

MEETING OF THE PARLIAMENT

Wednesday 18 March 2009

Session 3

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Scottish Parliament

Wednesday 18 March 2009

[THE DEPUTY PRESIDING OFFICER *opened the meeting at 14:15*]

Time for Reflection

The Deputy Presiding Officer (Alasdair Morgan): Good afternoon. The first item of business is time for reflection. Our time for reflection leader today is Professor Leonard Swidler, from the Global Dialogue Institute, Temple University, Philadelphia.

Professor Leonard Swidler (Global Dialogue Institute, Temple University, Philadelphia): In the dawning of the age of global dialogue, we humans are increasingly aware that we cannot know everything about anything. This is true for the physical sciences: no one would claim that we know everything about biology, physics, or chemistry. Likewise, no one would claim that we know everything about the human sciences, sociology, anthropology, or—good heavens!—economics. Each of these disciplines is endlessly complicated.

However, when it comes to the most comprehensive and complicated discipline of all—theology or religion—billions of us still claim that we know all there is to know, and that whoever thinks differently is simply mistaken. But if it is true that we can know only partially in any limited study of reality, as in the physical or human sciences, surely it is all the more true of religion, which is an

“explanation of the ultimate meaning of life, and how to live accordingly, based on some notion of the Transcendent.”

We must then be even more modest in our claims of knowing better in this most comprehensive field of knowledge: religion,

“the ultimate meaning of life.”

Because of the work of great thinkers, such as the recently deceased Hans-Georg Gadamer and Paul Ricoeur, we now also realise that no knowledge can ever be completely objective, for we, the knower, are an integral part of the process of knowing. In brief, all knowledge is interpreted knowledge. Even in its simplest form, whether I claim that the Bible is God’s truth, or the Qur’an, or the Bhagavad Gita, or, indeed, the interpretation of the Pope, or John Knox, it is I who affirms that it is so. But if neither I nor anyone can know everything about anything—including this most complicated claim to truth: religion—how can I proceed to search for an ever fuller grasp of reality, of truth?

The clear answer is dialogue. In dialogue, I come to talk with you primarily so that I can learn

what I cannot perceive from my place in the world, with my personal lenses of knowing. Through your eyes, I can see what I cannot see from my side of the globe, and vice versa. Hence, dialogue is not only a way of gaining more information; dialogue is a whole new way of thinking. We are painfully leaving behind the age of monologue and we are—albeit with squinting eyes—entering into the age of global dialogue.

Question Time

SCOTTISH PARLIAMENTARY CORPORATE BODY

14:19

Travel to Work Plans

1. Des McNulty (Clydebank and Milngavie) (Lab): To ask the Scottish Parliamentary Corporate Body, in addition to considering a cycle to work scheme, whether it will consider implementing personalised travel plans for staff to encourage more sustainable transport choices and promote cycling and walking to work. (S3O-6466)

Alex Johnstone (Scottish Parliamentary Corporate Body): A survey of building users in 2005 revealed that, of those who responded, only 20 per cent usually travel to the building by car, 35 per cent travel by public transport, 36 per cent walk, and only 4 per cent cycle. Although that is significantly more sustainable than the national average, the corporate body included in its environmental policy an objective to reduce the impact of travel to and from the Parliament. We have implemented a number of initiatives towards achieving that objective, including expanding the provision of cycling facilities, providing interest-free loans for bikes and public transport season tickets, and encouraging staff and members to use videoconferencing facilities.

We plan to repeat the travel to the Parliament survey within the next 12 months. The results will help us to determine whether it would be appropriate to implement personalised travel plans.

Des McNulty: The corporate body can perhaps learn from other organisations that have introduced personalised travel plans, particularly Greater Glasgow and Clyde NHS Board.

I suggest that the corporate body should consider whether it can encourage people who routinely use the car park to consider alternative methods of getting to the Parliament, particularly cycling and walking. I presume that a register is taken of the people who put their cars in the car park, so it should be relatively easy to identify those concerned.

Alex Johnstone: I assure the member that we have already increased the number of cycle spaces in the car park by 16 and the number of lockers by 20. We hope that the reduction in the number of spaces for cars to increase the number of spaces for cyclists will be the first step in making the move that he suggests.

Helen Eadie (Dunfermline East) (Lab): Will the corporate body give an assurance that it will not follow the example that the Scottish Government set with its policy of enriching Halfords by insisting that all its employees use Halfords, rather than supporting small businesses such as Sandy Wallace Cycles in Inverkeithing in my constituency? The matter was raised with me last night by a constituent who would prefer to support small businesses in Scotland.

Alex Johnstone: I am not in a position to give a detailed answer to that, but I fully agree with the spirit of the member's question. I will take the matter up and respond to her in due course.

Information Technology Systems

2. Patrick Harvie (Glasgow) (Green): To ask the Scottish Parliamentary Corporate Body what changes and improvements are planned to the Parliament's IT systems in the Holyrood complex and in constituency and regional offices. (S3O-6463)

Alex Johnstone (Scottish Parliamentary Corporate Body): Our budget for 2009-10 includes funding for several projects to improve the Parliament's information technology systems at Holyrood and in local offices. They include a desktop refresh project, under which our ageing desktop environment will be refreshed and updated to include the latest technologies, as well as improvements and updates to our network and business critical systems, such as our e-mail system.

Although those improvements are largely focused on Holyrood, they will also benefit users in local offices as they remotely access the same systems. Improvements that are directly focused on local offices include a technology refresh programme that will improve connectivity between Holyrood and local offices as well as a refresh of personal computers, software and remote access systems.

Patrick Harvie: I am sure that members of the SPCB are as aware as any other user of our IT systems of the difficulties that members, our staff and other system users experience not only with the painfully slow and unreliable system for connecting from remote offices, but increasingly on the Holyrood campus as well. It is difficult to establish even relatively simple improvements such as the provision of wi-fi. With wi-fi, the user plugs it in and it works. We seek such improvements to the systems here in the Parliament, but it seems to take for ever to make progress.

Does the SPCB agree that, rather than a plodding desktop refresh, what we need is to open up the system to allow users to use the software,

hardware and operating system of their choice, and to share data in secure areas of the internet rather than on the internal network? That would resolve all the problems at a stroke, and would probably save us a great deal of money into the bargain.

Alex Johnstone: The member knows from previous discussions that I agree with him in many respects and have, indeed, had the same difficulties in connecting to the system that many members have experienced. I assure him that in the next desktop refresh we will look at standardising the operating system, which will provide an opportunity for other software to be considered.

As far as wireless connectivity is concerned, public wireless access has been available in the Parliament since late 2008, with access points located in the press conference room and the garden lobby. Lessons learned from the public wireless access project will be used to inform future wireless strategy in the Holyrood building.

Scotland's Commissioner for Children and Young People

3. Karen Whitefield (Airdrie and Shotts) (Lab): To ask the Scottish Parliamentary Corporate Body, in light of its proposals for the reorganisation of SPCB-supported organisations, whether it can guarantee the continuation of the work carried out by the office of Scotland's Commissioner for Children and Young People. (S3O-6457)

Tom McCabe (Scottish Parliamentary Corporate Body): Any recommendations made to Parliament on the future structure of SPCB-supported organisations will be a matter for the Review of SPCB Supported Bodies Committee. In its submission to the committee, the SPCB has proposed a new rights body that would continue the functions that are currently undertaken by Scotland's Commissioner for Children and Young People and the Scottish Human Rights Commission. The SPCB has not proposed any diminution in the existing functions of either body.

Karen Whitefield: I am grateful to the minister—the member, I mean—for his answer and for pointing out the SPCB's view on this matter. However, are he and the other SPCB members aware of the concerns expressed by many children's and youth organisations about the proposed merger of the roles of the children's commissioner and the Scottish Human Rights Commission? Over the past few years, the children's commissioner has brought to the attention of the public—and, indeed, the Parliament—a number of issues relating to children and young people, including children

leaving care, the young people's health advisory group—

The Deputy Presiding Officer (Alasdair Morgan): Questions should be fairly brief.

Karen Whitefield: Does the member agree that such issues would not have been raised if we had not had the children's commissioner? Moreover, does he agree that the merger could dilute work being carried out on children's rights and that, if the proposal goes ahead, it will leave Scotland as the only part of the United Kingdom without a dedicated commissioner for children and young people?

Tom McCabe: I am grateful to the member for the albeit temporary promotion. It was nice for a few seconds.

I and the rest of the SPCB are very much aware of the concern that a number of bodies have expressed to the committee that is reviewing these matters. Indeed, we acknowledged that concern in our recent evidence to the committee.

However, as we have said, we believe that such concerns can be overcome. For example, we have suggested that, in the new legislation that would be necessary to establish the new body, provision could be made for a separate commissioner to deal specifically with children's issues. Another idea that is under consideration is to require each of the bodies to present to Parliament an annual strategic plan. It would then be up to us as parliamentarians to ensure that the plan specifically catered for children's needs and rights.

We obviously believe that our proposal has advantages, because otherwise we would not have made it. A new rights body, for example, could take a more holistic view of children's rights. In our recent evidence to the committee, we pointed out that although Scotland's Commissioner for Children and Young People can look at issues relating to the children of asylum seekers, she is at the moment unable to consider the whole picture, which would include the parents.

A new body would in principle also be capable of incorporating new rights-focused functions. Some people in Parliament hold the view that we should focus on the rights of other segments of society, and we feel that a new rights body could incorporate new functions without the need to establish new and separate bodies on each occasion.

Finally, I assure the Parliament that the SPCB has in no sense proposed a diminution in the children's commissioner's functions. After all, every SPCB member was party to the Parliament's decisions to establish the various commissions and commissioners. However, with

the benefit of hindsight, we feel that we might be able to organise these things better in the interests of the functions in question and the public purse.

Robert Brown (Glasgow) (LD): I accept that the corporate body has expertise in issues such as back-office functions and co-location, but will Mr McCabe advise the Parliament what expertise the corporate body claims to have in determining, or seeking to determine or advise on, the best way in which the functions of the bodies should be put together, given Parliament's decision to establish two free-standing bodies in the first place after detailed scrutiny by committees?

Tom McCabe: The corporate body has had a number of years' experience of supporting those bodies since they were established. The corporate body is made up of parliamentarians who bring their experience to that job, which they were given by the Parliament. They bring the same experience to those functions as they brought to the initial decision to establish the commissioners.

Videoconferencing (Committee Rooms)

4. David Stewart (Highlands and Islands) (Lab): To ask the Scottish Parliamentary Corporate Body what plans it has to equip all committee rooms for videoconferencing. (S3O-6461)

Alex Johnstone (Scottish Parliamentary Corporate Body): The current facilities, which include a dedicated videoconferencing suite and a portable unit that is based in committee room 1, have largely met the Parliament's requirements, and we have no current plans to equip all committee rooms for videoconferencing.

David Stewart: Will Mr Johnstone raise with the corporate body the opportunities that are provided by the next generation of videoconferencing technologies, which are known as telepresence systems—such systems are manufactured by Cisco Systems, among others—and which provide superior sound and vision, to enhance the broadcasting quality and provide members and the public with improved services?

Alex Johnstone: I thank the member for suggesting areas in which we might consider alternative technology. I assure him that staff in the Parliament continually review requirements and the technical capabilities of the available systems. At some point in the future, decisions might be made on the equipment and technology that will be used.

Equal Opportunities

5. Johann Lamont (Glasgow Pollok) (Lab): To ask the Scottish Parliamentary Corporate Body how it ensures that it complies with its equal opportunities responsibilities. (S3O-6462)

Mike Pringle (Scottish Parliamentary Corporate Body): The SPCB's commitment to equal opportunities is embedded across the organisation and has created a positive environment to work in and visit for staff, visitors and members of the public. Our approach to equal opportunities has always been to work beyond compliance and to make equality part of our day-to-day practice. The SPCB's equality framework sets out the strategy for achieving all our existing legal duties and goes further than we are obliged to. For example, the SPCB is not bound by the gender equality duty but, nevertheless, we developed a gender equality scheme and action plan when that legislation was introduced. That has led to a number of initiatives, including the appointment of more female officers in the security team; a new policy on domestic abuse; and the enhancement of family-friendly practices, including the new expectant mothers and parenting room and a mentoring scheme for staff on maternity and extended parental or adoption leave. However, we are conscious that more can always be done, and work is under way to enhance our services even further.

Johann Lamont: I thank the member for that comprehensive answer—I can scrub the first half of my follow-up question as a consequence. However, as well as meeting its responsibilities to staff, how does the corporate body ensure that an equalities approach informs its outreach work and services for visitors? For example, how does the corporate body test the education service to ensure that youngsters from beyond mainstream schools who would like to visit the Parliament are encouraged and supported to do so and that they have the same opportunities that many youngsters in our constituencies, fortunately for us, take up?

Mike Pringle: I almost explained that in my initial answer. I do not have the figures on the specific point about the education service, but I will speak to the officers concerned. The question is a good one, and it is worth exploring how we approach that. The Parliament is doing more and more to encourage visits—young people are coming into the public gallery as I speak. The Parliament and its officers are keen to encourage as many young people as possible from throughout Scotland to come to the Parliament. I will get back to the member with the specific information that she asks for.

Broadcasting

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is a statement on broadcasting by Michael Russell. The minister will take questions at the end of his statement and there should therefore be no interventions or interruptions.

14:35

The Minister for Culture, External Affairs and the Constitution (Michael Russell): It is now just over six months since the Scottish Broadcasting Commission published its final report, which was widely acclaimed for the independence of its thought, the thoroughness of its analysis and the practicality of its recommendations. At the outset, I offer my thanks to Blair Jenkins and his team for their extraordinary and hard work.

Since the report was published, much has happened in broadcasting and the wider world. The Office of Communications has published a United Kingdom-wide review of public service broadcasting; the UK Government has published "Digital Britain: The Interim Report", to which the Scottish Government responded last week; and, in a broader context, the economic environment in which broadcasting operates has, of course, been transformed since September. This is therefore an appropriate time to update the chamber on the Scottish Government's work in relation to broadcasting, particularly as, today, the Scottish Government is responding formally to the Scottish Broadcasting Commission's report.

The First Minister said in September last year that the Scottish Broadcasting Commission represented

"a blueprint for a revolution in Scottish broadcasting."—*[Official Report, 8 October 2008; c 11553.]*

The report contains 22 recommendations on increasing and improving the size and quality of our broadcasting industry. Its key recommendation, of course, is on the establishment of a Scottish digital network. I make it clear that the Government welcomes that recommendation unreservedly; indeed, it wholeheartedly accepts the report's recommendations.

The arguments for a digital network are compelling. We are entering a world where the public service broadcasting obligations of ITV and Scottish Television might no longer be commercially viable. Ofcom recognised that in January by limiting STV's requirement for public service broadcasting, other than news, to 1.5 hours a week. Furthermore, in some form or another, it looks likely that Channel 4 will provide the basis of public service broadcasting competition to the BBC at a UK level. Channel 4

currently produces virtually no content specifically for Scotland. I shall return to that point.

Without radical action, there will be no significant competition to the BBC for public service broadcasting content for Scotland. That is unacceptable. Our chief aim in developing the recommendations in the Scottish Broadcasting Commission report is to secure choice in quality public service broadcasting for Scotland, not just in news, but in documentaries, arts, drama and comedy.

Given that Scotland does not have any devolved powers in relation to broadcasting, we cannot achieve that goal by ourselves. The Scottish Government responded last week to the UK Government's "Digital Britain" interim report, and on 9 March I had a useful and positive meeting with Stephen Carter, the UK Government's Parliamentary Under-Secretary of State for Communications, Technology and Broadcasting.

It is clear that the unanimity of opinion expressed by the Scottish Parliament in October when it endorsed the network has been noticed. It is also clear that both Ofcom and the UK Government recognise the strong desirability of choice in public service broadcasting for Scotland. For example, in the House of Lords debate on Scottish broadcasting last month, Stephen Carter said that recognising the importance of

"having news and content that reflects the nation's sense of itself"

is

"one of the things that we are seeing as a catch-up after the devolution agreements".

The Scottish Government agrees with that view. Furthermore, we believe that a digital network offers the best way of ensuring a choice of content that, as Stephen Carter put it,

"reflects the nation's sense of itself."—*[Official Report, House of Lords, 25 February 2009; Vol 708, c 283.]*

We recognise that the ultimate prize we seek—a secure and sustainable alternative public service broadcasting voice for Scotland—is valued by all shades of political opinion in Scotland. I want to make it absolutely clear that the Scottish Government will engage constructively with the UK Government and others on proposals. To achieve that aim I am open to working with everyone in this chamber and with many others, including Westminster members of Parliament, in pressing the case.

In addition to the cultural and democratic importance of broadcasting, its economic significance is even greater in the current climate than it was last September. Broadcasting can be a major driver of growth within the creative industries, which are one of the priority areas set

out in the Government's economic strategy and which are also a vital part of our plans for creative Scotland.

It is useful to remember the original reason for establishing the Scottish Broadcasting Commission, which lies in the shocking fact that in 2006 major UK broadcasters made only 2.6 per cent of their network programmes in Scotland—half the figure of a few years previously. Simply by subjecting that decline to detailed public scrutiny, the Broadcasting Commission performed a great service, which might already be starting to bear fruit.

In the past few months there have been some very welcome announcements from both Channel 4 and the BBC. The BBC had already made it clear in late 2007 that it intended to produce at least 8.6 per cent of network programmes in Scotland by 2016 at the latest. On 15 October last year, it announced implementation plans to start to make that happen. I discussed those plans earlier this week with the controller of BBC Scotland and told him that the Government intends to keep a very close eye on the BBC's progress on the matter—and I meant it.

Channel 4 has not set a target for production in Scotland, but it has acknowledged that, so far, Scotland, along with Wales and Northern Ireland, has not benefited much from its quotas for production out of London. On 20 January this year, Channel 4 announced that it would establish a commissioning editor in Scotland and would ensure that a proportion of programmes in all its key programming strands would be made by companies that are based in Scotland, Wales and Northern Ireland. Channel 4 has also established a commissioning hub in Scotland for its digital media innovation fund.

Those of us who are slightly long in the tooth—I include Mr Brocklebank in that, given his experience in broadcasting—might say that all this is a little late in the day, given Channel 4's 26 years in existence. Even now, Channel 4's current commitments in Scotland do not come close to the 8.6 per cent target set by the Broadcasting Commission, and we will therefore continue to press Channel 4 on the issue. Similarly, we want the BBC to meet its production targets by 2012, rather than by 2016—I made that clear to the controller on Monday. Both broadcasters can and should do more, more quickly, and a major role for all politicians is to keep attention focused on the issue.

Production statistics for major broadcasters are released by Ofcom annually. If it becomes clear that broadcasters are still failing in their duty to commission programmes from across the UK, we should all expect them to explain why.

The promised increase in demand for programmes made in Scotland, together with the prospect of a digital network, presents a major opportunity for Scotland's economy and its independent production sector. As independent producers, they must show imagination and energy—as independent producers always do—to take advantage of the opportunity that exists, and I am sure that they are doing so. However, there is also a role for the public sector to improve skills, provide co-ordinated economic support and demonstrate leadership within the sector.

Today, Scottish Enterprise is publishing its economic strategy for the broadcasting sector. The document makes clear the scale of the economic opportunity that the broadcasting industry in Scotland faces: there is the potential for it almost to double in size in the next three or four years, which would bring direct and indirect benefits to the Scottish economy of approximately £200 million each year. The strategy, which I see as a starting point for Scottish Enterprise's involvement in the sector, rather than an end result, sets out how Scottish Enterprise will engage with the production sector so that it can remove barriers to growth for the industry in Scotland.

On skills development, the Scottish Further and Higher Education Funding Council announced last month that it was making £5.8 million of funding available over five years for skills development in the creative industries. Of course, that funding is not solely for broadcasting, but, among other things, it will help to fund an additional 40 postgraduate places in broadcasting each year.

My colleague the Cabinet Secretary for Education and Lifelong Learning, Fiona Hyslop, announced last month that there would be an additional 50 modern apprenticeships in the creative industries in 2009-10. That will help us to address skills needs across the sector, to ensure that our future workforce is geared up for the challenges and opportunities that it will face.

The framework agreement for the creative industries, which was published last month, outlined how creative Scotland plans to work with enterprise companies, local authorities and the business gateway to develop the creative industries. Councillor Harry McGuigan of the Convention of Scottish Local Authorities and I will jointly chair an independent short-life group to drive the agreement forward.

Between them, our skills bodies, enterprise companies and creative Scotland have made a good start in ensuring that the broadcasting industry will have access to the skills, support and leadership that it needs in order to prosper, but of course more has to be done. The actions that I have outlined are a first step.

The final point that I want to make is that a thriving broadcasting sector in Scotland would have a cultural and economic impact both in Scotland and beyond Scotland's borders. That impact could have economic benefits through the export of programmes and through making online content available commercially to users abroad. It would also be culturally significant.

At present, Scots and other people who are interested in Scotland—of whom there are many—might not have ready access to news and programmes about Scotland. For example, people who live in England can find it hard to gain access to Scottish news. The availability of a digital network would allow people throughout the UK to watch Scottish programmes if they wanted to do so. The network's online presence could provide people throughout the world with a source of high-quality information and programming from Scotland. The network would help to explain the wider world to Scotland and Scotland to the wider world.

The Scottish Parliament and all of us are central to taking those issues forward. As I said, there is little doubt that the views that were expressed here on 8 October have been heard beyond Scotland. The debate on STV in December, which Ted Brocklebank sponsored, was also a welcome sign of Parliament's concern about the subject.

I hope that the Parliament will take an active interest in the topic, and I intend to report to Parliament later this year on the progress that has been made. I hope that Parliament will actively influence opinion in and furth of Scotland to make the case for a new network in a compelling, persuasive and inclusive fashion.

It is right that the Parliament should have a regular opportunity to scrutinise and speak on the issue, since the goal towards which we are working is important. To demonstrate that, I will conclude on an undoubted success story—the establishment of BBC Alba. BBC Alba was set up to meet a clear need for a specialist Gaelic-language channel. It is now achieving impressive viewing figures each week, despite being available only on satellite. I was particularly delighted that it has been nominated for seven awards at next week's 30th Celtic media festival, which I hope to attend as a minister and as the event's founder.

BBC Alba shows clearly that there is an appetite in Scotland for high-quality programmes that—to borrow an elegant and useful phrase from the Scottish Broadcasting Commission's chair—are distinctively Scottish, but not relentlessly Scottish. Alas, that appetite is not being met by public service broadcasting in Scotland, but it needs to be, if viewers in Scotland and beyond are to have the choice that they deserve.

That is why the Scottish Government will continue to work openly, constructively and tirelessly with the Parliament, the UK Government and others to deliver the Scottish Broadcasting Commission's recommendations. We know that doing so will boost our economy, enrich our culture and strengthen our democracy.

The Deputy Presiding Officer: The minister will now take questions on the issues that his statement raised. I will allow up to 20 minutes for questions.

Pauline McNeill (Glasgow Kelvin) (Lab): I welcome again the recommendations of the Broadcasting Commission's report "Platform for Success". I confess that I thought that the Government had already responded to the report, which we have debated many times.

I note that today's statement placed much emphasis on the recommendation that a Scottish digital channel should be created. Labour has supported, and continues to support, the creation of such a channel. We want genuine and constructive dialogue with our colleagues in the Scotland Office and in Westminster in order to achieve that.

Given the challenges that face public service broadcasting in general, and the specific challenges that face our Scottish channel, STV, will the Scottish Government give priority to protecting our existing public services and to resolving the funding issues? Does the minister agree that a special focus on what STV is trying to achieve for Scottish viewers would be helpful to broadcasting in Scotland? Does he also agree that it would be far better to extend the STV franchise to cover the ITV Border area, which would give viewers in the Borders the local news that they deserve?

Funding for the digital channel is a key question that I would like the minister to address. What is the Government's position on funding? Where should it come from? What will be the Government's contribution to costs? The minister has assured us that the Government will not take its usual stance of blaming the Westminster Government for not coughing up; I would not mind hearing further reassurance on that in his answer.

Finally, I will deal with skills and development and creative Scotland's role. It is unfortunate that creative Scotland is an idea that is collapsing around the Government's ears. Last week, a significant player from Scottish Screen resigned. I do not think that the industry has a great deal of confidence in the Government's current handling of the body, to which the minister referred in his statement. Can broadcasters really hope that the body will look after their interests? Can the minister say precisely what skills and resources he

will bring to creative Scotland—a body that he says will be crucial?

The Deputy Presiding Officer: The member must conclude.

Pauline McNeill: Ken Macintosh and David Whitton will also press the minister on these questions.

Michael Russell: Pauline McNeill's question is detailed, so I will try to roll it up from the bottom. I do not recognise the image of creative Scotland that the member presented. I noted the resignation of Iain Smith—

Iain Smith (North East Fife) (LD): It was not me.

Michael Russell: I was referring to the Iain Smith who has a Hollywood reputation, as opposed to the Iain Smith who is sitting next to me, who does not—although he has a reputation in Fife.

I noted Iain Smith's resignation and would have been happy to speak to him before he resigned. I remain happy to speak to him and am actively seeking an opportunity to do so. Creative Scotland is not an idea that is collapsing around us but an idea whose time has come—it will be delivered. I am working hard with Creative Scotland 2009 Ltd and the existing organisations to deliver it and shall have more to say on the matter in the future. As I have said today, creative Scotland will have a role in skills development.

Funding is a serious issue for the proposed new network. However, legislative responsibility for broadcasting lies south of the border, so I suspect that funding responsibility also lies there; that is the reality of money and political power. I would be happy to discuss with the relevant ministers south of the border ways—of which there are a number—in which they might be able to provide the resources that are required.

At the moment, the issue is not money, but the willingness to accept the principle that there should be a Scottish digital network; my discussion with Stephen Carter about our response to "Digital Britain: The Interim Report" centred on that issue. We can look at the ways in which resources can be applied to a Scottish digital network after the principle has been accepted, especially because of the timescale. It needs to be acknowledged in the discussion that it is unlikely that money will be spent on the project before the next spending review period. It may also be possible to link the resources that are being applied to developing the production base in the BBC, and the proposed increase in production by Channel 4, to spending to develop a funding base for the new network. There are synergies.

My penultimate point is that I accept entirely Pauline McNeill's comments on the needs of viewers in the Borders. I oppose strongly the development that has taken place, with news moving to Tyne Tees. That is nonsensical and does not serve viewers in the south of Scotland, especially the Borders and Dumfriesshire. A better solution should be sought—the solution that the member suggested is certainly better than the one we have. ITV has got the matter utterly wrong, and the Office of Communications was wrong to allow the proposal to go ahead. Alas, however, it has.

I will end on a positive note by reversing what we heard in the question. I welcome the Labour Party's support for the proposed new network, which will become a reality only if we all work together. I will work in any way I can with the Labour Party, the Liberals, the Conservatives, the Scottish Green Party, Margo MacDonald, the UK Government—through the Scotland Office and other departments—MPs at Westminster, the House of Lords, members of the European Parliament and everyone else who can help us to convince the UK Government that it is right to establish a Scottish digital network. I look to Pauline McNeill to offer such opportunities, so that I can prove that I mean what I say.

Ted Brocklebank (Mid Scotland and Fife) (Con): I thank the minister for making available an advance copy of his statement, which includes much with which I agree. Does he agree that a Scottish digital channel, which was first proposed by the Scottish Conservatives, was adopted by the Scottish Broadcasting Commission as its flagship policy, and is broadly supported by Parliament, is now the settled will of the Scottish Parliament? Does he also agree that it is vital for that settled will to be maintained and acknowledged by the Labour Westminster Government and the minister with responsibility for broadcasting, Lord Carter, who is apparently still to be fully convinced of the case for the new digital network?

It may be difficult in the present economic and political climate for Westminster to write a £75 million annual cheque to fund the new digital channel for Scotland. I note in that connection that, in response to the recent Ofcom report, Lord Carter stated

"that additional expenditure might be difficult to justify in current circumstances".

Does the minister agree that substantial private sector funding, on the basis that has been outlined by the Scottish Conservatives, is still most likely to deliver the new channel? Does he agree that the model could also provide the platform and core schedule for a raft of local or city TV companies, in line with the Conservatives' national broadcasting policy?

Michael Russell: I am happy to accept many of the ideas that Mr Brocklebank has advanced, not as being writ in stone or as guidelines for what the new channel might achieve, but as part of the debate on how the channel should proceed. If Mr Brocklebank wishes the plan to be seen as the settled will of the unionist parties, it is probably better for it to be seen as that, rather than as a nationalist plot. If that is how he wishes to present it, I am happy to have it presented in that way. To return to the point that I made in response to Pauline McNeill, we need to show our ability to work together, in and outside the Parliament, so that we can persuade the UK Government of our case.

Ted Brocklebank raised funding issues. I do not wish to be drawn into that again, but if there has in the past been an imbalance in respect of investment in television in Scotland—as I think Mr Brocklebank would accept—the establishment of the new channel might be seen as balancing the debate, through the investment that will be made over time. Broadcasters are very fond of balancing things over a period, as Mr Whitton knows. The investment will be large in Scottish terms, but in terms of the totality of the licence fee, it is a very small investment. If one were to tot up the licence fee that has been raised in Scotland during these past 15 to 20 years, the investment would represent a miniscule amount in comparison.

There are all sorts of ways to approach that sum of money, but in doing so let us fight for acceptance of the principle that we should have the new channel as being the way forward. Then, let us have a detailed debate—which will take some time—about how we will structure the channel, how it will operate and even about the vexed question of where it will be based, which will take considerable effort.

I am with Mr Brocklebank on many of the points that he made, but they are points that can be resolved later. Let us all fight for the principle.

Iain Smith: Following Mr Russell's earlier comments, I was reminded of waking up in Sierra Leone the year before last to hear the headline "Ian Smith dies in Africa".

I thank the minister for the advance copy of his statement. There was little in it on which there would be disagreement in Parliament, and I particularly welcome the comments on investing in skills in the broadcasting sector. I also look forward to studying Scottish Enterprise's "Economic Development Strategy for Scotland's Broadcast Sector". We welcome the commitment of the BBC and Channel 4 to do more to produce programmes in Scotland, but they must be programmes that are genuinely produced using Scottish production skills, staff and facilities, and not just programmes that are made by people

jetting in so that programmes can be badged "Made in Scotland".

The minister is right that the chief aim must be to secure a choice of high-quality public service broadcasting for Scotland, but what was lacking from his statement was any form of road-map on how we are to reach the ultimate prize of the Scottish digital network. Does the minister agree that, before we can reach that ultimate prize, we must ensure the survival of our existing broadcasting industry? Will he therefore urge Ofcom and the UK Government to do more to help to develop for the Scottish channel 3 a sustainable model that will allow STV to compete on fair terms for ITV commissions, taking into account the retrenchment of ITV plc into London? If Ofcom does not require ITV to produce any of its programmes outwith London, let alone here in Scotland, will the minister at least encourage Ofcom to allow STV to compete for some of the 25 per cent share of programming that is required from independent producers?

Michael Russell: Mr Smith raised a number of good points. One of them, however, was not: the demand for a road-map for achieving the channel. Believe me, Presiding Officer—if I had such a road-map, I would not be hiding it, but distributing it in the chamber. There is no road-map, but there is an opportunity for a united campaign. I make that point again to ensure that the Liberal Democrats will be part of that campaign, as Mr Smith is indicating they will.

The issues around channel 3 are interesting. I do not believe that channel 3 is an alternative to the digital network. It is important to understand that we are talking about two different creatures. The digital network is a public service broadcaster to balance what is taking place and to create new opportunities. STV exists—the Scottish channel 3 exists. The difficulty in which the Scottish channel 3 finds itself is in moving from one model of broadcasting to another. We have to give opportunities to the many creative people—albeit that there are somewhat fewer of them than there used to be—who still work in STV and who need opportunities to access the pot of money that should be providing production opportunities throughout these islands, although the funding seems to be applied in a very restrictive way. I want people to access that money and I want the commitment to local programming—which still exists in the licences, although it is much reduced—to continue.

When we talk about the digital network, we are talking about something different—something that is much fuller and more varied and that might, as Mr Brocklebank said, grow into the type of city and local television about which there has been a great deal of debate and which is part of the new

infrastructure of broadcasting. Channel 3 will have a place in that infrastructure—a regional channel 3 might well have a place, although that is not yet certain—but it is not the alternative. If we start to describe it as the alternative, we will lose the real prize, which is the digital network. Let us keep our eyes on the real prize, while not forgetting the opportunities and difficulties that exist in relation to channel 3.

The Deputy Presiding Officer: I allowed front benchers some latitude; I now ask for brief questions and commensurate answers.

Alasdair Allan (Western Isles) (SNP): It is clear from what the minister and the Scottish Broadcasting Commission have said that there is untapped potential for broadcasting activity in Scotland. Will the minister say more about how he envisages broadcasting activity being part of the work of creative Scotland?

Michael Russell: It is clear that there is a skills issue for creative Scotland. That needs to be recognised. It is clear that there is an interface between what one might call the art of film production and the people who, quite rightly, treat film production as an art form, and people who work in the broadcasting sector, just as there is—historically, there always has been—an interface with people who work in the advertising sector. There are lots of interfaces. A key issue for creative Scotland will be the organisation's role in developing skills—there are other key issues. I have much sympathy with the view that we should provide opportunities for broad film training in Scotland, which would also train people in excellence in television.

David Whitton (Strathkelvin and Bearsden) (Lab): Like the minister, I think that skills are one of the secrets to our success. Does he share my disappointment that it has taken Scottish Enterprise three months beyond the date that the Scottish Broadcasting Commission set for it to come up with its strategy? Scottish Enterprise said that the number of jobs in the sector could double to 5,700. With that in mind, does the minister think that it is enough to offer 40 postgraduate places and 50 extra modern apprenticeships? Will he undertake to speak to his colleagues the Cabinet Secretary for Finance and Sustainable Growth and the Cabinet Secretary for Education and Lifelong Learning, to secure more money to create more such opportunities, which will lead to the jobs of the future?

Michael Russell: Those opportunities represent a start, not a conclusion, as I said in my statement. Like Mr Whitton, I think that it is important to create opportunities for people to acquire skills. I want those opportunities to continue to grow. There are always financial difficulties, and I am sure that Mr Whitton does not want to be one of

those Labour members who constantly call for more money and uncosted commitments.

I absolutely believe that we must show that there are opportunities for individuals to enter and continue in broadcasting in Scotland. As Mr Whitton and Mr Brocklebank know—and as I know from another perspective—it is unfortunate that the way in which the established and operating mainstream broadcasters in Scotland were able to bring people in and train them on real wages, rather than exploit them, is now sadly missed in Scotland. We would love such opportunities to exist again.

Kenneth Gibson (Cunninghame North) (SNP): The minister talked about the need for quality broadcasting; Pauline McNeill and David Whitton talked about funding. Given that £180 million of the £320 million that is raised each year in Scotland from the licence fee heads south to subsidise BBC London, what discussions does the minister plan to have with the BBC and Lord Carter, to ensure that the bulk of that money is retained in Scotland, to boost production of more and better-quality programming and to support the establishment of a new £75 million digital TV channel?

Michael Russell: As ever, Mr Gibson makes a good and combative point. I have argued the same point in the past. In my meeting with the controller of BBC Scotland this week I touched on the imbalance in relation to the licence fee in Scotland. If £320 million is the figure, as I believe it is, only a proportion of that money would be used for the new channel. Indeed, over 10 years the proportion would be very small.

I am keen that we keep our eye on the prize and are able to argue for the new network in a way that looks forward, not back. I hope that all members will contribute to that argument. Given Mr Gibson's skill as the most formidable campaigner in the Scottish National Party, I am sure that he can be a formidable campaigner for Scotland on the issue.

Ken Macintosh (Eastwood) (Lab): We were doing well on unity until Mr Gibson contributed.

I note the publication earlier today of Scottish Enterprise's strategy on broadcasting, to which the minister referred. The strategy talks about a major expansion in the industry, but points out that progress can be made only if funding can be secured for the new digital channel. Why has the minister not referred once to funding in his response to the Scottish Broadcasting Commission? Does he seriously believe that the unity in Parliament on a new digital channel can persevere if there is no financial contribution from the Scottish Government?

Michael Russell: It is slightly amiss of Mr Macintosh to accuse Mr Gibson of threatening

unity and then to do exactly the same, so let us try to draw ourselves together and re-establish unity. I will make the point about funding that I made some moments ago. If Mr Macintosh missed it, I ask him to allow me to make it again—

Ken Macintosh: The minister said that it is someone else's responsibility.

Michael Russell: If I may, Presiding Officer, I will make the point in a spirit of unity. The legislative power lies south of the border; therefore, the funding responsibility lies south of the border. If Mr Macintosh would like to go further than the Scottish Broadcasting Commission and support the repatriation of broadcasting legislation to Scotland along with the funding that goes with it, I will be a happy man. However, as I am sure he will not do so, let us find a way of working together on the matter.

I discussed funding with Stephen Carter and acknowledged that the issue will concern the United Kingdom Government. A number of solutions have been proposed already. One involves the licence fee and another is the allocation of revenue from spectrum sell, but both have some difficulties.

It is extremely important that we campaign for the principle of a new digital channel. In so doing, we will need to have a constructive discussion about funding among all the bodies that are involved.

I also said that a number of issues have not been taken into account on funding. For example, the channel would build the production base in Scotland, which would undoubtedly have an impact on the work that the BBC intends to do on building the production base in Glasgow. It would also have an impact on the commissioning that Channel 4 intends to do in Scotland. There may be synergy between those three that has not yet been fully recognised. If we have the opportunity, we might find that our resources go to one part of that triptych, which might usefully be the channel itself.

I say that to Mr Macintosh in order to indicate that I am engaged with funding issues. There is a detailed discussion to be had, and I would like to have it as part of the combined campaign to establish the channel. However, if Mr Macintosh wants to settle the funding issue as a prerequisite before we have the campaign, that will be unfortunate.

The Deputy Presiding Officer: We will move on to the next item of business. I apologise to the member whom I was unable to call.

Offences (Aggravation by Prejudice) (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is a debate on motion S3M-3694, in the name of Patrick Harvie, on the Offences (Aggravation by Prejudice) (Scotland) Bill.

15:08

Patrick Harvie (Glasgow) (Green): I am delighted to open the debate. When opening a debate on a member's bill, it is usual for the member in charge to begin with thanks to the lead committee for its work and for a positive report. I am certainly happy to offer those thanks, but wider thanks are needed in this case, as the bill is the result of a great deal of work over years by many people outside Parliament, some of whom have joined us in the gallery.

I pay tribute to the organisations that contributed to the working group on hate crime and which have campaigned since then to have its key recommendation accepted. I also thank the people who were willing to talk in Parliament and in the media about their experiences of being on the receiving end of hate crime. Their first-hand accounts have helped to build the majority that I hope will enable the bill to progress today.

Thanks are also due to the Scottish Government for agreeing to support the proposal through the handout bill process and to the bill team, which has helped me to reach this stage today. I also thank the 45 members who added their names in support of the proposal to enable it to reach stage 1.

I mentioned the working group on hate crime that was established by the previous Administration, but the issue is older than that. Under the Crime and Disorder Act 1998, the Westminster Parliament required that the aggravation of an offence by racial prejudice should be taken into account in sentencing. That was the first time a statutory basis was given to the use of aggravation as a means of addressing hate crime. After that, Donald Gorrie extended the concept—he was successful in amending the Criminal Justice (Scotland) Bill that was passed during the Parliament's first session—by using the same mechanism to address religious prejudice. At that time, my colleague Robin Harper made a similar attempt to include prejudice on other grounds, including sexual orientation and disability. Robin Harper's amendments were not accepted by the Government at that time, but they led to the working group on hate crime.

It is perhaps a little frustrating that it is only now, seven years later, that Parliament will have the opportunity to vote on a proposal to implement the working group's key recommendation, but there we are—such things sometimes move slowly. There have been delays, but I am hopeful that we will reach agreement tonight that a mechanism that is an important part of Scotland's response to crimes of prejudice should be extended to additional categories.

What is the evidence of the extent of the problem that the bill seeks to address? I acknowledge that one reason why we need legislation to provide a statutory basis for such aggravations is to build up a clearer set of data—a clearer picture—on the issues, although we know that the problems exist and are significant. In 2008, the charity Scope published a report that found that 47 per cent of disabled people in the UK had either experienced physical abuse or had witnessed physical abuse of a disabled friend.

The report also stated that

“disabled people were four times more likely to be violently assaulted than non-disabled people”

and that

“visually impaired people were four times more likely to be verbally and physically abused than sighted people.”

It also pointed out that

“people with mental health issues were 11 times more likely to be victimised”.

In 2003, a survey of lesbian, gay, bisexual and transgender people in Scotland found that 23 per cent had been physically assaulted because of their sexual orientation or transgender identity. According to a survey by the Scottish transgender alliance, 21 per cent of transgender people have experienced violent or sexual assault that was motivated by prejudice towards them.

We also know—increasingly, Scottish police forces are responding to this with real concern—that many people simply do not report such crimes to the police. Perhaps people fear being outed, do not expect a supportive response or cannot be bothered with the hassle. Perhaps people have simply come to believe that such offences are to be expected and should be accepted as a normal part of their lives.

Such crimes can have a profound impact on people's quality of life. If we leave aside serious violent offences, experiences of persistent low-level harassment, intimidation, vandalism and threats can be deeply demoralising and can come to reinforce an internalised prejudice that can leave many people believing that they are not worthy of the protection of the law. This Parliament should disagree—I hope that it will do so tonight.

In addition, we should consider the stress and emotional toll that many disabled people and transgender people deal with in engaging day to day with public institutions, which hold a great deal of power over the most intimate aspects of their lives and identities. In association with such experiences, hate crimes represent a level of harm that Parliament should not ignore.

The arguments in favour of the bill are clear. If we compare its provisions with the existing race and religion aggravations, we see a picture of a mechanism that is working effectively. I have not heard a single call—I doubt that any credible voice would do so—for abolition of the existing aggravations on race and religion. That leaves us with the long-standing question: if that is the right mechanism for those types of hate crime, why is it the wrong mechanism for other comparable types of hate crime? There is general agreement that the current aggravations are working and can be effectively used by the courts.

Such aggravations also help to ensure that we can find out the extent of the problem. In that context, I mention Bill Butler's recent written question, through which he was able to get from the Government information about the number of religious aggravation convictions in each procurator fiscal area. We are not able to find out the number of offences that are aggravated by prejudice because that information is simply not recorded, which is partly why we need to make aggravation by prejudice a statutory aggravation and why there should be a duty on courts to record their reasons for varying, or not varying, particular sentences.

The additional categories of aggravation with which the bill deals have been in place in England and Wales since 2003, and in Northern Ireland since 2004, with the exception of aggravation on the basis of transgender identity, on which I hope very much the other parts of the United Kingdom will catch up with us.

The creation of a new statutory aggravation will help the police and the courts to develop an approach that will encourage offences to be reported and will build confidence among members of the affected communities to increase reporting. It will also ensure that we pass appropriate sentences and that we build up a national picture of the extent of the problems, which will help us to make the most appropriate and most effective sentencing response.

Some people have argued that the flexibility that is inherent in the common law is sufficient to deal with the offences in question. In theory, it allows sentences to be varied, but in practice it is not used nearly enough. It is clear that there is less focus on the offences that we are discussing than there is on those that are defined in legislation.

Moreover, there are things that the common law cannot do. I repeat that if we record the number of such aggravations and build up a national picture, police forces will be able to gather intelligence that they can use to prevent future offences, which is far preferable to merely responding to offences.

An inconsistent approach is adopted to different types of hate crime. Many police forces want to respond coherently and consistently to the various manifestations of hate crime and would prefer the legislation to be consistent.

Some people have argued that the bill will create a hierarchy of victims or of rights, but even those who might once have argued that straight, white, able-bodied men would be left as an unprotected group in law have now come to reflect on their position and to recognise that that was an inappropriate response. Everyone has the right to be protected by the law—that will continue to be the case. However, we know that some sections of society are specifically targeted and made victims of crime. The bill is about adopting the appropriate response, given the motivation of the offender. It is about the motivation of the offender rather than the identity of the victim.

The bill will extend protection to anyone in society against whom an offence is committed because of their actual or presumed sexual orientation, transgender identity or disability. A hierarchy of rights exists in the minds of some people who commit such offences and who believe that their prejudice is justified and that their victims deserve what they get. The bill is about tackling and overturning that hierarchy.

It has been suggested that the new aggravation could be used maliciously, but it can be argued that the potential for misuse of it should not be a bar to legislating. We would not, simply on the basis that some people might be accused of it falsely, refuse to create a criminal offence if we thought that a phenomenon was real and was harmful. It is for the courts to determine whether the aggravation should stand and the sentence should be varied.

The witnesses from the Law Society of Scotland who explored some of the issues said that the existing statutory aggravations on race and religion are effective and useful, and that the introduction of new categories of aggravation would be beneficial. The Association of Chief Police Officers in Scotland told the Justice Committee that it was not aware of any cases of false accusations relating to the aggravation of offences by racial or religious prejudice. It is a question of the appropriate and effective application of the law; any potential for misuse of the new aggravation should not be a bar to our passing the bill. Ultimately, it will be for the courts to make a decision on that.

Some people have argued that the bill raises an issue to do with freedom of speech. The Christian Institute said that the bill

“could give gay rights groups a legal mechanism for targeting those who disagree with them. It could undermine free speech and religious liberty”,

but it could not give a single example from south of the border of the misuse of such mechanisms leading to inappropriate convictions. I agree that those objections are not serious, which was the conclusion of the committee’s report.

The bill is not a magic wand. It will not, in itself, spell an end to crimes of hatred against many in our society. I hope, however, that the bill will, combined with the other actions that the Government is taking to tackle prejudice in all its forms, help to mark the beginning of the end of the days when people felt that there was nothing they could do and that prejudice and hate crime were simply things that they should expect and accept.

I am happy to move,

That the Parliament agrees to the general principles of the Offences (Aggravation by Prejudice) (Scotland) Bill.

15:20

The Cabinet Secretary for Justice (Kenny MacAskill): I am pleased to reiterate the Scottish Government’s support for Patrick Harvie’s bill. I concur in his thanks and tributes to individuals who have campaigned for the issue to be dealt with and legislated on. I am pleased, too, that the Justice Committee recommended in its stage 1 report that the general principles of the bill be agreed to. It is encouraging that the committee has recognised that it is appropriate to create the statutory aggravations in the bill.

As part of our manifesto commitment to working towards a safer, stronger Scotland, we promised to carry out the recommendation of the working group on hate crime and introduce these aggravations. We were therefore happy to have the opportunity to support Mr Harvie’s bill and to co-operate with him to take it forward, as we are doing today.

People—whoever they are, whatever disability they are afflicted by and whatever sexual orientation they possess—are entitled to the full protection of the law, to be treated with dignity and compassion, and to be fully and properly protected.

We aim to improve the way in which crimes motivated by hatred are dealt with. The aggravations that are created by the bill will protect victims of crime who have been targeted as a result of their sexual orientation, transgender identity or disability—actual or presumed. We need to remember that, as Patrick Harvie said,

that does happen—far too often, frankly. That is why action is needed.

If a crime has been committed and it can be shown that the motivation was hostility and ill will based on the victim's sexual orientation, transgender identity or disability, the sentence should reflect that. As Patrick Harvie commented, that is already the case for crimes motivated by a victim's race or religion.

The bill does not create any new offences. Hate crime can include harassment, property damage, violence and, in extreme cases, murder. The aggravations can therefore apply to any crime or offence. The bill is simply a reflection of our belief about the view that we, as a society, should take on the basis of the aggravation added to the offence perpetrated.

Evidence that was presented to the Justice Committee by organisations such as the Equality and Human Rights Commission expressed clear and strong support for the use of statutory aggravations in the case of hate crime. Not only do statutory aggravations help to underline the seriousness with which hate crime is viewed, they help to ensure a consistent approach from law enforcement and criminal justice agencies. The Justice Committee considered that matter in some detail and examined the arguments for and against the creation of statutory aggravations.

Similar aggravations that are already in place for racially and religiously aggravated offences have been shown to serve a number of purposes: they ensure that, throughout Scotland, there are appropriate and consistent reporting and prosecution policies from the various agencies in the criminal justice system; they send a clear message that prejudice and hatred towards social groups as a motive for committing a crime are unacceptable and will not be tolerated; and they allow us to monitor the extent of such crimes in Scotland and tailor our approaches to tackling them.

The bill will ensure that an aggravation must be acknowledged and taken into account at the point of sentence. It will be clear to the offender at the point of sentence how seriously the aggravated nature of an offence is viewed.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): How will the Scottish Government monitor the number of offences that are treated as aggravations under the bill? How will that information be recorded and gathered, and how will the Scottish Government learn from it?

Kenny MacAskill: These matters are dealt with and recorded in a variety of ways. We have the Scottish Court Service and the Crown Office and Procurator Fiscal Service, and we are building on what we already do. As Patrick Harvie said, we

already have information on the existing aggravations in relation to race and religion and, quite correctly, we record information when we have a significant social problem such as assaults on emergency workers. The systems exist, and the Government will ensure that such matters are taken into account. The impact on the sentence will be a matter for the discretion of the judge, but the existence of the aggravation will require to be recorded at all stages in the criminal justice system. That will enable Government and practitioners to build up a much more accurate picture of the extent of such crimes in Scotland.

Both the Crown Office and the police, in their evidence to the committee, acknowledged the value of more accurate knowledge and a better understanding of hate crimes, and the value of giving the victims of the crimes more of a voice in the criminal justice system. We believe that this type of crime is substantially underreported in Scotland. That is shameful, but one of the aims of the bill is to tackle the phenomenon. We wish to encourage people who have experienced hate crime to come forward, confident that they will be taken seriously and that the crime that has been committed against them will be dealt with appropriately.

The working group found evidence of some social groups being proportionately more often the victims of harassment and crime. Much of that is motivated by prejudice against those groups. Research that was commissioned by the Disability Rights Commission in 2004 showed that 47 per cent of disabled Scots had experienced hate crime because of their disability. Research that was undertaken by the beyond barriers project in 2002—Patrick Harvie commented on similar projects—showed that 23 per cent of LGBT people in Scotland had been physically assaulted as a result of their sexual orientation or transgender status. The evidence shows clearly that LGBT and disabled people are much more likely to be the victims of crime—and, too often, crime that is motivated by prejudice against them.

The Justice Committee discussed the fact that our courts can, and do, take into account a wide range of factors when sentencing offenders. Why then focus on hate crime? Hate crime has a destructive effect not just on victims but on whole communities. As the working group discovered, hate crime not only causes greater damage to a victim than crimes that are not motivated by hatred but is socially divisive. Hate crime damages communities. It prevents people from engaging fully in their social and working lives. Hate crime demands a priority response because of its particular emotional and psychological impact on the victim and the victim's community. The damage that hate crime causes cannot be measured solely in terms of physical injury or cost.

Such incidents can damage the fabric of our society and can fragment our communities.

These are hard times for businesses and families, and we need to move forward as a nation. We need a vision of a more successful country—a country that will tackle crimes motivated by hatred or prejudice.

No one in Scotland should be targeted or victimised because of their sexual orientation, transgender identity or disability. Our clear aim is to prevent and deter crimes, but where crime does happen, it will not be tolerated. We want a Scotland where all are treated with dignity and respect. The Government is committed to tackling inequality and creating strong communities. The bill is part of the work that we and many others are doing to help to create a Scotland in which people can live alongside one another, respecting difference and celebrating diversity.

Patrick Harvie is correct to say that the common law is good and has served us well. However, it will be important to take account of aggravations and try to drive attitudinal change.

I thank the Justice Committee for its report, and I thank the Equal Opportunities Committee for its consideration of the scope of the legislation. I congratulate Patrick Harvie on bringing the bill so far. The Government looks forward to it making continued progress. We will give it our full support.

15:29

Bill Aitken (Glasgow) (Con): I rise to submit the Justice Committee's report on the Offences (Aggravation by Prejudice) (Scotland) Bill. After following sundry parliamentary procedures, the committee called for evidence and received written submissions from 25 individuals and organisations. Those submissions were, largely, supportive of the proposed legislation, apart from two caveats, to which I shall come later.

The committee took oral evidence from 18 witnesses over a three-week period in January. Those witnesses were from equalities groups and groups that work with those suffering from disability. We also heard from the police, the Crown Office and Procurator Fiscal Service, Scottish Government officials, the Law Society of Scotland and Patrick Harvie, the proposer of the bill. On behalf of the committee, I thank all the witnesses for giving their evidence, which they invariably did in a reasoned, courteous and moderate manner, which greatly assisted the committee in the preparation of the report.

The committee's view was, of course, that offences—it is usually assaults that we are talking about in this connection—that are perpetrated against individuals because of their actual or

presumed sexual orientation or disability are totally unacceptable. Those convicted of such crimes should be left in no doubt that the courts take a more serious view of those crimes, as we expect them to. In fairness, at the moment, there is little evidence to suggest that they do not.

However, as Patrick Harvie said earlier, there was evidence to suggest that offences of the type that the bill is concerned with are sometimes not reported. It is a valid argument that, by legislating, we will ensure that those who are the victims of this type of crime will be encouraged to report the crime to the police.

At the moment, there is no statistical base for estimating the prevalence of this type of offence. That is another justification for legislating. Crimes are simply recorded as a breach of the peace, an assault, a serious assault or whatever and there are no statistics to indicate the number of crimes that are committed in respect of the prejudices to which the bill refers. Of course, there is a general point to be made about unreported crime, but that is perhaps a debate for another day.

It is important to remember that, as the committee's report stresses, sentencing is a matter that is entirely for the judiciary. Indeed, in paragraphs 76 and 84, the committee agrees that the court should continue to exercise its discretion on whether to impose a greater or, indeed, a different sentence, based on the facts and circumstances of each individual case.

As has been recognised in earlier debates, sentencing is a complex matter and requires not only the severity of the offence and the offender's record, or lack thereof, to be borne in mind but whether the circumstances of the case merit the matter being dealt with in a different way from what would be usual in such instances.

There was some interesting evidence from the Equality Network, Enable Scotland and the Scottish Association for Mental Health. Their thinking was that community sentences could be tailored to break down the prejudice that was the basis of the offence. Patrick Harvie stated that, in some situations, that would be appropriate and that the legislation would, perhaps, encourage sentencers down that route in appropriate cases. Once again, however, the committee has recognised that it is for the court to decide the sentence in relation to these offences, as, indeed, it is in relation to all offences. However, it encourages the Scottish Government to work within the system to ensure that disposals of that type are available where that is practical or desirable.

The committee examined in some depth the contrary arguments. One of those arguments was freedom of speech. We took the view that, in light

of the fact that, currently, in order to substantiate and prove a crime of breach of the peace, the Crown has to demonstrate that alarm would have been experienced by a reasonable person in the prevalent circumstances, the bill will not prejudice freedom of speech.

I come now to the two caveats that emerged from our consideration. The first comes under the dreaded statute of the law of unintended consequences. At present, the matters that the bill is concerned with are dealt with under common law, and the committee acknowledges the flexibility of the status quo, and the possible problems that the proposed change might cause the police and the Crown.

The other argument against was encapsulated in the evidence of the Scottish Police Federation, which pointed out the danger that the bill might create a "hierarchy of victim", although it recognised that the provisions are an extension of existing statutory aggravations. Nonetheless, its point cannot be overlooked and the committee was mindful of it. We recognised the principled nature of the concern but, having considered all the evidence, which was generally in favour of the bill, and all the arguments, we agreed on balance to take the view that the bill should proceed.

15:35

Paul Martin (Glasgow Springburn) (Lab): I congratulate Patrick Harvie on the progress that he has made so far on the bill. Members who are progressing a member's bill, or who have completed that process, appreciate the hard work and commitment that are required to progress a bill through the Parliament.

At decision time, Labour members will support the motion in Patrick Harvie's name,

"That the Parliament agrees to the general principles of the Offences (Aggravation by Prejudice) (Scotland) Bill."

Most of those who gave evidence to the Justice Committee were genuinely supportive of the aims of the bill and were clear on its provisions and what it would achieve. I will highlight some of the issues that were raised in the stage 1 process. The committee recognised that the common-law system allows courts to take account of aggravating factors in determining sentences. However, a number of witnesses told us that the common law cannot send a clear message that such hate crimes are unacceptable in Scotland. The general feeling was that having a statutory aggravation will address the motivation behind such crimes.

On balance, Labour members are content that the statutory aggravations should be created. We need to ensure that we take every possible step to send out a clear message to those who commit

crimes of hatred because of an individual's presumed sexual orientation, transgender identity or disability.

The bill contains no provision for mandatory sentences. Many witnesses made the case that an appropriate response was the way forward and that the judiciary should have discretion in sentencing. Although I accept the right of the judiciary to have discretion in sentencing, I believe that we need to monitor carefully the effectiveness of sentencing policy in dealing with those who commit hate crimes. The Parliament needs to acknowledge the unacceptable fact that some individuals react only to the possibility of a prison sentence. Patrick Harvie has to take that into consideration and he may want to address it in his closing speech.

Although the community sentencing disposals to which Tim Hopkins referred in his evidence can be considered as a serious alternative to prison, I am not convinced that they are always appropriate sentencing options for the perpetrators of the crimes that were described to the committee.

The bill requires that, in recording a conviction that contains an aggravation relating to disability, sexual orientation or transgender identity, the court must do so in a manner that shows that the offence was motivated by prejudice on one of those grounds. The step is to be welcomed, but I would have expected such information to be recorded at present, although we heard evidence about the difficulties of recording such crimes. On a positive note, Superintendent David Stewart told the committee that recording these statutory aggravations will give police forces baseline figures to work from and allow them to target resources. That is a positive step in the right direction.

There can be no doubt that training plays a crucial role in raising awareness of legislation. As we have heard on many occasions in the chamber, it is important for new legislation to be implemented consistently and robustly. In this case, additional resources may be required. I would welcome a commitment from the minister in his closing speech that resources will be provided to the relevant agencies.

There is no point in passing the bill if crimes are not reported, so we must ensure that victims are given respect and proper consideration. In its written submission, the Royal National Institute for Deaf People Scotland stated:

"deaf and hard of hearing people are even less likely to report crimes against them because some find it difficult to access police services. For example, police stations may struggle to find interpreters at short notice when deaf people who use BSL as a first language want to report a crime. As a young deaf man who tried to report a crime at his local police station recalls: 'I had to wait for an

interpreter at the police station from 4.30pm to 10pm and in the end, I was tired.”

If people are to be convinced that they should report crimes and that they will be taken seriously, we must ensure that an action plan is in place to deal with such experiences.

I call on the Parliament to support the motion.

15:41

Gavin Brown (Lothians) (Con): The Scottish Conservatives agree with the general principles of the Offences (Aggravation by Prejudice) (Scotland) Bill and we will vote for it at decision time. We agree with the Justice Committee's conclusion that it is appropriate to create new statutory aggravations to protect victims of crime who are targeted as a result of hatred of their actual or presumed sexual orientation, transgender identity or disability.

The debate that took up most of the committee's time at stage 1 of the bill was whether there should be a statutory aggravation or whether we can rely on the common law. A couple of other speakers have already made the point that one of the strengths of the common law in Scotland is its flexibility to adapt to circumstances that arise. To an extent, therefore, it already allows aggravating factors to be taken into account. However, the committee heard persuasive evidence that a statutory aggravation would improve the current position. There are three reasons for that.

First, the common law is not being used in practice. In its evidence to the committee, the Equality Network said:

“It is theoretically possible to deal with the kind of aggravations that we are concerned with under the common law, but that is not happening. Nobody has reported to us that an offence against them has been dealt with in that way.”—[*Official Report, Justice Committee*, 13 January 2009; c 1484.]

A similar point was made by Capability Scotland, which said:

“We have spoken to lots of disabled people about their experiences, and we are not aware of any cases of aggravated crimes being prosecuted. Although the common law is available, it is perhaps not being used in a way that really deals with the issue.”—[*Official Report, Justice Committee*, 13 January 2009; c 1499.]

The common law exists, but it is clear from the evidence that was presented that it is not being used in practice to deal with the issue.

The second reason why a statutory aggravation is helpful and required is that it will send out a clear message and direction to society at large, and particularly to those people to whom it needs to be sent out. The Association of Chief Police Officers in Scotland stated in its written submission:

“The successful introduction and approval of such a bill will increase the public perception and awareness of prejudice/hate crime in addition to the racist and religiously motivated issues which are at the forefront of such crimes.”

The third reason, which is not an argument in itself but is helpful, is that the bill will create consistency with the remainder of the United Kingdom. It will bring into play laws that are similar to ones that are already in place in England and Wales and Northern Ireland. On that point, ACPOS stated:

“Similar legislation currently exists in England, Wales and Northern Ireland, therefore in terms of progression under the direction of the Scottish Government this overt enhancement of our approach would be a welcome addition to the Scottish Police Service in line with the rest of the UK.”

There are clear benefits in having the statutory aggravation, and I can see why the Justice Committee reached its conclusion.

As members have already pointed out, the bill has a number of other benefits, particularly with regard to the reporting of crimes. As statistics that have already been highlighted demonstrate, there is a general perception that this type of crime is underreported. I believe that all types of crime are underreported, but I think that a specific case can be made in this respect.

It is bad news for any crime to go underreported, so I hope that the bill will encourage victims to come forward. After all, that is their only hope of achieving justice. I add in passing that I hope that victims of this type of crime do not feel that they have to wait until stage 3 or the bill's enactment to come forward. Even though the bill's provisions are not yet in force, I hope that even this stage 1 debate will encourage people to do so.

Another very serious issue is the recording of crime, and sections 1(5) and 2(5) make the recording of the aggravation a statutory duty. The fact is that we need accurate recording from the initial reporting of the offence through prosecution and conviction to sentencing. As Bill Aitken made clear, these crimes are reported simply as breaches of the peace or assaults, without any reference to the hate element of the crime. After all, we can deal with a problem effectively only when we know its full extent.

Of course, certain areas require further consideration. Bill Aitken, for example, talked about the possibility of creating a hierarchy of victims and mentioned the law of unintended consequences. No doubt the committee will examine those points in more detail.

It could also be argued that we need a more realistic financial memorandum. The Scottish Prison Service and the Scottish Police Federation, for example, expressed concern about the current memorandum's statement that

"The effect may be a slight upward pressure on the prison population."

We need to hear more from ministers on that point.

That said, we agree with the Justice Committee's conclusions and will vote for the bill's general principles at decision time.

15:47

Robert Brown (Glasgow) (LD): The Liberal Democrats support the bill's general principles. After all, its aim was a Liberal Democrat manifesto commitment for this session of Parliament, and we are pleased that it has been taken forward. In that respect, we thank Patrick Harvie for preparing and progressing the bill, which, as others have mentioned, must have put a considerable burden on him.

Although the bill is modest—it has only three sections—it will help to improve and standardise the reporting of crimes aggravated by prejudice against disabled people and the LGBT community; to focus the attention of the police, the prosecuting authorities and the courts on the issue and possible solutions to it; and, in consequence, to improve rates of reporting and people's confidence in the criminal justice system. Like Gavin Brown, I hope that more people will come forward to report such crimes.

It might be an obvious starting point, but the Universal Declaration of Human Rights and various other international treaties oblige signatory states, including the UK, to treat everyone with equal dignity and respect and to ensure that they can enjoy their human rights free from discrimination, including on the basis of disability, sexual orientation or gender identity. It is clear, however, that some people in our society have fewer human rights than they should have. The Cabinet Secretary for Justice illustrated very well the general divisive effects of hate crimes on society, while Patrick Harvie highlighted the various surveys that have been carried out and detailed the abuse, threats and physical assault that disabled and LGBT people have experienced. The fact that the level of such crimes is well above the level for the general population is one of the rationales behind the bill. People with mental health or learning support issues are particularly and peculiarly vulnerable in this respect.

As the Law Society of Scotland has pointed out, the courts may currently take account of aggravating circumstances in a flexible way, as indeed can the Crown Office and Procurator Fiscal Service in determining the charge and forum for prosecution. There is no particular evidence one way or the other that, when faced with a homophobic or disablist crime, the courts do not

treat that element as aggravation, but there is no satisfactory recording at present. That is an important background consideration to the bill.

Important information as to the frequency and outcomes of such prosecutions is difficult to pin down, and it is unclear whether the police or prosecutors in individual cases always bring out the aggravating features clearly. The obligations that the bill will place on those people will assist in that regard. As Andrew McIntyre from the Crown Office and Procurator Fiscal Service told the committee,

"the impact of the aggravating factor on the court's handling of the case, particularly on sentencing, will be clear."—*[Official Report, Justice Committee, 27 January 2009; c 1556.]*

He also pointed out that the bill will provide a much clearer framework in which to operate and more clarity on what is expected from the police and the prosecution.

It is important to realise that the bill sits on top of existing crimes: it creates no new crimes and prescribes no new penalties. The aggravation—unlike the principal offence but like present common law aggravations—will not require corroboration, although sufficient credible evidence will be required to satisfy the court as to the truth of an allegation. The committee recognised that, as with any crime, false allegations might arise, but argued that it will be up to prosecutors and courts to determine their legitimacy. That was the balanced conclusion that we arrived at.

It is important to be clear about the effect of a proven aggravation. There has been discussion both today and in the committee about the fact that, with serious crimes, the aggravation might well add to the length of a prison sentence but, as many witnesses and Patrick Harvie said, for more minor offences the appropriate response might be a community sentence that could impact on the reasons for the offender's ill will towards someone from one of the specified groups. Either way, the bill sends a firm message and is part of the wider range of measures that are needed to undermine and eliminate homophobic crime or crime against disabled people.

As several members have said, rather than take action after crimes are committed, we would prefer to avoid such crimes and the culture that supports them in the first place. Norman Dunning of Enable Scotland told the committee that one of the best ways to tackle the bullying of young people with learning disabilities is to let the offender see them as real people and hear what their lives are like and to start breaking down the barriers and prejudice.

Charlie McMillan of the Scottish Association for Mental Health talked about the relationships between discrimination, prejudice, anger and hatred, and about change. We all know from meeting people who are in institutions or who face the criminal justice system just how much anger and hatred there is. That is one of the difficulties and challenges with which we must deal, and our ability to effect change is central.

Tim Hopkins of the Equality Network, who as always gave impressive evidence, talked about addressing the underlying prejudice that causes people to commit such crimes. We already know about those issues from considering the race and sectarian legislation and programmes. The insights that have come from the operation of that legislation in Scotland and throughout the United Kingdom will help in understanding the best ways to tackle some of the challenges.

I began by saying that the bill is modest but, for all that, it is important. It is part of the progress towards a more enlightened, liberal and tolerant society in which everyone is regarded as an individual with his or her rights and talents and as someone who enhances and enriches our world. I hope that the day will come when specific legislation such as that proposed in the bill is redundant. Sadly, that day is not yet with us, so accordingly the Liberal Democrats support the general principles of the Offences (Aggravation by Prejudice) (Scotland) Bill.

15:53

Linda Fabiani (Central Scotland) (SNP): It is good to hear so much consensus, but we have that because the issue is straightforward. It was correct that offences that are motivated by racial prejudice were recognised in the Crime and Disorder Act 1998; it was correct that, in 2003, the Parliament agreed to introduce a statutory aggravation for crimes that are motivated by religious prejudice; it was correct for the Parliament, at the same time, to consider Robin Harper's amendment that related to disability, sexual orientation, gender and age; and it is absolutely correct for the Parliament to agree to the principles of the Offences (Aggravation by Prejudice) (Scotland) Bill.

I commend Patrick Harvie for his work on the subject and the Cabinet Secretary for Justice and the Government for their commitment and the assistance that they have given. Just as no one in Scotland should be targeted or victimised because of their race or religion, no one in Scotland should be targeted because of their sexual orientation, transgender identity or disability. The proposals will mean that the divisive and scarring crimes that we are talking about are taken more seriously by the justice system and by society more generally.

That is a very positive message to send out, and it should lead to more effective deterrence. It will also bring us into line with the rest of the UK, which dealt with the matter in 2003.

As has been said already, the bill does not propose any new offence; instead a new statutory aggravation will be applied to any crime of motivation by "malice and ill-will" on the ground of the victim's actual or presumed disability, sexual orientation or transgender identity, in parallel with existing statutory aggravations of motivation by "malice and ill-will" on the ground of the victim's actual or presumed race or religion. The perpetrator will be guilty of an aggravated offence and the court will have to take that into account when deciding a sentence.

It is important to remember that the aggravation is based on the motivation of the accused, not the identity of the victim. That will send out a strong message and introduce greater consistency. Like others, I hope that it will encourage more victims of such crime to report offences because of the clear message that society recognises the abhorrence of the motivation behind them. It will ensure the recording of the levels of such crimes, which is crucial for any nation that believes in parity of esteem and respect for all whose actions do not harm others.

Figures provided by Inclusion Scotland show that people with disability are four times more likely to be violently assaulted than people without disability and almost twice as likely to be burgled. The organisation states that visually impaired people are four times more likely to be verbally and physically abused than sighted people. People with mental health issues are 11 times more likely to be victimised and 90 per cent of adults with a learning difficulty report being bullied.

Some people are sceptical of such figures but, whether or not there is doubt about them, one instance of abuse is too many and once is enough for a message to be sent out. The motive of such crimes can be to take advantage of a victim's vulnerability or their being a bit different. If it is about easy targeting and perceiving people as weak, it is about preying on the vulnerable, which is just not acceptable.

Some people think that introducing legislation is unnecessary and that society should consider other ways of dealing with the problem, such as taking action at the other end. The two options are not mutually exclusive, and work goes on at both ends across society. I commend cultural and arts organisations for the action that they take, such as Lung Ha's Theatre Company in Edinburgh, which has long worked with adults with learning difficulties. Many members have attended their plays, which have portrayed the difficulties of living with learning difficulties and shown how people

are bullied, both institutionally and by society in general. More great work is done by Theatre Nemo in East Kilbride, which deals with mental health issues in the health service and justice system. The work that we do is two-pronged, and we have to look at the issues from both sides.

The National AIDS Trust wrote to us all. It has a particular interest in section 1(8) of the bill about the definition of disability, which includes any

“condition which has (or may have) a substantial or long-term effect”,

such as HIV/AIDS. Stigma and discrimination are a distressing and dangerous reality for many people who live with HIV. One in three people with HIV has experienced discrimination linked to their HIV positive status. Again, it is very important that we take measures to show everyone that that is not acceptable.

The bill has a journey to make through stages 2 and 3, and changes might come its way, but in general I am content that it moves us in the right direction. The ultimate aim of us all is to get to the point where people are accepted with no prejudice and no law is needed to enforce that principle. We are not there yet, so I support absolutely the bill.

15:59

Bill Butler (Glasgow Anniesland) (Lab): I support the motion in the name of our colleague Patrick Harvie on the Offences (Aggravation by Prejudice) (Scotland) Bill, and I congratulate the member on the progress that he has made thus far.

As deputy convener of the Justice Committee, I put on record my thanks to the committee clerking team and the Scottish Parliament information centre for their exemplary support. I also thank the witnesses who gave evidence to the committee.

As colleagues will be aware, the aim of the bill is to create new statutory aggravations to protect victims of crime who are targeted as a result of hatred of their actual or presumed sexual orientation, gender identity or disability. Members will also be aware that similar statutory aggravations already exist to protect individuals and groups who are targeted on racial or religious grounds.

Those of us who served in previous sessions of the Parliament will recall that a former colleague, Donald Gorrie, moved an amendment to the Criminal Justice (Scotland) Bill in 2002 to make provision for the statutory aggravation of an offence as a result of religious prejudice. Mr Gorrie's amendment was agreed to and became section 74 of the Criminal Justice (Scotland) Act 2003, which was a good reform. Although Robin Harper's amendment to that bill was not accepted

by the then Minister for Justice, Jim Wallace, an amendment similar to the objective of the bill under discussion today led to the setting up of the working group on hate crime in June 2003, whose first recommendation of 14 was the general thrust of Mr Harvie's bill. I am genuinely pleased that we have arrived at a point where all the Justice Committee members agree in principle to the policy intention of the bill. I suspect that Parliament will agree at 5 o'clock.

The cabinet secretary was correct when he said in response to a parliamentary question from Mr Harvie some time ago:

“No one in Scotland should be targeted or victimised because of their sexual orientation, transgender identity or disability. Our clear aim is to prevent and deter crimes but where crime does happen ... it will not be tolerated.”—*[Official Report, Written Answers, 15 January 2008; S3W-8323.]*

Scottish Labour whole-heartedly supports that vision of a tolerant, inclusive, equal Scotland.

In the time remaining, I will touch on two or three specific issues that arise from the bill. First, I will outline some of the benefits that the bill, if enacted, will offer all the groups prescribed by it. It will mean that the hate crime laws that offer protection to ethnic minorities and religious groups are extended to the LGBT community and to those who are disabled. It will mean that an approach that has proved successful in tackling racist and sectarian hate crime is naturally extended.

That way of dealing with such offences has not only proved useful in individual cases but focused police attention on the problem. There is no reason to think that that way of proceeding will be any less successful in supporting and protecting the LGBT community and the disabled. Such an increased focus will mean that appropriate recording of such offences will be undertaken, which we hope will lead to a greater level of confidence in the criminal justice system among those sections of society.

As the committee's report concludes at paragraph 93:

“The Committee recognises that under the common law the recording of offences committed against victims who are targeted as a result of hatred of their actual or presumed sexual orientation, transgender identity or disability is not sufficiently robust.”

That is why I believe that the committee was correct when it welcomed

“the provisions in the Bill that will ensure the accurate recording of aggravated offences from the initial reporting of an offence through to prosecution, conviction and eventual sentence.”

I know that the Parliament is not under this misapprehension, but no one out there should be under any misapprehension: the problem is

significant. As the Scottish Association for Mental Health stated in its briefing:

“A survey in 2004 found that 47% of disabled people had experienced hate crime because of their disability, with 31% of those reporting that they suffered verbal abuse, intimidation or physical attacks at least once a month.”

If one of the effects of the bill is to focus police attention on the problem, that will be a welcome advance.

A related matter raised by the Law Society of Scotland in its letter to members of 17 March points to a possible gap in respect of one aspect of the bill: the ability to ensure that

“the outcome of the legislation is monitored.”

Mr Alan McCreadie, deputy director of law reform for the society, suggests that to improve the legislation’s effectiveness monitoring must be improved and that one way to do that is to

“assign crime codes to aggravations. Currently, only offences themselves are given crime codes.”

It is argued that, if such a procedure were put in place, monitoring the use of aggravations and the rate of successful prosecutions would be easier. I do not know whether a stage 2 amendment would be required to achieve that, but I intend to pursue the suggestion in whatever way is appropriate.

The Law Society’s second concern—the need to ensure that the diversity training that is offered to police officers and police staff is up to date—is a related matter that might require further exploration.

The Justice Committee felt—rightly—that, on balance, it is appropriate to create new statutory aggravations to protect victims of crime who are targeted as a result of hatred of their actual or presumed sexual orientation, transgender identity or disability. The Scottish Labour Party agrees with the committee’s conclusion and will support the bill at 5 o’clock. The bill is a focused reform that will help the Parliament’s drive to create a modern, inclusive and tolerant Scotland—a Scotland of equals.

16:06

Hugh O’Donnell (Central Scotland) (LD): I am happy to make a small contribution to the stage 1 debate on the bill. It would be remiss of me not to mention the role of the former member Donald Gorrie in a previous session of Parliament, particularly as he was my employer at the time.

The bill lays down yet another marker that discrimination is unacceptable in this country of ours, although—like other members—I fully recognise that we have a long way to go before we can confidently say that Scotland is free from discrimination.

My small role in the bill’s progress at stage 1 involved my membership of the Equal Opportunities Committee. I thank the members of the public and of organisations who gave the committee oral and written evidence as part of our consideration of the bill. My comments are personal views and not those of the committee.

Patrick Harvie must be congratulated on keeping the issue on the agenda and moving forward, notwithstanding the failure of Robin Harper’s original proposals. I hope that, with the Parliament’s support, the bill will continue to progress through the various stages.

Much of the Equal Opportunities Committee’s debate in its evidence sessions hinged on the range of perspectives about what the bill should and should not include. We discussed at length whether it should be adjusted to include a gender aggravation—given the scale of violence against women, that was a legitimate and valuable use of the committee’s time.

It was clear from the evidence that opinions were mixed, even among organisations that represent women who are victims of violence. Women’s groups told us that they had changed their collective position that a gender aggravation would develop the legislative framework for tackling domestic abuse. They opposed such a provision because it might not be appropriate given the complexities of the motivations behind domestic violence.

We also learned in taking evidence that the Equality and Human Rights Commission would shortly—it might now have begun to do so—gather research on criminal justice reactions to gender-based crime and violence, primarily against women. Evidence shows that the specific domestic abuse legislation that is in place throughout Europe and the wider world has been reasonably successful in highlighting what some argue—legitimately—is an aspect of discrimination. I would like to hear whether the Government has any plans in that area.

The other broad area on which the Equal Opportunities Committee took evidence was age. Once again, the committee was faced with diverse perspectives. On balance, we believed that the weight of evidence was not sufficient to support the inclusion of age in the framework of Patrick Harvie’s bill.

In concluding my brief contribution, I again thank and congratulate Patrick Harvie. As Robert Brown said, the Liberal Democrats will support the bill at stage 1. I look forward to some of the issues that have been raised during today’s debate being addressed more fully at stage 2 and give a personal commitment to support the bill today.

16:11

Anne McLaughlin (Glasgow) (SNP): I congratulate Patrick Harvie on introducing the bill, which provides us with the opportunity to give vulnerable groups in Scotland the same protection and safeguards that they enjoy in our neighbouring countries of Northern Ireland, Wales and England. More important, as Robert Brown mentioned, the bill will bring us into line with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, both of which prohibit discrimination against people on the basis of disability, sexual orientation and gender identity.

I wish Patrick Harvie a happy birthday. As a Sunday newspaper has already nicknamed me Mystic McLaughlin, I thought that I would look at what the true owner of that trademark had to say about the member's fortunes today. Mystic Meg's words of wisdom for Patrick are as follows:

"The Moon focuses on your community chart, helping you bring out the best in people."

So far, so good. However, she slips up when she tells the member to

"Be tactful when your ideas are smarter than the boss's."

That is where it all falls apart—as we know, there are no bosses in the Green party, only co-bosses.

I doubt that many of us would argue with the first part of what Mystic Meg had to say. I am delighted by the consensual nature of today's debate, which is bringing out the best in members. That is not before time, as the issue should have been resolved by the previous Administration when Robin Harper moved an amendment to the Criminal Justice (Scotland) Bill six years ago.

As we have heard, the purpose of the bill is to protect the rights of people who are targeted because of their sexual orientation—or presumed sexual orientation—transgender status or physical or mental disability, or because they are living with certain medical conditions, such as HIV or cancer. If, in 2009, someone is afraid of being who they are simply because part of being them means being homosexual, they are not being afforded equal treatment in our country. For someone to grow up knowing that they have been born in the wrong body must cause more soul searching and stress than most of us can imagine. If they then have the courage to go through gender reassignment, they deserve our admiration and support, not our scorn.

The bill is not about harmless banter. We all know the difference between banter and abuse, and it is up to us to give clear guidance to those who do not. The bill will do that. It is not about harmless banter but about physical attacks and real emotional abuse. We all know the saying,

"Sticks and stones may break my bones but names will never harm me." As a child, I always thought that that was nonsense, because it is. If name calling is aggressive and abusive and targets the core of someone's identity, the effects can be dramatic—no more so than for the group on which I wish to focus.

Being a victim of crime is an horrific experience for anyone, but the consequences for someone who suffers from a mental health problem are potentially extremely damaging. The Disability Rights Commission and Capability Scotland published a report on hate crimes against people because of disability. I hope that all members were as horrified as I was to read that 47 per cent of the people who were questioned believed that they had experienced a crime because of their disability. The people participating in the research were broken down by type of disability. One of the most commonly abused and attacked groups was people with mental health problems. SAMH reports that if people are targeted because of a mental health problem, it results in the victims experiencing further isolation, greater stigmatisation and yet more alienation, which often worsens their condition. I applaud the work of mental health organisations such as SAMH, and the see me campaign in particular.

I do not need an organisation to tell me about the damage that we as a society do to people struggling to manage a mental health problem, however. I have first-hand experience from a number of angles and this is a subject that is extremely important to me. I am sure that, at some stage in my parliamentary life, I will share some of those experiences with members. I will not do that today, but I can tell the Parliament that I will work tirelessly, for as long as it takes, to tackle our attitudes to people with mental health problems, to break down barriers and to remove, once and for all, the stigma of something that will affect one in four of us at some stage in our lives—that is 32 and a bit of the members of this Parliament. The bill will not do that on its own, but it sets a standard and, from that basis, we must start to tackle society's attitudes towards all the groups that are mentioned in the bill. That starts with educating our children, many of whom will inevitably fit into one or more of those groups at some point in their lives. I hope that we can consider that in more detail in the near future.

The bill will not only offer protection to individuals, but create a better and fairer society. That, after all, is why we are all here. There are currently no robust statistics around the type of crime that the bill is concerned with but, as we have heard, the research that is being carried out by disability and LGBT organisations clearly demonstrates a problem that needs to be tackled.

As Patrick Harvie said, the bill is not a magic wand, but it sets a standard. It gives us a basis on which to build. It sends a clear message to the perpetrators of these crimes that verbal and physical attacks on people because of their disability, sexual orientation or transgender status will no longer be tolerated. More important, it sends that very same message to the victims.

The bill is a good start—a late one, but a good start nonetheless—as long as we remember that there is more to be done. I look forward to working with all my colleagues in this consensual chamber and with the organisations that have contributed so much to the bill to ensure that it gets through.

16:17

Marlyn Glen (North East Scotland) (Lab): I am pleased to speak in support of the general principles of the Offences (Aggravation by Prejudice) (Scotland) Bill at stage 1. I hope that the bill will signal that Scottish society takes seriously and condemns incidents motivated by malice and prejudice, and that it will help to put an end to fear of attacks among the minority groups that it covers. The bill at last brings Scotland into line with the rest of the UK, and it begins to meet the requirements of article 7 of the Universal Declaration of Human Rights, on equality before the law.

The bill is short, and it largely mirrors the existing race and religion aggravation provisions. Groups such as the Equality Network recognise and applaud the definitions of disability, sexual orientation and transgender identity as having been well and inclusively drafted. As we have heard, the new statutory aggravations in the bill will be applied to existing offences, which will encourage consistency and transparency. The bill will focus the attention of the police on the problem, and they will ensure proper recording and monitoring. I welcome the changes to the systems that will allow that.

Hate crime can have a major impact on its victims' lives. It can force people to change their habits and even to move their homes. The number of disabled people who have suffered verbal abuse, intimidation and physical attacks is truly shocking. We should be ashamed of the statistics that have been quoted in the briefings that were supplied to us by Amnesty International, Inclusion Scotland and SAMH, the mental health charity. A disproportionate number of disabled people are assaulted, abused, bullied and victimised. That is unacceptable for all victims. For people with mental health problems, the resulting loss of confidence and alienation can seriously exacerbate their condition.

There is a need to build the confidence of both disabled and LGBT people in order to address the problem of underreporting. I await comment from the minister on how that will be developed.

The bill will implement recommendation 1 of the previous Executive's hate crime working group. I welcome the extension of the existing hate crime provisions, and I look forward to the cabinet secretary and the minister presenting proposals to implement the working group's remaining 13 recommendations. The bill implements only the first of three recommendations for legislation; a further seven recommendations were for the criminal justice agencies and a further four related to other areas.

As Hugh O'Donnell, who is a fellow member of the Equal Opportunities Committee, said, the committee took evidence on the bill and concluded that this is not the time to extend the protection in the bill to cover age or gender. However, in its report to the Justice Committee the committee recommended that the bill be amended to

"include a delegated power provision that would allow protection to be extended to other groups by statutory instrument if evidence emerged that such groups would benefit from the measures being proposed in the Bill."

The committee went on to say:

"there should be an element of parliamentary scrutiny and ... the best way to achieve this would be to specify that any statutory instrument introduced under this delegated power must be subject to affirmative procedure, which would allow committee examination and parliamentary approval."

Engender, Scottish Women's Aid and Rape Crisis Scotland all agreed that such an approach would be useful and would allow a discussion on the most workable options.

I accept that there are difficulties with the approach, but I draw members' attention to other recommendations of the working group on hate crime and to the evidence that the Equal Opportunities Committee received. The reasons that have been given for not wanting an amendment on gender seem to stem from a profound distrust of the legal system and the system's inherent sexism, and from a realisation that the problem of men's violence towards women is so vast that such an amendment might add complexity rather than help.

In evidence, the witness from Engender said:

"The gender duty itself offers the opportunity to demand good-quality gender-disaggregated data across the board on conviction rates and on reporting at all levels. The gender duty can be a powerful instrument because many of the problems that we face are about institutional sexism in the criminal justice system and at societal level."—[*Official Report, Equal Opportunities Committee*, 4 November 2008; c 697.]

We should act to improve the situation as soon as possible, instead of waiting for challenges to be made under the gender duty.

There is a call for a root-and-branch review of our systems. The Equal Opportunities Committee urged the Justice Committee to consider:

“how a domestic abuse aggravation might be framed in legislation and how it could work in practice, by examining the New Zealand Domestic Violence Act 1996;

the merits of introducing an incitement to hatred offence against women in relation to, for example, how pornography might be linked to sexual violence;

whether to recommend to the Scottish Government that the chief statistician undertake work on gender crimes data; and

using EHRC-commissioned research and any other relevant research on gender-based crime.”

In time, I would welcome a considered response from the minister on those issues. For now, I am pleased to support the bill at stage 1, with the caveat that this is just a start and a great deal remains to be done.

16:23

Mike Pringle (Edinburgh South) (LD): The bill is perhaps the shortest that I have seen since I was elected in 2003, but it is important and I congratulate Patrick Harvie on introducing it and the Scottish Government on accepting it. As Paul Martin and Robert Brown said, any member who has introduced a member's bill knows how much work and effort are required to do so.

The process was started in 2003 by the then Minister for Justice, Jim Wallace, who established a working group on hate crime, to consider the most appropriate measures to combat crime that is based on hatred of particular social groups. I was pleased that Patrick Harvie gave the working group the credit that it deserved. The group, which reported in 2004, defined hate crime as:

“Crime motivated by malice or ill-will towards a social group.”

It went on to say:

“Research consistently shows that some social groups are proportionately more often victims of harassment and crime and that much of this is motivated by prejudice against those groups.”

Individuals who have a mental health problem or a disability, or who are gay or transsexual, are significantly more likely to face abuse, threats or violence simply because of who they are. That is completely unacceptable in today's Scotland, as Bill Aitken and other members said.

I think that I am the only MSP who is registered disabled, but I confess that I have never been targeted or victimised because of my disability—at least, not recently. At school, many of my fellow

pupils called me “peg leg” but I did not worry too much about it then. On the other hand, many disabled people are often discriminated against. Linda Fabiani expressed well in her speech how varied disabilities can be and Marlyn Glen told us vividly how often such discrimination happens.

Scotland is currently alone in the UK in not having legislation on sexual orientation hate crime so the bill, which addresses hate crimes relating to sexual orientation and disability, is of the utmost importance. However, it is important that the Parliament focuses not only on legislating, but on working to create a cultural shift towards a more tolerant and accepting society. We must tackle the root causes of people's motivation for committing hate crimes. Issues such as drug and alcohol addiction, mental health problems and poor education must be addressed to prevent people from committing such crimes in the first place.

In 2008, “Homophobic hate crime: The Gay British Crime Survey” found that one lesbian or gay person in five in Britain had been the victim of at least one homophobic hate crime or incident in the previous three years. One in eight had been a victim in the previous year. Those incidents ranged from regular insults on the street to serious physical and sexual assaults.

As Robert Brown and Gavin Brown said, few of those who experienced hate crimes or incidents report them to the police, which is sad. I encourage anybody who is discriminated against in any way to report it to the appropriate authorities. I agree with Gavin Brown that they should not wait until stage 3 of the bill. If somebody is discriminated against, they should report it now.

A third of victims do not report incidents to the police because they do not think that the police could or would do anything about them. Therefore, I am pleased that ACPOS—among many other organisations—has agreed with the need for legislation and welcomed the bill. After all, the police will be at the forefront of enforcing it when it becomes law, as I am sure it will.

The bill seeks to ensure that, when it can be proven that an offence has been motivated by malice or ill will based on the victim's actual or presumed sexual orientation, transgender identity or disability, the court must take that motivation into account when determining sentence. As the minister said, that is only right. The policy memorandum points out that conviction of an aggravated offence may lead to a longer custodial sentence, higher fine or different type of disposal than might have been the case if the offence had not been aggravated. However, the bill will create no new criminal offence.

It is already possible under the common law for Scottish courts to take an offender's motivation into account when determining what sentence will be imposed, along with other factors that the court or jury might feel are relevant in particular cases. However, the proposed statutory aggravations would ensure that the courts must consider evidence that the offender was motivated by hatred towards the groups that are included in the bill and sentence offenders accordingly. As Paul Martin and Gavin Brown said, it is only right that the judges be able to weigh up the seriousness of the aggravation when considering their sentences, but I agree with Paul Martin that that aspect of the bill must be kept under review and considered at a later date.

I congratulate the Justice Committee on providing a good and comprehensive stage 1 report and congratulate the committee clerks who did a thorough job on it.

The Liberal Democrats will support the bill.

16:29

David McLetchie (Edinburgh Pentlands)
(Con): Like other members, I congratulate Patrick Harvie on bringing the bill to the stage 1 debate after a long campaign by him and others in support of its principles.

We have heard a number of thoughtful contributions to the debate. If Anne McLaughlin's was her maiden speech, it was good and I look forward to further speeches from her in future.

The concept of creating statutory aggravations for offences committed out of prejudice towards a specific group in our society is not new. As others have pointed out, we already have legislation for crimes motivated by racial hatred in the Crime and Disorder Act 1998, which was passed at Westminster. More recently, in section 74 of the Criminal Justice (Scotland) Act 2003, this Parliament created an aggravated offence for crimes motivated by religious prejudice.

At the time, I did not vote for the provision on offences aggravated by religious prejudice and I still have considerable reservations about the way in which the matter is policed. That is not because I object to having an aggravation for offences arising from motivations of religious prejudice but because, in the specific context of section 74 of the 2003 act, it was said that the purpose of the new law was to deal with sectarian behaviour in Scotland. It manifestly does not do that. On one side of Scotland's sectarian divide, the aggravation clearly applies to malice that is directed towards people of the Roman Catholic faith; however, the contrary sectarian behaviour in Scotland is, in practice, primarily expressed through the glorification of Irish nationalism,

republicanism and terrorism against the British state. In itself, such glorification has no religious connotations—nationalist and republican movements in Ireland have historically been of a secular nature—so such conduct cannot fall within section 74 even though it is plainly sectarian in nature. The result, certainly at football matches, is that the police have taken so-called anti-sectarian initiatives that have caused considerable resentment because the emphasis is on one set of supporters. The temptation is to make a point by policing the statutory aggravation rather than the primary offence. Perhaps it is time for a review of the operation of that statutory aggravation and of how it fits in with other aggravations, including those that are proposed in the bill.

One of the most striking features of hate-motivated crime is its ability not only to affect and scar emotionally the individual who is the victim of that crime but to create a whole community of victims. Evidence was presented to the Justice Committee that victims of hate crimes can suffer additional psychological trauma in coming to terms with the offence that has been committed against them. Furthermore, an attack on one person or organisation that is born out of prejudice or hatred is, in essence, an attack on all the people who are members of that group. A climate of fear can be created in members of a community because an aspect of their identity that they cannot change—or certainly would not wish to change—is hated by another person.

Courts in Scotland can and do take account of a wide range of factors—which can be mitigating or aggravating—when deciding on a sentence. By including the aggravations that are specified in the bill in the statute book, the motivation behind such crimes can be addressed. As Gavin Brown said, we welcome the provisions in the bill that will enhance and ensure accurate recording of aggravated offences and enable us to track trends. It was pleasing to hear the Cabinet Secretary for Justice acknowledge that point in his speech. Until now, the monitoring of such offences appears not to have been as robust as it might have been. If we know and have that information, we will be in a better position to tackle such types of crime in the future through a variety of policing, community-engagement and educational strategies. We also welcome the fact that the bill will not impose any mandatory sentence on proof of aggravation. In that respect, the independence of our judiciary is paramount. Judges are best placed to make an informed decision in each case in deciding on the appropriate sentencing option that is available to them.

As many have said, hate crime legislation sends out a signal to society that criminal conduct rooted in intolerant views and values will not be tolerated, but—as Patrick Harvie rightly point out in his

opening speech—legislation alone will not drive social change. It would be wrong to adopt such a self-satisfied and complacent approach. Passing the bill is the start, not the finish, of a process. Some people hate their fellow man for reasons known only to them. In itself, such hatred is not criminal, nor should it be. We cannot police thoughts nor should we limit freedom of expression, but we can target and highlight criminal conduct that is motivated by such hatred. The creation of a new statutory aggravation to give specific recognition to victims who are targeted as a result of hatred of their actual or presumed disability or transgender or sexual orientation is now appropriate, given the statutory aggravations that are already in place for other groups and to bring our law into line with that of England, Wales and Northern Ireland.

As Martin Luther King said:

"It may be true that the law cannot change the heart, but it can restrain the heartless."

We cannot outlaw hatred, but we can outlaw the harm that is caused by hatred. That is why we should support the bill.

16:35

Richard Baker (North East Scotland) (Lab): I congratulate the Justice Committee on its scrutiny of the Offences (Aggravation by Prejudice) (Scotland) Bill, and I congratulate Patrick Harvie on bringing it to the Parliament. We very much support it.

This has been a good and consensual debate, in which members have reflected on the fact that the journey to this point has not been short. It was in 2003 that Robin Harper lodged an amendment to the Criminal Justice (Scotland) Bill that would have addressed the forms of prejudice that we are discussing. Since then, the working party on hate crime, which was established in the previous parliamentary session, has produced its deliberations. Marlyn Glen mentioned its wider work. In addition, the Sentencing Commission for Scotland has done work on the issue, and provisions have been introduced in England and Wales on offences that are motivated by the victim's sexual orientation. I congratulate Patrick Harvie on ensuring that the bill has come this far, which has given us the opportunity to debate and pass it.

In the light of the Justice Committee's scrutiny of the bill and the extensive consideration of the issues that has taken place within and without Parliament, I believe that a clear case has been made for the bill. The evidence that the committee received was compelling.

As Patrick Harvie and the cabinet secretary said, the 2002 beyond barriers survey of almost 1,000

LGBT people from across Scotland found that 23 per cent of them had been subjected to a physical assault and 68 per cent of them to verbal abuse, just because they were LGBT. Mike Pringle mentioned the worrying evidence of "The Gay British Crime Survey 2008". Worse still, in 2006-07 eight homicides in Scotland were recorded as having a homophobic motivation. That truly shocking statistic appears in the Scottish Government's criminal justice statistics.

However, it has rightly been pointed out that the bill is not simply about doing all that we can do to ensure that the LGBT community can live free from fear of intimidation and victimisation. It is also about doing more to tackle crimes against people who have disabilities. A survey that was conducted in 2004 by the Disability Rights Commission and Capability Scotland found that some 47 per cent of disabled people in Scotland had experienced hate crime as a result of their disability, with 31 per cent of respondents reporting that they had suffered verbal abuse, intimidation or physical attacks at least once a month.

The problem is clear and the scale of it could not be clearer, so it is vital and absolutely right that Parliament does everything that it can to tackle it. We need to increase confidence in the criminal justice system that deals with hate crime. Too many lesbian and gay people believe strongly that the police cannot and will not take homophobic hate crimes seriously. We must change that, and I believe that the bill will help.

We must improve local responses to hate crime. Ultimately, we must increase the proportion of people who commit hate crimes who are brought to justice. Robert Brown spoke well on how the bill will ensure that such crimes are dealt with most effectively in the courts. We in Scottish Labour are keen that even more action is taken to support the victims of crime. We want to increase the proportion of victims or witnesses of hate crime who come forward to report what they have suffered or what they have seen.

We must confront the fact that we are not doing enough for the victims of such offences. We know that three out of four LGBT people who have experienced hate crimes or incidents did not report them to the police and that some seven out of 10 of them did not report them to anyone. I found the evidence of Tim Hopkins of the Equality Network persuasive. He told the committee:

"one of the bill's first effects will be to encourage more people to report crimes. It is likely that in the first couple of years after the bill is passed ... we will see the same thing that happened when the religious aggravation element was introduced, which is that the number of aggravated crimes that are reported to procurators fiscal and prosecuted will go up as people get more confident about reporting them to the police."—[*Official Report, Justice Committee*, 13 January 2009; c 1489.]

Paul Martin covered the recording of such crimes, which is another vital issue.

SAMH identified the fact that people who have mental health problems can face hate crimes of a prolonged nature and that they are often targeted as a result of fear and ignorance. It can, of course, be even more difficult for people who have mental health problems to have the confidence to face such crimes and to report them.

In Labour, we are proud of our record in standing up for the rights of people with disabilities—for example, through Jackie Baillie's bill on parking—and the rights of members of the LGBT community. However, on whether it is right to pick out certain groups in that way, and whether we are in danger of creating a hierarchy of victims—Bill Aitken referred to evidence to the Justice Committee on that—the case was well made by Stonewall Scotland that what is sought here is not special treatment, but fair treatment. The aggravation is based on the motivation of the accused, not on the identity of the victim. It is also about the accused's perception of the victim. Non-disabled and non-LGBT people can be victims of hate crimes. Stonewall Scotland has provided examples of that.

The bill is not simply about the rights of disabled and LGBT people; it is about the right of all of us to live in a society that does its utmost to tackle hate crimes and to ensure that they are reported and appropriately dealt with in our justice system. It is our responsibility to ensure that we have the right approach, and that we effectively tackle crimes that are targeted at people who are either among the most vulnerable in our community or perceived to be so. That is why Labour welcomes the bill and will vote for it at decision time.

16:41

The Minister for Community Safety (Fergus Ewing): I add my praise for Patrick Harvie's persistence in what we learned was a seven-year struggle to arrive at this day. I pay tribute to all the colleagues in his working group, and to others who had the courage to speak out, for their work over a long period, which brings us to this afternoon's debate.

The debate has been extremely consensual. The support from all parties should be welcomed when we pass the legislation. The work of the Equal Opportunities Committee and the Justice Committee in scrutinising the bill has, rightly, been acknowledged. The Government, for its part, is keen that the provisions of the bill should come into force and that there should be an improvement in the way in which we deal with hate crimes in Scotland.

As Bill Aitken outlined, the Justice Committee explored a number of lines of inquiry during its consideration of the general principles of the bill. The committee opened up a number of areas of concern for thorough discussion. Those have been considered by various members during the debate.

We are pleased that the committee has acknowledged that the bill does not present a threat to freedom of speech. The bill, in itself, does not create any new offences; it simply allows an existing offence that has been motivated by prejudice relating to disability, sexual orientation or transgender status to be tagged as such. It recognises that when the motivation for a crime has been prejudice against an element of the core identity of a victim or group of victims, that should be reflected in the sentence.

The Justice Committee addressed concerns about the creation of a hierarchy of rights. As Richard Baker pointed out, we must remember that the bill is about not the identity of the victim, but the twisted motivation of the offender. That recognition leads us to conclude that the argument that there would be a hierarchy of rights among victims is wrong. It is not so much about the victims—although we are here to protect the victims in so far as the law can do that—as it is about the motivation of the assailants. Once one recognises that, concerns about hierarchies and so on can be put into proper perspective.

The Justice Committee addressed the broader issue of the necessity of the legislation and came to the conclusion that statutory aggravations are the appropriate response to crimes that are motivated by hatred and prejudice based on the actual or presumed sexual orientation, transgender identity or disability of a victim. The need for the legislation was reflected clearly in the comments from mental health charity SAMH, which said that the bill

"addresses the needs of the community, based on people's experience."—[*Official Report, Justice Committee*, 13 January 2009; c 1505.]

Many members alluded to the plight and experiences of those who suffer from ill health. I, too, have encountered that in my work as an MSP over the past decade. Like David McLetchie, I was particularly struck by Anne McLaughlin's contribution, in what I gather was her maiden speech.

Anne McLaughlin indicated disagreement.

Fergus Ewing: Apparently, it was not her maiden speech. It was maiden to me. Putting aside that minor faux pas, I was about to say—before I misinformed myself—that Anne McLaughlin's speech was thoughtful and passionate. It was passionate because of her

obvious understanding of the issues. Like David McLetchie, I look forward to hearing more about her experience and her work before she came to this place.

I enjoyed Linda Fabiani's remarks, too. She suggested that all the groups that will be afforded protection by this legislation are united by their vulnerability to attacks caused by prejudice. It is not that the people themselves are vulnerable or in any way weak or inferior, but that they are exposed to a form of prejudice to which the rest of us may not be so exposed. Linda Fabiani brought out that point well.

I was asked to respond to other points and, as the Presiding Officer knows, I try not to disappoint members in that regard. What about protection for women? Many members have asked whether there should be an aggravation for assaults against females if those assaults are because of their gender. The issue is finely balanced. Liberal Democrat members in particular have raised it, and it was the subject of much debate in the Justice Committee. We can all agree that violence against women is a most serious issue. Rightly, it has been debated regularly in the Parliament. The Government is working to address the issue and will continue to do so with the assistance of all members of the Parliament. However, the conclusion that appears to have been reached by consensus is that considering the issue is not necessarily appropriate in respect of this bill. However, we may consider the issue again in due course.

Gavin Brown talked about costs and suggested that the financial memorandum to the bill may be considered to be on the light side. I therefore read the memorandum closely and it appears to me that paragraphs 27 and 28, on the Scottish Prison Service, indicate that the likely additional customers in our jails are likely to be relatively few. Although one might say that the cost of retaining a prisoner in Scotland is £40,000, that cost does not apply where there is a relatively marginal change. That is set out in the financial memorandum, but if the Conservatives wish to pursue the issue, we are of course willing to discuss it with them.

Figures from the United States and the London Metropolitan Police suggest that race hate crimes substantially outnumber crimes that are motivated by sexuality and disability. Whether that will prove to be the case here in Scotland remains to be seen. As Paul Martin pointed out, we do not yet have a clear steer on the numbers because there is as yet no aggravation. Patrick Harvie made that point too.

The main assurance that I want to give to Parliament—although it will not be a blinding surprise—is that the bill requires that the aggravation is recorded throughout the criminal

justice process. Those records will enable us to monitor the use of the aggravations. Indeed, I noted that the financial memorandum provides even for the costs of changing the information technology in the prosecution system. The initial cost to record the information will be about £20,000 for the Crown Office and £5,000 for the police. The information will be recorded; it will inform future policy; and it will allow us to get a clear picture. That will be welcomed on all sides of the chamber.

The evidence shows clearly that certain groups in Scotland regularly face crime based on prejudice. That is repellent, repugnant and wrong. Law in itself cannot tackle that; law is just words on a page. Nonetheless, this bill will give a clear signal to everyone in the criminal justice system, and to society as a whole, that such crime is not on and will not be tolerated. It will now be dealt with more seriously and consistently, and with the full will of every member of this Parliament.

16:50

Patrick Harvie: I am grateful for the many supportive speeches that have been made. I am genuinely delighted at the mood of consensus that has been struck and I hope that it will lead to a unanimous vote on the bill at decision time. I express my gratitude to all those who have argued the case in their party groups for the bill to be supported.

It was encouraging to hear Kenny MacAskill setting out a clear statement of intent. He said that the Government is committed to building a Scotland in which all people are treated with dignity and respect. I am sure that that would be true of the Government no matter which party was in power, but we should not undervalue it.

The cabinet secretary described as shameful the underreporting that we see in relation to such offences. I endorse that, but it is worth exploring a little further the reasons for that level of underreporting. The easy explanation, certainly with regard to offences relating to sexual orientation, would be to dismiss underreporting as simply a hangover from the days of criminalisation that will disappear through time, as generations move forward. However, I do not think that that is the case and I think that comparing it with the level of underreporting that exists with regard to offences relating to disability demonstrates that the existence of prejudice and bullying in schools is one of the things that continually undermine the likelihood of raising those levels.

I commend the Government for the work that it is doing, particularly in its response to the "Challenging Prejudice" document and the education aspects that it contains. There is much

in the document that we must build on, and I hope that the bill is seen as being integrated with that approach. We need to ensure that, as the generations move on, we continue to make progress towards that Scotland in which all people are treated with dignity and respect.

Bill Aitken asserted that those who are convicted should be left in no doubt that courts take these offences seriously, and I am glad that he is persuaded of the need for legislation. He also mentioned freedom of speech. While I agree with his conclusion and that of the committee in that regard, I want to pick up on the language that was used in paragraph 118 of the committee's report, which refers to those who hold

"traditional, mainstream beliefs about marriage and sexuality".

I am not aware that any of the mainstream churches submitted evidence on the bill, or that they have expressed a view one way or another. I question whether views on sexuality that I might describe as outdated and antique are still mainstream views. I do not think that they are any more. We need to move beyond that.

Bill Aitken acknowledged that sentencing is a complex matter. It is important to remember that, under the proposals, courts will retain flexibility. Varying a sentence might be necessary if the motivation of the offender demonstrates a continued threat to society. That could, in some circumstances, justify a longer custodial sentence. However, alternative, non-custodial sentences might be appropriate in other circumstances. Paul Martin explored some of those issues, too. I reassure him that I do not want to abolish the jail. We might have disagreed in previous debates about the appropriate use of prison sentences, but I do not think that anyone wants to abolish the jail. I think, however, that we should use it more carefully.

We need to be careful to monitor the effectiveness of sentences. However, the committee agreed—I think that Paul Martin would agree, too—that mandatory sentences are not appropriate for the aggravation of what could be a serious, or a much more minor, offence.

Robert Brown began by referring to the right for all people to freedom from discrimination, as set out in the Universal Declaration of Human Rights. He emphasised that such rights have to be claimed, guarded and protected because they are not automatically accessed by all people equally. The bill will give clarity to the courts and the public, which will help us to do that.

Robert Brown mentioned the efforts that we have to make to overcome prejudice, and argued that building a society without the crimes that the bill is concerned with is dependent on seeing

others as real people and overcoming ignorance and prejudice. I endorse that strongly.

Linda Fabiani made some important points about HIV status, which is covered in the disability definition. Although treatment options have improved dramatically and many HIV positive people live long and healthy lives, stigma and discrimination have not gone away.

Bill Butler and other members mentioned the long history of the proposal, which has led, at last, to consensus. It is important to remember that the aggravations under the bill are not restricted to specific victim groups. Racial aggravation is not limited to minority ethnic groups and neither is the sexual orientation aggravation limited to lesbian, gay or bisexual people; they apply to all people who can be given protection in law from crimes that are motivated by prejudice.

Hugh O'Donnell and Marlyn Glen spoke of the work of the Equal Opportunities Committee. I express my thanks to the committee for its work on the bill. It is entirely appropriate for the Parliament to examine the potential for age and gender, too, to come under the mechanism of statutory aggravation. Even if we agree—I think that we have agreed—that the mechanism is inappropriate in tackling the type of offence that is aggravated by prejudice based on someone's age or gender, we should agree, absolutely and universally across the chamber, that that is no reason for us ever to relent from the drive against those forms of violence. When we take account of the circumstances under which the offences are committed, we may agree that we need to approach gender-based violence and violence and prejudice on the ground of age not by way of legislation, but in other ways. That said, I am sure that the whole Parliament agrees that we should not relent from the task.

David McLetchie made one or two contentious comments, but I endorse strongly his clear exploration of the ways in which hate crime can be far more than a crime against one individual and can become a crime against a whole community. I thank him for those comments.

I cannot finish without mentioning Anne McLaughlin. First, I thank her for her birthday wishes, which are much appreciated. However, I am not sure about the moon bringing out my community mindedness. I am more excited by the spring sunshine at the moment; it is having more effect on me than anything else is. As for the horoscope advising me to be tactful in dealing with the boss, I would have thought that the advice was more for SNP members than for someone in my party. I take her comments in good part.

Anne McLaughlin moved on to address the serious issue of mental health. People with mental

health problems are another poorly understood outgroup in society. Many people like to think that mental health issues apply to other people and not to themselves, but any one of us can experience mental health issues, and many of us will during our lifetimes. I return to Robert Brown's point: we need to see others as real people, with whom we can have empathy. That is one of the most important ways of overcoming prejudice and discrimination.

The bill has been described as small but perfectly formed. Indeed, as its proposer, I have been described in similar terms. Robert Brown described it as a modest bill. I am not sure that that description is equally applicable. I believe that the bill, and the wider action that Government is taking—right across the policy spectrum—will integrate to overcome prejudice and discrimination. I am grateful for the strong measure of consensus in the chamber. I look forward to further discussion on the detail at stages 2 and 3 of the bill.

Welfare Reform Bill

16:58

The Presiding Officer (Alex Fergusson): The next item of business is consideration of legislative consent motion S3M-3653, in the name of Nicola Sturgeon, on the Welfare Reform Bill, which is United Kingdom legislation.

Motion moved,

That the Parliament agrees that the relevant provisions of the Welfare Reform Bill, introduced in the House of Commons on 14 January 2009, relating to a Right to Control for disabled people, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.—
[*Nicola Sturgeon.*]

The Presiding Officer: The question will be put at decision time.

Marine and Coastal Access Bill

16:58

The Presiding Officer (Alex Fergusson): The next item of business is consideration of legislative consent motion S3M-3614, in the name of Richard Lochhead, on the Marine and Coastal Access Bill, which is also United Kingdom legislation.

Motion moved,

That the Parliament agrees that the relevant provisions of the UK Marine and Coastal Access Bill introduced in the House of Lords on 4 December 2008, relating to the marine policy statement, marine planning, marine licensing, marine conservation zones and enforcement powers, so far as these matters fall within the legislative competence of the Scottish Parliament, or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.—[*Richard Lochhead.*]

The Presiding Officer: The question will be put at decision time.

Business Motions

16:59

The Presiding Officer (Alex Fergusson): The next item of business is consideration of business motion S3M-3717, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a business programme.

Motion moved,

That the Parliament agrees the following programme of business—

Wednesday 25 March 2009

2.30 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Standards, Procedures and Public Appointments Committee Debate: Review of Section 6 of the Code of Conduct (Cross-Party Groups)

followed by Standards, Procedures and Public Appointments Committee Debate: Changes to the Code of Conduct Arising from the Reimbursement of Members' Expenses Scheme

followed by Standards, Procedures and Public Appointments Committee Debate: Review of Section 8 of the Code of Conduct

followed by Announcement of Appointment of Scottish Public Services Ombudsman

followed by Scottish Government Debate: Local Government Finance Act 1992 (Scotland) Amendment Order 2009

followed by Business Motion

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 26 March 2009

9.15 am Parliamentary Bureau Motions

followed by Scottish Conservative and Unionist Party Business

11.40 am General Question Time

12 noon First Minister's Question Time

2.15 pm Themed Question Time
Rural Affairs and the Environment;
Justice and Law Officers

2.55 pm Scottish Government Debate:
Supporting Economic Recovery

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Wednesday 1 April 2009

2.30 pm Time for Reflection

followed by Parliamentary Bureau Motions
followed by Scottish Government Business
followed by Business Motion
followed by Parliamentary Bureau Motions
 5.00 pm Decision Time
followed by Members' Business
 Thursday 2 April 2009
 9.15 am Parliamentary Bureau Motions
followed by Scottish Government Business
 11.40 am General Question Time
 12 noon First Minister's Question Time
 2.15 pm Themed Question Time
 Finance and Sustainable Growth
 2.55 pm Scottish Government Business
followed by Parliamentary Bureau Motions
 5.00 pm Decision Time
followed by Members' Business—[*Bruce Crawford.*]

The Presiding Officer: Jeremy Purvis has indicated that he wishes to speak against the motion.

17:00

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): It is with regret that I rise to speak against the business motion that sets out the business programme for next week. I do so noting that the SNP has lodged two further Sewel motions today. At one point last autumn, more devolved legislation was going through the Westminster Parliament than was going through the Scottish Parliament.

Next week, the SNP proposes to hold yet another debate on the economy without a resolution of the Parliament. The difficulty with the business motion is not that it proposes a debate on the economy but that, yet again, the Government is asking us to debate an issue of its choosing without testing the Parliament's opinion on its actions. The Government may say in response that it is important that the Parliament speaks with one voice on the issue of economic recovery, but in order for the Parliament to have a voice, it must pass a resolution after a debate, rather than there being Government assertion without debate.

We have some common cause with the Government on the economy. We brought to the Parliament a debate on the merger of Lloyds TSB and HBOS, and the Parliament voted against the merger. The vote was welcomed by Kenneth Clarke in another place and described as reckless and unwise by the Conservatives in this place, but that example shows that the Parliament needs to

pass resolutions on the important issues that face the economy.

There are occasions when it is appropriate for the Parliament to have subject debates. The standing orders allow that, but they present subject debates as an exception to the rule. The Government seems to prefer them to debates with motions. In the previous session of Parliament, there were five subject debates. Since the SNP came into office, there have been 16 such debates, and, as the First Minister might say, we are only halfway through.

It would be wholly inappropriate to debate the economy next week without a Government motion. The Government obviously takes the view that no one is bothered whether it lodges a motion or not. This morning, it published "Progress on the Scottish Economic Recovery Programme", but it is not seeking a debate next week in which the Parliament can note that document. On the very day when the Government promotes its policies, it judges it inappropriate for the Parliament to have a say on whether it is satisfied with them. The Government considers the Parliament to be superfluous in many areas, unless of course it sees an opportunity to ditch manifesto commitments. That is a pick-and-mix approach to parliamentary accountability.

There is no disagreement that the Parliament should be united on the need for economic recovery, but we abrogate our responsibility if we deny that there needs to be debate and a resolution on what the Parliament believes are the right measures to bring that about. That is why I hope that the Government will think again and will test the Parliament's opinion rather than just use its time.

17:03

The Minister for Parliamentary Business (Bruce Crawford): If Jeremy Purvis is right and the Parliament has had 16 debates without a motion, not only must the Parliamentary Bureau have agreed that those debates should take place but the Parliament must have agreed.

At a time of unprecedented economic uncertainty, the last thing that the Parliament needs—and, more important, the last thing that the public need—is politicians who are more concerned about internal party politics and about who voted for what than about economic recovery. What the public want is an understanding that politicians have the vision, the plans and the imagination to address the problems that individuals and businesses are facing. A debate without a motion will give members in all parts of the chamber the chance to have a full, open and frank debate about how best we can help our

country through the recession and come out of the other side stronger. A subject debate will enable members to put forward ideas, views and proposals without the constraint of having to address a particular party position.

Since October, the Parliament has had 12 debates and nine statements with strong economic themes. There will be plenty more opportunities to have debates with motions in the future, because, as we all know, the economic problems will be with us for some considerable time yet.

In next week's debate, Labour members will, no doubt, wish to criticise elements of the Scottish Government's economic recovery plan. They might even want to praise some of it. I have no doubt that, on our side, we will have some criticisms of the United Kingdom Government's position, but no doubt we will want to praise some aspects of it as well. Surely the Tories will want to put under the microscope the proposals of both the Scottish and UK Governments. We will leave it to the Liberals to argue fiercely about parliamentary processes while the rest of us address the issues that concern the people of Scotland.

The Presiding Officer: The question is, that motion S3M-3717, in the name of Bruce Crawford, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Allan, Alasdair (Western Isles) (SNP)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)

Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grahame, Christine (South of Scotland) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Henry, Hugh (Paisley South) (Lab)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McMillan, Stuart (West of Scotland) (SNP)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Paterson, Gil (West of Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 White, Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

AGAINST

Brown, Robert (Glasgow) (LD)
 Finnie, Ross (West of Scotland) (LD)
 Harper, Robin (Lothians) (Green)

Harvie, Patrick (Glasgow) (Green)
 Hume, Jim (South of Scotland) (LD)
 McArthur, Liam (Orkney) (LD)
 McInnes, Alison (North East Scotland) (LD)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 O'Donnell, Hugh (Central Scotland) (LD)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)

The Presiding Officer: The result of the division is: For 97, Against 18, Abstentions 0.

Motion agreed to,

That the Parliament agrees the following programme of business—

Wednesday 25 March 2009

2.30 pm Time for Reflection
followed by Parliamentary Bureau Motions
followed by Standards, Procedures and Public Appointments Committee Debate: Review of Section 6 of the Code of Conduct (Cross-Party Groups)
followed by Standards, Procedures and Public Appointments Committee Debate: Changes to the Code of Conduct Arising from the Reimbursement of Members' Expenses Scheme
followed by Standards, Procedures and Public Appointments Committee Debate: Review of Section 8 of the Code of Conduct
followed by Announcement of Appointment of Scottish Public Services Ombudsman
followed by Scottish Government Debate: Local Government Finance Act 1992 (Scotland) Amendment Order 2009
followed by Business Motion
followed by Parliamentary Bureau Motions
 5.00 pm Decision Time
followed by Members' Business

Thursday 26 March 2009

9.15 am Parliamentary Bureau Motions
followed by Scottish Conservative and Unionist Party Business
 11.40 am General Question Time
 12 noon First Minister's Question Time
 2.15 pm Themed Question Time
 Rural Affairs and the Environment;
 Justice and Law Officers

2.55 pm Scottish Government Debate: Supporting Economic Recovery

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Wednesday 1 April 2009

2.30 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Scottish Government Business

followed by Business Motion

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 2 April 2009

9.15 am Parliamentary Bureau Motions

followed by Scottish Government Business

11.40 am General Question Time

12 noon First Minister's Question Time

2.15 pm Themed Question Time
 Finance and Sustainable Growth

2.55 pm Scottish Government Business

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

The Presiding Officer: The next item of business is consideration of business motion S3M-3718, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau—*[Interruption.]* If members want to know what this is about, it would be as well for them to listen. The motion sets out a timetable for stage 1 of the Criminal Justice and Licensing (Scotland) Bill.

Motion moved,

That the Parliament agrees that consideration of the Criminal Justice and Licensing (Scotland) Bill at Stage 1 be completed by 9 October 2009.—*[Bruce Crawford.]*

Motion agreed to.

Parliamentary Bureau Motions

17:06

The Presiding Officer (Alex Fergusson): The next item of business is consideration of motions S3M-3719 to S3M-3722, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, on the approval of Scottish statutory instruments.

Motions moved,

That the Parliament agrees that the draft Budget (Scotland) Acts 2007 and 2008 Amendment Order 2009 be approved.

That the Parliament agrees that the draft Regulation of Care (Scotland) Act 2001 (Minimum Frequency of Inspections) Order 2009 be approved.

That the Parliament agrees that the draft Regulation of Care (Fitness to Register, Provide and Manage Care Services) (Scotland) Amendment Regulations 2009 be approved.

That the Parliament agrees that the draft Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2009 be approved.—[*Bruce Crawford.*]

The Presiding Officer: The next item of business is consideration of motions S3M-3723 to S3M-3725, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, on committee remits.

Motions moved,

That the Parliament agrees that the remit of the Education, Lifelong Learning and Culture Committee be amended to—

To consider and report on (a) further and higher education, lifelong learning, schools, pre-school care, skills and other matters falling within the responsibility of the Cabinet Secretary for Education and Lifelong Learning; and (b) matters relating to culture and the arts falling within the responsibility of the Minister for Culture, External Affairs and the Constitution.

That the Parliament agrees that the remit of the Health and Sport Committee be amended to—

To consider and report on (a) health policy and the NHS in Scotland and other matters falling within the responsibility of the Cabinet Secretary for Health and Wellbeing; and (b) matters relating to sport falling within the responsibility of the Minister for Public Health and Sport.

That the Parliament agrees that the remit of the Local Government and Communities Committee be amended to—

To consider and report on (a) the financing and delivery of local government and local services and planning; and (b) housing, regeneration, anti-poverty measures and other matters falling within the responsibility of the Minister for Housing and Communities.—[*Bruce Crawford.*]

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

Decision Time

17:06

The Presiding Officer (Alex Fergusson): There are five questions to be put as a result of today's business. The first question is, that motion S3M-3694, in the name of Patrick Harvie, on the Offences (Aggravation by Prejudice) (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Offences (Aggravation by Prejudice) (Scotland) Bill.

The Presiding Officer: The next question is, that motion S3M-3653, in the name of Nicola Sturgeon, on the Welfare Reform Bill, which is United Kingdom legislation, be agreed to.

Motion agreed to,

That the Parliament agrees that the relevant provisions of the Welfare Reform Bill, introduced in the House of Commons on 14 January 2009, relating to a Right to Control for disabled people, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.

The Presiding Officer: The next question is, that motion S3M-3614, in the name of Richard Lochhead, on the Marine and Coastal Access Bill, which is UK legislation, be agreed to.

Motion agreed to,

That the Parliament agrees that the relevant provisions of the UK Marine and Coastal Access Bill introduced in the House of Lords on 4 December 2008, relating to the marine policy statement, marine planning, marine licensing, marine conservation zones and enforcement powers, so far as these matters fall within the legislative competence of the Scottish Parliament, or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.

The Presiding Officer: The next question is, that motions S3M-3719 to S3M-3722, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, on the approval of Scottish statutory instruments, be agreed to.

Motions agreed to,

That the Parliament agrees that the draft Budget (Scotland) Acts 2007 and 2008 Amendment Order 2009 be approved.

That the Parliament agrees that the draft Regulation of Care (Scotland) Act 2001 (Minimum Frequency of Inspections) Order 2009 be approved.

That the Parliament agrees that the draft Regulation of Care (Fitness to Register, Provide and Manage Care Services) (Scotland) Amendment Regulations 2009 be approved.

That the Parliament agrees that the draft Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2009 be approved.

The Presiding Officer: The final question is, that motions S3M-3723 to S3M-3725, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, on committee remits, be agreed to.

Motions agreed to,

That the Parliament agrees that the remit of the Education, Lifelong Learning and Culture Committee be amended to—

To consider and report on (a) further and higher education, lifelong learning, schools, pre-school care, skills and other matters falling within the responsibility of the Cabinet Secretary for Education and Lifelong Learning; and (b) matters relating to culture and the arts falling within the responsibility of the Minister for Culture, External Affairs and the Constitution.

That the Parliament agrees that the remit of the Health and Sport Committee be amended to—

To consider and report on (a) health policy and the NHS in Scotland and other matters falling within the responsibility of the Cabinet Secretary for Health and Wellbeing; and (b) matters relating to sport falling within the responsibility of the Minister for Public Health and Sport.

That the Parliament agrees that the remit of the Local Government and Communities Committee be amended to—

To consider and report on (a) the financing and delivery of local government and local services and planning; and (b) housing, regeneration, anti-poverty measures and other matters falling within the responsibility of the Minister for Housing and Communities.

Computer Games

The Deputy Presiding Officer (Trish Godman): The final item of business is a members' business debate on motion S3M-3311, in the name of Joe FitzPatrick, on support for computer games development.

Motion debated,

That the Parliament notes with concern the comments of Colin Macdonald, Studio Manager for Dundee-based computer games developer Realtime Worlds, who recently expressed concern for the future of the industry; recognises that despite the current economic situation the computer games industry is continuing to grow, however that in terms of games development the United Kingdom is falling behind; notes that UK firms must pay tax on research and development, while in countries such as Canada and France rebates are given; further notes the importance to the economy of Dundee and Scotland of computer games developers who have produced award-winning titles such as Crackdown, which recently sold over 1.5 million units, and believes that games development in Scotland will suffer under the current tax regime.

17:09

Joe FitzPatrick (Dundee West) (SNP): I am pleased to introduce this debate on support for the computer games industry in Scotland. Members will be used to hearing me extol the virtues of Dundee whatever the topic of debate, and today will be no different. However, in the case of the computer games industry, there is no need for me to embellish Dundee's role at the centre of the United Kingdom market. Dundee is a world player when it comes to the computer games industry.

From the first days of computer game technology, Dundee has been at the forefront. In 1983, Timex produced the Sinclair ZX Spectrum home computer in Dundee, and a generation in the city grew up learning the skills that would make Dundee a global leader. One of the early successes of the Dundee computer game scene was the worldwide hit Lemmings. There were also million-plus selling titles such as Earthworm Jim and RollerCoaster Tycoon and, of course, the huge hit Grand Theft Auto, which was created in Dundee by Rockstar North. Unfortunately, the company is now based in Edinburgh, although it is still successfully working for the Scottish computer games industry.

Dundee still produces world-class games. Last year, we had the award-winning Crackdown, which was developed by Realtime Worlds and sold more than 1.5 million copies globally. The games industry in the UK employs 30,000 people and contributes £1 billion to gross domestic product. Dundee is home to 10 per cent of the UK's computer games companies. It is estimated that about 3,500 people are employed in computer

games development and related industries in the Dundee area.

Dundee also leads the way on education and training. The University of Abertay Dundee has been instrumental in supporting the growth of computer games technology, and its graduates have set up companies in the city, throughout the UK and in other parts of the globe. Abertay had the UK's first undergraduate degree in computer games technology and Scotland has three quarters of the undergraduate courses that are currently available in the UK.

Despite the economic downturn, the worldwide industry is booming, with computer games sales last year overtaking DVD sales for the first time, with £22 billion of global sales. However, this is not a time to rest on our laurels. Yes, Dundee and Scotland are doing well in a booming computer games market, but we must ensure that, in the years to come, the companies still exist and that the news broadcasts stories about the latest great game launch and awards, rather than the latest company closures. Timex has long since closed its doors, and last week the loss of another 250 jobs at NCR in Dundee was a stark lesson that a once-successful business can quickly become less viable in changing market conditions.

We are seeing the first signs that problems might lie ahead for the computer games industry. The UK is falling behind on games development, and the countries that are overtaking us are those that have given tax breaks for games development. Scottish and UK firms must pay tax on research and development, whereas countries such as Canada and France give rebates, which gives their companies a competitive advantage over our companies. Although in some cases it might be possible to claim tax credits here, that applies only at the end of the development process. If our computer games industry is to compete on an equal footing with companies in other countries, it needs support during the development process, which can be lengthy.

Colin Macdonald, the studio manager for Dundee-based computer games developer Realtime Worlds, recently expressed concern that, unless the playing field is levelled and UK-based companies receive a similar tax break, such as a VAT exemption for games research and development, the industry will suffer. Realtime Worlds is not alone in that view. The University of Abertay Dundee, the Scottish Chambers of Commerce and the computer games trade body Tiga all say the same thing: unless the playing field is levelled, we could lose out in Scotland.

Top games such as Crackdown take about five years to develop. When tax breaks of up 25 per cent are available in other countries, Scotland and the UK are simply not as competitive, which is why

the UK is falling behind in the development of new games. The industry is calling for a change to the tax regime, as there is firm evidence that easing the tax burden on games development creates jobs and grows the industry. In Canada, the introduction of a 25 per cent tax break on development has resulted in a flurry of development and increased the number of people who are employed in the games industry by 40 per cent. It has also led to extra investment of \$1.5 billion in the Canadian economy. French companies were granted a 20 per cent tax break in 2007, which has proven an aggressive stimulant for the country's computer games industry. That competitive advantage has given new-found confidence to French game developers. The Scottish Chambers of Commerce and Tiga have stated that if we received a similar tax break to bring us back into line with our main competitors, it could create an extra 11,500 jobs throughout the UK and safeguard thousands more jobs in the industry.

At the end of the day, companies will go where prices are cheaper, even if development in the UK is of a higher quality. We are already hearing of Canadian headhunters targeting the wealth of talent in the Scottish computer games industry. Dundee generates 15 per cent of the UK's total computer games turnover—some £150 million annually—and would therefore feel more acutely any downturn caused by a loss of competitiveness.

Holyrood does not yet have tax powers to support the industry directly, but there is much that we can do in the chamber. I welcome the steps that the Scottish Government has taken to support the industry, most notably through the funding of the University of Abertay Dundee Skillset media academy, which will specialise in computer games education and expand the university's expertise. That new academy recognises Dundee's importance as a centre for computer games development and will provide a skilled workforce to ensure that Dundee continues to lead the field.

Dundee used to make Spectrum computers and NCR used to employ thousands in the city. With cross-party support in the chamber and at Westminster, we can ensure that it will never be the case that we have to say that we used to have a computer games industry.

17:16

Marlyn Glen (North East Scotland) (Lab): I congratulate Joe FitzPatrick on securing this debate and on organising the display of games this afternoon. I am particularly interested in the subject because the computer games industry is important to our native Dundee. Dundee has an enviable reputation for the outstanding quality of

its games development. Its most recent accolade was a £3 million investment from the Scottish Government to assist the University of Abertay Dundee to create the first UK centre of excellence for computer games education. There are 94 games courses in the UK, only four of which are accredited, and two of those are in Dundee. The principal of the University of Abertay Dundee, Bernard King, has said that the potential market value of the global interactive media sector to Scotland could be as much as \$68 billion by 2012, and he has made the point that success depends on continuous production of new ideas and ever-improving skill levels to drive achievements.

The debate is partly about taxation matters that are outwith the responsibility of the Scottish Parliament, but we should note that when the UK Prime Minister was Chancellor of the Exchequer, he announced a rise in the research and development tax credit in his 2007 budget. From last April, small to medium-sized companies have been able to deduct up to 175 per cent of qualifying expenditure on research and development activities in calculating their profits for tax purposes. The onus is on companies to make use of those opportunities. Joe FitzPatrick must acknowledge such facts, and that the French tax credit system is also tied to research and development.

Our debate should focus on how the Scottish Parliament, with its responsibilities, can help the computer games industry in Scotland. As we all know, computers have made their way into every sector of work, life and leisure to the extent that the British Academy of Film and Television Arts recognises in its awards excellence not just in traditional media such as film and television, but in games.

Creative Scotland has been given responsibility for the 13 creative industries to promote abilities, including those in interactive leisure software and computer services. Enterprise agencies are also charged with maximising economic opportunities on behalf of the creative industries. In seeking to help the Scottish computer games industry, what significant role does the minister see for his department working with creative Scotland and the enterprise agencies in promoting that industry as it continues to develop as a leading sector in the entertainment market?

The minister will be aware that the National Endowment for Science, Technology and the Arts—NESTA—has called on the Scottish Government to provide creative Scotland with the power to assist the creative industries beyond the provision of the business gateway services that are currently on offer, important though those services are in their own right. NESTA's

communications manager for Scotland, Graeme Downie, has already stated that

"Finding new sectors to drive economic growth is now essential ... Targeted government intervention in sectors with a high growth potential is vital."

NESTA has published proposals that suggest what a sector-specific support policy would entail. The proposals include: increasing student placements in the work environment, such as the dare to be digital initiative, which is sponsored by the University of Abertay Dundee and which allows students to demonstrate their talents to potential employers; setting up a games education fund to fund placements for lecturers, allowing them to gain experience in video games studios, and to finance research fellowships; and introducing a kite mark for computer games courses, which would link the financing of a particular course to its relevance to the industry sector. NESTA also sees Abertay's centre of excellence for computer games education as a possible opportunity to develop a new strategy on the role of educational games in schools.

I ask the minister to inform us, in summing up, how his department intends to respond to those proposals from NESTA and, thereby, to support the Scottish computer games industry, which is undoubtedly one of the potentially strong growth sectors in our economy.

17:21

Gavin Brown (Lothians) (Con): I congratulate Joe FitzPatrick on securing the debate on a topic that is dear to the area that he represents, and to the area that I represent. Rockstar North is certainly Dundee's loss and Edinburgh's gain. Joe FitzPatrick's speech was good; he raised a number of interesting points, such as that more computer games have been sold than DVDs over the past year. He was quite right to highlight some of the very impressive work that is being done at the University of Abertay and, in particular, in the school of computing and creative technologies. I was disappointed that, because I was in committee all morning and in the chamber all afternoon, I did not get a chance to enjoy the games demonstration in Parliament earlier today.

The games industry is important to Scotland and to the UK as a whole. There are particularly strong studio clusters in Dundee and Edinburgh. Joe FitzPatrick rightly stated that about 30,000 people in the UK are employed in the industry. It is worth saying that 10,000 of those jobs are in what is called the studio sector, which means that they are extremely well-paid and highly skilled jobs. They are good jobs and we want to keep them in Scotland and to try to bring even more here.

Joe FitzPatrick talked about the size of the industry in terms of gross domestic product, but it is also worth noting that it is worth more than \$200 million to the UK's balance of trade—it allows money to flow into the UK. Even in tough times, it has the potential for growth. Between 2006 and 2008, the UK games development industry grew by 8 per cent. Traditionally, we were the third-largest producer in the world. We fell to fourth, but are apparently back up to third. However, I am told that we are in danger of falling down to fifth, so we certainly cannot rest on our laurels.

Another critical point, which the convener of the Economy, Energy and Tourism Committee made recently when he reported back to the committee on his visit to the industry in Dundee—I will try not to steal his thunder—is that gaming is not just about playing games; a lot of high-powered mathematics and physics are involved in the technology. More important, there are applications for it outside the games industry—perhaps in the medical industry. We are talking about the cutting edge of computer technology.

The industry faces several challenges, some of which have been outlined. I commend to everybody the recent report that was commissioned by NESTA but produced by Games Investor Consulting. The report, which was produced in December 2008, is a thorough 50-page analysis of the position in the UK. It compared us to our main competitors and other countries in Europe and outlined the main challenges that we face, which are: increasing the flow of original and new ideas; exploiting the massive potential of online gaming; exploiting synergies between converging media; protecting UK creative jobs; increasing the calibre of our graduates, which some members have mentioned; increasing the diversity in development teams; and increasing support from public funds.

I would add to that that we must ensure that a positive perception of games is promoted, instead of the negative perception that some games might have attracted. Gaming is extremely popular, but only 3 per cent of games sold have a mature or 18 rating and more than 50 per cent of them are suitable for the under-7s. It is important for us to emphasise the positive aspects of gaming.

I will finish on the point that Mr FitzPatrick made in relation to tax. Of course, tax is important, but the NESTA report pointed out that tax is not the be-all and end-all. It said that the Canadians have had success, which he was right to highlight. However the French, to whom he also referred, have had a disastrous time with their tax policy. The report says that

“Following an exodus of studios to Quebec, France's studio sector has remained stagnant, despite such large-scale injections of capital. It is too early to assess the impact of a

new national games development tax credit, but it seems unlikely that the French development sector will become a global leader in the near future.”

Tax is important, but all the issues in the report to which I referred need to be addressed equally.

17:25

Iain Smith (North East Fife) (LD): I am pleased to participate in the debate, which I congratulate Joe FitzPatrick on securing. The games industry is important to Scotland. It has huge potential, which we should all work together to deliver.

My experience of gaming is largely playing Scrabble on Facebook. As a good Liberal Democrat, I concentrate more on games such as Railroad Tycoon than on Grand Theft Auto. Nonetheless, I am interested in the technology that is being developed. As the Economy, Energy and Tourism Committee's convener, I was pleased to have the opportunity to visit the gaming industry in Dundee. The University of Abertay Dundee is at the forefront of gaming education and research—it is hard to believe, but the gaming industry involves quite a lot of research.

Computer gaming is not just about young people sitting around playing games and wasting their time. As Gavin Brown said, the industry is at the cutting edge of computer software development and is highly mathematics and physics based. A game designer must know how objects bounce to work out how characters move and what happens to them if they are hit by something. Realism is an important part of good-quality gaming.

While in Dundee, I saw a fantastic computer animation based on a pop-up book. As the pages opened, the characters moved and bounced as they would if a paper pop-up book were opened. It was magnificently done. Game designers must understand the underlying maths—the algorithms, about which I keep being told. I am sure that the colleague from Abertay university who is in the public gallery will be pleased that I remembered that word.

Computer games have practical applications, too. For example, I saw and participated in police firearms training in which instant decisions must be made about whether people in scenes in computer games are likely to cause a threat with a firearm. That is helpful training.

I also visited Realtime Worlds, which is an incredible company. Joe FitzPatrick was right to refer to the game Crackdown, but that game faced issues. The company obtained most of the funding from abroad—from Microsoft—which limited its ability to make the game available on other platforms. Venture capital was also obtained from overseas. The funding situation means that much of the profit disappears from the United Kingdom.

As Crackdown is a traditional boxed game, the company loses money to publishers—it is strange that the United Kingdom has no publishers, despite being at the forefront of computer game development—as well as to distributors and to shops. Through online gaming—which the company is developing—a game can be available directly, more money can be made and people can purchase regular subscriptions for upgrades and extras, which increase profitability.

Games take a long time and are expensive to develop—some are five years in the making, so companies need money up front. We must ensure that they obtain it. Yesterday, NESTA published a report that contains several constructive suggestions on how to help the Scottish gaming industry. It is clear that we need to consider how we support research and development in the industry. The industry is not traditional and the up-front funding that it needs for research and development is not necessarily traditional: innovative support is needed for an innovative industry. Gavin Brown was rather disparaging of the French, but they have managed to develop a cultural test that allows them to get round European Union state-aid rules and to develop their gaming industry. That is important.

The next phase is developing games for smaller platforms such as mobile phones and the iPhone, which can be cheaper and quicker to develop. Many smaller organisations in and around Dundee and elsewhere in Scotland are developing games for such platforms.

Let us all work together to support the gaming industry. We should not fight with the United Kingdom Government on that; we need to work with it to get the best for Scotland's gaming industry.

17:29

Nigel Don (North East Scotland) (SNP): I, too, congratulate my friend Joe FitzPatrick on securing the debate, which is about an important but often overlooked part of our economy.

It is interesting to reflect on the fact that in the industrial city of Dundee the old has passed away to be replaced by things that our grandparents would have been unable to imagine.

As we heard from Joe FitzPatrick, Dundee and Scotland have an impressive list of global names in the industry such as Rockstar North and Realtime Worlds, with the latter employing 250 people in Dundee. However, I would like to focus on smaller businesses that exist throughout Scotland and to remind members that every new business starts as a small business.

Chris van der Kuyl, who is well known in the industry, started his first company, VIS Entertainment, out of his bedroom in Dundee. He now heads up a small company, 4J Studios, which has achieved worldwide success with the Elder Scrolls series. Chris Sawyer is another name in the industry—he works largely independently but has produced million-selling titles such as RollerCoaster Tycoon and Transport Tycoon. Those examples show that individuals and small companies can have a global market impact. However, in the past both developers have reported problems in financing development of their new titles. If they have problems, surely the same is true of plenty of others.

The dare to be digital competition that is run by the University of Abertay Dundee is a good example of what can be done to support people who are starting in the computer game business. The competition has been run each year since 1999 and challenges teams of five or six recent graduates to work together to produce a functional game prototype in 10 weeks, which is judged on the basis of its creativity, market potential and use of new technology. The university recognises how difficult it can be for graduates to enter the market, so the dare to be digital competition helps them to gain real-life working experience and includes the provision of mentoring support from games companies. That creates a link between students and potential employers that helps to ensure that the next generations hit the ground running.

This afternoon I had the opportunity, along with colleagues, to try out last year's winner, Ragnarawk. For the benefit of those who were not present, Ragnarawk is a role-playing game that enables one to explore a music-themed world. The music in the game is not, I hasten to add, the kind of music that I used to play, but if people play the guitar they are fine and can chase folk around the screen.

Gavin Brown made the point that the technology has applications apart from games. Those applications are not limited to health—I suggest that there are enormous educational opportunities to be derived from software that has such real-time applications. The benefits will extend well beyond games.

It has long been understood that we must support the UK film industry to ensure its growth and success and to ensure that projects are not stalled because of lack of funding. Each year, the film industry contributes £1 billion to the UK's gross domestic product—roughly the same as the games industry. However, unlike the games industry, the film industry receives £100 million in tax breaks every year. If we can see the links between tax breaks and a growing market for films, why cannot we see them for computer

games? A VAT exemption for games development for both large and small firms would allow the industry to flourish and ensure its continued success and growth, even in these difficult economic times.

17:33

Robin Harper (Lothians) (Green): This has been an interesting debate, in which I have learned quite a lot. The last time that I played a computer game was in the Traverse Theatre bar in 1975, when I had to blast little blobs off a black-and-white screen—I think that the game was called Space Invaders.

Even those of us who do not spend our spare time in Liberty City or strumming along to Guitar Hero can recognise the value of the industry to Scotland. Joe FitzPatrick, whom I congratulate on securing today's debate, mentioned that Dundee's loss has been Edinburgh's gain. To continue that theme, the headquarters of Rockstar North are less than a mile from this building. The company is the developer of the much-loved and admittedly also much-criticised Grand Theft Auto series, which has been mentioned, and before that of Lemmings, of which one of my staff members admits to being a big fan.

As we have heard, Dundee is a real hub of the business. It is the home of many of our best companies and of the game in Scotland recruitment event. This is not a fringe business or hobby—it is mainstream and a multimillion-pound success story. Rockstar North tells me that it has sold more than 100 million games over its short company life, and it continues to grow and develop. To compare the company to actual rock stars, it has achieved about the same number of sales as The Who.

Many Scots who play games do not know that so many of them are made here: few in Scotland know that we are home to such a successful games industry. It is a high-tech and creative home-grown triumph, and it appeals to our younger generation, who might be unsure about their further and higher education. Even if they end up working elsewhere, the prospect of a job producing games has convinced many people to stay on and study.

No country can afford to neglect an area in which it is a true world leader, and the Scottish Government could redouble its efforts to promote the sector at home and internationally. Existing tax credits could be simplified—and it is right to bring tax credits into the discussion. I hope that ministers will meet representatives of the industry, of NESTA and of the universities to establish how the current support arrangements might be

improved. Marlyn Glen has provided many recommendations in that regard.

We do not need to speak Gaelic to know its importance to Scotland, nor do we need to drink whisky to appreciate the contribution that our distillers make—and nor should politicians such as me assume that we have to be gamers to know the importance of games.

17:36

Andy Kerr (East Kilbride) (Lab): I add my name to the list of members who have congratulated Joe FitzPatrick on securing a debate on what is now a much better recognised part of our economy. It is less well-recognised than we would like it to be, but I believe that we have provided the nation with some confidence in what is a fantastic cluster in Dundee—which I recognise fully, notwithstanding Joe FitzPatrick's remarks about some companies moving to other parts of Scotland. However, the companies are still in Scotland and are contributing massively to the economy.

My view on the games business was formed when I had the opportunity to attend the dare to be digital event in Dundee, at which I saw the competition winners put through their paces by the panel of judges. It was remarkable how the qualifying students were able to bring a viable working model from zero to fruition over an intensive 10-week period. I understand that many of those students went on to work in the industry.

We should recognise that there is something special about Dundee. It involves the training and skills that are provided by the University of Abertay Dundee and the other education providers in the area. They are recognised for that work, and it is interesting to note that many of the graduates who go into the games industry are mathematicians and programmers—they have not necessarily done one of the plethora of gaming courses that are available in the UK. It is Abertay that, almost uniquely, provides the Skillset-accredited training that allows trainees to enter the industry on an industry-ready basis. Sadly, some of the other courses do not offer that and so are not getting the training right to offer business in Scotland and the rest of the UK industry-ready participants.

Much has been said about taxation—and that is quite right. I share with Joe FitzPatrick our pride in the games business in Scotland, but I also share some of the concerns that he expressed: tax incentives and measures can improve and change the dynamics of a particular business. I agree with Gavin Brown that the issue is not just one of tax breaks. It is one of creativity, entrepreneurship, innovation and having an education support stream, and it involves the work of development

agencies and Scottish Enterprise. Many things come together to make the industry a success, but that does not mean that we do not need to address the issue of taxation. I was pleased to note the increase in R and D tax credits, but more requires to be done, and I share some of the concerns that have been expressed.

It is interesting that Canada, with a 40 per cent tax break on R and D and a 37.5 per cent tax break on support for employees, has come from a standing start 10 years ago to a significant position in the world now. We need to address taxation. It does not provide all that is needed for making a difference, but it is part of the package that will allow the industry in the UK, and in Scotland in particular, to develop over time.

I, too, went to the discussion with representatives of the games industry in one of the committee rooms this afternoon, and I put it to the minister that lessons can be learned from how the biotech industry was supported. The public sector and business angels in the private sector made interventions to develop that industry, perhaps not into all that we wanted it to be but into a substantial position in the economy. We should note the lessons and applicability of that example to the games industry.

Other members have mentioned the fact that we do not have a publisher model in Scotland. We have missed out on that, and it is critical because, bluntly, much of the money is made through that route. Publishers also tend to draw innovation and creativity in house, and it is important to consider the potential for parts of the industry to be moved out of Scotland to elsewhere.

The games industry is not just about games but about innovation and entrepreneurship, and it is important to acknowledge that it has a role to play in education—in teaching our children, in medical trials, and in many other areas. A member mentioned the shoot-to-kill training package for the police, and games methodology has many important applications. I have had the opportunity to play SimVenture, which enables entrepreneurs who are starting out in business to explore in a complex but risk-free way how to develop their business.

The holy grail is not the taxation system but the package of support mechanisms for creativity and innovation to enable people to develop products and bring them to market. At UK and Scottish Government levels we need to consider a range of matters to support people, from the individual who develops a game in his bedroom to our businesses, which need support so that they can continue to grow. All members are solidly behind such an approach and want to work together to achieve that outcome.

17:41

The Minister for Culture, External Affairs and the Constitution (Michael Russell): I congratulate Joe FitzPatrick on securing the debate and on the relevance of the motion.

One or two speakers—though not Andy Kerr, whose thoughtful comments about tax were appreciated—might appear to be playing a computer game entitled Angels on the Head of a Pin, after Duns Scotus, given how they tried to avoid talking about taxation by saying that it should be discussed elsewhere or that we should not create a fight with Westminster, as I think Mr Smith said. The motion mentions the current tax regime, and the industry's view is that the current tax regime is a barrier to further development.

The real issue, as Nigel Don and Andy Kerr said, is the relationship between the tax regime and creativity. Nigel Don was wise to talk about the established precedent in the UK in relation to the tax system's contribution to film production. The approach is used much more effectively elsewhere but is acknowledged in our tax structure. We must consider how we use fiscal levers to achieve policy objectives in the creative sectors—of course, there is a wider question about how we do that in all sectors. Let us be honest, the answer is that we cannot use levers that we do not have—it is impossible to do so. Perhaps I will go on to consider more consensual views, but at the outset I want to say this: give us the tools to achieve the objective.

Gavin Brown: The Parliament and Government have powers in relation to business rates. We all know that rates for small businesses have been reduced, but does the minister accept that his Government has just increased business rates from 46p in the pound to 48p in the pound? Why has it done so?

Michael Russell: I will not be dragged down that avenue, which is lined with red herrings. I repeat my point, in case Mr Brown did not hear it: give us the tools on taxation and then we can decide how to apply them to create opportunities in sectors. That is a political issue and I pay tribute to Joe FitzPatrick for the work that he is doing to advance the issue in Dundee—it was most memorably advanced there last week by Councillor Craig Melville's victory in the Maryfield by-election, which will change the state of Dundee.

Andy Kerr: It is unfortunate that the minister has not risen to the occasion in the debate. Does he agree that, although most members acknowledge that taxation plays a part in the debate, it is not the be-all and end-all? The model in France has not worked. Working collectively to use the tools that are available at UK and Scotland

levels, not the speech that the minister has given so far, might get us somewhere.

Michael Russell: I accept that taxation is not the be-all and end-all, but it is not possible for us even to decide whether it is relevant because we do not have the powers. Give us the powers, and we will then decide whether it is relevant.

I will move on from the motion, which mentions tax, to talk about another way in which we consider creativity. Nigel Don is right to define creativity by activity and not medium. The point that Marlyn Glen made is germane to that. How we support the creative industries in the widest sense—activities undertaken by creative people—is a cultural issue. Within cultural policy, games are both artefact and idea. They are actual things that contribute to our culture, but they are also pervasive in other cultural expression. For example, I think of Scarlett Thomas's recent novel "PopCo", which is about playing games. It is also about alternate realities and how computer games create them, sometimes in potentially destructive ways.

The issue is important. The industry is important to us and is an important part of the creative industries sector. It needs to have all the tools at its disposal to compete internationally and one of those is undoubtedly taxation.

The serious challenges cover other areas. The NESTA report is significant. There is a potential lack of skills and there are barriers to finance, as well as the issue of subsidies in other territories. However, there are also interesting ways forward. For example, the Scottish Enterprise digital media industry advisory group is taking forward plans to develop the sector. That group includes some of Scotland's most important games companies, such as Realtime Worlds. It is considering how to secure more investment in games companies, greater internationalisation and more innovation and has highlighted the need to consider a range of possibilities.

Talent is needed to sustain the industry, as in every industry. The recent investment of £5.8 million for two new Skillset media academies is an important part of that. The academy at the University of Abertay Dundee will specialise in computer game education, and I praise the university for its initiative in that area.

We also need to ensure that those who are already involved in, or want to be involved in, the creative industries know where they can get the support that they need to get in or get on within those industries. The framework agreement that we have recently published—this, too, is germane to Marlyn Glen's point—sets out the roles and responsibilities of organisations that provide support to the creative industries. I am pleased

that enterprise agencies, local government and creative Scotland will work together to implement that agreement. As I mentioned in my statement on broadcasting, Councillor Harry McGuigan from the Convention of Scottish Local Authorities and I will jointly chair the short-life task force that will realise those plans.

We want Scotland to be recognised as one of the world's most creative nations across the board. Creative entrepreneurs—and no area of activity is more important for creative entrepreneurship than computer games—can access specialised support; we want to ensure that they go on accessing it through creative Scotland.

In the debate, we should acknowledge the reality that we need tax powers, but we should also celebrate the success of the computer games cluster in Dundee. My colleague the Minister for Enterprise, Energy and Tourism met academics at the University of Abertay Dundee last month to discuss a range of issues. He learned first hand about the work that is being done in Dundee and he celebrated it.

We will bring together key figures from the industry to identify what needs to be done whenever we need to. We will help to support the sector, but we will also be realistic. We will do what we can, but we could do more with the powers to do more.

Meeting closed at 17:48.

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