



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Wednesday 14 December 2011

Session 4

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Scottish Parliament

Wednesday 14 December 2011

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

Time for Reflection

The Presiding Officer (Tricia Marwick): Good afternoon. Our time for reflection leader today is Peter Ross, who is a volunteer with the Dumfries and Galloway third sector forum and the Scottish Parliament community partnerships project, a road to health.

Peter Ross (Dumfries and Galloway Third Sector Forum): Presiding Officer,

"John Anderson, my jo, John,
When we were first acquent;
Your locks were like the raven,
Your bonny brow was brent;
But now your brow is beld, John,
Your locks are like the snaw;
But blessings on your frosty pow,
John Anderson, my jo."

That was a quotation from Robert Burns's poem.

I am a volunteer with the Scottish Parliament community partnerships project called a road to health. Dumfries and Galloway, where the project runs, is a large rural area with a low population. We have one main hospital in Dumfries. It is approximately 70 miles from the next biggest town, Stranraer. We have the highest proportion of older people of any of Scotland's regions.

The community partnership volunteers have consulted 1,000 people across the region, and our interim evaluation raises concerns. Seventy per cent of people with a hospital appointment got there by car and bus, and 29 per cent of them were stressed by the experience. One hundred and twenty-three people found going out of the house difficult or impossible. Thirty-six per cent reported needing help with shopping, and 29 per cent of those people had to travel more than 5 miles to a shop.

My story is one of apprehension, as I am my wife's carer. What happens if I or my jo gets ill and has to go into hospital? What happens if—or when—I can no longer drive, due to illness or affordability?

We have collected many stories. These four are picked at random. An ill man going to the hospital in Dumfries is taken via Stranraer, increasing his journey from 60 miles to 180 miles. A visit to the Jubilee hospital in Clydebanks by public transport, for some, involves three or four buses and an overnight stay. Partners and carers sometimes

cannot accompany the patient. The fourth one is a quote:

"I haven't been out the house for 7 years."

I know that this is extremely difficult and that good people are striving to make it all work. There are many policies, strategies and guidelines. You have had difficult debates and I urge you not to shirk from having them and to provide the leadership that is required for us all to find our way through.

I return to the words of Robert Burns:

"John Anderson, my jo, John,
We clamb the hill the gither;
And monie a canty day, John,
We've had wi' ane anither:
Now we maun totter down, John,
But hand in hand we'll go;
And sleep the gither at the foot,
John Anderson, my jo."

If you want some more in-depth reading, I recommend the Scottish Council for Voluntary Organisations' publication, "A life worth living."

Business Motions

The Presiding Officer (Tricia Marwick): The next item of business is consideration of business motion S4M-01578, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, which sets out a revision to the business programme for today.

14:04

The Cabinet Secretary for Parliamentary Business and Government Strategy (Bruce Crawford): Members will note the change in decision time in the motion. That is the purpose of the motion.

I move,

That the Parliament agrees the following revision to the programme of business for Wednesday 14 December 2011—

delete

6.00 pm Decision Time

followed by Members' Business

and insert

5.00 pm Decision Time

followed by Members' Business

Motion agreed to.

The Presiding Officer: The next item of business is consideration of business motion S4M-01571, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, which sets out a timetable for the stage 3 consideration of the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during Stage 3 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 3: 40 minutes

Groups 4 to 6: 1 hour 10 minutes.—[Bruce Crawford.]

Motion agreed to.

Junior Minister

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-01575, in the name of Alex Salmond, on the appointment of a junior Scottish minister. Members should note that the question on the motion will be put immediately after the debate and not at decision time.

14:06

The First Minister (Alex Salmond): I am pleased to seek Parliament's approval for the appointment of Derek Mackay as a junior Scottish minister. The immediate reason for that appointment is, of course, the decision to create the new post of Minister for Youth Employment, which will be held by Angela Constance.

That move implements a key proposal of the recent Smith Group report. It was clear in the parliamentary debate on youth employment two weeks ago that the establishment of a new ministerial post had considerable cross-party support. In her new role, Angela Constance will build on the work that we are already doing to promote jobs and opportunities. For example, we have made a commitment that every 16 to 19-year-old in the country who is not in an apprenticeship, training, full-time education or a job will be offered a training place. As I announced two weeks ago, we are making available an additional £30 million to address youth unemployment.

Tomorrow, Angela Constance will host a seminar at the Parliament, taking on board various stakeholders such as local authorities, colleges, employers, the third sector and others to develop that new role. I am sure that her appointment will have a positive impact in ensuring that young people have the education, training and employment opportunities that they need to succeed.

Angela Constance's appointment has created a vacancy in her previous post. Aileen Campbell has done a fine job as Minister for Local Government and Planning since her appointment in May, and I am sure that she will do an equally good job in her new role as Minister for Children and Young People.

To replace Aileen Campbell, I have decided to appoint Derek Mackay to the ministerial team. Although he is a new and relatively youthful MSP, Derek is already something of a political veteran. At the age of 21 he became Scotland's youngest male councillor in 1999, and he led the Scottish National Party group in the Convention of Scottish Local Authorities from 2009 to 2011. Apparently,

that is enough to put grey hairs on even the youngest.

I believe that the changes that we have made to the Government to further raise the priority of youth employment will receive—and deserve—cross-party support. I believe that Derek Mackay will be an asset to the Government in the local government and planning brief, and I warmly welcome him to the Administration, pending the Parliament's approval.

I move,

That the Parliament agrees that Derek Mackay be appointed as a junior Scottish Minister.

[*Applause.*]

14:08

Iain Gray (East Lothian) (Lab): Labour welcomes the reshuffle in the ranks of the SNP Government. We congratulate Mr Mackay on his elevation, Ms Campbell on her sideways step and Angela Constance on what I consider to be her promotion.

As the First Minister made clear, Mr Mackay is no newcomer to responsibility for local government, given his experience in Renfrewshire Council. There, he had responsibility for the proposal to replace trained classroom teachers with volunteers; for a 23 per cent pay hike for senior council officials in 2008; and for teacher numbers too, cutting 200 posts in one year alone, which is proportionally the highest amount of any council in Scotland by some distance. He is therefore not so much a poacher turned gamekeeper, but more a ghillie who was always under orders from the big house. No matter. He takes on an important job today, and we genuinely wish him well.

Our welcome for Angela Constance to her post is unreserved. We demanded the creation of the post, as did the Smith report. The disastrous unemployment figures announced today underline how urgent the appointment is. Since we began discussing the appointment, another 24,000 young Scots have joined the ranks of the lost generation. The current figure is the benchmark and we will hold the minister to account in bringing it down. We do so in order that she may better win the arguments inside Government, that she is given the authority and influence required and that she is backed by the budget that she needs. We will be on Ms Constance's side, although it might not always seem like it.

For a start, we believe that Ms Constance's budget is not enough and too much of it is not new money—she needs more. Her job is at the heart of what our politics and this Parliament should be

about; it must be properly at the heart of Government.

As for Ms Campbell, I hope that she will forgive me if I say that, from the vantage point of my sixth decade, her role as a minister looks to me like a youth employment opportunity in and of itself. The challenges of children's policy are just as central to the future of our country as youth employment, and meeting those challenges is vital to creating the better Scotland that, across the chamber, we want to see. We therefore wish her success, too, in her vital role.

I have great pleasure in supporting the First Minister's motion. I wish the new ministers good luck in their new roles.

14:11

Jackson Carlaw (West Scotland) (Con): I congratulate the existing ministers on their new appointments, but I direct my remarks almost exclusively to Mr Mackay. This is the moment when he finds out the truth of the quotation, attributed to Boyd-Carpenter, that, "Your enemies are opposite you"—[*Interruption.*]*—*or, rather, that, "The opposition is opposite you and your enemies are behind," because this is a black day for many of the SNP members who sit behind the front bench. This is the day when one of the new intake has been promoted ahead of the old.

As we know, the path to office previously was to drink copiously of the First Minister's bath water. In the previous session of Parliament, Mr Neil and Ms Cunningham succeeded, against all their instincts, in doing what they had to do to get into office. What now for Mr Hepburn, Mr Doris and Mr Gibson, who for the past four and a half years have toiled to invent new ways to prostrate themselves before ministers? They have emulated the hyperbole of their predecessors with soaring crescendos of unadulterated sycophantic drivel in support of ministers, but all to no avail.

The First Minister has created a new fringe group of the great disappointed. Some of the new intake have watched with interest. Mr Yousaf, who may very well aspire to office before long, thought that getting noticed meant wearing more bling than Mrs Grahame, and Mr Stewart, who is not with us, had a cape and train that was longer than Her Majesty's.

Mr Mackay has opted for a different course: charming, reasonable, modestly attired and quietly loyal—his first utterance in the chamber was to look to the front bench and say, "What's my line?" Bless. Those of us in the west know that he is capable and believe that he is capable of going much further. We are relieved that there is now the opportunity for, it would seem, a right-wing presence in the Government, because Mr Mackay

has made it clear that his ideal dinner companions would be Margaret Thatcher and George Bush—a wise choice.

In wishing Mr Mackay all the best, I quote to him the words of one former Prime Minister, Churchill. He stated:

“it is not enough to do our best; we must do what is required”.

Good luck.

14:15

The First Minister: Presiding Officer, I was just reflecting on my disappointment that there was no Liberal contribution to welcome the ministerial presence, but they can always intervene during this closing speech.

I was struck, of course, by Jackson Carlaw's contribution. Boyd-Carpenter—who, incidentally, delivered the line rather better than Jackson Carlaw did—was Minister of Transport in Winston Churchill's Government. I reflect on this merely because I have been doing some comparisons between the efficiency of the Scottish National Party Administration in Edinburgh and the overstaffing of the various departments in London. I note that we have one transport minister in this efficient Government, whereas the UK Government has four ministers in its transport department. That overmanning, incidentally, goes right through the entire catalogue of the 110 ministers in the UK Government. I know that they had to make places for the Liberal Democrats, but when a Government in London has almost as many ministers as this entire Parliament has members, perhaps it is time to call a halt to ministerial appointments down south.

Boyd-Carpenter's line about your enemies being behind you was a great one, but I would have thought, given that Boyd-Carpenter sat for a London constituency, that David Cameron is the one who should be reflecting at the present moment that his enemies are behind him, in the Mayor of London.

I turn to Iain Gray, who supported the appointments. I have to say that, if that was a supportive speech, I am intensely relieved that Iain was not being critical. Let me take the substantive point before I make some remarks about Derek Mackay, about whom I think that Iain Gray was less than gracious. The substantive point was about Angela Constance being appointed Minister for Youth Employment, attending Cabinet, and reporting directly to the First Minister and the two relevant cabinet secretaries. That is a substantial move, which was recommended by the Smith Group, and I like the fact that it has cross-party support. We are doing that because everyone in this chamber has to be aware of the pernicious

evil of youth unemployment and has a personal responsibility to address it.

Iain Gray referred to a lost generation. I would love every full-time student in Scotland to have access to a part-time job, but let us remember that the headline figure in youth unemployment is far too high and includes 35 per cent of people who are in full-time education. People in full-time education are not part of a lost generation. On the contrary, they are people who are investing in the future of themselves and therefore in the future of the country.

As for Iain Gray's ungracious remarks, let us cast our minds back a few months. Derek Mackay, after his period as the group leader in Renfrew Council—one of the longest-serving group leaders in Scottish local government history—put himself before the electorate in his own area and achieved a sensational double-digit swing, to everyone's surprise, swept the Labour Party out of the seat in Renfrew and became a member of the Scottish Parliament. Iain Gray put himself before his people in the same election and scraped through by 150 votes. I think, given the comparison and the evaluation that local people made of Derek Mackay on one hand and Iain Gray on the other, that Iain Gray should have been rather more gracious in welcoming Derek Mackay's ministerial appointment.

The Presiding Officer: That concludes the debate on the appointment of a Scottish junior minister. The question is that motion S4M-01575, in the name of the First Minister, on the appointment of a junior Scottish minister, be agreed to.

Motion agreed to,

That the Parliament agrees that Derek Mackay be appointed as a junior Scottish Minister.

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill: Stage 3

14:19

The Presiding Officer (Tricia Marwick): The next item of business is stage 3 proceedings on the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill. In dealing with the amendments, members should have the bill as amended at stage 2, that is SP bill 1A; the marshalled list, that is SP bill 1A-ML; and the groupings, which I have agreed to. The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. Members should now refer to the marshalled list of amendments.

Section 1—Offensive behaviour at regulated football matches

The Presiding Officer: Amendment 1, in the name of David McLetchie, is in a group on its own.

David McLetchie (Lothian) (Con): I am delighted to kick off the debate.

Amendment 1 is an amendment that I first lodged at stage 2 but withdrew on the strength of an undertaking from the minister to consider its adoption. It was fairly considered by her and discussed by Parliament, but the minister concluded that she could not accept it. Accordingly, I have brought it back to Parliament for wider debate and discussion.

One of the bill's weaknesses is its failure to define sectarian behaviour, although its primary motivation is to address sectarian behaviour in the context of football matches. As I have said repeatedly, sectarian behaviour in Scotland cannot be viewed solely in the context of religious hatred directed against Roman Catholics. It also manifests itself in loyalties and affiliations arising from the history of Ireland, where religious divisions between Catholics and Protestants certainly play a major part but where there are also strong and secular republican and loyalist traditions. Regrettably, their conflicting desires to gain independence or defend an existing constitutional relationship with Britain have been conducted not just on a political level, but through the violence and activities of paramilitary and terrorist groups on both sides.

I welcome the fact that that broader perspective on what constitutes sectarian behaviour is shared

by the Scottish Government and reflected in the guidelines to prosecutors that have been published by the Lord Advocate. In the context of the section 1(2)(e) offence of

"behaviour that a reasonable person would be likely to consider offensive",

the Lord Advocate's guidelines indicate that that would encompass

"Songs/lyrics in support of terrorist organisations"

and

"Songs/lyrics which glorifies or celebrates events involving the loss of life or serious injury."

The intention behind amendment 1 is to incorporate a specific provision in the bill to refer to such conduct, which would sit alongside the religious hatred provisions in sections 1(2)(a), 1(2)(b) and 1(2)(c). At the same time, my amendment would remove from the bill the catch-all section 1(2)(e) offence that was the subject of much adverse comment in the evidence received by the Justice Committee, which is recorded in the committee's report to the Parliament. My amendment defines terrorism by reference to the organisations that are on the proscribed list compiled by Her Majesty's Government under the Terrorism Act 2006, which covers the Irish Republican Army and its various derivatives and splinter organisations, as well as loyalist paramilitary groups.

The problem with the statutory aggravation enacted by this Parliament in section 74 of the Criminal Justice (Scotland) Act 2003 was that it was one sided. It focused solely upon religious hatred rather than wider forms of sectarian behaviour and as such was rightly resented as an unbalanced piece of legislation. We risk making exactly the same mistake in this bill. It is not good enough to throw a catch-all provision into the bill and to leave to guidelines the definition of behaviour that will or will not be prosecuted. If one was going to take that approach, logically all unacceptable behaviour could be covered by generalised catch-all offences, leaving the specification of what is offensive to a reasonable person, including religious and other hatreds, to the Lord Advocate's guidelines to prosecutors. We do not have that. Instead, we have a half-and-half approach to the problem that is likely to satisfy no one and which, I am sorry to say, is born out of an unwillingness to grasp firmly the sectarian nettle. The Parliament can and should do better than that.

I move amendment 1.

James Kelly (Rutherglen) (Lab): I rise to oppose amendment 1, although I think that David McLetchie lodged it to try to address one of the central flaws of the bill, which is its lack of

definition. I genuinely believe that the Scottish National Party Government has got itself into great difficulty over that.

In the aftermath of the election, there was agreement across the Parliament on the need to tackle sectarianism, but the SNP focused on it as a football matter and rushed in the bill, which was poorly defined. That dogged the debate throughout the summer months and into the autumn. When issues about what would be an offence under the bill have been raised with SNP ministers and the Lord Advocate, the answer that has consistently been given has been that that will be down to the police and the prosecutors. That is simply not good enough. We should not expect the police and the prosecutors to fill in for the gaps in the bill.

The lack of definition and clarity is a central flaw in the bill. Amendment 1 in part seeks to address that, but Labour will not support it. We believe that the bill is flawed.

The Minister for Community Safety and Legal Affairs (Roseanna Cunningham): As we have heard, amendment 1 would narrow the scope of the offensive behaviour offence by removing the reference to

“other behaviour that a reasonable person would be likely to consider offensive”

and replacing it with a more limited reference to support for terrorism and glorification of loss of life. The Government does not support the amendment, but I nevertheless thank Mr McLetchie for his careful consideration of the bill and the constructive approach that he has adopted in lodging the amendment.

Two distinct but related issues are involved, the first of which is the removal of the general so-called catch-all provision in section 1(2)(e). I do not believe that the offence will be effective if it cannot accommodate itself to a range of existing and, crucially, future behaviours. Whenever a list of specific behaviours is captured in law, we risk freezing the law at that point and limiting its applicability. I understand that there are concerns about the catch-all nature of section 1(2)(e), but it is necessary to achieve our stated aims. I am also fully assured that the offence will be enforced proportionately and fairly. I would be extremely concerned that, were section 1(2)(e) to be deleted, the offence would not be flexible enough to capture the continually evolving variety of offensive behaviour that we are aiming to eliminate from Scottish football.

Secondly, the explicit reference to support for proscribed organisations is problematic. I have discussed that issue with Mr McLetchie and understand, and to a large extent sympathise with, his intentions in lodging an amendment to highlight

such an important issue. We are in full agreement that the bill should criminalise support for terrorist organisations in the context of football. I am therefore happy to give members an assurance that the bill already criminalises support for terrorism in connection with regulated football matches where there is a risk of public disorder. That is made very clear in the Lord Advocate's guidelines on the bill.

As a result of Mr McLetchie's engagement with us on the issue, we have looked into the issue of placing a reference to terrorism in the bill. I have discussed the matter with the Lord Advocate and carefully considered it. As I have said, I understand the concerns behind the amendment and am sympathetic to the reasoning for lodging it, but all offensive behaviour that is likely to incite public disorder is already covered by the bill, including support for terrorist organisations and the glorifying of tragedies. That behaviour is already covered by section 1(2)(e), which the amendment would remove. The Lord Advocate's guidelines make it very clear that that is exactly the sort of offensive behaviour that would be covered. The Government's view is that the Lord Advocate's guidelines are the most appropriate way to deal with the matter, and therefore we do not support amendment 1.

David McLetchie: I thank James Kelly and the minister for their contributions in this short debate.

I was pleased that James Kelly identified that the purpose of amendment 1 was to correct one of the central flaws of the bill, which is a lack of definition and precision in the way that the offences are framed. I am therefore slightly surprised that, when I lodge an amendment that incorporates such definition and precision into the offence, the Labour Party elects to vote against it. I suspect that there are other reasons at play, but so be it. I welcome even the qualified welcome that was given.

The minister said that amendment 1 would narrow the scope of the offence. Yes, it would, and I make no apologies for that because, as James Kelly fairly pointed out, one of the principal criticisms of the bill is that the new offences that it creates are too general in scope, particularly in relation to section 1(2)(e). On that issue, the minister and I, and the members of her party and those of mine, fundamentally disagree. I respect her views and I appreciate the fact that she respects ours. Nonetheless, I wish to press the amendment to a vote.

The Presiding Officer: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: We are not agreed, so I suspend the meeting for five minutes.

14:31

Meeting suspended.

14:36

On resuming—

The Presiding Officer: Order. I ask members please to resume their seats and check that they have their cards in their consoles; otherwise, they will not be allowed to vote.

We move to the division on amendment 1.

For

Brown, Gavin (Lothian) (Con)
 Carlaw, Jackson (West Scotland) (Con)
 Davidson, Ruth (Glasgow) (Con)
 Fergusson, Alex (Galloway and West Dumfries) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West Scotland) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McLetchie, David (Lothian) (Con)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, Brian (Aberdeen Donside) (SNP)
 Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)

Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Renfrewshire South) (Lab)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hume, Jim (South Scotland) (LD)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Keir, Colin (Edinburgh Western) (SNP)
 Kelly, James (Rutherglen) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Macdonald, Lewis (North East Scotland) (Lab)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackenzie, Mike (Highlands and Islands) (SNP)
 Malik, Hanzala (Glasgow) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMahon, Michael (Uddingston and Bellshill) (Lab)
 McMahon, Siobhan (Central Scotland) (Lab)
 McMillan, Stuart (West Scotland) (SNP)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Murray, Elaine (Dumfriesshire) (Lab)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Park, John (Mid Scotland and Fife) (Lab)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Salmond, Alex (Aberdeenshire East) (SNP)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Drew (Glasgow) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Urquhart, Jean (Highlands and Islands) (SNP)
 Walker, Bill (Dunfermline) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 15, Against 103, Abstentions 0.

Amendment 1 disagreed to.

The Presiding Officer: We now move to group 2. Amendment 2, in the name of David McLetchie, is the only amendment in the group.

David McLetchie: Amendment 2 is the same as an amendment that I withdrew at stage 2 on the basis of the minister's undertaking to give the matter fuller consideration. Again, she has done that in good faith, and I commend her for that. Again, however, my proposal has not been adopted or endorsed by the Government, so I am bringing it to the chamber for further debate today.

Amendment 2 is derived from the Lord Advocate's guidelines to prosecutors, to which I referred in the debate on the previous group. The guidelines stipulate that it is not appropriate to add an aggravation on the grounds of religious and other hatreds and prejudices in the prosecution of the new offences that are created under sections 1 and 5. I believe that that guideline should be in the bill.

The Government's position is that new laws are required in order that free-standing offences relating to offensive behaviour at football matches may be defined and prosecuted separately and distinctly from other common law and statutory offences that are of general application. If that is the Government's position, there is no need to charge a person with a statutory aggravation, which would be directed towards exactly the same behaviour. It would be particularly absurd to add a statutory aggravation under section 74 of the Criminal Justice (Scotland) Act 2003, which, as I have said before, is an unbalanced and unsatisfactory piece of legislation, and a product of this Parliament's last, inadequate effort to tackle sectarianism.

I move amendment 2.

James Kelly: I rise to oppose the amendment in the name of David McLetchie. I fundamentally disagree with the premise of the amendment that racial and religious aggravations should not be included.

It is important that we have appropriate statistics when we try to assess the problem of sectarianism and religious aggravation in Scotland. In the context of the bill—if it is to go forward—it is important that we are able to assess what the breaches of the peace cover. That should not be vague or unspecific.

On the analysis of statistics, it is a matter of regret that the Government has lost a substantial body of data dating back a number of years. That needs to be examined closely. I have taken the matter up with the Cabinet Secretary for Justice, who says that it is a matter of the information technology policy that the data is deleted after two

years. It has been pointed out to me that the IT systems might indeed hold the data, so I will take that up further with the cabinet secretary.

I oppose amendment 2. I believe that it is appropriate to have full data available if we are to be able to assess the impact of the problem and monitor the effect of any legislation going forward.

Roseanna Cunningham: I really have to deal with the point that James Kelly made first, to knock that nonsense on its head. The fact is that summary cases are dealt with in exactly the way that they have been dealt with since 2001, when the destruction policy was put in place by the member's own Government. If he is now going to say that that was wrong, I am astonished—

James Kelly: Why was it in your manifesto?

The Presiding Officer: Order, Mr Kelly.

Roseanna Cunningham: Mr Kelly must know that somewhere in the region of 270,000 cases are reported every year, which makes absolutely clear why the physical destruction policy was put in place in 2001. It is a bit rich for him to come to the chamber now and moan about something that he put in place.

Amendment 2, in the name of David McLetchie, is intended to ensure that individuals charged with offensive behaviour motivated by hatred cannot also have a statutory aggravation relating to behaviour motivated by prejudice added to their charge. I sympathise with the intention of the amendment, but it goes beyond what is needed to ensure that an additional aggravation cannot be added to those behaviours that express hatred, because it applies to all the types of behaviour listed in section 1.

As paragraphs (a) to (c) of section 1(2) on the offensive behaviour offence cover expression of hatred directed towards individuals based on their membership or perceived membership of groups including those that are defined by religion, colour, race, nationality, ethnic or national origins, sexual orientation, transgender identity and disability, the Government agrees that it would not be appropriate to add an additional aggravation to charges under those paragraphs.

However, amendment 2 would also preclude aggravations being added to charges under paragraphs (d) and (e) of section 1(2), which cover behaviour that is threatening or otherwise likely to be offensive to a reasonable person, including support for terrorism. It may be appropriate to add a statutory aggravation to charges under those paragraphs, and that is one of the reasons why the Government will not support the amendment. That was the basis of the conversations that we had with Mr McLetchie. I thank him once again for engaging in that discussion with us.

The other reason why the Government will not support the amendment is that the issue is, as Mr McLetchie recognises, already covered in the Lord Advocate's guidelines on the bill. The guidelines state:

"It is not appropriate to add aggravations in terms of prejudice relating to race, religion, sexual orientation, transgender identity or disability to this offence."

I think that that is very clear and leaves no doubt that additional aggravations should not be added to charges relating to hatred under the offensive behaviour at football offence. The Government will not support the amendment.

14:45

David McLetchie: I again thank the minister and Mr Kelly for their contributions to our debate this afternoon.

I find Mr Kelly's logic a little difficult to follow. The principal offence in the bill is behaviour that expresses or stirs up hatred against people who are members of a religious group or a social or cultural group with a perceived religious affiliation—and so on. The statutory aggravations are that an offence is aggravated by hatred, dislike or a stirring up of hatred of people in the same categories. How can we have an aggravation of something that is already an offence, in almost identical terms? That makes absolutely no sense at all.

That is exactly why the instructions are as they are in the Lord Advocate's guidelines. I seek only to bring that approach into the bill so that it is not just a matter for the guidelines. The minister—fairly, from her perspective—says that the Government wants the aggravations to apply to the more generalised offences in paragraphs (d) and (e) of section 1(2). That is where we fundamentally differ, because I do not think that the bill should have generalised offences in those paragraphs. It should be specifically focused on the behaviour that it was introduced to address: behaviour largely perceived to be of a sectarian nature.

As before, there is a fundamental division of opinion between us. I will press my amendment to a vote.

The Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Brown, Gavin (Lothian) (Con)
 Carlaw, Jackson (West Scotland) (Con)
 Davidson, Ruth (Glasgow) (Con)
 Fergusson, Alex (Galloway and West Dumfries) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)

Goldie, Annabel (West Scotland) (Con)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McLetchie, David (Lothian) (Con)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, Brian (Aberdeen Donside) (SNP)
 Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Renfrewshire South) (Lab)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hume, Jim (South Scotland) (LD)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Keir, Colin (Edinburgh Western) (SNP)
 Kelly, James (Rutherglen) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Macdonald, Lewis (North East Scotland) (Lab)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackenzie, Mike (Highlands and Islands) (SNP)

Malik, Hanzala (Glasgow) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMahon, Michael (Uddingston and Bellshill) (Lab)
 McMahon, Siobhan (Central Scotland) (Lab)
 McMillan, Stuart (West Scotland) (SNP)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Murray, Elaine (Dumfriesshire) (Lab)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Park, John (Mid Scotland and Fife) (Lab)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Salmond, Alex (Aberdeenshire East) (SNP)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Drew (Glasgow) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Urquhart, Jean (Highlands and Islands) (SNP)
 Walker, Bill (Dunfermline) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 14, Against 101, Abstentions 0.

Amendment 2 disagreed to.

Section 4A—Power to modify sections 1 and 4

The Presiding Officer: We move to group 3. Amendment 3, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: Amendment 3 is a technical amendment intended to clarify the application of the order-making powers in section 4A. Those powers were added at stage 2.

Section 4A allows the Scottish ministers to make an order, subject to affirmative procedure, to modify the behaviours that trigger, and the groups protected by, the offensive behaviour offence. The Government has given a clear commitment that we will consult on any substantive changes to be made using the powers.

The amendment is intended to make it clear that where necessary—for example, to ensure compliance with the ECHR, which is required of us in this Parliament—section 1(5)(b) can be disapplied as regards a type of behaviour listed in section 1(2). The effect of such a disapplication would be that persons must be present in sufficient numbers for public disorder to be likely to be incited as a result of a kind of behaviour.

I move amendment 3.

David McLetchie: I rise to oppose the amendment in the minister's name. In an extraordinary way, it demonstrates exactly what is wrong with the bill. In essence, with this amendment and the powers in section 4A, which was added to the bill at stage 2, the Government wants an opportunity by way of statutory instrument to amend on the hoof the new criminal offences that it is creating in the bill.

We have an absurd situation in that the bill says that behaviour is an offence even if

"persons likely to be incited to public disorder are not present or are not present in sufficient numbers".

In other words, it does not matter—someone can be guilty of an offence even if people are not present. However, the Government is so concerned that that provision might be struck down on the ground of its failure to comply with the ECHR that it now wants the power to remove the provision by statutory instrument. Would it not be a better idea to get it right in the first place? We would not then have a problem.

In conclusion, we had an interesting brief on the bill from the organisation known as Liberty. Its comments:

"Allowing for the modification of criminal conduct by way of Ministerial order is a breathtaking expansion of power. Use of the statutory instruction power to introduce significant policy decisions without full parliamentary scrutiny on par with that provided for proposed legislation is an extraordinary move which only goes to show that this Bill is poorly planned and poorly drafted."

I could not say it better myself; in fact, I have not. I oppose amendment 3.

Roseanna Cunningham: When David McLetchie comments about getting it right the first time, I wonder what he thinks stage 2 and stage 3 of our bill procedures are about. This is hardly the first Government to lodge the odd amendment during the progress of a bill. I seem to remember it happening frequently between 1999 and 2007.

Taking an order-making power is hardly an unusual procedure either. It is fairly standard and we have made it clear that the order-making powers that we seek to take under the bill will be invoked only with the fullest consultation, which means coming back to the chamber for a vote. I

do not understand why Mr McLetchie finds that to be so objectionable.

The Presiding Officer: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen Donside) (SNP)
 Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMillan, Stuart (West Scotland) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Salmond, Alex (Aberdeenshire East) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Urquhart, Jean (Highlands and Islands) (SNP)

Walker, Bill (Dunfermline) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

Against

Brown, Gavin (Lothian) (Con)
 Carlaw, Jackson (West Scotland) (Con)
 Davidson, Ruth (Glasgow) (Con)
 Fergusson, Alex (Galloway and West Dumfries) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West Scotland) (Con)
 Harvie, Patrick (Glasgow) (Green)
 Johnstone, Alex (North East Scotland) (Con)
 Johnstone, Alison (Lothian) (Green)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McLetchie, David (Lothian) (Con)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)

Abstentions

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Henry, Hugh (Renfrewshire South) (Lab)
 Hume, Jim (South Scotland) (LD)
 Kelly, James (Rutherglen) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Macdonald, Lewis (North East Scotland) (Lab)
 Malik, Hanzala (Glasgow) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McMahan, Michael (Uddingston and Bellshill) (Lab)
 McMahon, Siobhan (Central Scotland) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Murray, Elaine (Dumfriesshire) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Drew (Glasgow) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Stewart, David (Highlands and Islands) (Lab)

The Presiding Officer: The result of the division is: For 64, Against 17, Abstentions 36.

Amendment 3 agreed to.

The Presiding Officer: We move to group 4. Amendment 8, in the name of Patrick Harvie, is grouped with amendment 9.

Patrick Harvie (Glasgow) (Green): I have made it fairly clear all along that I am no great fan of the bill. Although I thought that the flaws in the bill were probably too deep to be rectified by amendments, I lodged a number of amendments at stage 2 because I took the view that, if the Government was determined to push the bill all the way, the least that we could do was try to shave off a few of the rough edges and resolve a few of the more significant problems. Unfortunately, I was not successful at persuading the Government that some of my worthy stage 2 amendments should be agreed to, so I have come back with a few smaller ones at stage 3. I again make it clear that I believe that the flaws in the bill run very deep and that, even if the Government accepts all my amendments, I am not sure that that will make me vote to pass the bill.

The bill has been portrayed as being a football bill or a sectarianism bill but, in reality, it is nothing of the kind. Although part of it applies only to football and part of it applies only to religion, it is a much wider hate crime bill, which will sit alongside the other pieces of hate crime legislation that have been passed.

Members will be aware that, in the last session of Parliament, I worked with the Government on such legislation in the form of the Offences (Aggravation by Prejudice) (Scotland) Bill, which, in the end, received the support of all the Opposition parties. We considered whether to include in that bill the offence of incitement to hatred. Along with some of the organisations that lobbied for the bill, I and other politicians considered whether incitement to hatred was an issue that we wanted to get into.

The UK Government and the Westminster Parliament have implemented incitement to hatred legislation, but the Scottish Parliament has never done so. Until about a week before the introduction of the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill, I thought that there was still a pretty clear consensus that we did not feel that it was right to pursue incitement to hatred in legislation without a great deal more careful consideration, but that is what the bill does.

The bill creates the offence of incitement to hatred, albeit only in highly specific circumstances. It was unclear why, if the Government supported the introduction of incitement to hatred legislation, it had defined those circumstances in the way in which it had. Therefore, at stage 2, I lodged amendments that would have extended the grounds of incitement to hatred to cover all the other grounds that are mentioned in relation to

other aspects of the bill. I put those amendments forward for debate, but I did not press them to a vote, because I had concerns that we were creating rushed legislation and that we were stepping over a line that we had previously agreed, on a cross-party basis, not to step over.

Following those stage 2 considerations, it was clearer to me than ever that we would be making a serious mistake. Therefore, the amendments in group 4—amendments 8 and 9—say to ministers that, if they intend to use the power that they wish to have to extend the scope of the incitement to hatred offence or the other offence, in addition to asking the Parliament's permission, they will need to begin a public debate on the proposal. The consequences of getting wrong hate speech legislation are far graver than the consequences of getting wrong legislation on other hate crimes. With statutory aggravation, we are talking only about treating existing offences differently because of motivation but, with hate speech legislation, we would be in much more danger of stepping over the line on free speech. The free speech defence that the Government has included does not apply to the whole bill or to both the offences that are proposed.

With amendments 8 and 9, I argue that the Government should have to consult publicly and begin a public debate with a view to ensuring that if, in future, it decides that it wishes to come back with an order to extend the scope of the offences, we do not make more mistakes than we have to.

I move amendment 8.

James Kelly: I support Patrick Harvie's amendments, for which he has made a cogent case. It is clear that, if the bill goes through, the proposed order-making power will give the Government a substantial remit to extend the provisions beyond those that are in the bill. Patrick Harvie is absolutely correct to say that, if that step is to be taken, there should be appropriate consultation, not only within the Parliament, but with interested parties outside it, in order to ensure that a consensus can be built for the changes that are proposed. I am afraid that the Government has failed to build such a consensus on the bill.

David McLetchie: As Patrick Harvie said, he lodged a significant number of amendments at stage 2, some of which raised fundamental issues to do with the relationship between, on the one hand, civil liberties and freedom of speech and, on the other, hate crimes. It would have been well worth having a wider debate on those issues at stage 3 in the context of what the bill aspires to do. It is a deficiency in our processes that we cannot accommodate such debate in the final stage of parliamentary consideration of legislation. That might be an issue for the future.

I support amendments 8 and 9 and I urge the minister to accept them, because it is important that there is wider public consultation on any proposed changes to the legislation, as Patrick Harvie and James Kelly said.

15:00

Alison McInnes (North East Scotland) (LD): I welcome Patrick Harvie's on-going efforts to improve this mess of a bill, although I fear that it is a hopeless cause.

Given the unprecedented powers that sections 4A and 6A will introduce, amendments 8 and 9 are vital if we are to ensure that at least some sense of democratic process remains in our law making. The Government's amendments to the bill at stage 2, which will enable the Government to alter the definition of a criminal offence by ministerial order, were hard to believe. As we heard, Liberty described the approach as a "breathhtaking expansion of power".

Despite the minister's assurances to the contrary, the affirmative procedure is simply not meant to be used for such a purpose. Criminal offences should only ever be redefined through the formal bill process, which demands full pre-legislative scrutiny—the bill was sadly lacking in that, due to the Government's gung-ho mentality.

Bill scrutiny involves three distinct stages, two parliamentary debates, a committee report and the opportunity to lodge amendments, whereas the affirmative order procedure involves no formal consultation and allows for no more than 90 minutes of debate in committee and only the briefest discussion in the chamber. That is no way to make criminal law.

Amendments 8 and 9 would, at the very least, require the Government to carry out some form of consultation before using its new powers. That is no substitute for genuine democracy, but it seems to be the best that we can hope for under the Scottish National Party Government.

Roseanna Cunningham: The problem with amendments 8 and 9 is that they would apply no matter how minor or technical the change. The Subordinate Legislation Committee considered in great detail the order-making powers as set out in the delegated powers memorandum for the bill, and it concluded in its report that the Government's reasoning for the use of order-making powers was "justifiable" and "appropriate". The committee said:

"The Committee recognises that the order making powers ... are significant and that in some cases orders under this power should be subject to consultation."

We have said that all along. The committee went on to say that it recognised that

"some orders ... will be of a technical nature and consultation ... in these instances would be unnecessary."

It concluded:

"Imposing a universal requirement for consultation on all orders under this section on the face of the Bill would in the view of the Committee be unnecessary",

and noted that I have assured the Justice Committee that

"consultation will be undertaken where it is appropriate"

on the substantive issues that were discussed.

I am happy to repeat that assurance. I confirm that the Government does not support amendments 8 and 9, for the reasons that I laid out.

Patrick Harvie: Here is a thought. The Parliament could pass a single piece of legislation, which would give ministers the power to come back with an order to change more or less any aspect of criminal law. It would save us all an awful lot of time and bother. I am sure that most ministers would be happy to have the power to say, "Actually, these changes are very minor and technical; let us not bother with full legislation but instead pass it all through the affirmative procedure."

I hope that all members understand that that is not a serious proposal. I hope that we all understand that that is not how we do things in a democratic Parliament. If the Government wants to change the law it should do so on a formal basis, rather than take upon itself the power to do so through the affirmative procedure.

Like David McLetchie, I am sorry that we are not having a wider debate about more fundamental aspects of the bill. We will perhaps have to confine our comments in that regard to the debate on the motion that the bill be passed, which will happen before decision time.

I will press amendment 8 to a vote on the basis that the Parliament should take responsibility for the operation of the legislation and any changes to it, and ensure that ministers do not come to regard the order-making power as a default position. There is a great danger that ministers will come to regard it as something that they can insert in every piece of legislation. I believe that we should hold them to a higher standard.

The Deputy Presiding Officer (Elaine Smith): The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)

Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brown, Gavin (Lothian) (Con)
 Carlaw, Jackson (West Scotland) (Con)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Davidson, Ruth (Glasgow) (Con)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Fergusson, Alex (Galloway and West Dumfries) (Con)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West Scotland) (Con)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Renfrewshire South) (Lab)
 Hume, Jim (South Scotland) (LD)
 Johnstone, Alex (North East Scotland) (Con)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Rutherglen) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Malik, Hanzala (Glasgow) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Lothian) (Con)
 McMahon, Michael (Uddingston and Bellshill) (Lab)
 McMahon, Siobhan (Central Scotland) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Murray, Elaine (Dumfriesshire) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Drew (Glasgow) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)

Against

Adam, Brian (Aberdeen Donside) (SNP)
 Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)

Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMillan, Stuart (West Scotland) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Salmond, Alex (Aberdeenshire East) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Urquhart, Jean (Highlands and Islands) (SNP)
 Walker, Bill (Dunfermline) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 53, Against 63, Abstentions 0.

Amendment 8 disagreed to.

Section 6A—Power to modify sections 5(5)(b) and 6

Amendment 9 moved—[Patrick Harvie].

The Deputy Presiding Officer: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)

Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brown, Gavin (Lothian) (Con)
 Carlaw, Jackson (West Scotland) (Con)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Davidson, Ruth (Glasgow) (Con)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Fergusson, Alex (Galloway and West Dumfries) (Con)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West Scotland) (Con)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Renfrewshire South) (Lab)
 Hume, Jim (South Scotland) (LD)
 Johnstone, Alex (North East Scotland) (Con)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Rutherglen) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Malik, Hanzala (Glasgow) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Lothian) (Con)
 McMahon, Michael (Uddingston and Bellshill) (Lab)
 McMahon, Siobhan (Central Scotland) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Murray, Elaine (Dumfriesshire) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Drew (Glasgow) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)

Against

Adam, Brian (Aberdeen Donside) (SNP)
 Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)

Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMillan, Stuart (West Scotland) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Salmond, Alex (Aberdeenshire East) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Urquhart, Jean (Highlands and Islands) (SNP)
 Walker, Bill (Dunfermline) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 53, Against 64, Abstentions 0.

Amendment 9 disagreed to.

Section 7—Sections 1(1) and 5(1): offences outside Scotland

The Deputy Presiding Officer: We move to group 5. Amendment 4, in the name of the minister, is grouped with amendments 5 to 7.

Roseanna Cunningham: Amendments 4 to 6 relate to the extraterritorial extent of the offences in the bill, and amendment 7 is a minor drafting amendment.

The extraterritorial scope of the offensive behaviour at football offence extends to matches that are played outside Scotland that involve a Scottish club or the national team. The bill currently covers all British citizens. That was

intended to ensure that the offence in relation to matches that are played outside Scotland covered supporters of Scottish teams who are based in England, Wales and Northern Ireland as well as those who are based in Scotland. It would have ensured that any British citizen who participated in sectarian or otherwise offensive behaviour during a match that involved a Scottish football club or the national team that was played outside Scotland was covered by the offence.

We have discussed the issue with the United Kingdom Government, which has argued that the extraterritorial application of the offensive behaviour offence should be restricted to individuals who are normally resident in Scotland, as other British citizens who take part in behaviours that will be criminalised under the bill would be punished under laws elsewhere in the UK.

Amendment 4's proposals will still mean that individuals normally resident in Scotland travelling to matches involving Scottish teams elsewhere in the world will be covered by the offence. That means that those travelling from their homes in Glasgow, Edinburgh or Dundee to watch their teams play in London, Munich or Napoli can be punished under the offensive behaviour offence.

The UK Government has given us assurances that laws elsewhere in the UK can deal with similar behaviour by other British citizens. I have sought its assurance that it will take all reasonable steps to ensure that conduct that our bill will criminalise if carried out in Scotland or abroad by those habitually resident in Scotland will be routinely prosecuted if the conduct is by persons not habitually resident in Scotland and relates to a match involving a Scottish team that is played elsewhere in the UK.

Therefore, in the light of the UK Government's objections to the extent of the offence and, crucially, its assurances that such behaviour will be dealt with elsewhere in the UK for relevant supporters, we have agreed to introduce the amendments in question to restrict the extraterritorial extent of the offence to individuals habitually resident in Scotland. The Crown Office and Procurator Fiscal Service will also take forward discussions with the Crown Prosecution Service on a protocol between the two organisations in relation to the prosecution of offensive behaviour that takes place elsewhere in the UK at a regulated football match involving a Scottish team.

Football clubs also have a part to play in addressing fan behaviour, including that at matches abroad. The joint action group has led to the implementation of a new information-sharing protocol between the police and clubs that will allow the police to pass details of offending fans to

clubs for appropriate action to be taken, regardless of whether it relates to matches at home or abroad. I am therefore confident that clubs will take action against any fans behaving in an unacceptable manner when following their team, which includes fans travelling from outside Scotland to any match involving their club.

The bill's provisions, action by clubs and liaison with the UK authorities will therefore ensure that anyone following their club or the national team who behaves in a sectarian or offensive manner that risks inciting public disorder will be subject to the full force of the law and possibly other sanctions, no matter whether the game takes place in Glasgow, Manchester or Milan.

Amendments 4, 5, 6 and 7 also provide that the threatening communications offence applies to any threatening communication made outside Scotland by any person where that communication is intended to be seen or heard in Scotland.

I move amendment 4.

Alison McInnes: I find it interesting but perhaps not surprising that at this late stage the Government has suddenly discovered that part of its bill lies outwith the powers of the Scottish Parliament. Had the Government listened to the many concerns that the Opposition parties raised here in the chamber and the dozens of individuals, groups and organisations that replied to the committee's call for evidence, it might have realised that there are fundamental problems with its bill. The Law Society of Scotland spoke in its submission of its concerns about the legislative competence of this part of the bill. Amendments 4, 5, 6 and 7 will remove an error in the drafting of the bill that it has taken the Government six months to recognise. I dread to think how many more we might discover in the next months.

Roseanna Cunningham: Alison McInnes must accept that for a considerable amount of time we have been in discussion with the UK Government on that drafting point; it is not something that anybody has suddenly discovered. I stand by amendment 4.

Amendment 4 agreed to.

Amendments 5 to 7 moved—[Roseanna Cunningham]—and agreed to.

Section 7A—Report on operation of offences

The Deputy Presiding Officer: We move to group 6. Amendment 10, in the name of Patrick Harvie, is the only amendment in the group.

15:15

Patrick Harvie: As I said before, I am sorry that I have not been successful in persuading the

Government to accept any of my more substantial amendments, either at stage 2 or today. I am left with one very minor amendment, and I hope that there will be some willingness to consider it.

Section 7A of the bill as amended at stage 2 requires the Government to produce a report on the operation of the new offences and to lay that before the Parliament. I had hoped, in the debate on the motion that the bill be passed, to be able to try to persuade the Parliament that we should do more than simply review the operation of those new offences and that we should set a timescale for the Government to consolidate hate crime legislation, given the frankly slightly messy situation that already exists and which we are making worse today.

However, if there is not to be such an opportunity—I will still argue for it, even though my amendment has not been selected for the debate—I will make the case that the report that the Government is to lay before the Parliament can be properly informed only if the Government consults publicly on the drawing-up of that report. Many people have direct, first-hand experience of these offences and we should listen to them when we are reviewing the operation of the legislation. I hope that, when the report is laid before the Parliament, we have the opportunity to debate in the chamber substantive amendments to a motion and vote on how the Government should respond to the experiences that are expressed during the review.

I move amendment 10.

James Kelly: I rise to support Patrick Harvie's amendment. I underline our sympathy with and support for the case that he outlined in relation to the consolidation of hate crime law. He makes some fair points in that regard.

Although he describes amendment 10 as more minor than others that he wished to debate, it deals with the important matter of the report coming back to the Parliament and the data in the report. As I said earlier, it is important to be able to monitor the effectiveness of legislation through reports and data.

It was disappointing that the minister failed to take my intervention earlier. I wanted to point out the fact that the Scottish National Party made a manifesto pledge regarding the full publication of data relating to religious offences. It is regrettable that the minister sought to criticise me but was not prepared to take that intervention.

Patrick Harvie's amendment is logical. It makes a great deal of sense and would help the Parliament to form a view not only on the effectiveness of the legislation but on the wider issues affecting Scottish society.

Roseanna Cunningham: As Patrick Harvie will be aware, the Government lodged an amendment at stage 2 to respond to the Justice Committee's recommendation that we should report to the Parliament on the operation of this legislation after an appropriate period.

The Government has already made it clear that we will give full consideration to the issues that are involved in preparing our report on the bill and that it will not simply be a statistical report. I regard it as essential that we consult a wide range of partners to assist in the preparation of our report. Consultation with appropriate persons is therefore already our intention.

Nevertheless, I thank Mr Harvie for the constructive way in which he has engaged in the process. I confirm that the Government appreciates the intention behind his amendment and that it will, therefore, support it.

Patrick Harvie: I could pretend that I am picking my chin up off the floor, but I am grateful to the minister for not only accepting the amendment but intimating to me earlier that I could expect this decision. I welcome the fact that one amendment from Opposition parties will be accepted.

In closing, I ask the minister and the Cabinet Secretary for Parliament and Government Strategy to look at how the Parliament will have an opportunity to consider the report when it is laid. We need a full debate on the report so that Opposition members can lodge amendments to a substantive motion and to ensure that the Parliament is able to decide how we should respond to the contents of the report.

Amendment 10 agreed to.

The Deputy Presiding Officer: That ends the consideration of amendments.

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

The Deputy Presiding Officer (Elaine Smith):

The next item of business is a debate on motion S4M-01524, in the name of Roseanna Cunningham, on the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill.

15:20

The Minister for Community Safety and Legal Affairs (Roseanna Cunningham): I am glad finally to be able to open this stage 3 debate and to set out the decisive actions that the Government has taken to address the problem of sectarian and other offensive behaviour at football. This is an historical issue that has been too long ignored in Scotland. In the previous football season the issue reached a crisis point, with death threats posted on the internet and bullets and bombs sent though the post in connection with football. We need to remember the events that took place earlier this year, because it was a fairly astonishing escalation of activity in Scotland that I would guess pretty much every member in the chamber absolutely abhorred.

I do not for one minute accept that sectarianism is confined only to football, and I will say more about the wider agenda in the debate. However, it is abundantly clear that such behaviour manifests itself in the context of football more visibly than elsewhere. Given that that is the case, it was manifestly clear that action was essential.

Working with the Lord Advocate, the police and football authorities, we took the decisive action that was demanded by the crisis we faced earlier this year. Following requests from the police to the First Minister, we established the joint action group to ensure, first of all, that football's own house was in order. There were 41 actions agreed in July, which included the establishment of a new national football policing unit backed by an investment of £1.8 million.

We are already seeing the benefits of that constructive partnership approach, which involves football clubs, authorities, fans and the police. I note the continued demand that football should put its own house in order. Of course we accept that, and that is exactly what we have already delivered through the joint action group.

On 6 December, along with the Cabinet Secretary for Justice and the Minister for the Commonwealth Games and Sport, I attended a joint action group meeting at Hampden. The Scottish Premier League, backed by the Scottish

Football League and the Scottish Football Association, has agreed proposals to toughen its approach to tackling unacceptable supporter conduct, demanding higher standards of clubs and introducing a new independent sanctioning regime.

We are seeing new focused action from the police, and we will see tougher standards for football clubs applied by the football authorities, but what of the Government? The critical role for Government in this partnership is to ensure that the law is fit for purpose. As part of its work, the joint action group was asked whether the current laws are adequate to ensure that the unacceptable behaviour that we are seeing is stopped. A fundamental change was not required, but the expert advice was clear: the laws could be improved in relation to tackling sectarian and other offensive behaviour at football matches and in relation to communications, in particular on the internet. That simple point seems to have been lost in what I think is a fog of denial and sometimes apparently wilful misunderstanding.

James Kelly (Rutherglen) (Lab): The minister has stated the views of the joint action group. Was it also the view of the football clubs that legislation was required?

Roseanna Cunningham: Football clubs know perfectly well that they have to get their house in order. I repeat that the advice from the experts was clear: a change in the law would assist police and prosecutors in stamping out this most visible form of sectarianism. In the face of that expert advice, the Government's responsibility to act was clear.

We have always fully accepted that this was about evolution not revolution in the law—about sharpening the tools available, not creating entirely new tools. Indeed, that is where there has been further confusion on the part of the critics of these measures. It is very difficult to reconcile the view that these new measures add nothing to the existing law and are thus unnecessary with the idea—often expressed in almost the same breath—that they are unworkable and illiberal.

The Lord Advocate made it clear that breach of the peace was being narrowed under challenge from the courts. Last year, in the Criminal Justice and Licensing (Scotland) Act 2010, we introduced the section 38 "Threatening or abusive behaviour" offence to deal with the narrowing in relation to domestic incidents. There was no great outcry then—indeed that gathered broad support. What we are doing through the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill is much the same, although in this case we are responding to the narrowing of breach of the peace as it relates to football. The narrowing that we are talking about includes

setting a very high bar for deciding when there is provably fear or alarm in the noisy and boisterous context of football and, even more seriously, judgments, for instance that those hurling racist abuse did not commit an aggravated offence because the abuse was fleeting and lost in the cauldron of noise.

We have carefully considered the legal issues and designed bespoke offences that deal with the limitations, while being fully mindful of our obligations under the European convention on human rights. No longer need police and prosecutors depend on the “fear or alarm” test in the context of football matches; the test now is the more relevant public order test.

Those claiming that the law adds nothing fail to mention the application of the new laws outside Scotland. Football is international, but breach of the peace, or section 38, is not. Similarly, Scotland currently has no incitement to religious hatred law to tackle the growing problem of sectarian and other religious threats on the internet and elsewhere. The new laws provide that. To be clear, those are clear and specific improvements on the existing law.

The measures in the bill relating to football go beyond sectarianism. We make no apology for that. It cannot be credible in taking action to stamp out overtly sectarian behaviour not to seek to stamp out wider offensive behaviour, which is all too often associated with, or a response to, sectarianism.

Patrick Harvie (Glasgow) (Green): Does not the minister make a good case for taking a wee bit longer and consulting a wee bit more widely before drafting legislation and introducing it to the Parliament so hurriedly? That would have been better and we would then have been able to take a clear view on whether the incitement to hatred offence—or the much wider expression of hatred offence—has wider application or not.

Roseanna Cunningham: We extended the timetable for the bill from the original plan to what we have now. For this bill, there was appropriate consultation.

There has been much comment that offensiveness is part and parcel of football—that it is just a fact of life. I simply disagree. When offensive behaviour risks provoking public disorder, that cannot be tolerated, and certainly not in the powder keg atmosphere of high-risk football matches—at which up to 300 police officers and 500 stewards are required to keep the peace.

Of course, much of the noisy, even rowdy, behaviour at football is its lifeblood. Often, it is a celebration of identity and culture, but let us not pretend otherwise than that much of what we see

at football celebrates nothing more than hate and division and is done to antagonise and provoke old wounds. That is unacceptable; that must stop.

We have heard a great deal about this Government's apparent failure to listen on this issue, but listen we have, time and time again, to the demands of the overwhelming majority of Scots—the 91 per cent who want tougher action. They are decent, law-abiding people who have simply had enough of what they hear on the terraces and read on the internet.

We also listened in June, when this Parliament requested more time to consider the legislation. We accepted then that the context for the legislation was not yet clear, and that pause has meant that the context for the legislative action that we are taking is now much clearer. That clarity has been provided by the crucial work of the joint action group to put football's own house in order and the wider, deeper strategy to tackle sectarianism, now supported by an unprecedented £9 million investment over the spending review period. So we are not where we were in June, when the bill was supported by a sizeable majority of this Parliament. There can now be no doubt that legislating to tackle the issues in football and on the internet—where this hatred is often most visible and therefore most damaging—is not the limit of our aspirations, nor the extent of our ambition.

In context, the bill seeks to introduce proportionate and effective measures that are designed to tackle a limited set of specific issues. It is the first necessary step on a longer journey. We have benefited from the constructive contribution of a number of members and have seen the bill amended to respond to issues raised by the Justice Committee and others to make it even more fit for purpose. Even if not all amendments are accepted, they provoke thought and reflection on the part of Government, and many of our amendments were lodged in response to those who engaged in thoughtful and constructive dialogue. I look forward to participating in the debate this afternoon.

I move,

That the Parliament agrees that the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill be passed.

15:31

James Kelly (Rutherglen) (Lab): I oppose the bill at stage 3. Let me say at the outset that I very much regret that the Parliament will divide on such an important issue. This Parliament has taken a united stand on many issues, including domestic abuse, and has sent out a strong signal to Scotland. We all agree that we want to eradicate

the evil of sectarianism—a blight on Scottish society—and we should not divide on such an issue. The reason why we are is not only that the Government has not made the case, but that the legislation is flawed, and the Government has not been able to build a consensus on it in Parliament or outside.

The minister tells us that she thanks members for lodging amendments; however, only at the very last minute did we actually see an amendment accepted—one, from Patrick Harvie. It was like throwing a crumb to the Opposition benches.

The decision not to agree to the bill at this stage is both a principled and an evidence-based one. It has been useful to have more evidence since our last debate in the Parliament. Statistics on prosecutions for religious aggravation have been published, showing 693 prosecutions in 2010-11. Do not forget that the vast bulk of those will have come before 3 March and the old firm game at which all the controversy started. That shows that legislation is effective and was being used. In addition, 99 of those prosecutions related to section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, which was only enacted in October last year. Surely it would have made more sense to let another part of the legislative toolbox settle in and to take more time. Then, as Mr Harvie pointed out, if there was a case for introducing legislation, we could have done so on the basis of evidence. The Government's process has been flawed.

We welcomed the decision by the First Minister back in June to pause, reflect and extend the timetable but, in reality, the Government paused but did not do anything more. Where was the consultation over the summer? Where were the discussions with community groups and the education sector? They did not take place. Instead, the Government was closeted in St Andrew's House with civil servants and became too focused on football. We still do not have a clear strategy for tackling sectarianism. As a result, the Government has not been able to build a proper consensus. The issues that were raised at stage 1 remain. We need only look at the submission from the Law Society of Scotland, which says that the existing legislation is adequate and asks about section 38 of the Criminal Justice and Licensing Act 2010. Many such issues, which it raised at stage 1, have still not been answered at stage 3.

No wonder the Government has failed to build support for the bill. The fact that Margo MacDonald, David McLetchie, Hugh Harvey—if only, eh?—Hugh Henry and Patrick Harvie have raised concerns shows the breadth of opposition in Parliament.

The First Minister (Alex Salmond): I wonder whether James Kelly recognises this recent quote:

"I applaud the legislation because this is besmirching the reputation of Scotland."

It goes on:

"Now if something happens it's worldwide, it's on Twitter, it's on YouTube, it's everywhere. It's about Scotland and I care passionately about how the country is viewed ... it's important that the government get this done and dusted and get on with it."

It was from Henry McLeish, former First Minister.

James Kelly: It is good to see that because the Lord Advocate is not available to look after the minister today, the First Minister has had to come in and take care of her.

Members: Oh no.

The Deputy Presiding Officer: Order.

James Kelly: We all know that the process has not been handled competently by the minister. At each stage, she has had to be looked after so that she always has someone at her side to tell her what to say. That is why the Lord Advocate was at the Justice Committee. What was he doing getting himself involved in the political process?

On the way forward on this issue—

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): Will the member take an intervention?

James Kelly: No, I will not take an intervention.

The First Minister: Will the member take an intervention?

James Kelly: No. I will not. The First Minister has had his say.

Members: Oh!

James Kelly: We need a proper, thought-out strategy on sectarianism—[*Interruption.*]

The Deputy Presiding Officer: Order. The member is not taking interventions.

James Kelly: We need a strategy that is informed by real people in real communities, not by civil servants in St Andrew's House.

The issue needs to be taken forward within the education sector, and the churches used, to build consensus in communities. That is what Labour's action plan does.

The action plan also deals specifically with the issue of offensive behaviour at football matches. Sectarian singing must be rooted out, which is why Scottish Labour supports points deductions for clubs that are unable to clean up their act in their stadiums.

Kenny Farquharson in *Scotland on Sunday* said that, if passed, the legislation would be the worst piece of legislation ever passed by the Scottish Parliament. The Scottish National Party Government will use its majority to railroad the legislation through. It is a defining moment for the Parliament—the first piece of legislation in the fourth session that the Parliament has considered at stage 3—but this is bad law and it is bad practice for the SNP to break up the consensus on such an important issue. We need to work together. We need consensus. We want to eradicate sectarianism from Scottish society and we ask the Government to work properly with Opposition parties to do that.

15:39

David McLetchie (Lothian) (Con): That has warmed things up—thank you, Mr Kelly.

At stage 1, Scottish Conservative members voted against the principles of the bill because we did not believe that the Government had made a strong enough case for introducing new laws to tackle offensive behaviour associated with football matches or threatening communications. We did not do so because we somehow tolerate such behaviour or deem it acceptable in present-day Scotland. To suggest that we do so is an offensive distortion of our position, and a distortion of the position of everyone else who has studied the bill and assessed the evidence that has been presented. It would help the debate considerably if all members approached it with respect for the positions that others have adopted in good faith on both sides of the argument.

We have sought to engage in dialogue with the Government following the stage 1 debate, and, as we have heard, we lodged amendments for consideration at stages 2 and 3. Those amendments were rejected, so we must now consider whether the bill as it stands should be approved. I have come to the conclusion that it should not be because, as I said earlier, it runs away from the problem of squarely addressing and defining sectarian behaviour in present-day Scotland, which is supposedly the conduct to which it is directed and which was the motivation behind its introduction. It introduces vague, catch-all offences that have been strongly criticised as an affront to civil liberties, and it wants to modify and introduce new criminal offences by statutory instrument without proper scrutiny in the Parliament.

I have no doubt that, following the commencement of the act, there will be a major push to prosecute alleged offenders under its provisions and I have no doubt that, within a year or so, the First Minister and others will hail it as a glorious triumph as figures are unveiled for

convictions secured under it. However, that is not the real test, of course. We will have to ask how many convictions would have been secured for the same behaviour if it were prosecuted under our existing laws; indeed, one might ask how many more convictions might have been secured. Moreover, we will have to ask how many people have been successfully prosecuted under the new laws who could not have been prosecuted under our present laws and what will happen when prosecutions under section 1, to which the statutory freedom of expression exemption does not apply, nonetheless hit the ECHR buffers. We got some flavour of that from discussion of an amendment. The answer is that the Scottish Government will try to patch things up using the powers conferred by section 4A.

The Government likes to tell us that the police want the bill. No doubt they do, but asking a policeman whether he wants more powers is like asking a policeman whether he wants a pay rise. It is not the job of the Parliament to confer police powers on demand; instead, in a free society, our job is to balance laws to maintain public order against rights of free speech and association. We are also told that the Lord Advocate thinks that the bill is necessary. Let us be honest: the Lord Advocate is not just a prosecutor, he is a member of the Scottish Government. To use those immortal words: he would say that, wouldn't he? That claim must be balanced against the weight of informed legal opinion, which is against the proposals as is well documented in the Justice Committee's report.

In the past, I have warned against the something-must-be-done syndrome that permeates the Parliament. The Government has fallen into the trap of grandstanding for effect. In some respects, I have sympathy for it, given the situation that it faced earlier this year and the public outcry about the latest manifestations of an age-old Scottish problem. In a football context, that problem should, of course, have been long since resolved by the football authorities, which have done us absolutely no favours in this regard. The criticism of the SPL in the Justice Committee's report is withering and demonstrates that the football authorities—the SPL and the SFA—really need to get their act together. It is ironic that, this very week, the Union of European Football Associations has taken action and has fined Celtic Football Club—as it has fined Rangers Football Club in the past—for the offensive behaviour of its fans at football matches played in UEFA competitions.

John Mason (Glasgow Shettleston) (SNP): Does not what the member has just said prove the need for the legislation? Obviously, the football authorities have felt, rightly or wrongly, that they could not control the issue because it has been so

big. Surely that is why the Parliament needs to get involved.

David McLetchie: It does not prove that, because the laws are big enough to deal with the issue. What has actually been proven is that our football authorities are somewhat weak willed and weak kneed in comparison with UEFA, which has set an example that our football authorities should follow.

The clubs concerned will point to the steps that they have taken to challenge sectarian behaviour in its widest sense, and I applaud their efforts, as we all do. They will also protest, as they have already done, that they are being penalised for conduct over which they have no control. That might be a good enough excuse for the SPL, but it is not good enough for UEFA and nor should it be. It might be guilt by association, but that is just tough. The offenders are the customers of our football clubs and the venues for such behaviour are their football grounds. The issue needs to be tackled by our football authorities, and they should get on with it. If that means fines, points deductions or closed-door games, so be it—it is long overdue. The time for playing pass the parcel is over.

The Deputy Presiding Officer: We move to the open debate. I ask for speeches of four minutes, although there is a bit of leeway for interventions.

15:45

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): Notwithstanding the somewhat bumpy ride that the bill has had, I am glad that it has been given full consideration at all stages in committee and the Parliament and has now come to stage 3. I am glad that the emergency legislation process was abandoned because, as I made clear at the time, that was not the proper approach.

James Kelly mentioned the Lord Advocate coming to give evidence to the Justice Committee. I remind him that witnesses who give evidence to the committee are there with the committee's agreement, so he must have agreed to the Lord Advocate's coming. Nothing was sprung on Mr Kelly. I remind him that, at stage 2, although the Government lodged several amendments, Labour did not lodge a single one.

James Kelly: Will the member take an intervention?

Christine Grahame: No—I have only four minutes.

I commend Patrick Harvie and David McLetchie for participating in the dialogue, notwithstanding their views on the bill. They did not simply take a stand right from the start.

James Kelly rose—

Christine Grahame: I remind members that this is a bill of two halves. Let us have less hysteria and hype and more matter-of-fact statements. The word “sectarian” is not mentioned in the bill; instead, it talks about “offensive behaviour”, which could relate to all manner of things, including colour, race, nationality and sexual orientation.

Hugh Henry (Renfrewshire South) (Lab): Will Christine Grahame give way?

Christine Grahame: In fairness, I will let James Kelly in, because he wanted to clarify an issue and I did not take his intervention.

James Kelly: I point out to Christine Grahame that the Labour Party supported the bill at stage 1, so we did not take that stance from the start. On amendments, she might want to reflect on the fact that the first time that a non-Government amendment was accepted was right at the end of the process.

Christine Grahame: I take it from that that you accept that the Labour Party lodged no amendments at stage 2, which is my point. Labour did not even argue the case by lodging amendments.

The bill is not simply about offensive behaviour—it must be behaviour that expresses hatred and is threatening to people, or behaviour that a reasonable person would consider offensive. We had a lot of debate about the term “reasonable person”, but the reasonable person test is well established in Scots law. Members have asked for specifics, but in law we must always look at the facts and circumstances of any incident. I might use a word that is not offensive because of the manner in which I deliver it, but in other circumstances it could be offensive and an incitement to hatred. That is a perfectly practical way of looking at the situation.

Johann Lamont (Glasgow Pollok) (Lab): The problem is that when somebody says something offensive at a football match or when watching football on television in the pub, that will be an offence, but it will not be an offence to say the same thing in a community. What message does that give to people?

Christine Grahame: There must be an incitement to public disorder and the reasonable person test must be met. There are many cases in law that deal with that. As we heard in evidence, breach of the peace is not a satisfactory way of dealing with the issue, because the behaviour always has to be in public.

We had a big debate about including people who are travelling to and from football matches. At the beginning of the process, I was not sure that I supported that provision but, as the evidence

came in, we found that most of the problems take place not in stadiums, which are well policed and where there are stewards, but outside stadiums and on the way to a match. Some people have no intention of going to a match and simply use the colours that they wear as a means of causing public disturbance. That was the evidence from the police. They said that they find it hard to deal with the issue. We must always remember that the police, the prosecution service and the vast majority of the public support the measures.

I have taken some interventions, so I hope that I will get an extra minute, because I want to refer briefly to the threatening communications offence, which we keep missing out. It is important that the term “material” means more than just material on the internet—it includes paper, parcels, blogs, images and anything like that. The test is higher than that for the other offence, because there must be an incitement

“to carry out a seriously violent act”.

The Government did not have to put a freedom of expression test in the bill, but it did so. People should take comfort from that that satire and genuine debate—even strident debate—will not be suppressed, because they do not seek to incite a seriously violent act.

Patrick Harvie has put forward a good argument for a review. At stage 2, proposals were introduced for such a review to be carried out at least two years hence, as well as for a report to Parliament and a consultation. That is important, because these are uncharted waters.

At the end of the day, I support David McLetchie’s view that the great disappointment is that only now are the SPL and the SFA getting together to discuss an independent sanctions regime. If only such a regime had been in place beforehand. No one is better placed to police football matches than the clubs, the SFA and the SPL themselves. Perhaps this legislation will not need to be used if those organisations get on and do the job themselves.

The Deputy Presiding Officer: Just before I call Graeme Pearson, I remind members that they have four minutes for their speeches but that if they take interventions, I can be generous in giving them time back.

15:51

Graeme Pearson (South Scotland) (Lab): First, I associate myself with the comments of David McLetchie about the responsibility of the clubs. I remind Christine Grahame that we raised the matter at an earlier stage of the bill, and that we on the Labour benches are focusing strongly on it.

The SNP Government is to be congratulated on the support that has been mustered in relation to the bill. To unite Rangers and Celtic supporters, the Law Society of Scotland, the churches, the Scottish Human Rights Commission, academics, commentators and Liberty—to name but a few—in opposition against it is impressive, and they oppose it with good reason.

Two thousand years ago, the Roman senator, Cicero, said:

“The strictest law often causes the most serious wrong.”

We should take heed of that message. The minister has had ample opportunity to provide the Justice Committee and Parliament with evidence to back up her call for new laws. Where are the statistics on sectarianism that have been asked for each year by the Roman Catholic Church? They are missing when they could have assisted us. Where was the evidence of the significant numbers of cases whose prosecutions failed due to problems with current laws? Where was the commitment to football banning orders in the five years during which fewer than 120 such orders were issued? In the past six months, however, the authorities have delivered 50 such bans. The evidence was not there.

Instead we were given the opinions of three police officers, who said that they needed new powers, and of the Lord Advocate, who appeared to suggest in the press that Parliament should not even debate the bill, and that we should merely pass the matter to him to deal with.

Cicero also commented that

“the arrogance of officialdom should be tempered and controlled”.

We have been given no facts and figures relating to failed cases, and no demonstration of what would change as a result of the new laws. We have been given opinions, not evidence. In most democratic societies, laws are enacted not as a result of the demands of the police or prosecutors, but because communities identify the need for solutions.

So what is this new crime, and how will we recognise it? Therein lies a difficulty. The Minister has been unable to clarify the unchallenged circumstances with which this law is designed to deal. Indeed, when excerpts of football chants and songs were played for her on BBC radio, she rejected, with some haste, the invitation to “name that crime”, and insisted that a police officer would be best placed to decide on that question. Last night on television, Humza Yousaf also failed the test of clarifying the situation.

Humza Yousaf (Glasgow) (SNP): Will the member give way?

Graeme Pearson: I am sorry; I will not.

In the past four years, the average number of arrests at old firm games has been 11. That is still too many, but are we really creating new draconian legislation to deal with an acknowledged small minority among the 50,000 fans at a match?

We are told that interpretations surrounding sections of the bill are to be resolved by guidelines that will not form part of the bill. The problem with unwritten law is that we do not know where to go to erase it.

In evidence to the Justice Committee last week on a possible bill of rights, Lord McCluskey said:

"Definition is fundamental to administering the law. Judges ought to be able to read the law like a railway timetable, not as a kind of general declaration of intent".—[*Official Report, Justice Committee*, 6 December 2011; c 592.]

The Deputy Presiding Officer: I am afraid that the member will have to conclude now.

Graeme Pearson: Will the law be accessible? Is it foreseeable to the man or woman in the street? The sectarianism legislation needs to be accessible and foreseeable, but how can it be if the minister describes it as a "catch-all" in some of his conclusions?

The Deputy Presiding Officer: I am afraid that you will have to come to a conclusion now, Mr Pearson.

Graeme Pearson: Will the Government take the opportunity to talk up Scotland and accept Labour's fleshed-out plans in the interests of decent supporters everywhere?

The Deputy Presiding Officer: I reiterate that speeches should be four minutes, but if members take interventions I can give extra time for them.

15:56

Alison McInnes (North East Scotland) (LD): I, too, oppose the bill and will vote against it at decision time. I thank everybody who responded to the Justice Committee's truncated call for evidence. I, for one, found the detailed guidance and informed opinions that they were able to submit at such short notice to be absolutely invaluable. I can only offer my sympathies to the vast majority of them, whom the Government has chosen simply to ignore.

At stage 1, I asked the minister 24 questions about the practicalities of enforcing the legislation, the evidence base behind its introduction, statistics on prosecutions under existing laws and issues potentially arising from the new offences. Those questions were just the ones that I had time to ask. Yesterday, I looked back over them and

reflected on what I have heard from the minister, her officials and the Lord Advocate since June. By my count—I am being rather generous—I have had an answer to four of them.

Throughout the progress of the bill, Opposition members have had to endure constant insinuations from the SNP that, by raising concerns over the potential implications of the bill, we are scared to tackle the problem, that we condone sectarian behaviour or that we are opposing the bill for opposition's sake. I say to all SNP members who have expressed one of those opinions that by doing so they demean Parliament and insult every person in this country who has doubts about whether the bill is in Scotland's best interests.

Christine Grahame: Will the member take an intervention?

Alison McInnes: I will not, at the moment.

I have made it clear from the outset that I, and the Liberal Democrat party, stand with every member in this chamber to say that sectarian behaviour, in whatever form, is unacceptable. It has to stop and we will gladly work constructively with anybody, any group and any political party to find a long-term solution to it.

Had the Government come to this chamber in June and said that it wanted to engage with all parties here, I would have been on board. If it had said that it wanted to work with clubs to identify problem areas better, to work with religious groups to promote tolerance and to work with local authorities and schools to educate our young people better, I would have been on board. Instead it introduced a bill that is so rushed, so badly drafted and so ill-conceived that it seriously risks doing more damage than good. I cannot support that.

If the minister is unable to answer more than one in every six questions that she is asked about the bill, how can she possibly claim that the Government has made the case for two new criminal offences to be created?

If expert groups such as Liberty and the Law Society, football clubs such as Rangers and Celtic, supporters groups from clubs across the country and religious groups of all faiths do not think that the bill is a solution to the problem, what exactly does the minister believe we are achieving here today?

In his announcement after stage 1, the First Minister said:

"On this issue above all, I want consensus; I want consensus across the chamber and across our partner organisations."—[*Official Report*, 23 June 2011; c 1020.]

At stage 1, five members—my colleagues on the Liberal Democrat seats and I—voted against the bill. At stage 2, 53 members could not support the bill. The more we have studied the detail of the bill, the more of us have come to realise that it simply is not workable.

The First Minister was right to seek consensus, but it will prove to be a hollow gesture if the bill is passed today, because although consensus has been found, it is consensus that the bill is not what we need. The First Minister now has a choice. He can step back from the brink again; he can withdraw the bill and ask us all in Parliament to work together on a lasting solution to sectarianism and offensive behaviour in Scotland. No-one here would criticise him for that. We would applaud him and we would get on and work with him.

Alternatively, he can use his majority to force this unwise, unwarranted and unworkable bill on to our statute books. In this Parliament, in which there is an SNP majority, we cannot stop him. We cannot make him listen to expert opinion or reasoned opposition, but if he does not do that, the people of Scotland can hold him alone accountable for his actions.

16:00

Patrick Harvie (Glasgow) (Green): I missed all the fun with the bad weather last week. I was not around because I was at a conference on hate crime, funnily enough, at which I learned a lot about the wide range of approaches that are being taken in European Union member states and various parts of the United States. Those approaches work in different contexts, of course. In the US, for example, there is strong constitutional protection of free speech. In many European countries, on the other hand, there is a record of laws on hate speech or controlling speech—for example, laws on Holocaust denial.

Different countries take different approaches in the light of their different historical and cultural contexts and the different kinds of hate crime that they consider important. However, legislating on incitement to hatred is not a universal approach. It is not always the wrong approach—there is a case for it, as well as a case against it—but part of my problem with the bill is that Parliament has always tilted towards the argument against legislating on incitement to hatred, although it has never run away from the argument for it.

If we wish to change that, we should try to do it on a cross-party basis and we must ensure that we do it in a careful and considered way that takes account of all the possible consequences before we start the journey. However, the bill came out of the blue. It will result in legislation on incitement to hatred in specifically defined

contexts. In Christine Grahame's speech, there was a suggestion that it will not apply in other circumstances—in ordinary communities—and, at one point, I heard a heckle from the SNP benches: "Well, maybe it should." Yes. Maybe it should, but maybe it should not. Let us not take the first step on a road that will lead us we know not where, without having properly considered all the consequences.

There is a case for legislation on incitement to hatred. The UK Government and Westminster Parliament have introduced it not only on religious grounds but, for example, on the ground of sexual orientation, but this Parliament has not done that. In fact, the bill goes way beyond the legislation on incitement to hatred in other places: it criminalises the expression of hatred, not only the inciting of hatred in others, so it goes way beyond what even some of the most gung-ho jurisdictions in the EU are doing on incitement to hatred. At various points at stages 2 and 3, I have tried to lodge amendments that might have toned down those measures or changed the context of them.

I have tried to examine why we talk about "hatred" in the bill when we talk about "malice" and "ill will" in other legislation. I also tried to think about how we define the circumstances—for example, whether the measures on a place where a regulated football match is being shown would apply if somebody was simply playing a clip of a match on their mobile phone. I tried to examine the fear and alarm test by asking whether a serious charge with a serious penalty requires a serious and credible threat or just the suggestion of one. I also attempted to widen the free-speech defence.

I am afraid that the successful amendment—an obligation to consult and report on the operation of the offences—is no substitute for those other changes, so the bill will still be bad legislation. No doubt it will be passed, but the Parliament should still assert itself after it has been passed.

I regret that we are not debating my amendment that would have called for consolidation of hate crime law on a set timescale. Consolidation will be required, so I call on the minister to make a commitment on that and for Parliament to join me in calling for that consolidation work to happen.

There may be a worthy intention behind the bill, but it is the wrong approach. We are making mistakes that we will need to come back to correct in good time.

16:04

John Finnie (Highlands and Islands) (SNP): The bill has been informed by the Lord Advocate—the senior law officer in Scotland—and police officers. I do not think that they have powers

on demand, as has been suggested. Nor have we had only three police officers asking for those powers: the representatives of every police officer—all three staff associations and the British Transport Police—commend the bill.

The bill's title is important. That might seem to be a self-evident statement. The bill seeks to tackle offensive behaviour at football and threatening communications. It is not about righting society's wrongs. The bill seeks to deal specifically with events that are connected with football.

Neil Findlay (Lothian) (Lab): Does John Finnie accept that the bill's title is loaded with value judgments about what one group of people deems to be offensive to another group of people?

John Finnie: No, I do not accept that. The standard judgment that applies to police officers and prosecutors will still apply.

I am always hearing people trying to decide how relevant the bill will be to them when they are attending football matches, so I have tried to envisage what the match-day experience might be for someone at a football match after the legislation is passed. Someone might well come from a community in which, in addition to on-going work on the pernicious issue of sectarianism, £9 million has been invested to deal with schools, community centres and the workplace. In many respects, there is not likely to be any noticeable difference on match day. However, travel to and from matches will be subject to the legislation, which is entirely in line with the criteria that were set out in the football banning orders that were put in place by the previous Labour-Lib Dem Administration.

The joint action group, which has done commendable work across the different sectors that are involved in dealing with football, is bringing about more rigorous checks for alcohol on buses. Alcohol plays a significant part in disorder. It is unfortunate that James Kelly is not in the chamber, but there has been clarification on the issue of the casual bigot who intervenes but is not going to the football match. Such people will be caught by the legislation, which will be rigorously enforced by the British Transport Police, who strongly welcome it.

In public houses, the licensee will be reminded of their obligations under the licensing legislation and the new legislation, which will make public houses more pleasant places for anyone to be a customer.

Johann Lamont: Will the member take an intervention?

John Finnie: I do not have time.

The public house will become a more pleasant place to walk past, and it will certainly be a more pleasant place in which to work. Public houses are workplaces.

In grounds, there will not be a discernible difference to policing. The police will be there and a fan will know that the officers will have been trained and that they will be vigilant and able to deal with offensive behaviour.

There has been some dubiety about the behaviour that the bill will cover. I will read out the following because it might well help:

"Songs/lyrics which promote or celebrate violence against another person's religion, culture or heritage

Songs/lyrics which are hateful towards another person's religion and religious leaders, race, ethnicity, colour, sexuality, heritage or culture"

will not be tolerated. I can only see that as being a positive step towards enhancement of the football experience.

The police will require to police these matters sensitively, not least because there are potentially significant public safety issues. Prosecutors and the police will require to deal with juveniles sensitively. We know that they have a wide range of powers and, for the most serious offences, there are custodial sentences.

We have heard about the difficulties that are associated with breach of the peace, and the legislation will certainly fill that gap. A lot could be said about that, but I fear that the Presiding Officer is about to tell me to sit down.

The Deputy Presiding Officer (John Scott): You can carry on for a little while, if you want to.

John Finnie: The suggestion that representations about the issue have not been listened to is incorrect. Freedom of expression, reporting back and the issues that have been alluded to by Patrick Harvie's amendments are all very important and it is important that we learn from our experiences. Christine Grahame was right when she said that the focus on offensive behaviour at football rather than on threatening communications has meant the loss of an important element, which is about the shocking posts on Facebook and Twitter. They will now be picked up by the legislation. That can only be a positive thing.

The Deputy Presiding Officer: Thank you. I remind members that we have a little time in hand, so we encourage interventions.

16:09

Humza Yousaf (Glasgow) (SNP): I appreciate having the chance to speak in what is an incredibly important debate.

The debate has been passionate, which is understandable, but it is a real shame that it has been so heated throughout, and so full of hyperbole, and that recriminations have been thrown back and forth by all sides.

During the de facto stage 1 debate, John Lamont spoke of his experiences as a child at school and what he felt was hateful behaviour between two factions. When he did so, he was loudly shouted down and heckled by members from all parties, some of whom went red in the face, pointed their fingers and shook their fists. Regardless of whether we agree with John Lamont—I do not—our inability to have a mature and reasoned debate on sectarianism is a collective failure on the part of all of us. How can we expect people outside Parliament to tackle the problem that is fuelled by offensive behaviour if we ourselves are incapable of doing so?

In the past few weeks, I have met representatives of Rangers supporters associations and representatives of Celtic supporters associations, and it is clear that they have a number of concerns, most of which relate to how the police may enforce the bill's provisions. Like them, I am keen that, as the act is implemented, those concerns are not borne out through the use of heavy-handed police tactics or invasive and unnecessary video recording in innocent supporters' faces. If there are such incidents, I will happily hold the police to account, but I do not believe that the police want to use such tactics.

Recently, the new football co-ordination unit for Scotland—FoCUS—met Hearts Football Club and supporters of the club before last weekend's match against Celtic to discuss appropriate behaviour and chanting. A couple of days before the match, Hearts posted a statement on its website, in which it urged fans to get right behind the team, but only to use "appropriate chanting"—no specific phrases were outlined. The result was that everyone talked about a dramatic match and what happened on the field rather than what happened on the terraces.

I have trouble with the claim that there is no clarity, because a Rangers fan will know exactly the type of song he or she should not sing. When I met the Rangers Supporters Trust recently, I was told that there are specific phrases that it wants out of Ibrox. We all know what they are.

On the other side of town, in the past few weeks Neil Lennon, Peter Lawwell and Celtic Football Club have come down hard on pro-IRA chanting. It is clear that they do not want such songs to be sung near Parkhead. There is no confusion or ambiguity about that.

When Opposition members tell me that the term "offensive" is too vague but then use it in their 11-point plan in the context of the banning of "offensive merchandise", that defeats their argument.

Patrick Harvie: Humza Yousaf makes the case that those things should be unacceptable and that there is an argument that a new offence should be created to deal with such songs and chants. Will he explain to me why that offence should not apply to the same group of lads when they are on a night out and to behaviour that is nothing to do with football, and which is not committed on the way to football? Why should not it apply in the wider community? Why does he think that incitement to hatred legislation in the context of football is the right way to do proceed?

Humza Yousaf: It is because the purpose of the bill is to target a specific problem. Anyone who looks at last season's incidents, whether they involved parcel bombs, bullets in the post or attacks on high-profile managers, will realise that they related to a specific problem. That is not to say that there is a hierarchy. The bill is part of a wider strategy, which I hope to come on to.

Neil Findlay: Will the member give way?

Humza Yousaf: I am short of time, and I want to make some final remarks.

The atmosphere, the rivalry and the banter are essential parts of the game and none of us wants them to be lost. More than 95 per cent of football fans will continue to sing the songs that they sing and will continue to chant as they have been doing without fear of arrest or prosecution.

I do not doubt any member's willingness to tackle sectarianism. We may not have agreed on whether this cog is a vital part of the overall machinery that is needed to tackle the issue, but I hope that, as we move forward, we will not allow that to stand in the way of our coming together to develop a wider strategy on a centuries-old scourge that has no place in the modern Scotland that we all aspire to build.

16:14

Siobhan McMahon (Central Scotland) (Lab): I will address the two primary flaws in the bill. First, it is ill defined, especially in its failure to outline what constitutes sectarian or offensive behaviour. Secondly, it is too narrow in scope and content and advances no strategy for combating sectarianism in a broader societal context.

The antisectarian charity, Nil by Mouth, defines sectarianism as

"Narrow-minded beliefs that lead to prejudice, discrimination, malice and ill-will towards members, or presumed members, of a religious denomination."

The bill contains no alternative definition. It is general where it should be specific and it is turgid where it should be compact. According to the policy memorandum, the bill's aim is

"to tackle sectarianism by preventing offensive and threatening behaviour related to football matches ... particularly where it incites religious hatred."

However, nowhere in a forest of disparate words and phrases does the bill mention Catholics or Protestants or refer to sectarianism.

Evasiveness is a theme of the bill, especially in relation to what constitutes offensive behaviour.

Humza Yousaf: Will the member give way on that point?

Siobhan McMahon: No.

One requires only the most cursory knowledge of Scottish football to appreciate that some songs, chants and slogans are brazenly aggressive and discriminatory and others are not. A refusal to engage with that reality and adopt a more detailed and constructive approach has rendered the bill confused and ineffective. According to the BBC's world service, "A Nation Once Again" has been voted the world's most popular song. "Give Ireland back to the Irish" was written by Sir Paul McCartney, and "Sunday, Bloody Sunday" by John Lennon. "The Soldier's Song" is the national anthem of Ireland. All those songs are commonly sung on the terraces. Are they to be banned?

The bill's barometer of offensive behaviour is

"behaviour that a reasonable person would be likely to consider offensive."

At the weekend, Scottish Police Federation chairman Les Gray said that if we have to tell people what is offensive and what is not we are in big trouble. That is the same man who said:

"I've been in homes with King Billy on the wall and on the other side with the Pope on the wall, and both sides are just as bad."

If such an enlightened attitude is typical of a reasonable person, I agree that we are in big trouble.

In practice, the task of negotiating the minefield of deciding who is reasonable and what is abusive will fall to the police. I am a proud Celtic supporter and I have followed my team far and wide, in stadiums throughout the country. I have heard and seen things that I found offensive. I have heard rival fans sing that I am in the wrong country, that the famine is over so why don't I go home, and that I only sing in the chapel. I have seen potatoes thrown at Celtic fans, as bananas were once thrown at black footballers. I have heard Irish nationals—yes, Irish nationals—such as Aiden McGeady and James McCarthy, being booed and

taunted in football grounds up and down the country.

However, when I have pointed out the culprits to police officers, I have been ignored or told that the perpetrators will be dealt with later. Not once has my complaint been acted on. I do not understand the logic of handing the police additional powers when they are failing to use the powers that are at their disposal.

Moreover, the police will never eradicate sectarianism, because they are dealing only with the symptoms, not the causes. Until we recognise that sectarianism is a societal problem, which requires a sophisticated response, we will never make progress. In stark contrast to a rushed and ill-conceived bill, Scottish Labour's 11-point action plan incorporates three key elements: examination, education and communication. It features a raft of innovative proposals, including a proposal for a comprehensive review of how educators can promote religious and cultural tolerance.

Education is the most effective way of confronting bigoted attitudes. It should begin in schools but it should not end there. Colleges, universities and employers throughout the public and private sectors should be required to conduct regular seminars and workshops that promote tolerance and understanding within and between faiths and cultures.

The only way we can rid ourselves of sectarianism is to broadcast the message loud and clear: in 21st century Scotland sectarianism—like racism, anti-Semitism and homophobia—is utterly unacceptable. I urge members to consider the points that I have made. I ask them to vote with their consciences and to vote against the bill.

16:18

Colin Keir (Edinburgh Western) (SNP):

Throughout the debate, speakers from all parties have said how much they want to end the blight of offensive behaviour and particularly sectarianism at football matches. Problems that are not associated with football can and should be targeted in other ways. Football is rightly being dealt with in the bill, because it provides the context for the most visible examples of offensive behaviour, not just at stadiums but as people go to and from matches. The offensive behaviour is seen on television. Of course there must be a wider societal approach, as Siobhan McMahon said.

The catalyst for the bill was the infamous game of shame between Celtic and Rangers last season, but offensive behaviour has been commonplace in football grounds throughout Scotland for decades, so it is particularly

disappointing that the Opposition parties appear not to be willing to support the bill, especially given that there was a great deal of agreement on various issues during the bill's committee stages.

I say to David McLetchie that I would like to think that the test will be not how the number of prosecutions rises but how it falls because of the bill.

As others have pointed out, the police, the Lord Advocate and others see the bill as an important step in strengthening the law, particularly as breach of the peace appears not to be as effective as it used to be. The provisions in the bill, taken with football banning orders, will mean that the toolkit that is available to the police and prosecution authorities is substantially enhanced. I welcome the freedom of expression provision, as well as John Finnie's comments.

James Kelly: Will the member take an intervention?

Colin Keir: I ask the member to let me make some progress.

I have to ask, as others have done today, how much thought was put into the 11-point plan that the Labour Party has proposed. Just about all the suggestions in what Graeme Pearson called a fleshed-out plan, including education and work with community groups, have already been started over a period of time. I do not believe that Labour has put in enough research, because its plan looks like it was written on the back of a cigarette packet on a Friday night.

Michael McMahon (Uddingston and Bellshill) (Lab): What about the bill?

Colin Keir: I think that my comment is appropriate.

Even Jack McConnell knows that he did not do anything like enough. In 2009, he stated that, if he had one regret, it was that he failed to introduce a bill to tackle sectarianism.

As the Minister for Community Safety and Legal Affairs said, the Government has committed £9 million over three years for community and grass-roots projects to combat sectarianism.

I welcome the joint action group's proposals on the actions to be taken if fans of clubs are found to be behaving in an offensive manner. As I said in the debate on the Justice Committee's report at stage 2 and in committee, I would prefer the Scottish Football Association to take over from the Scottish Premier League full responsibility for points deduction, as the SFA is the national association, but I know that the Parliament cannot legislate for that as it would breach FIFA's laws on Government interference. I therefore encourage the SFA and the SPL to ensure that action on any

disciplinary matters that relate to the behaviour of supporters is open and transparent, particularly given the recent decisions against Celtic as well as those in the past against Rangers. I fear that UEFA and/or FIFA will start to take a more serious set of actions against our clubs if the SFA and the SPL do not act on offensive behaviour.

The bill takes on the problems that are faced at football grounds today. Tomorrow can be dealt with through community initiatives and work with youngsters and faith groups; such work is already being done and it will be enhanced in the coming years. The bill is certainly not an attack on anyone apart from the mindless people who shame our national game and our country. Perhaps the Opposition parties will reflect on what the option of doing nothing would mean.

I support the motion.

16:23

Roderick Campbell (North East Fife) (SNP):

No one could say that ridding Scotland of offensive behaviour at football or in society in general is easy, and the bill cannot be anything other than a step along the way. However, it is not the bill that was introduced in May. We have a freedom of expression provision in relation to the second offence, a general review provision, and an amendment to the provisions in relation to a regulated football match. Those are small but significant amendments.

What I am still struggling with is the fact that some members chose not to participate in discussions to amend the bill, particularly given that, as was reported in June, members of the Opposition thought at that time that legislation should be in place as quickly as possible. I understand that they might not agree that this bill should be in place, but they did think that there should be legislation. When the Labour Party announced on Sunday that none of its proposals required new legislation, I found it troubling. We have a problem that is worthy of legislation in June but not one that is worthy of legislation in December.

No one has said that the problem can be solved with legislation alone, and no one has said that sectarianism is a problem at football games alone. However, legislation is a key instrument in a broad approach to the eradication of offensive behaviour of a religious, racial or homophobic nature at football matches.

The Lord Advocate spoke in evidence about gaps in existing legislation. By their actions, some Opposition members clearly seek to deny that there are such gaps. I have always accepted that the bill overlaps with existing legislation. However, as I said in June and at the stage 2 debate on 3

November, and as academics such as Dr Kay Goodall and the Lord Advocate have said, there is a transformational effect from legislation. The Lord Advocate said:

“Legislation can be transformational ... it can change society’s behaviour and its attitude towards behaviour, and that should never be overlooked.”—[*Official Report, Justice Committee*, 20 September 2011; c 309.]

As well as providing a primary mechanism, which is to punish those guilty of an offence, law has a secondary function in changing public attitudes to behaviour. Naming the offence will have a transformational effect on people’s behaviour and offensive behaviour at football will become a named crime. It will be something that people will be keen to avoid that will be rather different from a conviction for breach of the peace which, as others have said, is being used in any event far less often because of its known difficulties.

There is much to commend in Labour’s 11-point plan, but will it transform behaviour on its own? If, as a football pundit said to me, football has had 100 years to clean up its act and failed to do so, will what Labour proposes change the attitude of the clubs? Few would argue against the proposal for points docking in appropriate circumstances, but that is not a matter for the Scottish Government. As I understand it, FIFA rules would prevent any Government intervention. Let us be clear that if behaviour changes, as we all hope that it will, there will be few or no prosecutions, and we will all be happy.

James Kelly: Will the member take an intervention?

Roderick Campbell: I want to press on to finish the points that I can in the short time that I have.

I am not clear what the Labour Party’s position is on the second offence. I could guess that it says that section 38 of the 2010 act is sufficient, but we should not forget that that section does not include any reference to incitement to religious hatred. In that respect, I take on board some of what Patrick Harvie said. In contrast to section 38 of the 2010 act, the bill removes the need to prove that the person making the threat intended to carry it out and the need to prove that the behaviour actually caused fear and alarm.

As others have said, the 11-point plan refers to much that is under way. The Scottish Government has always said that it will continue to take an inclusive approach to its programme to tackle sectarianism. As I understand it, the Government has committed itself to spending £9 million on the issue over the next three years.

I very much hope that the Labour Party will recognise that its plans and the bill are not mutually exclusive. Legislation must go hand in hand with non-legislative action in education and

dialogue. In my view, not to support the bill when the opportunity presents itself while at the same time condemning sectarian songs sends out entirely the wrong message. We need new legislation, but we also need a wider approach—on that, at least, I hope that we can all agree.

16:27

Mary Fee (West Scotland) (Lab): When the First Minister addressed members in the chamber in June, he announced that the bill consultation would be extended to allow the First Minister and his Government to achieve

“consensus across the chamber and across our partner organisations.”—[*Official Report*, 23 June 2011; c 1020.]

Six months later, it is clear to all, except to Alex Salmond and the SNP, that they have failed to achieve a consensus with Opposition parties and organisations that are involved in tackling sectarianism.

Nobody doubts the importance of tackling the disgrace that is sectarianism and bigotry and eradicating it from our communities, workplaces, schools and football stadiums, but the bill fails to address the problems and the attitudes of bigots at football matches, in pubs and at home.

The First Minister has accused Scottish Labour of being negative and oppositionist regarding the bill. I wonder whether his views are the same towards groups and organisations such as the Law Society of Scotland, which questioned

“whether these proposed measures do in fact bring clarity and strengthen the law.”

The Scottish Human Rights Commission said:

“the Bill is drafted too broadly, lacking legal precision as to the scope of the new offences”.

Nil by Mouth commented that it would like to see “less grandstanding” and more understanding. The Church of Scotland and Faith in Community Scotland said:

“The Bill will do nothing to reduce sectarianism unless it is part of wider work.”

I ask the First Minister and the Minister for Community Safety and Legal Affairs whether those groups are being negative and oppositionist, too, when they say that they would like to see wider work to tackle sectarianism.

John Mason: The member seems to be suggesting that wider work is not going on but, in the schools in my area, incredibly good work is going on. Does the member agree that wider work is going on and that we should be debating an addition to that rather than downgrading it?

Mary Fee: I am not in any way downgrading any outside work or wider work that is going on. This is

a huge problem, and we need a wide variety of solutions to tackle it.

Scottish Labour has published our action plan to tackle the ills of bigotry through education, working with young people, teachers, employers, faith groups, football clubs and supporters groups. We agree that we need to tackle sectarianism, and our action plan shows how we can make the changes that are needed. However, sectarianism is not restricted to football matches or the pub. It is in schools, workplaces and homes.

The Scottish Government has been forward in its promotion of early intervention, and here we have a clear area that needs attention, not the reactionary bill that we have as a result of the bigotry and lack of understanding of the minority in football grounds.

I am glad to see that football banning orders, which were introduced by the previous Scottish Labour Administration, have been used more and more each year. Before that, we enabled the courts and police to add a religious prejudice aggravation to offences. Those measures are already in place and should be used further. However, by adding the bill, we risk doing more harm than good by confusing the public. The Government cannot even define sectarianism in the bill and gives no indication of what songs are offensive.

Humza Yousaf: Will the member give way?

Mary Fee: I do not have time.

The minister who is responsible for the bill, Roseanna Cunningham, told the Justice Committee that fans who cross themselves or who sing the Scottish national anthem, "Flower of Scotland", or the British national anthem, "God Save the Queen", could be arrested if they were behaving in a threatening or offensive manner. There is no clarity about what is offensive. It is simply down to people's judgment at the time.

The bill has been steamrollered through by the SNP. Given the Government's majority, the bill will likely be enacted. However, the SNP has failed to convince the general public, supporters groups, Opposition parties and external bodies that would like to work further with the Government to tackle the problem at its root, and I cannot support such a flawed and discredited bill. I hope that SNP members will ignore their whip sheet, see sense and vote with their conscience.

16:32

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I am the last speaker in my group and we are fast approaching time added on for stoppages in the debate, but there is still an opportunity for

some members to score a late winner and grab victory from the jaws of defeat.

The Scottish Government has played a blinder, even agreeing to a replay at the request of its opponents, in the interests of sportsmanship. The Opposition has been thrown hastily together with last-minute changes and comprises a variety of players from different teams, all with different tactics and no clear idea of how to influence the outcome of the game. However, in the world of politics and the Scottish Parliament, there is still hope, even in the few minutes that remain, that we can unite and score a victory against bigotry at Scottish football matches.

We should remember that the vast majority of supporters of all our clubs will not be affected in the slightest by the bill. They are the majority who behave and act responsibly, support their team and are great ambassadors for their clubs.

Michael McMahon: We keep talking about bigotry, and all the references that are made in this debate appear to focus on Celtic and Rangers. However, after the bill is passed, will Kilmarnock fans stop singing about being up to the knees in Ayr blood?

Willie Coffey: I hope that every football fan in Scotland and, indeed, throughout the world desists from singing songs that poke fun at or criticise their opponents and fans of any other clubs.

The bill is aimed at the small minority who disgrace their clubs, embarrass their fellow supporters and bring shame on Scotland through their behaviour, regardless of the public disorder that could occur. It has been suggested that the bill will criminalise fans for having a sing-song and that it diminishes freedom of speech. However, it does neither of those things.

The Lord Advocate explains that the current offence of breach of the peace is not sufficient to deal with the problems that we have and that proving that sectarian chanting causes alarm to a reasonable person is not as straightforward as some people suggest that it is. The bill attaches an offence to conduct and behaviour that could lead to public disorder, as the Lord Advocate, the Association of Chief Police Officers in Scotland and many others have asked for. Who can support a view that behaviour that is likely to lead to public disorder should not be an offence in Scotland? That is what the bill does, and it should be supported by all decent fans and organisations.

Throughout the debate, we have heard that the bill does not do this or that, that it should be not only about football, that sectarianism is far wider than football, and that we must educate and work with everybody for a common solution, and so on. There is merit in that, and I know that some great work is being done, with more to follow. I was

pleased to hear in the minister's statement that the Scottish Government has allocated an extra £9 million for community and education grass-roots work.

The bill is not going to be enough to eradicate sectarianism in Scotland; nobody said that it was. However, this problem is one rotten egg in the sectarian basket that is being cracked tonight; hopefully, the stench will diminish with time. It is more than a pity that some members prefer to oppose the measure unless the whole basket of rotten eggs is cracked in a one—something that those members failed abysmally to do for years when they were in government.

We must support the bill tonight as a Parliament. It is a good measure that clarifies the breach of the peace law for our police officers and sends out a clear message to the bigots who stalk our football grounds masquerading as supporters that Scotland will no longer tolerate their behaviour. The bill should be the beginning of a process of engagement that reaches out to all decent supporters and organisations that say that enough is enough. We must work together and gather in all the good ideas that have been offered over the past few months. Education, mutual respect and co-operation should—and always will—triumph over the forces of bigotry which, if left alone and unchallenged, fester and corrupt us all.

The world is watching us closely to see whether Scotland's Parliament is ready to make a stand against the bigots. We might not be able to do that in football, but in the Parliament we can all grab a victory before the referee blows the whistle on another tawdry encounter at Holyrood.

16:37

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): I thank my former colleagues on the Justice Committee for their work in scrutinising the bill. Together with the clerks, they did a good job in considering how the bill could be improved.

When the Scottish Government first announced that it would delay the bill's passage, that was welcomed by all sides as an opportunity to make serious changes to the poorly written and vague first draft that came before the Parliament. It is highly regrettable, therefore, that we have reached stage 3 and yet the bill has shown remarkably little improvement. The SNP will probably use its majority to push through this lacklustre response to what is a blight on Scotland's culture.

No one doubts that sectarianism is an evil that must be removed from our society in Scotland, and any right-minded person would want to achieve that. However, I would argue that the way

to tackle such unacceptable behaviour is not through vague and potentially harmful acts of Parliament but through better enforcement of existing laws.

Those are not just my thoughts. Aidan O'Neill QC described this as the worst drafted bill that he had ever seen, and concerns have been raised by the Law Society of Scotland, the Church of Scotland and others, which are all worried about the potential harm that the bill could cause. They agree that bad law is worse than no law.

There are a number of reasons for that, which my colleague David McLetchie identified. The Scottish Government has failed clearly to define the behaviour that it is trying to criminalise. The SNP has been unable to identify the problem at the heart of the issue, and its members cannot seem to agree on whether it is tackling a religious or a political issue. As such, the Government has produced a catch-all measure that could result in those with innocent intentions being punished by the law.

There is no clear definition of what constitutes an offence, and many are rightly concerned about what might be caught and become criminal behaviour. Churches throughout Scotland are worried that Christian teachings might be in jeopardy because of the vague definitions in the bill. Other organisations have raised similar concerns. Indeed, when I asked the minister in committee whether the singing of the national anthem would constitute an offence, she was unable to answer me, stating that it would depend on the other circumstances.

I know that the minister will direct members to the guidelines that support the bill, but that is not the point. The legislation itself must be certain and clear, and it is simply wrong of the Scottish Government to rely on guidelines to deal with the inadequacies in the bill's drafting.

Many are concerned that the bill will impinge greatly on the ability to associate, speak freely and voice opinions with anyone or on any matter. That will inevitably mean that the people who are criminalised are not the individuals who are peddling these unacceptable views but innocent Scots throughout the country who will be seen as committing an offence, despite having honest intentions.

Although there is an agreement that we must tackle this serious issue, that does not condone the something-must-be-done mentality that the SNP Government has adopted. Existing measures are in place that, if used more effectively, could start to deal with the problem.

The Justice Committee report called on both the SFA and the SPL to take more action on the issue and it is vital that they now start to do so. Closer

working between the two groups in charge of Scottish football could produce a co-ordinated effort to take action against fans who are guilty of sectarianism. As the committee noted in its report, it is highly regrettable that that has not already been achieved and more pressure should and must be put on them to ensure that the issue is dealt with as a matter of urgency.

The Scottish Conservatives will rightly consider any initiative that aims to reduce sectarian behaviour in our society but, having looked at the bill, we think that it has been found wanting. David McLetchie has tried to improve the bill with amendments, but they have been rejected and our concerns remain. We have tried to be reasonable but have been rebuffed by the Scottish Government, which is determined to force through this shoddy bill.

I therefore urge every MSP to think carefully before voting to approve the bill. If it is to become law, there are real concerns and a real danger that it could end up causing more harm than it does good.

16:41

Johann Lamont (Glasgow Pollok) (Lab): I regret very much the position that we are now in, whereby the Opposition will vote against the bill and it will be voted through by the Government.

Willie Coffey, in one of his many puns, talked about opposition being cobbled together. The minister should reflect on the fact that, on an issue that everyone is concerned about, the Opposition parties have come together to express their concern about the bill. It is not good enough to say that that is about wilful opposition. The minister should recognise the significance and the scale of the opposition to the bill, in the Parliament and elsewhere, if she wants to address the issue.

I would love to have the luxury of the SNP's majority. However, the Government must recognise not only the power of that majority, which I am sure that it will use from time to time to implement its programme, but the responsibility of majority to recognise that in certain circumstances it is not good enough for the Government to use its votes to get its way.

When the First Minister stepped back in June and said that he wanted to build a consensus, we celebrated and welcomed that. However, we got not a pause to reflect but a period of paralysis. Nothing happened and the bill came back in the same form. We promised that we would not exult when the First Minister stepped back and we welcomed his move. However, I am disappointed that we still have the same bill with little amendment and that the minister has not

acknowledged that the concerns that have been expressed are serious.

Members across the chamber recognise the preciousness of unity on the issue, because we recognise that disunity gives heart to the most bigoted in our communities. We wanted unity on the issue so much, yet we feel that we cannot come together, unified, on the bill.

Annabelle Ewing (Mid Scotland and Fife) (SNP): The member referred to the fact that the bill was in substantially "the same form" and that few amendments were incorporated. Does she therefore regret that her party lodged no amendments at stage 2?

Johann Lamont: It is not worthy of the seriousness of the debate to try to allay people's concerns by saying that we did not lodge amendments.

We made exceptionally clear our willingness to work with the Government. We did not start from the position of opposing this bill, of all bills. I did not want to be in the position that I am now in of opposing the bill, but the fact is that we have reached the view—across the Opposition—that the bill has the potential to make the situation worse rather than better. It is offensive to condition people into believing that, if someone disagrees with the bill, they condone sectarian behaviour.

I welcomed Humza Yousaf's comments about the need for maturity, but I regret the minister's suggestion that those of us who do not support the bill are in denial about the scale of the problem. It is precisely because we understand the scale of the problem that we will not stand by and allow the bill to go through without raising concerns about it.

We have a strategy and a record in government on this question. When we developed a strategy, we consulted on it; in that way, legislative weaknesses can be reflected in the legislative programme. This Government has done things the other way round. It is simply not good enough to have assertion rather than evidence. It is a very simple factual matter that of all the convictions for religiously aggravated offences, only a third of the offences took place at or around football grounds. That is my concern. This is a huge issue in our communities and the bill does not address that question at all.

The minister says that people did not engage in careful consideration, and that there was no thoughtful and constructive engagement. We did that, but we simply came to the conclusion that the approach of the legislation would make things worse. We are entitled to say that and we reflect the concerns of people beyond the Parliament. The Government has a majority, but the Parliament takes very seriously the need to listen to the voices outside the Parliament. There are

many voices who agree with us, and the Government cannot wish those voices away.

If time had been taken in this debate, and if we had reflected seriously on how best to tackle the problem, perhaps we would have dealt with Patrick Harvie's questions about whether it would have been better to use the legislation about hate crime. I am personally in favour of legislation, on occasion, symbolically signifying what people disagree with. I am also in favour of naming crimes, which is why I supported legislation on stalking. However, such things take time.

People in our communities want to engage with the process. It is simply not good enough to say that, of course, legislation will make it better, and that legislation is necessary for the transformation of attitudes. If people are not won over to that position—people who feel that they have been discriminated against, who feel threatened by the legislation, who are unsure whether, when they go into a football ground, or indeed a pub, they will be committing an offence—it is reasonable for this legislature to address those concerns rather than to deny their existence.

One of our colleagues said that at least a pub would be a better place to work in as a result of the bill—but only on match day and only if the television is on. If behaviour is unacceptable to someone who is working in that pub, it should be unacceptable, offensive behaviour, full stop. The parliamentary process allows us to tease out the issues that are difficult to address. It is simply not good enough to close down the debate and to say that people are not interested, that they are not reflecting any real concerns and that they are simply being oppositionist for opposition's sake.

The tone of the back-bench speeches was far more constructive than that from the ministers on the front bench. I welcome that. We do not pretend that our action plan is the last word. We want to engage in a debate and a discussion on how these matters can be taken forward. We offer our action plan as a genuine, serious way of making progress and I still extend to the minister the offer of engaging directly on how these points can be addressed through the parliamentary process.

While the Government is set on pushing through the legislation, we remain troubled, but we remain united in our concern about sectarianism. Our offer to the minister is genuine. We will vote against the bill but we will continue to engage as actively as we can, with the minister and with committees, on how to tackle the broader scourge of sectarianism and offensive behaviour, which goes far beyond football grounds and far beyond match day. It is very much to our regret that we will vote against the bill, but we continue to be determined to work with people across the

Parliament to tackle this grave problem in our communities.

The Presiding Officer (Tricia Marwick): I call on Roseanna Cunningham to wind up the debate. Ms Cunningham, you have until 4.59.

16:49

Roseanna Cunningham: Thank you, Presiding Officer.

In closing the debate, I thank all those who contributed to the development of the bill, right back to June and, indeed, before then. In particular, I thank all those whom I have met or who have written to me to discuss the bill. I also thank the Justice Committee, the many witnesses and experts who gave their time to engage in the parliamentary process and the Scottish Government officials who have worked tirelessly on the bill over the past six months.

Despite this afternoon's debate, I am confident that we are beginning to see long-needed change in attitudes and behaviours in Scottish football. As I have said many times, football is not the only manifestation of sectarianism but those behaviours at football are often the most visible sign of division in our society.

Once the legislation is in place, we can get down to the difficult and long-term work of tackling sectarianism. I want to begin the process of healing the divide and then celebrating this nation's differences and diversity. Whatever division there is in Parliament over the bill, I hope that once 5 o'clock has been and gone we can rise above that and set our sights on the real, longer-term prize.

There were a number of thoughtful contributions to the debate, including some that did not support the bill. Other contributions were somewhat less edifying. I cannot go through every one of the contributions because, despite the generous apportionment of time, I fear that I would run out of it.

However, I must take up some of the comments from James Kelly and, by inference, Johann Lamont. James Kelly made much of what was obviously a rather hastily cobbled together announcement at the weekend by the Labour Party on its proposals on sectarianism. I looked at the 11 proposals quite carefully and what struck me as interesting was that every one of them reflected commitments that this Government has already made. There was nothing new there. I am happy to speak to James Kelly and others in his party about the detail of that, if they wish to hear it.

I turn to Patrick Harvie's comments on the importance of tackling hate crimes more generally. I have some sympathy for what he said. The

Government has no plans to undertake a wide-ranging consolidation exercise on hate crime, because of the enormous resource-intensive nature of any consolidation exercise—it is not in our plans, and certainly not on the timescale that Patrick Harvie would have wanted—but I can give an undertaking that the Government will explore the possibility of research to evaluate the effectiveness of existing hate crime laws. I will engage with Patrick Harvie as we move forward on that.

Patrick Harvie: I am grateful to the minister for those words and would appreciate a timescale being imposed on the design and delivery of that research. In particular, will she explain why an offence such as a broad version of incitement to hatred should apply specifically to football matches but not to an English Defence League rally or a group of drunken thugs outside a gay club at 2 o'clock on a Sunday morning? Why is it that that offence is being introduced only in that one specific circumstance but would be wrong in other circumstances?

Roseanna Cunningham: I respectfully say to Patrick Harvie that, when he gets a concession, it is generally a good idea to welcome the concession without immediately demanding chapter and verse on every detailed aspect that might arise. I have committed to engaging with Patrick Harvie on that and I will do so.

I will speak about some of the other contributions more generally. Sadly, many of them repeated the same stock phrases that have time and again been refuted. We heard the repeated assertion that sectarianism is not confined to football, as if the Government had ever claimed that it was. However, football is the ugliest and most visible manifestation of sectarianism and the bill was designed specifically to deal with that.

Johann Lamont: I indicated to the minister that only one third of convictions for religious aggravation relate to offences in or around football stadiums, which means that two thirds of such offences must happen in our communities. The problem must go far beyond football.

Roseanna Cunningham: Did I not just say that? I sometimes wonder whether selective deafness comes over people when they listen to SNP members. I respectfully point out to Johann Lamont that that particular group of offences does not cover travel to and from football matches, for example, which are encompassed by the bill.

Another frequently made point is that somehow the bill represents all that we are doing. On the contrary, we have a wide-ranging set of measures already in hand, as I have said, including the commitment of an unprecedented £9 million to the

problem over the next three years. That is more money than the Labour Government put in.

It is also said that there is united opposition to the bill. There has certainly been quite a degree of discussion and debate, but it is simply not true to say that there is unanimous opposition to it. We listened to the churches' request for a freedom of expression provision, and they acknowledged and welcomed the amendment that we lodged at stage 2. That was one of a number of amendments that the Government lodged as a result of the committee's report. Indeed, a number of members know perfectly well that there is continued support from, for example, Bishop Devine, who speaks for the Catholic church on the issue. The Scottish Human Rights Commission certainly raised specific issues with us that related to a specific provision in the bill, but it has been broadly supportive of the bill, and has said so on a number of occasions. If we add the churches and the SHRC to the police and the prosecutors, we have an interesting group of people who support the bill, and given the decisions that have been made over the past couple of days, we could probably pray in aid UEFA, if it knew about the bill.

On 23 November, Chief Rabbi Jonathan Sacks visited the Parliament. I was struck by something that he said:

"Great nations are honest nations and it takes confidence to say that you have faults".

Those are wise words, which I commend to members. Scotland is, of course, a great nation with many more virtues than faults—members would expect me to say that—but some of the faults that we have run very deep, and that can make honesty all the more difficult. Therefore, let us be honest here today. Sectarianism has created faultlines in Scottish society over many years, decades and, arguably, centuries. Some of those faultlines may have healed over, but occasionally the faultlines shift and make clear the depth of the problem that remains. That often takes people by surprise, and it can shake our confidence as a nation.

Comprehensive and long-term action is required to tackle sectarianism, of course. Deep-set attitudes and behaviours need to be changed through education and engagement. It is important to reiterate that the Government has already announced that it will develop a community-based approach to tackle sectarianism that is focused on meeting the specific needs of communities. In our manifesto, we gave our promise that we are in this for the long run, and we have backed that promise with the unprecedented levels of investment to which I have referred.

I have made it clear that I do not believe that sectarianism in Scotland reduces to what we see

at football matches. Those who are genuinely disadvantaged and discriminated against may never have set foot inside a football stadium, and phrases such as “90-minute bigot” are an affront to their plight. However, football grips this nation, so what we see at football matches sends a disproportionately powerful signal not just through Scottish society, but throughout the world. It is therefore clear that we cannot address the wider problem of sectarianism without taking action to stamp out its very visible manifestation at football matches.

I commend the bill to Parliament and the people of Scotland.

Business Motions

16:59

The Presiding Officer (Tricia Marwick): The next item of business is consideration of business motion S4M-01579, 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 21 December 2011

2.30 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Scottish Government Debate: Delivery and Legacy of the Commonwealth Games

followed by Education and Culture Committee Debate: National Gaelic Language Plan

followed by Business Motion

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 22 December 2011

9.15 am Parliamentary Bureau Motions

followed by Scottish Government Debate: Welfare Reform Bill

11.40 am General Question Time

12.00 pm First Minister's Question Time

12.30 pm Members' Business

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

2.55 pm Finance Committee Debate: Report on the Scottish Spending Review 2011 and Draft Budget 2012-13

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

Wednesday 11 January 2012

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 12 January 2012

9.15 am Parliamentary Bureau Motions

followed by Scottish Government Business

11.40 am General Question Time
12.00 pm First Minister's Question Time
2.15 pm Themed Question Time
Health, Wellbeing and Cities Strategy
2.55 pm Scottish Government Business
followed by Parliamentary Bureau Motions
5.00 pm Decision Time
followed by Members' Business—[Bruce Crawford.]

Motion agreed to.

The Presiding Officer: The next item of business is consideration of business motion S4M-01580, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a timetable for stage 1 of the Land Registration etc (Scotland) Bill.

Motion moved,

That the Parliament agrees that consideration of the Land Registration etc. (Scotland) Bill at Stage 1 be completed by 29 February 2012.—[Bruce Crawford.]

Motion agreed to.

Parliamentary Bureau Motion

17:00

The Presiding Officer (Tricia Marwick): The next item of business is consideration of a Parliamentary Bureau motion. I ask Bruce Crawford to move motion S4M-01582, on approval of a Scottish statutory instrument, the Student Fees (Specification) (Scotland) Order 2011.

Motion moved,

That the Parliament agrees that the Student Fees (Specification) (Scotland) Order 2011 [draft] be approved.—[Bruce Crawford.]

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

Decision Time

17:01

The Presiding Officer (Tricia Marwick): There are two questions to be put as a result of today's business. The first question is, that motion S4M-01524, in the name of Roseanna Cunningham, on the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen Donside) (SNP)
 Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMillan, Stuart (West Scotland) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)

Russell, Michael (Argyll and Bute) (SNP)
 Salmond, Alex (Aberdeenshire East) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Urquhart, Jean (Highlands and Islands) (SNP)
 Walker, Bill (Dunfermline) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

Against

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brown, Gavin (Lothian) (Con)
 Carlaw, Jackson (West Scotland) (Con)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Davidson, Ruth (Glasgow) (Con)
 Dugdale, Kezia (Lothian) (Lab)
 Eadie, Helen (Cowdenbeath) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Fergusson, Alex (Galloway and West Dumfries) (Con)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West Scotland) (Con)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Renfrewshire South) (Lab)
 Hume, Jim (South Scotland) (LD)
 Johnstone, Alex (North East Scotland) (Con)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Rutherglen) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 MacDonald, Margo (Lothian) (Ind)
 Macintosh, Ken (Eastwood) (Lab)
 Malik, Hanzala (Glasgow) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Lothian) (Con)
 McMahon, Michael (Uddingston and Bellshill) (Lab)
 McMahon, Siobhan (Central Scotland) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Murray, Elaine (Dumfriesshire) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Drew (Glasgow) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)

Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

The Presiding Officer: The result of the division is: For 64, Against 57, Abstentions 0.

Motion agreed to,

That the Parliament agrees that the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill be passed.

The Presiding Officer: The next question is, that motion S4M-01582, in the name of Bruce Crawford, on approval of a Scottish statutory instrument, the draft Student Fees (Specification) (Scotland) Order 2011, be agreed to.

Motion agreed to,

That the Parliament agrees that the Student Fees (Specification) (Scotland) Order 2011 [draft] be approved.

Fuel Prices

The Deputy Presiding Officer (Elaine Smith): The final item of business today is a members' business debate on motion S4M-01340, in the name of Stuart McMillan, on commending petrol and diesel watch.

Motion debated,

That the Parliament commends the *Greenock Telegraph's* Petrol and Diesel Watch feature, which advises motorists on a daily basis of the fuel prices at filling stations throughout Inverclyde and the west of Scotland; acknowledges that this was established in response to public outcry at rising fuel prices and also reported disparities of as much as 7p per litre between filling stations in nearby towns, and is concerned that dramatically rising fuel prices threaten to exacerbate an already challenging economic situation for households and business operations in Inverclyde, the west of Scotland and across the country as a whole.

17:04

Stuart McMillan (West Scotland) (SNP): I thank all the members who signed the motion, including Murdo Fraser, without whom the debate would not be taking place, as he was the first and only member from the Opposition parties to sign the motion.

I congratulate the *Greenock Telegraph* on its campaign to highlight the inequality of petrol and diesel pricing that every vehicle driver in Inverclyde is facing. It is important to state that the *Tele*—the shortened name for the newspaper—did not launch the campaign because it wants petrol and diesel to be cheaper in Inverclyde than anywhere else, but because it believes that there is inequality in the pricing of petrol and diesel in Inverclyde and in nearby towns.

This week, the newspaper is reporting that the average price of unleaded petrol is 132.9p a litre, and that the average price of diesel is 141.9p. It uses a couple of petrol stations outside Inverclyde to make daily comparisons, and the prices at those stations are regularly lower than those in Inverclyde. I know people who have stopped putting fuel in their cars in Inverclyde because they know that, if they buy it elsewhere, it will be that bit cheaper. That has a knock-on effect on the local Inverclyde economy, because those people purchase other products and services outside the area.

In previous correspondence with companies that supply fuel, they have responded that they are pricing the fuel to be competitive in the local market. In studying economics, we are always told that competition works to reduce prices, and that if there are more suppliers, there is a better chance of the customer getting a better deal. I accept that theory, but it is not working for motorists in

Inverclyde. Competition in fuel pricing does not appear to be working.

I can understand when members who represent rural communities highlight the high price of fuel in their constituencies. I contacted some of my colleagues this week to ask for examples of fuel prices in their areas. Mike MacKenzie responded, telling me that a petrol station on the Isle of Coll is charging £1.71 for a litre of unleaded petrol, and £1.72 for a litre of diesel. I fully appreciate that the price of fuel in Inverclyde and other parts of West Scotland is not as high as it is in the Western Isles, Orkney, Shetland and parts of the Highlands. There remains an issue, however, with regard to the inequality of the prices.

The *Greenock Telegraph* online reported on 22 July that fuel was 7p a litre cheaper in Ayr than in Inverclyde. I congratulate the people of Ayr on getting their fuel 7p a litre cheaper—well done to them—but that highlights yet again how flimsy the local-competition argument actually is. Within the past week, I have purchased fuel from two garages outwith Inverclyde. The first occasion was at Tesco in Helensburgh last Friday, and the second was at the Esso garage in Paisley yesterday, when I was on my way to Parliament. I noticed that the diesel in the Esso garage was 5p a litre cheaper than in Inverclyde, and that petrol was 3p a litre cheaper.

Any purely economic explanation of those irregularities falls down. Scotland is an oil-rich nation, yet Scots are now paying among the highest fuel prices in Europe, and more than ever before. Rising oil prices are putting extra revenue into the United Kingdom Treasury. It is bad enough that Scotland does not see the benefit of its rich natural resources, but we also lack a structure to ensure fairness in relation to fuel duty. It is high time that some of the money that the Treasury rakes in was used to bring down and stabilise fuel prices in Scotland. This situation, more than anything, underlines the need for the fuel duty regulator for which the people of Scotland and the Scottish National Party have long campaigned.

Last week, during our debate on the Chancellor of the Exchequer's autumn statement, I mentioned the delay in introducing the 3p per litre increase that had been due in January. I welcomed the chancellor's decision not to introduce the increase, and I do so again today. However, he has delayed it only until next August, so I encourage him not to introduce it then, either. Murdo Fraser also touched on that in his contribution to the debate last week. The 3p increase would be a retrograde step, whether it was done in January or August. We know that the economic conditions are not great and, in the light of today's announcement of the latest unemployment statistics, I hope that the

chancellor will realise that high fuel prices play a part in such figures.

Inverclyde faces particular challenges. In an environment in which there is high unemployment, people can ill afford increased fuel bills, especially when the bills could hinder their trade or their route back into work. This morning's announcement highlighted that there are 3,500 unemployed people in Inverclyde. That just goes to show the economic challenges that the area faces.

Although the SNP Government is working to lower bills through the council tax freeze, the small business bonus scheme and the abolition of prescription charges, as well as trying to create opportunities to stimulate the economy and creating modern apprenticeships, Inverclyde motorists feel as if they are being ripped off at the fuel pump. There are knock-on effects on the wider Inverclyde economy.

David Stewart (Highlands and Islands) (Lab): I appreciate the member's giving way.

What is Stuart McMillan's view on the role of the major supermarkets, such as Tesco and Sainsbury? In many cases, they have a UK-wide policy on consistent petrol prices. Volume is a major factor that relates to pricing. The member mentioned economic rules. I would be interested to hear his views on those two factors.

Stuart McMillan: The information that I have received on various supermarkets the length and breadth of Scotland, in rural and urban communities, suggests that there are variations in the prices that they charge. I do not fully comprehend their reasoning around having similar prices throughout the country.

I am conscious of the time, so I will conclude. In the absence of any action from Westminster to introduce a fuel duty regulator, I want those powers to be devolved to this Parliament. Ultimately, the people of Inverclyde are really fed up of feeling as if they are being ripped off when it comes to fuel. The great Inverclyde petrol rip-off has sickened many people from the area, who have decided to buy their fuel elsewhere. Something needs to be done about it.

I warmly welcome the *Greenock Telegraph's* campaign for fair fuel prices. It is an excellent initiative and the newspaper deserves to be commended for it wholeheartedly. The people who work on the newspaper understand the harsh economic reality that Inverclyde's motorists are facing, as well as the wider economic challenges. I hope that the newspaper keeps the campaign going. I know that that service is warmly welcomed by everyone in Inverclyde.

17:12

Duncan McNeil (Greenock and Inverclyde) (Lab): I welcome the opportunity to speak in the debate, which opens up two significant issues for my community, one positive and the other negative.

The Deputy Presiding Officer: Could I ask you to move your microphone closer to you, Mr McNeil?

Duncan McNeil: Okay. I will not repeat the first bit—I am sure that it is on the record.

The first issue is the positive role of local newspapers in campaigning on issues that are important to their readership in the wider community. I have been involved in successful campaigns with the *Greenock Telegraph* over 30 years. In recent years, I have worked with it to save our accident and emergency services, our local football team and even the hospital tea bar. I am sure that many members will have similar experiences. It was great to be able to repay the favour to the newspaper industry, particularly the *Greenock Telegraph*, in a debate almost two years ago, in January 2010, when the Scottish Government was threatening to withdraw public notice advertising from newspapers, which is vital to sustaining local newspapers through difficult times.

I note that Stuart McMillan also took part in that debate, when he extolled the virtues of new media in Inverclyde and described the different perspective that they provide as “refreshing”, compared with that provided by the local newspaper. He also told the chamber that day that quite a few people tell him that

“they are sceptical about their local papers”.—[*Official Report*, 28 January 2010; c 23215.]

I wonder who he was referring to.

The Deputy Presiding Officer: Could you discuss the petrol and diesel issue?

Duncan McNeil: Yes.

The Deputy Presiding Officer: Thank you.

Duncan McNeil: I will discuss that. I think that the motion refers to the role of the newspaper's campaign. In the course of my contribution, I will mention that, too.

I welcome Stuart McMillan's conversion to the cause of local newspapers and his belated recognition of the good work of the *Greenock Telegraph*, which is mentioned in the motion. Sadly, he has not always been able to support recent campaigns. He will remember the *Tele's* award-winning campaign against knife crime, which supported John Muir's call for tough action—a campaign that came within just two votes in the chamber of bringing about a change in

the law. It was a very successful campaign, which received an award. He will also remember the campaign earlier this year against the cuts to Inverclyde's regeneration budget. Our community demanded its fair share from the SNP Government, only for that money to be diverted to other parts of the country. That campaign continues.

That leads me to the current campaign on fuel prices. Every motorist has cause to grumble about the price at the pumps, but we in Inverclyde have particular grounds to be unhappy because, as the *Tele's* petrol and diesel watch highlights, we are consistently asked to pay higher prices than our near neighbours. The lack of competition in Inverclyde is at the heart of the matter. The two large Tesco shops and one Morrisons store keep prices high and, in effect, fund a price war in other parts of Scotland that enjoy greater competition. I have repeatedly made representations to the supermarkets involved—Tesco and Morrisons, for the avoidance of doubt—and have spoken and written to the Competition Commission, regrettably without success.

I have also raised the issue of anti-competitive planning law with the Scottish Government. The minister will be aware that planning law can restrict new applications for supermarkets coming into an area such as Inverclyde. Tesco and Morrisons value that protection, but it is time that we asked whether, given that they are using their dominance to inflate fuel prices, they deserve it.

The minister has an opportunity to review planning legislation that would make the supermarkets sit up and address loyal consumers who repeatedly complain about the price that they pay to fund price wars in other areas. The prize for Inverclyde could be a reduction of 5p a litre on average. I ask the Scottish Government to consider reviewing planning legislation that supports such practices.

17:17

Murdo Fraser (Mid Scotland and Fife) (Con): I commend Stuart McMillan for his motion and congratulate him on securing the debate. As members might be aware, I am not a regular subscriber to the *Greenock Telegraph*. However, I was interested to see the campaign that it is running, which sounds extremely worth while in the local context.

I will spend my time talking about some of the broader issues that are highlighted in the motion, such as the impact of “dramatically rising fuel prices” on the economy. The assumption in the motion is that rising fuel prices are bad. I agree with that, but that assumption is not shared by everybody. There is no representative of the

Green party present, but I suspect that, if there were, they would take quite the opposite view and state that rising fuel prices are a good thing because they dissuade people from using their cars and move them on to public transport. Therefore, we should not accept as a given that everybody thinks that rising fuel prices are bad.

That general approach drove previous Westminster Governments to introduce the fuel tax escalator to increase the cost of fuel year on year and help to bring about modal shift away from private transport to public transport. However, times have changed, as the cost of fuel has gone up dramatically not simply because of taxation but because of the underlying cost of a barrel of oil.

I remember—as will other members—that, when the price of a litre of unleaded fuel was reaching £1 some years ago, people thought that there would be riots in the streets. It is now, I think, around £1.30 for a litre of unleaded fuel—at least, that is what I paid when I filled up yesterday—so costs continue to rise.

The motion rightly points out that there is an impact on individuals and businesses. All individuals pay more when they fill up their cars and all businesses pay more because the goods that we buy in the shops must be brought in. The haulage industry plays a vital role in that, but 1p on the cost of a litre of fuel puts many pennies, if not pounds, on the cost of the goods that we buy in the shops and contributes to inflation.

As Stuart McMillan fairly said, there is a great impact on rural communities in particular, including some of the ones that I represent. The option to move to a public transport alternative does not exist there to the same extent as might be the case in an urban community.

Stuart McMillan was gracious enough to acknowledge some of the steps that the chancellor has taken to reduce the impact of increased fuel duty. It was announced in the budget earlier this year that the proposed increase would be scrapped. Indeed, fuel duty was decreased by 1p at that time, and the 3p increase that is proposed for January has been deferred until August. The result of that is that by January, fuel will cost 10p a litre less than it would have had the previous Labour Government been re-elected. That is welcome, although I accept that there is more to do. Those steps will also be welcomed by motorists and businesses across the country.

There is always a balance to be struck. Those measures reduce the revenue coming in to the Government at a time when the Government is desperately in need of revenue to balance the books. The Government used the budget to introduce an increase in the tax on oil and gas to fund the reduction in fuel, and that led to loud calls

from the oil and gas industry about the deterrent effect that that increase would have on future exploration. I have to say that there is little sign of the increase having deterred future investment, but it goes to show that there are never any easy options. If we reduce the price of fuel, we have to find the money from somewhere to fund that. Whoever has to pay the extra money will not like it.

My congratulations to Stuart McMillan, and I thank him for giving us the opportunity to discuss these important issues.

17:21

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): I add my congratulations to Stuart McMillan on securing the debate. In my constituency, and throughout the Highlands and Islands, the issue of high fuel prices has long been contentious. Although the *Greenock Telegraph* feature that is mentioned in Stuart McMillan's motion serves to highlight price discrepancies between filling stations, the issue in the Highlands is not so much that retailers are profiteering but that Westminster is cashing in by taking too much tax from the motorist and that fuel prices in rural areas are higher than they are in towns and cities.

Recognising that, Lib Dem MP Danny Alexander based much of his 2010 re-election campaign on promises to take action on the issue. Of course, his re-election was successful and he is now chief secretary to the Treasury with power to act and nowhere to hide, unlike his Lib Dem colleagues in the Scottish Parliament who are all hiding tonight—there is not a single one of them in the chamber—unless of course Murdo Fraser is a proxy Lib Dem for the coalition parties. I see from the horrified look on his face that he is not.

Danny Alexander tried to implement a little bit of his promise and, this autumn, after months of delays and excuses, island motorists heard that next year they will see a small reduction in the price of their fuel.

Although any reduction in the cost of fuel is welcome in areas in which the use of a car is essential, I am afraid that the impact of the 5p cut in the limited geographical area in which it has been delivered has only made the price a little bit less exorbitant. It is still much higher than the price that we see in other parts of the country. In Skye, the 5p off is welcome, but it must be balanced against growing public anger throughout mainland Highland that the Lib Dems have failed to deliver on their main pledge to have cheaper petrol in rural areas, which persuaded so many to trust them with their votes.

Earlier this year, I was contacted by several independent filling stations on the west Highland

mainland who feared that cut-price competition on Skye would fatally undermine their business. For instance, today, at 140.9p per litre, there is no difference between the price of petrol at the pumps in Broadford on Skye and at pumps in Inverinate, which is just 20 miles away on the mainland. Diesel is actually a penny cheaper in Broadford. With the fuel discount, the difference would be 5p for petrol and 6p for diesel, with the mainland filling stations being disadvantaged.

In October, I wrote to Mr Alexander to make the case for applying the discount to all disadvantaged rural areas. Sadly, that commonsense approach appears to have been beyond him, as he rejected my call. My letter to him suggested a two-stage roll-out of a rural petrol discount programme, to be applied initially to the west Highlands, to tackle the issue of uneven competition that is feared by those petrol retailers close to the fuel discount area, and then to all rural areas.

However, that would need to be supplemented by implementation of the SNP's long-standing policy to have a fuel duty regulator for all areas, which would reduce the Government's tax take from fuel sales as prices rose, to allow the maintenance of stable prices at the pumps.

Given that Scotland is the European Union's largest oil producer, it is surely not too much to expect our citizens at least to have stability in the cost of their fuel, even if they pay a higher price for petrol than people in almost the entire continent.

The newspaper feature that is referred to in Stuart McMillan's motion sounds like an example of the reliable information that is needed to enable the fuel market to operate efficiently, and it should help to equalise prices in the Inverclyde area. I congratulate those involved on that.

17:26

The Minister for Energy, Enterprise and Tourism (Fergus Ewing): I thank Stuart McMillan for bringing an important subject to the chamber, and I welcome the terms of the motion. I also welcome the action that the *Greenock Telegraph* has taken to highlight the variations in fuel prices across Inverclyde, and its provision of a daily snapshot of prices.

In preparing for the debate, I asked to see some of the relevant articles from the *Greenock Telegraph* because, like Mr Fraser, I confess that it is not the first journal that I choose in my daily perusal of the newspapers.

I commend the active and persistent journalism on the part of all of those who have taken part in the campaign. Their provision of information to their readers is a salutary example, which other local newspapers could well emulate. Some, of

course, do. Paul Coulter, Susan Lochrie and David Goodwin—I apologise if I omitted anyone—are to be praised. I do not wake up in the morning expecting to praise many journalists in the course of the day, but I recognise the persistence with which they have pursued the matter.

An article that appeared in the paper on 22 July 2010 states:

"Every day from today we will publish an updated list of the fuel prices at every petrol station across Inverclyde. That way our readers can decide where to fill their tanks—and at what price. The reason behind our new Petrol Watch feature is we receive countless letters and emails from local drivers who say they are fed up at having to pay higher prices than areas nearby."

Setting aside the politics of the issue, we can all recognise that such journalism, which involves the simple, straightforward reporting of facts and the provision to readers in the area of readily understandable information, is extremely helpful and informs them about where they can get the best deal. More than that, it constitutes a form of pressure on the companies involved—which, according to the motion, charge up to 7p more than others—to reduce the excess charges that lead to the disparity, through fear of public exposure and being named and shamed.

Inverclyde is not the only area of the country where that happens. The *Strathspey and Badenoch Herald*—if I may be permitted to mention that august organ—has exposed the disparity in the prices that are charged in petrol stations in Aviemore, Grantown and elsewhere, some of which are in my constituency while others are in that of Dave Thompson.

I put on record my appreciation to the *Greenock Telegraph* for the work that it does, and I acknowledge Mr McNeil's comments, even if they ranged freely and widely—that is what we would expect from an old hand—in recognising the newspaper's campaigning efforts in other areas. I have met Mr Muir on several occasions. I have debated with him and I respect him, as Duncan McNeil knows. These are serious matters and it is right that a local newspaper should take up the cudgel on behalf of its readers. That is perhaps the main thrust of the debate.

Mr McMillan's motion refers to the

"challenging economic situation for households and business operations in Inverclyde",

which I think permits me to claim that relevant to the debate is the work that the Scottish Government is doing through the council tax freeze, the abolition of prescription charges and the small business bonus scheme, which have helped to alleviate the burden that many individuals and businesses face in their daily lives. I think that Mr Thompson alluded to the matter.

Duncan McNeil: Does the minister—

The Deputy Presiding Officer: Can we have Duncan McNeil's microphone on, please? [*Interruption.*] Mr McNeil, I think that you will need to take your card out of the console and reinsert it.

Duncan McNeil: I give up. I am sure that the minister could hear me clearly, though.

Fergus Ewing: I could probably hear Mr McNeil if he was in Our Dynamic Earth. I am sorry that I did not have the opportunity to take his intervention; I would have been happy to respond.

Taxation accounts for around 60 per cent of the price that we pay at the pumps—the highest rate in any EU country. The taxes are set by the UK Government and it is clear that the UK Government possesses the levers to address the issue. It is also clear that 80p is collected through fuel duty and VAT on each litre of petrol that is sold—that is 14p more per litre than was being collected just three years ago. Of course, under current plans, fuel duty is due to rise by a further 3p per litre next August. It is evident that the overall tax burden on petrol and diesel is still increasing. That is unfair on Scotland, given that we are incredibly oil rich—I think that this year we contributed in the region of £13 billion to the London Exchequer from our overall oil and gas taxation.

I acknowledge the comments that members have made and I will try to be reasonably consensual. The cost of fuel is a burden on ordinary families and individuals, especially households on lower pay and households that have no access to public transport, some of which need two cars so that the husband and wife can travel to and from home.

Duncan McNeil: I will try again. Will the minister give way?

Fergus Ewing: Do I have the pleasure of hearing from Duncan McNeil now?

Duncan McNeil: I thank the minister. He has commended the campaign, but representations to the Competition Commission and to supermarkets—who are turning away the representations of loyal customers—have had no success. Is there a possibility that the minister and the Scottish Government can aid consumers who are in the situation that he described, by reviewing the planning laws that supermarkets value and suggesting that competition issues will be dealt with and other supermarkets encouraged to come into areas, which would reduce consumer prices?

Fergus Ewing: I never say never, but I am not aware of a provision in planning law that would allow that to be done. If Mr McNeil can suggest an approach that we can take, we will be happy to consider it.

Taxation on fuel remains the main component of the cost, and the power rests with Westminster in that regard. I wish that the Scottish Parliament had the power to handle matters. If it did, I think that members of all parties would strive with every effort that we could muster to provide a better deal, especially for people on lower incomes and people who live in rural and island communities, who have suffered injustice for far too long.

Meeting closed at 17:34.

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