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Scottish Parliament

Thursday 29 October 2020

[The Presiding Officer opened the meeting at 12:20]

First Minister's Question Time

The Presiding Officer (Ken Macintosh): Good afternoon, colleagues. Our first item of business is First Minister's question time. Before we turn to questions, the First Minister will give an update on the Covid-19 situation.

The First Minister (Nicola Sturgeon): I will shortly confirm the different levels of protection to be applied across Scotland from Monday and will briefly explain some of the reasoning behind those decisions. A detailed analysis paper is also being published, which sets out our assessment of each of the five factors and our overall judgment for each local authority area.

First, I will give an update on today's Covid statistics. The total number of positive cases reported yesterday was 1,128. That represents 7.1 per cent of total tests and takes the total number of cases to 61,531. Of the new cases, 416 were in Greater Glasgow and Clyde, 266 in Lanarkshire, 121 in Ayrshire and Arran, and 117 in Lothian. The remaining cases were spread across nine other health board areas; only Shetland reported no new cases. I can also confirm that 1,152 people are in hospital, which is an increase of 35 from yesterday, and that 86 people are in intensive care, which is one more than yesterday.

I deeply regret to say that in the last 24 hours, a further 37 deaths have been registered of patients who first tested positive during the previous 28 days. That means that the total number of deaths, under the measure used in our daily figures, is now 2,791. Once again, I send my deepest condolences to all those who have lost a loved one to this illness.

Those figures show that we are still seeing high numbers of new cases, increasing hospital and intensive care unit admissions and, sadly, a rising number of deaths.

Those issues are not unique to Scotland. We have seen a resurgence in the virus in all parts of the United Kingdom, across Europe and right around the world. Last night, for example, both France and Germany reimposed nationwide lockdowns.

In Scotland, we acted early—with some difficult but necessary measures—and we hope that that will have the effect of slowing the spread and preventing a further deterioration in our position.

Although we cannot be certain and have no grounds for complacency, we see some encouraging signs that that might be the case. Last week, I indicated that we were beginning to see a significant slowing in the rate at which new cases are increasing. I can confirm that that has continued. Cases in the last week up to today have increased by 4 per cent; two weeks ago, the weekly increase was 40 per cent. Our latest estimate of the R number, which was published today, suggests that it is still above one but may have fallen slightly to 1.3.

All of that suggests that the measures that were introduced five weeks ago to curb household meetings are having an effect and that the additional measures that were introduced three weeks ago to significantly restrict hospitality may also be starting to have an impact. That is all down to the sacrifices of people the length and breadth of the country.

However, we must be under no illusions. Europe is now firmly in the grip of a second wave of Covid. Cases here at home are still rising—albeit that the rate of growth appears to be slowing—and the virus is still highly infectious. It will take every opportunity to spread. Therefore, unless we act individually and collectively to protect and build on the progress that we see today, that progress will quickly go into reverse.

Our strategic framework aims to tackle the virus with measures that are strong enough to work but also proportionate to the scale of the problem in different parts of the country, and in a way that minimises as far as possible the other harms that the pandemic is causing.

The assessment of what level of protection is right for each local authority is broadly based on five key factors. Those are: the number of positive cases per hundred thousand people over the most recent week; the percentage of positive tests; our forecast for new cases in the weeks ahead; and the capacity of local hospitals and intensive care facilities.

Those factors are assessed alongside the views of local public health officials and with consideration of local circumstances, such as specific outbreaks, travel and work patterns, and the extent to which health services are provided by neighbouring health boards. Our final decisions are based on all those factors.

Before setting out our decisions, I want to take a moment to remind people of the purpose of each level. The baseline level—zero—and level 1 are intended to ensure as much normality as possible, but do not remove all restrictions. The protections that are in place at those levels should enable communities to control outbreaks quickly and effectively and minimise transmission of the virus

by following the guidance and supporting one another to comply.

However, when we begin to see community transmission in an area, and when the spread of the virus cannot be linked to a specific outbreak, we must apply the brakes. That is essentially what levels 2 and 3 are designed to do.

Our aim is that the restrictions—especially in level 3—should be in place for as short a time as possible. If any area is at level 3, the collective aim of those who live there, the local authority, local health services and local businesses must be to bring that down to level 2 and then level 1, and not to allow it to drift to level 4. We will use level 4 when transmission is extremely high and threatens the capacity of the national health service to cope.

I turn now to the levels that will apply across the country from Monday at 6 am. I point out that, following this initial assessment, we will review on a weekly basis whether any changes are required. We aim to confirm our decisions to Parliament on a Tuesday, with changes coming into force on the following Friday. Barring the need for any changes before then, our next update will therefore be Tuesday 10 November, with any changes coming into effect on 13 November.

Before turning to today's decisions, I remind everyone that you can see on the Scottish Government's website the reasoning behind those decisions, as well as the level that your own area is in and what restrictions that entails for the area where you live.

Given the fragile situation that we face and the fact that we are migrating to the new system for the first time, we are taking a deliberately cautious approach today. At present, we do not judge it safe or prudent to place any part of the country into the baseline level, zero. However, if we see continued progress, I hope that that might change—and will change—in the weeks ahead.

I can confirm that Highland, Moray, the Western Isles, Orkney and Shetland have all been assessed as level 1. In time—a short time, I hope—we expect that level 1 will allow people to meet in one another's homes, in groups of up to six people from a maximum of two households. However, at present and on clear public health advice, the restriction on household meetings will continue to apply in all parts of the country.

I am conscious that that restriction can cause particular difficulty in our more rural and island communities, so we will review its necessity in level 1 areas ahead of the 10 November review. If the virus remains controlled in those areas, I am hopeful that we will be able to lift the restriction then.

Let me now address the areas that have been assessed as level 2. They are Aberdeenshire, Aberdeen, Fife, the Borders, Dumfries and Galloway, Argyll and Bute and also—as I will discuss in more detail—Perth and Kinross and Angus.

In two of those cases—the Borders and Argyll and Bute—the decision on whether they should be assessed as level 1 or level 2 was finely balanced. In both cases, one of the key factors in reaching our decision was the interconnection with neighbouring areas, and in particular with health services in Lothian and in Greater Glasgow and Clyde. We have also considered the impact of travel from nearby areas with a higher prevalence of Covid. As a result, we have decided to take a cautious approach by applying level 2 to both areas. We will, however, consider that decision very carefully at the next review point.

The interconnection with neighbouring areas and services has also heavily influenced our decision on Inverclyde. I understand why that area would wish to be assessed as level 2. However, we do not consider it safe to take that decision yet, given the very close connections between Inverclyde and other parts of west central Scotland that have high transmission rates, high positivity levels and already significant pressure on hospital and intensive care unit capacity. Inverclyde has therefore been assessed as level 3, along with East Dunbartonshire and West Dunbartonshire, Renfrewshire and East Renfrewshire and the City of Glasgow. That level also includes South Ayrshire, East Ayrshire and North Ayrshire, Stirling, Falkirk, Clackmannanshire, the City of Edinburgh, Midlothian, West Lothian and East Lothian.

We know that those areas in level 3 have been under restrictions now for a number of weeks, particularly on household interaction. Based on the data that we are considering and if progress in suppressing the virus is maintained, we hope that at a very early review point, we will be able to consider moving some areas—East Lothian in particular and possibly Edinburgh—from level 3 to level 2 reasonably soon. I cannot make that commitment now, but I hope that we will be able to confirm it in the coming weeks.

Our approach to managing Covid will work best where there is real partnership work between neighbouring authorities and health boards on how to drive down levels of infection, share resources, and communicate with and support communities.

I indicated earlier this week that we had cause for concern in relation to Dundee and that we expected it to move into level 3. Dundee is currently seeing, per week, around 185 new cases per 100,000 of the population, which is higher than for several areas already in the equivalent of level

3. We have therefore decided that a level 3 assessment for Dundee is the correct one, so from Monday at 6 am Dundee will move into level 3.

Support is available for businesses that will be required to close and all businesses across Scotland will have access to the replacement job support scheme from the UK Government, which begins on Monday. I would encourage all businesses in Dundee that are impacted by the closure and those in the supply chain to engage with Dundee City Council and to look at the findbusinesssupport.gov.scot website to find out what help is available. In fact, businesses across the country can access that resource.

In making that decision on Dundee, we considered carefully whether Perth and Kinross and Angus should also be placed in level 3, given the travel patterns and interdependencies between those three authorities. Our decision not to do so at this stage is based on the view of the three authorities, NHS Tayside and the police that close partnership working can militate against cross-border transmission. However, people living in Angus and in Perth and Kinross have a big part to play. It will be essential for them to adhere strictly to the guidance and the restrictions, especially on travel, if a rise in cases that would necessitate level 3 restrictions being applied across all of Tayside is to be avoided.

I turn to the situation in Lanarkshire. The decision between level 3 and level 4 there has been very finely balanced. Lanarkshire has a high number of cases, high test positivity and a high number of patients in hospital and ICU. However, there is evidence in recent days that the situation is stabilising, which is undoubtedly down to the compliance and sacrifices of local people. The local councils, NHS Lanarkshire and the police believe that they have strong partnership plans in place to maintain that progress under current restrictions. For those reasons—and given the severity of level 4 restrictions—we have decided that North Lanarkshire and South Lanarkshire should remain in level 3 at present.

However, I want to be very clear that that is a borderline decision that we require to keep under review, not just weekly but on a daily basis. I therefore appeal to people across Lanarkshire to continue to play their part. Please abide strictly with all the rules and guidance to help ensure that the rise in cases continues to slow and that more severe restrictions can be avoided.

Finally, I turn to travel, and here I need to be very blunt. I know that travel restrictions are unwelcome and can be controversial, but they are an absolutely essential part of any regional approach to tackling Covid. They are, unfortunately, a price that we pay for more targeted restrictions. If people do not abide by the

travel advice, the virus will spread from high to lower-prevalence areas and a differentiated approach will become unsustainable. In those circumstances, we would have to return to national restrictions.

I will be clear what we are asking of people at this stage. If you live in a level 3 council area or, in future, a level 4 area, please do not travel outside the council area that you live in, unless you require to do so for essential reasons. If you live in a level 1 or 2 local authority area, you must not travel into a level 3 or 4 area, except for essential purposes. By essential purposes, we mean things like work—if you cannot work from home—education, local outdoor exercise, healthcare or caring responsibilities and essential shopping, where that is not possible locally. In recent weeks, that guidance has applied to health board areas, but from Monday it will apply at local authority level. Similarly, wherever people live, they should not travel between Scotland and areas in the rest of the UK with high levels of the virus, unless it is essential.

Given that the police cannot check everyone's journey, we must rely on public willingness to adhere. That is why the advice is in guidance at this stage and not regulation, but we will keep that under review. However, I appeal to people across the country: please comply with this advice to keep everyone safe and allow us to continue, if possible, with a proportionate response across different parts of the country to wider restrictions.

The levels that we will put in place from Monday require more sacrifice at a time when all of us are tired of making sacrifices. I recognise that and, again, I thank everyone across Scotland for everything that they are doing. However, those sacrifices continue to be essential. If we all dig in and stick with it, this proportionate approach has a real chance of being sustainable and keeping Covid under control over the winter. If we succeed, we open the prospect—in all parts of the country—of being able to lead slightly less restricted lives in, I hope, the reasonably near future.

However, the other side of that is equally true, and I must be open with Parliament and the country about this. We are, as of now, making progress in Scotland, but cases are still rising and the situation that we face is fragile; across Europe, the pandemic is accelerating so I cannot rule out a move back to nationwide restrictions in the next few weeks, including at level 4. That could happen if, for example, cases in parts of the country start to rise faster again, to the extent that controlling spread with travel restrictions will not be effective; or it could happen if pressure on the NHS risks breaching capacity not just at local level, but overall.

We want to avoid that, obviously. However, to achieve that, we must all play our part. The Government must and will lead, but all of us have individual agency and individual responsibility. None of us can guarantee that we will not get or transmit the virus, but we can all make choices that keep ourselves, our loved ones and our communities safer. I ask people to make sure that they know the restrictions in their local area, please. From Monday, a postcode checker will help everyone to do that. Please stick to the restrictions.

Wherever people live, for now, do not visit other people's houses and do not travel to or from level 3 areas. Please remember to wear face coverings; avoid places with crowds of people; clean your hands and surfaces; keep 2m distance from people in other households; and self-isolate and get tested immediately if you have Covid symptoms.

If we do those things, we have a chance of keeping the virus under control in our neighbourhoods and our communities. We can reduce overall case levels in our own areas and help to do so across the country. Then we can all play a part in moving all parts of Scotland to lower levels of restrictions. Above all, we can protect each other, protect our national health service and save lives.

The Presiding Officer: We turn to questions.

Care Home Covid Deaths

1. **Ruth Davidson (Edinburgh Central) (Con):**

It is clear that we are now in the grip of a second wave. However, today, I want to talk about the first wave and the devastating Public Health Scotland report into care home Covid deaths. Yesterday, the First Minister said,

"I'm ... not trying just to pick on specific lines",

but she had already selectively picked her line from the report. She quoted:

"Overall, the analysis does not find statistical evidence that hospital discharges were associated with care home outbreaks."

Of course, the First Minister chose not to read the next line, which said that there was a "relatively wide" variation in the estimated levels of risk. Can the First Minister now tell us how high might the true risk have been of putting known Covid-positive patients into care homes?

The First Minister (Nicola Sturgeon): I begin by recognising again the toll that Covid has taken on people in care homes. The fact that that is not unique to Scotland does not in any way detract from the distress and grief that have been caused. Today, I say again that I am deeply sorry for that.

The position on testing changed in line with evidence and advice. That was true in Scotland, and it was true in other parts of the United Kingdom. However, the absence of testing did not equate to an absence of action. Guidance was in place all along that was designed to minimise the risks in care homes. We continue to learn lessons, we continue to apply those lessons and we continue to take with the utmost seriousness the duty on Government to do everything possible to protect the general population and particularly those who are most vulnerable.

This is for others to judge, but I do not know that the people who were watching all the hour or more that I spent answering questions on the topic yesterday would have concluded that I tried to hide any aspect of this. This is a difficult situation for families and for the public generally. I quoted the conclusion of the report. The report has hard messages for us. It tells us some of what we think are factors driving outbreaks in care homes, but there is still work to do to understand that.

Of course, we have the information that the report gives us because we commissioned the report. Similar things have happened in other countries where they still do not have that level of information. I am determined that we continue to learn and apply lessons and do everything that we can to keep people in our care homes and the general public as safe as we can.

Ruth Davidson: I thank the First Minister for that answer, but it did not address the specific question that I put to her. I asked her what the increased risk was.

When someone tested positive for Covid before being transferred to a care home, the report said that the best estimate was that there was a 45 per cent increase in the risk of an outbreak. However, because of the wide variation that I quoted, the risk could have been much higher—in fact, the report says that it could have been as high as 374 per cent. That would have meant a 374 per cent increase in the risk of seeing Covid rip through a care home. That is exactly why we need a public inquiry to start now, as there is still so much that we do not know.

What we do know is that only 13.5 per cent of care homes that were never sent any patients ended up having an outbreak. That figure jumped to 38 per cent when a home had one or more patients placed in its care. However, we still do not know how high the number went when a care home had a known Covid-positive patient sent to it. That is pretty basic stuff. Why was that number left out of the report?

The First Minister: The report was done independently of the Government. Public Health Scotland published it, but it was contributed to by

academics who are entirely independent and who, yesterday, conducted a briefing with journalists at which they explained their findings and methodology in more detail.

I do not think that the report is the last word on these issues—I have never thought that. There is much more work to be done to understand the issues that were factors in outbreaks in care homes. The report tells us about some of those, but it does not tell us about them all.

Of course, the report gives us much more information than is available in any other part of the UK. I hope that we will see the same depth of understanding develop in countries elsewhere, so that we can learn from each other as well as from our own experiences.

The report's overall conclusion is as I quoted it at yesterday's briefing. However, as I also recognised yesterday, although the report said that, in all the different scenarios—whether someone tested positive or negative or was not tested at all—there was not statistical evidence that hospital discharges were associated with outbreaks, it said that there was a variation in the confidence intervals for the estimates across those scenarios.

On page 40, the report says:

“the risk of an outbreak associated with care home size is much larger than any plausible risk from hospital discharge”.

That means that, although we must continue to consider the issues around discharges, we must also look at the other factors. The Cabinet Secretary for Health and Sport will say more about those in the Parliament next week when she sets out details of our winter planning for social care.

I take all such issues extremely seriously. As I have done before, I give a commitment that, as many other countries have also done, there will be a full public inquiry that will consider the issues involving care homes. We are in the grip of a second wave of Covid. It is right that we enable everybody who has a part to play to focus on getting the country through that.

This morning, I was struck by comments made by Professor June Andrews, who will be familiar to many members in the chamber. When she was asked about the timing of a public inquiry, she said:

“It's far too soon. We've got far too many things to do to keep the system going, to keep people well”.

There is no doubt that there will be a public inquiry. However, at the moment we will continue—[*Interruption.*] For the avoidance of doubt, I say that Professor June Andrews will also have said things that were critical of the Government. I am not trying to depart from that at

all. There will be a full public inquiry when the time for that is right, once we have got the country through the next stage of the Covid pandemic.

However, as we have done all along, as we go forward we will continue to learn and to apply lessons in care homes. That is a responsibility that all of us in the Government take very seriously.

Ruth Davidson: I am not sure that the best defence against selective quoting is to quote selectively what Professor June Andrews said on the radio this morning—it was devastating to the Government.

The calculation appears to have been that publishing yesterday's report would ensure that any pressure to speed up or bring forward the holding of a public inquiry would ease. I believe that the opposite is the case, because of the way in which the publication of the report was handled. It was delayed by a month, it was given to ministers privately on Monday and it was released to the media only 15 minutes before they were due to ask questions, with a press release that did not even to bother to mention known Covid-positive patients being sent to care homes in the first place.

The very last people of all to have sight of the report were the families and loved ones of those who died. We already know that a crucial line in Public Health Scotland's briefing to journalists, which the First Minister has just mentioned—that it was

“likely that hospital discharges were the source of introduction of infection in a small number of cases”—

was missing from the final report.

Does the First Minister really think that the delay, the spin and the sleight of hand surrounding the report serves those grieving families well?

The First Minister: I do not expect grieving families to be assured or to have all their concerns satisfied by any report and I do not think that this report is the only or the final word. The report was commissioned by the Scottish Government; I will say again that we are the only Government in the UK so far to commission a report of this depth and I think that Wales is the only other Government that has done anything to look at this issue but, as I understand it, that was a report that was based on statistical modelling, not on data. That is an important point.

The timing was down to Public Health Scotland and it consulted the statistics authority, given the complexity of bringing the different data sets together. As with all official statistics, the date of publication was pre-announced. On the timing of it, I answer questions every single day at the moment. Rightly and properly, there is no shortage of opportunities to scrutinise me.

In my view, the report does not change the arguments one way or another on a public inquiry. As I said yesterday, I expected the report to say something different from what it did on hospital discharges. However, the fact of the matter is that a public inquiry is necessary and, until that point, it is also necessary that we continue to deepen our understanding and take the actions that are necessary, just as we did back in April, when, in light of changing advice and evidence, we moved to testing of discharges to care homes, and just as we later moved to routinely test all workers in care homes. Last week, we announced plans to extend that to designated visitors and other routine visitors to care homes.

We are learning and we are applying that learning on an on-going basis. There are no words that I will ever find to convey the depth of my regret at what happened in care homes. I take possibly more seriously than I take anything else, including any other aspect of our handling of the pandemic, the need to ensure that we learn lessons where we got things wrong and do not shy away from that, but more than anything, that we take all possible steps to keep those in our care homes safe.

Ruth Davidson: Yesterday's report was stuffed full of numbers and statistics but, fundamentally, this is not about stats; it is about people—the people who lost their lives and the people they left behind. It is about people such as Sandra O'Neill, who said yesterday of her lost mum that

“the thought that she was on her own with a sense of drowning, it's the last thing I think about at night and it's the first thing I think about every morning”,

or Alan Wightman, who lost his 88-year-old mum in May. He said yesterday that a public inquiry should have started in June and that this report does not provide the answers that he needs. For six months, grieving families such as the O'Neills and the Wightmans have had no answers and they are not satisfied with this report; nor are we. Will the First Minister give those families the respect that they deserve and order Public Health Scotland to go back and fill in the blanks?

The First Minister: I said yesterday that we would be taking forward further work and asking Public Health Scotland to do further work. I am sure that Public Health Scotland and the independent academics who contributed to the report would be willing to do what they did with journalists yesterday and meet any members across the chamber to explain their methodology, how the report was conducted and the limitations of the methodology, which nobody has ever shied away from. We will continue to do whatever work is required.

I do not expect any grieving family to think that they have all the answers to their questions in this

report. I want to do everything that we can to provide those answers and to make sure that there is full learning and accountability in due course. Those grieving families and what happened with care homes is probably the first thing that I think about when I wake up in the morning and the last thing that I think about before I go to sleep. That is no comfort to anybody who has lost a loved one. I extend my condolences to them, and my regret at what they have suffered knows no limits. The commitment that I have to them each and every day as we continue to guide the country through the pandemic is to learn and apply lessons, to take whatever action is necessary to keep people safe and to go through a process that allows us, as far as possible, given what we have been dealing with and are continuing to deal with, to answer their questions. I will continue to do that to the best of my ability for every moment that we are in this situation.

Covid-19 (Levels and Support for Businesses)

2. Richard Leonard (Central Scotland) (Lab): We send our condolences to all the families of all those who have lost loved ones at any point during the course of this pandemic. We also extend our thanks to all staff in health and social care for the tireless work that they have done and that they continue to do.

I thank the First Minister for advance sight of her statement today. From it, it is clear that some local communities are at a lower tier than was predicted but some are at a higher tier than was predicted. Has the Government worked out what today's decision means for people's jobs and incomes in the areas that are in the higher tiers? What further consultation will there be in those areas between now and Monday? If the health measures are, in the Government's view, proportionate, will the Government work to introduce proportionate economic measures to protect jobs, businesses and local public services, especially for the areas that are in tier 3 now and that might be in tier 4 in the future?

The First Minister (Nicola Sturgeon): As I said earlier, I very much hope—although I cannot guarantee this—that we can avoid any part of the country, let alone the whole country, going into level 4. That is a responsibility not just for Government but for us all. I repeat that we have deliberately taken a cautious approach right now. That is, first, because the situation here at home and across the United Kingdom and Europe is very fragile, and we have to recognise that. Secondly, it is because, as I hope people will understand, we are migrating to a new system. We have not yet applied the differentiated approach in this way, so, for the first application of it, a degree of caution is merited.

There are some areas—I cited the Borders and Argyll and Bute—that are in level 1 and that could and did make a case that they should go straight into level zero. We will consider that as we go forward. Likewise, other parts of the country, such as Inverclyde, made a case that they should go into level 2, and the reasons why that is not happening have been set out. I encourage members to read the paper that we have published, which goes into more detail about the decision making.

All of this has an impact on jobs, public services and livelihoods. I am acutely aware of that. However, what will have a bigger impact on jobs, services and livelihoods is if we do not control the virus—we only have to look across Europe right now to see that. Germany and France last night went into full nationwide lockdowns again. That is what we want to avoid, and this is our best chance of doing that.

We have set out the support that will be available for businesses, which will apply to businesses that are closed or that have restricted trading regardless of what level their area is at. Information is available on the website that I mentioned earlier.

The replacement job support scheme, which is run by the UK Government, comes into place next week. I think that Richard Leonard and I agree that it should go further, but it is there for businesses to take advantage of.

We are providing as much business support as we can within the resources that we have available, and we will continue to work with the UK Government to extend that further. It is right and proper that businesses are supported, but we will do no favours to any businesses if we prematurely ease up to an extent that allows the virus to run out of control again, because that is a sure and certain route to level 4, not just for parts of the country but for the whole country, and I think that we all want to avoid that.

Richard Leonard: I, too, turn to the serious question of what has happened in our care homes. Yesterday's Public Health Scotland report shows that 123 patients were discharged from hospital after testing positive; that over 300 patients who were discharged had been in hospital for Covid-19; and that thousands of elderly patients were transferred into care homes without being tested at all. Care homes that took discharges were three times more likely to have outbreaks than those that did not. Is the First Minister really comfortable telling the families who have lost loved ones that there is no link between her Government's decision to discharge people into care homes untested and the tragic outbreaks that then occurred?

The First Minister: That is not what I am saying. I will come on to that in a second, but I first want to correct an inadvertent error in my previous answer to Richard Leonard. I said that the Borders and Argyll and Bute are in level 1 and argued to go to level zero. Of course, the Borders and Argyll and Bute are in level 2 and made a case to go to level 1. My apologies for that mistake.

On care homes, I am not saying that there is no link, and the report does not say that. The report says that, taking account of all the factors, hospital discharge was not a statistically significant factor compared to, for example, the size of a care home. The point that I laboured to make yesterday—and will always make—is that there were serious outbreaks in care homes and discharges did not have no effect on those, but there are other factors that we have to consider as well.

At the end of the day, the fact that there were big outbreaks that led to people losing their lives is something that I will never be comfortable with, not just as the First Minister but probably for the rest of my life. I want to understand the issue and I want to ensure that we continue to take the necessary action to protect older people in care homes.

Our position on testing changed, as I said, in line with advice and evidence, and it is right that it did so. However, a key point here, which remains important now, even when we have a much wider approach to testing in care homes, is that the absence or even the presence of testing should not allow us to ignore the other important things that have to be done. Infection prevention and control in care homes is vital. There was always an emphasis on that, and testing now supplements the protection that is there.

I sincerely apologise if anybody listening to me at any time thinks that I am in any way trying to minimise what happened in care homes. If that is an impression that I give, I readily say sorry for that, because that is not the impression that I am trying to give. I am trying to understand the situation and to give the public as deep an understanding of it as possible, but I am not trying to—and never will try to—underplay the severity or the seriousness of what happened and of all the factors that may, to a large extent or to a smaller extent, have played a part in that.

Richard Leonard: I hear the First Minister's regret, but we are also looking for her responsibility.

Yesterday's report does not tell the full story. The crisis in our care homes did not have just one cause. The causes included the lack of personal protective equipment, despite warning after warning; the lack of testing of care home staff,

despite warning after warning; and years of underfunding, despite warning after warning. I make it clear that the drive to clear space and free up beds in our hospitals and the discharge of Covid-19 positive patients and untested patients straight into care homes were permitted and encouraged by Scottish Government guidance, so families deserve answers.

Why did the Government apply the precautionary principle to all other areas of the pandemic but not to Scotland's care homes?

The First Minister: I do not agree with that, but I do not minimise the impact on care homes. I have said it before and I will say it again today: we got things wrong. We did not get things wrong because we did not care about care homes. We got things wrong in care homes—as other countries in the United Kingdom and further afield did—because, at that point, our understanding of the virus was underdeveloped and because, as I readily concede, there was significant and acute concern that our hospitals would be overwhelmed with Covid, which would make them unsafe places for older people. As a result, there was a requirement to free up capacity in care homes.

I have rightly been challenged on many occasions on the need to reduce delayed discharge in hospital in normal times. The reason for seeking to do that in Covid times was to make sure that older people were not in hospital without it being a necessity for them to be there as Covid cases came in.

Of all the things that I wish that I had had then, I wish that I had had the knowledge that I have now. That is not to say that we will not simply have got things wrong. Of course we will have done. However, I am afraid that, in saying some of what people are saying that we should have done then, they are applying hindsight that we did not have at the time. We will continue to take the steps that we can, we will continue to be open and up front when we get things wrong, and we will continue to apply that learning to keep our care homes safe.

We are in—in Scotland, I hope that we are not going deeper into it, but we might be—a second wave. There is an intense focus on the part not just of Government but of partners across the country on ensuring that care homes are as safe as they can be, and we will continue to keep 100 per cent focused on that each and every day.

New Covid Framework (Additional Funding)

3. Patrick Harvie (Glasgow) (Green): Obviously, nobody will be happy about today's announcement about on-going restrictions, but we can all see that their continuation is happening at a time when other European countries are moving more in the direction of full lockdown in the face of

a second wave and at a time when we are all facing up to the dawning realisation that those restrictions, or measures like them, will probably be with us for a long time to come.

That is also happening at the same time as Boris Johnson's Government is giving us all a Halloween nightmare with the ending of furlough and its inadequate replacement, which will mean not only that large numbers of jobs will be lost, but that many people who keep their jobs will experience significant reductions in their incomes. Even people on the minimum wage will lose up to a third of their income. In addition, astonishingly, personal protective equipment will be taxed at 20 per cent, which will push up the cost for front-line businesses and workers.

Even in this difficult context, we all have a responsibility to urge people throughout Scotland to take the restrictions seriously and comply with them to keep one another safe, but the success of the new framework will depend to a large extent on enforcement at a local level, which must mean having the resources to do that work. One Scottish local authority leader said today on the radio that

“the Scottish Government are saying that whether you are in level 3 or 4, there is no additional funding.”

Is that accurate and will there be additional funding for those local authorities that have to ensure enforcement action—*[Interruption.]*—at the local level to make the new framework operate successfully?

The First Minister (Nicola Sturgeon): I will try to address that question in full. Presiding Officer, I hope that nobody takes this the wrong way, but I misheard part of Patrick Harvie's question because I was distracted by shouting from members on the Conservative benches. I am trying to address all the questions in full because they all deserve answers.

I will try to give a balanced answer on the question of support. The support that has been provided by the United Kingdom Government is very important and welcome, but I do not think that it goes far enough in relation to the move from furlough to the jobs support scheme. I have expressed that view previously, and we will continue to argue that with the UK Government, because the impact of that deficiency will be felt by workers across the country in the form of reduced pay packets, which nobody wants to see. For businesses that will be closed or have their trading restricted, we have put in place a grant scheme that matches the scheme in England and we are doing that to the maximum of the resources that we have—we are going beyond the resources that have been committed to us through consequentials. We will continue to make the case to the UK Government that there should be more

funding available so that we can pass that on to councils and businesses.

This is the bit of the question that I did not fully catch, and I apologise to Patrick Harvie for that. If he was asking me about support for local authorities over and above that scheme, particularly for enforcement, we will continue to discuss that with local authorities—for example, one particular issue that we are exploring is whether further powers are needed for local environmental health officers. There is a case to be made for that, but the case has also been made by local authorities, which I also think is valid, that that would require additional resources to allow those enforcement powers to be properly used. That remains a dynamic discussion—it always will—between central Scottish Government and local governments, so that we can make sure, as far as we possibly can, that they have the resources that they need to enforce compliance where necessary and support people to comply.

Patrick Harvie: Another issue that I raised this week, which will require local enforcement, is that of people being told by their employers not to comply with the Covid rules. We have heard of people being told that they should not install the Protect Scotland app or not keep their phone switched on, and that is not exceptional. I have heard of cases across the country of employers asking people not to self-isolate or people being told that, if they do, it will be treated as unauthorised unpaid absence.

Someone who works in a well-known pub chain got in touch with me today—I will not name it until I have verified this—and told me that a member of staff had been showing symptoms, took a test on the Wednesday and was made to work on the Thursday until the results came back; the results were positive so they went off work from then. She had been working with symptoms for two days and the staff members who worked with her on those two days were not only told to keep working but were moved around the chain's other pubs because of short staffing.

Can the First Minister tell us whether local government, the Scottish Government or Police Scotland currently have the enforcement powers to take action against irresponsible employers who put their short-term business interests ahead of the safety of their workforce, their customers and the wider community, and does the Scottish Government support the proposals from Unite hospitality on issues such as raising sick pay up to full pay and ensuring regular routine testing for hospitality workers?

The First Minister: We will consider the Unite proposals carefully. On the question about enforcement powers, one of the changes that Patrick Harvie will recall we made some weeks

ago was to give local authorities the powers to take enforcement action against any individual premises that were, through whatever conduct, raising the risk of transmission; that could include closure of that particular premises or some restrictions on their ability to trade. Local authorities have powers of that nature, but of course we keep under review whether there needs to be further extension.

Like Patrick Harvie, I do not know whether the examples that he narrated to the chamber are verified in any way; I would be very interested to know whether they can be.

Let me be very clear. I understand how incredibly difficult the situation is for businesses, but any business that has been behaving in that way has been risking making the situation worse, risking restrictions having to be in place for longer, risking the health and safety of their workers and the wider community, and risking making the impact on businesses more severe and longer lasting. It would be completely and utterly irresponsible for any business to behave in that way. I appeal to businesses, in their interests and those of the wider country, to abide by all the rules and support their staff fully to do so.

To workers across the country, I say this: if you are being put under pressure by an employer to act in any of those ways, get in touch with your local MSP or your local environmental health office, or email me directly. We would take steps to ensure that any such dangerous behaviour was addressed fully and properly.

Covid-19 (Care Homes)

4. Willie Rennie (North East Fife) (LD): The Government had a rule: care workers were told that if they had symptoms of the virus, they should stay away from work—stay away from the care home. They did that to protect vulnerable residents. However, the Government broke its own rule: it sent hundreds of people who had the virus into care homes. I know that the situation is difficult, but it seems to have been the case that there was one rule for care workers and another rule for the Government. That is not hindsight, because I warned about the issue at the time.

Despite all the carefully chosen words today, I still want to hear from the First Minister that the lesson has been learned, that the error has been accepted and that the apology for that error has been made. Will the First Minister say those words?

The First Minister (Nicola Sturgeon): I am sorry for any error that I have made in the matter. I have said it many times. I am not carefully choosing my words—I probably do not have the capacity to do that at the moment—but am trying

to be as frank as possible. We have got things wrong, we will continue to try to put that right and we will use all the normal processes of accountability.

The one thing that I will always rail against—not through “carefully chosen words”, but through emotion, probably, more than anything else—is the idea that we were somehow not caring about what happened in care homes. That does not mean that we did not get things wrong, but we tried at every point, on the basis of the evidence and advice that we had at the time, to do the things that we thought would be most effective. In care homes, at the earliest stage of the pandemic, those things were around infection prevention and control, isolation of residents in their rooms, not having communal activities, and steps regarding care home workers. It is absolutely legitimate to question, with the benefit of hindsight, whether those things were right or wrong, but at the time, the advice on testing asymptomatic people and its effectiveness was different from what it is today.

I wish that I could turn back the clock on all this—especially with regard to care homes—but I cannot. What I can do, and what I have the responsibility to do, is ensure that we learn the lessons, apply them and get things as right as possible.

Will we make more mistakes in this situation? Undoubtedly we will, and we will regret them, but I promise everybody in the country that, every single day, I and my Government will do our best to get it right. We will be scrutinised and I will listen to all the criticisms and scrutiny—that is an important part of the process. On every step of the way, we will do everything that we can to keep people as safe as possible. That is true for the whole population, and it is particularly true for the people who are most vulnerable.

Willie Rennie: I did not challenge the motive. It is the facts and decisions that we all want to get to, and that is the purpose of this scrutiny.

The complicated statistical report is limited because of the lack of testing, which means that the margins of error are wide. This must not, for the sake of the families who need to know more, be the end of the investigation of the care home travesty. We need to learn, because the virus is still with us.

After the Nike conference, the Government was able to establish whether the strains of the virus had spread around the country. Will that work be done for care homes?

We need to know what is happening now. We need to know that all new residents have had two negative tests before they are admitted to care homes. Is that always the case?

The First Minister: That is what we say should happen. I accept that I cannot stand here and say with 100 per cent confidence that in a big system there is never a circumstance in which a policy is not applied. However, that is the policy, and it is what we expect to be applied.

There will always be circumstances—this is reflected in the report—in which, for good clinical reasons, a clinician will decide that it is not appropriate to conduct an invasive test on a person. A frail elderly patient might be at the end of their life, for example. I cannot countermand the decision of a clinician on that, but the policy is very clear.

On Willie Rennie's point about genomic sequencing, I expect genomic sequencing to tell us much more about the spread of the virus across the country, including the situation in care homes. Scotland is probably doing more genomic sequencing than many countries are doing. It has told us a lot of important things about what happened and what did not happen after the Nike conference. I expect that there will be more findings in the coming period from looking at the situation over the summer and what happened as we came out of lockdown. It has an important part to play, including in care homes.

I am not complaining at all about scrutiny. If it ever sounds as though I am, that is not my intention. Scrutiny is an important part of the process that we are all going through right now.

I have never said that the report is the final word; obviously, it is limited. It looked at a particular factor, and there were limitations on what it could say about that factor. I have never tried to say otherwise. However, there was a call for us to commission a report on that particular factor, so that is what we did.

There are other factors that we have to understand better, and we will, in the fullness of time, have to look at the situation in totality through a full public inquiry. I am absolutely clear in my mind that that has to happen. It has to happen for the country overall; it has to happen for everybody, and not just for the families of residents in care homes, although it has to happen particularly for them. It has to happen for the sake of the families of people who died and so that we learn lessons now that can be applied if the world—I hope that this will not happen in our lifetimes—ever goes through such a situation again. I am 100 per cent committed to that process.

However, right now, my main duty as First Minister is to continue to lead the country in a very focused way through the second wave that still lies ahead of us.

The Presiding Officer: I remind members that I will take supplementary questions after question 7. There are well over two dozen potential supplementaries—in fact, there are more than 30. I do not think that we will get through them, but we can try.

Child Sexual Exploitation

5. Kenneth Gibson (Cunninghame North) (SNP): To ask the First Minister what her response is to the report by the Scottish Children's Reporter Administration and Barnardo's Scotland, which confirms that child sexual exploitation is happening in island, rural and urban communities across the country, with cases being reported in 27 out of 32 local authority areas. (S5F-04496)

The First Minister (Nicola Sturgeon): Child sexual abuse and exploitation are heinous crimes. We welcome the publication of that important research, which examined the complexity of sexual exploitation and its links to other forms of abuse. The research demands close attention from all core agencies and key partners in determining an appropriate multi-agency response.

Any child or young person, regardless of their age, race or ethnicity, can be at risk. Children from any background or any community can be affected. I know that all of us want Scotland to be a place from which sexual exploitation of children and young people is eliminated.

Kenneth Gibson: The report contains many disturbing findings. For example, more than half of the girls and a quarter of the boys in the children's hearings system were victims of sexual abuse, and a high proportion of those young people—especially girls—attempted suicide. It is worrying that four out of five boys and a quarter of girls who were identified as likely victims had not been recognised. That suggests that vulnerabilities are not being taken seriously enough.

Given those concerns and their magnitude, will the Scottish Government put a sustained focus on child sexual exploitation in order to deliver the better protection that our most vulnerable children urgently need?

The First Minister: With our third sector partners and through the continued funding commitments for the child-protection sector, we will continue to build on the wealth of activity that is delivered through the national action plan to prevent and tackle child sexual exploitation. We have listened carefully to child-protection partners, which called last year for acknowledgment of the strong links between child sexual exploitation and other forms of child abuse. That is why we will place a renewed focus on child abuse and

exploitation as part of the revision of the human trafficking and exploitation strategy.

Flu Vaccinations (Completion)

6. Michelle Ballantyne (South Scotland) (Con): To ask the First Minister whether all flu vaccinations will be completed on time. (S5F-04486)

The First Minister (Nicola Sturgeon): Yes, health boards are on track to provide eligible cohorts in phase 1 with the vaccine by the time the flu season reaches its peak. Eligible cohorts are those who are the most clinically vulnerable to flu. Among others, they include the over-65s, those with underlying health conditions, pregnant women and health and social care workers. Health boards have estimated that almost 1.1 million people will be vaccinated by the end of this week—that is 44 per cent of the total people who will receive the vaccine during this flu season. In the United Kingdom, the flu season begins in December and reaches its peak in January and February. However, it will be possible to receive the vaccine as late as the end of March 2021.

Michelle Ballantyne: When I previously asked the First Minister whether she could guarantee that everyone who is due a flu vaccine will receive one and what percentage she hoped to achieve by the end of November, she was not able to offer that guarantee. However, the health secretary wrote to me to give me the figure of 1,072,237 people—or 52 per cent of the people in that phase 1 group—whom she said would be vaccinated by the end of October.

Since then, we have had further reports of hundreds of patients in Grampian being turned away for flu jabs this month due to major logistical and capacity issues, while NHS Ayrshire and Arran suspended its programme and is unable to vaccinate its care staff. Ms Freeman said yesterday that she does not think that that is shambolic, but many of our constituents disagree.

Can the First Minister tell me how many people in the phase 1 group in each NHS health board have received a flu jab as of today, and can she provide reassurance that I will not need to ask the question again in November?

The First Minister: I do not have the information for all health boards in front of me—and if I did, Presiding Officer, it would probably take too long for me to give it and you would be more unhappy with me. However, the health secretary will write to the member with that information.

I can, though, say—and I will give the number more precisely than I did in my initial answer—that 1,072,786 people will be vaccinated by the end of this week, the end of October. That is 44 per cent

of the total number of people who will receive the vaccine during the flu season, and the vaccination programme will continue.

There have been some challenges in health boards, particularly in NHS Greater Glasgow and Clyde. In Ayrshire and Arran, there was a temporary issue to do with the procurement of the vaccine, which has been resolved. Many of my friends and family live in Ayrshire and Arran, as that is the part of the country that I come from, and I know that the programme is generally working very well in that area.

Where there are issues, the health secretary and her officials have been working with health boards to address them. The vaccination programme is on track and we will continue to ensure that that remains the case.

Burrtisland Fabrications Ltd

7. Claire Baker (Mid Scotland and Fife) (Lab): To ask the First Minister how the Scottish Government is responding to reports that BiFab is on the brink of collapse. (S5F-04488)

The First Minister (Nicola Sturgeon): In order to save BiFab from closure back in 2017—and, at that time, to support the delivery of the Beatrice offshore wind project—the Scottish Government invested £37.4 million through a combination of equity and loan facilities, which was converted to a 32.4 per cent equity stake in BiFab. A loan facility of £15 million has also been provided to support working capital.

We will continue to do absolutely everything that we can to support the business while recognising the need for us to remain in line with state aid regulations and overall financial constraints. In doing that, we remain in regular dialogue with the majority shareholder, JV Driver.

Claire Baker: Today, the *Daily Record* reports on legal opinion regarding state aid rules from Lord Davidson, which concludes that the Government has appeared irrational in withdrawing the commitment to provide a guarantee and that that decision risks judicial review.

Communities in Fife cannot understand why the Scottish Government has withdrawn its support. I urge the First Minister to reverse that decision and to publish the advice that she has received on state aid, as 500 jobs in Fife rely on that contract. A workforce who marched on the Parliament three years ago deserve straight answers and a future.

The First Minister: I sympathise absolutely with the sentiments of Claire Baker's question. The Government has worked very hard with the trade unions—which have worked even harder—and with the owners at BiFab to try to secure it. We

have invested heavily, but we have to act within the advice that we get on state aid and financial constraints.

I want to be very clear: we will leave no stone unturned. I ask Claire Baker to recognise that and to take it as a sign of the sentiment that lies behind the Scottish Government's actions. We have invested significantly—we are a significant shareholder in BiFab—so it would make no sense for the Government, let alone the workers or the wider community, to simply allow BiFab to go to the wall if there is a way for us to avoid that happening.

We will explore every opportunity to save BiFab, as we have done in the past. As people would expect of someone in my position, I have personally spent a great deal of time and effort working with others to secure BiFab. But for that, BiFab would have closed three years ago. We will continue to do everything we can, but we have to operate within the legal constraints that all Governments are bound by.

The Presiding Officer: Thank you. I highlight again that we seem to have a remarkable number of members wanting to ask supplementaries today. We will not be able to get through them all, but we will go through as many as we can. I urge people to remember my injunction for succinct and brief questions and answers.

Covid-19 Restrictions and Support (Dundee)

Shona Robison (Dundee City East) (SNP): I am sure that the First Minister will understand the local concerns about Dundee being placed in level 3. Can she give any further detail on support for businesses in Dundee that are affected by that change? Does she share my alarm at the forecast in today's document that NHS Tayside will exceed hospital bed capacity within six weeks on the current trajectory? What more can we all do to change that trajectory and blunt the rises, so that Dundee can move out of level 3 at a future review?

The First Minister (Nicola Sturgeon): Presiding Officer, first, I would like to say that you are in charge of the chamber, but I am happy to answer all the questions and to stay here for as long as it takes to do that if that is permissible.

The projections relating to NHS Tayside are part of the reason that we have taken today's decision on Dundee city. It is action designed to take Tayside—and Dundee, in particular—off the path that it is currently on and to avoid those projections coming to pass. My plea to people across Dundee and the wider Tayside region is that they abide strictly by all the advice and all the regulations, so that those decisions and actions

that we have taken have the best possible chance of working.

The support for businesses is set out in general terms in the strategic framework. Businesses in Dundee will be able to ask the city council for precise details, and the website findbusinesssupport.gov.scot—if I do not have that wrong—is available so that businesses can look in more detail at the support that is available to them should they require to close or have their trading restricted.

The Presiding Officer: Thank you. For information, this question session is due to end at 13:40, or 20 minutes to 2, and we will resume at half past 2. There is not a huge amount of time for turnaround, and there is a lot of business to get through.

Business Support (Wholesalers)

Brian Whittle (South Scotland) (Con): Will the First Minister give assurances that wholesalers that are not closed but that are severely restricted by the closure of the hospitality sector will have access to the hardship fund and additional targeted sectoral support, so as to ensure that the wholesale food supply chain does not fail and that it can continue to service hospitals, schools, prisons, care homes and hospitality businesses when they reopen?

The First Minister (Nicola Sturgeon): The support package that we have made available is designed to support not just businesses that require to close or businesses that have their trading restricted in a primary sense, but the supply chain as well. Therefore, it includes wholesalers. The precise details of support packages are available for businesses to consider. We have tried to match the grant support packages that have been made available in England.

I think that that is the minimum that businesses can expect from the Government, but it is the maximum that we can do with the resources that we have. We will continue to work with our colleagues across the United Kingdom to ensure that we see expanded and appropriate support for businesses as we continue to go through these difficult times.

Care Services (Reductions)

Johann Lamont (Glasgow) (Lab): The First Minister will be aware that many services that were available pre-Covid were withdrawn during the early stages of the crisis, including care for older people and disabled people in their own homes. A number of constituents have contacted me to report that, now that those services are being reintroduced, their support packages are

much reduced and there is a consequent serious impact on their health and wellbeing.

Does the First Minister agree that any attempt now to reduce support that was deemed essential pre-Covid is unacceptable? What action will she take to ensure that support is not reduced by stealth, with the impact of Covid being suggested as a justification?

The First Minister (Nicola Sturgeon): I agree with that. The Cabinet Secretary for Health and Sport has previously made it clear that people should have the support that they require and that Covid should not be used as an excuse to reduce packages “by stealth”—to use Johann Lamont’s phrase. I do not think that that is happening across the country, although I have heard reports of it happening in particular parts of the country and the health secretary is engaged with local partners where that is the case.

There has been additional investment by the Scottish Government in local partners to ensure that those services have the support that they need. If a member has any evidence of a reduction in packages happening in any part of the country, they can draw that to the attention of the health secretary and we will take steps to address the issue.

Covid-19 Restrictions (Amateur Football Teams)

Bob Doris (Glasgow Maryhill and Springburn) (SNP): I know that many MSPs have been contacted by amateur football teams. A local amateur football team in my constituency—Maryhill Milan AFC, which was formed in 2017—has many players, including those in the recovery community. Under level 3 restrictions, they cannot play the game that they love and I am sure that everyone in the chamber will appreciate the potential impact on the health and wellbeing of those players.

I absolutely accept the tough decisions that the Scottish Government must take and the balance that it must strike at this difficult time. What considerations can be given in the future to the development of a more flexible framework that can see teams such as Maryhill Milan AFC return to playing as quickly and—just as important—as safely as possible?

The First Minister (Nicola Sturgeon): We all appreciate the positive benefits that participation in football, and sports generally, has on physical and mental health and on a range of other outcomes, including recovery—the activity of Maryhill Milan AFC in Bob Doris’s constituency demonstrates that. I know that the restrictions on adult contact sport will disappoint people who cannot get

together with their pals and teammates to play at whatever sport they favour.

After significant consideration and consultation, the Scottish Government has reluctantly confirmed the position as previously set out: the risk that is associated with the virus is still too great in areas with level 3 or level 4 conditions to allow adult contact sport.

I assure Bob Doris and others that we will keep that situation under review, because nobody wants to restrict anything without it being necessary, or for longer than is necessary. That is particularly true of sporting activity. We will continue to review the situation and give updates as and when we are able to do so.

Outdoor Education Sector (Sustainability)

Liz Smith (Mid Scotland and Fife) (Con): I warmly welcome the £2 million that the Scottish Government gave to the outdoor education sector. What further engagements will the Scottish Government have with the sector about long-term sustainability? The £2 million is obviously not enough to get the sector through the considerable concerns that it faces with Covid-19.

The First Minister (Nicola Sturgeon): We are acutely conscious that short-term support is short-term support. We need to work with all sectors and consider the support that is appropriate and necessary as the situation develops. We have on-going engagement with the outdoor education sector, which has been good and resulted in the short-term support that Liz Smith welcomed.

It has been the case all along that we want to support the sector in the short to medium term to do as much as can be done within the current regulations to maximise its activity. However, we want to also work with it and other sectors in the broad framework that we set out to reduce levels of the virus, so that we can start to introduce more normality. This is not easy for anybody, but we will continue to work with sectors to provide as much support as we can.

A point that is relevant to the previous question and to this one is that we all have to remember that the restrictions can feel difficult for everybody—a quick glance across Europe right now shows that we are not alone. The more effectively that all of us act to get the virus under control, the quicker we can start to restore normality. That has to be the key point that all of us remember and communicate to our constituents across the country.

Shielding (Supermarket Deliveries)

James Kelly (Glasgow) (Lab): I draw the First Minister's attention to research that was published yesterday from the Scotland in Lockdown project,

based at the University of Glasgow, which highlighted the plight of forgotten shielders—those on the official shielding list who have had to shield because of long-term health conditions or disabilities. One particular problem for them is access to supermarket deliveries; even when they get access, getting the appropriate food—consistent with their conditions—is a problem.

As we enter phase 2, what discussions can be had with supermarkets to ensure that people who are in that situation get appropriate access to the food that they require in those challenging circumstances?

The First Minister (Nicola Sturgeon): We will continue to keep that under on-going discussion with supermarkets. Of course, at the outset of the pandemic there were particular pressures on supermarkets, which led to supply issues and that included delivery slots. That eased, although we also took action to set up a specific food delivery service for people in the shielding category and local authorities set up local arrangements to make sure that people in the shielding category got that priority access to food. Thousands of people got the free food deliveries every week through the Scottish Government scheme that we set up.

We also did some work with supermarkets to give priority access to slots for vulnerable people. We hope that we will not see the same pressures going into the next period as we saw at the outset, but we will continue to talk to supermarkets to make sure that pressures are addressed where they arise. We will also take steps, in partnership with local authorities, to ensure that vulnerable people get access to any support that they need including, where necessary, access to food supplies.

Contact Tracing (Target Time)

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): What is the target time for contact tracers in our test and protect scheme to contact someone who has received a positive test result, so that the test and protect app can be updated as quickly as possible?

The First Minister (Nicola Sturgeon): People who test positive should be contacted within 24 hours of the positive test being entered into the case management system. The system has been under pressure in recent weeks due to the increasing volume of index cases, but it is routinely exceeding the 80 per cent target for closure of cases. That means that not just the initial contact but all the work has been done within 72 hours.

The latest published statistics show that, for the week ending 25 October, 84.1 per cent of people

had their interview complete within 24 hours of an index case appearing in the case management system and 97.7 per cent of cases were closed within 72 hours of being created in the system. Compared with systems elsewhere those are positive statistics, but we are not complacent about them. We will continue to work hard to make sure that they do not deteriorate and that we improve them even further.

Ministerial Code (Investigation)

Oliver Mundell (Dumfriesshire) (Con): Will the First Minister agree to expand the ministerial code investigation to include her statements to Parliament and her actions on the legal advice regarding the judicial review into Alex Salmond's alleged behaviour?

The First Minister (Nicola Sturgeon): My view right now is that James Hamilton, who is the adviser undertaking the investigation into the ministerial code, is not restricted at all in the issues that he can look at. If he thinks that there are any issues that engage the ministerial code or could in any way constitute a breach of the ministerial code, my view is that he is free to look at them. If he considers that that requires any change to his official remit, I am sure that he is perfectly able to say that. However, for the record and to be clear, I do not consider his remit to be limited to just one aspect of the ministerial code.

Covid-19 Restrictions (Financial Support for Businesses)

Colin Smyth (South Scotland) (Lab): There are many pubs across my region that do not sell food and do not have space for a beer garden and therefore they cannot sell alcohol. Because of the restriction levels that the First Minister has just announced, they will, frankly, close.

The Government has not shared the regulations that will underpin those restrictions, so I ask the First Minister whether those businesses will be legally required to close. If not, will they be treated in exactly the same way, in terms of the level of financial support from the Scottish Government and access to the furlough scheme, as businesses that are legally required to close and, if not, why not? Government restrictions have the same effect on those businesses as legal closure, so they are surely entitled to the same level of support.

The First Minister (Nicola Sturgeon): I agree that we have to support all businesses, not just those that are legally required to close. The job support scheme does that by having different strands for businesses that are required to close and those that are not. Our grant system recognises that businesses that are not required to close but which have their trading restricted are also eligible for support.

It is important that we recognise the different ways in which the restrictions impact on the ability of businesses to operate normally. We are trying, through that system, to have as proportionate an approach as possible. In many and increasing numbers of countries, including in the United Kingdom—in Wales, obviously, for reasons that I entirely support because the First Minister there thought that they were necessary—hospitality is completely closed. We see that now in Belgium, France, Germany and increasing numbers of countries.

We are trying to be proportionate and to give proportionate support, but it is necessary that such restrictions are complied with to avoid the need for us to do what other countries are doing. That is a point that we cannot lose sight of, however difficult I know the restrictions are.

BiFab (Investment)

David Torrance (Kirkcaldy) (SNP): What role did the lack of capital investment by JV Driver, the majority shareholder in BiFab, have in the company's recent decision to withdraw its bid for the energy contract?

The First Minister (Nicola Sturgeon): The Scottish Government is a minority shareholder in BiFab—I set out the shareholding position in my response to Claire Baker's question—and we are bound by state aid rules, so we can act only as a commercial investor would in our situation.

We look to JV Driver, as the majority shareholder, to provide financial support to the business. At this stage, it is maintaining a zero-risk position. If the majority shareholder is not prepared to invest in the business, that makes it more challenging to demonstrate that another commercial investor would invest. Of course, that changes if the majority shareholder is prepared to invest in the company; that would potentially open the door for the Scottish Government to provide further support.

We will continue to do everything that we reasonably can to support BiFab. We would not have come this far with the scale of investment that we have already made in BiFab only to blithely let the business go to the wall now. We will continue to do what we can, but we are bound by state aid rules and the broader financial context.

Covid-19 (Testing in Schools)

Ross Greer (West Scotland) (Green): In August, the Deputy First Minister confirmed that, by October, the enhanced surveillance testing programme for schools would be fully operational. Can the First Minister confirm if that is now the case, and whether the aggregate data that is

produced by the testing programme will be published?

The First Minister (Nicola Sturgeon): I will come back to Ross Greer on the plans for the publication of data. There are a number of strands to testing work in schools. All teachers and school staff can access testing if they feel that they have been exposed to the virus. There is also surveillance testing, and an antibody testing programme is being conducted in schools. I do not have the data on the numbers to hand, but I will undertake to come back to Ross Greer with the detail as soon as possible.

Covid-19 Restrictions (Islands)

Liam McArthur (Orkney Islands) (LD): Along with the island authorities, Beatrice Wishart and I have been raising concerns about the continued restrictions on small indoor meetings in Orkney and Shetland. Meeting socially outdoors is simply not possible for many as we enter winter in our island communities, where restaurants, cafes and coffee shops are pretty thin on the ground.

How was that factored into the Scottish Government's decision? Given the known social harms and risks of isolation, will the First Minister ensure that every effort is made to lift those restrictions at the earliest possible opportunity?

The First Minister (Nicola Sturgeon): Yes, I will give that assurance. As I said earlier, we hope—although I will not give a guarantee ahead of the formal assessment—that we will be able to lift that restriction for level 1 areas at the next review point.

I understand the particular difficulties for island and rural communities, and I recognised those in my statement. The clear public health advice that is currently coming to us is that, given the overall fragility of the system; given that there have been cases in our island and rural communities, although transmission is lower in general; and given that we are migrating to the new system for the first time, the precautionary and safe thing to do is to keep the restrictions in place for a further period.

As I said earlier, NHS Shetland is the only health board area that does not have cases today, and I know that the current situation is therefore particularly harsh on that area. Nonetheless, we want to move away from it as quickly as possible, all things being equal, and I hope that we can signal such a change at the next review point.

Miners' Strike (Inquiry)

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): As the First Minister knows, I represent three mining communities: Penicuik, Gorebridge and

Newtongrange, which is the home of the Scottish Mining Museum. I therefore welcome yesterday's announcement of a general pardon by the Scottish Government for those in Scotland who were criminalised for the events in the 1984 strike.

I know that the Government wants the United Kingdom to hold an inquiry. Can I ask that the First Minister emphasises that any UK inquiry must include in its remit the question whether there was political interference in police operations, which saw mounted police charging into miners who were democratically defending their jobs and communities?

The First Minister (Nicola Sturgeon): The miners' strike was one of the most bitter and divisive industrial disputes in living memory, and I am really glad and proud that the Scottish Government was able to take a small but important step yesterday in righting those wrongs and addressing the injustice that was suffered by so many miners and their families during the strike.

There are unanswered questions about the UK Government's role in the strike, and we will continue to press the UK Government to hold a full public inquiry, which would of course include any allegations of political interference.

For our part, we initiated the independent review to ensure that the experiences of Scottish mining communities were fully understood. We now have an opportunity to bring reconciliation to miners and police officers and to try and heal the wounds of the past. We will call on the UK Government to adopt the same reconciliation approach in pursuing a UK-wide inquiry.

Fire and Smoke Alarm Standards

Alexander Stewart (Mid Scotland and Fife) (Con): Following a wave of public discontent, the Scottish Government has performed a U-turn on fire and smoke alarm standards. The Minister for Local Government, Housing and Planning confirmed to a parliamentary committee:

"It is imperative that we get the publicity right."—[*Official Report, Local Government and Communities Committee*, 19 December 2018; c 26.]

In reality, a private company conducted a marketing campaign, carrying the Scottish Government logo, that was not signed off by the Scottish ministers. What reassurances can the First Minister give to constituents in my region and to organisations such as Age Scotland that lessons will be learned?

The First Minister (Nicola Sturgeon): The logo should not have been used, and we have taken steps to ensure that that will not happen again. I know the upset that that will have caused to

people across the country. I first saw the leaflet when it went through the door of a member of my own family, who told me about it, and many people received it.

More substantively, I could equally frame this as the Scottish Government listening and recognising the unique circumstances that we are in. Covid has meant that we were not able to do the awareness raising and supportive work that would have made possible a shift to the measures according to the anticipated timescale.

I think that we have done the right and responsible thing, which was to recognise what has happened, listen to people's concerns and propose a delay to the introduction of the legislation. We will continue to try and respond in that responsible way to all the difficult issues that are being thrown up by this unique and unprecedented set of circumstances that we are living through.

The Presiding Officer: As members can see, I am letting this session run on a little bit longer, so that we can get some more questions in.

Leigha Collins

Alex Rowley (Mid Scotland and Fife) (Lab): The First Minister will recall that I have previously raised the case of my constituent, Leigha Collins, both at First Minister's questions and with ministers. Leigha is a young Scottish mum who, along with her infant son, was sent back to Malta by a Scottish judge to face a risky and uncertain future. It now appears that important issues relating to her case were not known to the Scottish judge before he made his decision: namely, that her former partner had admitted a charge of grievous bodily harm last July, eight months before the hearing, at which the judge insisted that the former partner was innocent until proven guilty in Malta. This young woman and her young child have been isolated and alone—in one room in a hostel in a foreign country—because the legal system did not believe her, in particular that she was frightened for her safety and the safety of her children. They need someone on their side.

I am asking the Scottish Government to step up and examine the details of the case. I appreciate that it is a legal matter, but when the law fails children and young Scottish mothers, surely something has gone wrong. Will the First Minister agree to examine the detail of what has happened in this case? The family needs help to be brought back together and to be brought back to Scotland.

The First Minister (Nicola Sturgeon): I thank Alex Rowley for raising the case. Members understand the constraints in which I must operate when it comes to commenting on decisions of the independent legal system. From a human

perspective, there are some cases where I find that much more difficult compared with others, and this is one such case. My heart, like the heart of everybody I know, goes out to Leigha, noting the circumstances that she finds herself in.

I cannot simply cast aside the constitutional limitations of my role, but if there is anything that I can do to try and allow Leigha to be home and to be safe, I will of course look at doing that. If Alex Rowley wishes to write to me, I am happy to engage and look to see whether there is anything that I can do within the obvious constraints in which I operate.

Fireworks

John Mason (Glasgow Shettleston) (SNP): The First Minister will be aware that there is a lot of concern about fireworks this year, especially as some of the larger and council displays have been cancelled. She probably also knows that the Dogs Trust is based in my constituency, and that animals get extremely stressed and frightened when fireworks are let off near them. Can she make any comments or offer any advice to households or individuals who are thinking about fireworks this year?

The First Minister (Nicola Sturgeon): The need to behave responsibly is even greater this year than it was previously.

During the past few years I have dealt with some particularly challenging issues in my constituency that involved the irresponsible and downright dangerous use of fireworks, so I know only too well the impact that they can have on local communities.

Like so many other things, bonfire night will look very different this year. Many traditional activities will not take place and public fireworks displays will not happen. That means that it is all the more important that individuals do not act irresponsibly or, inadvertently, in a way that puts them and others at risk. That is important for human beings, but also for animals—pets and livestock.

Public health advice and Covid restrictions on household gatherings must also be adhered to. Let me be very clear that people should not have private fireworks displays in gardens that breach those rules. Generally, people must behave responsibly around fireworks.

The police and the fire brigade will ensure that they have the resources to respond appropriately on the night and in the days leading up to it.

Coronavirus Business Advisory Council

Maurice Golden (West Scotland) (Con): Given the difficulties that many businesses have had in accessing support, will the First Minister back our

proposals for a coronavirus business advisory council to ensure that businesses are at the heart of our efforts to save jobs?

The First Minister (Nicola Sturgeon): During Tuesday's debate, I said that we would consider that proposal sympathetically; that remains the case.

Businesses are already at the heart of this. I appreciate that, in the circumstances that we are living in, it might not always feel like that for businesses and individuals—I readily recognise that.

We want to ensure that businesses are involved, as far as possible, in the decision-making process and that they have an understanding of what drives those decisions. We want that to be true of wider society as well—trade unions should be involved, for example. We will consider how to take that proposal forward.

I said on Tuesday that although—for reasons that we explained—we were not able to vote for the Conservative or Labour amendments, that did not mean that there were not good ideas in them. We will take those good ideas forward as far as we can.

Airport Racial Profiling (Mohammad Asif)

Pauline McNeill (Glasgow) (Lab): Mohammad Asif came to Scotland from Afghanistan in 2000 as a refugee. He has made a huge contribution to Scotland, including by adopting seven-year-old Mohammad Sudais after he was injured in a gas explosion. Mohammad Asif is also known to the First Minister.

He recently visited his very sick mother in Pakistan, but on his return to Glasgow airport he was detained by police, closely interrogated and asked to read schedule 7 of the Terrorism Act 2000. He was asked questions about what he thought of the Taliban and whether he was a strict muslim. His phone was interrogated for pictures and data. He felt deeply humiliated and degraded.

First Minister, this is not only about Mohammad Asif; it is about a process that seems to me to undermine our approach in welcoming refugees and to race-community relations. I wonder whether the First Minister agrees with me on that.

Treating people such as Mohammad Asif as a terrorist, when it is widely known that he fled the brutality of the Taliban, should be condemned. Perhaps it is time to review how services go about profiling people whom they detain.

The First Minister (Nicola Sturgeon): I declare an interest, because Mohammad Asif is a very dear friend of mine, as I know he is of Pauline McNeill. He is a fine, upstanding member of the Scottish community who makes a marvellous

contribution to this country, and we should be really proud to have him here. Little Mohammad Sudais has come through the most unimaginable trauma, but is also flourishing.

This is obviously about Mohammad Asif's experience, but it is also about a wider issue. I have not had the chance to speak to him this week. However, I have read the reports of what he experienced. I think that it is unacceptable, and that things need to change.

Let me also say that people who work for Border Force and immigration authorities do a tough job, and we should also recognise that.

However, many of my constituents in the south side of Glasgow who travel backwards and forwards to Pakistan feel that they are not treated fairly in that process, and that they are often put through humiliating and degrading experiences. That is wrong. We need to find the right balance between protecting the country and recognising the fact that people such as Mohammad Asif should not be treated in that way.

This issue relates to matters that are reserved, but we continue to raise them with the United Kingdom Government as appropriate.

The Presiding Officer: I am afraid that although I have let the meeting run on, I do not think that I can let it run any further.

Point of Order

13:49

Johann Lamont (Glasgow) (Lab): On a point of order, Presiding Officer. This relates to the role of members in interrogating the work of the Scottish Government.

I note your willingness to extend the session and I note and particularly respect the First Minister's willingness to continue answering questions, but we must all accept that there is a serious problem about MSPs being able fully to explore all the issues—Covid and non-Covid—in one session.

I suggest that part of that challenge comes from including a significant statement like today's as part of First Minister's questions. Presiding Officer, will you ask the Parliamentary Bureau to consider separating any statement on the progress on levels of restriction—some of which are, I understand, being looked at daily—from FMQs, enabling more questions to be raised? A statement could perhaps be made on Tuesday. Could the bureau also consider the role of the COVID-19 Committee and how it might engage with the First Minister on those serious issues?

The Presiding Officer (Ken Macintosh): I thank Johann Lamont for her point of order. There are still more than a dozen members who wished to ask the First Minister a question and who have not been able to make a contribution as we have not been able to make time for them today.

This is a matter of on-going debate at the bureau. I suggest that Johann Lamont puts her proposal through her business manager. I will also note it and bring it to the bureau.

I remind all—[*Interruption.*] One second. Points of order are for me to answer.

I remind all members that, at the moment, the Parliamentary Bureau is leading a specific piece of work on the process of parliamentary scrutiny in light of the stage that we have reached in our response to Covid. We have appealed to all members to bring forward suggestions such as Ms Lamont's, specifically on the question whether we are allocating enough parliamentary time for members to raise issues on behalf of their constituents. That is on the agenda for Tuesday and I will take Ms Lamont's suggestion to the bureau.

The First Minister would also like to speak.

The First Minister (Nicola Sturgeon): I appreciate that there was a lot of information, but I did say in my statement that it is the Government's intention to come to the Parliament and to make a

statement each Tuesday, if changes are being made to the levels. I recognise the limitations of doing that before FMQs.

More broadly, I appreciate that my answers can be lengthy. I am trying to give as much information as possible. Equally, I am always happy to stay here for as long as possible to answer all the questions that MSPs have.

The Presiding Officer: That is noted. The fact that we have had an hour and a half for this session is appreciated. These matters are discussed at the bureau every week.

Brian Taylor

13:52

The Presiding Officer (Ken Macintosh): I do not want to keep members, but on an entirely different note and before I suspend proceedings, I draw members' attention to the fact that today is the last day on which Brian Taylor, the BBC Scotland political editor, will be covering our affairs.

All of us here know Brian very well. He has had a long and distinguished career in broadcasting and has spent more than two decades—every moment of our political life here in the Scottish Parliament—covering this institution. He has done so with authority and insight and often with humour and wit. He has been the conduit for many people in Scotland of all our affairs, deliberations, decisions and machinations. I thank him on behalf of the Parliament and of the Scottish people for the work that he has done and for his contribution to public life. [*Applause.*]

On that note, I suspend proceedings until half past two.

13:53

Meeting suspended.

14:30

On resuming—

Portfolio Question Time

Education and Skills

The Deputy Presiding Officer (Linda Fabiani): Good afternoon, everyone. I remind members that social distancing measures are in place across the chamber and the Holyrood campus. Please take care to observe those in the course of this afternoon's business.

I warn everyone that I am going to be quite strict on timings for questions and answers, because over the past couple of days too many members have missed out on the chance to ask questions.

Additional Support for Learning

1. **Ruth Maguire (Cunninghame South) (SNP):** To ask the Scottish Government how it will ensure that children and young people and their families are actively involved in decisions regarding additional support for learning that directly affect them. (S5O-04697)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): On 21 October, the Scottish Government and the Convention of Scottish Local Authorities published a joint action plan that accepted the recommendations of Angela Morgan's independent review of additional support for learning. At the heart of the action plan is a commitment that, at national, local authority and school levels, we will actively involve and listen to children, young people and their families in decisions that affect them. We will seek to remove any remaining barriers and will consider support that can be put in place to encourage participation. Progress will be monitored by the additional support for learning implementation group and will be reported on by October 2021.

Ruth Maguire: Children in Scotland's young ambassadors for inclusion contributed to the review. One of their questions was whether the review's recommendations would affect their own experience of school. Bearing in mind the impact of the pandemic, but also the fact that our children and young people are in school, can the cabinet secretary say when the young people who contributed might see such change?

John Swinney: The issues that Ruth Maguire raises are central to how our entire education system has to operate in listening to the voices of young people. The contribution of the Children in Scotland young ambassadors for inclusion has been effective in putting that point at the heart of Angela Morgan's review. I am certainly

committed—and I know that educators the length and breadth of the country are, too—to ensuring that we listen carefully to the voices of children and young people.

I expect the changes resulting from the review to be felt in the course of this school year, but the review that will take place in October 2021 will provide us with an opportunity to take stock of the progress that has been made.

Jamie Greene (West Scotland) (Con): The Morgan review said that

“Additional Support for Learning is not visible or equally valued within Scotland’s Education system”

and that not all young people who need support are

“being supported to flourish and fulfil their potential”.

Will the cabinet secretary confirm the date by which the Government will have fully implemented the review’s careful recommendations?

John Swinney: That is an on-going priority, but I have committed to reporting again in 12 months’ time, once we have seen the achievements that have been made.

Fundamental to the issue that Mr Greene raises is another important point, which is that we must ensure that the needs of every young person are met within our education system. That means that different forms of support should be in place for individual young people. That point has been reinforced by Angela Morgan’s review. Further, the fact that we have established a joint agreement with COSLA on the review’s implementation—because that will be done in schools, which are run by local authorities—shows that we have made a crucial commitment to ensure that the review is effective in changing practices.

The Deputy Presiding Officer: Question 2 will come from Bob Doris—I hope.—[*Interruption.*]—Oh, there he is. He appeared just in time.

Covid-19 (Financial Support for Students)

2. **Bob Doris (Glasgow Maryhill and Springburn) (SNP):** To ask the Scottish Government what financial support has been made available to further and higher education students during the Covid-19 pandemic. (S5O-04698)

Richard Lochhead (Minister for Further Education, Higher Education and Science): Eligible students in further and higher education have continued to access bursary, grant and loan payments throughout the Covid-19 pandemic. In addition, earlier this year the Scottish Government provided emergency funding of £5 million to support students impacted by the pandemic. We also provided early access to £11.4 million of

higher education discretionary funds to support students over the summer period and into this academic year. The Scottish Funding Council also brought forward £2 million of funding for further education students at college.

If students are continuing to face additional hardship as a result of Covid-19, they should apply for discretionary funding support from their college or university.

Finally, we announced a digital inclusion fund of £5 million to support access to digital equipment and to tackle digital poverty.

Bob Doris: I have had students contacting me who have been forced into significant hardship due to delays in getting their Student Awards Agency Scotland funding. The students were forced to apply for student hardship funds, with some applications being rejected by institutions as they did not have SAAS award letters. I have three specific brief questions to ask the minister. What progress has been made in tackling the backlog? Can SAAS seek to prioritise students who may be in the most precarious financial situations? What guidance can the minister give universities and colleges to try to ensure that those who are most in need are not rejected simply because they do not have a SAAS award letter?

Richard Lochhead: It is important that any student who requires support at this time receives it from their university or college in relation to the hardship funds. I thank Bob Doris for bringing to my attention the issue that some institutions are not providing support where the SAAS award letter cannot be produced by the student. If that is the case, I will certainly investigate, because we have to make sure that that particular issue is addressed.

Due to the uncertainty around the pandemic throughout the past year or so, there were not as many early SAAS applications, so a bit of a backlog built up, because many of the applications came in a bit later than usual. However, SAAS has determined and processed 97 per cent of the undergraduate applications that have been received and SAAS is also working with the Student Loans Company to make sure that everything is being co-ordinated so that students get the help that they deserve. I thank the member for bringing that point to my attention and I will investigate it.

Iain Gray (East Lothian) (Lab): The National Union of Students has today asked that additional support be promised for students who cannot, or choose not to, leave their term-time address over Christmas. Will the minister ensure that that is the case?

Richard Lochhead: Iain Gray will be aware that the Scottish Government is working hard with all

our stakeholders to ensure that we can have the safe return of students over Christmas where they choose to do so, if indeed that is possible in terms of the pandemic.

However, it is the case that many students—more than usual, I expect—will wish to stay in their term-time accommodation over Christmas, particularly international students. We are therefore in discussions with our universities and colleges—mainly, in this context, with universities—to ensure that adequate support is available for those students. First and foremost, that is the responsibility of the universities, but of course we are discussing that matter with them.

Offshore Energy Training and Skills (Initiatives from Industry Bodies)

3. Lewis Macdonald (North East Scotland) (Lab): To ask the Scottish Government what initiatives have been brought forward by industry bodies in support of offshore energy training and skills. (S5O-04699)

The Minister for Business, Fair Work and Skills (Jamie Hepburn): I welcome [*Inaudible.*] energy products which will provide flexibility for oil and gas and offshore wind workers to pursue opportunities across both sectors. I also welcome the Engineering Construction Industry Training Board train to retain scheme, which is supporting essential skills and providing long-term opportunities for sustainable employment and ensuring the retention of skills to support a net zero energy transition, and the creation of the Energy Skills Alliance, which is creating an integrated all-energy career proposition for a net zero energy industry.

It is crucial that a sustainable and resilient future is developed for those who work in the energy sector supply chain, whose skills and expertise will be vital for the transition to a zero carbon future.

The Deputy Presiding Officer: The minister's connectivity seems quite bad. Would you like to ask your supplementary, Mr Macdonald?

Lewis Macdonald: I hope that the minister agrees with me that the key here for the worker is that if the worker has the skills and qualifications, he or she is able to move freely between the oil and gas and offshore renewables sectors in both directions, as employment opportunities arise. Will the minister undertake to work to ensure that employers in all the offshore energy sectors support that principle of mutual recognition of relevant skills and qualifications?

Jamie Hepburn: That is a principle that I broadly agree with and I can say to Mr Macdonald that the oil and gas and energy transition strategic leadership group, which is chaired by Paul Wheelhouse, was refocused in April and is

meeting monthly to identify practical actions to support the sector and its workforce and that would be one such issue that it can explore.

School Grade Appeals

4. Dean Lockhart (Mid Scotland and Fife) (Con): To ask the Scottish Government how it plans to recognise school grade appeals made by young people in exceptional circumstances. (S5O-04700)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): The Scottish Government fully recognises that young people are rights holders and key stakeholders within the education system. In line with the Priestley review recommendations, we have asked the Scottish Qualifications Authority to review the appeal system for national qualifications in a fair and transparent way. The SQA will conduct the review working closely with key stakeholders, including learners and their representative groups, to ensure that the review best meets young peoples' needs.

Dean Lockhart: I have been corresponding with a constituent whose son was unable to attend full-time schooling for over a year, due to a disability. My constituent's son received independent tuition and self-studied throughout the period. However, his school submitted his estimated grades to the SQA without consultation with those independent tutors, who were best placed to assess his progress. My constituent and the tutors disagreed with the estimated grades that the school submitted, but they have been unable to appeal that directly to the SQA, because only schools can appeal. Does the cabinet secretary recognise that there are exceptional circumstances in which the existing SQA appeal system does not work? What advice can he give my constituent and others who find themselves in similar exceptional circumstances?

John Swinney: There is provision in the existing arrangements for exceptional circumstances to be considered. Mr Lockhart fairly raises with me a set of circumstances that, on the face of it, appear to be exceptional. I am happy to consider the case that Mr Lockhart has raised. If he cares to write to me with the details, I will correspond with the SQA on that point.

It is important that the appeals system recognises that there can be specific circumstances that will impede a young person's ability to have their performance properly recognised in the examination circumstance. The appeals facility should be available to young people in those circumstances.

As I said, the Priestley review recommended that we look at the issue again, which we will do,

and I am happy to consider the specific case that Mr Lockhart has raised.

Daniel Johnson (Edinburgh Southern) (Lab):

The cabinet secretary referred to the review of exam appeals. Can he confirm when that review will report? Will it address directly the point that the decision to appeal should ultimately be the candidate's rather than the school's?

John Swinney: There is a pretty fundamental point at the heart of Mr Johnson's question about where the ability to initiate an appeal should lie—should it lie with the candidate or with individual schools? Until now, we have always followed the approach that it should rest with schools, but I recognise that there is a changing dynamic on the issue because of the commitments that we have made in relation to the incorporation of the Convention on the Rights of the Child into Scots law, which will in a sense change some of the fundamental assumptions. Mr Johnson raises a legitimate point. I cannot give him a definitive answer today, but the point will be explored in the review.

Covid-19 (Protection of Teachers in North East Scotland)

5. Liam Kerr (North East Scotland) (Con): To ask the Scottish Government what action it is taking to protect teachers in the north-east from Covid-19. (S5O-04701)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): The safety, health and wellbeing of teachers and other staff are of paramount importance. Any teacher who has symptoms of Covid-19 should book a test through the NHS Inform portal. In addition, if a teacher or other essential staff member in a school setting does not have symptoms but is worried about their circumstances, they can book a test through their employer.

Our guidance for schools, which was developed with the education recovery group, sets out clearly the mitigations that should be in place to ensure that schools are safe, open and welcoming. Furthermore, "COVID-19: Scotland's Strategic Framework", which was published last week, sets out our latest position on community-wide protective measures, which are designed to ensure and enhance the safety of our schools.

Liam Kerr: Last week, *The Press and Journal* reported that Aberdeenshire schools are recording 240 coronavirus-related absences each week. To protect teachers, Aberdeenshire Council has implemented mitigations, including enhanced cleaning routines, but it has warned that resources are stretched, especially in rural areas, and that it is having to take urgent remedial action. The

council urgently needs help and resources if it is to continue to keep teachers and kids safe. Will the Scottish Government provide that?

John Swinney: Mr Kerr will probably be familiar with the financial arrangements that we have put in place with local government in respect of such expenditure. We have already distributed £20 million of new resources to all local authorities for schools to cover activities such as cleaning activities and other costs that arise out of the Covid requirements.

We have indicated that a further exercise will be carried out to examine the costs to individual local authorities. The Government has committed to putting on the table a further £30 million, based on the costs that are incurred by local authorities. That data collection exercise, which will be based on the experience since the return of schools in August, will be considered during the month of November. I am sure that Aberdeenshire Council will have access to some of those resources—I would be surprised if it did not.

The Deputy Presiding Officer: I will allow two short supplementaries.

Richard Lyle (Uddingston and Bellshill) (SNP): What extra safety measures and support are being considered for schools in areas such as Lanarkshire, which will enter tier 3, to help to protect staff and pupils?

John Swinney: The education recovery group's guidance makes it clear that a range of measures should be routinely undertaken in schools to ensure that they are safe in the Covid environment. Obviously, those measures to ensure that our schools are safe should be applied in all circumstances, regardless of the level at which a local authority is placed.

Schools in Mr Lyle's constituency in North Lanarkshire and in South Lanarkshire will be at level 3. The guidance is very clear about the steps that need to be taken to support education in that context. We hope to avoid a situation in which North Lanarkshire has to move into level 4. I appreciate the dialogue that I have had with North Lanarkshire Council in the past few days about the steps that it has committed to take to ensure that that is the case.

Further education recovery group guidance will be published tomorrow, which will set out further measures to ensure that our schools remain safe for all staff and pupils, which is our essential commitment.

Beatrice Wishart (Shetland Islands) (LD): There have been reports of some local authorities forcing vulnerable staff to come to work even when they do not feel safe. The education secretary will be aware of my proposal to import

the Danish model for keeping vulnerable teachers safe by making doctors' advice on working arrangements mandatory. Will the Scottish Government take that forward?

John Swinney: I think that the duty of care of any employer would extend to considering the appropriateness of a member of staff being required to be at school. The education recovery group's guidance sets out the relevant provisions, which enable individual teachers to make representations to their local authority about their circumstances. I think that that should be done in all cases. The education recovery group monitors some of the patterns on such matters.

In addition, I indicated in my original answer to Mr Kerr's question that testing opportunities are available for staff even if they do not have symptoms, and I encourage staff to take up those opportunities if they think that it would be appropriate for them to do so.

Skills Development Scotland (Training Provider Register)

6. Alexander Burnett (Aberdeenshire West) (Con): To ask the Scottish Government when Skills Development Scotland will reopen its training provider register. (S5O-04702)

The Minister for Business, Fair Work and Skills (Jamie Hepburn): In Scotland, we do not hold a training provider register. However, Skills Development Scotland contracts annually for modern and foundation apprenticeships, the employability fund and—[*Inaudible.*—]through the year. Bids from training providers can be submitted through the public contracts Scotland website.

SDS is currently inviting bids from training providers for modern apprenticeship starts. That procurement was opened on 15 October and will close on 16 November. Successful contracts will then be issued to training providers in time to deliver places in 2021-22.

The Deputy Presiding Officer: It was very difficult to hear that answer. Did you get what was said, Mr Burnett?

Alexander Burnett: I am afraid not, but I will ask my supplementary and perhaps the minister can reply in writing.

I thank the minister for that answer—what we heard of it—and I refer to my entry in the register of interests.

Professional Drone Training Ltd in my constituency, which is a recognised assessment entity that is authorised by the Civil Aviation Authority but not by Skills Development Scotland, was told that there were no plans to reopen the training provider register. Instead, SDS sent

people to be trained in Devon, which led to further travel and accommodation expenses, while simultaneously failing to support Scottish jobs.

What confidence can we have that the minister is focused on jobs when fast-growing sectors are treated in that way? What can the minister do to fast-track training providers that already possess United Kingdom-wide accreditation?

Jamie Hepburn: I am sorry if people could not hear my initial answer; what I said was that, contrary to any training provider being told that the register is closed, we do not have a training provider register. However, there is a process of putting contracts in place.

If Mr Burnett wants to write to me with specific details, I would be happy to explore the issue with SDS. If there is demand for specific training, my expectation is that SDS explores that and looks at it seriously, so if the member gives me that information, I would be happy to look at it further.

The Deputy Presiding Officer: I suggest a good read of the *Official Report* tomorrow, Mr Burnett.

Showpeople (Addition of Children to SEEMiS Records)

7. Richard Lyle (Uddingston and Bellshill) (SNP): I refer members to my entry in the register of members' interests.

To ask the Scottish Government, in light of showpeople being added to the 2022 census, what action it will take to ensure that their children will be added to the SEEMiS educational records in schools. (S5O-04703)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): Following the introduction of showman/showwoman as an option for Scotland's Census 2022, we will consult local authorities and other partners on the introduction of showman/showwoman as a specified category for the pupil census.

Richard Lyle: In a meeting that Christine Stirling, the educational officer for the Scottish Showmen's Guild, and I had with the cabinet secretary, he agreed to raise the matter with local councils, and I know that he did that. However, Glasgow City Council seems not to be taking that on board. Will the cabinet secretary raise the issue again with Glasgow City Council and send further guidance to all councils in Scotland to address the views of the Scottish Showmen's Guild?

John Swinney: I recognise the long-standing interest that Mr Lyle has taken in those issues and I recall the meeting that we had with Christine Stirling. I reiterate my commitment to encourage that approach to be taken, and I will look into the

issues that Mr Lyle has raised and take further action if necessary.

Attainment Gap

8. Neil Findlay (Lothian) (Lab): To ask the Scottish Government for what reason the education attainment gap is reportedly continuing to grow. (S50-04704)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): Tackling the poverty-related attainment gap is a critical priority of the Scottish Government, which is why we have committed over £750 million to the attainment Scotland fund and are continuing the Scottish attainment challenge into 2021-22. We are making progress on closing the attainment gap. The attainment Scotland fund year 4 evaluation reported that the attainment gap had narrowed on a number of indicators and 91 per cent of headteachers reported improvements in closing the attainment gap as a result of Scottish attainment challenge-supported approaches.

Neil Findlay: The schools exam fiasco showed the entrenched nature of educational inequality and signed off a system that had discrimination by social class at its core, bearing for all to see the educational attainment gap. Where is the big substantial intervention to end the scandal of educational inequality in Scotland?

John Swinney: I contend that that is the Scottish attainment challenge, which is a £750 million commitment that has now been taken forward in every locality in the country to tackle the poverty-related attainment gap. I encourage Mr Findlay to take heart and encouragement from the fact that our education system sees that as an essential priority and focus of its activity. I am certain that Mr Findlay and I will be able to agree that the issues that drive the poverty-related attainment gap are not only issues in our schools; they are wider issues that are influenced by some of the damaging decisions that are taken in relation to welfare and employment, and we are currently experiencing and wrestling with some of those challenges as a consequence of Covid and the economic disruption that is taking place.

Our schools will do a phenomenal amount of activity to try to close the gap, but we have to recognise that there are wider policy choices made by the United Kingdom Government that are changing the landscape of our country in relation to poverty. We have to tackle that issue as well.

Rona Mackay (Strathkelvin and Bearsden) (SNP): What is the Scottish Government's response to the 2019 headteachers survey, in which nine out of 10 headteachers said that the attainment Scotland fund is making an impact on

closing the poverty-related attainment gap, and 98 per cent of headteachers said that they expect to see improvement in closing the gap over the next five years?

John Swinney: One of the points that I made in my answer to Neil Findlay's question is relevant to my response to Rona Mackay's question: the commitment of educators the length and breadth of the country to tackle the poverty-related attainment gap. Doing that is a central educational priority of the Scottish Government and educators, and I am confident that the evidence demonstrated by the response to the headteachers survey gives us a strong foundation on which we can take the necessary action to close the attainment gap in the forthcoming period.

European Union Exit (Further and Higher Education)

The Deputy Presiding Officer (Christine Grahame): The next item of business is a statement by Richard Lochhead on an update on the impact of EU exit on Scotland's further and higher education sectors. The minister will take questions at the end of his statement, so there should be no interventions or interruptions.

14:57

The Minister for Further Education, Higher Education and Science (Richard Lochhead): In 63 days, the United Kingdom's new relationship with the EU will begin. It will be a weakened relationship that, in the referendum of 2016, Scotland made abundantly clear that we do not want. For our colleges, universities, researchers and learners, that matters greatly. They have benefited greatly from our membership of the EU, which has brought access to funding, talent and ideas. Our participation in programmes such as horizon 2020 and Erasmus+ have seen our institutions secure high levels of research funding and attract large numbers of students to study here. Likewise, many of our students have gone to live and study in other countries.

I had hoped to come to Parliament to report real and encouraging progress with the post-Brexit arrangements to continue our relationship with the EU, and to outline how Scotland will benefit from successor schemes. Instead, I have to say that we remain largely in the dark, and all the benefits that we have enjoyed for decades remain under serious threat as we head towards the end of the year. There remains little clarity from the UK Government on what it is thinking or what it hopes to achieve by then, and, as we all know, the clock is ticking.

To be clear, Brexit is potentially very damaging for our colleges and universities. It will lead to less funding and it will put off prospective researchers and students—exactly the sort of bright minds that Scotland needs—from coming to our shores. I share the views of Paul Nurse, a Nobel laureate and former president of the Royal Society, who said in July that the UK Government needs to make

“a concerted ... effort to change its rhetoric to be more welcoming, to fully embrace the future and think less about the past, and to engage the many young people and scientists who were overwhelmingly against Brexit.”

Paul Nurse has good reason to raise the alarm. A recent report by the Wellcome Trust sets out that there will soon be an up-front cost of more than £13,000 for a family of four on a five-year UK global talent visa, in contrast to a £1,000 fee for

the same family under the French talent visa. Although the global talent visa is a step in the right direction, aimed at reducing potential barriers in the new visa system for world-class academics, the exorbitant cost shows that the UK Government is out of touch.

It is no wonder that EU researchers are now choosing to leave and, in some cases, take their EU research grants with them. Of course, many will now choose not come to Scotland in the first place. Those research grants come from programmes such as horizon 2020 and its successor programme, horizon Europe, which are of vital importance to Scotland and our researchers. They help us to foster invaluable partnerships across Europe and the world. Across disciplines and sectors, they provide opportunities for all experience levels, from early career researchers to Nobel prize winners.

Since horizon 2020 began in 2014, Scottish organisations have won €711 million. Scotland has won a higher proportion of funding relative to population than any other part of the UK. In fact, Scotland produces 12 per cent of the UK's research with 8 per cent of the UK's population and 10 per cent of its researchers. That was outlined in the Universities Scotland submission for this statement, which I am sure that all members have read. That is truly an excellent track record.

I am sure that we are all aware that it is not just a matter of funding alone. The Scottish Science Advisory Council's report “A Metrics-Based Assessment of Scotland's Science Landscape (2007-2016)”, which was published last year, demonstrated that research collaboration with EU countries brings the greatest academic impact, with six out of 10 of Scotland's top international collaborating countries being in the EU. It is for those reasons that we want Scotland to remain involved with horizon.

In the immediate term, we have asked the UK Government to guarantee equitable funding to horizon 2020 participants in Scotland and to guarantee no funding gaps. We have urged it to associate as soon as possible, to fully fund continued participation in all parts of horizon Europe that are open to third countries and to plug all funding gaps where alternative schemes may be required if the UK becomes a third country.

In comparison with the clarity of our position on that issue, the UK Government's approach to horizon Europe has been pretty murky at best. We had to wait until July this year for a clear public statement of the UK ambition for association, and key information is too often held back from us, such as the actual costs expected for horizon participation, or the cost of any alternative. At the same time, sufficient attention is not given to

devolved options and devolved possibilities for alternative schemes.

I welcome, of course, the good engagement with us by the UK Government and UK Research and Innovation on the design of the discovery fund, which will be a key driver of academic excellence in international collaboration. However, the discovery fund is just one of three strands of alternatives for research collaboration that may be required. We have had minimal engagement by the UK Government recently on the other two. I think that we can all agree that that suggests a haphazard approach at best to information sharing or a selective approach at worst. That is no way to help our institutions to plan for the future in these very challenging times.

Just as horizon has been a key programme for our institutions in attracting funding and researchers to come to our shores, Erasmus+ has done the same for students. In facilitating the mobility of individuals across Europe—whether that be for learning, teaching or working—Erasmus has come to signify to many of us what is good about the EU. It brings people together, allows us to exchange cultures and ideas, and fosters a wider sense of community and belonging between the nations of Europe, and Scotland does exceptionally well from it. We attract proportionally more students from across Europe than any other part of the UK, and we send proportionally more students abroad through the scheme than any other part of the UK.

Between 2014 and 2018, our institutions secured over €90 million in Erasmus funding and, just this month, we have learned that the European Commission has confirmed a 55 per cent increase in the programme's budget, which is now sitting at over €22 billion. It should therefore come as no surprise that we want Scotland to remain a member of Erasmus.

We have made our position clear to the UK Government time and again. We have provided it with evidence that shows in no uncertain terms the economic and social benefits that the programme brings to Scotland, but we have still to receive confirmation that that evidence has been used in the UK Government's own assessment of the programme. I have also sent letters to the UK Minister for Civil Society and DCMS, Baroness Barran, and the UK Minister of State for Media and Data, John Whittingdale, concerning the incredibly important youth and community learning and development aspects of Erasmus, and I have yet to receive answers to them.

Although the UK Department for Education has now adopted our position that all mobilities at all levels should be funded fairly—we had a long debate about that for many months—the UK Treasury refuses to accept that. It tells us that,

although we may not remain a part of the EU programme, the UK will develop its own version—a better version—that stretches right across the globe. In reality, we can expect a very pale imitation of the real thing. We are being presented with a replacement programme that may see Scotland's funding for mobility cut by more than 50 per cent and support for our colleges, schools and community groups severely reduced and in some cases removed all together. Groups like Royston Youth Action, which I met earlier in the year, have been undertaking life-changing, transformational work through Erasmus.

Additionally, devolution will be ignored. If the UK Government fails to associate to Erasmus+ and looks to deploy the replacement scheme, it will, if it gets its way, prevent the Scottish Parliament from having any say in how that scheme is run in Scotland. Worryingly, UK ministers have refused to rule out using the United Kingdom Internal Market Bill to foist inferior schemes on Scotland, which would be completely unacceptable.

No matter the eventual outcome, however, I hope that we can agree that Brexit will be bad for Scotland. At this stage, it remains to be seen whether the EU programmes that are so vitally important to our colleges and universities will be part of any such deal.

It is in that context that the Scottish Government has been working closely with our sectors to prepare as best we can. We are considering, for example, the introduction of a new scholarship scheme to help preserve the bonds between our nearest neighbours and ourselves. We are continuing to speak with our European friends and reiterating that, regardless of the outcome of the negotiations, we want to continue to work with our EU partners through research collaboration. We continue to impress upon the UK Government the urgent need to confirm association to horizon Europe and Erasmus+, and, as members will know, we have guaranteed that EU nationals who choose to make their home in Scotland by the end of this year and are successful in gaining either settled or pre-settled status will continue to have access to our generous student support package, including the home tuition fee rate.

Those actions show our commitment to internationalism and our view that that remains a key strength of higher and further education in Scotland. However, despite those efforts, it can be easy to give way to despair in the face of such dire-looking prospects. The consequences for horizon Europe and Erasmus+ illustrate that Brexit, and even worse, a no-deal or poor-deal Brexit, is an act of self-sabotage that will cause severe injury to some of Scotland's most important institutions, the life chances of current and future generations and the Scottish economy. That is the

last thing that our colleges, universities and young people need on top of the impact of the global pandemic.

The devolved Administrations have been left in the waiting room outside, while the UK Treasury, the Department for Education and the Department for Business, Energy and Industrial Strategy are inside Whitehall offices deciding the fate of those hugely important programmes. As we continue to pursue a no-detriment policy for EU programmes in terms of funding and participation, we will use the coming weeks to do all that we can to protect Scotland's interests and prevent the UK Government from inflicting untold damage on our relationship with Europe.

I thank the Parliament for the opportunity to provide an update on those important issues.

The Deputy Presiding Officer: The minister will now take questions on the issues that were raised in his statement. I intend to allow around 20 minutes for questions. I ask members who wish to ask a question to press their request-to-speak button now.

Before I move on, I say that I am not sure whether Dean Lockhart, who is down to ask a question, is in the chamber or will be joining us remotely. *[Interruption.]* I see that Liz Smith will ask the question. *[Interruption.]* That pigeon has not arrived yet.

I call Kenneth Gibson, to be followed by Liz Smith.

Kenneth Gibson (Cunninghame North) (SNP): I welcome the minister's statement. What recent discussions has he had with his UK Government counterparts regarding the UK's future involvement in the Erasmus+ programme, given that his letters are being ignored? Does he share my concerns that any UK alternative that is being considered at Westminster will not go far enough, and that we could lose out on the next funding programme for Erasmus+, which is set to double in size to €30 billion for the 2021-2027 programme?

Richard Lochhead: I have had numerous conversations and meetings about Erasmus with the UK Minister of State for Universities and my devolved Administration counterparts. We continue to hammer home the point that during the referendum in 2016 we were given the assurance that Scotland would not lose out because of Brexit, yet here we are, facing a situation in which our students, young people and institutions—universities and colleges—are set to lose out on a significant amount of resources and experiences.

As Kenneth Gibson said, it is also the case—ironically, at a time when we would have had an increased budget coming to Scotland for the

Erasmus programme and, potentially, the horizon 2020 programme—that we face a scenario in which we will get less than we had before. That is absolutely unacceptable.

Liz Smith (Mid Scotland and Fife) (Con): On a point of order, Presiding Officer.

The Deputy Presiding Officer: I think that Liz Smith is going to tell me that she is going to translate herself into someone else, now. Are you?

Liz Smith: I could never do that, Presiding Officer.

Our chief whip, Miles Briggs, sent a message to the whip's office to confirm that our order is Jamie Greene, Jamie Halcro Johnston then me. Dean Lockhart has had to pull out.

The Deputy Presiding Officer: That pigeon has not arrived; the other one had just arrived, but that one has not, so I am lost now. Is it you next, Ms Smith? No—Jamie Greene is next. I call Jamie Greene, to be followed by Annabelle Ewing.

Jamie Greene (West Scotland) (Con): Thank you, Presiding Officer. I was just about to welcome Mr Gibson to the Opposition benches, but he does a good job of that himself—

The Deputy Presiding Officer: I am so sorry. It is me who is getting muddled up now. Wipe the tape. The order is Jamie Greene, followed by Iain Gray. *[Interruption.]* Mr Gray, you are quite right; you do not need to tell me—I need a holiday.

Jamie Greene: We all do.

I thank the minister for advance sight of his statement. It was just that—a lengthy statement of some very well-rehearsed views on Brexit and the UK Government. We have all heard them in the chamber many times.

However, the minister made some perfectly valid points about horizon 2020 and Erasmus+ and what will come next. I, too, want to see progress on those programmes, and the universities that I speak to want it, as well.

I know that Mr Lochhead has frequent and regular meetings with the UK universities minister. My understanding is that those meetings are productive, and that he and his officials have participated in domestic-alternative workshops on a number of key issues. He will have ample opportunity to convey his concerns directly in those meetings to the UK Government, and I commend him for doing so.

However, I will ask additional questions on the substance of what he has talked about today. Can the minister confirm that the funding savings that result from the decision to remove home status for EU students in Scotland will be reallocated in

Scottish budgets to lift the unfair cap on Scotland-domiciled students?

Can he confirm that he will support Scottish universities that want to partake in UK alternative schemes that will replace horizon 2020 and Erasmus+?

Also, as we know that his Government recently turned down an offer to participate in a UK-wide scheme to assist our universities, which are in dire need, can he confirm that he is still positively working, and committed to working constructively with the UK Government on any future higher education funding schemes?

The Deputy Presiding Officer: Minister, please be brief, if you can.

Richard Lochhead: There were a lot of questions in that.

We have had reasonable engagement with the UK Government throughout this year. However, it is often a matter of its hearing what we say but not necessarily listening to us. The decisions are made by the UK Treasury, which objects to some of the solutions that have been proposed by Scotland—and, I understand, by the other devolved Administrations—to ensure that we can have continuity in those vital programmes.

On the ceasing of EU students paying home fees in Scotland, we have already said that that money remains in the higher education budget.

On working with our universities on any UK alternative schemes, of course we will work with them to access those. We are saying that the alternative schemes are going to be very inferior to what we have at the moment, and will not necessarily be suited to Scottish circumstances, the needs of Scotland's research base or, in the case of Erasmus, to our young people. That is a real concern.

We are going to end up in a much worse position post-Brexit than when we were in Europe and, indeed, than we were promised by the UK Government. That is an unacceptable situation.

The Deputy Presiding Officer: I call Iain Gray. I apologise, Mr Gray.

Iain Gray (East Lothian) (Lab): Not at all. Thank you, Presiding Officer.

Let me agree with pretty well everything that the minister said in his statement. Brexit is a disaster. It will impact negatively on our universities, colleges, staff and students in all the ways that he laid out. The Tory Government has completely failed to develop or agree the successor arrangements that we so badly need to be in place—and, indeed, any post-Brexit arrangements with the European Union. It is absolutely the Tory Government's fault, and the situation is dreadful.

But—we need to hear from the minister what he is going to do to address the threat, if he has to.

Will the minister tell us how the Scottish Government will step up in order to secure research funding for our universities and employability courses for colleges? What arrangements is it planning to allow exchange of staff and students, should we fall out of Erasmus? It will take more than a scholarship scheme to protect those critical sectors. It is not his fault, but it is his responsibility.

Richard Lochhead: There is always a “but”. I am happy to answer the question, however.

Scotland has a lot of fans in the European Union, and we have had tremendously positive feedback from Germany and other countries that want to work closely with Scotland, irrespective of what happens.

The resources that will be available for us to take forward such initiatives and programmes will clearly be extremely limited, because the UK Government holds the purse strings. It also has the obligation to ensure that there is no detriment to Scotland from Brexit; it promised as much to the people of Scotland, its universities, colleges, young people and researchers, so it must deliver on that promise.

I commend the universities, which have put a lot of effort into setting up bilateral arrangements with our European counterparts. That process is difficult and is not nearly as good as what we would have with full participation in Erasmus and horizon 2020. We support those efforts and will continue to do so before Brexit.

As I said before, we have a few weeks—two months—left to ensure that the UK Government sticks to its commitments, and associates us with Erasmus and horizon 2020 for full participation.

The Deputy Presiding Officer: I call Kenneth Gibson, to be followed by Liz Smith.

Kenneth Gibson: Thank you, Presiding Officer. I welcome the minister's statement. Scotland has a strong global reputation for punching above its weight in production of world-class research. We know that EU citizens who work in Scotland via our membership of the European Union have strengthened that research.

What actions has the Scottish Government taken to protect that research collaboration with Europe, since the UK Tory Government refuses to provide any clarity on our future involvement with horizon 2020?

Richard Lochhead: In response, can I say that I very much welcome Kenneth Gibson's second question. [*Laughter.*]

I assure Kenneth Gibson that I have been in contact with other European Union countries to explain that Scotland is absolutely determined to continue our international collaboration. As I said in my answer to Iain Gray, we are getting positive feedback from other European countries that value very much their collaborations with Scottish institutions. We will do everything that we can within devolved powers to support those collaborations. As I said before, we have a few weeks, or two months, left for the UK Government to deliver on its obligations. Otherwise, enormous damage will be inflicted on our universities, research base and young people.

Liz Smith: If the negotiations for the Erasmus+ scheme do not work out as we all hope they will, would the Scottish Government be in a position to agree with the UK Government to have a UK-wide social mobility plan for students across the UK?

Richard Lochhead: I will continue to do what I think is best for Scotland's young people, in line with our commitment to ensuring that those kinds of programmes continue. We would prefer to have had the opportunity to have our own unilateral relationship with Erasmus and horizon 2020, even as a devolved country. As Liz Smith might be aware, Her Majesty's Paymaster General wrote on 13 July to Michael Russell, the Cabinet Secretary for the Constitution, Europe and External Affairs, and said:

"I confirm that the UK Government will not be negotiating separate participation for individual devolved administrations",

so that route was unfortunately blocked off because of Scotland's constitutional status and the attitude of the Tory Government in London.

We will, clearly, look for any opportunity to ensure that international collaboration with students in Europe continues, as well as inward and outward mobility.

Annabelle Ewing (Cowdenbeath) (SNP): The Erasmus programme, which my mother Winnie Ewing was instrumental in getting off the ground when she was MEP for the Highlands and Islands, follows on from a centuries-old enriching tradition of Scots students studying at European universities.

Can the minister advise how many students will be impacted by the UK Government's pulling the plug on Erasmus? Is not it the case that continued membership of Erasmus would be yet another example of the advantages of independence?

The Deputy Presiding Officer: I need short questions, please.

Richard Lochhead: I thank Annabelle Ewing for raising the tremendous legacy of Madame Ecosse, Winnie Ewing, with regard to Erasmus,

which has been an enormously valuable programme for Scotland. As I have said, we have taken advantage of the programme more than any other part of the UK has.

In the context of Annabelle Ewing's question, it is important to point out that the UK Government appears to focus on Erasmus as a programme for higher education students. However, in Scotland, as well as higher education students, people from youth organisations, colleges and other walks of life, including apprentices, have all taken massive advantage of Erasmus.

Under the current proposals, albeit that they are vague and we cannot pin them down, there is a huge danger that the UK Government is proposing that any future scheme will be focused on higher education students and not on young people generally, who have benefited enormously from the scheme. Annabelle Ewing has made the very important point that, of course, if Scotland were to rejoin Europe as an independent country, our young people would regain those massive benefits from that new constitutional status.

Claire Baker (Mid Scotland and Fife) (Lab): I hope that this will not come to pass, but in the event of leaving the shared programmes, what is the Scottish Government's strategy to retain and recruit international academics and students? The minister mentioned a scholarship programme. Will that be part of a wider-reaching approach? What discussions is he having with the Minister for Public Finance and Migration about the importance of higher and further education?

Richard Lochhead: The Scottish Government very much wants to continue our international links with other European countries and to let our young people, researchers and others benefit from that. However, we do not have immigration powers or the budgets that we were promised would be passed to Scotland post-Brexit for the Erasmus and horizon programmes in terms of no detriment if we were to vote for Brexit as a UK state—never mind Scotland's opposition to it—and we do not have foreign affairs powers. We need the UK Government to deliver for Scotland, our young people and our colleges and universities. We will look at scholarships and what we can do within devolved powers, but the real benefits will be secured by the UK Government fulfilling its promises.

George Adam (Paisley) (SNP): Does the minister agree that the Scottish Parliament has rejected the UK Government's attempts to override devolution by pushing through the United Kingdom Internal Market Bill? He will be aware that the UK Secretary of State for Education has refused to rule out interfering in Scotland's free tuition fees after Brexit and, after years of refusing to back free tuition for Scottish students, it comes

as no surprise that the Scottish Tories will always follow behind their UK leaders. Does the minister agree that the only way that Scotland can continue to protect free education is by becoming an independent country?

The Deputy Presiding Officer: Short questions, please.

Richard Lochhead: It is a real concern for the Parliament, for all parties, that we are in a situation just now in which the UK Government has not ruled out using the internal market bill to foist an inferior Erasmus scheme on Scotland. We should all be concerned about that, as MSPs elected by the people of Scotland to protect devolution. As George Adam says, it is no wonder that support for independence in Scotland has gone up to 58 per cent or thereabouts in the opinion polls, because the real examples of how real people will lose out from Brexit, something that we did not vote for, are issues such as Erasmus and the Horizon research investment moneys that underpin the Scottish economy. That will only fuel the case for Scottish independence and such issues will be used to illustrate why we need our own voice in Europe.

Ross Greer (West Scotland) (Green): I note with sadness but no surprise what the minister said about the UK Government refusing to negotiate on behalf of devolved nations who wish to fully participate in schemes such as Erasmus. Given that, will the Scottish Government use—or has it already used—some of the good will that Scotland currently has across Europe to make direct application and a direct request to the European Union for us to participate to the greatest extent possible in such schemes?

The Deputy Presiding Officer: Did you hear all that, minister?

Richard Lochhead: Yes. I thank Ross Greer for his question and give an absolute commitment that the Scottish Government will continue to have a dialogue with the European Commission, the European Union and all European countries to say that we want to continue that cross-European collaboration and have student exchange programmes and research collaboration, which are so valuable to Scotland. We have enormous good will in Europe and we will capitalise on that as much as possible to protect the interests of future generations.

Rona Mackay (Strathkelvin and Bearsden) (SNP): [*Inaudible.*—without the Erasmus programme and other areas. Does the minister agree that that is an insult to democracy and to thousands of Scottish young people who could lose out on that life-enhancing experience?

Richard Lochhead: It is an important point. When I met the young people at Royston Youth

Action in Glasgow they stirred up my emotions when they spoke to me about how taking part in Erasmus benefited their lives and changed their perspectives. Those are the kind of people who will lose out if we do not have proper participation in future Erasmus programmes, not just for higher education university students but for people from youth organisations and colleges, apprentices and others who have benefited in the past. Rona Mackay is right to highlight the fact that young people will lose out and that it is an affront to democracy because they did not want this and they did not vote for it.

Beatrice Wishart (Shetland Islands) (LD): Ending freedom of movement and making our country less open through barriers and restrictions will hurt Scotland's world-class academic institutions. The minister said that more and more

"EU researchers are now choosing to leave."

Research by Liberal Democrats revealed that, at the end of last year, almost 2,500 EU academics had already left Scottish universities.

With regard to the loss of talent and expertise, and what further loss there might be, what work has been done to quantify and monitor that to inform future decision making?

Richard Lochhead: Beatrice Wishart makes an important point. We know from the feedback from our institutions that many researchers have chosen to leave, and in some cases to take their research grants with them to other parts of Europe.

We have to remember that Scotland's world-leading institutions—our universities and colleges—are built on the successful relationship that they have had with Europe. As we go forward, therefore, we should all be concerned about the loss of that investment from Europe. In addition, our nation's reputation in research and science has been built on successfully gaining investment from horizon 2020 and other programmes. We will pay attention to that aspect.

Of course, the one thing that we cannot measure is how many bright minds and leading academics from across Europe have chosen not to apply for jobs in Scotland because of Brexit. We know that that is the case, but it is difficult to quantify, and it is such a shame that it is happening.

Jamie Halcro Johnston (Highlands and Islands) (Con): The minister spoke at some length on research collaboration. Can he clarify what proportion of that collaborative research work takes place with institutions in the rest of the UK? What is the Scottish Government doing to support Scottish universities to grow collaboration with institutions across the rest of the United Kingdom?

Richard Lochhead: Jamie Halcro Johnston—although he is not coming from the same direction as me on this topic—raises an important point, in that we have other sources of research moneys in the UK. We are therefore paying close attention to the UK Research and Innovation funds, as it is really important that Scotland maintains its disproportionate benefit from those funds as we move forward; we have seen some changes taking place there on which we have to keep a close eye. I assure Jamie Halcro Johnston that we are in regular touch with UKRI and the other research funds that are available to Scottish institutions to make sure that Scotland can maintain its fair share of those funds.

The Deputy Presiding Officer: I ask members for short questions and answers to match.

John Mason (Glasgow Shettleston) (SNP): The minister talked about the UK possibly sending students across the globe. I do not know what that means—perhaps Australia and New Zealand—but surely it is better, and more students could travel, if it is in Europe rather than so far away.

Richard Lochhead: Leaving aside today's specific debate, Scotland currently supports international collaboration and scholarships across the globe. One example is the very successful Saltire scholarships; we have literally thousands of applications for the number of Saltire scholarships to support students from India, Pakistan and various other countries around the world to study in Scotland and live here for a while, and they take back enormous good will from Scotland when they go back to their home countries.

We have to remain an international, outward-looking country, and attract students and talent from Europe and the rest of the world at the same time.

Daniel Johnson (Edinburgh Southern) (Lab): The minister rightly points to the loss of research funding as one of the biggest consequences of Brexit, but Audit Scotland, in its most recent report on higher education finances, pointed out that publicly available funding domestically provides only 80 per cent cost recovery for research undertaken by our universities.

Surely any response to these issues needs to acknowledge and address that point first and foremost?

Richard Lochhead: Daniel Johnson highlights a number of challenges that are faced by further and higher education in Scotland, which have been compounded by the current global pandemic. He will be aware that we have asked the Scottish Funding Council to review the sustainability of further and higher education in Scotland at this pivotal moment. With the world economy changing, demographic challenges, the

global pandemic and Brexit, there are a number of issues that we have to get right as we go forward to maintain Scotland's world-leading reputation.

Daniel Johnson will be aware that we allocated an extra £75 million of research funds to Scotland's universities a few months ago in response to the global pandemic. That was warmly welcomed by the sector, and it is a good illustration of this Government's commitment to maintaining Scotland's international reputation as a centre of science and research excellence.

The Deputy Presiding Officer: That concludes questions on the impact of EU exit on Scotland's further and higher education sectors. I added in an extra five minutes as there was a wee bit of a kerfuffle in the middle—for those who were not here, it was not much of a kerfuffle.

UK Withdrawal from the European Union (Continuity) (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Christine Grahame): The next item of business is a debate on motion S5M-23163, in the name of Michael Russell, on the UK Withdrawal from the European Union (Continuity) (Scotland) Bill. I call Michael Russell to speak to the motion. [*Interruption.*]

15:30

The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell): Sorry, Presiding Officer—I am having another kerfuffle here.

The Deputy Presiding Officer: It has been that kind of afternoon. Please continue, cabinet secretary.

Michael Russell: My apologies, Presiding Officer. I thought I would contribute my own kerfuffle, as I did not see the earlier one.

Let me start with what, although a truism, needs to be repeated regularly and often. The people of Scotland voted overwhelmingly to remain in the European Union, but they are being dragged out of the EU against their will. Moreover, in subsequent elections, the people of Scotland have comprehensively rejected the hard-Brexit ideology of the Conservative Party and its plans to remove Scotland from the many benefits of EU membership, including membership of the single market and the customs union. The Tories, in government in the United Kingdom while in perpetual opposition here, are not listening. The Scottish Government and, I believe, the Scottish Parliament, are listening, however. We hear the ambition of the people of Scotland to retain the closest links with the EU and to continue to meet the high European standards that presently serve us so well.

The UK Withdrawal from the European Union (Continuity) (Scotland) Bill makes a start, at least, on meeting those ambitions. It is a modest measure, but it will be of use to every part of our country and every sector of our economy. The only people who oppose it are those who have got us into this mess in the first place.

The bill returns the ability to regulate that was lost as a result of the Brexit that Scotland rejected. It replaces the protection for Scotland's environment that is provided by EU law, and it is a statement of our values and of the path that we believe is the best future for Scotland. My remarks on it will focus on part 1 of the bill, and my colleague Roseanna Cunningham will cover part

2, which has a particular focus on her area of responsibility.

Murdo Fraser (Mid Scotland and Fife) (Con): Will the cabinet secretary give way?

Michael Russell: Let me make some progress, please.

I thank the Finance and Constitution Committee, the Environment, Climate Change and Land Reform Committee and the Delegated Powers and Law Reform Committee for their thoughtful contributions to scrutiny of the bill so far. I also thank everyone who has expressed their views.

If Mr Fraser now wishes to express his views, he may.

Murdo Fraser: I am grateful to the cabinet secretary for giving way. It was stated in evidence to the Finance and Constitution Committee that the bill creates a substantial Henry VIII power, taking power away from the Parliament and giving it to the Scottish ministers. The cabinet secretary would be apoplectic if the UK Government were to do that. Why is it all right for him?

Michael Russell: I would be in a state of permanent apoplexy if I—

Murdo Fraser: You are.

Michael Russell: Well, I am only in a state of permanent apoplexy because I am faced with people like Murdo Fraser too often.

I would be in a state of permanent apoplexy if I even thought about the amount of powers that the UK Government is taking for itself on a daily basis—including today in the House of Lords, under the United Kingdom Internal Market Bill. Murdo Fraser should not patronise this Parliament, please, by pretending that there is an interest in the powers. The powers are being grabbed by the party of which Mr Fraser is a member.

Let me make some progress, however. Let me not be distracted by Mr Fraser—it is never a pleasant experience.

A defining feature of this Parliament, in contrast to some others, is the importance that we place on listening to those who are affected by what we do. The power in section 1 is intended to give ministers an appropriate way to recognise in domestic law the high standards that are represented by EU law. I have, of course, heard the calls for greater clarity on the principles that underpin how that power will be exercised, and I agree with those who say that the nature and breadth of EU law makes trying to define those in the bill almost impossible. However, if the bill passes at stage 1 today, I will commit to publishing guidance on the factors that ministers will have to consider.

I have also heard calls for the Parliament to reflect on the role that it and stakeholders should play in scrutinising regulations. That is, of course, an important issue with every bill. Some people have suggested that primary legislation should be required instead, and there is a role for primary legislation in areas of major innovation, but to make all legislative changes, however small and technical, through primary legislation would be, and always is, disproportionate.

Liz Smith (Mid Scotland and Fife) (Con): I agree entirely with the points that the cabinet secretary has just raised. Does he accept, however, that, when it comes to major policy issues, primary legislation is very important?

Michael Russell: I am always happy to agree with the reasonable face of the Conservative Party, from which I have just heard. We will, of course, ensure that, when there are major changes, they are adopted in that way. However, attempting to limit the power to exclude significant new proposals would not be practical, given the legal difficulties in defining them.

Subject to Parliament's agreement, I will engage further to agree a way of working together that not only addresses the point that Liz Smith has made but gives Parliament as early a role as possible. That could involve regular reporting by ministers on forthcoming EU legislation and its interaction with devolved areas, as well as a discussion on the most appropriate procedure for any legislation. I will also lodge an amendment that requires ministers to make a statement to accompany regulations under this power, which will set out the consultation that has taken place with local government and others.

We have listened to those who are concerned that Brexit threatens human rights. Following Parliament's agreement to the general principles of the bill, I will lodge an amendment to require a further statement to accompany regulations that explains any effects that they will have on human rights.

The people of Scotland did not choose Brexit. They certainly did not choose the sort of disastrous no-deal Brexit that is still a possibility, and nor did they choose the equally low deal that is the only alternative left on the table. That low deal is a painfully thin, job-destroying ideological muddle, and, if it is imposed in the middle of a global pandemic, the resulting deep recession will cost every one of us dearly. It beggars belief that any responsible Government would even consider it, still less choose it.

This Government will do all that we can do ensure that we remain a confident, outward-looking country that shares values with the people of England, Wales and Northern Ireland as well as

with our European neighbours. We value our joint commitment to compliance with international human rights law and the protection of the environment that is at its core.

With that, I shall pass over to Roseanna Cunningham, the Cabinet Secretary for Environment, Climate Change and Land Reform, who will speak to part 2 of the bill.

The Deputy Presiding Officer: That is breaking news to me, but it has been one of those days.

I invite Roseanna Cunningham to speak to and, I presume, move the motion.

15:36

The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham): This is a unique job-share experience for the Parliament.

I thank Mike Russell for so clearly restating that Scotland did not choose to leave the EU. There should be no need to consider how to deal with Brexit, and anything that we do cannot fully substitute for the loss of our membership.

From the beginning, my priority has been to protect the environmental standards that we have in Scotland. I am proud of our environmental record and of our commitment to respond to the global crises of climate and biodiversity loss. Our natural world supports our wellbeing and our reputation as a nation. Natural resources contribute to our society and economy in countless ways, and we must protect those precious assets from the threats that arise from Brexit.

I have committed to maintaining or enhancing our environmental standards, and I have made it clear that we should align with future developments in EU standards wherever possible. Those objectives have been shared by many across Scotland—in our public bodies and nature charities and across society. That is the context for the development of the environmental proposals in part 2 of the bill. We have already completed a huge body of work to ensure that our regulatory systems are robust and will continue to protect standards.

Earlier this year, I published "The Environment Strategy for Scotland: vision and outcomes", which will set a framework for future policy. The measures in the bill provide for continuity, in domestic law, of two key features of the EU's structures that we are losing, to ensure that we can continue to protect environmental standards. The proposals establish guiding environmental principles in domestic law, which will ensure that the principles continue to underpin the development of our environmental policy and law.

The proposals will also create a proportionate system of domestic environmental governance to replace the role of the EU institutions in ensuring that environmental law is fully implemented and effective.

This is becoming urgent. I hardly need to remind the Parliament that the Scottish Government made repeated calls to negotiate an extension to the transition period in the face of Covid-19—calls that were ignored by the Government at Westminster.

I echo Mike Russell's thanks to the Finance and Constitution Committee, the Environment, Climate Change and Land Reform Committee and the Delegated Powers and Law Reform Committee for their scrutiny of the bill to date. I also thank all those who have contributed their views. With the hard work of the committees, clerks and stakeholders—who have been willing to give evidence remotely—the proposals in the bill have had a thorough airing. I appreciate that we have been working to a tight timetable for complex provisions. However, that is not a situation or timescale of our own choosing.

If people are saying that the proposals are not as good as being in the EU, I readily agree. However, we must be careful that, in seeking to maintain what we are losing due to the EU exit, we keep the balance with domestic law and procedures right. We want to maintain what we had within the EU, but careful thought must be given to how best to translate supranational arrangements into domestic law. As Mike Russell said, it must be for this Parliament to determine our environmental standards outwith the EU. He made a clear argument against any automatic or rules-based application of the alignment power. The real-world policy environment is too complex for a sensible set of rules to be made by flatly applying criteria.

A similar case can be made with respect to part 2. We need measures to continue the effect of environmental principles and governance, but no rigid set of rules can replace the judgments made by ministers and the Parliament about future policies and legislation.

The environmental principles must remain what they are in the EU context: a central guide to good decision making that is to be weighed alongside other matters and objectives. Environmental governance must keep public authorities in line with the laws that are passed by this Parliament but must not shift decision making from this Parliament to another body or to the courts. I will, of course, be flexible at stage 2.

I believe that the fundamental measures in the bill are what we must have in place. There is limited time, and we must focus on putting in place effective and proportionate principles and

governance now and dealing with other matters at a more appropriate time.

The Deputy Presiding Officer is telling me that I have run out of the time that I thought I had.

The Deputy Presiding Officer: It has been a mystery tour for us all this afternoon. There was 10 minutes for the cabinet secretaries, and you have not moved the motion.

Roseanna Cunningham: I move,

That the Parliament agrees to the general principles of the UK Withdrawal from the European Union (Continuity) (Scotland) Bill.

The Deputy Presiding Officer: There we are. We are all inventing the script as we go. I call Bruce Crawford—I hope—to speak on behalf of the Finance and Constitution Committee.

15:41

Bruce Crawford (Stirling) (SNP): I hope that I can clear up any remaining mysteries.

I thank our clerking team for supporting the committee so effectively through the stage 1 process. I also thank my MSP colleagues for the way they went about the process, not always agreeing, but being able to disagree amicably and professionally.

As the lead committee, we focused on part 1 of the bill. The Environment, Climate Change and Land Reform Committee focused on part 2, and the convener, Gillian Martin, will discuss her committee's findings later in the debate.

Part 1 of the bill would enable ministers to make provisions in secondary legislation to keep pace with EU law in devolved areas, where appropriate. My committee—with the exception of our Conservative colleagues—supports the principle of the keeping pace power as it exists in the bill, but the committee does not accept that the use of the power should be entirely at the discretion of the Scottish Government. The committee recommends that the bill should be amended to require the Scottish Government to provide guidance setting out the criteria that will apply to the use of that power. The guidance should also set out clearly how the keeping pace power interacts with other sources of regulation that will impact on people and businesses in Scotland. That should include the impact of trade deals, common frameworks and the operation of the UK internal market.

The committee welcomes the commitment from the cabinet secretary to work with the Parliament to agree an appropriate and proportionate decision-making framework for future alignment with EU law. I am therefore pleased that the

cabinet secretary has committed to publishing such guidance.

However, given that future Governments might not always be as accommodating as the current one, there might still be room for further discussion on the matter. It is therefore essential that the Parliament gives serious consideration to the level of scrutiny of the keeping pace power that would be appropriate and proportionate. Specifically, what role should Parliament, stakeholders and the wider public have in relation to the decisions on whether to keep pace and to early engagement in the policy development process, especially when there are opportunities for ministerial discretion in how to keep pace?

The committee recognises that, until now, Parliament has had a limited role in the EU policy development process. There might be a risk that EU policy-making process is replaced by an executive-driven process that allows for significant levels of ministerial discretion. Therefore, there is a pressing need for Parliament to consider how its scrutiny role must evolve to meet the challenges of the impact of Brexit on devolution.

The committee has therefore agreed to write to other parliamentary committees to seek their views on the matter. We have also asked for a committee debate in the chamber before the Christmas recess, and we encourage all committee conveners or representatives from each committee to speak in that debate.

A key question for the committee is whether the extent of the secondary powers in the bill is appropriate. As colleagues will be aware, the keeping pace regulations in the bill are subject to either the affirmative or the negative procedure. The committee recognises that it might be necessary and acceptable for minor and technical amendments to be made quickly by subordinate legislation to refine retained EU law. However, the committee's view is that further consideration is needed in relation to the implementation of significant new policy proposals that have no equivalent in retained EU law.

The committee therefore recommended that the Scottish Government give serious consideration to the Delegated Powers and Law Reform Committee's view that primary legislation is the most appropriate vehicle for domestic law to implement significant new policy proposals that have no equivalent in retained EU law, and that that applies particularly to EU directives. In the event that the power is not amended to that effect, the committee recommends that the choice of procedure is expanded to include the superaffirmative procedure.

I note the cabinet secretary's view that attempting to limit the scope of the power in

section 1(1) to exclude significant new proposals would not be practical, given the significant legal difficulties involved in defining that in the bill. I also note that the cabinet secretary has said that he is content to discuss the matter further.

A further important consideration for the committee and Parliament is the extent to which the keeping pace power could be subject to statutory and non-statutory constraints. Although the keeping pace power is very wide in principle, in practice it might be much more limited. In particular, the committee notes, although with the disagreement of my Conservative colleagues, that the mutual recognition and non-discrimination principles in the United Kingdom Internal Market Bill could significantly undermine the use of the keeping pace power. Indeed, the committee believes that the internal market bill, in particular the market access principles, undermine the whole basis of devolution. This Parliament has made its views clear on that in refusing consent for that bill.

That leads to my final point, which is on the role of common frameworks—an area that the committee has considered extensively. The committee remains supportive of the Scottish Government's view that common frameworks should not be imposed by the UK Government. The committee supports a system of common frameworks for trade in the UK market, with the common frameworks to be agreed between the devolved Governments and the UK Government. However, it is equally important that common frameworks are not imposed on Parliament and stakeholders without meaningful consultation and an opportunity to propose amendments.

The committee, with the exception of my Conservative colleagues, supports the general principles of the bill.

15:48

Gillian Martin (Aberdeenshire East) (SNP):

The Environment, Climate Change and Land Reform Committee outlined a number of areas in which further information and action is required in part 2 of the bill. The committee has previously expressed serious concerns about the ability of Scottish ministers to exercise their powers within the devolution settlement in devolved environmental competence following EU exit. In fact, during the summer, I made a statement on behalf of the committee on our discomfort with giving approval to a legislative consent motion on the UK Environment Bill—that is just one example.

The continuity bill and its interplay with the United Kingdom Internal Market Bill raises further questions about the broad and lasting consequences of EU exit, including on the development of and agreement on common

frameworks. Despite our continued requests to the UK Government—certainly since I have convened the committee—for more detail on common frameworks, we have yet to receive sufficient information on them. My committee agrees with the Finance and Constitution Committee on that point.

The committee agrees with the general principles of part 2 of the bill, in so far as it seeks to provide legal recognition of the environmental principles and oversight of the implementation of and compliance with environmental law following EU exit.

We welcome the cabinet secretary's determination, which he has outlined again today, to keep pace with environmental standards set by the EU. However, we want to highlight some concerns, particularly about the role of environment principles, and the functions, powers, and independence of the proposed new environmental standards Scotland body, or ESS.

The committee certainly supports the commitment to maintain or exceed EU environmental law to ensure the continuation of higher environmental standards in Scotland. We consider that the bill is fundamental in consolidating the framework for environmental law and other policy and law that impacts on our environment. *[Interruption.]* I apologise for the noise that the dog is making—I will keep going.

On balance, we are content that the keeping pace power is discretionary. However, there must also be more clarity about when the Scottish Government would use the regulation-making power under section 1.

We are also of the view that the climate and ecological emergencies, the climate targets, the commitment to maintain environmental standards and sustainable development must form part of any decision-making tools or assessments when deciding whether to keep pace.

We recommended that the Scottish Government regularly reports to Parliament on developments in EU environmental law and how they have been matched in Scotland. It is crucial that we have a transparent and accountable process for parliamentary engagement and scrutiny of those decisions. The Government should also lay a regular report before Parliament on significant developments in international environmental protection legislation.

We welcome a statutory footing for the principles in the bill, but we consider that, in order to provide legal continuity, it must also set a high level of environmental protection. Without that being on a statutory footing, the Scottish Government's objective of achieving a high level of environmental protection is a statement of

policy intention and does not necessarily provide legal continuity for any subsequent governments.

We firmly believe that, in order to deliver a green recovery and respond to climate and ecological emergencies, we need to integrate environmental issues across all Government policy legislation. That will rely on there being a legislative basis for the principles of integration and environmental equity, and extending the precautionary principle to include human health.

We have said in our report that we need to know how those principles will sit in the broader constitutional and legal context, and how they will be applied. We also need additional information on how the United Kingdom Internal Market Bill will influence Scottish ministers' ability to act on environmental principles.

I turn to environmental standards Scotland. We asked whether the body will provide continuity of environmental governance and we heard that there are potentially a couple of gaps, specifically in the ability to pursue matters at the level of an individual case, in the investigation of cases in which the environment is an element and not the core of the matter, and in climate governance more generally.

Under the proposed system, an element of governance previously fulfilled by the European Commission will, ultimately, end up in Parliament through the laying of an improvement report. That will impact parliamentary committees, particularly the ECCLR Committee, and questions remain about whether committees have the capacity and access to expertise to consider such reports.

Our report also flags up the long-standing debate about the need for an environmental court in Scotland. We need to rationalise how legal issues and appeals are determined across regulatory frameworks affecting environmental issues. We firmly believe that compliance appeal cases need to be heard by people with expertise and experience in environmental law. We are keen to know how the Government plans to build and consolidate environmental law expertise across the judiciary in tandem with setting up the ESS.

The committee is of the view that the bill's success, from the point of view of the environment, depends on a satisfactory response to the issues that we have raised in our report and to strengthening the areas that we have outlined. However, as I said earlier, we support the principles of the bill at stage 1.

The Deputy Presiding Officer: Thank you, Ms Martin. I also thank your canine companion for the little interventions made on your behalf—or perhaps not on your behalf.

I call Dean Lockhart. Let us hope that things will go smoothly for the rest of the afternoon. You have six minutes, Mr Lockhart.

15:54

Dean Lockhart (Mid Scotland and Fife) (Con): Thank you, Presiding Officer. I do not have any pets with me, as far as I can see.

I add my thanks to the clerks, conveners and others on the committees overseeing the legislation for all their hard work.

The context for the debate is that Scotland is now facing an unprecedented recession, with its economy declining by 20 per cent and unemployment increasing rapidly. Following the additional restrictions that were announced earlier today, the Parliament's priorities must be to protect jobs and livelihoods and to rebuild Scotland's economy.

However, instead, we are debating a continuity bill that will do the opposite—a piece of legislation that will impose barriers to trade, increase the cost of doing business and ultimately, I am afraid, cost jobs and livelihoods across Scotland. There is no doubt that this bill will damage Scotland's trade with the rest of the UK and beyond. Those are not just my views; they are concerns that were raised by stakeholders who gave evidence to the Finance and Constitution Committee.

John Mason (Glasgow Shettleston) (SNP): Will the member give way?

Dean Lockhart: I will in a minute, Mr Mason.

For example, according to NFU Scotland, the keeping pace power in part 1 has, in its words,

“the clear potential to lead to substantial regulatory, and therefore economic, divergence with the rest of the UK.”

For NFU Scotland, that is a major concern, given that more than 60 per cent of Scotland's agriculture and food exports go to the rest of the UK.

Michael Russell rose—

Dean Lockhart: However, such concerns are not limited to the agriculture sector. According to the Fraser of Allander institute, more than 550,000 jobs across all sectors in Scotland depend on our having barrier-free access to the UK's internal market.

I will give way to the cabinet secretary.

Michael Russell: I wonder whether the member has read NFU Scotland's submission on the United Kingdom Internal Market Bill, which talks about the difficulties that will be experienced with the proposals that are being made and the effect that they will have on trade.

Would it not be better to remain in the EU, which would get rid of all such problems and would help all of us? It would also mean that the recession that we face would not be made worse by Brexit—which it will be.

Dean Lockhart: I remind the cabinet secretary that we are debating the continuity bill. As Scottish Conservatives have said in previous debates, common frameworks will form the bedrock for trade in the internal market. It was unfortunate that the cabinet secretary walked away from negotiations on the internal market guidelines.

By keeping pace with some—but not all—future EU laws, the bill will require firms in Scotland to comply with myriad divergent regulations, including: devolved law that keeps pace; devolved law that does not; and different regulations in other parts of the UK that no longer follow EU regulations.

The committee heard evidence that that would lead to Scotland becoming a “regulatory no man's land”, with the inevitable consequence of the proposals being that they will increase the expense and complexity of doing business, increase costs for consumers and, at the end of the day, cost jobs and livelihoods—all at a time when thousands of businesses across Scotland are already struggling to survive under Covid restrictions.

However, the ultimate indictment of the bill is that it will not even achieve its stated aim of keeping Scotland aligned with EU regulations, which the cabinet secretary mentioned in his opening remarks.

The Faculty of Advocates has pointed out that

“the Scottish Government will not be able to ‘keep pace’ in areas of EU law which depend on reciprocal arrangements between Member States.”

Commenting on the proposed legislation, EU officials have said:

“This legislation could create a difficult position for Scotland and wouldn't be effective. Many regulations which are passed by the EU will be difficult to implement and will not apply to Scotland.”

I look forward to the cabinet secretary addressing that EU response in his closing remarks.

Not only will the bill damage Scotland's economic recovery; it also represents a power grab by Scottish ministers that will undermine the powers of the Scottish Parliament and turn it into a passive rule taker of future EU laws. *[Interruption.]* The Scottish National Party members who are making comments should listen to the following concerns that were raised by key stakeholders.

Paragraph 48 of the committee's report refers to the keeping pace power as a “substantial Henry VIII power”—in other words, a power that will

enable Scottish ministers to introduce new laws, including significant new policies, by means of secondary legislation without any parliamentary scrutiny or consultation with stakeholders.

Scottish Conservatives' concerns in that area are shared by the Law Society of Scotland, the Faculty of Advocates, NFU Scotland and a number of constitutional experts, including Professor Aileen McHarg, who gave the following evidence to the committee:

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

We agree—as does NFU Scotland, which told the committee that

"there is an absolute requirement that Scotland, through the Scottish Parliament, retains an ability to adapt new laws for Scottish circumstances."

I have read the cabinet secretary's response to those stakeholder concerns and I have listened to what he has said today about some of the amendments that he will lodge at stage 2 and I have to say that he provides no assurance whatsoever in respect of this Parliament having the proper level of scrutiny.

Given the concerns that I have outlined, a number of stakeholders have provided recommendations on how this legislation can be improved. For example, the NFUS made the following important recommendations: that ministers be required to publish a full regulatory, financial and environmental impact assessment of regulations made under the legislation and to ensure that all keep pace regulations are made following consultation with relevant stakeholders. We will be listening to the recommendations from the NFUS and other key stakeholders and we will be lodging appropriate amendments at stage 2 to address those concerns.

We will be voting against the bill at decision time. It gives excessive powers to Scottish ministers to implement significant new policy changes with no parliamentary scrutiny, it will turn the Parliament into a passive rule taker, and it will create barriers to trade between Scotland and the rest of the UK, a market that accounts for more than 60 per cent of our trade.

16:01

Alex Rowley (Mid Scotland and Fife) (Lab): I am pleased to be speaking in this stage 1 debate on the UK Withdrawal from the European Union (Continuity) (Scotland) Bill. I thank all those on the Finance and Constitution Committee and the Environment, Climate Change and Land Reform Committee for their hard work in scrutinising the bill, and I thank the clerks for their support in

bringing together the stage 1 reports. I also thank all those who gave evidence and helped to advise the committees through the scrutiny of the bill.

The bill is being introduced to allow our legal system to keep pace with EU law in devolved areas where appropriate, as well as being able to ensure that there continue to be guiding principles on our environment here in Scotland in our post-Brexit landscape. Those general principles are supported by the Labour Party and we will be supporting the Government with the progression of the bill today.

At this stage, we agree in principle with creating new powers to allow the Government to keep pace with EU laws. It is particularly desirable to be able to deliver the strong environmental standards that we want to see in Scotland. It would be impractical to require all changes in EU law to be given effect by primary legislation in the Scottish Parliament. That would hold up important legislative activity. However, some future changes in EU law could involve substantial policy considerations, which Parliament and stakeholders must have the opportunity to scrutinise and influence.

The Government must set out detailed guidance on how those powers would be used and alternative processes for when consultation would be required. Scottish Labour welcomes the proposal for a new environmental governance body, environmental standards Scotland, but that body has to be independent of Government. We believe that climate change, individual cases and fiscal measures should all be included in the remit of that body and that exemptions to investigations should be prevented or at least have to go through primary legislation.

We welcome the incorporation of the EU's guiding environmental principles in the bill, as argued for by Scottish Labour in relation to the previous continuity bill. Labour is considering amendments at stage 2 to add further principles, including recognition of human health impacts. We also believe that the bill should be strengthened at stage 2 to act in accordance with the environmental principles.

The keeping pace powers should not be entirely at the discretion of the Scottish Government and there must be greater clarity on how the Scottish Government proposes to use the powers. I am pleased by the indications from the cabinet secretary to the Finance and Constitution Committee that he intends to work with the Parliament to agree on an appropriate and proportionate decision-making framework for all future alignment with EU law.

I welcome the cabinet secretary's response to the Finance and Constitution Committee's report,

which we received this Tuesday and which stated that he would

“commit to publishing the guidance which will be used to inform decisions on the use of this power.”

That is a welcome step. However, it is worth noting that the Law Society of Scotland, in its briefing for today’s debate, said:

“it is suggested that the power to make regulations under section 1 should be restricted to where the changes in EU law do not involve substantial policy considerations unless they are subject to super affirmative procedure”.

That point is worth bearing in mind as we move forward with the bill. From my reading of the cabinet secretary’s response to the committee, he appears not to have taken that suggestion on board. I hope that a satisfactory agreement can be reached on the level of scrutiny that will be required before we take on board new rules.

The NFUS has said that it agrees with the recommendations of the Finance and Constitution Committee and the Environment, Climate Change and Land Reform Committee that the use of the power in part 1 should not be “absolute and inflexible” and that there should be a stronger role for Parliament in scrutinising its use.

I hope that there will be a willingness to work together. We believe that there is a need for the bill. It is ludicrous for the Scottish Tories to continue to align with Boris Johnson and attack the environmental rights of the Parliament and the people of Scotland. We will work together to ensure that we improve the bill at stages 2 and 3 and then pass it.

16:06

Mark Ruskell (Mid Scotland and Fife) (Green): I say at the outset that the Greens strongly back the bill’s principles at stage 1, just as we backed the original continuity bill—the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill—which was so recklessly struck down by the UK Government. While the storms gather over the United Kingdom Internal Market Bill, it is important to forge ahead with European alignment for the sake of the environment, people and our economy.

It is important to reflect on what the bill aims to allow us to stay in alignment with. European protections were built on the struggle of citizens’ movements to protect human rights and the environment over many decades. From the Sandoz chemical spill that decimated the Rhine to particulate air pollution in European cities and today’s climate emergency, European protections have been the response to the struggles on those issues and now provide a strong counterweight to the economic neoliberalism that, if left unabated,

would have collapsed Europe’s environment a long time ago.

The Environment, Climate Change and Land Reform Committee was told that the bill’s primary objective is to maintain alignment with those hard-won protections and to ease the path to reaccession to the European Union. Therefore, it is not a pick and mix or a Norway-lite approach; it is about EU membership. Stage 2 will be a test of the Scottish Government’s commitment to the goal of alignment and reaccession.

The foundation stone of that is the keeping pace power. I welcome the Government’s commitment to make the decision-making framework for that more democratically accountable, but it still needs a direction. It needs a statutory purpose that nails what we are aiming for. One of the rights that we had as EU citizens was the right to enjoy a world with a high level of environmental protection. That is enshrined under article 37 of the Charter of Fundamental Rights of the European Union, yet it is absent from the bill. If the Government wants to maintain and exceed European environmental standards, it needs to be clear in law that that means a high level of environmental protection.

I have my doubts, however, because the Government’s response to the Environment, Climate Change and Land Reform Committee stage 1 report states:

“When enhanced environmental standards are introduced in the EU, we can expect a full and lively policy debate about how Scotland should respond”.

That worries me because, although there will be EU laws that are no longer functionally relevant to a departed member state, those that set core environmental standards will be relevant. Actually, I do not want a lively debate about whether we should hold off from tackling air pollution that causes asthma in children, or whether we should keep spraying a pesticide that decimates bee populations; I want Europe-wide action as the baseline.

The bill attempts to enshrine four key environmental principles, but it requires ministers merely to “have regard to” them. That is very different from how policy has been developed until now in the EU, because EU treaties have required our policy to be based on those principles. A Westminster committee has judged that the phrase “have regard to” is

“weak, unenforceable and lacks clear meaning”,

so why put those weasel words into Scottish legislation?

I think that we have an opportunity to deliver real progress while staying on a parallel path to reaccession. For example, applying environmental principles to budgets would drive the green

recovery that I think we all want. The precautionary principle would help us to put preventative spending first, thereby stopping costly problems becoming unmanageable in the future.

If environmental standards Scotland is to replace the European Commission, it needs to be strong, independent, well resourced and rigorously appointed by Parliament. It needs to operate under the widest definition of the environment, which must include climate change. It must consider individual complaints as case studies to improve compliance with the law and to suggest changes to the law itself. ESS needs to be a watchdog that has one eye on the European and international legislation, with the other eye firmly focused on ensuring that we keep pace at home.

There is acres of room for the Government and a majority of members in the Parliament, should they wish to improve the bill at stage 2. For the sake of our environment and our health, we need to continue to make progress in lockstep with our European neighbours, and the bill must rise to that considerable challenge.

16:10

Liam McArthur (Orkney Islands) (LD): I, too, start by thanking the Finance and Constitution Committee and the Environment, Climate Change and Land Reform Committee for their work to date on the bill. It is not a bill that many of us would have wanted to see and it further highlights the needless damage, disruption and uncertainty that have been caused by Brexit.

As Scottish Environment LINK points out, 80 per cent of Scotland's environmental protections stem from European Union legislation. The climate emergency and the need to tackle biodiversity loss demand no let-up in robust standards, and that is what we must look to achieve through the bill.

To do that effectively, the approach must be based on the right principles and set within the context of a clear overall purpose. Although I have no difficulty with the four principles that are currently in the bill, I agree with the ECCLR Committee and others that the Government should go further by including the Lisbon treaty principles on high levels of protection and integration. It would also be helpful to set out the overarching principle. Scottish Liberal Democrats will work with others to achieve that at stage 2.

Such principles will matter only if there is an onus on ministers to use them as the basis on which to take decisions. As Scottish Environment LINK pointed out and Mark Ruskell has identified, the bill that is going through Westminster appears to provide greater safeguards in that respect than what is proposed in the bill before us. Whether it is a requirement for ministers to have "due regard to"

or to "act in accordance with", it is clear that the ECCLR Committee wants the Government to toughen things up. Again, the Scottish Liberal Democrats will work with others to achieve that.

Another problem that the Government will have to address at stage 2 stems from the power that the bill gives ministers to keep pace while not requiring them to do so. Nobody else is allowed to insist that ministers keep pace; as things stand, only ministers can choose to do so.

I was struck by the fact that Mr Russell told the Finance and Constitution Committee that

"those who are opposed to any keeping pace could frustrate the legitimate will of the Scottish people to keep pace with high standards."—[*Official Report, Finance and Constitution Committee*, 9 September 2020; c 6.]

However, he then spent the rest of his time saying that he would not keep pace with everything, for a whole series of reasons. Therefore, it turns out that he might yet find himself in the position of frustrating the legitimate will of the Scottish people.

The Law Society of Scotland, the Faculty of Advocates and others have made suggestions about how that might be addressed. Professor Michael Keating put it well when he said:

"We need to know on what basis things are going to be selected."—[*Official Report, Finance and Constitution Committee*, 26 August 2020; c 3.]

It has been suggested that there could be an annual report that would look ahead at anticipated EU legislation and state whether the Government intended to keep pace with it. There are various options. The cabinet secretary has mentioned the use of guidance as a possible option. The bottom line is that the issue needs to be addressed at stage 2.

Among the other issues that have been flagged up by the committees is the need to protect the independence of ESS. I can certainly understand the anxieties about that.

I want to close by acknowledging one other issue that was identified by Scottish Environment LINK in its briefing. The case for a dedicated environmental court or tribunal is one that has been made by many people over many years, although few have made it with as much persistence and passion as Lloyd Austin, formerly of RSPB Scotland, has done. I think that the bill provides an opportunity for the Government at least to commit to consult on an environmental court, which would allow any incoming Government in May to decide how best to proceed. I hope that the cabinet secretary will consider the idea and look at least to take initial steps on it.

In the meantime, I again thank the committees for their work to date and assure them of Scottish Liberal Democrat support in pursuing the improvements that are needed to minimise the damaging legacy of Brexit, especially in the area of environmental policy.

16:14

Joan McAlpine (South Scotland) (SNP): We are now more than four years on from the disastrous and irresponsible Brexit referendum, so it is worth reminding ourselves of the outcome of that vote here in Scotland: remain got 62 per cent and leave got 38 per cent. Every local authority area in Scotland voted to remain, so the bill has an overwhelming mandate from the people of Scotland. Brexit has been forced on us by the UK Government's actions, not only in taking us out of the world's largest single market and ignoring compromise solutions from the Scottish Government, such as remaining in the single market and customs union, but in refusing to extend the transition period despite Covid and in failing to secure any kind of trade deal worth the name—and certainly not the Canada-double-plus deal that was the UK minister's catchphrase just a few months ago. The Tories have swung the wrecking ball of Brexit towards Scotland, and the bill aims to mitigate some of the destruction that that wrecking ball will do. This is law as damage limitation.

Maintaining high environmental standards is critical for addressing the nature and climate emergencies that we face as well as underpinning efforts to deliver a green economic recovery from Covid-19, which are all Scottish Government priorities. I note that Scottish Environment LINK welcomed the bill's intention to embed the four EU environmental principles directly into Scots law, which are the precautionary principle, the polluter-pays principle, the rectification-at-source principle and the preventative action principle. I also note that Scottish Environment LINK would like us to go further still—instead of requiring ministers to “have regard to” the four principles, as the bill states, LINK wishes it to say that the policy will be “based on” the four principles. That strikes me as a fine line and no doubt colleagues will give it due consideration as the bill moves through Parliament.

I must comment on paragraph 87 of the Finance and Constitution Committee's report on the bill, which notes that the United Kingdom Internal Market Bill could

“significantly undermine the use of the keeping pace power” in this continuity bill. Indeed, it is incompatible with devolution, as my colleague Bruce Crawford has said.

My committee, the Culture, Tourism, Europe and External Affairs Committee, has also taken evidence on the internal market bill and we came to exactly the same conclusion. The Scottish Parliament has now voted decisively to withhold consent for the internal market bill, but there is no assurance that the UK Government will listen. That is why there is only one way forward. The bill will ensure that we keep pace with European environmental standards, but it looks as if the Brexit wrecking ball means that anything that we do in this Parliament can simply be obliterated and the devolution principle can be turned to dust. That is why more and more Scots understand that it is only by assuming the full status of an independent country that we can prevent the UK Government from smashing Scotland's powers to pieces. That independent Scotland is coming, and it will be an independent equal member of the European Union. The continuity bill will help to ensure that we are ready to rejoin Europe in as smooth a way as possible, and I therefore have no hesitation in supporting it today.

16:18

Liz Smith (Mid Scotland and Fife) (Con): Just as was the case when we debated the United Kingdom Internal Market Bill a few weeks ago, the Parliament's main purpose with regard to the end of the transition period must surely be to ensure that all the post-Brexit structures that will be put in place will have the best interests of Scotland at heart, as well as her relationships with the rest of the UK and with the international community, most especially those that protect the internal market and Scotland's ability to be a thriving nation in the future.

The continuity bill must be judged against those criteria, and I am sure that we can all agree, just as we did last August, that Scotland's best interests also have to be the principal concern from the legislative perspective. To that end, it is surely important that Scotland's Governments work together and do not seek to create division. That is obviously true for the environment, just as much as it is true for other aspects of policy. Roseanna Cunningham was correct when she said that it is essential that Scotland does not lose crucial environmental safeguards as the UK exits the EU—safeguards that have increasing relevance as the focus on the environment becomes ever more prominent.

That brings me to the controversial keeping pace principle. In the continuity bill, that principle is designed to ensure that Scotland will be aligned with EU regulations wherever possible, but that is something about which members on the Conservative benches are uncomfortable, because it would necessarily mean keeping pace

with standards and laws over which we would have no say.

There is another aspect to the issue, which Bruce Crawford mentioned when he was opening on behalf of the Finance and Constitution Committee. Any keeping pace decision would become a matter of political choice for ministers, rather than be a legally binding commitment, as was the case when we were in the EU. Potentially, that will invest significant powers in ministers and it raises questions over scrutiny of some key policies, as Alex Rowley pointed out. Evidence given to both the ECCLR Committee and to the Finance and Constitution Committee reflects that.

On part 2 of the bill, which relates to the environment, there is general agreement across all parties about the need for Scotland to adopt the highest environmental standards and for a legal basis to protect environmental principles, but much less agreement about the structures that need to be put in place to achieve that. As the convener of the ECCLR Committee said, we have broadly agreed on some key principles that would have to be adhered to for the highest standards to be maintained—for example, the polluter-pays principle—but we are not agreed about exactly how to do that. For example, some witnesses at the ECCLR Committee, such as Scottish Environment LINK and the National Trust for Scotland, were seeking confirmation that some aspects of EU environmental law would be written into the bill, so that ministers would be specifically required to keep pace with environmental standards.

That was definitely not the view of NFU Scotland, which told the Finance and Constitution Committee that it has long been frustrated by agriculture's inability to adapt to local circumstances as a result of some aspects of blanket EU law that do not always articulate with local circumstances. That, of course, is only part of the story, as questions remain about keeping pace decisions. I think that it was Bruce Crawford who said that keeping pace has implications for trade deals, common frameworks and so on, so there are question marks over that.

It is for those reasons that Conservative members want to see structures put in place that permit maximum flexibility when it comes to achieving the highest standards. It should not just be a case of aspiring to follow EU law, when there is no guarantee at all that EU standards would automatically be those that we wished to adopt.

We also want to see good governance when it comes to parliamentary scrutiny and the agencies that oversee environmental standards. A lot of issues have been raised at both committees about how we do that. I entirely accept the comments that members have made about environmental

standards Scotland, which in principle is a very good idea, but whether it will have sufficient independence from Government and whether there will be separation of powers is a major issue in the bill.

I reiterate the point that I made at the start of my speech, which is that post-Brexit structures must put in place what is in the best interests of Scotland and the UK, in terms of economic growth and social cohesion, and that both Governments must work together to deliver what the public has a right to expect.

16:22

Tom Arthur (Renfrewshire South) (SNP): I am grateful for the opportunity to participate in the debate and I would like to put on record my thanks to committee colleagues, clerks and those who gave evidence during stage 1.

It is a matter of regret that the legislation is required. My constituents in Renfrewshire South, along with a clear majority of people in Scotland, opposed leaving the European Union. They registered that view in the referendum of June 2016 and reinforced it at subsequent elections, most recently the UK general election of December 2019. With barely five months until the dissolution of this session of the Parliament, currently opinion polling suggests that support for the parties most strongly opposed to Brexit has only strengthened.

The circumstances in which we find ourselves are a consequence of a monumental failure of statecraft by the UK Government. Had it responded to the referendum with humility and a sense of responsibility, and pursued a settlement commensurate with the close and contested nature of the result across the UK, it could well have been the case that we would now be exactly 19 months to the day into a single market and customs union arrangement. Instead, we are exactly nine weeks away from, at best, a damaging low-deal Brexit, and, at worst, a disastrous no-deal Brexit.

Given that our best-case scenario is now a hard Brexit, it is of the utmost importance that we respond by equipping ourselves with the necessary tools to mitigate and minimise the impact of the UK Government's hardline approach. The bill is an important part of that response. In particular, it enables the Scottish ministers to make provision in secondary legislation to allow Scots law to keep pace with complex EU law in devolved areas, where appropriate.

Outwith the European Union, Scotland will, of course, no longer automatically be subject to new EU regulations, and it will not be obliged to implement EU directives. However, that does not

preclude the Scottish Parliament from seeking to mirror EU law where it determines that that is appropriate.

I stress that it will be for the Scottish Parliament ultimately to decide whether to incorporate any new aspect of EU law into Scots law via the bill. All regulations in part 1 of the bill are subject to the affirmative or the negative procedure. Power remains with the Scottish Parliament. The Scottish Government can propose, but it is for the Parliament to decide whether to approve.

For those who wish to see an example of Scotland being compelled to be a rule taker or of a hoarding of powers by the Executive, one need look no further than the UK Government's United Kingdom Internal Market Bill. That bill, which was comprehensively rejected by the Scottish Parliament only a few weeks ago, poses a threat to the bill that we are considering. That was highlighted by the convener of the Finance and Constitution Committee, Bruce Crawford, who quoted from paragraph 87 of the Finance and Constitution Committee's stage 1 report on the bill. Those words bear repeating. The report says:

"the mutual recognition and non-discrimination principles in the UK Internal Market Bill have the potential to significantly undermine the use of the keeping pace power in this Bill. Indeed, as the Committee states in our report on the Internal Market Bill LCM, we believe that the Internal Market Bill, and the market access principles in particular, undermine the whole basis of devolution."

That state of affairs serves as yet another example of the inadequacy of the current constitutional arrangements. The best solution would be for Scotland to be a member of the European Union in its own right. However, as we face the imminent end of the transition period, we must do all that we can to ensure that we have the flexibility to retain the closest possible alignment with the EU where appropriate. On that basis, I support the general principles of the bill.

16:27

Claudia Beamish (South Scotland) (Lab): The continuity bill is fundamental to the way forward for our devolved settlement as Brexit deadlines, sadly, approach all too fast. The bill as introduced and the scrutiny so far afforded by both committees are significant. I intend to focus on some of the concerns that were raised by the ECCLR Committee in our unanimous stage 1 report, which I do not believe have yet been resolved by the Scottish Government response.

We need the most robust possible protection for our environment and scrutiny of all actions and impacts on it by air, land and sea. That is not simply about the current Government and its commitments; it is about underpinning the

direction and accountability of future Scottish Governments.

I was delighted when the Scottish Government agreed to enshrine the four EU guiding principles—the precautionary, prevention, rectification at source and polluter-pays principles—in law in the previous continuity bill as a result of amendments that Mark Ruskell and I lodged. That said, I still ask the Scottish Government to consider whether it could be necessary to amend the bill to refer more explicitly to human health in the precautionary principle, because of the importance of assessing how actions affect human health.

The four principles have been focused on, but I think that it is necessary to have a high-level environmental protection principle in the bill, as highlighted in recommendation 81 of the ECCLR Committee report. That report refers to

"reflecting the Treaty on the Functioning of the European Union".

I also want to focus our thinking on the integration principle, which I believe would strengthen the bill. In recommendation 83, which our convener quoted, we stated:

"The Committee believes that, in light of the green recovery and current climate and ecological emergency, it is critical that environmental issues are integrated across all government policy and legislation."

Despite what the Scottish Government said in response to our report about there being references in the bill, I am still of the view that there is a need for a stand-alone integration principle for robustness, and I hope that the Scottish Government will reconsider that.

I turn to the phrases "having regard to", "having due regard to", and "acting in accordance with" the principles. I am aware that time prevents me from going into the detail of the committee's stakeholder engagement and its deliberations on the significant differences between those phrases. However, it is disappointing that the Scottish Government does not agree with our committee's recommendations and has said in its response that

"have regard to' ... would give effective and proportionate effect to the principles".

It is crucial that we accord those principles a strength that is similar to or greater than what is contained at present in the terms of the EU treaty, so I ask the Scottish Government to reconsider.

Turning to the new body, ESS, I point out that our environmental laws are only as good as the institutions that uphold them and a watchdog can only be robust and effective if it is truly separate from and independent of Government. The European Commission's role in implementing and

enforcing environmental law has been crucial because of its independence from member states' national governments. I still think that climate change should be included in the remit, despite the Scottish Government's reassurances.

I will turn to the exclusion of individual decisions. Unless those limitations are removed, the ESS would not provide the continuity with existing EU arrangements and would represent a significant erosion of environmental governance in Scotland, as well as the rights and ability of Scots to take action on the environment. A more detailed definition of the environment would also be valuable.

I am clear that the further scrutiny of schedule 1 to the bill, and of the exemptions in paragraph 1(2) of the schedule, is essential. The committee raised those concerns in recommendation 180 of its report. The Scottish Government's response was detailed and helpful, but if the exception in schedule 1 is required for accounting or other general reporting requirements, could the provision be more tightly drawn to allow for that exception, but no others? I still argue that the scope of the exception is too broad.

Finally, along with the committee and Scottish Labour, I support the principles of the bill and I look forward to working with everyone to take forward the best continuity bill possible.

16:32

John Mason (Glasgow Shettleston) (SNP):

First, Scotland wants to trade freely with both the UK and the EU. I fully accept that the UK may be the bigger part of that trade and that of course we do not want to lose that 60 per cent, but neither do we want to lose the 20 per cent of our trade with the EU. What country in its right mind would put 20 per cent of its exports in jeopardy?

The main aim of the bill was to keep us aligned with both the UK and the EU. It seems wise for us to keep our environmental and other standards as closely aligned with the EU as possible, and that should make it easier for us to trade with the EU and easier when we re-enter the EU as a free member in our own right.

One of the first questions that the Finance and Constitution Committee faced was whether we needed the legislation at all. It was suggested that primary legislation could be used for every issue. However, we accepted that that would be impracticable, and that minor tweaking of existing policies would be best dealt with by secondary legislation.

Following on from that was the need for guidance on what criteria there would be for the Scottish Government to use the powers. I think

that it is agreed that guidance is required by the Government, but the Government does not consider that an amendment to the bill is needed; it is committing to providing guidance and I guess that we will go into more detail on that at stage 2.

Another suggestion was that it should be mandatory for ministers to keep pace, at least on environmental matters. That was suggested by the National Trust for Scotland and by Scottish Environment LINK. Clearly, those organisations trust the EU more than they trust the UK, and I share that position. However, I take the Government's point that the power needs to be discretionary as it would not be possible to keep pace with everything.

Again, there is the question of the volume of work that would be involved in keeping pace, both for the Scottish Government and for the Parliament. I am not sure that it would be practical to require the Government to report on every EU law that is not being kept pace with. It is probably not possible to examine every decision to keep pace or not, but the Parliament, through its committees, should be ready to challenge the Government as to why any particular directive is not being followed. I am quite drawn to the idea of an annual report from the Scottish Government that looks at EU legislative priorities for the coming year, as well as looking back at what has already been done. I think that the Government has agreed to that.

The DPLR Committee considers that for major new policies, in contrast to amendments to existing policies, primary legislation in Parliament will normally be the best way to go. I think that the Government accepts that, since it has talked about "areas of major innovation", which is good. However, I note that the Government seems reluctant to have amendments to that effect on the face of the bill, apparently because they would be difficult to word. I suppose that that is a challenge for somebody to propose suitable amendments for the committee to consider at stage 2.

The relationship with the United Kingdom Internal Market Bill is also relevant. If, as we fear, that bill allows the UK Government to roll back devolution, or at least gives the power to private companies to challenge devolution, the scope for us to align with the EU might be more limited. Again, the key point is that we want Scotland to be outward looking and international, not narrowly focused on the British or English market, important though that is.

We also touched on common frameworks, which I hope will be voluntarily entered into by all the devolved Administrations. If that is the case, it is to be welcomed. However, bargaining between Governments in a private room late at night or over the phone, as we know has happened before,

does not make scrutiny by this Parliament—or, for that matter, by the Westminster Parliament—very easy. The Scottish Government confirmed in its response that there should be “an appropriate role” for Parliament. It would be good if we could hear more detail on that in due course.

Overall, I believe that we can support the bill in principle, and I hope that members will do so at decision time.

The Deputy Presiding Officer (Lewis Macdonald): I remind members who are taking part in the debate to press their request-to-speak buttons in good time to be called.

16:36

Alexander Burnett (Aberdeenshire West) (Con): Just yesterday, I was glad to contribute to a debate that focused on how to support the Scottish energy industry in helping to meet our climate change targets and improve energy efficiency. As a member of the Scottish Parliament, I take pride in doing what I can to represent my constituents and in taking part in debates that will bring real, positive change to their life and the next generation.

Today, however, I am wasting time, which I could have spent helping constituents, by debating a bill that has only one underlying aim: to reopen old divisions and break up the country in the middle of a pandemic. It is on record that, as a member of the Finance and Constitution Committee, I dissented from supporting the general principles of the bill. I did so for a number of reasons. Although the divisive aim of the bill is plain for all to see, and although Mike Russell and his colleagues choose to devote valuable time in the midst of pandemic to such legislation, it is, as usual, flawed.

First, the bill will lead to a lack of scrutiny, and that is simply not good enough. The policy memorandum states that, apart from some prescribed circumstances that are set out in section 4 of the bill, negative procedure will be used to align with EU law. That will lead to this Parliament’s role being diminished, as there is no scrutiny when EU law is simply copied and pasted into Scots law. Professor Aileen McHarg raised concerns, noting that the lack of scrutiny arrangements in the bill are even weaker than the scrutiny arrangements that the SNP proposed in the original UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill in 2018.

There is not only that. Our committee pointed out that the Scottish Government has admitted that it is not possible to keep pace with all future EU laws. The committee recommended that amendments should be made to the bill that set out guidance on how the keeping-pace power

would be used. The Law Society of Scotland agreed with that recommendation. I hope that the SNP will be wise enough to change the habit of a lifetime and listen to such organisations.

I cannot support a bill that fails to recognise the importance of our biggest trading partner, the United Kingdom. Some 60 per cent of our trade is with the rest of the UK, and it is worth over £50 billion. NFU Scotland repeated that point, noting that

“the UK internal market is far more important to the interests of Scottish agriculture than the EU market or other export markets”.—[*Official Report, Finance and Constitution Committee*, 2 September 2020; c 9.]

The bill’s policy memorandum states that the

“Scottish Government will do everything it can to be an active and constructive participant on EU matters.”

What a pity, then, that the SNP can never bring itself to be active and constructive on UK matters, which have far greater impact on Scotland’s interests. The bill is simply another opportunity for the SNP to reheat its separatist agenda.

The coronavirus pandemic has shown that we have had to adapt. Now, more than ever, we need to work with the rest of the UK and take advantage of the benefits that being part of this union bring. [*Interruption.*] I will not give way.

The Parliament’s time would be better spent in discussing ways in which we can create jobs, become world leaders in education once more and drive forward the revolution that we need to see in tackling climate change. One day, the Parliament will perhaps stop being used as a tool for separatist grandstanding and will focus instead on shaping a better Scotland for future generations.

16:40

Kenneth Gibson (Cunninghame North) (SNP): That is a really hard act to follow.

In 2016, the Minister for the Cabinet Office, Michael Gove MP, said that

“there is a free trade zone stretching from Iceland to Turkey that all European nations have access to ... after we vote to leave we will remain in this zone.”

Former Tory MEP and founding member of the vote leave campaign, Daniel Hannan, declared that

“absolutely nobody is talking about threatening our place in the single market.”

Indeed, the current Prime Minister promised in the aftermath of the Brexit vote that Britain would retain access to the single market. How times and Tory policy have changed. The risk of Scotland crashing out of the European single market with no trade deal whatsoever has never been greater than it is right now.

Who knows? The UK Tory Government might strike a limited, last-minute low deal with the European Union—only marginally less damaging than no deal at all. As a third country, many goods that enter Scotland from the European mainland would still be subject to border checks, which, by the UK Government's own admission, would lead to delays as well as an increase in costs and bureaucracy for our businesses.

The people of Scotland did not vote for any type of Brexit and most certainly not for the cliff-edge scenario that we face in only two months in the middle of a pandemic. A direct consequence thereof is that a majority of Scots now want our nation to be an independent country. We could then rejoin the European Union and its single market of 450 million people.

In the meantime, it is our duty to prepare for that possibility by staying close to our European partners. The continuity bill will be a helpful instrument in allowing our businesses to keep pace with European directives and regulations where it makes sense to do so.

Dean Lockhart: Mr Gibson talks about Scotland rejoining the European Union. How will his Government reduce Scotland's fiscal deficit, which is currently around 25 per cent of gross domestic product, to the 3 per cent that the EU requires?

Kenneth Gibson: I have to say that the union dividend to which Scotland has been subjected is quite shocking. Mr Lockhart seems to believe that Scotland is a kind of parasitic nation, in which we live off the rest of the United Kingdom. We all know well that the UK Government is inept when it comes to the development and growth of Scotland's economy and to ensuring that we are a country that is able to play a full role in Europe. Two million people migrating out of this country from 1950 to 2000—that is Mr Lockhart's union dividend.

At a time of huge economic uncertainty, the bill will also provide businesses in Scotland and the EU with vital consistency and predictability. I therefore also welcome the Scottish Government's willingness to prepare regular reports about the EU's upcoming legislative priorities and updates on how those might affect Scotland's devolved competencies.

Yet, the continuity bill is about more than just economics: it will also help us uphold the EU's core values and principles, which we share. I am pleased that the bill seeks to maintain or enhance the EU's high environmental protection standards, after the Tories drag us out of the single market, the customs union and the European Court of Justice's jurisdiction.

As a country, we have world-leading ambitions when it comes to tackling global warming and will

never accept a post-Brexit race to the bottom in environmental standards. I welcome the fact that the bill seeks to establish a robust and independent environmental governance body—environmental standards Scotland—to secure a full and effective implementation of environmental legislation.

Of course, the current devolution arrangements mean that the Scottish Government will have the discretionary powers to maintain alignment only in matters that are devolved to the Scottish Parliament. Sadly, even in those devolved policy areas, the UK Government's unacceptable internal market bill poses a serious risk to our ability to maintain close alignment with EU standards in areas where we choose to do so.

I share the Finance and Constitution Committee's concerns that the internal market bill's market access principles might still undermine the use of the keeping pace power in the continuity bill. Its implementation could force us to accept the lower food or environmental standards that are set elsewhere, against the explicit wishes of the Scottish Parliament.

The continuity bill is clearly a helpful and necessary instrument in the reduction of the economic shock of a no-deal Brexit. It allows us to maintain close alignment with the European Union's standards in devolved areas wherein we consider it appropriate and practicable to do so. Yet, the UK Tory Government's disastrous internal market bill also makes it clear that, as long as we are part of the United Kingdom, the Scottish Parliament will be at constant risk of seeing Westminster overrule its decisions.

16:44

Stuart McMillan (Greenock and Inverclyde) (SNP): I welcome the continuity bill and know that constituents welcome it, too. Taking action now to protect the future is crucial to protection of the interests of people, businesses and our environment.

I had a discussion with a constituent last week, who was raising concerns about what will happen to our regulations in the post-EU environment. I told her about the bill and its purpose and she was genuinely pleased to hear that. Constituents are keen to learn that the Scottish Parliament is determined to focus on and work for the interests of every person who lives here.

The UK has taken the decision to leave the EU, although Scotland did not. It is therefore vital that Parliament does what it can to keep our standards as high as possible by aligning with our EU neighbours, rather than with the race to the bottom that is proposed by the Prime Minister and the Tory UK Government.

I thought it was telling, earlier this afternoon, when MSPs from across the chamber were asking Richard Lochhead questions regarding the impact of Brexit on Scottish further and higher education, that issues concerning the Erasmus+ programme, research funding and international researchers were key.

Members from all parties were asking genuine questions, so I found Edward Mountain's comments of a few moments ago to be quite strange. It was not Edward Mountain, but Alexander Burnett. I apologise. He was attempting to portray the bill as some type of grievance bill, but it certainly is not that. It is a bill to try to protect and help our population and some services in Scotland.

The continuity bill has become even more important as a consequence of things that have happened. The proposals in it are based on the existing strong institutional arrangements for climate change action, including the roles that are played by Parliament and the UK Committee on Climate Change. Our climate change legislation, which was agreed by Parliament in 2009 and 2019, provides a strong role for regular independent expert advice from the UK Committee on Climate Change. In addition to having the ambitious headline target of net zero emissions by 2045, we are the only country to have legally binding annual emissions targets, which means that reporting to Parliament and scrutiny of progress happen every year.

The submission from the Faculty of Advocates to the Environment, Climate Change and Land Reform Committee's call for evidence on the bill, which closed on 31 July 2020, was very helpful. It said:

"After the end of the transition period, some areas previously subject to EU regulation will continue to require regulation at the domestic level, in the interests of good government. Within those areas, the subject-matter may pertain to an area within devolved competence. A power to adopt EU measures appears to us to offer a vehicle for such necessary regulation of those areas in future."

I believe that Brexit should not mean a race to the bottom on environmental standards, which is why the Scottish Government is absolutely correct to keep pace with EU regulations. In addition, the UK is already facing the worst economic crisis in decades, yet the Tories are determined to crash out after the transition period this year, thereby imposing yet more uncertainty on Scottish businesses during a global health emergency. Add in the social and economic effects of Covid-19 on Scotland and we see that it is essential that some degree of certainty exists for our population.

Until such time as we become an independent country, it will be important that Parliament

maintains an international outlook. The bill does that, for the limited areas that it considers.

The Deputy Presiding Officer: We move to closing speeches.

16:48

Sarah Boyack (Lothian) (Lab): This has been an important debate. We need the continuity bill, but it is clear from the hard work of our committees that it needs to be improved, and that the Scottish Government should commit to supporting a more accountable approach in order that we keep to the democratic principle of important policies being tested by the Parliament, and not just by the Scottish ministers.

I agree with Liz Smith that the two Governments need to work together, but the UK Government also needs to respect our devolved Governments and international law. It is really striking how out of step the Tories have been in their speeches today. That makes the bill even more important in ensuring that we retain the high environmental standards that our country needs—a view that has been supported by members from across the chamber.

The debate gives us the opportunity to ensure that this devolved Parliament has the powers to maintain what are currently some of the highest environmental standards in the world, and to keep pace with improvements in standards in the EU. It also gives us the opportunity to decide which standards we wish to maintain in Scotland as Brexit pulls us out of the EU, which is creating huge economic uncertainty in the middle of the pandemic. The comments from Alexander Burnett were completely bizarre and somewhat ironic.

Part 2 of the bill sets out the framework for keeping pace with EU environmental standards. As Alex Rowley made clear, Scottish Labour welcomes the proposal for a new environmental governance body, but it needs to be independent of the Scottish Government. As several colleagues mentioned, climate change, individual cases and fiscal measures should all be included in the remit of that body, and exemptions in respect of investigations should be prevented—or should, at least, have to be made through primary legislation.

We should take on board the evidence from Scottish Environment LINK, which argued that the

"exemption of individual decisions overlooks the critical role that individual decisions have played in setting precedents in the past".—[*Official Report, Environment, Climate Change and Land Reform Committee*, 18 August 2020; c 33.]

We welcome the fact that the bill incorporates the EU's guiding environmental principles. However, as Labour argued in the previous debate on the continuity bill, and as Claudia Beamish said

this afternoon, we can still do more to strengthen the bill, with better regulation of human health impacts and environmental protection.

Having looked at the evidence, we feel that because some future changes in EU law could involve substantial policy considerations, this Parliament and our stakeholders must have the opportunity to scrutinise and influence the law as it will apply in Scotland. We believe that, in principle, new powers should allow the Government to keep pace with EU laws, and that we should be able to deliver the strong environmental standards that we want in Scotland. However, it is crucial that we ensure transparency and accountability, so changes need to be made when the bill comes back for stage 2.

I hope that, in summing up, the Scottish ministers will commit to looking at those issues. Those points have been raised by two committees, and there is clear cross-party support for them. It is important that we have the necessary democratic accountability and principles so that people who make representations to Parliament can see that there is transparency and that their views are being considered.

Members from across the parties made points about the importance of tackling climate change, biodiversity and making sure that we have strong environmental policies. It is critical that, in our future economic and trade relations, we have strong standards in Scotland, because that is what we want. It is also important that our Parliament debates the issues and their detail. Although we work with ministers, it is Parliament that needs to do that work. The work should be advised by ministers but not without the control of Parliament. That is a really important principle.

I thank the committee members for the work that they have done so far. I hope that ministers will reflect on the power of their scrutiny and work with MSPs to deliver the change that we need in order to strengthen the bill, because it could not be more important at this time. As we look at Brexit coming down the track, the bill is important for the future of Scotland.

16:53

Murdo Fraser (Mid Scotland and Fife) (Con): I remind members that I am a member of the Law Society of Scotland, as I will be referring to its evidence to the Finance and Constitution Committee.

As we have heard throughout the debate, the bill seeks to give the Scottish ministers the power to keep pace with EU legislation. That will apply after we have left the EU, so we are talking about laws that would be made by a supranational body

of which we are not a member and with which we have no direct relationship. We are talking about laws, in relation to which we will have had no input, being made by others.

As a number of witnesses have made clear in evidence to the Finance and Constitution Committee, that would put Scotland in the position of being a rule taker but not a rule maker. Widespread concerns about the approach were expressed in evidence to the committee. Dean Lockhart and Liz Smith both highlighted evidence from NFU Scotland, which is concerned that Scottish producers could be put “at a competitive disadvantage” if they are obliged to adhere to an EU regulatory framework for the environment, in so far as it relates to agricultural practice, when producers elsewhere in the UK are not.

In NFU Scotland’s view, that would cause “distortion” within the UK internal market, which is by far the biggest market for Scottish agricultural exports, and the primary source of the majority of agricultural imports.

That is not the only thing that is wrong with the bill. A host of witnesses who came before the Finance and Constitution Committee, including Professor Aileen McHarg, Professor Michael Keating and representatives of the Faculty of Advocates, the Law Society of Scotland and the NFUS, expressed concerns about the sweeping powers that are being given to Scottish ministers under the bill. Laws that are made in the EU, into which we have had no input, will be introduced in Scotland by Scottish ministers after very limited parliamentary scrutiny and with no scope for amendment.

There is one term for that: it is “power grab”—a term with which the constitution secretary is very familiar. It is a real irony that he is now guilty of the very act that he continually complains is done by the UK Government. I referred earlier to Henry VIII powers; that was a direct quote from Professor Tom Mullen, who is an adviser to the Finance and Constitution Committee and an eminent constitutional lawyer, who Mr Russell complains is patronising Parliament with his view. I suggest that Professor Mullen knows more about these matters than Mr Russell does.

Patrick Harvie (Glasgow) (Green): I am sure that Mr Fraser was not intending to suggest that the list of witnesses whom he cited are all calling for the bill to be abandoned, because that certainly is not their position. The Tories argue that the bill will open up regulatory divergence from the rest of the UK. That cannot be the case if he accepts the UK’s promise not to diverge from, or water down, EU standards. Which is it? Does Mr Fraser agree with the UK Government, or does he think that there will be regulatory divergence?

Murdo Fraser: That is an entirely false choice; we do not know what the EU is going to do in the future. We know that, in many areas, UK regulations are actually stricter than EU laws, but we do not know where the EU is going to go in the future. To take a blanket approach and adopt every single EU law, whether we have been consulted on them or not, would put Scottish farmers at a competitive disadvantage, which is precisely why the NFUS is concerned about the bill.

As the Finance and Constitution Committee heard time and again, if the Government wants to bring in major new policy changes, it has a mechanism through which to do that—the tried and tested mechanism of primary legislation. That allows for full consultation, discussion with stakeholders and proper impact assessments to be carried out. It also allows Parliament to amend the legislation, which will not apply to the secondary legislation that the bill will set up.

There was an opportunity to approach the whole issue differently—an opportunity for the Scottish Government to introduce legislation that would allow minor tweaks to existing EU laws to be made via secondary legislation. I do not think that anyone would have objected to a bill that did that.

What we have before us today is quite different, however. It gives sweeping powers to the Scottish ministers and seeks to align Scots law with the future law of the EU—a body of which we are not a member and with which we will not have a direct relationship. That will be damaging to Scottish business, as Dean Lockhart said, and to vital sectors including agriculture. For all those reasons, the bill should be rejected.

What we have before us today is bad law. There could have been consensus on a way forward that had the support of stakeholders through which to bring in a law that would allow ministers to make minor adjustments to existing legislation through use of regulations. Instead, we have a power grab by Mr Russell—the Henry VIII of this Parliament. It is a power grab that will damage the Scottish economy, that disrespects and takes power away from this Parliament, and which is fuelled by the SNP Government’s ideological obsession with the EU.

For all those reasons, Parliament should reject the bill.

16:58

Michael Russell: Let me start with the positives in the debate. I say to the other parties, with the exception of the Conservatives, that I was clear in my opening speech that I want to debate and discuss some of the key issues that the committees have identified. As has been my

approach to every bill that I have ever brought to the chamber, I acknowledge that the bill before us can be improved and developed, and we will find a way to do that. I note the points that have been made by a variety of members across the chamber. The stage 1 reports by all the committees have some important issues within them on which we can respond, and we will do so.

We will not agree on everything. One thing that has been common to every bill that I have ever been involved with is that there is always a discussion about the levels of subordinate legislation—a matter that seems entirely arcane to most people outside the chamber, but I know that it is very important to members of the Parliament. I think that we will have that discussion, and I think that we will find a way through it.

In the few minutes available to me, I want to reflect on the extraordinary speeches from the Conservatives. Sarah Boyack used that word, and she was quite right to do so.

Let us start by remembering why we are here. This chamber passed a continuity bill by an overwhelming majority. It was a bill that had keeping pace powers and, with one very small exception that was not in this area, entirely within the competence of this Parliament. The Supreme Court found that the UK Conservative Government had changed the law to outlaw that bill. We are here, repeating what we have already done, because the UK Conservative Government—backed by a minority in this chamber—managed to overrule a piece of legislation that had been passed by an overwhelming majority.

In addition to that, I say to Alexander Burnett that we are here—using the valuable time that he would spend with his constituents—because of the UK’s Tory Government. Therefore, I hope that he will take the issue up with his colleagues in the UK Tory party and blame them for the fact that we have had to come back here.

Mr Burnett should blame them for something else, too. He talked about the waste of time and money that Brexit has been. Indeed, I agree with him—to the tune of £200 billion, which has been the cost of Brexit. I agree with him because I have spent a great deal of the last four years engaged in it, and I would much rather that I had not been, because the people of the country in which I live voted against Brexit. I have had to spend that time—as we all have—on something that goes against the wishes of our constituents. He should, please, not remind me of wasted time. Instead, he should go and remind his Conservative colleagues.

I have to say that I have a life full of enjoyable instances and excitements, and I will go straight from this debate to a meeting of the joint

ministerial committee on EU negotiations. During that meeting, I will, no doubt, hear many of the arguments that have been put by the UK Tory party already, and it will allow me a further opportunity to wonder—as I have spent this afternoon doing—at the current state of the Tory party.

Mr Lockhart's contribution reminded me of a line from "Alice Through the Looking-Glass":

"If I had a world of my own, everything would be nonsense."

That is because he is living entirely in a world of his own. He is living in a completely upside-down world.

Dean Lockhart: Will the cabinet secretary take an intervention?

Michael Russell: No, thank you. I am standing the right way up and will continue speaking on this matter.

Allow me to deconstruct the nonsense that I heard earlier. There are three particular items that I will deconstruct. The first one—I have to raise this point, because it is of great significance to this chamber—is that Mr Lockhart has now twice contended that the United Kingdom Internal Market Bill bases its powers on the frameworks and is there to support them. The *Official Report* will make that entirely clear. That has happened twice now; it happened in this debate and in a previous debate. I asked Mr Lockhart to correct the *Official Report*, because what he said was not true: the bill does not refer to the frameworks in that way. However, he repeated that this afternoon. He doubled down on an assertion about the internal market bill that is not true.

Dean Lockhart: Will the member take an intervention?

Michael Russell: No, I will finish this point and then I will give way.

That is a very serious matter, because that bill is of enormous importance. It is taking powers away from this Parliament and we must tell the truth about it. Please, Mr Lockhart, tell the truth about it.

Dean Lockhart: This is a debate about the continuity bill, so will the cabinet secretary respond to comments from European Union officials that the legislation will not be effective, will be difficult to implement and will not apply to Scotland? That has come not from us or from the UK Government, but directly from the European Union.

Michael Russell: First, there is the issue of the internal market bill. I have given Dean Lockhart the opportunity to correct something that he has said twice in this chamber, and it has not been corrected. Let the record show that.

Secondly, there is the issue of jobs and the retention of them. The argument from the Conservatives, all afternoon, has been that high standards cost jobs. Their argument is that, if we lower those standards and become a deregulator—because that is what the argument is in favour of—jobs will be created in Scotland. However, that is not true—it would be utterly counterproductive and would mean throwing away all the advantages that we have to create jobs, and they simply would not be created. That is also an area on which the chamber has been woefully misinformed this afternoon.

Then there is a third, very significant, issue: the issue of this Parliament being made a rule taker. How can any Conservative deny that who has in front of them the internal market bill, which is the most massive undermining of devolution since its beginning? Members should not take my word for it; they should take the word of Lord Hope, the former Deputy President of the UK Supreme Court, the word of the Anglican primates across these islands or the word of any of the members of the House of Lords who have spoken on it. Members can take their word for it, and yet what they say is apparently not true, because Mr Lockhart says that it is not true. A rule taker—that is what the Conservative UK Government seeks to make this Parliament. It wants to undermine and take away our powers to do things and to make rules.

Having heard the debate, I say that the Scottish Conservative Party is in an utterly woeful state—in fact, worse than woeful, because what we have heard is an attempt to defend the indefensible. We are debating this bill because a previous bill was sabotaged by the UK Tory Government, and with the consent of the Tory party in Scotland. Now black is white and white is black.

I am grateful to the members who have shown their commitment to taking the bill through. We will take it through, but it will be part of a process of saying to the people of Scotland that we have the right, in Scotland, to make our own choices about what we do. We will not be told not to do that; we will not be cheated out of that by people who care nothing for this chamber and everything for their colleagues south of the border. It is a shameful position and it will not stand.

The Presiding Officer: That concludes our debate on the UK Withdrawal from the European Union (Continuity) (Scotland) Bill.

Points of Order

17:06

Jamie Greene (West Scotland) (Con): On a point of order, Presiding Officer—*[Interruption.]*—Yes, it is a real one, thank you for asking.

On Tuesday, Parliament rightly debated the Scottish Government's plans for a new, tiered approach to tackling Covid. I am pleased that those important measures received cross-party support. Today, shortly before First Minister's question time, the Government announced the list of tiers that our respective local areas will fall into. From next week, those new tiers will place restrictions on millions of people in our constituencies and regions, and many thousands of local businesses will be affected. Inverclyde, in the region that I represent, was placed in tier 3 despite all of its current indicators being at levels 1 and 2.

People rightly have questions of us, and we, as members, rightly have questions of the Government—*[Interruption.]* I would appreciate it if members listened to the point that I am making.

The Presiding Officer (Ken Macintosh): Let us hear the member make the point of order.

Jamie Greene: Presiding Officer, I appreciate that you extended First Minister's question time today to accommodate questions from members and also that the First Minister expressed a willingness to take as many questions as she could. I thank her for that. However, by the close of that session, many members, including some on the Government benches, still had important questions to ask the Government about the measures that will be introduced. We will not now get the opportunity to ask the Government those important questions before the measures come into force on Monday.

Presiding Officer, what additional steps will you or parliamentary officials take to ensure that, when such announcements are made, every member has a legitimate right to ask questions or to raise concerns and that they will be given the opportunity to do so? That is the least that we can offer those who are affected by the decisions that we make here.

The Presiding Officer: Such matters are procedural questions for the chair and, more properly, for the Parliamentary Bureau. The point of order that the member makes is similar to the one that was made by Johann Lamont following FMQs.

The bureau is actively considering the process by which the response to Covid is scrutinised. The current process is that the Government proposes

a programme to the bureau and the bureau agrees that programme and proposes it to the Parliament. The Parliament then votes on the business programme and allocates time. The amount of time that is allocated to scrutiny is in members' hands. That subject will be on the agenda on Tuesday. I encourage all members to speak to their business managers if they do not have enough opportunities to put questions or if they would like the opportunity to attend committees or to improve the scrutiny process in some other way.

I hope that that addresses the member's point.

Neil Findlay (Lothian) (Lab): On a point of order, Presiding Officer. Mr Greene and Johann Lamont have raised pertinent points. *[Interruption.]* If Government backbenchers do not like that, then that is tough. We have every right to raise questions and points on the floor of the Parliament on behalf of our constituents.

The issue that we have is that the new impositions have been brought in before members have had any opportunity to ask questions about them. I appreciate your saying that the issues are being discussed, but we have been raising them for eight months and they continue to be discussed. New laws, new guidance and new regulations are brought in that affect not only hundreds of thousands but millions of people, who are ramming our inboxes every day with questions about a range of issues, but we do not have the opportunity to scrutinise thoroughly what the Government is doing before measures are implemented. That is the key point that members are raising.

The Presiding Officer: I thank Mr Findlay. I do not want to prolong the discussion, but this Parliament and the United Kingdom Parliament have passed laws that give the Government executive authority to act urgently to bring into force emergency measures, which is why the Government has used the affirmative procedure. However, those matters are causing some concern among a wide variety of members and the general public, which is why they are on our agenda right now. I suggest to all members who have views on the matter that they bring them to the attention of the Parliamentary Bureau through their business managers, and we will discuss them. I hope that we will be able to move matters forward in a constructive manner.

UK Withdrawal from the European Union (Continuity) (Scotland) Bill: Financial Resolution

17:11

The Presiding Officer (Ken Macintosh): The next item of business is consideration of motion S5M-22723, on the UK Withdrawal from the European Union (Continuity) (Scotland) Bill financial resolution.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the UK Withdrawal from the European Union (Continuity) (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.—[*Ben Macpherson*]

The Presiding Officer: We will vote on the motion at decision time.

Decision Time

17:12

The Presiding Officer (Ken Macintosh): The first question is, that motion S5M-23163, in the name of Michael Russell, on the UK Withdrawal from the European Union (Continuity) (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division. As members know, we will have to allow all members, including those online, to access the voting platform, so I will suspend Parliament for a few moments to allow members to do exactly that.

17:12

Meeting suspended.

17:16

On resuming—

The Presiding Officer: We will go straight to the vote. This will be a one-minute division.

The vote is now closed. If any member does not think that they have been able to vote, please let us know either through a point of order or online.

The Minister for Community Safety (Ash Denham): On a point of order, Presiding Officer. I was unable to vote this evening due to a technical issue. I would have voted in favour.

The Presiding Officer: Did I hear you correctly that you would have voted for the motion?

Ash Denham: That is correct.

The Presiding Officer: Thank you very much, Ms Denham. I will make sure that your name is added to the voting roll.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)

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

Against

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

The Presiding Officer: The result of the division is: For 87, Against 27, Abstentions 0.

Motion agreed to,

That the Parliament agrees to the general principles of the UK Withdrawal from the European Union (Continuity) (Scotland) Bill.

The Presiding Officer: Our final question is, that motion S5M-22723, in the name of Kate Forbes, on a financial resolution on the UK Withdrawal from the European Union (Continuity) (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the UK Withdrawal from the European Union (Continuity) (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.

Meeting closed at 17:20.

This is the final edition of the *Official Report* for this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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