scottish Government needs to be more serious if it wants us to believe that it is truly interested in scrutiny.

17:58

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): I am pleased to see from what is on show today that the Parliament and its committees evidently continue to have such a healthy and positive interest in scrutiny. Since the Parliament reconvened in 1999, after its unduly long adjournment, it has had to adjust its working practices and scrutiny mechanisms to cope with many new external realities. However, in all that time, perhaps nothing has represented the kind of threat to the Parliament and its powers that the United Kingdom Internal Market Bill represents.

That is one reason why it is right that the Finance and Constitution Committee has been working with the other committees that we have heard from today to look at the impact of Brexit on devolution and at what I think is the inseparable issue of why the Scottish Parliament and, more importantly, Scotland need the UK Withdrawal from the European Union (Continuity) (Scotland) Bill.

The continuity bill does not pretend bravely that Brexit has somehow not really happened and that it was all just a very bad dream; it starts from the sober realisation that the people of Scotland’s views on Brexit, as on so many other issues, feature only marginally in the thinking of the UK Government. The Scottish Government’s approach to that situation also recognises that almost anything could still happen in the Brexit

talks that are currently under way in Brussels. We all realise that it could still be just 23 sleeps till a no-deal Brexit, a prospect that some in the UK Government seem to have been open to—indeed, perhaps festive about—at various stages in recent weeks, despite all that it would mean for our economy in the midst of a global pandemic.

Faced with all those issues and threats, the continuity bill seeks to give the Parliament the ability not just to scrutinise the huge changes before us—important as that ability is—but to ensure a continuity of provision that would otherwise be lost on withdrawal from the EU. At its most basic, it would guarantee that, after new year’s day, those devolved areas that were previously subject to EU regulation will continue to be regulated on and scrutinised in Scotland as a matter of stable, good governance.

Secondly, in those parts of the law where the subject matter might pertain to an area within devolved competence, the bill offers the Parliament the chance to ensure that EU law is kept pace with if that is the Parliament’s wish. In my view, such a power to adopt EU measures is the best way to ensure that we have the on-going productive relationship with Europe that our businesses want and to maintain the high environmental standards that our farming and other industries demand.

As with the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, which was passed by the Parliament but blocked by the UK Government, the bill contains a power for the Scottish ministers—with the Parliament’s approval—to align devolved Scots law with laws in the EU. It will also help us to live up to our commitments on the environment, as others have pointed out, regardless of what pressures might come from elsewhere for us to do otherwise.

All that said, the Finance and Constitution Committee and the Environment, Climate Change and Land Reform Committee have highlighted their concerns about the way in which the United Kingdom Internal Market Bill will seek to impact on not just the continuity bill but the Parliament’s ability to scrutinise legislation.

Therefore, in my view—and I am far from alone in believing this—it is important that the Scottish Parliament is in the driving seat on the debate ahead of us in the context of Europe. We are certainly now in uncharted waters. The Parliament must contend with a Prime Minister who is on record as saying that it matters not one jot to him what the Scottish Parliament has to say; who claims, rather intriguingly, that he believes that Scotland does not have a border; who says that public money is best spent in Strathclyde; and who describes the very idea of devolution as a “disaster”.

That is not a Prime Minister with whom this Parliament can easily do business, but we will try, and the committee's efforts, which we are considering today, are an attempt to do so under very trying circumstances.

18:03

Annie Wells (Glasgow) (Con): I welcome the opportunity to speak in this afternoon's debate on the impact of Brexit on the devolution settlement. As our relationship with the European Union is set to change, which in turn will change how the Scottish Parliament will function in the years to come, it is right and proper that Parliament considers the issue carefully. Therefore, I would like to thank the Finance and Constitution Committee for reaching out to other committees to seek their views, and for bringing the debate to the chamber.

That said, as we look ahead to the future and envisage what kind of role we want the Scottish Parliament to play in holding the Government of the day to account, it is important that we first take a step back to ascertain how we got here. As with the current circumstances relating to Brexit, the 2014 independence referendum debate was a time when change was looming with regard to how the Scottish Parliament would function.

Prior to that referendum, the Scottish Conservatives launched our plans for making the Scottish Parliament one of the most powerful devolved legislatures anywhere in the world—as it rightfully should be. From among the other pro-Union parties, we put our head above the parapet and made a loud and clear case that unprecedented powers over tax and welfare should be devolved to the Scottish Parliament. A powerful energised and confident Scottish Parliament, supported by the broader framework of the United Kingdom, is the guiding principle that we followed, and continue to follow to this day.

As we now prepare to exit the European Union, the functions of the Scottish Parliament are set to change once again, and it is my firm belief that they will change for the better. As parliamentarians, we should recognise this as another excellent opportunity for the Scottish Parliament to grow and mature even further, as its powers are set to strengthen and expand once again, as we leave the European Union.

As we are set to leave the Brexit transition period at the end of the month, a raft of significant powers, which for years have been held and controlled by the European Union, will flow to the Scottish Parliament. Significant areas of policy—from land use to animal welfare to air quality—are well on their way to the Scottish Parliament, where we, as MSPs, can properly debate ideas,

challenge opinions and scrutinise Scottish Government policy on such important matters. We can do so in the knowledge that we can, by being able to make policy in those areas, change things for the better and make a positive difference to the lives of people across Scotland.

Despite the noise—the same old rhetoric and talk of a power grab from the usual suspects—let us not forget that not one single power will be taken away from the Scottish Parliament. Indeed, quite the opposite will be the case. The faux outcry from others is completely devoid of logic and reeks of hypocrisy. Although the SNP is highly vocal and complains about the Internal Market Bill being a power grab from the Scottish Parliament by the UK Government, what is its proposed solution? As far as I understand it, it is simply to give those powers back to the EU and let it decide how to make laws in vital areas that impact Scots day to day. In that scenario, the Scottish Parliament and its MSPs would not get a look-in, because it would be up to the EU to develop policy in a wide range of areas, some of which I have mentioned.

Let us take fisheries, for example. The SNP has made no secret of the fact that it would reject any new deal agreed by the UK Government and the member states of the EU, and would move to vote against it. Putting its position about not backing any deal whatsoever to one side, what kind of message does it think that sends to our fishermen and Scotland's coastal communities, who have for decades been required to abide by, and face the adverse consequences of, the EU's common fisheries policy? That is why I remain genuinely dismayed by the SNP's current position on the matter.

The SNP seems to be complaining about the UK Government taking powers from the Scottish Parliament, although it would happily give those same powers to the EU in a heartbeat. With all the new powers that are coming to the Scottish Parliament, it is vital that we remember that MSPs will have the power to directly influence and change policy in those areas, where we see fit. I am afraid that we simply would not be able to do that as a member of the European Union.

As I mentioned, I welcome the fact that we are having the debate because it is, of course, right that we, as MSPs, discuss the impact of the UK's withdrawal from the EU on the workings of the Scottish Parliament. However, Conservative members urge Parliament to be positive about the forthcoming changes, because they will take the Scottish Parliament to the next level by providing it with new and unprecedented powers to wield as it sees fit.

18:08

Anas Sarwar: Three key themes have emerged from today's debate and from the committees' letters and the report. They are the role of Parliament, accountability of ministers, and the processes for keeping pace and the role of ministers and Parliament in choosing whether to keep pace.

There is broad consensus on the role of committees and the need to beef them up. They need time to scrutinise and, in order for them to be able to do that work well, they need resources for supporting staff, including clerks, Scottish Parliament information centre staff and legal support staff. Gordon Lindhurst summed it up as

"consultation, transparency and time".

Ruth Maguire and Gillian Martin both reflected that they do not believe that our committees are currently adequately resourced or ready to take up that role, and I agree.

On accountability for ministers, there is no doubt that the Executive and ministers are going to gain significant new powers from the process, as has been noted by a number of colleagues, including Dean Lockhart. As Patrick Harvie said, there is a challenge about how we strike the right balance of power between the Parliament and the Executive, to make sure that the Parliament is prime and that it, not the Government, decides on the level of scrutiny. How we have that Parliamentary accountability built in to our processes is, I think, absolutely crucial.

On keeping pace, I think that it was Mike Rumbles who said that we have to get the balance right. Again, it is for the Parliament to be at the forefront of that, not the Government.

Many members, including Bill Bowman and Joan McAlpine, referred to the importance of the checks and balances that should come from Parliament. I echo what Bruce Crawford said at the start of the debate—that checks and balances are not about the parliamentarians who are currently in the chamber; they are for the parliamentarians of future Parliaments.

As Donald Cameron reflected, it is for the Parliament to decide not only what scrutiny looks like, but what the process for that scrutiny is.

Keith Brown raised a point about the imposition of laws on Scotland. Of course, he was referring to that imposition coming from Westminster. I agree that there should be no imposition of laws on Scotland; however, I would be careful that that includes inadvertent imposition of laws from the EU through the powers. We need to guard against that.

There is a significant new role for the Scottish Government in monitoring EU policy developments. How that is done will be important. At the moment, it is up to ministers whether to choose to keep pace. We need greater clarity on the roles of committees and Parliament in that process. We must have democratic accountability, so beefing up the committees will be absolutely crucial.

I will finish by giving credit to James Kelly for coming up with the "Zoomer Johnson" line, although he is probably not the first person to have used it. James Kelly was, of course, right to say that the attack on devolution by the Prime Minister—at the very least, the words that were spoken—was gravely wrong. That attack has been rightly condemned by members across the Parliament. The Prime Minister is not a natural supporter of devolution.

However, we should also accept that independence is not devolution, either: it is a separate process. Those who are proudly supportive of devolution have to speak out and speak up for it.

The fundamental point that has been made in the debate today is that there has to be primacy for Parliament when it comes to accountability and transparency. Regardless of our party, or of which party is in Government, it is in our collective interest to come together to decide how that primacy works in practice.

The Presiding Officer: I call Alexander Burnett to wind up for the Conservative Party.

18:13

Alexander Burnett (Aberdeenshire West) (Con): Care homes, small business support, national health service waiting times, tourism support and green energy targets are all issues that, I think, we would all rather find ourselves talking about today. I have noted before my frustration at having to debate constitutional points when we should be focusing on protecting jobs, supporting businesses and boosting trade.

As my colleagues have noted, when the UK leaves the EU, Holyrood will become the most powerful devolved Parliament in the world, with 111 extra powers coming to the Scottish Parliament. Despite what the SNP falsely claims, not a single power will be removed from the Scottish Parliament. We will experience a power surge to Scotland, but the SNP wants instead to hand those powers back to the EU by rejoining the hated common fisheries policy.

The UK Government has introduced a bill to protect the UK internal market and strengthen the Scottish Parliament, yet the SNP has withdrawn

and has refused to work on that bill for more than a year. I am not sure how that approach stands up to any scrutiny. Michael Gove rightly said that that completely threatens

“our common frameworks programme ... As we cautiously emerge from coronavirus and focus on our country’s recovery, we will consider how to bring people in the UK closer together, not put up more barriers.”

It is not just the UK Government that is asking the SNP to work with it. Business groups have done so, too. Carolyn Fairbairn, director general of the Confederation of British Industry, said:

“Preserving the integrity of the internal single market—the economic glue binding our four nations—is essential to guard against any additional costs or barriers to doing business between different parts of the UK.”

Even Mike Russell, in 2018, admitted the need for common frameworks across the UK, and the SNP’s white paper on separation said that the UK internal market is vital, noting that

“It will be in the interests of both countries for there to be an integrated market across Scotland and the rest of the UK.”

Why, then, is the SNP no longer working in the best interests of Scotland? What does it have to hide, apart from the £92 million that was given to it to prepare? It has refused to show how that money has been spent. On 1 November, Michael Gove wrote to the cabinet secretary to seek clarification, but he got no detail from Mike Russell.

It is disappointing that our SNP Government is choosing to play petty politics with the constitution, risking the more than half a million Scottish jobs that are linked to trade with the rest of the United Kingdom. That is what is at stake here. We are talking about 60 per cent of our trade, worth more than £50 billion. We owe it to the people of Scotland to protect those close economic ties and the jobs that rely on them. If the SNP keeps up its petty grievance with the UK Government, businesses and consumers in Scotland will suffer.

After a horrendous year in which thousands of people have lost their loved ones, watched their businesses disappear and struggled to make ends meet, the people of Scotland are desperate for some support from their Scottish Government. I can only hope that in May, they will have a new Government that will be willing to provide that support.

Bruce Crawford: On a point of order, Presiding Officer.

I know that we are not able to make points of order when people are speaking from home via the virtual process, but during that speech there was not one occasion when the member mentioned parliamentary scrutiny of the Government here or in Westminster. I hope that

you will raise that with him, because I think that it would be appropriate to do so.

The Presiding Officer: Thank you, Mr Crawford. Your point is noted. I think that the member suffered from not being present in the chamber. However, he referred to some of the comments in the debate, and in that context what he said was relatively appropriate. Your comments are on the record and I am sure that they will be noted.

18:17

The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell): What will stick in my memory of this debate is that not one but two members—Bill Bowman and Keith Brown—mentioned Montesquieu.

Montesquieu talked about the separation of powers, which is where I want to start. We are discussing the separation of powers, and we have to have some clarity about that and about all the different roles in this Parliament and our democracy. There has to be agreement on the respective spheres in which we work.

I must take issue with my friend Donald Cameron, who said that it is not up to the Scottish Government to make proposals on these matters. If he looks at the coronavirus legislation, he will see that it was precisely up to the Scottish Government to make proposals on those matters. I think that he meant to say that it is not up to the Scottish Government to decide on these matters; it is for all of us, as members of this Parliament, to decide what is the right level of scrutiny and how it should operate. That is the issue that many members addressed this afternoon, and they addressed it well—I have a caveat, though, which I will come to in a minute.

I want to commend some speeches, and I will start with that of Mike Rumbles. It is so unusual for me to commend Mike Rumbles that this should be a red-letter day. I disagree with him on a single, profound issue in this debate, which is his point about making the use of primary legislation the norm when taking on regulations from the EU. However, I have offered to discuss the matter with Mr Rumbles and I will be happy to do so, to see whether we can find a suitable definition that narrows down what he wishes in relation to areas of significant or major change.

Mike Rumbles: I am heartened by what the cabinet secretary just said. There is a slight misunderstanding. He is not disagreeing with me at all. I am not calling for the use of primary legislation to be the standard practice; I am calling for its use when major changes to the law are being considered. I will take him up on his offer to talk the matter through.

Michael Russell: Good, and I hope that we can get an agreement on that because we are endeavouring to get agreement on how to take forward the wider issue of the continuity bill. It is not a question of the Scottish Government simply saying, “This is how we’re going to do it.” In fact, tomorrow morning, I have a meeting with four MSPs from different parties about how to find the right way to put issues into the bill. We will go on in that way, and I hope that, in the end, Mr Rumbles and I can come to a conclusion.

Scrutiny is, of course, about securing good governance; it is not about replacing governance. Despite what we heard in unfortunate contributions from two Conservatives, scrutiny is not only about politics; it is also about ensuring that politics does not get in the way of good governance. We have to recognise that, as we look at scrutiny and how it operates across the Parliament.

Scrutiny is also indivisible from the wider issues of how we operate. Patrick Harvie was absolutely right about that. Scrutiny cannot be separated from the power structures; nor can it be separated from the powers that we hold. I want to come to one of those powers in a moment, because I and Bruce Crawford are as one on a major issue here.

However, I say to the Conservatives that these issues are inseparable. They cannot defend scrutiny here but reject it elsewhere. For example, on the issues that are being discussed in the internal market bill, they are trying to take powers away, while here they are suggesting that scrutiny is required more than we believe that it is.

Scrutiny is also a function of democracy. The Conservatives cannot promote democracy in this chamber and deny it elsewhere, in the way that they are denying the people of Scotland the right to say how they wish to be governed.

As Ruth Maguire said, scrutiny is also about human rights—it is about wider issues. The UK Conservative Government is trying to suppress those rights, for example in relation to the European convention on human rights. It is trying to stop scrutiny happening in judicial review. I want to see consistency on the matter.

Anas Sarwar and James Kelly raised the issue of belief in devolution. If there is genuine belief in the Scottish Parliament, the Conservatives should operate as if they believe in it and want it to work; they cannot have one thing elsewhere and another thing here. The Conservatives cannot measure up standards to suit them here that do not suit them elsewhere.

I come to a point that Bruce Crawford made. There was extensive discussion in the previous session of Parliament about resources for committees and, in particular, about how we can

develop the ability of members to specialise and understand key issues. That was a big debate, which was connected with the question whether conveners should be paid and whether the number of committees should be reduced. That issue remains at the conclusion of this session of Parliament. Scrutiny would and could be at its most effective if we recognised those linkages. I give the examples of the way in which members are pulled so far apart by trying to be on two or three committees that they cannot specialise and the resources that members need to challenge legislation in a well-informed way. I know, both as a minister and having been on a committee and dealt with legislation on occasion, that ministers are massively better resourced when it comes to legislation than members are. That should not be the case. We should be able to address that.

Equally, if we are going to build a Parliament as a Parliament—and I hope that we build it with all the powers of a normal Parliament—we have to build the ability of individual members not just to hold the Government to account but to contribute to the wider issue of scrutiny, which means that we all scrutinise one another in our desire to ensure that the governance of Scotland is as good as it possibly can be. That is the big issue. Regrettably, it has not been resolved in this session of Parliament; it really needs to be resolved in the next one.

18:23

Murdo Fraser (Mid Scotland and Fife) (Con): I am pleased to close this important debate on behalf of the Finance and Constitution Committee. Although the committee has been considering the impact of Brexit on the devolution settlement for some time, it has been interesting to hear the views of other committees, given that the issue will impact on all the remits to some extent. I appreciate the views that have been expressed by not only committee conveners, but other representatives.

Inevitably, in a debate in which the word Brexit appears, there was always going to be some party political comment, and that is entirely understandable. Given that I am responding on behalf of the committee, I am sadly constrained in responding to any of those comments. Anas Sarwar put it well earlier, when he said that we should all be able to unite around the debate, because it is a discussion on how the Parliament should function. I will concentrate my closing remarks on those aspects, rather than on the party political comments that were made by all sides.

It is clear, both from responses to the committee’s letter and from the debate, that three key areas are giving cause for concern. First, there is the question of who will undertake the

monitoring of relevant EU policy developments to inform decisions whether to keep pace with them, where appropriate. That question arises as a result of the continuity bill, which is expected to complete its parliamentary passage before the Christmas break. That issue was referred to by a number of the conveners who spoke, including Ruth Maguire on behalf of the Equalities and Human Rights Committee, Gillian Martin on behalf of the ECCLR Committee and Joan McAlpine on behalf of the Culture, Tourism, Europe and External Affairs Committee. Monitoring will be a challenging task—Gillian Martin made that point fairly—because, particularly in relation to the environment, a huge amount of policy will come out of the EU that we will need to keep track of.

The key question is who will decide whether to keep pace with specific policy developments. Some committees have suggested that the Scottish Government should be required to report on the use of the power and, perhaps more important, on the reasons underpinning its decisions. It has also been suggested that the Parliament and its committees should have a role in such decisions, and our stage 1 report welcomed the cabinet secretary's commitment to working with the Parliament to agree a decision-making framework for future alignment with EU law. It is essential that the Parliament gives serious consideration to the level of scrutiny of the keeping pace power that would be both appropriate and proportionate—Bill Bowman made that point in his contribution on behalf of the Delegated Powers and Law Reform Committee. I look forward to greater clarity being provided on those matters when the continuity bill is considered at stage 3 in a couple of weeks' time.

The second overarching point relates to the need for sufficient time for parliamentary scrutiny and engagement and consultation with those stakeholders who will be most affected by the decisions. That point was made by Gordon Lindhurst on behalf of the Economy, Energy and Fair Work Committee in a contribution that was made at least partly in French—and it sounded like fluent French to me. The point is particularly important in respect of common frameworks, which the Finance and Constitution Committee has previously recommended should be agreed between devolved Administrations and the UK Government. However, it is equally important that common frameworks are not in effect imposed on the Parliament and stakeholders without meaningful consultation and an opportunity to discuss or propose amendments. I hope that both of Scotland's Governments will reflect on those points and seek to build sufficient time into the process for meaningful parliamentary scrutiny—for example, how might amendments be dealt with in

what is essentially an intergovernmental process? We need to consider that more carefully.

My third and final point has also been highlighted by several committees and it is about the impact of increased workloads on committees' already busy work programmes; Ruth Maguire highlighted that on behalf of her committee. Much of the work will be complex and technical in nature and will involve topics to which the Scottish Parliament has given limited scrutiny to date because they have been matters reserved to the EU. Questions have been asked and raised about the Parliament's capacity to undertake that additional work in tandem with our usual legislative and inquiry-driven functions and whether resources should be reprioritised accordingly. I expect that the Finance and Constitution Committee will return to that subject in our scrutiny of the Scottish Parliamentary Corporate Body's budget submission for 2021-22. I believe that we are taking evidence from the SPCB on that subject next week. The issue was acknowledged at the start of the debate by the Minister for Parliamentary Business and Veterans, and all other speakers acknowledged it, too.

I agree with the remarks made by Michael Russell in his closing speech. Those are not words that I utter often in the chamber, but his comments about support for committees around legislation were very well made. As committee members, we have all had the experience of sitting in a stage 2 bill debate when our carefully crafted amendments, which have been prepared with help from the Parliament's legislation team, have been gaily dismissed by the relevant minister as being poorly drafted or not doing what was intended. Ministers benefit from the back-up of civil servants in drafting their amendments; perhaps we should reflect on giving non-ministerial members similar back-up, so that our amendments are just as credible and capable as those of ministers are.

In the time that has been available, I have touched only briefly on the topics that have been raised, but the debate has certainly provided valuable food for thought. I thank again all who contributed and I look forward to returning to the topics in due course.

Presiding Officer's Statement

18:30

The Presiding Officer (Ken Macintosh): I was disappointed to note that significant details of today's statement on the cancellation of the higher exams appear to have been reported in the media before the announcement in the Parliament. I remind members that the Government provides copies of its statements under embargo to Opposition parties to assist parliamentary scrutiny. That information is provided in good faith. Just as members expect the Government to follow guidance by making statements to the Parliament in the first instance, so there is an equally important obligation and expectation for all members and parties to respect the confidentiality of information that is provided to them. Given the subject of this afternoon's debate, I hope that members will note my remarks.

Decision Time

18:31

The Presiding Officer (Ken Macintosh): There is one question to be put as a result of today's business. The question is, that motion S5M-23565, in the name of Bruce Crawford, on the Parliament's evolving scrutiny function, be agreed to.

Motion agreed to,

That the Parliament notes the Finance and Constitution Committee's recent consultation with other committees regarding the impact of Brexit on devolution and how the Parliament's scrutiny role will need to evolve to address this impact.

The Presiding Officer: We will move shortly to members' business, after a short pause for members and ministers to move seats. I remind members to wear their masks and observe social distancing when leaving the chamber and in following the one-way system around the Parliament.

Human Rights Day (70th Anniversary)

The Deputy Presiding Officer (Linda Fabiani): The final item of business today is a members' business debate on motion S5M-23220, in the name of Ruth Maguire, on the 70th anniversary of human rights day. The debate will be concluded without any question being put.

Motion debated,

That the Parliament acknowledges the 70th anniversary of Human Rights Day; understands that 10 December 2020 marks 70 years since the UN invited states to celebrate an international Human Rights Day marking the adoption of the Universal Declaration on Human Rights in 1948, and asking states to continue increasing progress in human rights; further understands that the day is an international reminder of what it considers the critically important progress that still needs to be made to protect and realise human rights to their fullest extent; believes that the COVID-19 response has highlighted states approaches for human rights globally, with governments balancing the need for restrictions with the potential impact on the human rights of their citizens, and has also highlighted that respect for human rights across the spectrum is fundamental to the success of the response to, and recovery from, the pandemic; endeavours to respect, protect and fulfil human rights going beyond the immediate response to COVID-19 through the UN Convention on the Rights of the Child (Incorporation) (Scotland) Bill, which it considers demonstrates the Scottish Government's commitment to fully realising children's rights; acknowledges the National Taskforce for Human Rights Leadership, established by the First Minister following the recommendations made in December 2018 by the First Minister's Advisory Group on Human Rights Leadership, which is working to establish a new statutory framework for human rights that can bring internationally recognised human rights into domestic law and protect the human rights of every member of Scottish society, and reaffirms what it sees as Scotland's role in promoting international dialogue and respect for fundamental human rights, and the commitment to ensure that the rights of the people of Scotland are respected, protected and fulfilled.

18:33

Ruth Maguire (Cunninghame South) (SNP): I am grateful for the cross-party support from members in acknowledging the 70th anniversary of human rights day and allowing the debate to go ahead.

Thursday 10 December 2020 marks 70 years since the United Nations invited states to celebrate an international human rights day to mark the adoption of the Universal Declaration of Human Rights in 1948. Human rights day is an international reminder of the critically important progress that still needs to be made to protect and realise human rights to their fullest extent, and a day on which we look to states to continue to increase their progress on human rights.

With that in mind, I take the opportunity to echo concerns that have been raised about the United

Kingdom Tory Government's intention to review the Human Rights Act 1998. We must be alive to the threat to human rights protections in Scotland, and the weakening of citizens' rights across the UK, post-Brexit. It is crucial that we receive clarity on the scope of that review and its impact on devolved matters and Scotland's separate legal jurisdiction.

My understanding is that there has been no consultation with the Scottish Government. Perhaps the Minister for Older People and Equalities could, in summing up, speak to that and update members on what action the Scottish Government intends to take in that regard. Scotland is a country that is committed to standing up for human rights, and the European convention on human rights is hardwired into the Scotland Act 1998. Any plans from the UK Government to bypass the devolved Governments or water down protections must be robustly challenged.

The Covid-19 pandemic has highlighted states' approaches to human rights globally, with Governments being required to balance the need for restrictions to save lives with the potential impact of those restrictions on the human rights of their citizens. This year, as we live through the pandemic, we have seen deep-seated inequalities that have stubbornly persisted for decades highlighted and, in many cases, exacerbated. The harms that the pandemic has caused, and those resulting from the measures that have been put in place to manage it and save lives, have not been felt equally, and our Governments' responses should continue to reflect that. In the decisions that are made, the importance of ensuring fairness and quality of life for all our citizens must be not only considered but acted on.

However, among all those things, we have seen wonderful work executed speedily, with the needs of our people right at the centre. For years, campaigners have called for dignified food provision, accessible information, online classes and support for those who are affected by loneliness and isolation. This year, in a matter of weeks, those things became really quite mainstream. More than that, we got to a place where no one had to sleep rough on the streets.

However, endeavours to respect, protect and fulfil human rights go beyond the immediate response to Covid-19. At the same time as the Tory Government seems to be intent on weakening citizens' rights post-Brexit, the Scottish National Party Government is instead working to strengthen them.

During its passage through Parliament, the important United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill has received widespread support from a range of stakeholders, and—perhaps most importantly—

from children and young people themselves. It demonstrates our Government's commitment to human rights and to the full realisation of children's rights.

I end by acknowledging the work of the national task force for human rights leadership, which was established by the First Minister. The task force is working to establish a new statutory framework for human rights that will bring internationally recognised human rights into domestic law and protect the human rights of every member of Scottish society.

Scotland has an important role to play in promoting international dialogue and respect for fundamental human rights, and I thank every single human rights defender in our country who helps to do just that. I ask us all to use human rights day to reaffirm our commitment, lead by example and ensure that the rights of the people of Scotland are respected, protected and fulfilled.

The Deputy Presiding Officer: I apologise that we did not set the clock at the beginning of your contribution, Ms Maguire—you perhaps did not need to speak as fast as you thought you did.

We move to the open debate, and I call Jeremy Balfour, to be followed by Bill Kidd.

Jeremy Balfour (Lothian) (Con): [*Inaudible.*]

The Deputy Presiding Officer: Excuse me, Mr Balfour—you are on mute. Please give us a moment to see whether we can fix that.

I am terribly sorry, but we have a sound malfunction—in other words, we cannae hear him. We will go to Bill Kidd first and try to get Mr Balfour's sound sorted out.

18:39

Bill Kidd (Glasgow Anniesland) (SNP): I thank Ruth Maguire for creating an opportunity for us to formally recognise the anniversary of an important and historic event: the adoption of the Universal Declaration of Human Rights. I know that she has constantly and continually used her role in the Scottish Parliament to promote the furthering of human rights, so I appreciate the subject being brought to the forefront of business in the Scottish Parliament today.

This Thursday will mark 70 years since the Universal Declaration of Human Rights was adopted. That may seem like a long time, and the ideas underpinning human rights may seem quite obvious now, but we must remember that they grew out of the most tumultuous period in human history. The impression of the weightiness and security of the idea of human rights is evidence of the conceptual success of the declaration.

Appeals to human rights are embedded across societies, and citizens now expect that making an appeal to human rights as a way of explaining an injustice is an effective way in which they can make positive change happen. I have personally seen that approach work effectively in the field of nuclear disarmament. One of the reasons why it is so effective is that human rights are built from a true conception of morality and ethics.

The truth underpinning human rights is that people are born with inherent value, and there is nothing that can add to or be stripped from that inherent value. If someone is born with certain wealth or status, with a certain ethnicity or gender or with a disability, none of those things makes them more or less valuable, and that never changes. That is the fundamental ethic of human rights, and it is fully true. Human rights afford freedom of thought and belief—that is, the opposite of control, repression and subjugation. They are the lifting up of the subjugated and a calling to accountability for those people or states that would curb those fundamental freedoms and that personhood.

Human rights were born in the aftermath of the Holocaust, the fall of empire, the nationalisation of states and the formation of the United Nations. There was a collective effort by people around the world to promote the plight of the marginalised and those without a voice. Human rights recognise personhood and provide room for our concept of personal liberty. They underpin the values that are important across the banner of Scottish politics—all our Scottish politics.

However, while the concept of human rights may proliferate in our society, those rights are not yet accepted globally. That is why we have to fight to protect human rights and shore up the integrity of the thought system behind them. Freedom of thought, freedom of speech and personal liberty are paramount in a system of thought that means that individuals are valued, no matter what their creed.

Scotland is a place of refuge for many who have fled repression or come to live in security without fear of conflict and war and the consequent persecution of their families on the basis of ethnicity or faith. I am proud to live in such a country and to represent some of its people.

We must continue to fight for human rights both in and outwith Scotland. That means addressing continued inequalities, the main one of which is poverty. In practice, that means reducing child poverty, fuel poverty and the attainment gap, and building good-quality homes that are genuinely affordable. It also means protecting free intellectual thought, discussion and debate, because that fundamental principle is the cornerstone that upholds all our human rights.

The Deputy Presiding Officer: We will try again to bring in Jeremy Balfour.

Jeremy Balfour: [*Inaudible.*]

The Deputy Presiding Officer: Oh dear, Mr Balfour—I am sorry, but we are still not hearing you. I will go to Mary Fee next, but we will persevere.

18:44

Mary Fee (West Scotland) (Lab): I, too, thank Ruth Maguire for bringing this important debate to the chamber. Human rights day is a time for both celebration and reflection. During my time in Parliament, I have championed human rights and they have always been at the centre of everything that I do. That is because, when we put human rights at the foundation of our decision making, we all reap the rewards of a more equal society.

Although we celebrate human rights day, we must remember that, for billions of people, human rights are not a given but must be advocated and campaigned for every day. Those rights are not handed to us; we are afforded them only when we fight for them.

On this 70th human rights day, one group of people need us to fight for them and their access to human rights now more than ever. Transgender people across the world, including here in Scotland, face unprecedented levels of discrimination. The fear and hatred that trans people contend with every day just to live as themselves is unacceptable. There are some people who do not believe that the rights to life, privacy, freedom of thought, conscience and religion should be extended to trans people. That is a dangerous thought and one that we must confront. That poisonous bigotry must end.

Health is a human right. Trans people's health rights are attacked daily across the globe. That is an attack on their human right to health and life. We must condemn it. Healthcare for trans people in Scotland requires more resources and support. The most recent figures show that average waiting times to access a gender identity clinic in some areas were 260 days for adults and 314 days for young people. That is far too long to wait for an initial appointment. Services should be more localised and we need more staff to provide support for those who are working under strained circumstances.

In preparing for our post-Covid world, we must put human rights first. Scotland's first Covid vaccine was administered today. That shows that, when we work together to find a solution and to put an end to pain and suffering across the globe, we can do anything. There is much more work to do. We face a crisis in jobs, the climate and

mental health. Human rights must be at the core of the solutions to those problems.

We should always aim for the next 70 years, looking ahead to the day when someone who may not yet be born stands here to celebrate the 140th human rights day. I hope that they can look back and remark on how the world pulled together and brought us back from the brink. I hope that they will live in a world where human rights and equalities lead the way in everything that we do.

Thursday is human rights day, but we must approach every day as a human rights day.

18:48

John Finnie (Highlands and Islands) (Green): I thank Ruth Maguire for bringing the debate.

We see every day how important human rights are. They must be protected. The Justice Committee is scrutinising two pieces of legislation in which rights are important. One is about defamation. We know that the right to freedom of expression is not an absolute; it comes up against the right to protect one's reputation. Similarly, in the Hate Crime and Public Order (Scotland) Bill, the right to utter expressions of antipathy, dislike, ridicule and insult comes up against the right not to be a victim of hate. The term "chilling effect" has often come up in our scrutiny of each of those pieces of legislation. If we fail to get the balance of those competing interests right, someone's human rights will suffer and nothing will change for the better.

An unwillingness to address an issue—perhaps because we wrongly fear that a change might tread on our rights or because it is too controversial or complicated—can have a similar chilling effect.

There is no wee boy in Vietnam whose ambition it is to cultivate cannabis in a bungalow in the north of Scotland, all the while being told by his controllers, who literally hold his life in their hands, that he is in debt to them for taking him to London, which is where he believes he is. Likewise, no wee girl in west Africa sets out with the goal of having her body treated as a commodity to be used and abused by men in Scotland. She is a victim. Let us be very clear: she is a victim of men in Scotland who pay for her services. Is that not a vile euphemism? Those men provide the market for human traffickers and make those human traffickers their sordid fortune.

I recognise that issues such as abortion and medically assisted suicide, both of which engender strong views, are legitimately viewed as being about an individual choosing what to do with their body. If that is a decision of someone of sound mind, fully aware of the issues and in control of

themselves, then it is none of my business. However, the same cannot be said in relation to sexual exploitation, as the owner of the body is unable to exercise choice or free will; they are trapped and it should be everyone's business to end such suffering.

I wrestle to reconcile arguments about the so-called sex industry and the graphic facts of human traffic. Last week, the increase in trafficking in Scotland was described by Police Scotland as "exponential": the police identified 84 women forced into prostitution and nine of the supported victims were under 18—the youngest was a 13-year-old child. I abhor what one victim described as "the trade in trauma".

I want to understand how we can better address the issue. Is there a hierarchy of rights in Scotland? Do Scotsmen's perceived purchasing rights trump those of a trafficked girl from Sierra Leone or Stirling? Whose rights are we going to prioritise? As a man who condemns gender-based violence and who recognises the gender power imbalance that fuels so many societal problems, would I try to find a rights-based justification for the men in Scotland who abuse women and girls—the so-called customers—whose actions fuel the globalised crime industry of human trafficking?

As I have got older, I have found that my right to change my mind has become more important. In recent times I have witnessed first hand the inability of medicine to control pain, which has changed my mind on the issue of medically assisted suicide. I am increasingly confronted with the sexual exploitation of trafficked souls, which means that I must rethink everyday language, including the term "the sex industry". Men have no right to buy another human and to use and abuse them for their sexual gratification. Scotland's laws must change to reflect that. Any meaningful human rights impact assessment of that tragic situation will evidence that that is the right thing to do.

18:53

Pauline McNeill (Glasgow) (Lab): Today we celebrate the 70th anniversary of the Universal Declaration of Human Rights. I thank Ruth Maguire for leading the debate and for the wonderful work that she does as convener of the Equalities and Human Rights Committee. I know that she is very committed to the issue.

The Universal Declaration of Human Rights is the cornerstone document of the United Nations. The declaration is unequivocal:

"All human beings are born free and equal in dignity and rights."

The declaration is inextricably tied to development, setting out the rights of all to

"a standard of living adequate for ... health and well-being", including the right to education, to work and to social security.

I also thank Alan Miller, Scotland's first chair of the Scottish Human Rights Commission, for the work that he has done in leading the national task force for human rights leadership and in establishing a new strategy framework for human rights in Scottish domestic law.

We have heard some good speeches tonight. Mary Fee talked passionately about the rights of trans people and John Finnie gave a wonderful speech about the scandal of human trafficking and gender-based violence. As always, Bill Kidd talked passionately about the rights of asylum seekers. I agree with Bill Kidd that Scotland should be a refuge for people fleeing conflict and violations of their basic human rights.

The declaration includes many other articles, including the right to marriage and to have a family, to own property, the freedom of belief and religion and the freedom of opinions and information. There are many others.

Some communities have been disproportionately affected during the pandemic, and I will highlight some of those groups. Initial analysis of the direct impact of the coronavirus by ethnicity and disability has shown greater impacts for some ethnicities.

There has been a very poor level of information available about the impact of Covid-19 on ethnic minorities in Scotland. Because of that, a full picture of the impact on people from black, Asian and minority ethnic communities is still not available. We must protect our BAME communities and their health by applying human rights to the situation that we face now.

Despite the fact that less than 1 per cent of the population of Scotland live in care homes, deaths from coronavirus in care homes have made up two fifths of the national total. I raised the scandal of the "Do not resuscitate" orders earlier in the session, and I have highlighted their use during the pandemic. I do not believe that we have got to the bottom of the matter, but I want a declaration that no future Scottish Government will allow such a policy to be enacted ever again. Age Scotland has called for a parliamentary inquiry into the handling of "Do not resuscitate" notices, and I look forward to the outcome of that.

I turn now to the group of young adults who have been shielding throughout the pandemic, who have been especially badly hit. The 18-24 age group in particular—a group who have had to give up their freedoms and jobs in order to protect

themselves and their own health, as well as helping to protect the country by not transmitting the virus—have experienced reduced social contact with their peers, and the situation of that particular group really needs addressing in relation to mental health services. Human rights must be applied to them in a meaningful way.

For the Universal Declaration of Human Rights to mean anything in our lives, we must try to apply its articles and the values that we believe in as best we can in the daily work of the Scottish Parliament and in our daily work as politicians.

The Deputy Presiding Officer: We will try to hear from Mr Balfour again.

Unfortunately, we cannot hear from Mr Balfour, as we have had some technical problems. I can say for the record that Jeremy Balfour tried very hard to contribute to this debate, and we are sorry that we are unable to hear from him.

We will therefore move on to hear from Christina McKelvie, who will respond to the debate. You have around seven minutes, minister.

18:57

The Minister for Older People and Equalities (Christina McKelvie): I conclude today's debate by thanking all members who are marking and celebrating the 70th anniversary of human rights day on 10 December by demonstrating Scotland's strong and unwavering commitment to protect, respect and fulfil human rights.

As we have heard from all members who have spoken in the debate, 2020 also marks 70 years of the European convention on human rights, which was opened for signature on 4 November 1950 and signed by the United Kingdom on the same day. The convention brought a new commitment to and awareness of human rights and fundamental freedoms. As Bill Kidd said, it came from one of the most tumultuous times in modern history, a place that we never wanted to go back to.

In the week that marks this anniversary, the UK Government launches yet another review of the Human Rights Act 1998. The safeguards that are provided by the 1998 act protect every member of society, ensuring that public institutions uphold our most fundamental rights. That means that we all have freedom of expression and the right to a fair trial. We have privacy, and we can all challenge decisions that affect us. Those rights are central to the law of Scotland, and they are at the heart of the devolution settlement. They demonstrate our commitment to protecting human rights, internationally, for people everywhere.

As others have indicated, the Covid-19 crisis has brought all that into sharp focus, in an unprecedented way. There is a clear necessity for

human rights to be at the forefront of all our policy making and to be embedded throughout it. We have made clear our continued commitment to ensure that during the Covid-19 response and beyond.

The Human Rights Act 1998 is critical to achieving that, and that is why the Scottish Government vehemently opposes any attempt to undermine or weaken it.

Given the UK Government's review report on the

"balance between the rights of individuals, our vital national security and effective government",

my fear is that that is exactly what the UK Government is trying to do, and has been threatening to do for some time.

Ruth Maguire is correct that there has been no consultation with the Scottish Government, but we believe that we have a Scottish representative on the panel and will continue to push to ensure that we have full and continued involvement in the process. I am happy to restate that point, and Ruth Maguire should be in no doubt about it.

Rather than launching yet another attempt to rewrite the 1998 act, the UK Government should focus its efforts on making rights real for everyone in UK society. We need to champion international standards, not retreat into Brexit isolation. The Scottish Government will continue to champion and progress human rights leadership wherever we can by enhancing the rights and freedoms that we all enjoy. We want to go forwards, not backwards, on human rights, and we want to do so with the people of Scotland in an open way that fully aligns with a human rights approach. Current legislation in the Scottish Parliament will bring the United Nations Convention on the Rights of the Child into Scots law, and our national task force, which will report next year, is actively developing proposals to extend human rights law even further.

It is essential that the UK Government review group fully consults Scottish interests, including not only the Scottish Government, but this Parliament, the wider public sector, civil society and the general public. It must not become another exercise that undermines devolved powers or the constitutional settlement.

Mary Fee gave us a powerful reminder of how fragile our rights are, and she is absolutely right with her message that we must all hear and take action. The national task force for human rights leadership, which is taking forward proposals for new human rights legislation in Scotland, is working collaboratively and openly across our society with a wide range of people who represent the broadest range of rights, including disabled people, older people, people from minority ethnic

communities and people from lesbian, gay, bisexual, transgender and intersex backgrounds. That extensive engagement and outreach work, which has been taking place over recent months, will be essential in informing and shaping the legislation.

I reassure Mary Fee and John Finnie that any hate crime is completely unacceptable to the Scottish Government. It will not be tolerated, whether it relates to race, religion, disability, sex, sexual orientation or transgender status. It is already clear that there is a strong breadth of support for the task force's work, and there is wide recognition that the Covid-19 pandemic, although felt by us all, has had a particular impact on people who might already face challenges in realising their human rights. As the task force's work progresses, we will work hard to ensure that we bring everyone with us on the journey to implement a strengthened and ambitious framework for human rights in Scotland.

We aspire to be a world leader in human rights, and we demonstrate leadership and share practical experience of a human rights approach to policy making and delivery. As part of our continued commitment to the internationally renowned human rights defender fellowship, this year, we have doubled the grant for the programme, thereby supporting human rights defenders nationally and internationally. It is one important way that we can hold duty bearers, including the Scottish Government, to account. John Finnie gave us a powerful testimony on why being a global leader and supporting international human rights defenders is incredibly important, and I agree with him.

As part of our commitment to human rights, we want to ensure that children are treated fairly and equitably, and are respected as equal citizens. By introducing the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill to the Scottish Parliament, we have taken the first important steps to making that a reality. The bill fully and directly incorporates the UNCRC into Scots law to the maximum extent possible with the Scottish Parliament's powers. Alongside the bill, the programme for government outlined our intention to incorporate the UN Convention on the Elimination of all Forms of Discrimination Against Women, which, during the 16 days of activism, I am sure that members will welcome.

Bill Kidd talked about personhood, and the lifting up of rights, and I am sure that he will be pleased that we will also actively consider the incorporation of the UN Convention on the Rights of Persons with Disabilities and the International Convention on the Elimination of All Forms of Racial Discrimination. We are working closely with

stakeholders in those sectors, and on the task force.

Today, we celebrate all the important improvements that we have made to the lives of people in Scotland and Europe since 1950. When we think of human rights, the obvious monumental advances come to mind—for example, the Equality Act 2010—but we have also made huge strides this year, and we still have huge strides to make.

The coronavirus pandemic has further demonstrated to us the importance of embedding a human rights approach. It has affected different groups of people in different ways, and has had a particular impact on some groups, but our sustained commitment to human rights has ensured that we continue to protect all society for everyone in Scotland.

The strides in development are significant, and Scotland will do whatever it can to continue to be a leader in human rights. I thank my colleague, and the convener of the Equalities and Human Rights Committee, Ruth Maguire, for bringing the debate to the chamber today.

Meeting closed at 19:05.

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