OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 9 February 2021

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 9 February 2021

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JUSTICE COMMITTEE
5th Meeting 2021, Session 5

CONVENER

*Adam Tomkins (Glasgow) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*Annabelle Ewing (Cowdenbeath) (SNP)
*John Finnie (Highlands and Islands) (Green)
*Rhoda Grant (Highlands and Islands) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Johann Lamont (Glasgow) (Lab)
Dean Lockhart (Mid Scotland and Fife) (Con)
Liz Smith (Mid Scotland and Fife) (Con)
Humza Yousaf (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Virtual Meeting

Scottish Parliament

Justice Committee

Tuesday 9 February 2021

[The Convener opened the meeting at 10:00]

Hate Crime and Public Order (Scotland) Bill: Stage 2

The Convener (Adam Tomkins): Good morning, everyone, and welcome to the Justice Committee's fifth meeting in 2021. We have no apologies this morning, and we are joined by Dean Lockhart MSP, Johann Lamont MSP and the Cabinet Secretary for Justice, Humza Yousaf MSP. I welcome all of them to the meeting. We may be joined later by Liz Smith MSP if we reach her amendments.

Agenda item 1 is continuation of our stage 2 consideration of the Hate Crime and Public Order (Scotland) Bill. Members should have a copy of the marshalled list and the groupings for debate.

I remind everyone that this is a fully virtual meeting and that we will use the chat function on BlueJeans as the means of voting electronically. When we vote, I will call for members to type Y in the chat function to record any votes for yes; I will do the same in turn for no, for which members will type N, and for abstain, which members will record by typing A. The clerks will collate the results, and I will read them out and confirm them. If a mistake is made in the process, please let me know immediately by typing R, "help" or something else appropriate in the chat box before we move to the next vote because, once we move to the next vote, we cannot go back.

If we lose the connection to any member at any point, I will suspend the meeting to try to get them back into the meeting. If we cannot do that after a reasonable time, the deputy convener and I will have to make a call as to whether we can proceed or whether we will have to abandon the meeting.

I hope that that is reasonably clear. We have proceeded in that way before, but I hope that that is helpful for members of the public who are tuning in and are not used to how we do things online.

If there are no questions or comments about any of that, we will make a start.

Section 2—Consequences of aggravation by prejudice

The Convener: The first group of amendments is on disaggregation of data relating to hate crime. Amendment 32, in the name of Dean Lockhart, is grouped with amendments 59 and 99.

Dean Lockhart (Mid Scotland and Fife) (Con): Good morning. My amendments 32 and 59 provide for the disaggregation of data with respect to different offences committed under the legislation. Paragraph 386 of the committee's stage 1 report on the bill states:

> "the Committee notes the evidence from some of our witnesses that more could be done to improve how hate crime offences are recorded and monitored".

Paragraph 386 also highlighted the importance of ensuring

> "consistency of approach across Scotland, e.g. within Police Scotland, when it comes to recording offences"

under the legislation.

Paragraph 381 highlights the evidence that was given by the Equality Network and Victim Support Scotland, which called for

> "a legal requirement to be integrated into the Bill that places a duty on the Scottish Government, Police Scotland and any other relevant duty bearers to develop a bespoke system of hate crime data collection and disaggregation across all characteristics covered by the Bill".

My understanding is that, under other legislative frameworks in Scotland, if any statutory aggravation is proven, the court is required to state on conviction that the offence is aggravated by prejudice relating to the characteristic in question, to record the conviction so that it shows the relevant aggravation, and to take that aggravation into account in sentencing. I am not certain that the bill replicates that, so my amendments seek to ensure that that is covered. Evidence was also given by the Scottish Courts and Tribunals Service that it would struggle under the bill, as introduced, to record incidents in the way that it currently does. My amendments seek to address those issues.

Amendment 99, in the name of the cabinet secretary, also deals with data disaggregation, but in a different context. I look forward to hearing whether the cabinet secretary considers that that amendment addresses all the issues that have been raised by the stakeholder groups that I have mentioned in relation to data disaggregation and the recording requirements under the legislation.

I move amendment 32.

The Cabinet Secretary for Justice (Humza Yousaf): Good morning to you, convener, and all the members who are present. I hope that everybody is doing well. I will speak to amendments 32 and 59, which are in Dean Lockhart's name, and to amendment 99, which is in my name.

I recognise very much the value of data and evidence on hate crime, to which Dean Lockhart referred, and the fact that the data needs to be improved. It needs to be disaggregated more and to tell us more about victims and perpetrators. Such data is essential to our work to tackle hate crime more effectively.

As was just said, a number of stakeholders have—rightly—called for several years for improved data on hate crime. Most recently, those calls have included a request for additional statutory requirements to publish more information on hate crime. Like our stakeholders, I want that level of data to be published regularly and sustainably.

I am delighted to have the support of Police Scotland and BEMIS for amendment 99, which relates to information that the police record, rather than to convictions or charges that are reported to the Crown Office. The amendment is important because it will provide vital information from the earliest stage of the justice system about the groups that are being targeted and how such crimes come to the police's attention.

Underreporting of hate crime is a key issue that must be tackled. Having the data and evidence to inform our response will ensure that that response is effective and provides the necessary support for victims. We are working with Police Scotland to ensure that its new crime management system is capable of capturing the disaggregated data that is available on a sustainable basis, as I said.

Amendment 99 provides a clear framework for reporting data under the new system and creates a legal duty for reports to be provided annually. Until Police Scotland has in place the systems to extract the data, I am happy to give the commitment that for at least the reporting year of 2020-21, which covers the exceptional circumstances of the Covid pandemic, the Scottish Government will produce a further study that does a deep dive into the characteristics of police-recorded hate crime.

Dean Lockhart's amendments 32 and 59 consider the opposite end of the justice system by focusing on convictions data. I absolutely support the intention that is behind the proposed provisions, but significant challenges would be associated with implementing them.

Courts cannot provide the proposed level of data at the moment, and the Scottish Courts and Tribunals Service has told us that it would not be possible to implement the proposals with its current systems. However, that does not mean that it would not be possible in the future. Having disaggregated data on convictions is an important ambition but, for such a proposal to work in practice and deliver the improved disaggregated data that we agree is needed, it would benefit from further refinement, including refinement through engagement with the Crown and the SCTS.

Amendments 32 and 59 would require the Scottish ministers to prescribe subcategories in regulations. I understand that the intention is to give clarity, but my approach in amendment 99 is more advantageous, as it provides a degree of flexibility that Dean Lockhart's amendments do not. That is particularly important given the difficulties under the courts' current systems, which I just explained.

There is a technical difficulty with amendments 32 and 59. They would require the Scottish ministers to make regulations that were subject to the affirmative procedure, and I recognise the importance of the rigorous scrutiny that that procedure provides. However, the amendments combine that with a mandatory duty to make regulations, which could have the unintended effect that, if Parliament did not approve the regulations, the Scottish ministers would be unable to meet their legal duty.

I ask Dean Lockhart not to press amendment 32 and not to move amendment 59. I am happy to work with him, if he wishes, to potentially develop a provision on disaggregated data on convictions for an amendment that could be lodged at stage 3. We would have to factor in considerable time for developing the SCTS's systems capability before such a provision could be commenced, if the bill were passed.

I ask members to support amendment 99, which is in my name.

The Convener: Thank you. Two members have indicated that they wish to speak in the debate on this group. I call Liam McArthur, to be followed by Rhoda Grant.

Liam McArthur (Orkney Islands) (LD): I will be brief. As the cabinet secretary has identified, there may be some weaknesses in the framing of Dean Lockhart's amendment 32, but the principle is sound. Over the course of this parliamentary session, the committee has had cause to return to that principle on a few occasions. Having disaggregated data is very much in the public interest, so if a way can be found at stage 3 to address the concerns that the cabinet secretary has justifiably flagged up, that will lead to an improvement in the bill. I welcome the cabinet secretary's offer, and I thank Dean Lockhart for lodging his amendment.

Rhoda Grant (Highlands and Islands) (Lab): I agree with what has been said, so I will not repeat it. It will be important to have both police data and conviction data, so that we can see any difference between the two figures and decide whether more work needs to be carried out in certain areas.

The Convener: I invite Dean Lockhart to wind up and press or withdraw amendment 32.

Dean Lockhart: I thank the cabinet secretary, Liam McArthur and Rhoda Grant for their remarks. The limitations of existing systems are understood, and I welcome the cabinet secretary's commitment to consider and address them, such that further disaggregation of data under the legislation can be provided for. Therefore, I look forward to working with the cabinet secretary between now and stage 3 to take disaggregation of data as far as it can go under the legislation. I will not press amendment 32 or move amendment 59.

Amendment 32, by agreement, withdrawn.

Section 2 agreed to.

After section 2

The Convener: The next group concerns the offence of racially aggravated harassment. Amendment 33, in the name of the cabinet secretary, is grouped with amendments 62, 64, 66, 68, 70, 72, 74, 100 and 102. If amendment 24 in the group entitled "Removal of provisions ancillary to sections 3 and 5" is agreed to, I cannot call amendment 64.

Humza Yousaf: Amendment 33, which is the only substantial amendment in the group, inserts a new part after section 2. The new part contains one section, which provides for an offence of racially aggravated harassment. The provision restates section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995, with some minor adjustments to the wording for consistency with the equivalent wording in part 1 of the bill. The remaining amendments in the group are consequential on the insertion of the new section by amendment 33.

Lord Bracadale recommended that we repeal section 50A of the 1995 act, which covers the offence of racially aggravated harassment. He argued that offending behaviour that is caught by that offence could mostly be captured by and recorded through other offences, with the addition of racial aggravation. However, we heard clearly from stakeholders that repealing the offence could send the wrong message. Removal could be particularly damaging in terms of tackling racial hatred in Scotland, particularly if it was perceived as a weakening of criminal law protection in the area of race.

In addition, in 2019-20, the Crown Office and Procurator Fiscal Service reported 1,208 charges under section 50A—a staggering 40 per cent of all race hate crimes reported by the Crown Office that year. As I previously set out, I believe that a distinct approach for race is needed in recognition of the seriousness of racial hatred and the impact that it has on community cohesion.

As I listened to the Justice Committee's scrutiny of the bill at stage 1, I took cognisance of the calls to consolidate the offence of racially aggravated harassment into the bill. Doing so will maintain the distinct approach for race and ensure that all hate crime legislation can be found in one place.

10:15

My officials and I have engaged with a number of racial equality organisations, and I know how important it is to them that the offence is maintained in Scots law. I know that those organisations are also anxious to ensure that any move to consolidate would not alter the practical effects of the offence, nor how the courts prosecute it. Amendment 33 aims to consolidate in the bill the existing offence of racially aggravated harassment.

I am happy to leave it there, rather than speaking to the consequential amendments in the group. I hope that members will support the consolidation of the offence in the bill.

I move amendment 33.

Liam McArthur: As with my comments on the previous group, I will be brief. I very much understand and sympathise with the rationale for not adopting in the bill as introduced the approach that is now being proposed. Any message that there would be a dilution or weakening of the protections in relation to crimes of a racial nature is one that we would need to take seriously, although we heard pretty compelling evidence that that would not be the case.

Consolidation provides a greater opportunity for the law to be clear, comprehensible and therefore enforceable, and I hope that the groups to which the cabinet secretary has spoken in recent weeks will take some reassurance from that. The committee's message is that there should be no dilution or weakening, and that the practical effect of the changes proposed in amendment 33 are simply about consolidation. I welcome amendment 33.

John Finnie (Highlands and Islands) (Green): I echo everything that Liam McArthur said. There are two important points. The administrative aspect stood out—the offence could either be consolidated in legislation or not, so I am delighted at its proposed incorporation in the bill.

I am also delighted to hear about the cabinet secretary's discussions with racial equality groups. We are aware that no one wanted any dilution, and it is clear that race requires a different approach. I am delighted at the incorporation of the offence, and I hope that those groups are reassured that this has never been about diluting protections that have long been in place.

The Convener: I associate myself with the remarks of Liam McArthur and John Finnie. I am delighted that the offence will be consolidated in the bill, and I very much share the view that there is no dilution of protections associated with taking that step. I therefore welcome amendment 33.

I invite the cabinet secretary to wind up and say whether he wishes to press or withdraw amendment 33.

Humza Yousaf: I will press amendment 33 in my name. I am certain that most of, if not all, the racial equality groups with which I, and the committee, have engaged will take great comfort from the reassurances from members that none of us wants to see any dilution of the protections. The committee's stage 1 report recommended the consolidation of section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995. That is a sensible approach, and I am delighted to press amendment 33.

Amendment 33 agreed to.

Section 3—Offences of stirring up hatred

The Convener: The next group is large and complex, as there are a number of pre-emptions. The group is on the threshold for, and operation of, offences relating to the stirring up of hatred. Amendment 34, in the name of the cabinet secretary, is grouped with amendments 34A, 35, 36, 36A, 37 to 39, 39A, 9, 40, 40A, 10, 1, 2, 41, 42, 17, 6, 18, 3, 4, 44, 45, 55, 8, 25, 27 and 84.

I draw members' attention to the information on pre-emption in the groupings document. If amendment 34 is agreed to, I cannot call amendment 35. If amendment 36 is agreed to, I cannot call amendment 37. If amendment 39 is agreed to, I cannot call amendment 9. If amendment 40 is agreed to, I cannot call amendment 10. With that in mind, I invite the cabinet secretary to move amendment 34 and speak to all the amendments in the group.

Humza Yousaf: As you say, this is a large grouping, but I will try to be succinct.

I will start with amendments 1 to 4, in my name. As members know, the bill creates a new stirring up of hatred offence, which applies to the characteristics of age, disability, religion, sexual orientation, transgender identity and variations in sex characteristics. Those characteristics do not currently have a stirring up hatred offence associated with them in Scotland; amendments 1 to 4 relate to those new stirring up of hatred offences.

Expanding the offences of stirring up hatred to cover those further characteristics caused concern about the inadvertent impact that such offences could have on people's right to freely discuss controversial ideas, for example about religion. In light of the concerns that have been raised, I made the decision that I announced in Parliament in September 2020 that amendments would be lodged to seek to make the stirring up offences for all characteristics except race require an intention to stir up hatred as an essential element of the offence. Amendments 1 to 4 make good on that commitment, so I ask members to support them.

Amendments 2 and 4 remove the likely to stir up hatred limb of the new stirring up hatred offences in sections 3(2)(b) and 5(2)(b). Amendments 1 and 3 are consequential.

I will be supporting Liam Kerr's amendment 19, which seeks to remove section 5. Therefore, amendments 3 and 4, which adjust section 5, are relevant only if amendment 19, which is to be debated in a future grouping, is not agreed to.

Amendments 34, 36 and 38 to 40, in my name, ensure that it is clear that there is an objective standard against which behaviour or material must be assessed for the purposes of the stirring up hatred offences. For an offence to be committed under section 3, a person requires to have engaged in conduct or to have communicated material that is threatening or abusive or, in the case of characteristics relating to race, insulting.

There has been public and stakeholder concern as to who gets to decide whether something is abusive under the bill. I know that you in particular have pressed the Government on the issue, convener. There may be a perception that reliance will be placed on the subjective views of individuals, which could result in people being investigated for criminal prosecution for very spurious allegations that do not, in any sensible view, amount to abusive behaviour. Similar concerns could equally apply to what amounts to threatening or insulting behaviour. For that reason, I agree with the committee, and indeed with the convener, that it is best to include provisions in the bill to clarify and put beyond doubt the nature of the test to be applied when interpreting those terms. The best way to do that is by reference to the objective standard of a reasonable person test. That is what amendments 34, 36, 39 and 40 seek to do.

In addition, amendment 38 adds a reasonable person test to the likely effects of a person's behaviour or communication for the stirring up racial hatred offence. That applies an objective standard as to whether the effect of a person's behaviour or communication is likely to result in hatred being stirred up against a group defined by race, which includes colour, nationality, citizenship or ethnic or national origins.

Amendments 42 and 45, in the name of Liam Kerr, pick up the same issue about objectivity

within the stirring up hatred offences. Although those amendments are well intentioned, they are more limited in scope than my amendments in this area, as they do not relate to behaviour or material that may be insulting or likely to stir up hatred. In addition, I decided that clarity in the bill would be best achieved at the place where the thresholds of the offence are provided, so my amendments are made directly to sections 3(1) and 3(2), whereas Liam Kerr's amendments are added to the ends of sections 3 and 5.

The overall policy aims for my amendments and Liam Kerr's amendments are broadly the same, but I suggest that my amendments go further in terms of policy and that they are more transparent and consistent with the reading of the bill, so I ask members to support my amendments.

Liam Kerr lodged amendments 39A and 40A, to remove the term "abusive" from amendments 39 and 40. Those are consequential changes, which are required if his amendments 9 and 10 are agreed to. I will shortly explain my position on his substantive amendments 9 and 10 but, for the reasons that I will give, I ask members to oppose amendments 39A and 40A.

In a similar vein, Dean Lockhart lodged amendments 34A and 36A. Those amendments are consequential to his amendments 35 and 37, which remove "insulting" from the threshold of the stirring up racial hatred offences. Again, for the reasons that I will give shortly in discussing his substantive amendments 35 and 37, I ask members to oppose amendments 34A and 36A.

Amendment 17, in the name of Liam Kerr, would entirely remove section 3 from the bill. When read together with schedule 2, amendment 17, if agreed to, would result in there being no offences of stirring up hatred—including the stirring up of racial hatred—in Scots law. That is not what the stage 1 report recommended. I ask members to reject amendment 17. The amendment disregards the existing legal landscape in Scotland and across the UK, where offences of stirring up hatred are not new. It would remove long-standing, UK-wide laws that protect people from suffering racial hatred in Scotland and would result in Scotland having the UK's weakest protections against the stirring up of hatred.

Behaviour that stirs up hatred is corrosive. It can result in entire communities feeling isolated, scared and vulnerable to attack. In the most serious cases, it can directly encourage activity that threatens or endangers life. Amendment 17 turns its back on all victims of hate crime. I hope that members will vote against it, because agreeing to it would set a harmful precedent for Scotland.

Liam Kerr has also lodged amendments 9, 10 and 18, which seek to remove the threshold of "abusive" from the operation of the new offences relating to the stirring up of hatred. Amendments 25 and 27 are consequential to those amendments.

Amendments 9, 10 and 18, if agreed to, would mean that new offences relating to stirring up hatred would be restricted to "threatening" behaviour or material intended to stir up hatred, or to the possession of threatening material with a view to communicating it to stir up hatred. Abusive behaviour would therefore never be subject to criminal sanction under part 2 of the bill, even if such abusive behaviour or material was intended to stir up hatred. I cannot support amendments 9, 10, 18, 25 or 27, which do not take account of Scotland's legal context or of the Justice Committee's unanimous recommendations on that issue.

As a matter of criminal law policy, it is appropriate to include abusive behaviour as part of the offences relating to stirring up hatred. Scotland has had a statutory offence of threatening or abusive behaviour since 2010; the offence has been prosecuted thousands of times in our criminal courts. The police, Scottish courts and legal practitioners are used to considering what constitutes abusive behaviour. That has been affirmed during scrutiny of the bill by those representing the legal profession and by Police Scotland.

It is important to balance protecting people from hate crime with respect for freedom of expression. We all agree on that. Removing "abusive" conduct from the scope of the new offences relating to stirring up hatred does not achieve that balance. I urge members to vote against amendments 9, 10, 18, 25 and 27.

Amendments 35 and 37, in the name of Dean Lockhart, seek to remove the threshold of "insulting" from the operation of the offence of stirring up racial hatred, as provided for in section 3(1) of the bill. That threshold has operated in Scotland, England, Wales and Northern Ireland for more that 30 years. Removing it would leave Scotland with the weakest protection against the stirring up of racial hatred in the UK.

We cannot deny the prevalence of racial hatred in Scotland. I know that from personal experience and the committee heard about it from a number of racial equality groups during its oral evidence sessions. The sad reality is that two thirds of all recorded hate crime in Scotland relates to race. The bill recognises the damaging impact of racial hate crime on community cohesion. That could be worsened if there was a perception that the protections in hate crime law that relate to race were being weakened. Members who spoke on

the previous group of amendments made it clear that they would not want to give any impression that the law on racial hatred was being diluted.

There is a distinct approach for race, which is also reflected in the English and Welsh stirring up hatred provisions, as set out in the Public Order Act 1986. Any changes that give rise to a perception that long-standing protections in that area are being weakened must give us pause for thought. A number of the groups that spoke to the committee gave compelling testimony that there is a justification for taking a distinct approach to the stirring up of racial hatred offences and for retaining the existing threshold of "insulting".

I firmly believe that, if there were perceived to be a weakening of the offences of stirring up racial hatred, that could cause difficulty in that there would also be at least a perception of weakening of the criminal law. That is not a risk that I would be willing to take.

I therefore ask members not to support amendments 35 and 37.

10:30

Amendments 41, 44 and 84 have been lodged by Liam Kerr. Amendments 41 and 44 appear to add the requirement of a public element in order for an offence to be committed under sections 3 and 5 where the offending conduct takes place in a private dwelling. Amendment 84 is consequential.

The public element that is provided for by amendments 41 and 44 does not extend to what people in other dwellings might see or hear. If words were to be written where they could be seen or heard by, say, neighbours within their dwellings in an upstairs or downstairs flat, that would not constitute a public element, which means that no offence of stirring up hatred would be committed. Instead, the public element seems to require people in public places, such as on a street pavement, to see or hear the words or behaviour before an offence can be committed.

In my view, those are entirely artificial distinctions, which fail to recognise that, when the offence of stirring up hatred occurs within a dwelling, that does not avoid the potential wider harmful impacts that such offences seek to prevent. For example, damage to local community cohesion, feelings of victimisation by neighbours and the incitement of acts of violence might occur in a dwelling, but such effects can be felt by behaviour taking place in public, to the detriment of the targeted group.

We must also be very careful of the potential unintended adverse consequences of such amendments. The effect of Liam Kerr's amendments 41, 44 and 84 is that a person using some sort of video, teleconference, internet live stream or chat room function might be able to escape criminal liability if it were not possible to prove that anyone who saw or heard the communication was outside a private dwelling at the time.

Amendments 41 and 44 would create an obvious, glaring omission in law by allowing people to continue to stir up hatred from the confines of their own homes to a wider audience, whether members of that audience were in their own dwellings or even another person's dwelling at the time of viewing. If someone behaves in a threatening or abusive manner or communicates threatening or abusive material with the intention of stirring up hatred, I consider that the criminal law should be capable of addressing such behaviour, whether it takes place within a private dwelling or outwith it.

As has been recognised by legal and academic stakeholders, the criminal law is often concerned with what goes on inside people's homes—and rightly so. At stage 1, the committee heard oral evidence from Michael Clancy, who said:

> "There is no sanctuary, in that sense, for most aspects of the criminal law and I do not think that there should be a sanctuary when it comes to hate speech."—[*Official Report*, *Justice Committee*, 3 November 2020; c 9.]

I very much agree with him. I urge members to vote against amendments 41, 44 and 84.

Amendment 55, in the name of Liam Kerr, seeks to insert in the bill a requirement that any prosecution in respect of the offences of stirring up hatred in section 3 or section 5 must be instituted by or consented to by Crown counsel. The Lord Advocate has written to the committee, explaining his views on why amendment 55 should not be agreed to. It seems to draw on a provision of the Public Order Act 1986, which applies to England and Wales and which states that proceedings for an offence of stirring up hatred may be instituted there only by or with the consent of the Attorney General.

Of course, the crucial point is that that provision applies only to England and Wales and not, as it stands, to Scotland. That is because fundamentally different systems of prosecution apply in Scotland compared with those in England and Wales. In practice, all prosecutions in Scotland are brought by public prosecutors who operate within the system of prosecution for which the Lord Advocate is responsible and they are subject to direction from the Lord Advocate. A private prosecution may be initiated only with the concurrence of the Lord Advocate or the approval of the court. In practice, private prosecutions are practically unknown.

In contrast, in England and Wales prosecutions can be brought by a range of agencies. The practical availability and prevalence of private prosecutions and prosecutions brought by public bodies other than the Crown Prosecution Service justifies control, in certain cases of sensitivity, through the imposition of an explicit requirement for consent by the Attorney General. As explained, the situation does not arise in Scotland, because all public prosecutions are brought by prosecutors within the system for which the Lord Advocate is responsible. The Lord Advocate's powers of legal direction combined with his ministerial oversight of the system of prosecutions in Scotland make it unnecessary—indeed, I would suggest constitutionally inappropriate—to prescribe the operation of the decision-making processes of the Crown in that way. I know that the Lord Advocate has made that entirely clear.

Amendment 6, in my name, removes section 4 from the bill. Section 4 concerns the culpability of directors and presenters of plays where a performer commits an offence of stirring up hatred under section 3 during the public performance of a play. That change was welcomed by the committee in its stage 1 report. Having listened carefully to the evidence during the scrutiny of the bill, I decided that the provision does not serve a useful purpose in singling out directors and presenters of plays in a way that is not done for other similar categories. In particular, I consider that there is no need to legislate that neglect could be sufficient to lead to criminal liability for a director or presenter of a play if a performer commits an offence of stirring up hatred under section 3. On that basis, I am satisfied that the general criminal law rules on part liability can instead be applied to ensure that, where any person commits a stirring up hatred offence under section 3 of the bill, any other person who, for example, participates or assists in the committing of that stirring-up offence may also be held criminally liable. I therefore ask members to support amendment 6.

I turn finally in this group to amendment 8, which is also in my name. Where an organisation has committed an offence under section 3 or 5, section 9 makes provisions for certain persons who are involved in the operation of organisations to be held criminally liable for committing an offence under section 3 or 5. That is a normal feature of criminal legislation. However, following further policy consideration since the introduction of the bill, I consider that culpability of responsible individuals on the basis of neglect where an organisation commits an offence is too low a threshold in the context of offences relating to stirring up hatred. Accordingly, amendment 8 removes neglect from the scope of the provision in section 9. The amendment has the effect that section 9 will apply only when an offence under section 3 or 5 is committed by a relevant organisation and the commission of the offence

"involves consent or connivance on the part of a responsible individual".

I move amendment 34.

The Convener: Thank you, cabinet secretary, for taking us clearly and carefully through the amendments in this long and complex group, which raise a number of overlapping issues.

Dean Lockhart: My amendments reflect representations, in particular from the Law Society of Scotland, that the committee heard at stage 1. The bill as currently drafted provides differently for the offence of stirring up racial hatred in comparison with offences that are committed against other protected characteristics. Section 3(1)(a), whether or not it is amended by the cabinet secretary, will still retain the concept of "insulting" as a characteristic of behaviour that might lead to someone being considered to have committed an offence. The committee has heard a great deal of evidence on whether that element of the offence should remain in the bill. I have lodged my amendments to provide the committee with an opportunity to consider the issue.

As the cabinet secretary set out, one of the justifications that has been given for retaining the reference to "insulting" conduct is that the word is present in current legislation: the Public Order Act 1986, which has been in place for more than 30 years. However, witnesses who gave evidence to the committee were not convinced by that argument. For example, Dr Andrew Tickell said:

"The argument that, because it is in the Public Order Act 1986, it should be in the bill is not convincing ... We should be ... asking whether those protections, restrictions or extensions are necessary."

Roddy Dunlop of the Faculty of Advocates believes that "insulting" is not a necessary part of the bill. He said:

"It is difficult to see a situation in which words are used that are not 'threatening' or 'abusive' yet which might still be thought worthy of criminalisation under reference to 'insulting'."

Mr Dunlop also questioned how many convictions there have been on the basis of "insulting" and surmised that it was probably "none, or almost none." He concluded, therefore, that he would not be concerned about dilution of the protection if the word was removed from the bill.

Mr Dunlop's view is supported by assertions made by Anthony McGeehan of the Crown Office and Procurator Fiscal Service, who told the committee that policy officials conducted a review of relevant cases in relation to the 1986 act since 2009 and found that

"the removal of the word 'insulting' would not diminish the ability of the Crown to take appropriate prosecutorial action in relation to those reported offences."

All of that indicates that there would be no weakening or dilution of the protection afforded by the legislation by removing the word "insulting". On the other hand, including it would add further ambiguity to the bill and to the criminal law in Scotland.

In addition, the Law Society of Scotland advanced the concern that retaining the term "insulting" could, arguably, create a hierarchy of victims. Anthony McGeehan of the COPFS argued that there is a risk,

"if the insulting offence is retained"

in the legislation

"in relation to racial hate crime",

that there would be

"a difference in the behaviour that is allowed in relation to the other protected characteristics but not in relation to race crime."

Police Scotland also alluded to the matter, saying that

"it could create a hierarchy of discrimination and"

make

"it more difficult for the officer to understand what types of behaviour and what circumstances cross the criminal threshold."—[*Official Report, Justice Committee,* 3 November 2020; c 5, 3, 39, 47-8, 37.]

We heard from the cabinet secretary a concern that the removal of "insulting" from the bill at this stage may send the wrong message, and the Scottish Government is not willing to risk such a perception arising. In response, I highlight the written evidence from Victim Support Scotland, which states:

"provided the inclusion or exclusion of behaviour as 'insulting' does not adversely impact anyone affected by crime, Victim Support Scotland can support this language change."

The cabinet secretary's concern about messaging can be addressed by making it clear that there has been no reduction in the underlying conduct that would constitute an offence under the bill.

For those reasons, there is a strong case for the removal of the word "insulting" from the definition in the bill. It would not weaken protection, it would not risk detriment and it would ensure that we do not inadvertently create a perceived hierarchy of offences.

On that basis, I move amendment 34A.

Liam Kerr (North East Scotland) (Con): I have a number of amendments in the group to speak to, each of which seeks to address a distinct shortcoming of the bill. I will deal with my amendments slightly out of order—it will become clear why.

Amendment 17, which seeks to remove section 3, is one of a series of amendments, with the others to be debated in a later group. Their combined impact is the deletion of part 2—the stirring-up offences part. From the start, it has been my contention, and that of a number of people, that part 2 needs to be subjected to greater scrutiny. Whatever we amend the drafting to at stage 2, the provisions will have significant and far-reaching ramifications. We are considering them in a truncated timescale and in circumstances that are far from ideal.

The bill deals with extremely important issues, but part 2 and its threat to free speech could be carved out so that the other parts could be amended—as we are doing in these meetings—precisely so that we do not turn our backs on victims. Indeed, that would achieve precisely the opposite, which is what we all wish to do. However, I do not think that the committee will be with me on that. I fear that if I move amendment 17 and my later, related amendments, I will be precluded from advancing them, and my argument, before the full chamber at stage 3. Accordingly, I shall not move amendment 17 today, in order to preserve my position.

Amendments 39A, 9, 40A, 10, 18, 25 and 27 seek to remove the term "abusive" from the stirring up hatred provisions and thus limit their scope to "threatening" behaviour. That would bring the provisions into line with public order laws south of the border on the stirring up of hatred on the grounds of religion or sexual orientation.

10:45

Those laws, which have been in place for more than a decade, have struck a balance between preventing the stirring up of hatred and protecting freedom of expression. That suggests that "threatening behaviour" is an appropriate threshold to adopt and does not go beyond what is required to protect what needs protection. The threshold is clear and catches words and behaviour that intimate violence.

In contrast, "abusive" arguably risks reducing the threshold for what could be considered hate speech and thus could be used to try to shut down the expression of opinions. In the bill as introduced, the terms are to be read disjunctively—"threatening" or "abusive"—not conjunctively. By lodging his amendments to add a reasonable person test, the cabinet secretary has acknowledged that there is a problem with the term "abusive". The test is welcome as far as it goes; its inclusion is the reason why I will support

his amendments in that regard and not press my amendments 42 and 45.

However, the cabinet secretary's amendments do not go far enough. Some stakeholders have rightly asked whether the proposed provisions catch speech and writing that are not currently criminal—speech and writing that are controversial, combative and even insulting, but which rightly ought to be protected as part of our democratic tradition. Lord Justice Sedley famously said that free speech includes not only the "inoffensive" but

"the irritating, the contentious, the eccentric, the heretical, the unwelcome and provocative."

It is such an important point: other people's dislike of one's views should not restrict the freedom to speak one's mind. We should all operate with a presumption that is in favour of free speech and be willing to defend other people's freedom to speak even when we profoundly disagree with what they say.

Many of those who contributed to the consultation, from many different perspectives, raised the concern that the term "abusive" could lead to the offences catching speech that was merely contentious or provocative.

My concern is about the reports that could be lodged with Police Scotland at the front end of that process, should the stirring-up provisions leave room for doubt on what the term "abusive" should be taken to mean. Should such a case proceed, the courts would have to adjudicate on whether someone's political opinions were abusive.

In the consultation and in our evidence sessions, people recognised that the reasonable person test, in relation to which the cabinet secretary has lodged amendments, is useful. However, they were concerned about the uncertainty that is inherent in the test and wished that uncertainty to be removed. I listened to those people, and my amendments in the group would remove that uncertainty.

I turn to amendments 41, 44 and 84, which I will colloquially call the dwelling defence amendments. The amendments seek to provide a defence for words that are spoken in a private dwelling and are not overheard by any person except those within. I note again that such a provision exists in parallel public order law in England, Wales and Northern Ireland.

The underlying rationale for what I am trying to do is twofold. First, the point was made several times during the committee's evidence sessions, including by the convener, that the bill is supposed to be concerned with public disorder, as the title of the bill demonstrates. We can all recognise the risk of public disorder at a rally, where rabble-rousing public speakers inflame feelings and individuals can feel emboldened by being in a large group that commits criminal acts. The same considerations do not apply in the context of a private family home. The language remains equally reprehensible as that used at the public rally, but the risk of public disorder is clearly not present.

Secondly, there is a wider argument for the protection of private speech in the context of the home. Throughout the debate on the bill, the committee has recognised the inevitable tension between the tackling of hate crime and the vital rights of freedom of speech and expression, and the need to balance the two.

The Government has been forced to make concessions throughout the process because the bill as introduced failed to protect our right to freedom of speech. No concession has yet been made on the lack of a private dwelling exemption, but one needs to be made, because prosecuting people for stirring up hatred over a private conversation in their own home is a violation of privacy.

Crucially, a dwelling defence would not hinder the operation of the offence. Lord Bracadale told our committee that no suggestion had been made to him that the existence of a dwelling defence exception

"had inhibited the use of the provision."—[*Official Report, Justice Committee*, 27 October 2020; c 46.]

During the evidence sessions, the committee heard concerns that allegations could be made by individuals after an argument at a dinner party or a similar social event and then investigated by the police. It would be difficult to establish a case for a stirring up hatred offence having been committed in that scenario.

Calum Steele of the Scottish Police Federation warned us that conversations about contentious issues could be repeated innocently by children in the playground and lead to reporting. The police would have no choice but to investigate. In building a case for prosecution, they would have to take witness statements from others who had been present. If a person had a guest in their family home who objected to something that was said, the only other witnesses might be the person's spouse or children. Without a dwelling defence, the bill could lead to the ridiculous scenario in which parents censor themselves in their own homes because they are anxious that their children might repeat something that they have said out of context. The idea that we should empower the police to question children about what a parent said over the dinner table is surely anathema to our democratic values.

In summary, the reason for much of the opposition to part 2 is that it deals with situations in which people have opinions. We might not like or agree with those opinions, but people have a right to them, and they surely must have a right to express them in their own home. It cannot be the police's job to investigate private ideological disputes and to use the criminal law to set the parameters of acceptable opinion. I fear that it would cause serious harm to the police's reputation with the public if they were forced to investigate things that were said in the privacy of someone's own home. I therefore seek support for my amendments 41, 44 and 84.

Amendment 55 stipulates that any decision to take proceedings on a stirring up hatred offence must require

"the consent of ... Crown Counsel."

For ease, I will refer to that colloquially as a prosecution lock. The Public Order Act 1986 and the Public Order (Northern Ireland) Order 1987 require that a similar step be taken before prosecutions are brought.

The relevant consideration that I have in mind is that, for the reasons that I have provided in relation to earlier amendments, there is a danger that someone could be accused of a stirring-up offence and prosecuted simply for speaking an offensive viewpoint. Even if they were not, ultimately, guilty of the offence, to be accused of such an offence would have the potential to ruin their life, particularly if they were taken through the court system first.

The cabinet secretary has spoken persuasively about the incorporation of a reasonable person test through amendment 40. I seek to ensure that such consideration is given at a preliminary stage. In England, consent for a stirring-up prosecution is required from the Attorney General. In Northern Ireland, it is required from the Director of Public Prosecutions. In Scotland, the equivalent level of seniority would be the Lord Advocate but, as the Lord Advocate and the cabinet secretary have set out, we have no legislative precedent for sending such decisions to the very top of the prosecution hierarchy in that way. That is precisely why I have not gone for that option.

Instead, I have based amendment 55 on guidance that the Lord Advocate issued in 2013. The guidance says:

"Any decision to take proceedings in relation to cases of this nature will be approved by Crown Counsel."

Therefore, sign-off by Crown counsel is a mechanism for which there is precedent in Scotland.

There is enormous public concern about the new stirring up hatred offences, so amendment 55 would provide a simple additional check and balance to reassure people that prosecution will be brought only when all issues, including the importance of free speech, have been properly considered by a senior prosecutor.

Last week, the committee received a letter from the Lord Advocate that specifically addresses amendment 55. I am grateful to the Lord Advocate for taking the time to address the specific point. His argument is, of course, persuasive, but I do not think that it is a compelling reason to reject my amendment. He is correct to say that we operate a completely different justice system from that which has been developed in England and Wales. He cites that as a reason why he does not find favour with my argument that other jurisdictions take such an approach, so why not Scotland. However, I do not find that to be a persuasive reason for rejecting the principle of a prosecution lock. In my submission, the principle is sound and is not defeated by comparison.

The Lord Advocate then contends that a prosecution lock is "wholly unnecessary", as the Lord Advocate will

"put in place the appropriate policies and procedures for decision-making",

including whether a case should be reported to Crown counsel. I have no doubt that, were such policies in place, the amendment would be otiose, but there are no such policies and procedures in place. That means that, in the event that the bill passes, there will be no prosecution lock or safeguard to prevent such a prosecution, and there should be.

I come to the next argument in the Lord Advocate's letter for not incorporating a prosecution lock. The Lord Advocate says that one of the reasons for having a prosecution lock in England is that individuals there can bring private prosecutions, which is not possible in Scotland. I do not follow the logic of that point. I am not concerned with people bringing private prosecutions; I am worried about handing fiscals difficult decisions to make in implementing a contentious new law—difficult decisions that they will have to make in a vacuum. An extra safeguard is therefore absolutely justified.

I completely understand why members might understand the principle behind my amendment but be reluctant to accept it after reading the Lord Advocate's letter. However, I have set out clearly why my submission should be preferred and why the amendment should be agreed to.

I am minded to move my amendment, pending what the cabinet secretary has to say in response to my remarks when he winds up the debate. For the avoidance of doubt, I am all too aware that, should I move amendment 55, I might be

disbarred from lodging a revised amendment on the same principle at stage 3. I am keen to hear the debate on the amendment, but I reserve the right not to move it when the convener puts the question so that I can preserve my position for stage 3.

The Convener: Thank you, Mr Kerr. That was clear and helpful. John Finnie wants to say a few words, after which I will say something, too.

John Finnie: I want to talk about a couple of positives, if I may, in relation to amendment 6, on plays. I welcome the Scottish Government's positive response in that regard. The provision was always seen as an outlier. A lot of people simply could not understand why it was in the bill and I welcome its removal, not least because the one thing that we want in Scotland and any progressive liberal democracy is a vibrant arts sector—[*Inaudible*.]—and I welcome that.

Similarly, on amendment 8 and the threshold for the stirring-up offences, I welcome the Government's positive response to the committee's stage 1 report. The application of an objective definition to the meaning of the term "abusive" must be welcomed by everyone. We want some clarity on that.

On prosecutorial policy, there is nothing new in the bill on how the police would engage with the public or respond to crimes or accusations of crimes, or how the prosecution would treat things differently. There is nothing new in the bill about that. Some of Liam Kerr's hyperbole on that bordered on nonsense, quite frankly.

In its briefing, the Equality Network Scotland asked us to reject amendments 39A, 9, 40A, 10, 18, 25 and 27, which would remove the term "abusive" from the stirring up hatred offences against those with protected characteristics other than race.

We know that the Government amendments will ensure that "abusive" is interpreted objectively. The Equality Network's briefing says:

"Hate crime legislation is intended to combat the genuine harm caused to affected communities by the behaviours covered in the law. Restricting the coverage of the offence only to behaviour that is threatening would narrow the scope to exclude behaviours that cause as much or more harm than directly threatening behaviour."

Convener, you will recall the compelling evidence that we had from a range of people. The Equality Network commented:

"As we noted in oral evidence, the kind of grossly abusive graphic material produced about Jewish people by the Nazis illustrates that the intentional stirring up of hatred can be done by material that is not in itself explicitly threatening."

I was somewhat bemused at Liam Kerr telling us that the Lord Advocate made persuasive arguments before going on to ridicule what the Lord Advocate said—I certainly thought that they were persuasive in relation to Mr Kerr's desire to rewrite prosecutorial policy in Scotland.

11:00

On amendment 17, which would delete the stirring-up provisions entirely, including those relating to race, I know that Mr Kerr wants to preserve his position, but if he does not wish to move the amendment, I will move it on his behalf so that we can get this nonsense dealt with at stage 2. I will move his other amendments as well.

This is pandering. If we are going to arrest the perniciousness of hate crime across the United Kingdom, we need a uniform approach, and we need our laws to be as tight as possible. Good grief—I would have thought that that would be something that a Conservative member would be in favour of. We need international co-operation on the matter. Mr Kerr is taking a wrecking ball not just to the bill, but to existing protections, and that is unacceptable.

The Convener: Fulton MacGregor and Rhoda Grant also want to come in, but I will say a few words before I turn to Fulton. There is a lot in this group of amendments, and I want to say a few words about a number of themes that have arisen.

I will start with the amendments in the cabinet secretary's name that I have supported, which define "abusive" in an objective way. For me, this is a question of fundamental principle, to the point where I would not have been able to support the bill unless such amendments were made. We had a debate last week about the freedom of speech and freedom of expression sections in the bill. Those sections are important and it is imperative that we get them right at stage 3, but even more important is having an appropriately narrow, curtailed and defined scope of the offences that we are writing into the Scots criminal law book. Explaining what we mean by the terms that we use, especially when those terms are apt to be stretched and used in different ways by different interested parties, is critical to the exercise of good law making.

The committee was unanimous in its stage 1 report in concluding that "abusive" needed to be defined objectively. In the stage 1 debate, there was some discussion about whether that needed to be done in the bill or in explanatory notes or guidance, and I am delighted that the cabinet secretary has seen the force of my argument that "abusive" needed to be objectively defined in the bill, and that is why I support this suite of amendments. These are matters of fundamental principle that go to the very heart of the balance that we are seeking to strike between criminalising

that which stirs up hatred and, at the same time, safeguarding and protecting freedom of expression.

I do not support the amendments that Liam Kerr has lodged to remove "abusive" from the bill. I would have supported them if "abusive" had not been defined objectively and clearly, but it is much more important, it seems to me, that we have a clear and objective understanding of what "abusive" means, and if the amendments in the cabinet secretary's name are supported by the committee, as I believe they will be, I see no case for removing "abusive" from the scope of the common law in this context, not least because there are a number of other areas unrelated to hate crime where abuse or abusiveness is criminalised, such as in the Domestic Abuse (Scotland) Act 2018.

That is a question of fundamental principle, but what are much more finely balanced questions of judgment are the debates about whether the word "insulting" should remain in the scope of the racial hatred offences and the extent to which there needs to be a public-facing element in those offences.

With regard to both those issues, I find the arguments to be very finely balanced, as did the committee in its stage 1 report. The committee recognised the force of the arguments both for removing the word "insulting" from the scope of the racial hatred offences and for not removing it. Those arguments were made by different witnesses who kindly gave evidence to the committee. It is a difficult issue to wrestle with, but I have concluded that "insulting" should be removed from the scope of the racial hatred offences for two reasons. The first reason has to do with the definition of "race" in the bill, which is not just about race but about ethnicity, citizenship and nationality, and I am not sure that we should criminalise people who insult each other on the basis of their nationality or citizenship. I do not see why nationality and citizenship should be protected more fully in criminal law than transgender identity or sexual orientation.

Secondly, where an issue is finely balanced and there are good sound arguments on both sides, the freedom of expression considerations that underpin it all should tilt that balance in favour of the outcome that is more protective of free speech. It seems to me that that is the force of what the committee wrote about freedom of expression in its stage 1 report, in which it said, I think, that freedom of expression is a general principle that should be broadly and amply interpreted and understood and that exceptions to that principle should be as narrowly drawn as possible. For those reasons—this matter is not a fundamental question of principle but a finely balanced question of judgment—I will support the amendments that seek to remove the word "insulting" from the scope of the racial hatred offences, which are largely in Dean Lockhart's name.

Similar reasons lead me to support amendments 41, 44 and 84, in Mr Kerr's name, which reintroduce to our public order law a public-facing element of these offences. In this case, it is not so much freedom of expression but the right to privacy that is at issue. Again, these are finely balanced issues, with plausible and sound arguments on both sides. However, on balance, I find myself in agreement with what Mr Kerr said on those issues.

I have two final points, before I bring in Mr MacGregor and Rhoda Grant, who are waiting patiently. I completely agree with, and find persuasive and compelling, what the Lord Advocate said about the so-called prosecution lock. The committee did not take any oral evidence on that matter in its stage 1 inquiry, and it did not express a strong view on it in its stage 1 report. The prosecution lock pertains in the prosecutorial systems of England and Northern Ireland because of the different offices that they have in their prosecution systems, which we do not have in Scotland. For the reasons that the Lord Advocate amply set out in his lengthy letter to the committee last week, for which I thank him, it is clear that that kind of prosecution lock does not fit with the fabric of the Scottish criminal justice system. Therefore, I will not support Mr Kerr's amendment 55.

Finally on this group, I am pleased to support amendments 6 and 19, which remove from the bill sections 4 and 5 respectively.

Thank you for your patience, Fulton, and I now hand over to you.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I have a few remarks on the amendments lodged by Liam Kerr on the dwelling defence, because there was a lot of discussion in the committee on that matter. I cannot agree with the argument that Liam has made. The amendments to introduce a dwelling defence could take us back many years. It is not that long since people would have come to committees like this—not in this Parliament, because it was established relatively recently, but in other places of power—and argued that things such as domestic violence should remain behind closed doors. On the basis of the information that we get in cross-party groups and in my party, we can all agree that some of the worst offences happen behind closed doors.

Liam Kerr puts forward a reasonable argument, and if someone were just tuning in to listen, they

might think that it sounds quite justifiable, but I do not think that it holds up to scrutiny given what we have heard. We have already established certain thresholds. We know that the bill does not prosecute free speech and that it will offer protection for people to have free speech—people are not going to prosecuted for things that are not hate crimes.

At the end of the day, whether it occurs in a public or a private space, if it is a hate crime, and there is evidence of that, surely we agree that it should prosecuted. Liam Kerr used the example of a family sitting down at the dinner table and being worried about what the kids might say. My argument would be that, if a hate crime is being committed in front of the kids or the partner, a hate crime is being committed, and if it is not, it is not. It is quite simple—surely we should not want any kids to be exposed to hate crime.

I know that the main argument would be about the public aspect, and the convener has picked up on that argument as well. That is probably the strongest point in favour of the amendments, but surely the worry should be that, if the issue is taken out of the home, it will become public anyway. If the kids in Liam Kerr's example repeat what has been said by, presumably, their parent in a private dwelling, that concerns the public interest, because the hate crime has been taken elsewhere.

Those are the only amendments that I wanted to speak on. I will not support Liam Kerr's amendments on those issues. I thank the convener for giving me the time to make those points.

The Convener: I ask Rhoda Grant to contribute to the debate.

Rhoda Grant: I will be as quick as I can. This is probably the most contentious part of the bill. If it is amended today, it will be interesting to see whether that meets the aspirations of those who have concerns about it. I welcome the reasonable person interpretation. I think that it goes a long way to meet concerns, and I will be supporting it.

On the removal of "insulting", the balance is fine, but it remains to be seen whether that adds or takes away anything. In my view, to be seen to water down protections in a hate crime bill would not be the right direction to take, so I will not be voting for amendment 34A or amendment 35.

I have some sympathy for what the amendments on the private dwelling defence are trying to do. However, for threatening or abusive behaviour not to be prosecuted if it takes place in a private dwelling does not hit the right balance at all. That defence would mean that, if you went into someone's house and were threatened or abused, you would not be able to report that to the Crown. It is even more of a concern if it were applied to the use of social media and someone had threatening and abusive behaviour on their Twitter account. Surely that cannot be defensible because it took place in a private dwelling.

That is all I wanted to say; obviously, I reserve my position on the section for stage 3. We need to meet the aspirations of those who have real concerns about it, and I hope that the amendments that I will be supporting will go some way to doing that.

The Convener: No other member has indicated that they wish to contribute to the debate on the group, so I invite the cabinet secretary to wind up on amendment 34 and will then ask Dean Lockhart to formally wind up on the group and to press or withdraw amendment 34A.

Humza Yousaf: If I may, I will speak to some of the points that have been raised. The debate has been very useful and helpful, and it shows that we can debate issues that are at times highly contentious with a degree of respect.

I will reference some of the remarks that have been made in relation to Dean Lockhart's amendments that seek to remove the "insulting" threshold. He suggested that, if "insulting" were removed from the threshold in relation to racial hatred, there would simply be a perception that the law was being weakened and that, in practice, it would not make a material difference.

11:15

My response is that, particularly in relation to this bill, I think that we have all agreed that perceptions can be important. We accept that when we discuss provisions on freedom of expression, for example, as the committee and the Government did collectively yesterday. I think that the vast majority of us probably accept that having a freedom of expression section would make little material difference to the bill, but we also accept that it gives assurance to a number of people who are concerned about the impact of the bill on free speech. Therefore, I think that perceptions are hugely important.

Dean Lockhart referenced a number of stakeholders to whom he had spoken in relation to the "insulting" threshold. However, I notice that he did not mention a single racial equality stakeholder. I would hope that, when suggesting such a change, he spoke to such stakeholders. He may have done so and, of course, he can tell us so in summing up. I remind him of the important maxim on which I hope that we all agree: what is about us without us is not for us. Therefore, I think that it is imperative that we take into consideration the views of those who would be most affected by

any potential weakening of the law, or at least the perception of the weakening of the law.

I note everything that the convener has said in his support for the removal of the "insulting" threshold being a finely balanced decision. My response is that we are not criminalising people who are insulting people because of their nationality. There would also have to be either the intention to stir up hatred, or behaviour or material communicated that would be likely to stir up hatred. If people were insulting people who were Polish or Pakistani with the intention of stirring up hatred or, indeed, if their behaviour was likely to stir up hatred, I think that most of us would agree that that should be prosecuted.

I add that the "insulting" threshold has existed since 1986—for almost 35 years—without any controversy. I am curious about the amendments, because they seem to be trying to fix a problem that I do not think exists.

On the public element in Liam Kerr's amendments, which has been spoken about, I accept that, for a number of members, there is a finely balanced judgment to be made. I want to reassure members that I have not dismissed any of the arguments that call for a dwelling defence or a public element—far from it. I have given the matter serious consideration—I have had quite a few sleepless nights thinking about the issue.

I know that it is often the case that, when we debate amendments at stage 2, we do so on technicalities and draftsmanship. However, on these amendments, the public element is firmly a matter of principle and policy. You should ask those who have been victims of hate crime, assaulted due to the colour of their skin or their religion, or beaten up because they are gay whether they are comforted by the fact that the individual who stirred up hatred against them cannot be prosecuted because they did so in their own home. I think that they would receive no comfort from that whatsoever.

There are serious flaws with the amendments in relation to the public element. Someone could have 20 friends in their private dwelling, the curtains could be closed and the doors could be locked. That person could intentionally stir up hatred against people who are Jewish, for example. Those 20 individuals could then go out and desecrate synagogues and graffiti them with swastikas. Those people would, of course, be charged for those offences, but the individual who stirred up hatred—and intended to stir up hatred—against Jewish people would not be prosecuted. How could that be justified, or be seen to be fair in any way?

I will give another example. You could have a group of workmen in your house. One of them might be Polish, for example. If you stir up hatred with the other workmen and they assault—attack and verbally abuse—that Polish workman in your house, because that was done in your private dwelling you could not be prosecuted for stirring up hatred. That cannot be right.

I will not add anything else to what I have said about any of the other amendments, other than to say that I firmly agree with the points made by the Lord Advocate, as you would imagine that I would. I hope that members will support the amendments in my name and reject those that the Government and I have expressed serious reservations about and opposition to.

The Convener: I invite Dean Lockhart to wind up, and to press or withdraw amendment 34A.

Dean Lockhart: I will make this brief, because committee members have done a good job of explaining the underlying rationale behind some amendments and their concern about other amendments not being pressed.

With respect to "insulting", I understand the cabinet secretary's concerns about perception and about dropping the language and concepts at this stage in the legislative process. As the committee has heard in evidence, this is an issue that can be dealt with by the Scottish Government. In my view, the cabinet secretary's concerns are outweighed by the serious concerns that would arise were the concept of "insulting" to be retained in legislation. I will not go through all the concerns that I highlighted in my opening remarks except to say that retaining "insulting" would create unwelcome uncertainty in Scottish criminal law. We have heard from Police Scotland that the offence of insulting would be difficult to police in practice, because it would create a hierarchy of events in which some behaviour in respect of some protected characteristics was allowed and some behaviour in respect of other protected characteristics was not allowed. That is a serious concern. On that basis, I will press amendment 34A.

The Convener: The question is, that amendment 34A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Kerr, Liam (North East Scotland) (Con)
Tomkins, Adam (Glasgow) (Con)

Against

Ewing, Annabelle (Cowdenbeath) (SNP)
Finnie, John (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Robison, Shona (Dundee City East) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 34A disagreed to.

Amendment 34 agreed to.

The Convener: Amendment 34 pre-empts amendment 35.

Amendment 36 moved—[Humza Yousaf].

The Convener: I remind members that if amendment 36 is agreed to, I cannot call amendment 37.

Amendment 36A moved—[Dean Lockhart].

The Convener: The question is, that amendment 36A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Kerr, Liam (North East Scotland) (Con)
Tomkins, Adam (Glasgow) (Con)

Against

Ewing, Annabelle (Cowdenbeath) (SNP)
Finnie, John (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Robison, Shona (Dundee City East) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 36A disagreed to.

Amendment 36 agreed to.

The Convener: Amendment 36 pre-empts amendment 37.

Amendment 38 moved—[Humza Yousaf]—and agreed to.

Amendment 39 moved—[Humza Yousaf].

The Convener: I remind members that if amendment 39 is agreed to, I cannot call amendment 9.

Amendment 39A moved—[Liam Kerr].

The Convener: The question is, that amendment 39A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Kerr, Liam (North East Scotland) (Con)

Against

Ewing, Annabelle (Cowdenbeath) (SNP)
Finnie, John (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Robison, Shona (Dundee City East) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 39A disagreed to.

Amendment 39 agreed to.

The Convener: I will briefly pause the meeting while I take advice from the clerk.

11:27

Meeting suspended.

11:28

On resuming—

The Convener: Sorry about that; I just needed to check something that I could not understand.

Amendment 39 pre-empts amendment 9.

Amendment 40 moved—[Humza Yousaf].

The Convener: I remind members that if amendment 40 is agreed to, I cannot call amendment 10.

Amendment 40A moved—[Liam Kerr].

The Convener: The question is, that amendment 40A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Kerr, Liam (North East Scotland) (Con)

Against

Ewing, Annabelle (Cowdenbeath) (SNP)
Finnie, John (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Robison, Shona (Dundee City East) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 40A disagreed to.

Amendment 40 agreed to.

The Convener: Amendment 40 pre-empts amendment 10.

Amendments 1 and 2 moved—[Humza Yousaf]—and agreed to.

The Convener: I will suspend the meeting for five minutes to enable everybody to take a comfort break, check on their children and all that sort of thing. We will reconvene just after 11:35.

11:30

Meeting suspended.

11:36

On resuming—

The Convener: Welcome back, everyone. The next group of amendments is on the stirring up hatred offence characteristics. Amendment 11, in the name of Liam Kerr, is grouped with amendments 12 to 16. I call Liam Kerr to move amendment 11 and speak to all the amendments in the group

Liam Kerr: The probing amendments 11 to 16 are about seeking clarity and flushing out the evidence base that, perhaps due to the truncated timetable on which the bill is operating, the cabinet secretary has been unable to provide prior to this point. Underlying that request is the way in which the bill has been drafted, because it does not seek to create a single, unified criminal offence of stirring up hatred; rather, it looks to particularise, in section 3(3), six protected characteristics and establish offences spinning off each of those. However, the committee is being asked to consider the characteristics almost as a package and to include them all. The Scottish Government's and Lord Bracadale's arguments for doing so have focused on the symbolism of that approach, rather than the practicalities of it.

My amendments 11 to 16 simply probe whether the cabinet secretary will provide for each of the protected characteristics the evidential basis for introducing each one in section 3(3). In his answer, can he set out for each protected characteristic the Scottish Government's estimate of how many cases it expects to proceed before court? Can he point, for each characteristic, to a specific case where he thinks that the police might not be able currently to act in relation to that specific characteristic?

I move amendment 11.

The Convener: Thank you, Mr Kerr. No other member has indicated that they wish to speak on the group of amendments.

Another member has now indicated that he wishes to speak.

John Finnie: Forgive me, convener, for being a bit slow with the keyboard.

These amendments are important and it is important that we discuss them. I find myself again looking to the briefings that we have had, particularly the one from the Equality Network. It is important to quote directly from the people on the front line. The briefing states:

> "Amendments 14, 15 and 16 would be a stark statement that the Parliament believes that LGBTI people are less valuable than the other people covered by this bill. This would represent a reversal of many decades of progress in Scotland."

I whole-heartedly agree with that. I will not support Mr Kerr's amendment, but I will press it.

The Convener: Thank you. No other member has indicated that they wish to take part in the debate on the amendments, so I call the cabinet secretary.

Humza Yousaf: I share much of the sentiment and possibly even some degree of anger about amendments 11 to 16.

I associate myself with the remarks from the Equality Network and others. They point out that people may feel that, if the protections are not extended to them in the way that they currently exist under the racial stirring-up offences, they would not be as adequately protected in law. Would that mean that the hatred that is directed at them is seen as a lesser hatred? That would be a dangerous signal for any Parliament, let alone our own, to send.

In England and Wales, stirring-up offences have been extended to cover religion and sexual orientation. In Northern Ireland, there are stirring up hatred offences that cover race, religion, sexual orientation and disability. As has been described, section 3(1) of the bill provides for the offence of stirring up hatred in relation to race. Amendments 11 to 16 seek to remove each of the additional characteristics that relate to the new offence of stirring up hatred in section 3(2) of the bill.

Liam Kerr asked a range of questions about the evidential base; I am happy to write to him with more detail on that. However, he should be comforted—I would hope that he is—by the oral evidence that he, as a member of the Justice Committee, heard at stage 1. He has often talked about a truncated timetable for the bill. I accept that the committee has had, and still has, quite a lot to deal with in a truncated period of time, in particular given Covid pressures. However, the committee heard almost 40 representations during its stage 1 oral evidence proceedings, so no member can claim that they have not heard the issues debated at some length.

If amendments 11 to 16 are agreed to, their effect would be to remove some or all of the listed characteristics from the scope of the stirring up hatred offences. That could mean that perpetrators who deliberately intend to stir up hatred based on a person's sexual orientation or

disability, for example, would not face criminal sanction in relation to the distinct harm that is caused by such behaviour. If there is a particular characteristic that gives Liam Kerr cause for concern—he did not seem to suggest that there was—I would be interested to hear what it is. If he can single it out, I can give him specific data that he may wish to see.

I have often pointed out that stirring up hatred offences are not—and I would not expect them to be—prosecuted in large numbers. The racial stirring-up offence has existed for almost 35 years, and in the past decade it has been prosecuted in Scotland only seven or eight times. We know, therefore, that the offences in the bill would not be prosecuted a large number of times. We certainly know that when the racial stirring-up offence is prosecuted, it can make a stark and important difference to the communities that have been targeted.

I cannot support amendments 11 to 16, which at best would result in some characteristics being favoured over others to benefit from the protections that section 3(2) of the bill affords, and at worst could remove those protections entirely.

I leave the committee with this question. If I am protected from having hatred stirred up against me on the basis of my race, why should others who are often the victims of hate not be afforded that same protection? Legislating to protect all existing and new characteristics from offences of stirring up hatred, as the bill currently does, will send a very important message and a signal that that type of behaviour attracts particular condemnation by society and will not be tolerated. However, it is more than just a message—it is about the law affording those protections to groups that are often susceptible to hatred. To do any less than that would be to fail the victims of hate crime. I therefore urge members to vote against amendments 11 to 16.

The Convener: I see that Rhoda Grant has just indicated that she wishes to contribute. I can squeeze her in if she is brief, although it is a late call.

Rhoda Grant: I will not vote for any of those amendments; indeed—[*Inaudible*.]—characteristic added to the list, which is sex.

The Convener: Thank you—that was commendably brief.

I ask Liam Kerr to wind up and indicate whether he wishes to press or withdraw amendment 11.

Liam Kerr: I am grateful for the contributions, but I am disappointed—as I have been throughout the process—by Mr Finnie's approach to these matters. It is the job of the Parliament to ensure that matters such as these are explored. If there is a lacuna in the Government's evidence base that stakeholders are interested in hearing about, probing amendments such as these are a legitimate mechanism to test and explore that.

11:45

I seek leave to withdraw amendment 11 and will not move the other amendments. If John Finnie wishes to do so, let the record show that he was the one who wished to remove those characteristics.

The Convener: Does the committee agree to amendment 11 being withdrawn?

John Finnie: I think that the matter is important, given that we have engaged in discussions—and I resent the characterisation that Mr Kerr made. Of course, we must have robust scrutiny, and I have encouraged that all along.

I would like to press the amendment.

The Convener: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

Ewing, Annabelle (Cowdenbeath) (SNP)
Finnie, John (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Kerr, Liam (North East Scotland) (Con)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Robison, Shona (Dundee City East) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 0, Against 9, Abstentions 0.

Amendments 12 to 16 not moved.

Amendment 41 moved—[Liam Kerr].

The Convener: The question is, that amendment 41 be agreed. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Kerr, Liam (North East Scotland) (Con)
Tomkins, Adam (Glasgow) (Con)

Against

Ewing, Annabelle (Cowdenbeath) (SNP)
Finnie, John (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Robison, Shona (Dundee City East) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 41 disagreed to.

Amendment 42 not moved.

Amendment 17 moved—[John Finnie].

The Convener: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Finnie, John (Highlands and Islands) (Green)
Grant, Rhoda, (Highlands and Islands) (Lab)
Kerr, Liam (North East Scotland) (Con)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Robison, Shona (Dundee City East) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 0, Against 9, Abstentions 0.

Amendment 17 disagreed to.

Section 4—Culpability where offence committed during public performance of play

Amendment 6 moved—[Humza Yousaf]—and agreed to.

Section 5—Offences of possessing inflammatory material

Liam Kerr: In anticipation of a debate that is shortly to take place, I will not move amendment 18.

Amendment 18 not moved.

Amendments 3 and 4 moved—[Humza Yousaf]—and agreed to.

The Convener: Amendment 43 is in the name of Margaret Mitchell. I ask Liam Kerr whether it will be moved.

Liam Kerr: Margaret Mitchell has asked me not to move amendment 43.

Amendment 43 not moved.

Liam Kerr: In anticipation of amendment 19 being debated, I will not move amendments 44 and 45.

Amendments 44 and 45 not moved.

The Convener: The next group is on offences of possessing inflammatory material and starts with amendment 19, which Liam Kerr referred to. Amendment 19, in the name of Liam Kerr, is grouped with amendments 47, 48, 51, 56 to 58, 60, 61, 63, 67, 69, 71, 73, 75, 76, 80, 85, 92 and 94.

Liam Kerr: I have no wish to take more time than is required in this long meeting. I have one amendment in the group—amendment 19. It simply says, "Leave out section 5". That section, which has been one of the most contentious aspects of part 2, is entitled "Offences of possessing inflammatory material". Many committee members expressed concern about the provision. We received powerful and compelling testimony on the issue in oral and written evidence as we prepared our report.

I lodged amendment 19 to remove section 5 altogether. I was pleased that the cabinet secretary supported that move in his letter in response to the committee's report and by lodging his support for the amendment. The convener has also signalled his agreement to the amendment.

Nothing further requires to be said. I move amendment 19.

Humza Yousaf: I am happy to speak to amendment 19 and to a number of consequential amendments. Section 5, which provides for offences of possessing inflammatory material, is based on provisions that are in the UK Public Order Act 1986. The offence of possessing inflammatory material is not new—it has existed for a number of years in relation to the characteristic of race, for example—but the extension of the offence to the additional characteristics that the bill covers is new.

I listened carefully to the oral evidence that was presented to the committee, and I read through a number of the written responses that the committee received. I engaged with a number of stakeholders, particularly those in faith groups and in the creative industries, including authors and playwrights, and they expressed some deep reservations to me about this offence.

As I confirmed in my stage 1 report response, the Scottish Government has decided that section 5 is not required in the bill, and I am therefore happy to support amendment 19, which seeks to remove the section. I have lodged a number of consequential amendments flowing from the removal of the section.

In supporting amendment 19, I have taken the view that conduct that is criminalised by section 5 can be covered to a very significant extent—albeit not entirely—by application of the general criminal law in relation to attempts to commit offences combined with the specific offences in section 3. Hence, there is no significant policy effect or practical effect in removing section 5 from the bill.

I support amendment 19 and I ask members to support it as well as the consequential amendments in my name.

Amendment 19 agreed to.

Section 6—Powers of entry etc with warrant

The Convener: The next group is on powers of entry. Amendment 46, in the name of Liz Smith, is grouped with amendments 7, 49, 50, 52 to 54 and 101.

Liz Smith (Mid Scotland and Fife) (Con): Thank you for this opportunity, convener. Amendments 46, 49, 50, 53 and 54 all form part of the same point. Put simply, section 6 as drafted allows the entry into premises by a constable or a member of police staff. A "member of police staff" is defined in section 6(4) as

"an individual appointed under section 26"

of the Police and Fire Reform (Scotland) Act 2012. Under section 26(2)(b) of that act, that also includes persons provided to the police under arrangements between the police and a third party.

In evidence, Assistant Chief Constable Ritchie spoke to the committee about

"certain powers being exercised by members of police staff, which is the unusual element here."

It is that "unusual element" that is concerning.

In the same evidence session, Calum Steele of the Scottish Police Federation said:

"Police staff currently have the skills for many roles, and the technology to enable them to perform them, but the use of invasive and coercive powers still tends to be reserved to police officers, even if the investigative capacity rests somewhere else in the police service ... To reiterate a point that we made in our submission, it is entirely possible that, through the freedoms that police staff enjoy as members of the public who work in the police service, they could then find themselves using coercive or enforcement powers on other members of the public in the course of an investigation that relates to issues on which they have taken public positions. That is not a helpful wedge to introduce into debate on the role of police officers in society or who should have such powers over members of the public."

I agree with that.

In a closing point made in that evidence session, Anthony McGeehan of the Crown Office and Procurator Fiscal Service said:

"It would not be unusual for a procurator fiscal to seek a search warrant that allowed a uniformed police officer to execute a search warrant with the assistance of other members of police staff, as opposed to a search warrant being executed distinctly by a member of police staff who was not a police constable. That concern could be addressed through the tightening up of the drafting of section 6."—[*Official Report, Justice Committee*, 3 November 2020; c 42-4.]

However, that has not been done, and my amendments therefore seek to address the concerns that the police raised by deleting the ability for a "member of police staff" to be warranted to undertake those matters under section 6.

Amendment 52 seeks to pick up the point that, as drafted, the provisions of section 6(3) are very wide. Throughout, the Law Society of Scotland has flagged its concern that the operation of the provision will be a challenge, not least because no time period for undertaking the conversion exercise is specified. Although not stated, presumably, the cost would need to be borne by the person who is required to undertake the conversion, which seems to be not only wide but slightly unreasonable.

12:00

The Law Society of Scotland helpfully suggested clarifying the provision with an amendment—which I note has not been lodged—to introduce a caveat of "reasonableness" with regard to the time that is afforded to convert or produce, and specifying that costs should be borne by those who instruct the search. That is interesting, but it has an impact on police costs. In the absence of the cabinet secretary coming forward with proposals to address those concerns, I will be moving amendment 52.

I move amendment 46.

Humza Yousaf: Amendments 46, 49, 50, 53 and 54, in the name of Liz Smith, seek to remove members of police staff from the powers of entry provision in section 6. Liz Smith has articulated well the concerns that were raised during the committee's oral evidence sessions at stage 1.

Section 6(1) enables a sheriff or a justice of the peace to grant a warrant

"authorising a constable or a member of police staff to enter premises if ... there are reasonable grounds for suspecting ... that an offence"

relating to stirring up hatred

"has been, or is being, committed at the premises, or ... there is evidence at the premises of the commission of"

such an offence.

I appreciate that concerns have been expressed about section 6 by witnesses who gave evidence to the committee, and Liz Smith referenced the evidence of the Scottish Police Federation and Police Scotland. They do not regard the inclusion of members of police staff as an essential operational requirement, given that police constables would, in any event, be present and able to enforce warrants.

Liz Smith's amendments 46, 49, 50, 53 and 54 would remove police staff from being subject to the warrant powers. I have reflected carefully, and I support amendments 46, 49, 50, 53, and 54. I give notice that, ahead of stage 3, I will consider further whether any additional changes may be needed to ensure that members of police staff can

still enter premises when a police constable has been authorised under the warrant power in the bill. However, that does not prevent me from supporting those amendments today.

I cannot support Liz Smith's amendment 52, because it would unduly hinder the ability of the police to secure evidence in relation to the suspected commission of an offence of stirring up hatred. In the exercise of a warrant, section 6(3) provides the police with the power to require any electronic information to be produced or converted in such a way that it can be removed from premises that are subject to a warrant. For example, that could happen in relation to a computer on which there are reasonable grounds to suspect are stored hundreds of threatening or abusive emails or electronic communications for the purpose of stirring up hatred in others. Unfortunately, I can think of far too many international examples of such stirring up hatred offences to which electronic communication was key.

Removing section 6(3) would take away an important part of the powers of entry that are provided for in the bill, which would undermine the ability of the police to gather evidence. Therefore, if Liz Smith chooses to move amendment 52, I ask members to vote against it.

Amendment 7, in my name, adds a time limit to the exercise of warrants that are granted to the police under section 6. The committee invited me to reflect further on that issue in the light of the evidence that was heard. In my response to the committee's stage 1 report, I committed to lodge an amendment to limit the period of effect of a warrant to 28 days. Amendment 7 makes good on that commitment.

Finally, amendment 101, in my name, concerns the exercise of powers of entry and search under a warrant that is granted under section 6 as they relate to Crown land. It is fairly normal to insert such a provision in legislation that contains powers of entry and search. Such provisions exist in many acts of Parliament, including the Wild Animals in Travelling Circuses (Scotland) Act 2018 and the Forestry and Land Management (Scotland) Act 2018.

Accordingly, I ask members to support amendments 7, 46, 49, 50, 53, 54 and 101, and to reject amendment 52.

The Convener: John Finnie has indicated that he wishes to speak on the group.

John Finnie: For the reasons outlined by the cabinet secretary, I will also not support Liz Smith's amendment 52. However, I thank her for raising an important issue and will support her other amendments.

There are important specifics that relate to the bill, but there is also the general principle around giving extensive powers that are, if I am quoting Mr Steele correctly, "invasive and coercive"—the ability to gain entry to and search premises and the ability to detain and arrest someone. Those powers should be given out only sparingly and only to sworn constables. That does not mean that police support staff do not play a valuable role in forensics and in backing up police officers. That is not the issue; the issue is about having a sworn constable exercise those important powers.

The Convener: As no other member has indicated that they wish to speak on the group, I invite Liz Smith to wind up and press or withdraw amendment 46.

Liz Smith: I thank the cabinet secretary for his comments, which were very helpful. I also thank Mr Finnie. The issue that the amendments address is important. I lodged them as a result of the evidence to the committee relating to comments that were provided by the police. We have to recognise the concerns that the police would have if we did not amend the bill. I listened carefully to what the cabinet secretary said about amendment 52 and, when the time comes, I will not move it. However, I will press my other amendments.

Amendment 46 agreed to.

Amendments 47, 48 and 7 moved—[Humza Yousaf]—and agreed to.

Amendments 49 and 50 moved—[Liz Smith]—and agreed to.

Amendment 51 moved—[Humza Yousaf]—and agreed to.

Amendment 52 not moved.

Amendments 53 and 54 moved—[Liz Smith]—and agreed to.

The Convener: We have three further groups to debate and we will not get through them all today. Therefore, I will draw a line at this point. We will reconvene next week to continue and complete our stage 2 consideration of the bill.

Next week, we will commence with the debate on the next group of amendments, which concerns removal of provisions ancillary to sections 3 and 5. I do not anticipate that the remaining stage 2 consideration will take more than about an hour, but we do not have an hour today, not least because we have one other piece of business to deal with.

I thank Dean Lockhart, Johann Lamont, Liz Smith and Humza Yousaf for joining us. I ask members of the committee to stay where they are because there is another item on the agenda that needs to be disposed of in public.

Subordinate Legislation

Police Service of Scotland (Miscellaneous Amendments) Regulations 2020 (SSI 2020/453)

Police Appeals Tribunals (Scotland) (Amendment) Rules 2020 (SSI 2020/454)

12:10

The Convener: Agenda item 2 is consideration of two negative Scottish statutory instruments.

Do members have any comments on the instruments? No one is indicating that they wish to comment.

Are members therefore content not to make any comments to the Parliament on the instruments? I see that members are content.

That concludes consideration of the instruments and the meeting. Our next meeting will be on Tuesday 16 February. The clerks will be in touch with the timings.

Meeting closed at 12:10.

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