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Scottish Parliament

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[The Deputy Presiding Officer opened the meeting at 13:00]

Place-based Economic Development Zones

The Deputy Presiding Officer (Christine Grahame): Good afternoon and welcome to this virtual meeting of the Scottish Parliament. The first item of business is a statement by Ivan McKee on the contribution of place-based economic development zones. The minister will take questions at the end of his statement.

The Minister for Trade, Innovation and Public Finance (Ivan McKee): Today, I have published “Scotland’s Economic Performance - The contribution of place-based economic development zones”, which is an analysis of the findings from a survey conducted at the end of 2020. I welcome the opportunity to set out some of those findings and the next steps to Parliament.

The survey sought the views of businesses, local authorities and other partners on how we might develop future plans to nurture Scotland’s regional and local economies. I thank everyone who responded to the survey.

The survey was conducted for two principal reasons. First, in mapping out the future of the current network of 16 enterprise areas across Scotland beyond March 2022, we wanted to obtain views on the efficacy of the enterprise area model and how it, and other place-based economic development initiatives, could be improved to support delivery of our fair work first and net zero agendas. Secondly, we wanted to obtain views on the merits or otherwise of United Kingdom Government plans for free ports and how they might work in the Scottish context.

The Scottish Government is clear that all our efforts to develop Scotland’s future economy must enable an inclusive and sustainable recovery from the impact of the Covid-19 pandemic, with wellbeing and fair work at its heart. The hallmarks of that recovery will include the creation of new jobs, good jobs and green jobs, which we adopted as a national mission in our programme for government.

For now, Scotland finds itself outside the European Union and denied all the benefits of being within the single market and the customs union. The UK Government has cited the creation of free ports as something that is made possible by Brexit—that is, a new ability following our

collective, enforced departure from the EU. Its narrative ignores the inconvenient fact that free ports operated in the UK while we were in the EU, and that they still exist across the EU. In that sense, they are being oversold as a Brexit dividend.

With that as our backdrop, the Scottish Government will leave no stone unturned in seeking to create a technology-enabled, net zero, inclusive wellbeing economy that delivers for every place and community in Scotland.

The very helpful returns to our survey have helped to frame our thinking and will be used to inform the Scottish Government’s policy position. The approach that I am setting out today is one that is informed by a range of opinion and knowledge from Scottish stakeholders.

In general, respondents were supportive of the development of a tailored Scottish approach to the free port model, tied to Scottish Government policy priorities around inclusive growth, fair work and the just transition. Some of the comments highlighted Scotland’s natural advantages around renewable energy and net zero transition activity and reinforced the need to create high-value jobs. Some respondents also reflected on the impact of Covid-19, in terms of the impact on current activity and timescales for progress in that area and the importance of new interventions to help with economic recovery.

We are already taking a range of initiatives to grow regional and local economies. We provide incentives and assistance to encourage cluster building through the enterprise area network. The importance of building on the strengths of places was reinforced in “Shaping Scotland’s Economy: Scotland’s Inward Investment Plan”, which identified opportunities for cluster building based on our strengths in high-technology, high-productivity and high-wage sectors.

Every part of Scotland has a commitment to new investment through the city region and growth deal programme. Many deals are in delivery, with communities beginning to benefit from a commitment of more than £1.9 billion of Scottish Government investment. We have worked with the UK Government and our regional partners to assemble a £5 billion programme over the next 10 to 15 years. Building on that partnership working, we have considered whether the UK Government free port proposition can fit our model of economic development by helping to drive inclusive and sustainable growth in Scotland.

The reputation of free ports across the world is mixed, with concerns having been raised about deregulation and the risks of criminality, tax evasion and reductions in workers’ rights. That is not a model nor an approach that the Scottish

Government will sign up to or allow here in Scotland.

We have considered carefully those risks and the views that were shared through our survey, and I can confirm that the Scottish Government, having looked at the available evidence, has developed a proposal that adapts the published UK Government proposition to make it fit the Scottish context. We will take the UK Government's free port model and apply Scotland's values and priorities to it, so that it meets our ambition to deliver a net zero economy and uphold the highest standards of environmental protections and fair work practices.

I can announce that Scotland will turn free ports into sustainable and fair green ports. We will not engage with any economic model or mechanism that allows for a race to the bottom. Instead, the Scottish green port model will be an exemplar, adopting best practice to help us to deliver our net zero and fair work principles alongside support for our regeneration and innovation ambitions.

The designation of a green port, or operating within such a zone, will come with benefits and incentives. It is therefore right that it also comes with responsibilities to uphold high standards, put into practice our fair work principles and work towards a just transition to net zero.

We are conscious of the need to avoid economic displacement within and from Scotland. Scotland's model will seek to anchor our newly designated economic development and trading zones. They will be designed to support the development of innovative industries that are committed to developing new green technologies and fair work opportunities, and to embedding themselves in the local communities in which they are based.

I am confident that we can align key elements of the UK model with our Scottish values to make sustainable and fair green ports work. The Scottish green port model will include the following key features. Clear conditions will be applied to ensure that such zones contribute to sustainable and inclusive growth. The conditions will centre on specific commitments being made by applicants, and subsequent obligations will be placed on successful applicants, which will be linked to a dual commitment to supporting decarbonisation and fair work. The conditions will include payment of the real living wage and the adoption of the Scottish business pledge by the operator of the zone and by all new businesses operating within the zone boundary that benefit from any governmental assistance through devolved or reserved tax incentives.

Applicants or applicant partnerships and new beneficiary businesses that are set up in the zone

will also be expected to demonstrate how they are contributing to Scotland's just transition to net zero emissions and a low-carbon economy—for example, by meeting certain standards related to reductions in greenhouse gas emissions and waste. Under the model, applicants will be required to set out a robust and ambitious transition plan to show how they will contribute to a just transition towards a net zero economy.

As is the case with the UK Government's model, the incentives and support offered to Scottish green ports will be a mixture of reserved and devolved tax benefits and other support. Devolved tax benefits, which might include non-domestic rates and land and buildings transaction tax reliefs, will be designed specifically for the Scottish green port model, taking into account the complementary reliefs that are on offer from the UK Government.

From my discussions with UK Government ministers, I am confident that we can realise our proposition for sustainable and fair green ports and that we can create something inspirational. We can set the standard in accelerating decarbonisation, promoting job creation and fair work, and sending out a signal about Scotland's commitment to being a dynamic, open and principled trading nation, with fair work and the planet's future at the top of our priority list.

Equally, I am clear that we will not allow any free port to be created in Scotland that enables or allows potential tax evasion. I have raised that specific issue with the Chief Secretary to the Treasury. It will be essential that the UK Government plays its part by including firm legislation and measures to ensure good tax behaviours. More widely, our Governments will want to work together on compliance, governance and management of performance related to the operation of Scottish green ports and the business that is conducted within their boundaries. I am happy to keep the Parliament updated as that work develops.

Having published the responses to our recent survey, our next step is to publish an application prospectus for green ports in Scotland for potential bidders. I aim to make that available for interested parties this quarter so that we are in a position to dovetail the establishment of the zones with the UK Government's plans.

Place-based economic development has significant potential to grow our economy sustainably in communities across Scotland, not least through our cluster-building approach to key sectors. Work in that regard is under way and is being marshalled in particular through the regional economic partnerships and Scotland's inward investment plan.

Our green ports proposal also plays a role in that respect. We will now seek to optimise key aspects of the UK Government's free ports model, principally around innovation and regeneration. In particular, we will ensure that Scottish green ports help to drive desirable investment and inclusive growth in a way that is focused on the Scottish Government's twin ambitions of creating a net zero carbon economy and promoting fair work. For those reasons, this Government now intends to move forward with our proposals to secure the development of Scotland's first designated sustainable fair green ports, based on the criteria that I have just outlined, and we would welcome the Parliament's support in that endeavour.

The Deputy Presiding Officer: The minister will now take questions on issues that were raised in his statement. I can take us up to 1.30 pm with that.

Maurice Golden (West Scotland) (Con): I thank the minister for advance sight of his statement.

This is a humiliating climbdown for the Scottish National Party. Just a few months ago, Ivan McKee was claiming that free ports were a "shiny squirrel", and the SNP conference backed a motion slamming them, so this screeching SNP U-turn is very welcome. It seems that the SNP has finally realised that businesses are desperate to reap the benefits of free ports.

For months, the Scottish Conservatives and the UK Government have said that the SNP should stop playing politics and start working constructively to take the proposals forward. Yet again, the SNP has treated the proposals as an afterthought and ignored the benefits in order to make political points. Only now has it finally backed down.

[*Inaudible.*]*—hope that that will help the SNP Government to improve its poor climate change record. The recycling rate is now lower than it was in 2016, and transport emissions—[Inaudible.]—jobs have never materialised.*

The Deputy Presiding Officer: Mr Golden—

Maurice Golden: Can the minister say whether the proposals for free ports will contain specific targets to reduce waste and greenhouse gas emissions?

The Deputy Presiding Officer: I am sorry, Mr Golden. My microphone was muted; I say to the engineer that it should not have been. Unfortunately, delivery of your question was a bit intermittent, so I do not know how much of it the minister managed to catch.

Minister—did you manage to catch much of that?

Ivan McKee: I caught enough, Presiding Officer.

The Deputy Presiding Officer: Okay.

Ivan McKee: To be frank, I am very surprised that Maurice Golden has not taken the time to read what we have actually said about free ports or green ports over the past few months. If he had done so, he would understand very well the Scottish Government's position, which is that there is potential for economic development through adoption of a model that is designed—as I have just set out—to support and align with the Scottish Government's economic priorities.

We have also made it clear—I made it clear in my statement that nothing has changed in this regard—that we understand that the UK Government is trying to position the policy as some kind of antidote to Brexit. As I said in my statement—as Maurice Golden would know, had he been listening—that is utter nonsense. The UK had free ports while it was in the EU; 80 free ports currently exist across the EU. The fact is that the UK Government is to some extent using the policy as a mechanism to take attention away from the disaster of its Brexit policy, which Maurice Golden supports.

We are considering practical measures, and we have taken the time to go out and engage with businesses. We have conducted a survey, and I and my officials have engaged extensively over a period of time in order to understand the practicalities regarding which parts of the free port model could be made to work in Scotland and which could not. My statement clearly identified which parts of the model can work, and what we need to do to adapt it to Scotland's economic priorities, and to focus it on our fair work agenda and the net zero transition. Those two aspects do not appear in the UK Government's model. We have gone beyond that model on those aspects in order to make it clear that green ports will be exemplars of fair work practice and of the transition to net zero, which is central to our economic development.

I make no apology for using the ports as a mechanism to support our clear focus on cluster building. Again, I say that if Maurice Golden had read our inward investment plan, he would understand exactly where the proposal is coming from and how it is centred in our economic development policies.

To answer Maurice Golden's question, there will be measures within the model that is laid out in our bid prospectus that will require businesses and operators to comply with reductions in waste and greenhouse gases. That does not appear in the UK Government's free port model.

The Deputy Presiding Officer: A lot was said there. I want shorter answers. Many members want to ask questions.

Alex Rowley (Mid Scotland and Fife) (Lab): I thank Ivan McKee for advance sight of his statement.

Labour will work with the Scottish Government to support the endeavours that were set out in the statement. Some dangers could arise from free ports: for example, regions might compete against each other in a race to the bottom, as has happened in some countries. It is important that Parliament comes together to put Scotland's interests first. That is why we will work with the Government.

Does the minister understand that trade unions and workers see much of the talk about green jobs and green ports as mere rhetoric, because we do not see the high-quality jobs that he talked about materialising? We need to see some progress in that regard. Does he understand why people are concerned?

Does the minister also understand the important roles of local economic development services and local authorities? Local economic development services have been cut to the bone, so their capacity to drive development must be better supported. Is the minister willing to consider supporting councils to establish regional skills academies across Scotland, in order to ensure that our people have the skills to get the jobs?

The Deputy Presiding Officer: We want shorter questions from now on. We are using up a lot of time.

Ivan McKee: I thank Alex Rowley for his positive contribution on the Scottish green ports model. I am willing to work with anyone in Parliament and across Scotland.

Mr Rowley is right that there are issues to address. We must ensure that the green ports do what we want them to do, and that they are exemplary in respect of fair work and our transition to net zero emissions. The bid prospectus that we are developing will make that clear and will include requirements for businesses and operators to meet our standards. I am happy to work with members to ensure that that happens.

I understand that unions and workers might be concerned by what they have seen of free ports in other jurisdictions. We are aware of those concerns and we are determined to ensure that what they have seen is not the case in Scotland. I am happy to work together with others to ensure that our standards are met.

Kenneth Gibson (Cunninghame North) (SNP): I welcome the minister's statement. Will Hunterston be considered as a potential green

port, given the First Minister's commitment to developing green energy and the circular economy there? Also, how will Scottish ministers ensure protection of the marine environment at our green ports?

Ivan McKee: Hunterston, like any other part of Scotland, can submit an application when we open the bidding process. I look forward to seeing any proposal that might come from Hunterston, along with many other proposals from across Scotland. The green focus that Kenny Gibson mentioned will chime with the requirements that will be set out in the bid document.

I assure him that there will be no reduction in existing marine protection standards, which will apply in order to ensure that Scotland's green ports do not adversely impact on the marine environment.

Murdo Fraser (Mid Scotland and Fife) (Con): I welcome the Scottish Government's change in approach. The analysis of survey responses that has been published today shows that non-domestic rates relief was the most beneficial of all previous interventions. Given that non-domestic rates are a wholly devolved tax, can the minister outline how he intends to offer rates relief to support development of new free ports and to attract businesses to them?

Ivan McKee: Again, I am surprised that Murdo Fraser has not heard what has been happening in this conversation over the past few months. If he had, he would understand much better the Scottish Government's position.

On Murdo Fraser's question about NDR, I highlighted that aspect in my statement. We will, recognising what the UK Government has done for its free port model, work through the details of incentives and how they will be positioned to support the green port model in Scotland. The details will be articulated in our bid document, when it comes out.

John Mason (Glasgow Shettleston) (SNP): The minister said that there are potential tax incentives—both reserved and devolved. Does that mean that the Scottish budget will be reduced and that the Scottish Government will have, for example, to reduce the national health service budget to match the tax incentives?

Ivan McKee: No, we will not do that. The point of economic incentives—be they tax incentives, incentives for businesses that are delivered through economic development agencies or other mechanisms to support business—is that businesses grow as a consequence of them and the tax take increases, too. That model applies to our enterprise areas and to any intervention that we make to support inward investment or supply chains in Scotland.

John Mason can rest assured that the purpose of the proposed activity, as with our other economic development activities, is to increase the tax take by targeting incentives where they will make most difference, and by ensuring that we have, as a consequence, more rather than less money to spend on public services in Scotland.

Rhoda Grant (Highlands and Islands) (Lab): The cabinet secretary might be aware of a proposal from Cromarty Firth and Moray Firth ports that includes 12 stakeholders. They promise high-wage and high-quality jobs, through creation of a renewable energy hub that would benefit the whole of Scotland. The jobs will be good new green jobs. Will the Scottish Government favour bids that would deliver high-value jobs and growth for Scotland while tackling climate change, over bids from locations that primarily import goods and are typically dependent on a low-wage economy?

Ivan McKee: That is a good question. Our intended direction of travel is clear. I articulated clearly that the model is a green port model and that the intention is to attract investment and businesses and to grow good green jobs by making use of Scotland's tremendous assets, technology and skills in renewable energy and many other aspects of the transition to net zero. Our bid prospectus will set out our focus on those requirements. We expect bids to be for green ports so that they comply with those requirements. They are the criteria that we will favour in the bid process.

Mark Ruskell (Mid Scotland and Fife) (Green): Simply renaming free ports "green ports" does not guard against the race to the bottom in standards. In its submission to the survey, Forth Ports identified a new gas-fired power—*[Inaudible.]*—as a key net zero project. Will the minister—*[Inaudible.]*—the like of Forth Ports to build whatever they want? How are those powers linked to democratically decided local development plans?

The Deputy Presiding Officer: Minister, can you manage a reply, given that the sound was breaking up?

Ivan McKee: I caught only some of that, unfortunately. I do not know whether Mark Ruskell wants to repeat his question.

The Deputy Presiding Officer: I am sorry, but I want to get other members in. If you cannot answer the question—*[Inaudible.]*

Ivan McKee: I will answer based on what I heard.

It is important to be clear that referring to green ports is not just a semantic renaming exercise and semantics. Mr Ruskell will see that if he reads through the document. I am happy to meet him

and other members to put their minds at rest on the matter. Central to our proposition is the requirement to meet fair work criteria. Payment of the real living wage and signing up to the Scottish business pledge are red-line criteria. It is, therefore, the opposite of a race to the bottom; it is a climb to the top and is about working with businesses that are committed to meeting those requirements.

Clearly, if any individual port authority or other enterprise in Scotland wants to submit a proposal, we will look at it in the context of the criteria that will be set out in the bid document. As I said, the transition to net zero and enabling, supporting and implementing fair work practices are central to that.

The Deputy Presiding Officer: If Mark Ruskell puts his full question in the chat box, that will be handy, because we can forward it to the minister.

Willie Rennie (North East Fife) (LD): The UK Government published its bidding prospectus in mid-November last year, and the period for applications closes in a couple of weeks. The Minister for Trade, Innovation and Public Finance hopes to publish the application prospectus in the next quarter, with no deadline for applications. How will he catch up?

Ivan McKee: I think that Willie Rennie must have misheard me. The application process—the bid document—will come out in this quarter, in March, and will run for three months. We will receive bids during the summer, then the incoming Government will take a view on how to progress matters.

We are conscious of the timetable to which the English free port model is running. I am also aware that businesses will make decisions on where they will go based on fundamental considerations. I believe that we will be close enough to the timetable that applies to the rest of the UK for that not to be a material factor in investors' and businesses' consideration of our model, when it comes to making big decisions about long-term location of their activities.

Stuart McMillan (Greenock and Inverclyde) (SNP): Can the minister provide any more information on how Brexit will affect free ports, particularly green ports? Will the ports address any of the challenges that are currently faced by Scotland's ports?

Ivan McKee: Let me be clear—I have said this already, but I will say it again, because it is important. The free port model cannot and will not undo the damage that is being caused to Scotland by the UK leaving the world's biggest single market and customs union.

The impact of Brexit on businesses, ports and Scottish exporters is significant; in many cases, the impact will be critical. We continue to press the UK Government to fix the problems and to do whatever it can to resolve the difficult challenges that are being placed in the way of Scottish businesses.

I believe that our model will support Scottish economic development along the lines that I have described. Our green port model is focused on the journey to net zero, on delivering fair work and on supporting regional cluster building across Scotland. However, let me make it very clear that that does not fix the vandalism that has been done to Scotland's economy by the UK Government through the Brexit process. It will help to resolve only some of the issues.

The Deputy Presiding Officer: I call Graham Simpson. If I have time, I will call Rona Mackay next.

Graham Simpson (Central Scotland) (Con): I, too, am pleased that the minister is now on board with the programme on free ports. Is he putting a limit on the number of free ports in Scotland? When does he expect the first one to be in operation?

Ivan McKee: Graham Simpson is another member who, unfortunately, has been sleeping through this process. If he had watched the various evidence sessions and followed our commentary on the issue, he would know that we have been watching the process closely in order to understand how we might take what the UK Government comes up with and make it work in the Scottish context.

However, I will say it again, because it cannot be said often enough: Scottish free ports will have commitments to fair work, with hard obligations on paying the real living wage and signing up to the Scottish business pledge. Such commitments do not appear in the UK Government model, neither does the commitment to net zero. Those commitments are essential to our green port model.

On the timescale, I have already laid out what will happen. We will release the bid prospectus this quarter, we will get responses from businesses in the following quarter, then we will lay out a more detailed timetable for implementation. Of course, that will be after the election; the incoming Government will progress that work based on applications that are received. That will be done as fast as it can be done.

The Deputy Presiding Officer: I am afraid that I do not have time for either Rona Mackay or Richard Lyle. I apologise. We have run out of time, and there is no extra time available this afternoon.

Rural Economy (Impact of European Union Exit)

The Deputy Presiding Officer (Christine Grahame): The next item of business is a statement by Fergus Ewing on the impact of leaving the European Union on Scotland's rural economy. The cabinet secretary will take questions at the end of his statement, so there should be no interventions or interruptions.

13:29

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): Just three weeks have passed since Scotland was taken out of the European Union against our will, but we are already seeing catastrophic impacts across all sectors in our rural economy. The United Kingdom Government's trade and co-operation agreement with the European Union has erected significant barriers to trade for Scottish producers and businesses. Already, real economic harm is being caused and many people are now extremely worried about the short- and long-term effects on their businesses and sectors.

Members will be aware of the challenges that Scottish seafood producers are facing. There have been similar challenges in the meat sector, where new trade barriers have led to significant reductions in the volume of Scottish beef and lamb exports to Europe. The Scottish Government and Scottish food and drink stakeholders repeatedly warned the UK Government that businesses needed a grace period to prepare for such fundamental changes. Sadly, the UK Government continually ignored those warnings.

Expecting businesses—particularly small businesses—to adjust, within days, to complex new administrative burdens and costs would be a big ask at the best of times; to expect them so to do when they are reeling from the impacts of the Covid pandemic is simply unconscionable. We should not forget that behind the headlines, the commentary and the images that we have seen represent real people upon whom families, employees and communities depend. Businesses that have taken generations to create and nurture are being brought to their knees, practically overnight, by a callous Tory Government that seeks to point the finger of blame at anyone and everything instead of owning responsibility for the Brexit chaos.

Therefore I will now bust a few Tory myths. The Scottish Government and our partner agencies have done, and continue to do, all that we can to help businesses to prepare for such wholesale change. Scottish export hubs were properly resourced at the end of the transition period, and

Food Standards Scotland delivered all the export health certificates that businesses had requested. To ensure that rising demand is met, we have increased the number of staff at the hubs, in line with our resourcing strategy. Food Standards Scotland continues to work closely with businesses and UK Government departments to support exporters in arriving at ports fully prepared for inspections and the new, Brexit-driven export bureaucracy.

However, sadly, we cannot fix everything. A whole new category of goods, now known as prohibited and restricted goods, is being impacted by Brexit. Those were previously traded freely with the EU, but Scotland and Great Britain can no longer export a wide range of produce there. We cannot export chilled mincemeat, meat preparations or mechanically separated poultry. Trade in category 1 and category 2 animal by-products is largely prohibited. Honey bees can no longer be exported to the EU or imported to Great Britain. Wild-harvested lobsters for on-growing cannot be exported. Some of those products, such as seed potatoes, are of great economic importance to Scotland. For months now, we have fought to secure equivalence to allow our highly respected Scottish seed potatoes to continue to be traded with EU states. Some, such as our good friend Ireland, are hugely dependent on receiving that stock. I have made it clear to George Eustice, the Secretary of State for Environment, Food and Rural Affairs, that should we fail to gain equivalence we expect Scottish seed potato exporters to be compensated for their losses.

However, it is not just trade with the EU that is being affected: the vast majority of such prohibitions and restrictions apply to trade in goods from Great Britain to Northern Ireland, thanks to the Northern Ireland protocol. At the last minute, the UK Government secured a derogation for some of the chilled meats that I have mentioned, which had been ordered by big retailers—but only for six months, and there is no certainty about what will happen after that.

Prohibited and restricted meat products are not included in the three-month grace period for export health certification. Their export is already causing issues, particularly for groupage exports. Last week, UK supermarket chiefs warned that further disruption was inevitable if border requirements dating from April were not simplified or the grace period for EHCs not extended. Many less fortunate businesses, which were not afforded such derogations, are struggling with the required export and health certification.

New health requirements have seen a halt to Scotland's trade in sheep to Northern Ireland. Sheep cannot be moved unless they meet the scrapie monitoring requirements; that takes four

years at a minimum and comes at a cost to the farmer.

The UK Government blithely dismisses all those impacts as “teething problems”, hoping that no one realises that the changes are permanent and will create permanent extra costs and burdens on our businesses, threatening jobs and livelihoods. However, as James Withers of Scotland Food and Drink pointed out yesterday, what we are reaping at the moment results from a kind of complacency and incompetence in thinking that, somehow, we were ready just to flick a switch.

The Tories have broken many Brexit-related promises, the worst of which is the promise that we would all be better off. That did not even make it beyond the Tory Government's first spending review. It promised at least to match EU funding, but as matters stand Scotland is set to lose out on £170.1 million of equivalent common agricultural policy funding through to 2025 that rightly should be spent on our producers and rural communities.

We also have a right to expect £62 million for marine and fisheries funding, instead of the paltry £14 million that has been promised. We have a right to expect our share of the £100 million that was promised to sweeten the awful deal for fisheries to come directly to Scotland, for us to determine our investment priorities and needs.

I have called repeatedly for UK ministers to compensate the seafood sector for the disaster that it is facing. That disaster sits whole-heartedly with the Tories and their failure to secure anything like a satisfactory Brexit deal. The recent UK Government announcement on compensation for the sector shows what can be achieved when we keep the pressure on, but it is merely a sticking plaster. It provides short-term relief for only a few, and the conditions attached to the £23 million that was announced on Wednesday mean that few will qualify. It does nothing to fix the failing information technology systems, which are, in effect, being tested in real time, at the expense of our exporters.

However, we will not give up. I, together with the Minister for Rural Affairs and the Natural Environment, Ben Macpherson, will keep the pressure on. We will keep working with businesses and stakeholders to find and implement solutions and to identify opportunities for recovery. We will continue to provide resources and expertise to fix what we can and we will keep fighting to protect and promote the interests of everyone in rural and island communities, using all the powers that we have at our disposal.

However, there is no denying that the rural economy is in peril, not least from the very real and brazen power and funding grab that is under way. The Tories at Westminster will increasingly

sideline our interests; we are being made small and we are being isolated from our closest and most important overseas trading partners. All the gains made in 21 years of devolution for our rural and coastal communities will be reversed.

The Tories have betrayed our rural communities, selling out key rural sectors, and they have broken so many promises to so many that it is doubtful whether they will ever be either forgiven or forgotten. However, Scotland has an escape clause. We can choose a different future. By choosing to become an independent nation, we can rejoin the EU and benefit from frictionless and barrier-free trade within the single market. That future cannot come soon enough.

The Deputy Presiding Officer: The cabinet secretary will take questions on the issues raised in his statement. We need to finish this item of business by 2 o'clock.

Jamie Halcro Johnston (Highlands and Islands) (Con): I thank the cabinet secretary for advance sight of his statement. I remind members of my entry in the register of members' interests, and as a partner in a farming business, I know that many farmers will laugh at the Scottish National Party lecturing others about IT failures when it is responsible for perhaps the biggest IT disaster in the history of farm payments, the effects of which are still being felt.

However, it is another week and another statement from the cabinet secretary—heavy on politics but light on actual policy. It was an all-too-typical rant, so let us get some facts on record.

Fergus Ewing talks about farm funding; the UK Government has guaranteed to protect farm funding until 2024—that is a commitment that Fergus Ewing could not make if he had his way and Scotland was outside the UK. The Scottish Government promised a report on future farm funding by the end of 2020; it is 2021 and that promise to Scotland's farmers has been utterly broken. When will we know what the SNP proposes?

Fergus Ewing said that no-deal Brexit would cause irreparable damage to the economy and to people's lives, then he voted against a trade deal that NFU Scotland welcomed.

Fergus Ewing said today that he has increased the number of staff at Food Standards Scotland, which is an admission that he did not put in place enough staff to begin with. Although Mr Ewing pretends to be against trade barriers, the Scottish National Party's policy of independence would erect more trade barriers between Scotland's farmers and the rest of the UK and the world than any form of EU exit. Is it not time that the SNP was honest with rural Scotland?

Fergus Ewing: Regarding farm payments, those problems were fixed and now farmers in Scotland have received their payments earlier than anyone else in the UK. This month, the LFASS—less favoured area support scheme—payments have been paid, as far as I can recall, at the earliest point ever. I have just announced today that the second tranche of the convergence moneys—moneys that were rightfully due to our farmers and crofters but which were withheld by the Tories for six years—will be paid out very shortly. [*Fergus Ewing has corrected this contribution. See end of report.*] I will not take any lectures from the Tories on that.

Yet again, we find that nobody in the Scottish Conservative Party, particularly not its rural spokesperson, admits that the deal is a poor one for Scotland and for the fishermen. Frankly, the longer the Conservatives take the approach of not mentioning Brexit and its impacts, the more self-inflicted damage they will cause.

To answer the only actual question that I could identify in the statement that Mr Halcro Johnston made, we are being honest about Scotland's future. I have made it absolutely clear for the past five years that, on Brexit and particularly on fishing, the Tories were overpromising and underdelivering. It was the Conservatives who were not being honest or straight with the public, when they promised that the EU funding would be at least matched. The fact is that we face cuts in the money that we would have had if we had been in the EU amounting to £170.1 million. Similar cuts are faced in Wales and Northern Ireland, so it is not only Scotland but all the devolved Administrations that are making that argument.

In conclusion, as long as the Scots Tories refuse to face reality, they will be punished by the electorate.

The Deputy Presiding Officer: I would appreciate short answers, cabinet secretary, as we move along.

Colin Smyth (South Scotland) (Lab): I thank the cabinet secretary for the advance sight of his statement.

Although farmers and crofters across Scotland will be relieved that a catastrophic no-deal exit from the EU was avoided, there is no such thing as a good deal when it comes to Brexit, and there are extra burdens in accessing labour and markets for many producers. The trade deal that has been cobbled together falls short of what was needed and promised and leaves a huge amount of uncertainty.

Will the cabinet secretary update us on what progress is being made on the development of a set of post-Brexit common frameworks that protect the integrity of the UK-wide single market? The

rest of the UK remains by far the biggest market for Scottish agriculture, so ensuring that there is adequate consistency in alignment between our nations is vital.

Crucially, does the cabinet secretary accept that our agriculture sector is crying out for clarity from him on what support schemes will look like post the common agricultural policy, after 2024? The NFUS president Andrew McCornick told the cabinet secretary to

“Stop dithering and start delivering.”

The clock is ticking. Surely by now the cabinet secretary can tell our farmers and crofters when they will see the detail of the future support mechanisms policy.

Fergus Ewing: That is not what the NFUS president Andrew McCornick told me this week when I spoke to him. He said that he is very satisfied with the payments that we are making and especially with our plan to reinstate LFASS payments next year at 100 per cent, with the payment of the convergence moneys within a very short period, with the earliest payment of LFASS and, generally, with the Scottish Government’s performance.

It is fortunate that I did not do what Mr Smyth advocated and make up a plan before Brexit was upon us because, had I done so, that plan would have been short by £170 million, which the UK has cut from our budget.

We have of course been working on frameworks for some time, and we have always sought to work constructively on those matters.

My last point in response to Colin Smyth’s remarks on Brexit is this: the purpose of my statement is to illustrate the fact that we are scarcely three weeks into Brexit and the damage is already being felt not only in seafood, where it is catastrophic, but across the whole rural economy. In other words, Brexit is already bad for Scotland not just in one respect but in just about every respect. That is the point to take from today’s statement.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): The cabinet secretary has spoken at length about the shocking immediate impacts that are being caused by Brexit, but what does he understand to be the longer-term impacts for the rural economy in Scotland? Is he most concerned about what will happen in the longer term? Can he tell sheep farmers whether the French market for lamb at Easter—*[Inaudible.]*

The Deputy Presiding Officer: I am afraid that you are breaking up. I ask the cabinet secretary to answer the first question, and I caution members to ask just one question.

Fergus Ewing: As Ms Watt opined, I think that there will be long-term damage, which will affect markets and customers and the value and the volume of trade, and will result in the loss of protected geographical indicators for products such as Arbroath smokies, Orkney cheese and Scotch beef and lamb. That damage will include the loss of influence, the loss of workers, the loss of freedom of movement and the loss of frictionless trade. It is already clear that, in all those respects, Brexit will damage the rural economy in not just the short but the long term.

Dean Lockhart (Mid Scotland and Fife) (Con): Yesterday, the Finance and Constitution Committee heard evidence that the level of EU structural funds available to Scotland has declined significantly in recent years as a result of the SNP’s failure to spend all the money available.

In contrast, the UK shared prosperity fund will be invested in and delivered directly to rural communities across Scotland and rural organisations, thereby helping them to rebuild from the pandemic. Will the cabinet secretary work constructively with the UK Government to allocate that extra UK funding directly to rural communities, as opposed to that money being hoarded and wasted at Holyrood, as has happened in the past?

Fergus Ewing: The fact of the matter is that we still do not know much more about the UK shared prosperity fund than those four words. The fact is that that fund deals with entirely devolved matters and the UK Government is on a power grab, whereby it is seeking somehow to administer those matters directly. Of course, it cannot; it will be entirely reliant on our administrative services to do that. It is entirely a political move.

In order to get people to vote for Brexit, the Tories promised that there would be at least the same amount of money for the rural economy. They promised that throughout the UK, and the Welsh, the Northern Irish and I have argued that they have broken that promise. In our case, they have done that by reducing the funding for the period between now and 2025 by £170 million, which is a huge amount of money. It is really sad that none of the Scottish parliamentarians in the Tory party has had the guts to point out that that, frankly, is disgraceful.

Joan McAlpine (South Scotland) (SNP): The Northern Ireland protocol has undoubtedly made trade with Northern Ireland and the Republic of Ireland much more complex and costly. The cabinet secretary mentioned the problems that are being faced by sheep farmers. Are there other Scottish businesses and sectors that are going to have problems with trade?

Fergus Ewing: Yes. There is a lot of concern in the whole farming sector and the meat sector, not

just the sheep sector. I have also noticed that concerns have been expressed in the public press by AOG Couriers, Marks and Spencer and others. There are concerns that labelling of some products will, in effect, have to be doubled. For small businesses, it would not be productive or cost effective to have to provide two sets of labels for products such as whisky.

Joan McAlpine is quite right. Across a whole range of issues, there is huge concern that the frictionless and seamless trade that we enjoyed with Northern Ireland while in the EU will become difficult trade, expensive trade or lost trade.

Mark Ruskell (Mid Scotland and Fife) (Green): Delays to exports of fresh produce have led to growing concern about mountains of food waste. There is an urgent need to break the deadlock on the export regulations, but what steps is the Government taking to create new domestic supply chain options for sectors such as seafood and fresh meat, which have been hardest hit?

Fergus Ewing: We have certainly encouraged new methods of marketing food, such as direct marketing and online marketing. Many fishing interests—fishermen and fishing businesses—have been ingenious during lockdown in selling direct to the public, for example.

However, I make the point to Mr Ruskell that those efforts, worthy and to be commended as they are, are absolutely insufficient to make up for the potential loss of hugely valuable and very substantial European markets such as France, Italy and Spain. The scale of export of seafood produce to those countries is such that it would not be possible simply to divert that product elsewhere. We can, of course, divert some of it, and we should do that. However, that loss is a direct result of Brexit, and the point of my statement is to show the damage that has already been caused by Brexit across the rural economy, and the worries about that. We will do everything we can to avoid that damage, but, nonetheless, it will occur both now and in the future.

Liam McArthur (Orkney Islands) (LD): I thank Fergus Ewing for early sight of his statement. I agree with much, although certainly not all, of what he said. At the very least, this SNP Government must now acknowledge the perils of non-tariff barriers, whether in relation to the EU or within the UK. As the Tories are finding, it is risky to use the fishing industry for one's own political ends.

What consideration has been given to establishing accredited local clearance centres, possibly in Glasgow or even in Peterhead, to allow seafood exporters such as the Orkney Fishermen's Society in my constituency a better chance of being able to continue supplying their customers on the continent?

Fergus Ewing: We worked hard over a long period to do our best to prepare for what was to come with Brexit, but the best preparation—a derogation, which we and the industry asked for—was refused. However, in response to Mr McArthur's question, I note that FSS had set up three hubs by September last year and it worked round the clock to ensure that they were properly serviced and staffed with sufficient resource of veterinary officers, for example. The principal one is at DFDS.

I am happy to work with Mr McArthur to see whether anything else needs to be done in respect of the interests of the fishermen and fishing communities in his constituency. I am engaging with their representatives and I expect that at least one of them will be present at a meeting next week. I am happy to consider any more detailed proposal that Mr McArthur may have if he wishes to write to me on that or discuss it with me.

Rona Mackay (Strathkelvin and Bearsden) (SNP): The cabinet secretary mentioned that third-country status has been denied for our seed potato exports. Will he say more about the practical effect of that and how it affects this iconic Scottish industry?

Fergus Ewing: Rona Mackay is quite right. Seed potatoes in Scotland are regarded as being of the highest quality in the world. Our provenance is respected and our expertise is admired throughout the world and valued by our trading partners.

I have been working with George Eustice to assure equivalence in an article 44 application, which is to be considered at the end of January by the section of the Standing Committee on Plants, Animals, Food and Feed that deals with these matters. I am working closely with the industry, which I have met on, I think, three occasions in the past three weeks, in order to pave a way for success.

If that is not successful, there is a risk that the industry will lose some of its stock, for which I believe that the UK must compensate it. Even more important is the fact that the industry must make decisions about planting seed potatoes for next year's crop, and it must make those decisions in a matter of weeks, not months. The compensation that was required would therefore not just be for seed potatoes that cannot be exported legally now because of Brexit and the ban. The problem would go on and affect next year, with the potential loss of markets. We are working very hard to avoid that scenario, but if it arises, Rona Mackay is right—the UK must pay up for all losses.

Finlay Carson (Galloway and West Dumfries) (Con): The cabinet secretary says that he will

keep working with stakeholders to find and implement solutions. The problem is that Mr Ewing needs to come up with solutions now. He has been criticised by the president of the NFUS for the lack of future policies, and yesterday Chris Stark, chief executive of the Climate Change Committee, criticised the Scottish Government—not for the first time—for the delay in bringing forward a new agricultural strategy before 2024. Yesterday, he said—

The Deputy Presiding Officer: No, no, Mr Carson. Brevity.

Finlay Carson: Will the cabinet secretary stop—to use his own words—finger pointing, take responsibility and clearly lay out his vision for rural support post 2024?

Fergus Ewing: I completely reject Mr Carson's analysis. It is hugely disrespectful to the public servants working round the clock for Food Standards Scotland—staff who have been provided by FSS at our instigation—who set up the hubs, such as at DFDS. The problems that have arisen have not arisen because of a lack of staff or a lack of action on our part, but because the UK Government has foisted a hugely complex system on an industry without giving it the opportunity to try to test it or sort out the problems over a grace period or derogation period. The UK Government did not even ask for that.

The brazen cheek of Tory parliamentarians knows no bounds. We will get on and we are getting on with the job of doing all we can to solve these problems. That is my top priority.

My goodness me, we have had enough of the Tories' broken promises and their complete lack of remorse or acceptance of responsibility. It is one of the most shocking things that I have seen in 21 years of political life.

The Deputy Presiding Officer: If I may, I respectfully ask for a little more brevity from you as well, cabinet secretary.

Gail Ross (Caithness, Sutherland and Ross) (SNP): Can the cabinet secretary explain to my constituents in the fishing industry, of which there are many, how the UK compensation scheme will replace the income that they have lost over the past few weeks?

Fergus Ewing: I had a brief discussion with George Eustice, who gave me very brief details of the scheme, a couple of hours before it was announced in public. The little that the UK Government has told us indicates that the fishermen compensation scheme will actually exclude fishermen. It will be the first scheme in history that was designed to support a group of people who will be ineligible for any support therefrom.

Any support will be only for losses incurred by processors. I am pleased that some compensation will be paid, and I fought long and hard with the UK Government for that. My understanding is that the UK Government will not pay a penny piece to any fishermen anywhere in the UK for the losses that they have sustained through being unable to ply their trade because of Brexit.

Gillian Martin (Aberdeenshire East) (SNP): Does the cabinet secretary share the anger of people in the north-east about George Eustice's comments on the radio that the devastation and desolation at Peterhead fish market was caused by Covid and that there is no fishing in January anyway? What will the cabinet secretary have to say to George Eustice about those comments the next time that he speaks to him?

Fergus Ewing: I have sought to work—and it is my duty to work—constructively with George Eustice, and in the past we have done so. I find his comments that Covid has caused this issue to be incomprehensible. Nobody believes that at all, and I am astonished that he made those remarks. Will the Conservatives not just accept responsibility and say that Brexit has not worked out; that the disruption that Michael Gove said would never happen has actually happened; and that although the losers at the moment are the seafood community and businesses, many other sectors in the rural economy are starting to be affected? Surely acceptance of responsibility for its Brexit boorach is something that we should expect from the UK Government.

Portfolio Question Time

Rural Economy and Tourism

14:00

Covid-19 Restrictions (Support for Tourism in West Scotland)

1. Mary Fee (West Scotland) (Lab): To ask the Scottish Government what support it is providing to tourism businesses in the West Scotland region in light of the current Covid-19 restrictions. (S5O-04921)

The Deputy Presiding Officer (Christine Grahame): I remind members that, if they want to ask a supplementary question, they should put R in the chat function.

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): The Scottish Government recognises the difficulties that businesses throughout Scotland face and the fact that, although the restrictions are necessary, they have had a devastating impact on the sector. We have allocated almost £3 billion to support businesses. I announced a package of support worth £104 million for tourism and hospitality businesses, which was developed following many discussions with industry. The roll-out of those funds is under way.

Many tourism businesses in Scotland can also obtain regular support through the strategic framework business fund. On 11 January, we announced top-up grants worth up to £25,000 for larger premises. We continue to assess what more can be done to support individual sectors.

The Deputy Presiding Officer: If members put R in the chat function, they have to make it clear which question they want to ask a supplementary question to, because their question could be about anything.

Mary Fee: The £104.3 million of support will help many tourism and hospitality businesses in my region, but what support—financial or otherwise—is available to businesses in the tourism and hospitality supply chain that primarily rely on that sector?

Fergus Ewing: Mary Fee makes a very reasonable point. We have worked on that long and hard. There are elements of the supply chain that are largely dependent on tourism and hospitality; the wholesale sector in particular springs to mind. I have worked long and hard with representatives of the wholesale sector to ensure that they are not left out. My task is to get lifeline support out to those who need it, and we have not completed that task. I am determined that we will

continue to do that and reach out to businesses that have been impacted but have not had help. That is absolutely imperative. I am determined to carry on doing that task for as long as the Covid crisis is upon us.

Tourism (Support)

2. Maurice Corry (West Scotland) (Con): To ask the Scottish Government what support it plans to provide to the tourism industry in light of the uncertainty that businesses face in their decision making for this year's summer season. (S5O-04922)

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): I agree that the restrictions will continue to have a devastating impact on our hospitality and tourism sectors, but they are, of course, vital in suppressing virus transmission. As our efforts to tackle the virus progress, we will continue to build on our very constructive dialogue with the industry and listen to its concerns as we move towards recovery. Indeed, that was one of the key recommendations from the tourism recovery task force report.

Maurice Corry: I welcome the long-called-for announcement last December of the Scottish Government's funding package for the tourism and hospitality industry, which is to include a sorely needed outdoor tourism restart fund. Outdoor and marine tourism businesses along the Firth of Clyde in my West Scotland region desperately need sustained support to recover and rebuild their services, such as for the functioning and renovation of their piers. What progress are the cabinet secretary and the Scottish Government looking to make in co-operating with tourism bodies on producing detailed funding criteria and a roll-out plan that will help marine businesses, such as those in my region, to remain viable in the long term, especially given the challenges that they face in an on-going lockdown?

The Deputy Presiding Officer: I would like shorter questions and shorter answers, please.

Fergus Ewing: We are working very closely with stakeholders, including the Scottish Tourism Alliance and Sail Scotland. We are working with marine tourism interests; I have met representatives and will continue to do so. To answer the member's question, we are engaging actively with the marine tourism sector. I absolutely agree that it is an extremely important, growing and varied part of the tourism offering in Scotland, and it is hugely attractive to many throughout the world. I undertake that we will continue that work and do our very best to support the sector through the Covid crisis.

Richard Lyle (Uddingston and Bellshill) (SNP): The cabinet secretary mentioned some of

the responses to the Scottish tourism recovery task force's recommendations. What engagement has the Scottish Government had with the United Kingdom Government regarding some of the long-term recommendations that were made by the task force?

Fergus Ewing: I have regular engagement with the UK, Welsh and Northern Irish tourism ministers. I think that Nigel Huddleston and I have a good working relationship.

I made it clear that I felt that the furlough should be extended from October, and it was, to April. I fear that the furlough, as we heard in the Culture, Tourism, Europe and External Affairs Committee this morning, does not offer sufficient support to hotels and major employers in particular. I think that the case for extending the VAT relief period is very strong. I will be putting those points to Mr Huddleston in our next meeting, which I believe will be on 28 January.

Rhoda Grant (Highlands and Islands) (Lab): Marine tourism misses out because boats do not have rateable values. I understand that some funding has been announced, and that is welcome, but it has not yet opened. Discretionary funding that is available to local authorities is also failing to meet those desperate needs. Those businesses cannot wait any longer. They will fail if they do not get funding immediately. What can the cabinet secretary do to give them immediate help, so those marine businesses—

The Deputy Presiding Officer: Cabinet secretary.

Fergus Ewing: Of course it is absolutely correct to say that many businesses are facing real financial pressure. That is why we have sought to provide support for many sectors, including marine tourism, that face real difficulties. For some areas of activity, such as taxi driving and the coach sector, there have been supports, such as the hotel fund and the pivotal enterprise fund, that I do not think have been replicated in England. We have gone an extra mile for some.

However, I absolutely accept that the speed of dispatch of funds is extremely important. Frankly, my officials and I are working every day and sometimes at night in order to finalise the schemes and work with industry to get the money out to the people who need it. That is the absolute priority.

Agriculture Funding Review (Discussions with United Kingdom Government)

3. **Kenneth Gibson (Cunninghame North) (SNP):** To ask the Scottish Government what discussions it has had with the United Kingdom Government regarding the recommendations of

Lord Bew's agriculture funding review. (S5O-04923)

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): In September 2019, I welcomed the UK Government's acceptance of the "recommendations" and "wider observations" of the Lord Bew review. That came after five years of campaigning by the Scottish Government and Parliament for the UK Government to right that historic wrong. In its response to the Bew review, the UK Government welcomed the principle of uplift for less productive land and that collective engagement with the devolved Governments should take place on future funding. Disappointingly, no such meaningful engagement has taken place. Indeed, it took persistent pressure from me, alongside ministers in the other devolved Governments, to receive the commitment to such engagement from the Secretary of State for Department for Environment, Food and Rural Affairs in November last year.

The UK Government is causing considerable uncertainty about a sum of £77.1 million through to 2025 by not committing to, or even opening dialogue on, the future of Bew money. That sum is not in isolation; it is part of the £170 million that Scottish producers and rural communities are set to miss out on through to 2025.

Kenneth Gibson: Does the cabinet secretary agree that we simply cannot trust the Tories to do right by rural Scotland? What impact would the loss of the Bew review funding have on our farmers and crofters? Where would that leave Scotland in comparison with UK other nations in terms of payment rates for farming and crofting?

Fergus Ewing: The cut by the UK of £170.1 million is devastating. Incidentally, a decision was not even made clear to ministers in Scotland, Wales and Northern Ireland; it was communicated at a meeting of officials in September.

It is a disgraceful decision. Michael Gove and George Eustice promised that, if we got out of the EU with Brexit, there would be no reduction in funding, and indeed there would be an increase—they promised that funding would be at least matched. That promise has been broken. The Tories have broken their promise to Scotland, and we can never trust them again.

International Tourists (VAT-free Shopping)

4. **Rona Mackay (Strathkelvin and Bearsden) (SNP):** To ask the Scottish Government to expand on the discussions it has had with the United Kingdom Government regarding the continued operation of VAT-free shopping for international tourists visiting Scotland. (S5O-04924)

The Deputy Presiding Officer: Your question is not quite as it was written in the *Business Bulletin*, but it is close enough—I will let you away with it.

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): Despite the serious implications for travel, tourism and retail, there was no prior engagement between the UK Government and the Scottish Government on the matter.

On 22 October, the Cabinet Secretary for Economy, Fair Work and Culture and the Cabinet Secretary for Finance sent a joint letter to the UK chancellor, expressing our opposition to the proposed change and requesting a review of the decision as soon as possible. We will continue to press the UK Government on the matter.

We believe that it is vital that these sectors receive the support they need to weather the difficulties they already face and the further challenges to come, thanks to Brexit, and we do not believe that this is at all an appropriate juncture at which to make such abrupt and significant changes.

Rona Mackay: Our retail and aviation sectors need all the support that they can get in the middle of this global pandemic. Given that the VAT scheme plays a critical role in helping the sector to create jobs and in helping businesses to survive, will the cabinet secretary call on the UK Government to see sense and maintain these crucial schemes, to protect thousands of jobs from being lost and businesses from going under?

Fergus Ewing: Yes, I will, and I will do so when I meet Nigel Huddleston on 28 January. I am grateful to Rona Mackay for raising the issue in the Scottish Parliament.

The international tourism sector is the least likely to emerge from Covid rapidly. It is the most affected, and surely VAT-free shopping is one of the factors that help to bring people into international custom and visitation. To cut that is to cut the feet from under international tourism when it is on its uppers. It seems to me to be a particularly callous and ill-chosen decision. That is why the Scottish Government has resisted it, and, thanks to Rona Mackay raising it today, I will raise the issue with Nigel Huddleston next week.

Covid-19 (Support for Food and Drink Businesses)

5. Bill Kidd (Glasgow Anniesland) (SNP): To ask the Scottish Government what support it has provided to businesses in the food and drink sector whose operations have been affected by the Covid-19 pandemic. (S5O-04925)

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): Since the start of the pandemic, our support for business and the economy has totalled almost £3 billion, which demonstrates our commitment to supporting the economy and providing as much financial support as possible to affected business, including food and drink businesses.

We have also supported bespoke food and drink sectors. We have given £5.4 million to 40 businesses in the food and drink wholesale sector and £5.8 million to seafood processing businesses, which have been impacted very hard. We need to continue to provide help as we strive to balance our effort to suppress the virus, with the impact on business.

Bill Kidd: The cabinet secretary will be aware that many Glasgow-based businesses, including hauliers, are involved in the fishing and seafood sectors and that the problems with exports reach very far into the economy. Will the UK's compensation scheme help everyone who has been affected by the chaos caused by the Tories' Brexit?

Fergus Ewing: It is emerging that the compensation scheme will benefit only a few and that there will be quite high hurdles. Many businesses in the seafood sector that have been hit very hard during the past three weeks will therefore be absolutely spitting with rage when they find out that the promise from the Prime Minister will exclude them. He promised them El Dorado, but they are looking at insolvency instead.

Colin Smyth (South Scotland) (Lab): Last year, ahead of stage 3 of the Agriculture (Retained EU Law and Data) (Scotland) Bill, the cabinet secretary announced that he was

“beginning a process of developing a non-statutory statement of policy on food”.—[*Written Answers*, 17 August 2020; S5W-31244.]

His argument was that it was a better alternative to the statutory national food plan that I called for because it did not need legislation. Five months on, can the cabinet secretary tell us what the timetable is for delivery of that statement on the food policy?

Fergus Ewing: We are working on that at the moment, and I will get back to Mr Smyth with a more detailed answer. I respectfully point out that we are in the middle of not just one but two crises—a Covid crisis and a Brexit crisis. Frankly, my day-to-day focus is on trying to help businesses that face going under, people who face losing their livelihoods and businesses that are being crippled by Brexit. Forgive me, but that is where I am spending my time and doing my work all day, every day.

Liam McArthur (Orkney Islands) (LD): Many food and drink businesses will have scaled up or, indeed, embarked on online operations. Earlier today, my colleague Beatrice Wishart raised with the cabinet secretary the importance of reopening the digital boost scheme, but can the cabinet secretary advise what support is available to food and drink businesses to improve packaging, distribution and other aspects that will allow them to take advantage of those opportunities?

Fergus Ewing: Mr McArthur raises an important point on an issue that has, again, been exacerbated by the Brexit difficulties. It will have a significant impact on things such as labelling, requiring additional costs for additional, altered and different labels for different markets. In the light of that, we will have to reconsider whether there is more that we can do. The assistance on those matters came, in part, from the food and drink financial support from the European Union, of course, and that support has been massively cut—by £170 million—by the UK Government. Our scope for action on it, out of the EU, is far reduced from what it was when we were a member of the EU.

Brexit (Impact on Salmon Industry)

6. **Annabelle Ewing (Cowdenbeath) (SNP):** To ask the Scottish Government whether it will provide an update on the impact of Brexit on the salmon industry. (S5O-04926)

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): Just as we warned, Brexit is having a devastating and immediate impact on the farmed fish sector, particularly salmon farming. The Scottish Salmon Producers Organisation has estimated that the industry's losses since 1 January are several million pounds. That is due to salmon being stuck in transit, the inability to fulfil orders on time and the lack of groupage facilities, which is hampering smaller producers. Cancelled harvests and lost customers are adding to the impact, with a drop in spot prices for delayed and unreliable Scottish orders making Norwegian salmon more competitive.

Annabelle Ewing: I thank the cabinet secretary for his very worrying response. He will, of course, be aware of my constituency interest, given that Mowi has a salmon-processing plant in Rosyth that employs more than 600 workers. Will the cabinet secretary clarify whether it can really be the case that the rotten Brexit deal negotiated by the United Kingdom Tory Government enmeshes for the first time the future of Scotland's aquaculture industry with the outcome of subsequent fisheries negotiations, with tariffs therefore not able to be ruled out?

Fergus Ewing: That is correct. The trade agreement negotiated by the UK is such that if, at the expiry of the five-year period, the European Union does not obtain a rollover or a satisfactory deal, it will be quite entitled to impose tariffs to the level of its estimated loss in fishing effort as a result. That would see tariffs imposed on aquaculture that would have nothing to do with the common fisheries policy—they would be entirely separate. The aquaculture industry will be punished for something completely separate and apart from it, which was an astonishing provision to agree to. It is completely irrelevant, utterly unjustified, appalling and just another example of how the Brexit deal let Scotland down badly. I am not sure that they know very much in Whitehall about Scotland's aquaculture industry, and decisions like that prove that that must be true.

Gene Editing (Crops)

7. **Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con):** To ask the Scottish Government what its position is on the gene editing of crop varieties in order to deliver greater food production and achieve environmental targets. (S5O-04927)

The Minister for Rural Affairs and the Natural Environment (Ben Macpherson): The Scottish Government's policy on the cultivation of genetically modified organisms has not changed. We will maintain Scotland's GM-free crop status in line with our commitment to seek alignment with high EU standards. We have made our views on that issue known to UK ministers.

We also await the result of the forthcoming study on the decision made by the European Court of Justice in 2018 that gene editing falls under the GMO legislation. That is the proportionate and appropriate approach to take.

Rachael Hamilton: At the Oxford farming conference last year, the Cabinet Secretary for Rural Economy and Tourism, Fergus Ewing, said that the Scottish Government would not comment until the European Union had considered the prevailing European Court of Justice ruling that gene editing could be considered in the same way as genetically modified crops. We know that gene editing reduces the need for the application of pesticides, which, in turn, would help the Scottish Government's poor biodiversity record and help the agricultural sector meet climate change targets. If England were to approve gene editing, would the minister and his SNP Government seriously disadvantage Scottish farmers and the environment by holding Scotland back on the basis of an outdated EU decision?

Ben Macpherson: First, it is important to emphasise that the Scottish Government's position on the cultivation of gene-edited crops

remains precautionary. That is in line with our commitment to seek alignment with high EU standards when that is appropriate and in Scotland's best interests. I should also emphasise that we have been opposed to the cultivation of GM crops in an open environment only in order to protect the clean, green status of Scotland's £14.8 billion food and drink sector. It is important to bear in mind that that clean, green status is part of what makes Scottish produce so attractive to consumers in Scotland, in the UK and around the world.

It is also important to emphasise that the UK Government's decision to consult on changes to the definition of GMO, which would differ to Scotland's approach, is an example of why we believe the United Kingdom Internal Market Act 2020 removes our competency to make decisions on the marketing of products in a devolved area. It is of concern that, although any definition change as outlined in the UK Government's consultation would not, in legal terms, extend to Scotland, the UK Internal Market Act 2020 would force Scotland to accept marketing, sale and free circulation of products in Scotland that did not meet the standards set out in the Scottish regulations.

There is much to be concerned about. However, as I said, the Scottish Government will continue to take a precautionary approach.

Tourism Industry (Meetings)

8. **John Scott (Ayr) (Con):** To ask the Scottish Government what recent meetings it has had with representatives of the tourism industry, and what was discussed. (S5O-04928)

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): The Scottish Government meets weekly with the sector to discuss a range of issues including the impacts of Covid restrictions, the need for continued business support and the route to recovery. At the most recent meeting, on 13 January, I met the Scottish Tourism Alliance to discuss details of the new £185 million business support package and to hear about the progress of the new tourism and hospitality talent development programme.

John Scott: The cabinet secretary will know that tourism businesses such as coach operators and visitor attractions have been waiting months for support. Last week, the Convention of Scottish Local Authorities suggested that the support that was announced in December may not arrive until February or March. If that is the case, what is causing the delay, and when will those funds be paid out to struggling businesses?

Fergus Ewing: In the case of the coach sector and most other sectors, I would expect payments to be made following the application process that

is being launched either this month or in February. I would expect payments to be made swiftly thereafter.

Mr Scott raises an extremely important point. We must get this money out as quickly as possible. However, we must use public money carefully and avoid making any wrong payments.

On the payment to coach operators which is going ahead in Scotland, given that coaches travel across the border and work on a pan-UK basis, I had asked the UK Government for a UK scheme, but the UK Government declined. That is why we are going ahead with the Scottish scheme to compensate coach operators, which are an essential and quality part of the tourism offering in Scotland.

The Deputy Presiding Officer: That concludes questions on rural economy and tourism. My colleague Ms Fabiani will take over for the next set of questions.

Transport, Infrastructure and Connectivity

The Deputy Presiding Officer (Linda Fabiani): The next portfolio is transport, infrastructure and connectivity. I ask members who wish to ask a supplementary question to enter the letter R in the chat function during the relevant question.

Sustainable Transport (Investment)

1. **Patrick Harvie (Glasgow) (Green):** To ask the Scottish Government how it plans to redirect investment from unsustainable modes of transport and into modes that are considered more sustainable, including rail infrastructure. (S5O-04929)

The Cabinet Secretary for Transport, Infrastructure and Connectivity (Michael Matheson): We are investing more than £1 billion in bus priority and active travel infrastructure. We provide more than £1 billion every year to support public transport provision and, over the course of the pandemic, we have committed £692 million of additional support.

Since 2007, we have invested more than £9 billion in rail infrastructure, and we continue to invest record levels in this control period, including funding to support our commitment to decarbonise the network by 2035. Decisions on future transport investment will be made through the second strategic transport projects review and will prioritise investment in line with the sustainable investment hierarchy.

Patrick Harvie: The cabinet secretary might have seen the "Rail For All" report, which the Scottish Greens published recently. Among many

other recommendations, the report calls for a streamlining of the Scottish transport appraisal guidance—STAG—process, which is extremely complex, time consuming and costly, and which places a barrier to rail development. Does the cabinet secretary agree that the process needs to be shortened and aligned with the overarching aim of rapidly delivering low-carbon transport infrastructure, and that the change should begin immediately?

Michael Matheson: I am aware of the report to which Mr Harvie refers, which makes a number of interesting suggestions that will be taken into account as we make decisions through STPR2. In our national transport strategy, which was published just last year, we set out a clear commitment to review the STAG process. I am conscious that there are some issues relating to the length of time that it takes and the costs that are associated with it. For that reason, we have already committed to carrying out a review over the next couple of years.

Mr Harvie will recognise that it is extremely important that, before we undertake any major transport investment, we have an assurance that it will deliver the intentions behind the scheme. That is why the STAG system is important. However, I recognise the need to reform it, which is why we have committed to doing so.

A75 Dualling (Progress)

2. **Oliver Mundell (Dumfriesshire) (Con):** To ask the Scottish Government what progress has been made with dualling the A75. (S5O-04930)

The Cabinet Secretary for Transport, Infrastructure and Connectivity (Michael Matheson): The “South West Scotland Transport Study”, which was published in January 2020, contains in its recommendations the option of targeted improvements on the A75, including some partial dualling. That option will be subject to more detailed appraisal in the second strategic transport projects review.

The study emphasised the importance of a connected, safe, resilient and high-quality strategic transport network for south-west Scotland, and it found that targeted improvements, rather than full dualling, would be more proportionate in meeting regional transport objectives and the sustainable investment hierarchy that is set out in our national transport strategy.

Oliver Mundell: I thank the cabinet secretary for that answer but, after 14 years of Scottish National Party inaction, does he not believe that my constituents deserve better? Will he explain to them why he was unwilling to take part in the union connectivity review, which has the potential

to boost the case for improvements to this vital route?

Michael Matheson: Let me deal with both issues that Oliver Mundell has raised. It is wrong to suggest that no action has been taken by the SNP Government. We have just completed the south-west Scotland transport corridor study, which identifies areas for not only road improvement but wider modal improvement in south-west Scotland. That work is feeding into the second strategic transport projects review, which will be published this year and will set out the priorities for investment across the country, including in south-west Scotland.

The union connectivity review has no relevance to investment in the A75, which is a devolved matter that is the responsibility of the Scottish Government. Equally, the member will recognise that the review was set up without any consultation or engagement with the devolved Governments across the whole United Kingdom. The Northern Irish and Welsh Governments have, just like the Scottish Government, raised very serious concerns about that. The review is nothing more than a blatant power grab by the UK Government, which is seeking to undermine the devolved competence of the Scottish Parliament. I would have thought that Oliver Mundell, as a Conservative, would want to stand up for the people of Scotland and ensure that his constituents get the type of investment that is necessary, rather than signing up to a political agenda that is being pushed by his colleagues at Westminster.

Colin Smyth (South Scotland) (Lab): The challenges of Brexit highlight more than ever how vital the A75 and A77 are as direct routes to the ferry port at Cairnryan. Can the cabinet secretary tell us specifically to what extent he will take into account the increased economic importance of keeping Cairnryan competitive when it comes to allocating what is likely to be—as he has made clear—a smaller budget for road infrastructure?

Michael Matheson: The member raises an important point about the strategic importance of Cairnryan. Such key factors will be considered as part of the STPR2 process and in looking at potential modal improvements to both road and rail in the south-west of Scotland.

He also mentioned another important point, which is the fact that the UK Government has just cut our capital budget by 5 per cent. That will have consequences, not just for transport but for wider capital investment across the whole Scottish Government, and therefore across the whole of Scotland. Nevertheless, he can be assured that the strategic importance of Cairnryan will be a key factor that will be taken into account in determining

investment for the south-west of Scotland as part of the STPR2 process.

Queensferry Crossing (Closures)

3. Claire Baker (Mid Scotland and Fife) (Lab): To ask the Scottish Government what action is being taken to reduce the impact of any closures of the Queensferry crossing. (S5O-04931)

The Cabinet Secretary for Transport, Infrastructure and Connectivity (Michael Matheson): When there is a risk that the Queensferry crossing may have to close as a result of ice accretions, our operating company BEAR Scotland will be alerted in advance. Our five-point plan is then implemented: it includes enhanced patrols; a heightened focus on prevailing weather conditions; increased data and intelligence gathering; the pre-laying of traffic management measures; and enhanced stakeholder communications. During any emergency closure of the Queensferry crossing, a diversion route will be implemented using the Forth road bridge or the Kincardine bridge as appropriate, depending on the required duration of the closure.

As the member will be aware, the Queensferry crossing was closed this morning at approximately 4.30 am. The northbound carriageway reopened at approximately 9.15 am and the southbound carriageway at 10.20 am. The closure followed forecasts of a high risk of ice accretions between 5 and 7 am this morning, and the five-point plan was implemented successfully. As this morning's disruption was forecast to be of short duration, traffic was diverted via the Kincardine bridge in accordance with the established procedures.

Claire Baker: As the cabinet secretary has recognised, the bridge was closed overnight and earlier this morning, which has caused significant delays and diversions for those who are travelling. What cost assessment was made for the ice prevention system that was considered as part of the construction plans for the Queensferry crossing? Why was it decided not to take that system forward?

Michael Matheson: I do not have the precise figure to hand, but I am more than happy to write to Claire Baker with further information on the actual cost associated with that system, which was part of the original design programme.

The reason why the system was not progressed is that it was identified that there was a low risk of ice accretion being a problem on the new Queensferry crossing, given the history of the site and the weather forecasting in the area over an extended period of time. It is clear, however, that ice accretion continues to be an on-going issue, which is why we have enhanced the current

arrangements for managing such matters to try to minimise the disruption that is caused to Claire Baker's constituents, which is always very regrettable. She should also recognise that the bridge is much more reliable than the Forth road bridge, which was closed regularly because of high winds; that is not the case with the Queensferry crossing.

I assure the member that we are trying to identify any measures that would further minimise the risk of disruption to the Queensferry crossing that is caused by the specific weather conditions that result in the accretion of ice. We will do all that we can to minimise the risk and the problems that occur due to such disruption.

Graham Simpson (Central Scotland) (Con): Will the cabinet secretary tell us what measures he is looking at to prevent further closures of the Queensferry crossing? The number of closures is becoming immensely frustrating.

Michael Matheson: I recognise the frustration, but there have been only three or four occasions on which this problem has occurred. It was not a problem during construction and occurs only in specific weather conditions. For example, there were no problems on the bridge during the beast from the east.

We are looking at a range of options, which might involve ultrasound or a vibration system. Those may be appropriate means to address the problem, but any system for a bridge must be a bespoke design. The member may be aware that such problems have arisen on similar bridges in the United Kingdom and worldwide. Any new system would have to be a bespoke design that suits the parameters of the Queensferry crossing.

Alex Cole-Hamilton (Edinburgh Western) (LD): I was told in a helpful briefing from Transport Scotland that the reason why Kincardine was favoured this morning is that it takes five hours to put in place the contraflow, signage and road changes that would be required to open up the Forth road bridge as a resilience measure.

Given that the sensors on the bridge have warned of ice accretion on almost every day since Christmas, it is likely to be a regular issue. What can be done to reduce how long it takes to stand up the FRB as a resilience measure? Will the Scottish Government commit the necessary capital funding for a permanent mitigating solution on the bridge?

Michael Matheson: We are committed to identifying a long-term solution to the issue. Research is on-going to try to make sure that we get a system that will address the problem.

Mr Cole-Hamilton is correct about how long it takes to implement a diversion. BEAR Scotland

will be carrying out an exercise in the coming weeks to try to reduce that time. He will understand that if a diversion was implemented on every occasion when it was thought that there might be a risk to the bridge, that would cause significant disruption. There is a balance to be reached in making those judgments. BEAR Scotland's on-going work and our own research will help to inform how we can help to manage the issue more effectively.

Covid-19 (Protection of Front-line Public Transport Staff)

5. Anas Sarwar (Glasgow) (Lab): To ask the Scottish Government what additional support is being provided to protect front-line public transport staff during the Covid-19 pandemic. (S5O-04933)

The Cabinet Secretary for Transport, Infrastructure and Connectivity (Michael Matheson): Since the pandemic began, Transport Scotland has provided guidance for transport operators to keep both staff and passengers safe. That guidance was produced in consultation with operators, the Convention of Scottish Local Authorities, regional transport partnerships, passenger groups and trade unions and is subject to on-going review.

The cornerstone of the guidance is an emphasis on the importance of undertaking a robust and on-going risk-based assessment with full input from trade unions and then keeping all risk mitigation measures under regular review so that transport facilities, vehicles and vessels continue to feel, and to be, safe for staff and passengers.

Anas Sarwar: The on-going conversations about protection against Covid-19 are welcome. I have heard staff express concerns about the added risk of threats, violence and abuse on our public transport system. There are fewer people on board, and those who are there feel more vulnerable as a result of that.

What public information campaign could be run, and what further support can be given, to ensure that we are protecting our public transport staff not only from Covid-19 but from threats and abuse at work?

Michael Matheson: Scotland's front-line public transport staff have been outstanding throughout the pandemic. They have shown a commitment to maintain public transport and to ensure that key workers and others can get to their places of employment during a challenging time.

Mr Sarwar raises an important issue. There have been reports of some in our public transport sector experiencing increasing levels of abuse, particularly when they try to enforce rules around social distancing and the wearing of face coverings. No worker should face any form of

abuse in the course of their work, and I condemn any form of violence or inappropriate language that has been used towards transport workers in the course of their duties.

We have engaged with both Police Scotland and the British Transport Police on what further action could be taken to address the issue. However, I can assure Mr Sarwar that the BTP in particular is proactive in pursuing matters where problems are identified across the transport network. We will continue to work with and support the BTP in that important work to address the issue.

The Deputy Presiding Officer: We will have a quick supplementary, please, from Alex Rowley.

Alex Rowley (Mid Scotland and Fife) (Lab): I have been contacted by constituents who have had to use buses for essential shopping and have found that a number of people on the buses are ignoring the need to wear face coverings. Given the previous question, what needs to be done to ensure the safety of people using buses when other passengers refuse to wear face coverings?

Michael Matheson: The current system requires operators to have prominent signage and information that encourages those who use buses to wear a face covering and indicates the rules for use of that transport during the pandemic. We have provided operators with support around communications that they can use, and expand on, in their networks to encourage service users to wear face coverings and to ensure that they do so.

However, we also have a collective responsibility to play a part in helping to reduce the spread of the virus across our communities, and face coverings are important in that regard. Ultimately, enforcement is a matter for Police Scotland when it comes to buses. If Mr Rowley hears that his constituents are experiencing a persistent problem on particular routes, he should engage with the operator and potentially with Police Scotland about that.

M74 (Soundproof Fencing at Uddingston)

6. Richard Lyle (Uddingston and Bellshill) (SNP): To ask the Scottish Government when soundproof fencing will be erected on the Uddingston section of the M74. (S5O-04934)

The Cabinet Secretary for Transport, Infrastructure and Connectivity (Michael Matheson): My officials continue to press Scottish Roads Partnership for details of how it will deliver its obligations under the contract. Scottish Roads Partnership is considering how best to address the matter, therefore the programme for mitigation measures that may be required is unknown at this stage. The subject requires detailed specialist input, so my officials have sought independent

specialist advice to aid the resolution of the issues in discussion with Scottish Roads Partnership.

Richard Lyle: The cabinet secretary knows that I have pressed on this issue for a number of years. I will continue to do so until I retire. My constituents were promised soundproofed fencing if noise levels increased. Given that noise levels have increased, as per recent surveys, what steps is the Government taking to press SRP to ensure that that promise is kept?

Michael Matheson: I recognise that Richard Lyle has pursued this long-standing issue vigorously on behalf of his constituents. To ensure that we make further progress on the issue, my officials have sought independent specialist advice on the noise assessment that was undertaken by Scottish Roads Partnership. I can assure Mr Lyle that that will be used to ensure that the necessary suitable mitigation measures that the contractor is contractually required to take forward will be implemented. The specialist advice will assist us in ensuring that progress is made on the matter.

Edinburgh to Perth Railway (Upgrade)

7. Liz Smith (Mid Scotland and Fife) (Con): To ask the Scottish Government when the Edinburgh to Perth railway line will be upgraded. (S5O-04935)

The Cabinet Secretary for Transport, Infrastructure and Connectivity (Michael Matheson): Record levels of investment continue to be made on the rail network in the current control period, including to the routes linking Edinburgh to Perth. Improvements include electrification from Edinburgh to Dunblane, the new Blackford freight terminal and the new high-quality Inter7City service.

Scottish ministers are committed to ensuring that the railway meets future growth needs for passengers and freight. For example, work to implement the rail services decarbonisation action plan includes consideration of electrification options for the routes to Perth.

Liz Smith: I thank the cabinet secretary for that answer, but he knows that, in relation to the green recovery and addressing climate change, the Scottish Government's own experts have advised that infrastructure development and greener transport are essential. He also knows that the timescale for a journey between Perth and Edinburgh is exactly the same as it was 100 years ago. What priority is the Government placing on the upgrade? What is the exact timescale for any improvements that will be made?

Michael Matheson: The member should be aware that we are investing record amounts into our railway during control period 6, and that we are the first part of the United Kingdom to commit

to decarbonising our rail network by 2035. That will involve significant investment not only in electrification but in new zero-carbon-emitting rolling stock. All that investment is a significant recognition of the importance that rail has in helping to achieve our climate change objectives.

Regarding the line between Perth and Edinburgh, as I mentioned we have already electrified the line to Dunblane, and we are considering the potential for further electrification, which delivers faster services and increases capacity on the route network. Alongside that, we are looking at improving the existing signalling system and the timetable; again, that would help to improve journey times between Edinburgh and Perth.

M8/M73/M74 Motorway Improvements Project (Evaluation)

8. Margaret Mitchell (Central Scotland) (Con): To ask the Scottish Government when the next evaluation will be carried out of the M8/M73/M74 motorway improvements project, in line with the Scottish trunk road infrastructure project evaluation guidance. (S5O-04936)

The Cabinet Secretary for Transport, Infrastructure and Connectivity (Michael Matheson): [*Inaudible.*]

The Deputy Presiding Officer: Mr Matheson, your sound appears to be on mute. I think that it is okay now, so could you start your answer again?

Michael Matheson: I am sorry, Presiding Officer.

Transport Scotland has undertaken an evaluation of the M8/M73/M74 motorway improvements project one year after opening, in line with its guidance. The evaluation report will be published shortly, after a technical review has been completed. Given the scale and impact of the project, the evaluation requires extensive data collection and analysis to ensure its robustness.

Margaret Mitchell: [*Inaudible.*—flooding

The Deputy Presiding Officer: Excuse me, Ms Mitchell. We have a sound issue with you, too. Please start your question again.

Margaret Mitchell: Surface water and flooding during heavy rain continue to be a worrying issue on large parts of the upgraded M8. There have been countless gantry warnings telling drivers to take extra care and/or speed restrictions put in place to control traffic on roads that have been made hazardous by surface water. What is being done to address that dangerous issue and make the roads safer for drivers in wet conditions? Has drainage been identified as the problem? If so, perhaps the issue is rubble from the upgrade of the project.

Michael Matheson: I recognise the important safety issue that Margaret Mitchell raises. I am not aware of any specific problems on that area of the M8, or on the M73 or M74. However, I will ask officials to engage with our trunk road operating companies to ensure that, if there is a particular problem, that issue is addressed.

If Margaret Mitchell has specific details about sections of the road on which she believes that that is a problem, I would be more than happy to ensure that officials pick that up and investigate the matter properly.

Justice and the Law Officers

The Deputy Presiding Officer (Christine Grahame): The final portfolio is justice and the law officers. I remind members that questions 2 and 6 have been grouped together. I will take any supplementaries on those questions after both of them have been answered. Any member who wishes to ask a supplementary question should indicate that by entering an R in the chat function during the relevant question.

European Union Security Protocols and Law Enforcement Organisations

1. **Shona Robison (Dundee City East) (SNP):** To ask the Scottish Government what the impact will be on security and safety in Scotland of no longer having access to EU security protocols and law enforcement organisations, including the European arrest warrant, Europol and Eurojust. (S5O-04937)

The Cabinet Secretary for Justice (Humza Yousaf): The impacts will be significant. Under the new deal, Police Scotland and the Crown Office and Procurator Fiscal Service now have to use slower and, frankly, less effective tools than those that they had previously.

Key impacts are the loss of access to the Schengen information system II—SIS II—database, which means that Police Scotland will no longer have access to real-time or immediate alerts from European Union partners on wanted or missing persons, and the loss of the European arrest warrant. As the new system allows EU member states to refuse to extradite their own nationals to Scotland, bringing someone to face justice here is likely to take longer and to cost more than it would have done when the UK was an EU member state.

Although the deal enables some co-operation with Europol and Eurojust, that is still less than was possible when we had full EU membership. Frankly, the only people who will benefit from such a loss of capability are those who commit crime.

The Deputy Presiding Officer: Cabinet secretary, I am finding your sound quite quiet. I do not know whether that is just me or whether it is the same for all members. I ask Ms Robison to say whether she was able to hear your reply clearly.

Shona Robison: Yes, I was—thank you, Presiding Officer. I thank the cabinet secretary for his answer, albeit that it was very concerning. Does he agree that it is clearer than ever that Scotland will now have suboptimal security and safety arrangements, and that the only way to ensure the safety of our citizens will be to rejoin those vital cross-border agencies by becoming an independent nation inside the EU?

Humza Yousaf: Shona Robison is right to say that such arrangements are now suboptimal. They mean that it will take longer to extradite someone. We have absolutely lost access to the SIS II database, which Police Scotland formerly accessed millions of times a year and which alerted it to missing or wanted people. The only way to rectify that situation would be for Scotland to take up EU membership as an independent nation. That is not only because of the important social and economic benefits that it would bring; it would also afford us greater co-operation on security with the rest of the EU.

Covid-19 Lockdown (House Parties)

2. **Alison Harris (Central Scotland) (Con):** To ask the Scottish Government how many house parties police have been called on to disperse since the current Covid-19 lockdown was imposed. (S5O-04938)

The Cabinet Secretary for Justice (Humza Yousaf): The latest available data shows that, for the period from 31 December until 6 January, Police Scotland attended 565 house gatherings, 343 of which were found to have breached restrictions. In addition, 240 fixed-penalty notices were issued and 15 arrests were made. Police Scotland regularly updates such data on its website. We continue to work closely with it on the provision of a weekly Covid-19 bulletin, which is published on that site and summarises the position in various areas of policing, including enforcement of measures during the pandemic.

Alison Harris: The Scottish Government recognises that house parties are a major source of the spread of coronavirus, which is why the police are being called on to attend to disperse them. Why are the very same police officers not being prioritised to receive the Covid-19 vaccine when the Government expects them, as part of their daily work, to put themselves at even greater risk by attending to break up such parties?

Humza Yousaf: I say to Alison Harris that—regardless of the political party to which we might

belong—I am certain that every single one of us credits Police Scotland and its officers for the difficult job that they do even in normal circumstances, let alone the risk they place themselves in during the pandemic.

I should say that the Joint Committee on Vaccination and Immunisation prioritisation for the Covid-19 vaccine that we follow here in Scotland is exactly the same as the one that is being followed by the Conservative United Kingdom Government and the Governments of the other devolved UK nations. Priorities are set in order that the vaccine will be received by those who are at most risk of death or serious illness.

I can give an absolute assurance to Alison Harris, and indeed to any police officers or police staff who are listening, that when it comes to phase 2 of the vaccination process, the prioritisation of first responders, including Police Scotland, is very much at the forefront of our minds.

The Deputy Presiding Officer: Before I move to question 6, cabinet secretary, can I ask you either to speak up or, at some point, to raise the volume, if you could? You are slightly quiet.

Covid-19 Restrictions (Enforcement by Police Scotland)

6. Alex Cole-Hamilton (Edinburgh Western) (LD): To ask the Scottish Government whether it will provide an update on Police Scotland's enforcement of the current Covid-19 restrictions. (S5O-04942)

The Cabinet Secretary for Justice (Humza Yousaf): I will try to both speak up and to sit slightly closer to my tablet, so hopefully you will hear me a little bit better, Presiding Officer.

As I said in my previous answer, I appreciate the hard work of Police Scotland throughout the pandemic and the professionalism that the police have shown. I speak weekly with the chief constable about enforcement of the Covid regulations. Enforcement of the restrictions is of course an operational matter for the chief constable and Police Scotland, and Police Scotland has been clear that it will operate under the principle of policing by consent. It will also follow the four Es approach, whereby the police will engage, explain, encourage and only then enforce as a last resort to protect public health. Of course, the police can accelerate to enforcement if they believe that the circumstances warrant it.

As the member will be aware, John Scott QC was commissioned by the chief constable and the Scottish Police Authority to review Police Scotland's use of the new emergency powers to respond to the coronavirus outbreak. The group will report directly to the SPA. The latest data on

enforcement is available on the Police Scotland website.

Alex Cole-Hamilton: I am interested in how information is now flowing between Public Health Scotland and Police Scotland—for example, around breaches of quarantine. Over the—*[Inaudible.]*—lull especially, experts were telling us that quarantine was routinely being—*[Inaudible.]*, that systems were incapable of responding to those situations and that that was leading, in turn, to outbreaks.

What work has the Scottish Government done to establish the extent to which that contributed to the spread of the virus and, looking forward, what is the plan for travel restrictions and enforcement for the period after lockdown?

Humza Yousaf: Forgive me, I did not hear all of Alex Cole-Hamilton's question, but I think that the majority of it is probably better directed towards the Cabinet Secretary for Transport, Infrastructure and Connectivity, who is leading on issues around international travel, and indeed domestic travel.

However, there is of course a data-sharing arrangement between Public Health Scotland and Police Scotland whereby, if public health officials are unable to reach somebody they are trying to reach in relation to those who are quarantining or should be quarantining, they can pass that data on to Police Scotland for enforcement. A memorandum of understanding on that was developed between Public Health Scotland and Police Scotland. In addition, Police Scotland has tools that it can use for enforcement, or indeed it can issue a fixed-penalty notice if necessary in relation to any breaches of quarantine.

My understanding is that the figures on Police Scotland's follow-up are routinely published in relation to international travel. However, if Alex Cole-Hamilton requires any further details, particularly around international travel, he may want to write to the transport secretary.

Covid-19 Restrictions (Education in Prisons)

3. Keith Brown (Clackmannanshire and Dunblane) (SNP): To ask the Scottish Government what guidance it has produced regarding the provision of education in prisons under the current Covid-19 restrictions. (S5O-04939)

The Cabinet Secretary for Justice (Humza Yousaf): The Scottish Government has produced guidance for colleges, universities and student accommodation providers during Covid-19; on 15 January 2021, we published further guidance on arrangements for the current term. Although the guidance is not specific to prisons, education provision across the public prison estate is modelled on our further and higher education

systems, so the guidance acts as a guide for delivery within the prison community.

I know that education, like all other aspects of the prison regime, has been impacted by the necessary restrictions that have been put in place to manage the challenges of Covid. There is no alternative to face-to-face learning within prisons, and at a time when the whole country is being asked to minimise all but absolutely essential interactions and travel, prison education has been temporarily suspended.

Keith Brown: As the cabinet secretary will be aware, staff who provide learning across 13 prisons in Scotland are employed by Fife College and subcontracted by the Scottish Prison Service. As per guidance, the college has moved to remote learning, but staff who are subcontracted to the SPS—[Inaudible.]—their place of work, which can mean attending three different workplaces. Will the cabinet secretary clarify whether he believes that that approach falls within the current restrictive guidance and, if so, why it is different from the guidance that was issued in March last year?

Humza Yousaf: As I said, prison education has now been temporarily suspended. I understand that none of the staff who teach in prison learning centres has been in the establishments since 12 January. However, I will double check that and confirm it for the member.

For clarity, the SPS has a contract with Fife College to provide education, but management of staff is an issue for Fife College. Stay-at-home regulations came into effect on 5 January 2021, and they place a duty on employers to take all reasonable steps to minimise the spread of coronavirus.

The member is welcome to raise those specific issues directly with the SPS, who can provide him with more information but, as I said, my understanding is that, from 12 January, Fife College advised its prison-based staff not to return to learning centres in prisons for the remainder of that week and, on the Friday of that week, it took the decision to furlough its prison-based staff until 12 February. I understand that the college will review that decision on 31 January and that it intends to bring its staff back from furlough at the earliest opportunity.

The Deputy Presiding Officer: I will take two brief supplementary questions—the word is “brief”.

Liam McArthur (Orkney Islands) (LD): The number of people awaiting trial in Scottish prisons has doubled since April last year, yet those on remand cannot access education programmes and often have little time out of their cells. What purposeful activity is currently on offer to those sitting in Scottish jails on remand and what is the

cabinet secretary doing to help to reduce the ballooning remand population?

Humza Yousaf: With Covid and the current restrictions, that activity is very limited. The SPS is doing what it can within the restrictions to allow some element of purposeful activity, but public health will of course always be our number 1 priority. I am happy to ask the SPS to provide the member with a fuller answer on purposeful activity.

On the rising prison population, I am more than happy to write to the member with fuller detail about all the steps that we are taking in relation to remand prisoners and prisoners who have been sentenced. I share an absolute concern that the prison population in Scotland is too high, and we are taking detailed measures to ensure that we reduce that population in good time.

Rhoda Grant (Highlands and Islands) (Lab): Given that some prisoners have been released early on licence, it is unlikely that they will have had full access to pre-release support. What support will be available in the community for them and for those who have community disposals to ensure that they get the support that is required to address their offending behaviour and rebuild their lives as part of the community?

The Deputy Presiding Officer: That is drifting a little off education in prisons, but feel free to answer it, cabinet secretary.

Humza Yousaf: I am happy to answer it, because Rhoda Grant has raised an important point.

We fund third sector organisations that help with prisoner integration on their release such as the Wise Group, Sacro and the Shine public social partnership, which works with the female offending population. That said, I am keen for the SPS to re-establish its throughcare officer support, which was suspended when the prison population rose quite significantly last year. If the member wishes, she can write to me or to the SPS directly and we can give her further detail on what support we can provide prisoners on release from prison.

Collection of Data on Sex and Gender (Draft Guidance)

4. **Johann Lamont (Glasgow) (Lab):** To ask the Scottish Government what involvement the Cabinet Secretary for Justice and his officials had in the development of the draft guidance on collecting data on sex and gender. (S5O-04940)

The Cabinet Secretary for Justice (Humza Yousaf): The sex and gender in data working group is led by and reports to Scotland’s chief statistician. The draft guidance has been developed by the chief statistician in consultation with members of the working group and through

engagement with stakeholders. The work of the group is transparent, and details of group membership as well as papers and minutes are published online. Membership relevant to the justice portfolio includes an official from the Scottish Government family law unit as well as representatives from the Scottish Prison Service and Police Scotland.

Johann Lamont: [*Inaudible.*—assault and domestic abuse are overwhelmingly male and the victims are overwhelmingly female. Given the recognised approach of prevention through education, protection through legislation and provision through support for women victims, how can the Scottish Government measure the scale of offending by men and any success in tackling that behaviour without collecting data on the sex of the offender? Does the cabinet secretary agree that it matters to record whether a rapist is male?

Humza Yousaf: I might have missed the very end of Ms Lamont's question, but I think that it was about the recording of rape. Again, I will correct the record—

The Deputy Presiding Officer: I think that it was about recording the gender—whether male or female—of the person who committed the rape.

Humza Yousaf: Yes, I believe that that is what the question was about.

I am happy to correct the record if I am incorrect, but my understanding is that, although Police Scotland may well record somebody's gender, there are exceptions to that, and one of those would be in a case of rape, in which somebody is recorded by their biological sex. Of course, there are certain elements to the offence of rape that can be carried out only by those who were born male or who are post-operation trans male. I will double-check that and provide clarification to Johann Lamont.

On the broader point that Ms Lamont raises, she is absolutely right: domestic abuse is largely a crime that is committed by men towards female victims. The data that is currently gathered bears that out. The draft guidance says that it is up to organisations to decide whether to record the gender or the sex of the person concerned, but there are exceptions that organisations can make, depending on the circumstances.

As I said, it is draft guidance, and stakeholder responses are still being made. I encourage Johann Lamont, if she has not already done so, to respond by giving her views on the matter to the chief statistician.

The Deputy Presiding Officer: I ask for shorter answers. I know that important matters are being discussed, but I have three more questioners to fit in.

Reduction in Criminal Trials (Support for Victims)

5. John Mason (Glasgow Shettleston) (SNP): To ask the Scottish Government, in light of the decision by the Lord President to reduce the number of criminal trials, what further support it will provide to victims. (S5O-04941)

The Cabinet Secretary for Justice (Humza Yousaf): We have provided additional funding of £5.75 million to support organisations that provide front-line services to those who experience violence or domestic abuse. That is on top of annual budgets of £18.7 million to support victims and £12 million to tackle violence against women and girls. In addition, we increased our budget to provide compensation for victims of violent crime to more than £21 million. All in all, we have provided £57.5 million of funding to support victims and organisations that help victims.

Although the Lord President's decision was a difficult one, I think that it was the correct one from a public health point of view. I have spoken to Victim Support Scotland about that decision, and I have further meetings lined up—[*Interruption.*]

The Deputy Presiding Officer: John Mason, please. Sorry—had you finished, cabinet secretary?

Humza Yousaf: Not quite. I have a number of meetings lined up with a number of other victim support organisations to address the issue.

John Mason: Many of us feel that the justice system is very slow at the best of times, but the current delays mean that witnesses will forget what happened in an incident and victims will feel let down. Is there any way of speeding up the justice system?

Humza Yousaf: I can confirm to John Mason that active conversations are taking place with the Scottish Courts and Tribunals Service, the legal profession and victims organisations, and between me and the Cabinet Secretary for Finance, about tackling the backlog of court cases. We have funded the Scottish Courts and Tribunals Service for external jury centres, which has increased capacity in the High Court and will result in capacity in the sheriff court returning to pre-Covid levels. The best thing that we can do is provide funding to tackle that backlog.

Of course, the budget will be announced next week. I would not want to pre-empt that, but I can say that the finance secretary is considering the provision of finance to tackle the backlog so that victims do not have to wait so long for their case to come to court.

The Deputy Presiding Officer: I will allow a brief supplementary question from Liam Kerr.

Liam Kerr (North East Scotland) (Con): I am very grateful, Presiding Officer. In September last year, the First Minister announced that a victim surcharge fund would open by the end of 2020, but we now know that it will not pay out a penny until March 2021. Furthermore, the reduction in criminal trials means that there is even less money going into that fund. What is the SNP going to do to mitigate the impact on the victim surcharge fund of the SNP's delays to the scheme and the reduction in court trials?

The Deputy Presiding Officer: I hope that you heard that, cabinet secretary. The sound was a bit strange at the beginning.

Humza Yousaf: Yes. I got the general gist of it.

First, I am pleased that Liam Kerr mentioned the ground-breaking victim surcharge fund that the SNP Scottish Government has brought in. It will make a real, tangible difference to victims right across the board. He will forgive me—in the midst of a global pandemic, there may well be a few weeks of delay to certain matters, but it has been no more than that.

There has been an impact due to the reduction in the number of cases because of Covid, but the victim surcharge fund will be open to victims. I am delighted that victims right across the board and right across Scotland will have the ability to receive further support from the Scottish Government due to our ground-breaking victim surcharge fund.

Naloxone

7. Mark Ruskell (Mid Scotland and Fife) (Green): To ask the Scottish Government whether it will provide an update on the roll-out of providing naloxone for front-line police officers to respond to suspected overdoses. (S5O-04943)

The Cabinet Secretary for Justice (Humza Yousaf): Police Scotland announced in November that the chief constable had approved proposals for a test of change for police officers to carry intranasal naloxone spray. The test of change will take place in three test bed areas: Falkirk, Dundee city and Glasgow east. Approximately 700 officers will be trained across the three areas and will be eligible to carry naloxone, with training expected to commence shortly, in the spring of this year. It will be the largest test of change for police to carry naloxone in the United Kingdom to date.

The programme will be delivered in collaboration with a number of key partners and agencies and with significant support from the Scottish drug deaths task force. It is anticipated that the test of change will provide a strong evidence base to inform policies around police carriage of naloxone in Scotland. The Scottish Government fully supports the initiative and looks

forward to supporting a full roll-out throughout Police Scotland following the positive results that we expect the pilots to deliver.

Mark Ruskell: I thank the cabinet secretary for that detail on the pilots. However, the Minister for Drugs Policy announced recently that take-home naloxone kits will be given to people who are at high risk of accidental overdoses in order to urgently save lives. Can the cabinet secretary explain why a more cautious approach has been adopted by Police Scotland, with only very limited trials taking place in certain areas on a voluntary basis? When can we expect a roll-out throughout Scotland?

Humza Yousaf: I do not agree with Mark Ruskell's characterisation. I have spoken to the chief constable and his senior executive team about the issue, and they are very enthusiastic about doing everything within their powers to reduce drug deaths right across Scotland. It is a bold initiative. As I said, it is the largest test of change of its kind—in relation to the carriage of naloxone—anywhere in the UK.

I hope that the member will appreciate that it is important to gather evidence of how that carriage will, as we hope, save lives. Issues and concerns have been raised by the likes of the Scottish Police Federation, and it is important that we continue to work with staff unions and, indeed, staff associations so that we get them on board. I expect positive results after the test of change, and, if they are as positive as I expect them to be, I hope that we will be able to begin a full roll-out thereafter.

The Deputy Presiding Officer: We can just manage to squeeze in question 8.

Scottish Prison Service Annual Report 2019-20

8. Graham Simpson (Central Scotland) (Con): To ask the Scottish Government what its response is to the Scottish Prison Service's annual report for 2019-20. (S5O-04944)

The Cabinet Secretary for Justice (Humza Yousaf): I welcome the publication of the annual report. It recognises the achievements that our prison service made in 2019-20, but also some of the challenges that it faces. As I have said before, I am very grateful to all staff for their hard work and dedication, particularly during these unprecedented times.

The significant challenges that are being faced across our prisons, particularly in relation to the population, continue. The impact of Covid has meant that there has been a decrease in the population compared to the figures that are highlighted in the annual report. I am very frank about the fact that Scotland's prison population is far too high, but it is also changing in its

complexity, which is illustrated by the increasing numbers of people who are sent to prison with a history of sexual offending, organised crime and violence, and the increasing number of older people.

I regularly meet the interim chief executive of the SPS, and I am fully aware of all the issues that have been reported. Together, the Scottish Government, the SPS and justice partners are working to address some of the challenges.

Graham Simpson: I have a quick question about drug use in prison. When the Scottish National Party first came to power, there were 209 drug incidents in prisons. In the latest report, the figure has risen to just over 2,000. Will the cabinet secretary say why that is and what he is doing about it?

Humza Yousaf: In brief, the methods of detection of drugs and illicit substances in our prisons have got a lot better over the past almost 14 years for which the SNP has been in power. We invest in technology—Rapiscan machines are an example of that—and we will continue to do that.

On the general point, I am very concerned about the continued presence of drugs and illicit substances in our prisons. We are working on that with our justice partners and the SPS. If further investment in technology is needed, we will be happy to consider that as part of the on-going budget process.

Culpable Homicide (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Linda Fabiani): The next item of business is a debate on motion S5M-23917, in the name of Claire Baker, on the Culpable Homicide (Scotland) Bill at stage 1. I ask those who wish to speak in the debate to put an R in the chat box. We have no spare time in the debate.

15:17

Claire Baker (Mid Scotland and Fife) (Lab): I am very proud to be introducing this debate on the Culpable Homicide (Scotland) Bill today.

Families across Scotland who have suffered the death of a loved one at work have fought hard for justice. I want their voices to be heard and us to commit to use the powers of the Scottish Parliament to fully recognise when crimes have been committed. If culpable homicide can be identified as the cause of death, it should not matter whether that is by the actions of an individual or a small or large company. The treatment under the law should be equal, and that is what the bill proposes.

Natalie Woods McKeown is a supporter of the bill who came to Parliament to speak to MSPs. I thank all MSPs who supported the bill. Here is Natalie's experience:

"On April 16th 2002, our dad John Woods went to work and never came home.

His employers were never charged with any offence and we were never given an explanation why this was.

Nearly 19 years later, we miss our dad every day, we must live with the injustice of losing a loving dad with very little understanding of what happened and why no one was held to account.

Our family deserves justice."

We should be listening to voices such as Natalie's.

I thank the Justice Committee for its stage 1 report. Although I appreciate the difficult circumstances that we are all working under, it is frustrating that the bill was not afforded suitable time in the committee to hear from families and trade unions that have long campaigned for the legislation.

While we have failed to tackle this long-standing injustice, the most recent annual figure shows that, on average, 19 people are killed each year in work-related incidents in Scotland. That is the highest rate in the UK, according to the Health and Safety Executive. The most recent figure recorded is 29 deaths in 2018-19, and that excludes marine, air, rail and road investigations.

The bill will not amend any health and safety legislation, but it can be a lever to ensure that employers take their responsibilities seriously. At present, common law determines how culpable homicide applies to individuals. It can be possible to convict the owner of a small business when an employee has lost their life due to the business's neglect. However, we need to be honest and recognise that there is no expectation that a large business can be successfully pursued through the criminal courts. The current legislation is inadequate and the law is applied inequitably.

I am very disappointed by the Scottish Government's response and the lack of support for the bill not least because, when in opposition, many Scottish National Party MSPs, including the Deputy First Minister, supported Karen Gillon's very similar bill. In 2006, Nicola Sturgeon wrote to Families against Corporate Killers to say:

"The SNP is supportive of this legislation and, in particular, legislation specific to Scotland. It is regrettable that the Scottish Executive has not shown leadership in this issue".

I know how she feels. To support the principles of the bill in opposition and then not take action in government when the SNP has power leaves the SNP open to accusations of being supine. There is still time this afternoon to change that.

It is perhaps not surprising that the Scottish Government's response to the committee's stage 1 report defends the Corporate Manslaughter and Corporate Homicide Act 2007. The Government has previously claimed that that is an effective deterrent that sends a robust message. Along with affected families and the trade union movement, I strongly disagree with that, and believe that the fact that there has not been one prosecution in Scotland under that act in the 13 years since it was passed while deaths at work have increased shows the inadequacy and ineffectiveness of the legislation. Is the cabinet secretary really confident that the 2007 act could be used to respond to other tragedies, such as the Transco gas explosion? There is no evidence to support the argument that the 2007 act bypasses the Transco loophole. The 2007 act and the senior management test are not working, and we can use the Scottish Parliament's powers to change that.

I acknowledge that the Presiding Officer has given a negative legislative competence certificate. I urge the Scottish Government to recognise that there is a strong counter view to that: that the bill is clearly concerned with Scottish criminal law, which we have responsibility for, and that section 29(4) of the Scotland Act 1998 sets out the provisions for legislating in the area. The bill does not legislate on health and safety, and we have a responsibility to take action.

The Scottish Government has previously challenged the Scottish Parliament's legislative competence on the minimum price for alcohol and defended that to the last, and it has more recently proceeded with the UK Withdrawal from the European Union (Continuity) (Scotland) Bill, which also had a negative legislative competence certificate. The strong words from Pat Rafferty of Unite Scotland express the anger and disappointment of the trade union movement. He said:

"To suggest that the Bill is not competent is not only misleading but factually incorrect. We believe that the issue comes down to political will. ... in light of the Scottish Government's pathetic lack of will to use the powers already at its disposal, including criminal justice law, it is up to the Scottish Parliament to take a progressive stance."

The Scottish Government has argued that I should wait for the Scottish Law Commission's review of homicide. That review is not due to conclude until 2023. The Government's response also makes it clear that it is not considering the areas that are covered by my bill. My decision to introduce legislation has been described by the Government as a failure to give consideration to that option. What is a failure is the fact that a family lost their lives in the Transco gas explosion and there was no conviction of culpable homicide. It is a failure that Scotland's rate of workplace fatalities is not reducing but is on the increase, and it will be a failure of political leadership if the bill falls today.

This is a short debate and, in the time that I have, I have sought to set out the reasoning for the bill and to respond to the Scottish Government's points. I appeal to members across the Parliament, many of whom have supported the bill to this stage, to ask themselves how long families have to wait for justice and to support the bill through to the next stage.

I move,

That the Parliament agrees to the general principles of the Culpable Homicide (Scotland) Bill.

The Deputy Presiding Officer: I call Adam Tomkins to speak on behalf of the Justice Committee for up to five minutes, please.

15:23

Adam Tomkins (Glasgow) (Con): The Justice Committee is awash with legislation. Today, we have published our stage 1 report on the Domestic Abuse (Protection) (Scotland) Bill. Next week, we have stage 2 of the Defamation and Malicious Publication (Scotland) Bill. Very soon thereafter, we will have stage 2 of the Hate Crime and Public Order (Scotland) Bill. All of that is Government legislation. That is so time consuming that, since I became the committee's convener last summer,

we have had no opportunity to undertake any inquiry work of our own. However, we have been able—albeit briefly—to consider two members' bills, of which the bill that we are considering is the first to come to the chamber.

On 6 October 2020, we took evidence from Claire Baker, who is the member in charge of the bill, and from Patrick McGuire of Thompsons Solicitors, and we published a short report on 13 November. We asked for the Government to respond to that report before today's stage 1 debate, which it did, on 12 January. I thank the cabinet secretary for that. I also thank Claire Baker and her team for the constructive and helpful way in which they engaged with the committee.

Our report outlined what the bill does and summarised the policy intentions that underlie it, and I need not repeat here what we have already heard about those matters from Claire Baker this afternoon. The report also outlines the reasons why the Presiding Officer has stated that, in his view, the bill

“would not be within the legislative competence of the Scottish Parliament”,

and we noted that the member in charge of the bill respectfully disagrees with that view.

Given the constraints under which the Justice Committee is working, which have been imposed not only by the burden of Government legislation but by the impact of the pandemic, we were able to reach only the following conclusions. First, members' bills are an important part of the Parliament's work, and this bill in particular is very important indeed to a number of grieving families in Scotland who have lost loved ones at work. Secondly, the number of cases that have been successfully prosecuted in Scotland under existing corporate manslaughter and corporate homicide legislation is vanishingly small, and that has a devastating impact on families who are affected. Thirdly, the committee therefore has some sympathy with the policy intentions that underpin the bill; however, a number of issues have been raised in relation to the bill, both in the committee's questioning and in Claire Baker's consultation on the bill. Fourthly, the dispute about the bill's legislative competence could lead to a challenge in the courts, were the bill to be enacted. On the basis of those considerations, the committee made no recommendation to the Parliament as to the general principles of the bill.

As I mentioned, we asked the Government to respond, and the cabinet secretary's response was received earlier this month. It makes plain, as I am sure that we will hear in a few moments, that the Scottish Government has a number of policy and legal reservations about the bill and cannot support its general principles.

The Justice Committee expressed no final view on the bill but, in light of the evidence that we took and of the cabinet secretary's detailed and considered response to our report, I find myself, regrettably, unable to support the general principles of the bill, and I will vote accordingly at decision time today.

15:27

The Cabinet Secretary for Justice (Humza Yousaf): I begin by saying that the Scottish Government has a great deal of sympathy with families who have lost a relative while attending their workplace. We appreciate that the aims of the bill will be important to those who are affected. I thank Claire Baker for reading out the personal testimony of one family, and I know that she is engaged with a number of families about the bill.

Where the evidence shows that such deaths have happened because of organisational or management failure, I fully support law enforcement agencies taking robust and effective action, if they consider that that is appropriate in a given case, using existing laws.

I know that those who support the bill believe that the existing criminal law is inadequate. The Scottish Government has made it clear that current legislation could be improved by new devolved legislation, and we will consider what other steps should be taken. Let me say from the outset that, although the Scottish Government is unable to support the bill—I will go into detail about the reasons for that shortly—I have already spoken to Claire Baker to say that, dependent of course on election results, I would be happy to discuss these matters in the next session of Parliament with her to see whether we can address the concerns that she raises in a way that is within the Parliament's competence and which would enable any bill or proposals to be afforded the appropriate scrutiny.

I appreciate the constraints that the Justice Committee was subject to in undertaking its stage 1 scrutiny, as we have just heard from the convener. I know that it made no recommendation to the Scottish Parliament on the general principles of the bill. In the absence of full scrutiny, the Scottish Government's ability to analyse the bill has been limited, as our views on it would have been shaped by a full scrutiny process. For example, no oral evidence was taken from the Scottish Government, the Crown, trade unions or businesses. That is not at all a criticism of the committee, as it has a full workload, which is due overwhelmingly to the Scottish Government's legislative timetable.

However, on the basis of our examination, I can make the following remarks. The Scottish

Government notes that the bill has obtained a negative legislative competence certificate from the Presiding Officer. Based on a very preliminary analysis of the competence of the bill, the Scottish Government is also of the view that provisions in the bill that give effect to the policy intention behind it are outwith the legislative competence of the Scottish Parliament. We are also of the view that it would be difficult to amend the provisions of the bill at stage 2 so as to bring it within competence without significantly changing the policy intention of the bill.

Any doubt about competence could call into question any future prosecutions made under the bill, if passed, and we need to consider that carefully. That would not be a desirable outcome and it might lead to the Lord Advocate having no other option than to make a reference to the Supreme Court as to the legislative competence of the bill under section 33 of the Scotland Act 1998.

The Scottish Government also has a number of policy concerns. The first is the way in which the bill seeks to operate within the common law of culpable homicide. With the Scottish Law Commission's review on homicide under way and due to report in 2023, the Scottish Government is concerned about any piecemeal reform of the law. It is preferable that reform of culpable homicide as it applies to organisations should be considered once the reform of homicide in criminal law is in place, although I accept that that is not definitive and it does not have to be the case.

Our second policy concern is about the lack of clarity around how the process of aggregation under section 2(3) of the bill would operate. In particular, it is not clear how a jury would assess when such individual actions that when considered separately do not constitute culpable homicide are somehow sufficient—as the bill refers to it—when considered together for these purposes to provide that an organisation has committed culpable homicide. The bill does not set out what tests would apply.

In our view, there is also a lack of clarity around how the rules under section 6 art and part operate, and whether that approach is correct and fair. It would appear that provisions would apply even when the organisation has been found guilty only on the basis of an aggregation under section 2(3). Thus there is at least the possibility that an individual could be found guilty, art and part, even when their actions, viewed in isolation, do not constitute any criminal offence whatsoever.

There is also a lack of clarity around the way in which the bill would interact with existing provisions in the UK Government's Corporate Manslaughter and Corporate Homicide Act 2007.

In conclusion, the Scottish Government is happy to consider any proposals for reform to the law in this area, if they can be developed within the competence of the Scottish Parliament. It is not a lack of political will, and I am disappointed that our response has been characterised in such a way. There are clear doubts about the legislative competence of the bill, and they are not just theoretical; they could call into question any future prosecutions made under the bill if it is passed.

Alongside the competence concerns, the Government is concerned about piecemeal reform of the law, we have policy concerns, and we are concerned that the bill has not had the detailed scrutiny that one would expect at stage 1. For all the reasons that I have given, the Scottish Government finds itself unable to support the bill.

15:32

Liam Kerr (North East Scotland) (Con): I am pleased to have the opportunity to speak in the debate.

The Scottish Conservatives will vote against the principles of the Culpable Homicide (Scotland) Bill at decision time, but that phrase is interesting, because I have sympathy with the principles of the bill and with those who have lost loved ones.

Claire Baker, who introduced the bill, did so on the basis—the principle, if you like—that a person or organisation that causes a death can be found guilty of a suitable offence and to make clear who is responsible. The policy memorandum is succinct that its intention is to make clear in statute, although not in substitution for the common law offence of culpable homicide, what the offence is, what its elements are and who may be liable. That, the member says, would

“reflect the moral opprobrium that society attaches to taking a life”

while driving behaviour change, particularly in relation to safer working environments for employees. That is admirable, but we cannot vote the bill forward today.

First, the member knows that I am deeply uncomfortable with the legislative timetable in the justice portfolio and its impact on our ability to scrutinise proposed legislation. The convener described the committee as “awash” with legislation, and he is right. The Justice Committee felt unable to make a recommendation to the Scottish Parliament on the general principles of the bill, because we had only one meeting in which to review it. In that meeting, we heard from only the member and one other about a bill that, in its effect, could be groundbreaking and would require the utmost care.

There is very limited time left for consideration and scrutiny in this session and I cannot countenance voting something of such import through.

Secondly, on 1 June 2020, the Deputy Presiding Officer issued a clear and unambiguous statement:

“In my view, the provisions of the Culpable Homicide (Scotland) Bill would not be within the legislative competence of the Scottish Parliament.”

On the same day, the member said that it was her view that the bill would fall within legislative competence, but, in contrast to the DPO, she gave no reason for her view.

I also have regard to the cabinet secretary's letter of 12 January, in which he persuasively contends that the bill is not within competence and raises the concern that, were the bill to pass, there could be a successful challenge. He set out the implications of that in his speech just now.

Others will look in detail at the policy concerns inherent in the bill, including the significant danger of unintended consequences, so I shall finish by simply referencing the Scottish Law Commission's review.

I remind members that I am a practising solicitor with membership of the Law Society of Scotland. I find myself in agreement with the Law Society's view that, although a considered and detailed review of the law on culpable homicide is necessary, that already forms part of the work that is currently being undertaken by the SLC with its review on homicide.

The Law Society reassures us that when the SLC report is issued, it will provide a set of recommendations and a collection of evidence upon which to proceed with the reform of the law in this area. As well as providing authority and ensuring legislative competence, that would avoid a piecemeal approach to amending the crime of culpable homicide.

I understand the member's view that it has taken some time and that, even following the report, there will be a time delay until legislation. However, I cannot help but conclude that the SLC is the best and most appropriate body to be considering the matter, in order that when the Parliament comes to consider any bill, it will do so in the context of a full review that deals with any legislative competence issues, and it will be easy to challenge any criticisms of a piecemeal reform.

In summary, the Scottish Conservatives have sympathy with the families who have lost a relative at the workplace and appreciate the member's intentions, but we will vote against the principles of the bill at decision time.

15:36

Rhoda Grant (Highlands and Islands) (Lab): I begin by paying tribute to Claire Baker. Introducing a member's bill takes tenacity and hard work and she has displayed both.

The bill recognises that too often people die at work due to negligence, and all too often no one is held to account. For the families, it is heartbreaking. To lose a loved one is devastating, but to know that those who caused the death due to recklessness or gross negligence are not being prosecuted must be unbearable. They cannot get closure.

Louise Taggart lost her brother and said:

“Far too often, families like mine who have been bereaved by work are left to feel that we have failed our lost loved ones, because the justice system has utterly failed us!”

Neither does the situation enforce adequate safety standards. If companies are not held to account, they are actively being encouraged to cut corners, which puts their workers' lives at risk. There is an offence of corporate homicide, but not one person has been convicted under it in more than 12 years. That is despite the fact that an increasing number of people are dying at work due to negligence.

Roz Foyer, the general secretary of the Scottish Trades Union Congress said:

“The Bill is vital to workplace safety in Scotland. The 2007 Act is not working and it is vital that legislation is passed that can be effectively applied to larger organisations.”

Yet, the Scottish Government is doing nothing. The current situation is unacceptable and Claire Baker's bill tries to address it.

Workplace deaths are sadly increasing in number and there are more in Scotland than in the rest of the UK, so the bill is desperately needed. It is supported throughout the trade union movement and by families who have lost loved ones due to unsafe working conditions. It is hypocritical of the Government, whose members supported the proposal to legislate when they were in Opposition, to choose to vote the bill down now that it is in power. The issue is far too important to play politics with and I urge the Government to change its tack and support the bill at stage 1.

I also find it unacceptable that the Government will vote down the bill simply because there has not been enough time for scrutiny. That is not to say that we do not need scrutiny—we do. If there is not time to carry out that scrutiny during stage 2, then the bill will run out of time and fall. If there is time, then scrutiny will take place before amendment, and we can make a final decision on the amended bill at stage 3. There are enough

checks and balances in the system to allow the bill to pass tonight and be properly considered by the Parliament.

The general principles of the bill and what it is trying to achieve are sound and that is what we are voting on tonight. Therefore, if members believe that families who lose loved ones due to the recklessness and negligence of their employer need redress and closure, then they need to support the bill. If the Government cannot get control of Covid-19 and the election is delayed, there will be ample time to scrutinise the bill; if not, the bill will run out of time and fall. We lose nothing by supporting the bill at stage 1 and families and workers have justice to gain.

I leave you with the words of Louise Taggart:

“It is time for this whole Parliament to unite and show leadership and help put an end to future work-related heartbreak: to prevent other 26 year old men, like my wee brother, with their whole lives ahead of them, from going to work of a morning and not making it home.

Taking forward these proposals is about justice, it's about saving lives, it's about protection of family members. Families deserve justice. Families expect you to act without any more dither and delay, putting aside party politics.”

I urge members to support the bill at stage 1.

15:41

John Finnie (Highlands and Islands) (Green):

I congratulate Claire Baker and her team on getting the bill this far. I am a signatory to the bill and the Scottish Green Party will support it at decision time.

There is no dubiety that it is a complicated area of law. I refer members to the Law Society of Scotland's briefing, which has an appendix with the subheading, “a brief outline of the existing law which seeks to emphasise its complexity.” The complexity of the law is readily accepted, but we cannot wait for the Scottish Law Commission's review. The situation is untenable. The status quo does not deal with the realities of the situation in relation to workplace deaths.

I was elected to push the boundaries of issues and I think that Claire Baker is right to say that the bill is within the legislative competence of the Scottish Parliament. She is also right to highlight those issues where the Scottish Government has pushed the boundaries of legislative competence, namely in the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill and the Alcohol (Minimum Pricing) (Scotland) Act 2012.

I commend Patrick Maguire of Thomson's Solicitors, and Scottish Hazards for their outstanding campaign work. Reference has been made to Transco. We do not have time to go into detail in this debate, but we know that Transco was found to have

“shown a complete and utter disregard for the public.”

The charges of culpable homicide were, however, held as irrelevant and were subsequently dismissed.

The member believes that we must act and I share that belief. We must act by using the powers of the Scottish Parliament. The Scottish Government's response to the bill says that the

“lack of prosecutions under the 2007 Act does not necessarily lead to the conclusion that it is not fit for purpose.”

I thoroughly disagree with that point.

The Scottish Government also highlights the legal term, the “identification principle”, suggesting that there is a significant danger of unintended consequences. Once more, I utterly disagree with that point. Is not the purpose of Parliamentary scrutiny to address the identification principle head on to ensure that there are no unintended consequences? To veto the bill at this stage and not allow the debate to continue and the proposals to be refined seems selective and disappointing. I am also frustrated by the limited time that we have to discuss the issue.

Patrick Maguire said:

“We say that, if a responsible person—such as a supervisor or manager, to whose level authority has been delegated down within the company—acts recklessly or causes a death through a gross breach of duty of care, that individual forms the guilty mind, because they are acting as part of the delegated authority. The company is also responsible”. —[*Official Report, Justice Committee*, 6 October 2020; c 8.]

There is extensive support for the bill. The bereaved loved ones do not want expressions of sympathy—they want action. Most importantly, they want their Parliament to act on this significant failing. I hope that that is what members will do at decision time.

15:44

Liam McArthur (Orkney Islands) (LD): In customary fashion, I thank Claire Baker for introducing the bill. As I said in relation to the Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill, which the Parliament passed earlier this week, no one should underestimate the work that is involved in introducing a member's bill.

Although the Scottish Liberal Democrats cannot support the bill as proposed, for reasons that I will come to shortly, I make it clear that the issues and concerns that Claire Baker has highlighted through her bill are legitimate and require to be addressed. Indeed, I acknowledge the earlier campaigning and efforts of my friend and Claire Baker's former colleague Karen Gillon, which led to the Corporate Manslaughter and Corporate Homicide Act 2007.

It was recognised at the time that the act did not go as far as Karen Gillon and others had wanted, but a bridgehead was established.

As we know, the existing offence of corporate homicide, which was introduced by the 2007 act, has yet to be prosecuted in Scotland, so I recognise entirely why Claire Baker is seeking to strengthen what are seen to be deficiencies in the current law. I understand the frustration that the 2007 act appears to set the bar for prosecution relatively high, particularly when it comes to attributing a breach to individuals within the senior management of larger companies or organisations.

However, as the Justice Committee heard during the limited evidence that we took on the bill, there are serious questions about its legislative competence. The Presiding Officer has made clear his position in terms of the reserved nature of health and safety legislation and the law relating to corporations. Whatever our respective positions on where those powers should lie—I note the comments by John Finnie, Claire Baker and others about how we might test that at stage 2—I cannot see how the issue can be wished away in order to allow the bill to pass to stage 2.

There is certainly a strong case for reviewing the 2007 act, as the Law Society has suggested. Indeed, at the start of a new parliamentary session, before Government bills begin appearing, there could be an ideal opportunity for a successor Justice Committee to undertake such post-legislative scrutiny. If it were to do so, I am sure that the consultative and other work that Claire Baker has carried out would be invaluable in informing those deliberations and identifying potential ways forward. I also hope that the Scottish Law Commission, which is carrying out work on the law on homicide, might usefully look at that area in particular.

At this point, however, much as the Scottish Government has concluded, I am not persuaded of the case for passing the bill to stage 2, particularly given the workload pressures that are already on the Justice Committee in dealing with the legislation that is before it.

Nevertheless, like Karen Gillon before her, Claire Baker deserves huge credit for ensuring that a light continues to be shone on culpable homicide. That makes it more likely that the concerns that she quite rightly raises on behalf of the families who have been affected, and the wider public, will ultimately be addressed.

The Deputy Presiding Officer: We move to the open debate. I ask for three-minute speeches, please.

15:47

Kenneth Gibson (Cunninghame North) (SNP): Culpable homicide legislation needs to be updated, and the bill has been introduced with the intention of doing that. Much of the case law and, indeed, the language that is used when talking about culpable homicide dates back to a time when we had the death penalty for murder. However, the bill, which seeks to amend the law by creating two forms of culpable homicide, deals with only one aspect of homicide law and attempts to modernise it without addressing wider issues that might need reform.

The Scottish Law Commission has launched an extensive review into homicide law, which is due to be completed by 2023. It will assess the underlying principles of, and the boundaries between, the crimes of murder and culpable homicide, and the psychological element that is required for commission of the offences.

The commission also aims to review the nature, scope and definition of the main defences that arise in homicide cases, including self-defence, provocation and diminished responsibility.

That important and comprehensive review might well show that there is a need for current laws to be improved or supported by new devolved legislation. If that is the case, the Scottish Government should, at that point, consider introducing new legislation.

Every workplace fatality is a tragedy for that person's family and friends, and it can be traumatic for work colleagues, so I greatly sympathise with the bill's intentions. That said, before completion of the commission's review, the bill risks allowing a premature and piecemeal approach to be taken to reform. Any reform of culpable homicide as it applies to organisations should be considered only once reformed homicide criminal law is in place.

The bill was introduced on 1 June 2020. We would normally have expected it to have, by this stage, been subjected to careful scrutiny by the Justice Committee, and the Parliament to have received the recommendation for further action. In its stage 1 report on the bill, the Justice Committee warned that its scrutiny had been significantly constrained, as we heard from Adam Tomkins and Liam Kerr. Understandably, lockdown restrictions resulted in a delay to the committee's work programme, and its exceptionally busy schedule had an impact on the time that was available to scrutinise the bill. Although that was nobody's fault, the upshot is that the committee has not been able to scrutinise the bill to its usual high standard, or to make recommendations based on that scrutiny.

Even so, the committee raised significant concerns, with which the Presiding Officer has agreed, around legislative competence and policy in respect of the bill. Simply wanting the bill to be competent does not, sadly, make it so. There is a need for further and more in-depth scrutiny, which suggests that the bill has been brought to the chamber prematurely.

As I mentioned, I am sympathetic to the intentions behind the bill, and I thank Claire Baker for her hard work in bringing it to stage 1. I realise how frustrating it must be for her that it does not have greater support today. However, it would be irresponsible for us to pass such a bill without appropriate scrutiny or full understanding of the consequences. Although it can be tempting to rush legislation through, in particular on important and emotive issues, we must ensure that it is comprehensive and complete, that it holds up to scrutiny and that it is competent and will deliver. Sadly, the bill does not fulfil those criteria, therefore I cannot support it.

15:50

Gordon Lindhurst (Lothian) (Con): The Scottish Conservatives' approach to the bill has been outlined by my colleague Liam Kerr. I need not repeat what he has said, but perhaps one or two comments would be appropriate.

A key issue, on which many members have touched, is whether the measures that the bill aims to put into law fall outwith with the competence of this Parliament. Indeed, it is already considered that they do. Without a well-reasoned explanation of why that view is wrong, it is difficult to deal properly with the bill at this late stage in the current session of Parliament. It is a matter of concern that much time has already been spent—or, as some might say, entirely wasted—during this session on measures that have had competence, and on others that have been of dubious competence.

Another key point, which is unrelated to the bill itself, concerns the current circumstances, of which we are all too painfully aware, and the various measures that have been put in place as a result. Of necessity, those measures impinge on and, to a very real extent, prevent proper exercise by us, as MSPs, of our democratic functions, and prevent carrying out of our responsibilities.

To the extent that those functions can be exercised at present, doing so adequately is neither easy nor quick, including for the Justice Committee. Virtual meetings and online communication are not at all equivalent to meeting in person, and it is clear that information technology solutions do not provide equivalence at any level. I recall visiting a tech hub in the before

time—as some people refer to life pre-Covid—and being told by a highly successful IT entrepreneur that when he really wanted to get something sorted out, he got everyone together in a room, because online meetings just do not do it.

It is important, as other members have emphasised, to recognise that the bill's intentions are well meant. The onus must always be on individuals and organisations to act in responsible ways, which is why the law already recognises that, through the “controlling mind” principle. Imperfect though the current state of affairs is, the matter requires to be addressed very carefully indeed.

Given the circumstances that we face as we come to the end of the current legislative session, the matter would perhaps, if it is thought appropriate to do so, best be considered and acted on in the next session of Parliament.

15:53

Alex Rowley (Mid Scotland and Fife) (Lab): Scottish Hazards, along with trade unions and campaign lawyer Patrick McGuire from Thompsons Solicitors Scotland, has always said that families who are affected by workplace deaths are being denied justice. Humza Yousaf said today that he has

“a great deal of sympathy with families”,

but the clear message is that families need more than sympathy: they need a change in the law.

I will read out comments from Denise Christie, who is the head of the Fire Brigades Union Scotland. She says:

“The current legislation is completely ineffective. After 13 years there have been no prosecutions let alone convictions under the legislation in Scotland at all! The legislation is drafted in such a way that medium size or larger organisations are almost never likely to be prosecuted. We believe it protects companies from prosecution and fails workers and their families.”

That is the issue that Claire Baker, with a lot of support from others, has worked so hard to address.

It is absolutely appalling that the cabinet secretary has come to the chamber today with excuses, rather than looking at how we can take the bill to the next level—stage 2—and work to see whether the Government's concerns can be addressed. That, at least, should be the principal starting point for the Government.

The FBU says that the

“The Health and Safety at Work Act has been a good piece of legislation, however, it doesn't reflect the gravity of the crime. An organisation's reputation is one of their most valuable assets. If a company is found guilty of s2 or s3 of

the HSWA, it doesn't have the same impact as being found guilty of culpable homicide!";

which would cause reputational damage.

The FBU also says that

"organisations are now no longer deterred by the current legislation as they know that the chance of being prosecuted in Scotland under it is almost non-existent".

I thank Claire Baker and the trade unions. We must sort this out. I appeal to the cabinet secretary to agree that the bill should go forward so that we can continue our discussions to fix its current weaknesses.

15:55

James Kelly (Glasgow) (Lab): I pay tribute to Claire Baker for the work that she has put into a member's bill that deals with an important issue and means so much to families who are affected.

It is not the statistics that Claire quoted about increasing numbers of deaths in the past decade that affect us, but the stories and testimony behind those figures. Alex Rowley showed in his use of the FBU's testimony that there is a gap in the law. People are dying at work, but companies are not being held responsible and families are left with nowhere to go. That is a clear failure.

Those who have argued against progressing the bill have made two points. One is about legal competence. I have studied the Presiding Officer's statement and have listened to the cabinet secretary. However, Claire Baker and those who support the bill make the powerful point that it could be taken forward under section 29(4) of the Scotland Act 1998. We should explore that as part of our further consideration of the bill.

Some members have made points about a supposed lack of evidence and about timetabling. There is evidence. The issue goes back more than 15 years. A number of members have referred to the work that was done by Karen Gillon and continued by Richard Baker. There is already a formidable package of evidence.

Rhoda Grant pointed out that there is a question mark over the date of the election because of on-going restrictions that have been caused by the pandemic. It would be reasonable to accept the general principles of the bill at stage 1 in order to allow further consideration.

We have heard contributions from a number of members, including Liam Kerr and Humza Yousaf, who said that they are sympathetic to the principles of the bill but do not want to take it forward. That is not good enough. The issue has been around for more than 15 years. It is a failure of devolution that large companies go unprosecuted when fatal accidents happen at

work. The Government and all parties should take more responsibility for that.

We have listened to the testimony of people who have been affected. Rhoda Grant quoted Louise Taggart and Claire Baker quoted Natalie Woods McKeown. It is a tragedy that someone can leave to go to work and never return home; it is terrible for their loved ones. It is not good enough for members and political parties to wring their hands and say that we do not have enough time, or that there are legal considerations or concerns.

Let us use the time that we have to stand up and be a voice for those families. That is what Parliament is all about. Let us try to make a difference. Let us allow the bill to go to the next stage so that we can have further scrutiny and make it work.

I urge members to support the bill at decision time.

15:59

Margaret Mitchell (Central Scotland) (Con): I, too, pay tribute to Claire Baker for the immense work that she has put into researching, consulting on and drafting this member's bill, and I thank the Justice Committee for its scrutiny of the bill and the stage 1 report.

Under the Corporate Manslaughter and Corporate Homicide Act 2007, which applies to the whole of the UK, 250 cases have been prosecuted but only nine have resulted in convictions. The number of people killed in Scotland while at work averages 19 per year, but, despite that, the Crown Office and Procurator Fiscal Service has raised no prosecutions.

Currently, in order to bring a prosecution, the "controlling mind" of an organisation must be identified. That is easier to establish in smaller organisations than in larger ones and in corporations, where large and complex management structures often make it hard to identify who in the business or organisation controls the actions that have led to a death.

Section 1 of the Culpable Homicide (Scotland) Bill creates two different categories of statutory culpable homicide that apply to individuals and non-natural persons alike when a death has been caused by recklessness or gross negligence. Section 7(2) grants powers to Scottish ministers to, by regulation and subject to the affirmative procedure, add, remove or modify a description of a non-natural person. That flexibility has been welcomed by some, but others have raised significant concerns about the legal ramifications and possible changes to the criminal law. The law must give certainty, and that flexibility has been

viewed by employment law experts as a weakness in the bill.

Although it may be possible to address by amendment the flexibility issue and other issues that the Justice Committee has highlighted, the same cannot be done to resolve the legislative competence issue. The Presiding Officer has ruled that the bill is not within the legislative competence of the Scottish Parliament for the following reasons: it relates to part 1 of the Health and Safety at Work Act 1974, which is reserved; and the bill as a whole relates to the operation and regulation of business associations, which is also a reserved matter.

No one could fail to be moved by or feel sympathy because of the heartbreak suffered by the families of those who left home for work as normal but never returned, having lost their lives due to an accident at work. Consequently, the lack of convictions is certainly a cause for concern. However, the fact remains that the bill has been ruled as being not within the legal competence of the Scottish Parliament. That, in turn, has prompted the Justice Committee to question whether there is merit in the bill proceeding to stage 2, given the limited time available for further consideration in the current session of Parliament. It is for those reasons—disappointing as I know it will be for Claire Baker—that the Scottish Conservatives will not be able to vote in favour of the Culpable Homicide (Scotland) Bill this evening. Instead, we agree with the Law Society of Scotland that post-legislative scrutiny of the 2007 act would establish whether there is empirical evidence to support the criticisms of that act.

The Deputy Presiding Officer: I call Humza Yousaf, who has up to four minutes.

16:03

Humza Yousaf: I welcome today's debate. I am disappointed by some of the characterisations in the debate, particularly from Labour members, and the suggestion that those who do not support the bill today are not thinking of the families or do not have them in our minds as being affected by—

The Deputy Presiding Officer: Excuse my interrupting, cabinet secretary, but you are difficult to hear. Can you speak closer to your microphone?

Humza Yousaf: It has been suggested that those who, for good reasons, oppose the bill somehow do not understand the struggles of, or sympathise with the feelings of, the families whom the tragedies have befallen. I reject that view at the outset. It is precisely because of our concerns for those families whom Claire Baker has—and many others have—spoken about that we consider this to be bad legislation. Passing bad

legislation could lead to any prosecutions being overturned, and that is not something to be thought of lightly.

We have concerns about the lack of scrutiny. Scrutiny in this Parliament is incredibly important. Members of the Opposition have told us—quite rightly—day in and day out, that scrutiny of legislation is important. Whether that refers to a Government bill, such as the Hate Crime and Public Order (Scotland) Bill, or to Covid-related regulations, or, as in this case, to a member's bill, the Parliament exists to ensure that there is adequate scrutiny of any legislation.

The lack of scrutiny is not something that can be wished away—certainly not on the whim that the election might be postponed. As things stand, we very much expect the election to go ahead to its timetable. The lack of scrutiny simply cannot be ignored, and it is important that all parliamentarians consider that issue.

In addition, significant concerns have been raised by a number of stakeholders. For example, the General Medical Council has raised concerns of unintended consequences for the medical profession and for doctors' confidence in reporting and learning from medical errors. That is not an insignificant concern. We all appreciate the work of our healthcare professionals, particularly during the pandemic. To pass a bill that could have unintended consequences for those national health service workers without taking any oral evidence whatsoever from them surely cannot be right.

The competence issues are also of grave concern. A number of Labour members—and Mr Finnie, I noticed—suggested that we should simply push the boundaries, as we have done with other pieces of legislation. However, the difference is that, in dealing with legislation in which the Government has pushed the boundaries, and when there has been some dubiety about whether it was within legislative competence, our concerns have not been the same as those that we have with this bill. We are entirely convinced that the bill is outwith legislative competence. That is the Presiding Officer's view, too.

I also note that, when Claire Baker gave evidence to the Justice Committee, she accepted that the issue of legislative competence is an area for debate. She said that the Parliament should be "ambitious and brave". However, the convener rightly pointed out that

"the terms of the Scotland Act 1998 do not refer to ambition, but to purpose and effect."

He concluded:

"I completely understand the ambition, but ambition is an irrelevant consideration. The relevant considerations are purpose and effect, and both purpose and effect speak to

health and safety, which is reserved.”—[*Official Report, Justice Committee*, 6 October 2020; c 11-12.]

It is also the Scottish Government’s view that the provisions in the bill that would give effect to the policy intention behind it are firmly outwith legislative competence.

On the issue that James Kelly raised in relation to section 29(4) of the Scotland Act 1998, it is very much the Government’s view, as we set out in our response to the committee’s stage 1 report, that

“the provisions in the Bill fail the test in section 29(4) of the 1998 Act.”

There are a number of policy concerns, which, again, I will not rehearse. I think that it is inappropriate in a Parliament that is designed to ensure that there is adequate scrutiny of legislation not to take appropriate evidence when such significant policy concerns are raised.

I appreciate that those who support the bill believe that the current criminal law is inadequate. They cite the lack of prosecutions under the UK Government’s Corporate Manslaughter and Corporate Homicide Act 2007 in that regard. However, the lack of prosecutions under the 2007 act does not necessarily lead to the conclusion that that legislation is not fit for purpose.

Every fatality at a place of employment in Scotland is investigated by the Crown Office and Procurator Fiscal Service’s health and safety investigation unit as a potential corporate homicide. The very nature of such deaths means that detailed and lengthy investigations, often involving technical and medical issues that require expert opinion, are needed.

Health and safety criminal offences have been committed that have resulted in custodial penalties. In March 2015, Guthrie Melville, a shellfish boat skipper was sentenced to nine months—

The Deputy Presiding Officer: Come to a close, please.

Humza Yousaf: —after being found guilty at trial over a number of health and safety at work failures. In January 2017, Donald Craig, the manager of an access plant hire firm, was sentenced to the maximum penalty of two years’ imprisonment for breaches of health and safety law. There are a number of other cases to which I could refer.

Not only does the Scottish Government have sympathy for families; it also wants to work with them and with other members to produce a bill that could help to address the issues. However, those would have to be within the Parliament’s devolved competence, deal with the policy considerations and be appropriately scrutinised.

I will wrap up my remarks there, Presiding Officer.

The Deputy Presiding Officer: I call Claire Baker to wind up the debate. I can give you up to five minutes, Ms Baker.

16:10

Claire Baker: I thank members for their contributions to the debate. I recognise that the process of scrutinising the bill has been curtailed, and I appreciate the consideration that members have shown on that. I am struck that members seem to recognise and to agree that the current situation is not acceptable. However, I ask them what they are prepared to do to fix it if they do not wish to support the bill.

I thank Patrick McGuire of Thompsons solicitors for his commitment to the bill and his extensive work on its drafting. My thanks also go to Ian Tasker of Scottish Hazards and Louise Taggart of Families against Corporate Killers for their support and the provision of invaluable briefings. I also thank the STUC for its strong support and its generosity in hosting meetings and events. The contribution and commitment of the trade union movement, which has campaigned for change in this area, are very much welcomed. The GMB, Unite the union, Unison, the FBU and ASLEF all know the impact that the existing situation has on their members and their families. I sincerely thank all the families who have shared their experience with me. They include those who have had bereavements during the passage of the bill and who have contacted me in a distraught state because they have no confidence in the current justice system and fear that the lives of their loved ones and the loss that they have experienced have been undervalued.

To members who might be concerned about the bill’s potential impact on business, I say that it does not require businesses to do anything other than what they are legally required to do now. Businesses and employers that take seriously the duty of care that they have for their workforces and that take all necessary measures to prevent injuries and fatalities have nothing to be concerned about.

The cabinet secretary described the bill as “bad” legislation. I have to say that that was not the SNP’s view when it was in Opposition. I will not repeat the First Minister’s comments from then, but I ask what has changed. The cabinet secretary has also raised concerns about the drafting of the bill’s sections on aggregation and on art and part liability. In addition, points have been raised about the bill’s interaction with the Corporate Manslaughter and Corporate Homicide Act 2007. I recognise that those areas need further

consideration, and I propose to lodge or accept amendments to address them. I have met representatives of the GMC. I would also consider the option of including exemptions.

The curtailment of stage 1 of the bill's progress has limited the opportunities for dialogue and scrutiny. I believe that, as Rhoda Grant argued, those could be addressed by amendments at stage 2, on which I intend to work constructively with others. I ask members to consider how we might complete members' bills in this session. Members have introduced bills in good faith and in good time, and it is highly regrettable that legislation is now being thwarted by time constraints.

Unison Scotland is urging members to support the bill at stage 1. It says:

"For too long, large businesses have destroyed families with little recompense. It is time for the law to be readdressed."

There is a moral imperative to the bill. I draw members' attention to a case that is similar to those that the cabinet secretary mentioned. Scottish Hazards has highlighted the view of Sheriff Collins, which she set out in her sentencing of Craig Services and Access Ltd in 2012:

"The sentences I am about to impose cannot and do not attempt to reflect the enormity of Mr Currie's death, nor the suffering of his loved ones."

The inadequacy and insufficiency of the law were first exposed by the Transco case, to which the 2007 act was a response. However, there is no evidence that the current UK legislation can effectively deal with the prosecution of a company such as Transco or even that of a smaller company such as Craig Services and Access Ltd. Today, the FBU has said that it believes

"the Act protects companies from prosecution and fails workers and their families."

I welcome the cabinet secretary's offer to continue discussions in the next session of Parliament, if we are returned, and Liam McArthur has suggested a committee approach. However, sympathy is not enough; we need a solution-focused approach and not to be prepared to remain at a standstill, with no change.

Liam Kerr is not accurate in saying that I have not presented an argument that the bill is competent. I have done so, and my argument was shared with the Presiding Officer and the committee. Mr Kerr and others might not agree with it, but it is unfair to say that I have not made out a case. The bill is wholly concerned with Scots criminal law, and section 29(4) of the Scotland Act 1998 gives the Scottish Parliament the power to make modifications to that.

I do not agree with criticisms of the bill's purpose and effect. It proposes no changes to existing health and safety legislation. The pith and substance of the bill is on culpable homicide. It is not concerned with reserved health and safety legislation, so I do not accept that as an argument for denying legislative competence. A number of members referred to the Law Commission's review, but, to be clear, that is not considering culpable homicide cases concerning workplace deaths.

My final word on legislative competence is to call on the Scottish Government to think again, to give the bill the same consideration as it has given other bills that it has introduced, to not accept the current state of affairs and to agree to work with me to deliver a workable bill and a good piece of legislation that will provide families with a route to justice and help to reduce how often they may need to access it.

Presiding Officer, I appeal to members to support the general principles of the Culpable Homicide (Scotland) Bill and I give my commitment to work with members across the chamber to deliver justice for families throughout Scotland.

The Deputy Presiding Officer: Thank you, Ms Baker. That concludes the debate on the Culpable Homicide (Scotland) Bill at stage 1.

Dogs (Protection of Livestock) (Amendment) (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Linda Fabiani): The next item of business is a debate on motion S5M-23916, in the name of Emma Harper, on the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill at stage 1.

I advise members that we have no spare time at all in the debate.

16:16

Emma Harper (South Scotland) (SNP): I am pleased to open today's debate on the general principles of the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill. The bill will update and strengthen the law around livestock worrying, which is a horrendous event in which sheep and other farm animals are chased, attacked or killed by out-of-control dogs.

In many cases, sheep and other livestock are mauled to death or left with horrendous injuries and in extreme distress, often meaning that they must be euthanised. Being chased can also traumatised animals, leading pregnant ewes to abort. In addition to the emotional impact that the attacks have on the farmers and their families, there are often substantial financial losses. In some cases, pedigree sheep worth many thousands of guineas can be killed.

In evidence to the Rural Economy and Connectivity Committee, the Scottish partnership against rural crime reported that between April 2018 and March 2019,

"321 attacks on livestock were reported to Police Scotland"—[*Official Report, Rural Economy and Connectivity Committee*, 16 September 2020; c 2.]

and we know that attacks on livestock are underreported. The welfare of all animals is important and the evidence suggests that livestock attacks are a growing problem, which warrants legislative change.

The current livestock worrying legislation, which dates back to 1953, is outdated and no longer fit for purpose. Witnesses at the REC Committee agreed that current deterrents, as set out in the Dogs (Protection of Livestock) Act 1953, are insufficient and need to be updated. The bill provides additional powers for the investigation and enforcement of the offence of livestock worrying, and will increase the maximum penalties that are available to the courts.

The bill also extends the definition of "livestock" to include additional types of farmed animals, such

as alpacas, llamas, deer and buffalo, which are not afforded legal protection under the 1953 act.

It is clear from my consultation, which received more than 600 full responses, that the term "livestock worrying" does not adequately reflect the seriousness of the offence. The bill renames the offence from "worrying" livestock to "attacking or worrying" livestock. The word "worrying" has a different meaning today from its meaning in 1953; the word "attacking" is much more definitive and clearer.

I would like to thank everyone who has helped me get to this stage—the Scottish partnership against rural crime; NFU Scotland; the National Sheep Association; the Scottish SPCA; the British Veterinary Association; the British Horse Society Scotland; NatureScot; Scottish Land & Estates; the Dogs Trust; the farmers I met face to face; my vet, Alan Marshall; and the non-Government bills unit. Huge thanks go to my office manager, Scott McElvanney.

I also thank the REC Committee for its consideration of my bill at stage 1 and for supporting the general principles of the bill. I have written formally to the committee in response to its report and recommendations and, as the committee suggested, last week I met the minister to discuss the bill.

Following the positive meeting with the minister and the publication of the committee's report, I have committed to propose amendments to the bill at stage 2. The committee suggested that penalties could be increased to match recent changes to animal welfare offences. Having discussed that with the minister, I have agreed to the Government lodging a stage 2 amendment to increase the maximum penalty to 12 months' imprisonment or a fine of £40,000, or both.

The committee called for the powers in relation to the appointment of inspectors by inspecting bodies to be removed from the bill, due to concerns about the range of powers that would be available to those inspectors. I confirm that I will lodge stage 2 amendments to omit the relevant section from the bill to ensure that only the police can carry out any livestock attack investigations.

Additionally, the committee raised concerns about the power that would allow the police to enter non-domestic premises without a warrant in order to seize a dog. I will lodge an amendment at stage 2 to ensure that a warrant is required in all cases.

Finally, on a technical legislative point, the committee recommended that the procedure in relation to regulations regarding the definition of the term "livestock" should be affirmative and not negative. I will lodge a stage 2 amendment to that effect.

One point that I would like to clarify relates to compensation. The committee's report suggests that the bill contains compensation measures. That is not the case—there are no compensation orders in the bill. Compensation is already available as an option to the courts and, as the committee heard, compensation has been awarded in some cases.

I am hopeful that, with my commitment to lodge amendments at stage 2, the Parliament will support the general principles of the bill today at stage 1. That is the right thing to do to ensure that Scotland's hard-working farmers and crofters and those involved in agriculture have greater legal protection from attacks on their livestock by out-of-control dogs, which can be financially and emotionally devastating. I am committed to working with any member who has concerns or suggestions on how to improve the bill as we approach stage 2. I urge members to support the bill at decision time this evening.

I move,

That the Parliament agrees to the general principles of the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill.

The Deputy Presiding Officer: I call Edward Mountain to speak on behalf of the Rural Economy and Connectivity Committee.

16:22

Edward Mountain (Highlands and Islands) (Con): Before I begin, I would like to make a declaration of interests, in that I am a member of a family farming partnership.

As convener of the Rural Economy and Connectivity Committee, I am pleased to speak in this stage 1 debate. I thank all those who submitted their views, which informed our stage 1 report. It was those views that led us to support the bill's key aims. However, it was clear to us that considerably more clarity and amendment would be needed to make the bill effective.

Due to time constraints, I can touch on only a few of the issues. Considerable work has been put into the bill not only by the member in charge but by the committee. I therefore have to say that I find it totally unacceptable that such a short amount of time has been allocated for the debate. If the Parliament and its committees are to provide effective scrutiny of proposed legislation, sufficient time to do so must be found, and it is clear to me that an hour is insufficient.

I thank the member in charge and the Scottish Government for their responses to our report. Certain elements of the response from the member in charge did not appear to fully grasp the reasoning behind some of the committee's

decisions. However, I welcome the clarity that the Scottish Government's more detailed response brought.

We consider the increased penalties for the offence of livestock worrying to be justified, but we raised a question about whether they should be higher or in line with penalties in other legislation. I am pleased to note that the Scottish Government will resolve that by lodging an amendment to increase the maximum penalty available so that it is consistent with other legislation.

The committee found that certain elements of disqualification orders in the bill were unclear. To give one example, witnesses questioned how an order disqualifying a person from bringing a dog on to agricultural land would be enforced or monitored. The Scottish Government response agrees that the issue presents a challenge and accepts that further discussion is required.

The committee voiced deep concerns about the appropriateness of involving inspecting bodies in cases of livestock worrying. We therefore recommended that the provisions on that be removed. Again, I am pleased that the Scottish Government and the member in charge—today—have confirmed that they will make the required amendment.

Questions were also raised on practicalities to do with the role of vets in examining dogs, including how the integrity and continuity of evidence will be managed and the costs that will be involved. We asked for information and guidance to be provided, and the Scottish Government has indicated that that will be forthcoming, and that the police are expected to bear the costs.

I turn to the power of entry, search and seizure without a warrant, on which the committee had serious concerns, to the extent that we questioned whether the provisions were legally competent. We were not persuaded that the power was required or appropriate. Therefore, I welcome the fact that the Scottish Government agrees that the provisions should be removed from the bill, and I note that the member in charge has undertaken to do that.

Although the committee supported the general principles of the bill in our report, we did so only in very broad terms, and we provided some strongly worded caveats on the detail of its provisions. If the bill is to deliver Emma Harper's objectives and to be effective legislation, the important issues that the committee highlighted in its stage 1 report must be resolved in later amending stages.

I look forward to hearing other members' views on the bill and—if the Parliament agrees that it should progress to stage 2—to the issues that have been identified in the committee's report

being the subject of the considerable amendments that have been discussed.

16:26

The Minister for Rural Affairs and the Natural Environment (Ben Macpherson): I am pleased to have an opportunity to contribute to the debate, and I commend Emma Harper for her commitment and excellent work in bringing the bill to Parliament. I express my thanks, and those of my predecessor, to her for her constructive and collaborative attitude in working to deliver something simple and effective to modernise and improve the legislation on livestock worrying. I also thank the Rural Economy and Connectivity Committee for its detailed scrutiny of the bill proposals and its stage 1 report on the bill. As has been mentioned, I have already written to the committee to set out the Scottish Government's response to that report. I want to highlight key aspects of our position.

As has been said, the bill, as introduced, increases the maximum penalties for, and provides additional powers to investigate and enforce, the offence of attacking and worrying livestock. It proposes a minor but important change to the definition of "worrying livestock" and gives the attack element more prominence, although the scope of the offence remains the same. It also amends the list of animal species to which the offence relates to take account of the species that are commonly farmed in 2021.

I think that those changes are a useful modernisation of the Dogs (Protection of Livestock) Act 1953 and, in support of those principles, I agree with the intention to allow for future amendments to the definition of livestock as farming practices evolve.

The main focus of the bill is to increase the maximum penalties that are available for the offence of livestock worrying, which is a worthwhile aim. However, as Emma Harper indicated, to ensure consistency with the new penalties that are now available for many animal welfare and wildlife crime offences, which the convener of the Rural Economy and Connectivity Committee mentioned, and to allow the courts to impose appropriate penalties, depending on the particular facts and circumstances of the case, it is my intention to lodge an amendment at stage 2 that will increase the maximum available penalties on imprisonment from six months to 12 months and/or a £40,000 fine.

The vast majority of people in Scotland treat livestock with respect and care, but the small minority who do not must be held accountable through consequences that appropriately reflect the severity of their crime. Increasing the

maximum penalties that are available will allow the courts to impose appropriate sentences, once they have considered the facts and circumstances of each case.

Furthermore, I agree that there is merit in the bill's proposal on disqualification orders, which seeks to give the convicting court the power to prevent people who are convicted of the offence to be disqualified from owning or keeping a dog for such a period as the court thinks fit.

Such orders may be an effective way of dealing with certain offenders, particularly in cases where there appears to be a high probability of reoffending. However, it should be acknowledged that the enforcement and monitoring of such orders might be challenging, and we would not expect them to be appropriate in every case.

Overall, the bill is largely sound across its measures. However, there is scope potentially to simplify and improve some key aspects, which have already been mentioned. The Scottish Government would recommend that elements of the bill regarding inspection bodies and powers of entry be removed, as they are not considered to be necessary or appropriate, given that the relevant authorities already have powers in that regard. I have relayed that to Emma Harper, who is the bill's sponsor, and I understand from our conversations and the remarks that she made earlier that she has consulted and engaged with the authorities and those with practical experience, who share that view.

The bill includes a power to appoint inspecting bodies other than Police Scotland, but the evidence that was presented to the committee raised many questions about the role of the proposed inspectors and their working relationship with the police. The committee had fundamental concerns about the principle of inspection bodies taking the lead in circumstances in which a criminal offence has taken place.

Scottish ministers agree that responsibility for investigating the criminal offence of livestock worrying should remain with the police, with assistance from local authorities or the Scottish SPCA, as appropriate in the circumstances. The committee, Emma Harper and I, on behalf of the Scottish Government, agree that, should the Parliament agree to the general principles of the bill at stage 1, amendments will need to be lodged at stage 2 to remove the sections that relate to inspecting bodies.

Scottish ministers, in consultation with enforcement organisations including Police Scotland and the Crown Office and Procurator Fiscal Service, have concluded that the proposed power of entry, search and seizure without a warrant relating to non-domestic premises seems

unlikely to be required or used in practice if the police remain the investigating authority. Other speakers have mentioned that. I therefore propose that that power, too, be removed by a stage 2 amendment.

The Deputy Presiding Officer: Will you come to a close, please?

Ben Macpherson: Of course, Presiding Officer.

I hope that the Parliament will welcome those changes as I believe that they will strengthen and improve the bill and they have been agreed in principle with Emma Harper.

The Scottish Government supports the general principles of the bill, and I look forward to the remainder of today's debate.

16:32

Jamie Halcro Johnston (Highlands and Islands) (Con): I remind members about my entry in the register of members' interests as a partner in a farming business. I am also a member of NFU Scotland.

I congratulate Emma Harper on bringing the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill to the chamber. I share her interest in the subject. We both represent predominantly rural regions and we know all too well that livestock worrying remains a constant problem that is faced by farmers and the wider agriculture sector.

Dogs are mentioned in the title of the bill, but the real problem is inadequate and often reckless supervision by owners who allow such situations to occur. For far too long, there has been a strong belief among the rural sector that little has been done to safeguard its livestock. The member's bill consultation identified not only the scale of the problem, with dozens of offences being reported each year, but its increasing prevalence. We also know from NFU surveys that a great many offences go unreported.

When attacks occur, the financial costs can be considerable, but it is just as important that we reflect on the serious detrimental impact on the welfare of the animals that are involved. I suspect that many people do not realise just how easy it is for dog worrying incidents to result in harm to sheep and other animals, or how much damage an uncontrolled dog can cause.

The Rural Economy and Connectivity Committee's stage 1 report, which was developed before I became a member of the committee, is a detailed piece of work that makes a measured and reasoned case for the bill's future. I share the concerns that it expresses about some of the proposals in the bill and agree with the questions

that it raises about a range of the bill's provisions. Much of the evidence that the committee took pointed to changes that might be positive. There are a number of those, but I do not believe that that needs to be fatal for the bill.

Perhaps the most pressing issue is the proposed powers of entry, search and seizure. The committee has chosen not to support those, and there appear to be some deep-seated problems with them, which have been highlighted by the COPFS and the police. I am not sure that the proposed powers are really needed by those who enforce the law on the ground.

The report also addresses some thorny issues on which balance is essential and proper interaction with existing law would be beneficial. Making higher penalties available for livestock worrying offences is an overdue step that has broad support, but I hope that Emma Harper will take note of the committee's recommendations and look to find consensus with the Scottish Government to ensure that the bill is consistent with existing animal welfare legislation.

Compensation is another issue that has come up and was considered by the committee. There are undoubtedly barriers to seeking compensation through the courts, but we should keep in mind that the courts are there to make decisions on what is appropriate and to adapt to individual situations. If alternative compensation approaches are to be proposed, they must deliver real and tangible benefits to the injured party. Clarity is required on disqualification orders, and I hope that that can be provided as the bill progresses.

Of course, there are areas beyond the scope of the legislation that will impact on its effectiveness in achieving the positive aims that Emma Harper sets out. The discussion around inspecting bodies and the police highlights an obvious point: rural crime cannot be combated effectively if the required resources are not there. Public awareness will be key. I commend Police Scotland for its approach and work with the rural community, and its campaigns on livestock worrying that it has run at important points in the farming calendar, most notably lambing season. More will be necessary if the legislation is to be successful.

Members' bills are useful tools to correct particular wrongs, and this one focuses on what has been a long-standing problem for rural communities across Scotland. It is for the Parliament to take up the challenge and create a bill that will work effectively. I appreciate that time will be limited as we come to the end of this session, but the bill's progress will be closely watched by many in Scotland's countryside. As others have highlighted, there are undoubtedly

areas on which we should all reflect and offer suggestions and proposals.

The bill will have our support today.

16:37

Colin Smyth (South Scotland) (Lab): Labour will support the general principles of the bill. I thank Emma Harper for introducing it.

Livestock worrying is a problem that should concern not only farmers and crofters, but anyone who has an interest in animal welfare. When collecting evidence on the bill, the Rural Economy and Connectivity Committee heard from Fiona Lovatt from Flock Health Ltd, who said that its research has estimated that the number of livestock attacks might be as high as 10,000 per year. Charlie Adam of the NFUS noted a recent members survey that showed that 72 per cent of its members had been affected by attacks on their livestock.

Although the precise costs that are associated with livestock worrying incidents are hard to identify due to a lack of consistent data, the Scottish Government has indicated that incidents cost an average of £700. Livestock worrying is first and foremost a threat to the welfare of farmed animals, but it is also expensive and stressful for our farmers and crofters.

What is perhaps most concerning is that many stakeholders expressed to the committee the view that livestock worrying is on the rise. It is clear that the issue needs to be addressed, which includes the need to update legislation—although that is by no means a panacea.

Although Labour will be voting to support the general principles of the bill for those reasons, the bill requires substantial changes to make it fit for purpose. My major concerns with the bill lie, as do those of the Rural Economy and Connectivity Committee and the minister, with the enforcement provisions—specifically, those relating to inspecting bodies and the proposed powers of entry, search and seizure without a warrant.

As it stands, the bill would give ministers the power to appoint inspecting bodies to carry out investigations. I absolutely recognise the need for more specialism when it comes to investigating animal welfare and wildlife crimes; indeed, I raised that point during the passage of the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill. However, I am not convinced that the provisions in this bill are the way to achieve that. As many stakeholders pointed out to the Rural Economy and Connectivity Committee, there is a significant lack of clarity about what exactly is being proposed, and about how, or even whether, the powers would be used.

There is widespread agreement that Police Scotland remains the most appropriate body to lead on livestock worrying investigations. Based on that evidence, I am not convinced that the enabling powers in the bill are useful. Similarly, I have serious reservations about the need for the bill's provisions allowing entry, search and seizure without a warrant under certain circumstances. I welcome Emma Harper's commitment to amend those provisions.

Evidence that the committee received called into question what purpose the powers would serve in practice. I am uncomfortable about the prospect of introducing the new powers without any justification. Although similar powers exist in relation to other animal welfare offences, they are not in the Dogs (Protection of Livestock) Act 1953, so they have not been used before in relation to the particular crimes at issue, and I have seen no evidence that they are needed.

Finally, I want to highlight the concerns that have been raised regarding the exemption that the 1953 act provides for dogs that are participating in a hunt, which means that they are not required to be kept under control when they are in a field with sheep. I welcome the clarification that the bill proposes in limiting the application of that exemption

“if and to the extent that the dog is performing the role in question”.

However, some stakeholders have called for the bill to go further on that exemption; their points merit further consideration. The Scottish steering committee of the UK Centre for Animal Law raised that issue and pointed out that

“numerous incidents have been observed in Scotland where packs of foxhounds have been hunting in proximity to flocks of sheep”,

which has caused sheep to panic and run. OneKind called for the exemption for hunting to be revoked altogether, and rightly pointed out that

“Packs of hounds in the vicinity of sheep can cause them considerable stress”,

and, unlike the other exemptions, it is not providing an essential service.

In conclusion I say that although the bill is welcome, it requires change. Many issues were highlighted to the Rural Economy and Connectivity Committee in our evidence sessions. I thank all those who gave evidence, and I thank the clerks for their work on the committee's stage 1 report, which brings the concerns together.

I look forward to working with the member in charge of the bill over the coming weeks to discuss the issues, and how to ensure that the legislation will work as effectively as possible and ultimately deliver stronger action to help to protect

the livestock of Scotland's farmers and crofters, which is what we all want.

The Deputy Presiding Officer: Members should be aware that speeches are starting to run over time a wee bit. John Finnie has three minutes. *[Interruption.]*

Excuse me, Mr Finnie—there is a wee issue with your sound. Do not do anything other than start again.

16:41

John Finnie (Highlands and Islands) (Green): Thank you, Presiding Officer.

I congratulate Emma Harper on getting the bill to this point. The Scottish Green Party will support the general principles of the bill at decision time, but I have grave reservations about its content, as it stands.

Notwithstanding the widespread support for the bill, if the existing legislation does not, as we have heard, enjoy much respect among crofters and farmers, what in the bill will fundamentally change that mindset? What will change the priority or otherwise that Police Scotland gives to the matter? I certainly would not want legislation that would have Police Scotland not fulfilling its obligation to investigate crime.

On the role of inspecting bodies, Parliament needs to be extremely cautious about providing policing and enforcement powers. The powers of entry and search and seizure without warrant were, and remain, unacceptable. Had the member in charge not moved towards having them removed, I and, I am sure, others would have done so.

In dealing with crime, we must have absolute clarity about roles. On the role of vets and the relationship between the vet, the owner of the injured livestock and the owner of the accused or suspected animal, I take some heart from the Scottish Government's having encouraged Police Scotland, Scotland's Rural College's veterinary services and others to develop guidance and to establish contacts to provide expert advice, as appropriate, in individual cases in order to address that. Good grief! Is that not the case now? If not, why not?

I am glad that the question of costs has been clarified. The police investigate crime and meet costs, and they have a relationship with the Scottish Police Authority on forensic examinations.

I am keen that we are to have regard to evidence from the Scottish Society for Prevention of Cruelty to Animals and the British Veterinary Association. Crimes require to be evidenced, and the integrity and continuity of evidence are very

important. The review that the Scottish Government has talked about must address capacity issues.

On the welfare of the animal that is the subject of the accusation, I take the view of the Dogs Trust, which has suggested that, in instances of multiple livestock deaths, post mortems should be considered. That could be mitigating evidence in case of aberration in the behaviour of the dog.

The Crown Office and Procurator Fiscal Service has made its position very clear on the issue of search and entry. We have heard nothing to say that the existing warrant arrangements are inadequate. We must legislate only to the extent that it is needed, especially when important rights are being confronted.

There is still a way to go with the bill, but the Scottish Green Party will support it at decision time.

16:44

Mike Rumbles (North East Scotland) (LD): I am pleased to see that our committee's report on the bill is a unanimous one that recommends that Parliament agree to its general principles today. I, too, commend Emma Harper for introducing the bill.

The job of the committee was to examine the bill in detail, to ensure that it was fit for purpose and to see whether and how it could be improved. In the short time that is available to me, I will highlight just two of our recommendations, which previous speeches also addressed.

First, committee members feel that the proposed statutory power for the police to enter and search non-domestic property without a warrant is neither appropriate nor practical. As the convener has said, the committee questioned whether that power would even be legally competent. Personally, I feel that the power runs completely contrary to long-held principles of Scots law. For the police to carry out searches without a warrant would be unacceptable. To use a mixed metaphor, I note that the idea of the police going on a fishing expedition is just not on.

In Emma Harper's written response to the committee's report, she noted that her view is that the Scottish Government, as opposed to the committee, is "best placed to decide" whether that is a necessary power, and that if it is the Government's view that it is not necessary, she would "consider removing the provisions".

I am glad to have heard Emma Harper confirm that she will lodge an amendment to ensure that a warrant will always be necessary. I heartily welcome that. I also thank the minister, Ben Macpherson, for clearly acknowledging the

committee's concerns—I knew that he would. I say gently to Emma Harper that saying that she would take the Scottish Government's view as opposed to that of the committee was not particularly helpful ahead of stage 2, but there we are.

Secondly, the committee identified many unresolved issues with the proposal to appoint inspectors to aid the police in their duties. It said:

"The Committee has ... fundamental concerns about the principle of inspection bodies taking the lead in any circumstances in which a criminal offence of livestock worrying has taken place",

and that

"responsibility for dealing with such criminal offences should lie with the police alone."

I could not have put it better than John Finnie has just put it. The committee therefore recommended

"that the Member in charge should remove the inspecting bodies provisions from the Bill".

I was, again, glad this afternoon to hear that Emma Harper will lodge the necessary amendments to do that.

I know that time is short, so, with those two caveats, I am very pleased to recommend to colleagues that we vote to approve the general principles of the bill at decision time. That will allow the bill to proceed to stage 2, when it can usefully be amended to everybody's satisfaction.

The Deputy Presiding Officer: We move to the open debate. We are running a little short of time. All members who are speaking in the debate are likely to end up on gallery view shortly—please be aware that you might be getting shown to the world. Speeches should be no more than three minutes, please. I call Maureen Watt, to be followed by Finlay Carson.

16:48

Maureen Watt (Aberdeen South and North Kincardine) (SNP): I, too, am pleased to be taking part in this stage 1 debate to urge parliamentary colleagues to allow further consideration of the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill, as the committee recommends. I congratulate Emma Harper on pursuing this member's bill.

I speak as someone who was raised on a farm. I know the heartbreak of losing sheep and lambs due to dog worrying. That farm was more than 2 miles from the nearest town, but dog worrying affects animal owners anywhere. It is not just sheep that are affected, as Emma Harper has said, but other animals, such as cows, mares, nanny goats and all the new species that are being raised on Scottish farmlands. They can abort due to dog worrying and some animals die

or have to be put down. Anything that can be done to improve animal welfare and ensure the highest levels of protection should be done, and Emma Harper's bill adds significantly to that aim.

I thank the many organisations that have sent us briefings prior to the debate and note NFU Scotland's support, saying that

"there is a need for more robust legislation, stronger penalties and appropriate compensation to hammer home the responsibility and liability of dog owners who do not exercise their pets responsibly on agricultural land. This Bill would be a big step forward."

I also note the briefing from Scottish Land & Estates, which also supports the principles of the bill but stresses the need for more awareness raising and education to increase prevention and says that that will need a long-term campaign and commitment from all stakeholders. The bill also has the support of the many animal welfare organisations in Scotland.

The bill was given due scrutiny by the committee at stage 1, undergoing detailed questioning on issues such as penalties, compensation, inspecting bodies, the role of vets, the powers of entry, search and seizure, and where the events occur and what constitutes relevant land. In its response to the bill, I note the Scottish Government's detailed response to the report and its willingness to engage with Emma Harper on the areas in which amendments are seen to be necessary to make the intentions of the bill more fit for purpose.

I welcome the minister to his post. He has said that the vast majority of dog owners walk their pets responsibly in all environments but, sadly, some do not. As members will be aware from their parliamentary inboxes, the issue affects most members of the Scottish Parliament, so I look forward to further consideration of the bill at stage 2.

The Deputy Presiding Officer: We seem to be having a few issues with connectivity. I will try Finlay Carson on audio only.

We still seem to be having a problem with Finlay Carson, even if he is just on audio, so we will move on to Claudia Beamish.

16:52

Claudia Beamish (South Scotland) (Lab): I thank Emma Harper for bringing forward the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill. Scottish Labour fully supports the Rural Economy and Connectivity Committee's recommendations for the bill at stage 1. I identify myself with the remarks of my colleague and friend Colin Smyth, who is on the committee.

Although I am not on the committee, I am keenly aware of how necessary the legislation is. Much of the South Scotland region that I represent is rural, so dogs worrying livestock is an issue that is regularly raised by many of my constituents, especially those from the farming community. I regularly meet the NFUS and the issue is never far from the agenda.

Jen Craig, chair of the National Sheep Association and NFUS Clydesdale branch chair, farms in my region, quite close to where I am now, and she has expressed real concern about the increase in instances in dog worrying, which have been exacerbated by more people taking to the outdoors during the pandemic, some of whom do not take responsibility for their dogs. She said:

“Dog worrying and attacks on livestock is a problem that is becoming more frequent and in many cases more severe. Not only are the livestock suffering but so are the farmers and stockmen and women who care for them and have to witness these incidents.

The aftermath of an incident is not only costly in terms of the financial losses but it’s also heartbreaking and leaves a lasting impact on all those involved. Many feel powerless to be able to protect their livestock, prevent it from happening again and feel that justice is rarely achieved.”

The Dogs Trust also highlights that this is an animal welfare issue for the livestock that are attacked and for the dog because of irresponsible dog owners. I am therefore pleased that, through the amendments that will be considered, disqualification orders and dog control notices will be looked at again, and consideration will be given to greater powers to investigate instances and enforce penalties. However, more needs to be done on the bill to ensure that all aspects of the legislation are effective and fit for purpose. How to use existing powers to their full force must also be considered.

Penalties are only part of the solution. It is a notoriously difficult problem for the police, especially in rural and remote areas. If we are really to get underneath the issue, more consistent data gathering on dog worrying instances has to be a priority for the police, along with Scottish Government-backed campaigns to raise awareness of how grave the consequences can be if a dog owner is neglectful or reckless on a simple walk.

I want to stress that the benefits to wellbeing that the outdoors brings should be encouraged for us all. I fully support the work of organisations such as Paths For All and Healthy Valleys, which run very successful dementia walks, for example, in my local area. Those provide wonderful opportunities for people to experience the pleasures that walking can bring.

I am also proud of Scottish Labour’s introduction of the first land reform bill in 2005, which gave the

statutory right to roam. However, that comes with a public responsibility. The Dogs (Protection of Livestock) (Amendment) (Scotland) Bill that we are discussing today will be a tangible reminder of that responsibility and Scottish Labour supports the principles of the bill.

16:56

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I declare that I am the joint owner of a very small registered agricultural holding that our neighbour Gordon, who is a farmer, puts sheep on from time to time during the year.

I start by congratulating Emma Harper on all the work that she has undertaken in preparing the bill and taking it through Parliament. I know how extensive that has been because, although she is a South Scotland MSP, I met her at the Turriff show a few years ago—she had come right to the north of Scotland to proselytise about improved protection for animals on farms.

If, like me, members have seen photographs of sheep that have been attacked by dogs that are not under proper control, which I would not wish to show widely to people, they will know why the principle that is at the heart of our consideration today—that we should better protect sheep and other animals that are being cared for in farming settings—is a good one. What I hear from the debate so far is that we all support it.

Creating a legal framework that improves the environment of protection is a substantial and difficult issue, as is demonstrated by the committee’s investigation of the bill and other speeches. I welcome the fact that there appears to be a clear way forward to bring the bill to the statute book after the subsequent phases of consideration.

In some of the speeches, we were in slight danger of forgetting where evidence comes from because it is not simply a matter for the police. It is the police, broadly, who will communicate with the procurator fiscal to initiate prosecutions, but the evidence that will be relied on in those prosecutions will very largely come from people who happen to be in the vicinity, be they vets, farmers or laypersons like me. It is important to remember that that evidence will be tested in a court setting, as is proper to the person who might be accused of an offence.

It is worth saying that, many years ago, when I was a water bailiff under now-obsolete legislation, I could enter premises with the warrant card that I held, so those provisions on entry, which will not be there at the end, are not unique in the history of Scots law.

I congratulate Emma Harper and encourage Parliament to vote unanimously to approve the principles at decision time. I am happy to be here to support the bill.

The Deputy Presiding Officer: For the last of the open speeches we will try Mr Carson again. I know that you will all be disappointed if it is audio only, but we are trying that. Can we hear Finlay Carson this time?

16:59

Finlay Carson (Galloway and West Dumfries) (Con): Good afternoon, Presiding Officer.

The Deputy Presiding Officer: Hello, Mr Carson. We can hear you fine.

Finlay Carson: As a former farmer, member of the NFUS and dog owner, I welcome the opportunity to speak in this stage 1 debate. I support in principle the aims of the bill, which rightly seeks to strengthen and update the Dogs (Protection of Livestock) Act 1953 with reference to “livestock worrying”. There is still, without question, a need to review how the 1953 act is working—or, indeed, not working.

However, from the outset, my position and that of other stakeholders is that the best approach to addressing livestock worrying and other dog behaviour would have been for the aims of the bill to form part of a wider consolidation of dog control law. That said, I recognise the hard work of Emma Harper and her staff in the consultation work that was carried out in preparing the bill.

It is unfortunate that it was left to a back bencher to introduce the bill as a result of the Scottish Government’s failure to act in a timely matter. As the Rural Economy and Connectivity Committee said in its stage 1 report,

“more immediate action to amend legislation on livestock worrying is merited.”

The Scottish Conservatives welcomed the passing of the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020, which resulted in an increase in the maximum penalties to five-year sentences and unlimited fines. The Law Society of Scotland highlights that tougher sentencing should reduce crime, reform and rehabilitate offenders, protect the public and make the offender give something back. However, we need to ensure that offenders and potential offenders are aware of the nature of the offence and the likely sentences. Prevention is better than cure, but that can come about only following significantly improved efforts to educate the public through a fit-for-purpose publicity campaign.

Christine Grahame’s Control of Dogs (Scotland) Act 2010 was brought in to ensure that

“dogs which are out of control are brought and kept under control”.

However, despite being a substantial piece of legislation, it has been generally ineffective because of the lack of awareness of the law among the public, police and local authorities. Indeed, that issue was raised at the Public Audit and Post-legislative Scrutiny Committee. At that time, the Minister for Community Safety said:

“Responsible dog ownership is at the heart of Scottish Government policy in this area, with effective enforcement of existing legislation critical in improving public safety.”

That makes it even more disappointing that the Scottish Government has not introduced proposals such as those favoured by the Rural Economy and Connectivity Committee, which considered that the best approach to addressing the issue of livestock worrying would be for it to form part of a wider consolidation of dog control law. That position was supported by the NFUS and others, including Blue Cross, who submit that the bill will help to tackle the problem in a more cohesive manner but should not be seen as a panacea.

Dog control problems are complex and require imagination and innovation to be tackled fully. Great improvements could have been achieved if the Government had introduced a consolidation bill covering not only livestock worrying but dog control, dog breeding, puppy trafficking and responsible dog ownership.

Time is limited today, but I welcome the bill as a short-term plaster to fix an urgent and growing issue that is of great concern to livestock owners in Scotland. It has a great financial and emotional impact on the owner, brings distress to witnesses and veterinary responders and, of course, great pain, distress and, frequently, death to the attacked animal.

The Deputy Presiding Officer: We move to closing speeches. We are a wee bit behind time, so it would be useful if members were to apply brevity.

17:03

Colin Smyth: This afternoon’s debate has set out clearly why the bill is needed, and I welcome the consensus that we have heard in support of the principles of the bill. However, the debate has also highlighted the many problems with the bill as it stands and the changes that we will need to make to ensure that it is as robust as possible. I set out my views on that during my opening speech, and many of the concerns were echoed by other members in the debate, so I will not repeat them. Instead, I will make some final observations.

As we heard in the debate, the changes that the bill proposes would ideally have been introduced

as part of a more comprehensive review of dog control laws. It is disappointing that delays to the Scottish Government's work in this area have made it necessary to introduce stand-alone legislation on one aspect of the many changes in law that we need. It is therefore important that we try to ensure that the bill is ultimately consistent with its wider legislative context, in order to avoid unnecessary fragmentation and possible conflicts in related laws.

For example, it has been suggested that the penalties in the bill should be brought into line with those that were introduced in the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 for other animal welfare-related offences. I support that, particularly if it is the Scottish Government's intention to set fines at that level in the future for other crimes related to dog control. That increase would also allow greater flexibility for the courts to respond to individual cases as they see fit and send a clear message on the seriousness of the crime. However, it is equally important to emphasise that penalties must be applied appropriately, particularly if the maximum penalty is to be increased so drastically.

Crucially, although the bill will make welcome changes to how such crimes are dealt with once they have occurred, we cannot lose sight of the fact that the first priority must always be prevention. In her response to the committee, Emma Harper rightly noted that

"in most cases incidents of livestock worrying and attack are likely not premeditated and often lack ... intent to cause harm."

That point was made by a number of stakeholders in their evidence to the Rural Economy and Connectivity Committee. For example, the National Dog Warden Association Scotland said:

"Most dog owners do not believe their dog is likely to attack sheep and are shocked and distraught after the event."

Likewise, Battersea Dogs and Cats Home highlighted that livestock worrying often occurs when the owner is not even present. It pointed to a report by the United Kingdom Parliament's all-party parliamentary group for animal welfare that found that two thirds of incidents occurred when the dog had escaped from the house or garden of a neighbouring property. That highlights the need for the bill to be accompanied by an awareness campaign to communicate the risks that exist and the seriousness of the issue, as well as to make people aware of the laws and any new penalties.

The Dogs Trust highlighted the need to gain a better understanding of the issue. It pointed out:

"By working to better understand the problem, we believe it will be possible to undertake targeted proactive

measures that aim to result in the *prevention* of worrying, therefore protecting the welfare of livestock more robustly."

A number of stakeholders highlighted how underreporting and inconsistent data collection make it difficult to get a clear picture of the scope of the issue. As my colleague Claudia Beamish stressed, that needs to be addressed so that we can monitor the problem and ensure that the changes, if they are enacted, have the desired effect. That is the case for all animal and wildlife crime.

I know that time is tight in this debate, but it is also tight until the end of this parliamentary session. A considerable amount of work will be needed if the bill is to be fit for purpose. Labour will certainly support the principles of the bill, and we will do all that we can to ensure that changes are made to deliver on the intention of protecting the livestock of Scotland's farmers and crofters.

17:07

Peter Chapman (North East Scotland) (Con):

I welcome the opportunity to close the debate for the Scottish Conservatives. I remind members of my entry in the register of members' interests, which shows that I am a partner in a farming business.

As my Scottish Conservative colleagues have stated, we are generally supportive of the bill and recognise that livestock worrying by dogs is an increasing issue, to the point that it is becoming almost impossible to keep livestock in some fields near towns and villages. Official statistics show that there were more than 230 cases of dogs worrying livestock in the north-east in the past five years. However, we need to recognise that that is only the tip of the iceberg, because many incidents are not recorded.

It is important to highlight that any attacks on livestock do not just have a financial impact on livestock owners, serious though that can be. The emotional stress of witnessing an attack and the aftermath of the attack place a great mental strain on farmers, too. Therefore, there is an urgent need for the law on livestock worrying to be updated and strengthened. The current £1,000 fine, which is laid out in the 1953 act, is simply too low. The proposed increased fines and/or custodial sentences of up to 12 months better reflect the gravity of the offence and the impact that it has on farmers.

The implementation of disqualification orders to restrict the right of a person who is convicted of a livestock worrying offence from owning a dog, and their rights of access to agricultural land when accompanied by a dog, will help to reduce incidences of livestock worrying. However, some elements of disqualification orders are not clear.

For example, how is banning a convicted person from bringing a dog on to agricultural land to be enforced? Some witnesses also wondered how we would decide what agricultural land is. Moreover, given the increase in the number of dog walking services, there are questions about where responsibility would lie if another person who was deemed to be fit and proper was in charge of a dog at the time of an attack.

A number of stakeholders have noted the importance of compensation for livestock keepers. I highlight that compensation is already available under the current legislation. The problem is that the existing compensation mechanisms are not widely known among livestock keepers, so an awareness campaign about existing compensation schemes is sorely needed.

Further clarity is also needed on the role of inspecting bodies and who they may be. Both the Scottish SPCA and local authorities have expressed reluctance to take on that role, citing a lack of resources, but they have stated that they would be happy to assist the police. In my view, there is no doubt that the police must retain overall responsibility for pursuing the crime.

There are also questions regarding the role of vets in examining a dog. Will the police be given authority to give consent or will that remain with the owner? Who would be responsible for covering the cost of a vet? The bill also contains proposals to grant the power of entry, search and seizure without a warrant when cases are being investigated. There is a lack of clarity around the practical use of that power, and it raises serious legal questions. I therefore believe, and the committee believes, that the power must be dropped.

In conclusion, the Scottish Conservatives are generally supportive of the bill and see why it is needed. However, some aspects need further clarification. We therefore call on Emma Harper to take note of the concerns that members on all sides of the chamber have raised and to work with the committee and the Government to improve the bill.

17:11

Ben Macpherson: I welcome the consensus on the amendments that the bill requires, and in particular on the merit of making the agreed changes to the 1953 act at this time.

I note the points that John Finnie and Claudia Beamish raised about prosecution and resources for investigation. I am happy to liaise with members, including Emma Harper, on those matters ahead of stage 2.

Claudia Beamish, Colin Smyth and Finlay Carson made points around looking again at dog control notices. I simply highlight the Public Audit and Post-legislative Scrutiny Committee's report on the Control of Dogs (Scotland) Act 2010, and the committee's on-going work, which will include hearing from the Minister for Community Safety shortly.

There is also a Scottish Government-led working group that covers animal welfare policy. Participation in that forum has involved looking at both legislative and non-legislative opportunities to improve the dog control notice regime, and that work will continue. I am happy to liaise with members on those matters ahead of stage 2, if that would be helpful.

I again thank Emma Harper for seeking to modernise the legislation in a practical way, in order to address the concerns of the farming community. As Stewart Stevenson mentioned, dog attacks can have devastating effects, such as the horrific reported killing of 50 pregnant sheep in Wales just a few days ago. I know that farmers care deeply about the welfare of their livestock, and the bill will help to ensure that all animals in Scotland, whether they are farm-dwelling or companion animals, receive the protection that they deserve.

I maintain that the focused changes that are proposed in the bill will have an immediate impact in raising public awareness of not only what is in the bill, but the associated general issues, as Peter Chapman emphasised. I believe that the passage of the bill will, in due course, help to assure the farming community that this Parliament takes the matter of livestock worrying very seriously.

Given the stage that we are at in the parliamentary cycle, and the undoubted on-going impacts of the pandemic and of European Union exit, I hope that members will work collaboratively to allow the swift passage of this focused bill through stage 1 and on to completion by the end of the parliamentary session. The bill, as amended in the ways that we have debated today, will strengthen the law and help to reduce distressing attacks on livestock and the associated mental and financial hardship that those attacks cause to all concerned. The Scottish Government therefore supports the general principles of the bill and urges the Parliament to pass it at stage 1, at decision time.

17:14

Emma Harper: I will pick up on a few points in closing, but first I thank all members for their contributions today. I also thank the members of the Rural Economy and Connectivity Committee,

and the minister for his supportive comments and his contribution in closing. Finally, I thank the Cabinet Secretary for Rural Economy and Tourism, Fergus Ewing, and the Minister for Public Health and Sport, Mairi Gougeon, for their encouragement in respect of the bill.

The minister said that the goal is to make the bill simple and effective. That was my intention from the start. A farmer in Ayr told me, "Keep it simple."

The bill deals with a minority of irresponsible people. We know that most dog owners are responsible outdoors. Claudia Beamish was right to say that accessing the outdoors is a good thing. We want folk to do that and we know that it supports mental health. The issue applies to only a minority of people.

I am happy to engage further with Edward Mountain and all committee members about the disqualification orders.

Jamie Halcro Johnston highlighted financial costs. That is a huge problem caused by out-of-control dogs. We know that NFU Mutual paid out £1.6 million to settle members' claims in 2017 and has noted a 67 per cent increase in the cost of livestock worrying incidents.

Colin Smyth also presented specific statistics when he said that 72 per cent of NFU members had experienced attacks on their sheep.

I note the idea of exemptions for hunting dogs and I am willing to discuss that.

I welcome the scrutiny and comments from Mike Rumbles and John Finnie. They are fellow committee members and have much experience. I welcome any support that they can give me as we take the bill forward.

We know that there have been many campaigns to educate folk over the years, such as take the lead and take a lead. Those are great: I support any continued education, including any by NatureScot or Police Scotland in the partnership against rural crime. However, Mike Flynn of the Scottish SPCA asked the committee why, if education worked, we are still seeing an increase in attacks on sheep. We need to do more and I hope that the bill will deter irresponsible access to the countryside.

We know that the harm is caused by a minority of people, but farmers are asking for legislation. They asked me for stand-alone legislation and that is what I am trying to achieve. I will finish by giving the final word to a sheep farmer called Brian Walker, who is one of Mike Rumbles's constituents. This is what he told me:

"Having been on the sharp end of various livestock attacks in recent years, I am left in no doubt. The law needs to be brought up to date as soon as possible to reflect modern times."

I encourage members to support the general principles of the bill and I am keen to see any amendments as we move forward.

The Deputy Presiding Officer: That concludes the stage 1 debate on the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill.

Decision Time

17:18

The Presiding Officer (Ken Macintosh): There are two questions to be put as a result of today's business.

This is our first attempt at entirely remote voting. We will do it all through the chat box function of the BlueJeans app.

The first question is, that motion S5M-23917, in the name of Claire Baker, on the Culpable Homicide (Scotland) Bill at stage 1, be agreed to.

Members who do not agree should put an N in the chat box.

That is not agreed. There will be a division. In order to vote, we must temporarily suspend the broadcast to allow members to access the voting app.

17:19

Meeting suspended.

17:26

On resuming—

The Presiding Officer (Ken Macintosh): We will go straight to the vote. I remind members that the question is, that motion S5M-23917, in the name of Claire Baker, on the Culpable Homicide (Scotland) Bill at stage 1, be agreed to. This will be a two-minute division.

Let me, or information technology colleagues, know through the chat box—*[Inaudible.]*

I see a message from Jamie Greene. The vote is in progress, Jamie. You should be able to vote now. There are 20 seconds left in which to do so.

Thank you, colleagues. The vote has closed. I will allow a few moments to make sure that everyone has been able to vote, so just be patient. If you think that your vote was not registered, I ask you to alert me using the chat box function in BlueJeans. If your vote has been registered, the clerks will tell you through the chat box. If it has not been registered, I will call you to make a point of order.

I will allow time to ensure that all members' votes have been registered. Any member who thinks that their vote has not been registered should let me know in the chat box. I will then call them to make a point of order.

I believe that some members are having connection problems and so might not be able to see or hear everything on the BlueJeans chat function. At this stage, the most important thing is

for them simply to let us know if they think that their vote has not been registered. For guidance, I advise members that we think that nearly every vote has been registered.

I advise colleagues that we are not still voting. We are now in the period after the vote but before I call the result. We are just ensuring that all votes were registered and that all members have had a chance to check whether their votes have been registered. I assure members that only one vote was not registered.

I call Dean Lockhart to make a point of order. *[Interruption.]*

I see that Michael Matheson wishes to make a point of order, but I assure him that his vote was registered.

Before I announce the result of the division, I again confirm to Michael Matheson that his vote was registered. Of all those who were logged in, there was only one member whose vote did not register. That member might wish to make a point of order to clarify that at a later stage, but it will not make any difference to the result

For

Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Macdonald, Lewis (North East Scotland) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Matheson, Michael (Falkirk West) (SNP)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McNeill, Pauline (Glasgow) (Lab)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Sarwar, Anas (Glasgow) (Lab)
 Smith, Elaine (Central Scotland) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Balfour, Jeremy (Lothian) (Con)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Campbell, Aileen (Clydesdale) (SNP)
 Carlaw, Jackson (Eastwood) (Con)

Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Corry, Maurice (West Scotland) (Con)
 Crawford, Bruce (Stirling) (SNP)
 Davidson, Ruth (Edinburgh Central) (Con)
 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)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Golden, Maurice (West Scotland) (Con)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Harper, Emma (South Scotland) (SNP)
 Harris, Alison (Central Scotland) (Con)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Kerr, Liam (North East Scotland) (Con)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lindhurst, Gordon (Lothian) (Con)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 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)
 Mason, Tom (North East Scotland) (Con)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 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)
 Rumbles, Mike (North East Scotland) (LD)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Tomkins, Adam (Glasgow) (Con)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

Wells, Annie (Glasgow) (Con)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Whittle, Brian (South Scotland) (Con)
 Wightman, Andy (Lothian) (Ind)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP).

The Presiding Officer: The result of the division on motion S5M-23917, in the name of Claire Baker, is: For 26, Against 89, Abstentions 0.

Motion disagreed to.

The Presiding Officer: We move to the second, and final, question.

The final question is, that motion S5M-23916, in the name of Emma Harper, on the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill at stage 1, be agreed to.

Again, at this stage, I ask any member who objects to say no. I do not need any member to put yes in the chat box. The only thing that they should put in the chat box is no, if they disagree. I do not need to see any yeses; this is just for anybody who wants to say no. There will be a short pause to allow members to say no.

I think that some members may be having connection problems. I reiterate that I am calling the second vote. The question is, that motion S5M-23916, in the name of Emma Harper, on the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill at stage 1, be agreed to. Members only have to put no or an N in the chat box if they disagree. I do not need to know if members agree. I am assuming that members agree unless they disagree. Members should put an N in the chat box if they disagree. [*Interruption.*]

I am going to give this one more go. This is the vote on the second question. I gather that there are some connectivity problems in different parts of the country tonight. The question is, that motion S5M-23916, in the name of Emma Harper, on the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill at stage 1, be agreed to.

I just need to know if members disagree. If they disagree, they should put an N in the chat box. I should also just say that I will not open the vote—we will use the voting app only if there is disagreement and we need to call a vote. At this stage, as far as I can see, nobody disagrees and therefore there will be no use of the voting app.

Colleagues, there seems to be a glitch. If you do not mind, I will suspend for a few moments. I will come back, so do not leave. I am going to switch off broadcasting at this point, but do not leave the BlueJeans function. We will try to sort out the sound and vision problems, and then we will come back.

17:38

Meeting suspended.

17:41

On resuming—

The Presiding Officer: Unfortunately, we have not been able to satisfy ourselves that the problem with the BlueJeans platform is entirely resolved. We think that there is potential for some members to have been excluded from BlueJeans.

On that basis, I am afraid that I will have to defer the second vote this evening, on stage 1 of Emma Harper's member's bill. That vote will be deferred to a future meeting of Parliament. We will let all members know when the vote will be held. I am afraid that we are not going to be able to finish it tonight.

On that note, I close the meeting. We will meet again in the chamber next week.

Meeting closed at 17:41.

Correction

Fergus Ewing has identified an error in his contribution and provided the following correction.

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing):

*At col 16, paragraph 1—**Original text—*

I have just announced today that the second tranche of the convergence moneys—moneys that were rightfully due to our farmers and crofters but which were withheld by the Tories for six years—will be paid out very shortly.

Corrected text—

I can announce that the second tranche of the convergence moneys—moneys that were rightfully due to our farmers and crofters but which were withheld by the Tories for six years—will be paid out very shortly.

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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