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AITHISG OIFIGEIL

Meeting of the Parliament (Hybrid)

Tuesday 22 February 2022

Session 6



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Scottish Parliament

Tuesday 22 February 2022

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

Time for Reflection

The Presiding Officer (Alison Johnstone): Good afternoon. I remind members of the Covid-related measures that are in place. Face coverings should be worn when moving around the chamber and across the campus.

Our first item of business this afternoon is time for reflection. Our time for reflection leader today is Pall Singh, project director, Building Bridges.

Pall Singh (Project Director, Building Bridges): Presiding Officer, members of the Scottish Parliament, thank you for the opportunity to address you this afternoon.

Chicken tikka masala is the nation's favourite dish. It is a dish that was invented here in Scotland by the south Asian community and Glaswegians. Scotland is increasingly becoming an intercultural country that welcomes people from different parts of the world and celebrates the richness of all our cultures.

Understanding new Scottish communities, such as the Syrian community, and their backgrounds is crucial to our ability to live together in peace and harmony. There is a risk of creating what we might call parallel communities, where we live side by side without discovering the beauty that others can add to our society. Each emerging community, such as the Sudanese community, has something new to contribute in our towns and cities.

There are two ways in which we can imagine that happening. One way is like creating a smoothie, where you blend different fruits such as strawberries, bananas, blueberries and other fruits together and liquidise them. The smoothie might taste great, but the fruits lose their identity and individuality.

The other way is to see it like a fruit salad, with the ingredients cut up in small pieces in a bowl. Each complements the others without losing its flavour and uniqueness—there is diversity yet oneness, as they all have some to contribute to the whole. I imagine Scotland as a fruit salad bowl that can celebrate difference and values the taste that others bring to our nation.

However, this is not a one-way conversation, with the host nation doing all the listening and learning. Rather, it is a mutual dialogue that highlights the many aspects of life here in

Scotland that recently arrived people appreciate in our Scottishness, history and values—perhaps things that we have taken for granted, such as freedom of speech, education, health for all and desire for equality and fairness.

I have lived in the United Kingdom since the age of nine. This is my home, yet I still get asked, “How often do you go home?”—to which I reply, “Every day!”

Scotland is home for the new emerging communities; a place of welcome and belonging for the new Scots, who have a vital role to play in shaping the future of our country. Let us be aware of what is strong in these communities and not what is wrong. We have much to celebrate together with those we welcome into our land.

Point of Order

14:05

Stephen Kerr (Central Scotland) (Con): On a point of order, Presiding Officer. On 11 January, the First Minister announced the establishment of an internal investigation into the leaking of her parliamentary Covid statement to the press ahead of its delivery to Parliament. At the time, you described the leak as

“extremely disappointing, and ... disrespectful to this Parliament”.—[*Official Report*, 11 January 2022; c 10.]

You also sought a commitment from the First Minister that such disrespect would not be repeated, to which the First Minister agreed.

A letter from the First Minister to you dated 7 February confirmed the conclusion of the investigation and revealed that the source of the leak could not be identified. It further revealed that the only action taken by the Scottish Government was to send a reminder to staff on the importance of not leaking. Although I joined the Parliament only last May, my more experienced colleagues tell me that that is par for the course for Scottish Government internal inquiries.

I seek your opinion, as Presiding Officer and as one who has encountered leaks of this nature by the Scottish Government several times, on whether you believe that the investigation’s conclusion is satisfactory in addressing the disrespect that Parliament suffered from the leak. Would it be in order for Parliament to see an anonymised report from the Scottish Government on the investigation? If not, how can we ascertain whether further action may be required from the Scottish Parliament to unearth aspects that may have eluded the Scottish Government? Is the Scottish Government’s singular response of sending staff a reminder strong enough to convince you that the commitment that you sought from the First Minister to avoid a repeat situation is at all likely to be upheld?

The Presiding Officer (Alison Johnstone): I thank Mr Kerr for his advance notice of the point of order. On the date that the incident occurred, I sought and have subsequently received an apology and assurances from the First Minister of the Scottish Government’s respect for this Parliament. I made my views on the leaking of statements on that date very clear, and I have done so previously. I cannot emphasise enough how important it is that the place of this Parliament is respected and that all significant announcements are made here in the first instance, whenever that is possible.

The First Minister and I have discussed the matter and I am content that the matter before us

is closed. I have made it clear that I do not expect any repetition of such an incident. I think that we all wish to be in a position where we are not having this on-going discussion.

Business Motion

14:07

The Presiding Officer (Alison Johnstone): The next item of business is consideration of business motion S6M-03297, in the name of George Adam, on behalf of the Parliamentary Bureau, on changes to this week's business.

Motion moved,

That the Parliament agrees to the following revisions to the programme of business for—

(a) Tuesday 22 February 2022—

delete

5.00 pm Decision Time

and insert

5.15 pm Decision Time

(b) Thursday 24 February 2022—

delete

2.00 pm Parliamentary Bureau Motions

2.00 pm Portfolio Questions:
Education and Skills

and insert

2.30 pm Parliamentary Bureau Motions

2.30 pm Portfolio Questions:
Education and Skills

followed by Ministerial Statement: Building Industrial Clusters Around Scotland's Ports—
[George Adam.]

Motion agreed to.

Topical Question Time

14:08

The Presiding Officer (Alison Johnstone): The next item of business is topical question time. To get in as many members as possible, I would appreciate short and succinct questions and answers.

Violent Crime

1. **Jamie Greene (West Scotland) (Con):** To ask the Scottish Government what action it is taking in response to the most recent recorded crime statistics showing a rise in violent crime. (S6T-00519)

The Cabinet Secretary for Justice and Veterans (Keith Brown): Since 2006-07, violent crime in Scotland has fallen significantly, including a 15 per cent fall in homicide in 2020-21, to its lowest level since 1976. Surveys of the population show that adults in Scotland were less likely to experience crime in 2019-20 than those living in England and Wales.

Although that progress is encouraging, the stability in violent crime levels over recent years highlights that more needs to be done. The Scottish Government is clear that any act of violence is one too many, and in 2022-23 we are providing additional funding of 14 per cent to the violence reduction unit to support increased violence prevention activities. We continue to work with Police Scotland and other partners to prevent violent crime, including through the work of Medics Against Violence and delivery of the hospital navigator service.

Jamie Greene: The latest figures show that, since April last year, there have been 8,200 violent crime incidents. We are now on track to reach a record high. In fact, violent crime has risen in every single year since Nicola Sturgeon was made First Minister—I have it all here in black and white. That is not a record to be proud of. What substantive work has taken place to identify the root causes behind the rise in violent crime in Scotland? Given that many countries often look to us for our efforts against violence, why are things now going in the wrong direction?

Keith Brown: Jamie Greene completely disregards the point that I made about the reduction in homicides to their lowest level since 1976 and the reduction that we have seen since 2006-07. There have been huge reductions that have been substantially higher than those in England and Wales, such that people in Scotland are much less likely, and feel themselves to be much less likely, to become victims of violent crime. However, as I have acknowledged, violent

crime is a serious issue. We have dealt with it, and we continue to deal with it through, for example, the No Knives, Better Lives initiative, which has been deemed to have been extremely successful and is now copied in other parts of the United Kingdom, including London, where people have engaged with it.

The annual crime statistics, which are the most accurate records, show that recorded crime remains at one of the lowest levels since 1974. Non-sexual crimes of violence fell by 4 per cent between 2019-20 and 2020-21. The most recent years have, of course, been affected by the pandemic, as they have been in all jurisdictions, and the falls in the levels of some crimes that we saw during the lockdown period have been followed by increases. We are very conscious of that, and we are taking forward a number of initiatives in relation to crimes of sexual violence and violent crimes more generally, such as No Knives, Better Lives, which I mentioned.

Jamie Greene: The cabinet secretary has failed to accept that there is a problem, which itself is a problem. The reality is that, in 2014-15, there were 6,200 recorded cases of violent crime and, in 2019-20, there were 9,316 cases of violent crime. That is a massive increase. Let us be clear about what we are talking about: we are talking about serious assaults, attempted murders, domestic abuse and robberies. Those are life-changing events for the victims of those crimes. The Government is considering proposals to release criminals in prison after serving just a third of their sentence. How can that be justified in light of those shocking statistics? If it cannot, will the cabinet secretary now rule out that absurd idea?

Keith Brown: Of course, Jamie Greene misses the fact that it was the Conservatives who brought in automatic early release and voted in the Parliament against ending automatic early release. We will therefore take no lessons from the Tories in relation to that.

We will, of course, look seriously at the issues that the Conservatives have raised. Jamie Greene has quite rightly raised the issue of remand and our prisons. That is what the initiatives that we are taking forward, which are subject to consultation, seek to address. I would have hoped that we would have received some support from the Conservatives—if not support for what we intend to do, at least some ideas from them about what they would do in relation to remand.

We have seen massive reductions in homicides and in the handling of offensive weapons. It is important to mention that the number of emergency admissions to hospitals due to assaults with a sharp object has fallen by 51 per cent from 2006-07 until now. It is also important that, as I mentioned previously, people in Scotland

feel that they are less likely to be a victim of crime. We can bandy around the figures from here to eternity and mention different years or monthly statistics versus annual statistics, but the simple fact is that there is less crime in Scotland than there was when the Government came in, there is less crime in Scotland than there is in other parts of the UK and individuals feel that that is the case, there are more police officers who are better paid, and we have a very good track record on tackling crime across Scotland over the past 15 years.

Audrey Nicoll (Aberdeen South and North Kincardine) (SNP): The statistics that Mr Greene referred to show only half a picture. There are other forms of crime that are now at lower levels than they were in January 2020. According to the national statistics “Recorded Crime in Scotland, 2020-21” bulletin, recorded crime

“remains at one of the lowest levels seen since 1974.”

How is the Scottish Government ensuring the continued reduction in crimes of dishonesty, fire raising and vandalism, which have seen overall reductions since January 2020?

Keith Brown: Audrey Nicoll is, of course, right that Jamie Greene’s question raised only a very small and partial part of the picture. Crimes of dishonesty and vandalism decreased in the latest year to their lowest levels since the 1970s. Jamie Greene did not mention that, of course.

We are continuing to back that and other reductions in crime with our investment in front-line policing. We have increased police funding year on year since 2016-17, and we will invest £1.4 billion in 2022-23. Our investment amounts to more than £10 billion since the creation of Police Scotland in 2013 and has helped to ensure that officer numbers are 5.4 per cent higher than they were in 2007.

Of course, despite the weeks and months that we have had of the Tories saying that there should be massive increases to the police and justice budgets, when it came to it they offered no amendment to the budget that this Government proposed.

Ferry Services (Disruption)

2. Rhoda Grant (Highlands and Islands) (Lab): To ask the Scottish Government how it is addressing the disruption to ferry services in the west of Scotland that has reportedly resulted in significant supply issues and interruptions to the lifeline service. (S6T-00513)

The Minister for Transport (Jenny Gilruth): We have experienced a sustained and prolonged period of severe weather, which has caused disruption in ferry services for some island communities, not just in the west of Scotland but

elsewhere in the ferry network, including on the commercially strategic routes to Northern Ireland. In addition, that disruption occurred during the annual dry-dock period and winter timetable, when fewer services run.

I know that that has resulted in challenges for some communities when it comes to supplies, which creates difficulties for people and businesses alike, but I assure Rhoda Grant and indeed all members of the Scottish Parliament that we have been monitoring the situation very closely throughout each storm, through regular Scottish Government resilience room meetings and transport resilience meetings. There has also been regular engagement with CalMac Ferries, island local authorities, food and drink retailers and community organisations, through our resilience arrangements. Although we are aware that, on some of our islands, there have been issues with regard to perishable goods, there have been no reported cases of essential supplies not being available.

That has partly been helped by CalMac seeking to exploit weather windows, where those have arisen, with the option of running amended or additional sailings, if needed. CalMac continues to engage with key stakeholders, including hauliers and suppliers, to ensure that essential goods are prioritised on those services, where possible.

We will continue to monitor the situation closely and make clear our expectation that all agencies should ensure that normal service, in terms of supplies, is resumed at the earliest opportunity.

Rhoda Grant: Last week, Angus Campbell, the chair of the ferries community board, said:

“While we are well used to living with the effects of weather on our ferry services and more recently Covid, the recent extent and duration of mechanical failures on multiple vessels has led to massive disruption right across the network.”

He went on to say that that represents a

“real threat to our islands’ ability to retain and attract people, ensure services are sufficiently reliable and at prices that permit viable communities and thereby avoid depopulation.”

This morning, Donald Joseph MacLean of Barratlantic, a fish exporter, said that it is now impossible to run a business on the islands, due to the unreliable ferry services.

This is not just about weather. Disruption has gone on for years and things are getting worse. Is the minister’s Government trying to create a situation in which communities who stood firm against privatisation would now willingly accept it?

Jenny Gilruth: The First Minister has made her view on privatisation very clear, and I share it:

privatisation of our ferry services is not at all on this Government’s agenda.

Rhoda Grant raises some serious issues. She mentioned Mr Campbell, the community board chair. I am due to meet Mr Campbell in two weeks’ time. Ms Grant might appreciate that I am also due to meet CalMac directly this week, when I will raise issues to do with resilience, because it is hugely important that we get this right. I will also meet a number of island MSPs, and if Ms Grant wants to meet me to discuss the issue I will be more than happy to do so.

Ms Grant mentioned fares. I hope that the fair fares review will alleviate concerns in that regard, but—again—I will raise the issue directly with CalMac later this week.

Ms Grant talked about long-term investment. The Scottish Government has announced investment of £580 million in ports and vessels to support and improve Scotland’s ferry services.

On the member’s wider point about the sustainability of island communities, I have been keen to better understand the relationship in Government between the Cabinet Secretary for Rural Affairs and Islands, Mairi Gougeon, and me. Ms Gougeon and I will sit down shortly to discuss that link. Particularly in relation to Ms Grant’s point about resilience, there is an opportunity, through the islands connectivity plan, which the member knows will replace the current ferries plan from next year, to get in place the policy that we need if we are to ensure a sustainable future for our island communities.

Rhoda Grant: Let me be clear: we cannot wait until next year. The fault for this chaos lies at the door of the SNP Government, which has shown itself to be incompetent. It should be protecting our island communities; instead, it is putting them at peril. It has failed to provide additional tonnage and it has refused to employ the additional crew that would be required due to Covid restrictions to allow CalMac to use the full capacity that it has available.

The minister is new in post, but she does not have a period of grace, because time has already run out for our island communities. Will she commit now to purchase additional tonnage, and to employ the additional crew required to use the ferries to their full capacity?

Jenny Gilruth: Rhoda Grant asked me to commit to additional tonnage. However, she will understand that I cannot give her that assurance in the chamber this afternoon, because I would need to look at the costings associated with that. That notwithstanding, I recognise that we have a challenge regarding the sustainability of the current fleet. It is important that I have the opportunity to speak to CalMac about that—she

may say that I do not have a grace period, but she could at least offer me the opportunity to raise that with them directly. However, I am cognisant of the need for speed of delivery in relation to that point.

Rhoda Grant spoke about protecting island life. We need to reflect on what has been a very challenging period for our island communities. In the past week alone, we have had three named storms—Eunice, Dudley and Franklin—which has never happened since the introduction of the system of naming storms that we use. That is important. Climate change is having an impact on the way that our island communities experience their ferry services. It is my job as minister to ensure that those ferry services are up to scratch.

I recognise some of the challenges that Ms Grant spoke to. However, I hope that she understands that my job as minister is also to listen to communities. I am very keen to visit our island communities to speak to them directly, and to ensure that some of the challenges that Ms Grant highlighted today are dealt with adequately. I give her an assurance that I will raise a number of the points that she made—particularly the latter points on tonnage and staffing—with CalMac directly. I will also see what additional support we may be able to provide in Government.

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): I know from her recent conversations with me that the minister appreciates the importance of these issues. The lack of resilience in the network exacerbates the serious problems that people experience as a result of weather. I could cite examples in my constituency of where food shops have had serious difficulties. Quite aside from the issue of new tonnage, can the minister provide the chamber with any update on the efforts that the Government has been making to seek to charter vessels to provide more resilience?

Jenny Gilruth: Caledonian Maritime Assets Ltd and CalMac continue to look for suitable vessels for charter on a temporary basis, where that would be considered suitable and reliable. It also has to be affordable—I think that I made that point in my response to Ms Grant. That includes the consideration of freight vessels for use on both the CalMac and NorthLink services.

I know how frustrating it can be for local communities and individuals who have to face disruption because of not only weather but vessel breakdown. Although any breakdown is really unhelpful, thankfully, they are still relatively rare. However, that does not help a community that loses its ferry service unexpectedly and, sometimes, without assurance on how quickly normal service can be resumed.

We are committed to doing all that we can in relation to the resilience of the fleet, which Mr

Allan spoke to. More importantly, it is at the forefront of CMAL and CalMac's priorities. They continue to look for suitable vessels for charter on a temporary basis where that would be considered suitable, which includes the consideration of freight vessels that I spoke to.

Mr Allan and I have discussed the matter in some detail. He knows that I will meet CalMac later this week and raise with it the issue of replacement services and how Government might be able to better support replacement vessels in the future. He is absolutely right to raise the issue of the resilience of the fleet.

Graham Simpson (Central Scotland) (Con): The problem is that we do not have enough ferries and that those ferries that we have are too old and so keep breaking down. That lies at the door of CMAL. A report from a previous committee of this Parliament said that CMAL should be scrapped. When will the minister act on that?

Jenny Gilruth: Mr Simpson will appreciate that I have not yet had the opportunity to meet CMAL. I will meet CalMac this week. If he will let me first meet CMAL, I will respond to him in writing in due course.

Kenneth Gibson (Cunninghame North) (SNP): Bad weather and what should be preventable breakdowns are disruptive enough to our island communities, but Covid protocols, although necessary, have been, and are, also very unhelpful. One crew member testing positive grinds a lifeline ferry service to a halt. Now that the pandemic is receding, how soon will those increasingly unnecessary protocols be reviewed and—one hopes—discontinued?

Jenny Gilruth: It is important that we have in place measures to ensure the safety of crews and passengers. We need to remember that, although most restrictions have been lifted, the virus is still with us.

The issue also relates to the time that is taken to mobilise relief crew if an existing crew becomes ill or needs to self-isolate. I recognise some of the frustrations that that has brought, which Mr Gibson spoke to. It is important to note that the circumstances differ from other settings, because of the need to adhere to minimum legal crew requirements.

CalMac has aligned its protocols to the guidance that the Scottish Government has provided. As and when guidance is changed, CalMac will review its procedures to maximise its ability to maintain sailings. I recognise some of the frustrations that Mr Gibson raised and I give him the undertaking that I will raise the matter with CalMac when I meet it later this week.

Covid-19

The Presiding Officer (Alison Johnstone):

The next item of business is a statement by Nicola Sturgeon, giving a Covid-19 update. The First Minister will take questions at the end of her statement, so there should be no interventions or interruptions.

14:25

The First Minister (Nicola Sturgeon): Today's statement coincides with the publication of the revised strategic framework for tackling Covid. I will set out the key elements of the new framework and explain what it means for our collective response to Covid, now and in the months ahead. At the heart of the framework is a desire for, and increasing confidence in, our ability to achieve a sustainable return to a normal way of life, even as we remain prepared for future threats that Covid might present.

I will start by describing our updated strategic intent and approach. The new approach will see us resorting much less—I hope, not at all—to legally imposed protective measures. Instead, we will rely predominantly on vaccines, treatments and sensible public health behaviours and adaptations.

However, much as we might wish it was not the case, Covid is still a public health risk, here and globally. It is likely to remain so for the foreseeable future, so we must remain vigilant and prepared. I will outline how we will, to that end, categorise and respond to future risks—including those from new variants. I will explain why our decisions must be based on a combination of data, evidence and judgment. I will give our assessment of the current situation in Scotland in the light of recent data, and I will set out an indicative timescale for lifting or converting to guidance the small number of legally binding measures that remain in place.

Finally, I will set out our commitment to there being continued access to polymerase chain reaction and lateral flow testing free of charge, while we transition to a system of testing that is more targeted but which retains adequate capacity to support surveillance, rapid response to the emergence of new variants, effective outbreak management, and access to the best care and treatment for those who need it. I confirm our advice that people who test positive for Covid should continue to self-isolate for now.

On testing, I must express frustration at the United Kingdom Government's position. It is, of course, for the Prime Minister to decide how best to tackle Covid in England. However, current funding arrangements mean that although taxpayers in all four UK nations contribute to the

costs, decisions that are taken for England determine the resources that are available to Scotland, Wales and Northern Ireland for testing and other Covid measures.

As of now, we have no clarity on how much of the Covid testing infrastructure the UK Government intends to retain, no clarity on how much investment will support it in the future, and no clarity on whether the Treasury will provide additional resources or demand instead that funding be taken from elsewhere in the health budget. I hope that we will get clarity soon, so that we can set out in more detail our longer-term approach to testing.

However, I give the assurance now—I will say more on this later—that the Scottish Government is determined to retain a robust testing system that is capable of providing Scotland with strong resilience against future Covid threats and is firmly aligned with public health advice and the principles that underpin our national health service.

I will turn to the key points in detail; I start with our revised strategic approach. In earlier phases of the pandemic, it was important to try to eliminate Covid—or to suppress it to the lowest possible level—because we did not have vaccines or treatments to protect against the serious illness and death that the virus can cause. That is why our objective initially was

“to suppress the virus to the lowest possible level”,

although we modified that somewhat last year. In today's update, it is modified further, and is now expressed as being

“To manage COVID-19 effectively, primarily through adaptations and health measures that strengthen our resilience and recovery, as we rebuild for a better future.”

That change is possible because widespread vaccination coverage and better treatments have reduced the direct harms of the virus. As a result, using restrictions to suppress infection is no longer as necessary as it once was. Given the wider harms that are caused by protective measures, it is no longer as justifiable, either.

The strategic framework makes it clear, therefore, that in the future we will seek to rely much less on legally imposed measures and to rely more on vaccines, treatments, sensible adaptations and good public health behaviours. As a priority, we will continue to ensure the maximum possible availability and uptake of vaccination, in line with expert advice.

Although the success of the vaccination programme has exceeded our expectations, there are still more than 600,000 people over 18 who have had a second dose but have not yet had a third or booster dose, so there is more to do to maximise uptake. We will also continue to extend

the scope of vaccinations. Last week, the Joint Committee on Vaccination and Immunisation recommended that all 5 to 11-year-olds—not just those who are at the highest clinical risk—should be eligible for vaccination. I confirm that vaccination appointments for that age group will be issued from mid March. To allow parents and carers to attend with children, most appointments will be in the evening, at weekends or during the Easter school holidays.

Yesterday, we also accepted JCVI advice on protecting people who are at the highest risk. It is now our intention to offer care home residents, people over 75 and everyone over 12 who is immunosuppressed an additional booster six months after their last jab. That phase of the programme will also start in March, although the scheduling of appointments for individuals will depend on the timing of their initial booster or third dose.

In addition to vaccination, we will also use the best available treatments for people who need them. There are already effective treatments available that reduce the rates of serious illness and death among those who are admitted to hospital with Covid. Therapeutic medicines are also now being offered to patients who have not been hospitalised but are assessed as being at the greatest risk of needing hospital treatment. New oral antiviral treatments are also being evaluated through a UK-wide study. We will make the best use of those treatments, dependent on what the evidence and expert advice tell us about their efficacy.

Vaccination and treatment will play a major—perhaps the major—role in limiting the health harm that is caused by the virus in the months and years to come. However, it is also important to encourage and support people to adopt safe practices and to make basic adaptations that will help to keep us safe. The document that we are publishing today gives more detail on the kinds of behaviours and adaptations that will be encouraged in various circumstances. They include enhanced hygiene across the general population, improved ventilation in workplaces and other settings and—especially when levels of infection might be higher—increased hybrid and flexible working and use of face coverings in some indoor public places. It is now less likely that any of those measures will be legally imposed in the future, but we will advise their use for as long as they help to keep the virus under control and protect the people who are most vulnerable to it.

It is also, of course, vital that we remain vigilant for new developments. It is, unfortunately, highly likely that the virus will continue to mutate and confront us with new and potentially more harmful variants in the future. In order to identify and

respond to such threats quickly, we will maintain a strong surveillance capability. We will set it out in more detail next month but, subject to the point that I made earlier about the overall resources that are available to us, our surveillance system will include extensive PCR sampling and processing capacity, waste-water sampling and genomic sequencing capability.

We also welcome confirmation that the UK-wide Covid infection survey, which is conducted by the Office for National Statistics, will continue. It is essential, however, that it continues at scale, so we will seek to work with the UK Government to ensure that that is the case.

That surveillance capacity will help us identify new threats rapidly. It will also help us assess the potential severity of any new threat and quickly determine the appropriate level of response.

The strategic update that we are publishing today sets out a clear framework for any decisions that we might, in the future, have to take in response to new developments. I want to stress that the framework is intended as a contingency; we hope, of course, that we never have to use it. However, it recognises the on-going challenge that Covid presents and sets out three broad levels of future potential threat: low, medium and high.

The framework also offers illustrative examples of the types of protective measures that could be deployed in response to the different threat levels. It might be helpful to illustrate that through some general examples. If a new variant were to emerge that was more transmissible and more severe, perhaps with the ability to evade vaccines or natural immunity, that threat would likely be classified as high. In those circumstances, we might advise people to limit social contact for a period and to work from home where possible, and we might introduce some temporary protections for high-risk settings.

If a new variant was either more transmissible or more severe, but not both—as is the case with omicron—the initial threat assessment would likely be medium. In those circumstances, there might be a legal requirement to wear face coverings in some settings, and we might issue guidance for businesses and service providers on reasonable measures to reduce the spread of Covid in their premises.

Lastly, in the absence of a new variant, or if a new variant was neither more transmissible nor more severe—and if vaccines continue to be effective—the threat classification would likely remain low. Obviously, that is the level that we hope to reach and to stay at on a sustainable basis. In those circumstances, there would be no legally imposed protective measures; instead, we would continue to advise individuals and

organisations to adopt sensible public health behaviours. It is important to stress that any decision about the threat level and what the appropriate response should be will be guided by data and evidence.

However, that is not an exact science—it will also, by necessity, involve judgment. That is because the kind of developments that we might face in the future—principally, new variants—will not be uniform in their potential impacts. A new variant that is highly transmissible but less severe would obviously require a different response to one that was less transmissible but more severe, so we must guard against taking a one-size-fits-all approach. That is why the framework does not propose fixed thresholds for action—for example, by stating that we will take certain pre-determined steps if the number of cases rises above a specified level. Such thresholds might be superficially attractive because of the certainty that they appear to provide, but they pose a very significant risk of both underreaction and overreaction.

The framework that I have just described can be used to categorise our current threat level and to help to guide decisions in the coming period. I will return to that shortly.

First, I will summarise the latest data and trends. Today, we are reporting 6,427 new cases from lateral flow and PCR tests; 1,060 people are in hospital, which is 9 more than yesterday; and 25 people are in intensive care, which is the same as yesterday. Sadly, in the past 24 hours, 18 deaths have been registered of people with Covid under the daily definition. Once again, my condolences go to everyone who is mourning a loved one.

Over the past week, reported cases have fallen very slightly, by about 1 per cent. They have fallen in all age groups under 45, and have risen in all age groups over 45. The latest available data shows that hospital admissions have slightly increased again, from 619 in the week to 11 February to 654 in the most recent week. Total hospital occupancy has also increased again, so we will obviously continue to keep a close watch on that. The number of people who are in intensive care with Covid—25—continues to be relatively low.

In summary, we continue to face a highly transmissible variant that is causing a high level of community infection. However, although it is far from harmless, omicron's overall impact is less severe than delta's. Therefore, using the framework that I described earlier, we have assessed the current threat level to be medium. However, assuming that the level of infection and its associated impacts—for example, hospital admissions—fall or broadly stabilise, we expect the level to be reassessed as low in the period

ahead. That has enabled the Cabinet to agree this morning to an indicative timescale for lifting, or converting to guidance, the small number of legally imposed protective measures that remain in place at this stage.

First, I confirm that the Covid certification scheme, which requires certain venues and events to check the vaccination or test status of attendees, will come to an end next Monday, 28 February. However, the app that supports the scheme will remain operational, so that any business that wishes to continue Covid certification on a voluntary basis in order to reassure customers will be able to do so.

Secondly, as of 21 March—assuming that there are no significant adverse developments in the course of the virus—we expect that the legal requirement to wear face coverings in certain indoor settings and on public transport will be converted to guidance. However, we will continue to strongly recommend wearing of face coverings in shops and other indoor public places, and on public transport.

In addition, on 21 March, we expect to lift the legal requirement for businesses, places of worship and service providers to have regard to guidance on Covid, and to take the reasonably practicable measures that are set out in the guidance. The legal requirement on businesses and service providers to retain customer contact details is also expected to end on 21 March.

Governments, obviously, must act lawfully. That means that we cannot impose legal restrictions when it is disproportionate to do so. As the situation improves and the severity of the impact from Covid reduces, we are duty bound to remove legally imposed restrictions. However, that should not be taken as a signal that Covid no longer presents any risk to health: it clearly does. Therefore, even though certain measures—wearing of face coverings, for example—might not be legal requirements in the future, we will still recommend voluntary compliance as part of the range of behaviours that will help to keep us safe, as we manage Covid in a more sustainable and less restrictive way.

I turn, finally, to testing. Testing has been, and will continue to be, a vital part of our management of Covid. However, as the nature of the threat and our approach to managing it evolves, so, too, will our approach to testing. It is reasonable, over time and barring adverse developments, to move away from mass population-wide asymptomatic testing towards a more targeted system that is focused on specific priorities. Those priorities will include surveillance, rapid detection of and response to new variants, effective outbreak management, particularly in high-risk settings such as care

homes and hospitals, and ensuring access to care and treatment for those who need it.

However, it is vital that we make the transition in a careful and phased manner. In March—by which time we will, I hope, have more clarity from the UK Government on available resources—we will publish a detailed transition plan for test and protect, setting out our priorities in more detail and describing the scale of infrastructure that will remain in place for the longer term. The plan will also confirm the duration, beyond the end of March, of any transition period during which the system will operate—broadly—on the same basis as it operates now.

The public health reasons for ensuring a careful phased transition from the current arrangements to a more targeted testing system are obviously most important. However, we should also remember that hundreds of people in test and protect, at testing sites across the country and in our processing labs, including Glasgow Lighthouse, have worked tirelessly to keep us safe over the past two years, and these decisions affect their jobs and livelihoods, which is a point that was, seemingly, overlooked by the UK Government yesterday. I record our thanks to them today, and give an assurance that we will engage closely with them in the weeks ahead.

As we do that work in the coming weeks and for the transition period, access to testing will continue—subject to one change that I will set out shortly—on broadly the same basis as it exists now. We will be considering separately advice for schools and health and care workers, in line with expert advice. However, for the general public, I will set out clearly what that means from now until further notice.

First, if you have Covid symptoms, you should continue to go for a PCR test. Access to those tests will remain free of charge at testing sites across the country. Secondly, you should continue to make regular use of lateral flow tests even if you do not have symptoms.

The only immediate change that we are making to current arrangements on lateral flow tests for the general population is in our advice on frequency of testing. Instead of advising people to test before going anywhere to mix with others, we will, from next Monday, revert to the advice to test at least twice a week, in particular if you are going to a crowded place or mixing with people who are clinically vulnerable.

Lateral flow tests will remain free of charge in the transition phase. Indeed, we consider it to be important—in line with the principle of healthcare being free at the point of use—that they remain free of charge for any circumstances in which Government recommends testing. That is a

principle that we will seek to uphold in our longer-term plan for testing.

I also want to emphasise that in Scotland we will, for now, continue to ask people who test positive for Covid to isolate for the recommended period, and we will continue to make self-isolation support payments available to those who are eligible.

We will, of course, keep the recommended period of isolation under review. However, it is worth stressing that isolating and staying at home when you test positive for the highly infectious virus, and the follow-up tracing that test and protect does, remain among the most fundamental public health protections that are available to us. That helps to limit transmission overall and, in helping to keep workplaces and other settings safer, it also provides protection for people who are most at risk of serious illness from Covid, thereby enabling them, too, to return to more normal lives.

Covid is, unfortunately, still with us, so we must therefore remain vigilant and prepared for the threats that it poses, but today's new framework is an important moment in our recovery. It marks the point at which we move away—sustainably, we hope—from legal restrictions and rely instead on sensible behaviours, adaptations and mitigations.

Our return to normality must, though, go hand in hand with a continuing determination to look after one another. All of us have a part to play in ensuring a safe and sustainable recovery, so I will close by again urging everyone to follow advice on getting vaccinated, on testing as regularly as appropriate, on wearing face coverings when required or recommended, on keeping rooms ventilated and on following hygiene advice.

All that still matters, even as we lift the remaining legal requirements. It is how we will keep ourselves and one another safe as we recover from Covid and look forward together to brighter days ahead.

The Presiding Officer: The First Minister will now take questions on the issues raised in her statement. I intend to allow around 40 minutes for questions, after which we will move on to the next item of business. Members who wish to ask a question should press their request-to-speak button now.

Douglas Ross (Highlands and Islands) (Con): I begin by saying that, as we debate this afternoon, the grave situation in Ukraine is at the forefront of all our minds. The Prime Minister has made a statement to the House of Commons and, rightly, there has been cross-party condemnation of the actions of President Putin and Russia.

For weeks, we have seen a build-up of activity and threats, and last night's statement from President Putin showed in the starkest possible terms the reality of what Russia is seeking to do. We must stand together, supporting the UK Government and Governments around Europe and across the world as they seek to deal with current and future threats from Russia. Above all else, we have to make it very clear that we stand with the people of Ukraine.

I turn to today's statement. We welcome the move away from blanket legal restrictions towards an approach that is based on public health guidance. Two weeks ago, the Scottish Conservatives published our blueprint for living with Covid, "Back to Normality". Our approach focused on personal responsibility, trusting the Scottish public to make their own adjustments to protect themselves and their families.

When our plan was published, the Cabinet Secretary for Health and Social Care claimed that it was reckless. Today, large parts of it have been adopted by the Scottish Government. It is moving the wearing of face masks from law to guidance, it has finally scrapped vaccination passports and it is getting rid of mass testing. That was reckless two weeks ago, but it is Government policy today.

In her statement, the First Minister said that the Government is moving to a system of representative sampling and away from mass testing, so why did the First Minister create a fight with the UK Government over that issue just weeks before her own plans to scale back testing?

Secondly, the First Minister said in her statement that

"using restrictions to suppress infection is no longer as necessary as it once was"

and that

"Given the wider harms that are caused by protective measures, it is no longer as justifiable, either."

If so, will the First Minister explain why her Government intends to extend the Covid powers that it has at its disposal for a further six months until September? If it is no longer "necessary" or "justifiable" to keep restrictions in place, why is it necessary or justifiable for the Government to cling on to control over those powers and keep the threat of restrictions hanging over the public?

Finally, throughout the pandemic, Scottish businesses have been left in the dark. They have been an afterthought for the Scottish Government. The document published today is a plan for living with Covid. Will the First Minister tell us whether she personally had discussions and consultations with Scottish businesses before publishing that guidance and document and what their feedback was?

The First Minister: First, on the dreadful developments in Ukraine, the actions of Putin are utterly indefensible and he must face the most severe sanctions as a consequence of those actions. The announcement by the Prime Minister a short time ago does not go nearly far enough. He described the limited sanctions that were announced today as a "first tranche", but it is essential that we see further tranches soon, with very severe sanctions imposed on Putin and interests in Russia. We must all be—I hope that, across the Parliament, we will be—united in standing in solidarity with Ukraine and its people as they defend their independence, sovereignty and territorial integrity. I am sure that that will unite us across the Parliament and the country.

I turn to the issues that were raised in my statement. Douglas Ross says that we have now done what he asked us to do all along. I pause to note that he opposed the use of face coverings and Covid certification ever being legal requirements. He has opposed almost everything that this Government has done to try to control the virus and keep people safe from it.

The Government will continue to take a responsible approach to steering the country through the pandemic. We will take decisions in a timely manner; we will be driven by the data, the evidence and the application of judgment; and we will not follow the opportunistic and thoroughly oppositionist approach that is and has been recommended at every interval by the Scottish Conservatives.

Of the specific issues that were raised, I will start with testing. It is a bit rich for Douglas Ross to accuse me of picking a fight with Boris Johnson, but we will leave that to one side for the moment.

I have had many discussions on testing with UK Government representatives over the past few days, and we all agree that, in time—at least, I think that it should happen in time—we should move to a more targeted system of testing.

The difference between the Scottish and UK Governments is that we think that we should do that in a careful, phased basis and that we should put great care and thought into the testing infrastructure—built up over the past two years—that we retain for the future. To dismantle that in a significant way would be inexcusable negligence, given the threat that Covid still presents to us.

Yesterday, we had an announcement from the UK Government about what it will stop doing, but there was no clarity on what it intends to retain or on the funding that will be in place to support that. That is deeply regrettable. We will continue to work with the UK Government to try to get clarity so that we can set out our longer-term plans. We think that we should retain testing on the current

basis during a transition period and then, in a managed and careful way, move to a more targeted system that, nevertheless, retains the capacity and contingency that we might need in future.

On issues around continuing to have contingency measures that we might use in the future, I note that Covid has not gone away. It will not simply disappear because we want it to. I heard the chief medical officer for England make the point yesterday that it is highly likely that we will face new threats from the virus in the form of new and potentially harmful variants. We need contingency measures in place and we need to ensure that we have laws that are fit for purpose, which is why the Parliament is currently scrutinising coronavirus legislation. We will continue to do that.

Finally, my ministers engage with businesses on the detail of Covid measures, as is right and proper. We will continue to do so and to take appropriate steps to keep businesses safe while we keep the overall population of the country safe. I am sure that many people across the country will breathe a sigh of relief that Douglas Ross has not been in charge of these decisions.

Jackie Baillie (Dumbarton) (Lab): I associate the Scottish Labour Party with the comments about the situation in Ukraine and our determination, which I hope is shared across the chamber, to defend it against Russian aggression.

Boris Johnson's decision to dismantle the infrastructure that we rely on to keep Covid under control is "premature" and "incredibly concerning", and it "neglects" and "fails" those who are most at risk from Covid. Those are the words of the British Medical Association. On that, we can surely agree.

I have always, particularly at times of crisis, expressed a desire for the Scottish and UK Governments to work together in the interests of Scots. Instead, we see conflict.

At the start of the month, Scottish Labour published its plan for "Living Well with Covid". It set out our priorities to keep people safe, provide them with certainty and build resilience into our services. Central to that is the continuation of testing, contact tracing and isolation. The First Minister talked about a transition phase, in which testing will remain free of charge. That appears to be up to the end of March. It is not clear from the statement what will happen thereafter. Will she set out her plans for focused testing? It is also not clear what circumstances the Government will recommend testing for. Are the categories going to be the same as those that the UK Government is using, or are they different—and will the First Minister outline what the difference is?

Will the First Minister also tell us what constitutes a low, medium or high threat level? Will that be based, for example, on numbers infected, numbers of hospitalisations or other data? In the interests of us all having a shared understanding and of transparency, it is important that we understand how that will be determined.

There is little mention in the framework of long Covid, which is affecting more and more people. There is a particular problem in that their experience on the ground is not as it is painted in the framework. They are not getting access to services.

At a time when people are looking for more certainty about the future, there are not yet answers to some fundamental questions about what will be in place to protect Scots. We were promised a framework; this one appears to be more like a progress report. I appreciate that the First Minister is waiting for the UK Government to decide. However, as public health is devolved, will she commit now to funding testing and contact tracing, in order to protect the people of Scotland?

The First Minister: There is not conflict on those issues, but there is a UK Government that is failing to take decisions in an orderly and competent fashion. That is the reality. As recently as Friday, we fully expected that, yesterday, the UK Government would set out in detail the testing infrastructure that it intended to retain and the funding that would accompany that. Yesterday, I had two conversations with Michael Gove; between those conversations, a UK Cabinet meeting was postponed because its members were still having conflict among themselves. I deeply regret that, because it has a knock-on effect on Scottish Government decision making, and I hope that they get their act together quickly.

Jackie Baillie is right to point to the fact that public health responsibilities are devolved. However, that takes us to the very heart of the issue. Public health decisions are devolved, but decisions that determine how much resource is available to Scotland, Wales and Northern Ireland flow only from the public health decisions that are taken for England by the UK Government. I do not defend that system, because I think that it is unacceptable and unsustainable; unfortunately and regrettably, it is defended by Jackie Baillie and her party. If she is not prepared to take my word for how unacceptable that is, perhaps she will listen to the Welsh First Minister, Mark Drakeford, who has made exactly the points that I am making about the complete unacceptability of the position.

I have said that we will continue to secure free access to PCR and lateral flow testing for a transition period. Today, I have said that I expect that transition period to extend beyond the end of

March. We will set out the detail during March. However, before we can set out that detail, we need to know, based on the decisions that the UK Government will take, what resources will be available to support it. The assurance that I can give is that it will be the maximum possible testing capacity and infrastructure. I do not want what we have created over the past two years to be dismantled, and I want our testing arrangements to be fit for purpose and appropriate for the future.

When it comes to whether the categories of people who we routinely recommend for testing will be the same as the UK Government's, the UK Government has not given clarity on what its categories will be, so I cannot answer that question. I have set out the broad priorities for testing, and we will continue to develop the detail.

Finally on that point, in line with the fundamental principle of healthcare free at the point of use, which I and, I think, Jackie Baillie's party support—I am not so sure about the Conservatives—in any circumstance in which the Government recommends testing for Covid, it should provide those tests free of charge. To the best of our ability, we will seek to uphold that principle in any future strategy.

Presiding Officer, I have taken some time, but there were a lot of questions in Jackie Baillie's contribution.

Finally, on the categorisation of low, medium and high threat levels, I have set out in summary in my statement—it is set out in more detail in the document—why it would not be appropriate to rely on fixed thresholds of numbers of cases per 100,000 or numbers of people in hospital. That is because different threats do not have a uniform impact.

It stands to reason that, if we face a variant that is very highly transmissible but less severe, like omicron, that will demand less of a response than a variant that is both highly transmissible and more severe, which puts more lives at risk. That is why we—of course—look at all that data, but we will have to continue to apply judgment to it. Significant detail is set out in the document on that, and on long Covid, which is a significant challenge and something that this Government and other Governments will have to respond to for some time to come.

Alex Cole-Hamilton (Edinburgh Western) (LD): On behalf of the Scottish Liberal Democrats, I echo the support and solidarity that have been expressed across the chamber for the people of Ukraine in this deepening crisis.

Far from abolishing Covid identity card vaccination passports, the statement will normalise their use by some businesses, which will bake them into everyday life, perhaps

indefinitely. From now on, venues will have carte blanche to ask for private medical information without a public health imperative for so doing. A person can have a Covid passport and still have Covid. There is no comfort or reassurance to be offered by such a system. Can I ask the First Minister to revisit that assault on medical privacy and abolish it in totality today?

The First Minister: I think that Alex Cole-Hamilton does a disservice to his argument with the hyperbole that he uses. This is a proportionate measure that businesses, after it is no longer a legal requirement, will have the choice of using or not. The app is there and everybody can see the information that is available on it.

For every person who has contacted me to say that they do not agree with Covid certification, I have had at least one other person who has said that it makes them feel safer, in going to places, to know that people there are vaccinated or have tested recently. I think that there will be some businesses that see the advantage in still doing that in order to make people feel more confident about using their services and buying what they have to offer.

This is about giving choice and making sure that we have a package of measures in place that will collectively help to keep us safe as we continue to navigate our way through a challenge that is, we hope, receding but which will continue to pose difficult times for us in the months and years to come.

Stephanie Callaghan (Uddingston and Bellshill) (SNP): This morning, the UK health secretary, Sajid Javid, commented on Scotland taking a different approach from that taken by the Government at Westminster to managing the effects of the pandemic, saying that Scotland can

“pay for it in the same way that we pay for decisions in England”.

The Prime Minister said words to the same effect yesterday. Can the First Minister confirm that that means that the Scottish Government will have powers to borrow in the same way that the UK Government can, in order to be able to spend and deal with public health decisions in Scotland?

The First Minister: These are really important questions. Traditionally, we may debate such things through a constitutional prism, and we will differ in that. However, even if we do not approach the issue from a general point of view, this is about the best ways of dealing with an unpredictable public health challenge.

Right now, the fact is that, through the Barnett formula, the only way that money flows to Scotland, or to Wales or Northern Ireland, to allow us to discharge our public health functions is if the

UK Government takes a decision that generates additional spending for England. If it does not take such a decision or it takes a decision but does not provide any new money to support it, no resource is made available to Scotland, Wales and Northern Ireland.

I am not the only First Minister who is making these points. Mark Drakeford is making them, and the Executive in Northern Ireland—which, of course, is not functioning normally right now—makes them as well. It is a basic fact, and it is compounded by the fact that the devolved Administrations do not have borrowing powers. Anybody who wants this Parliament and this Government to be able to take public health decisions without being constrained by other Governments' decisions on resources should support us in getting to a more sustainable way of dealing with these matters. I encourage people across the chamber to engage with those issues seriously.

Jamie Greene (West Scotland) (Con): One of the emergency Covid powers that the Government is seeking to retain is the ministerial power to release prisoners on the ground of public health. In itself, that is fine, but when that power was last used during the pandemic, some 40 per cent of those who were released early went on to reoffend within just six months of their release, and that was not due to one or two isolated incidents. What happened, I am afraid, is exactly what we warned might happen, and behind every one of those offences is a victim of crime. Will that particular emergency power be ditched, not least as a token of apology to those who suffered the disastrous consequences last time it was used?

The First Minister: We continue to take decisions in a proportionate way. If further future action was necessary, ministers would set out specific criteria for which prisoners could be released. That would exclude types of prisoners that raise particular concerns. Since that power was created in April 2020, it has been used only once.

The bill, which will undergo full scrutiny in this Parliament, only extends the temporary power; it does not make it permanent. As I understand it, the equivalent power in England is permanent. That is not the proposal here.

This is about ensuring, whether on this issue or on a range of other issues, that we have at our disposal the means to respond proportionately and flexibly in the face of public health challenges.

I recently heard Aileen McHarg, a professor of public law, say something that I think is worth quoting:

“There’s a difference between having access to emergency powers and using those powers ... There is a

better opportunity now to design an effective control framework than there would be if powers”

were

“to be acquired urgently again in the context of another health emergency.”

This is about making sure that our law is sensible and gives the Government, with appropriate scrutiny from Parliament, the ability to respond to such emergencies.

Siobhian Brown (Ayr) (SNP): What steps is the Scottish Government taking to tackle health misinformation, especially in relation to Covid-19 vaccinations?

The First Minister: We continue to work with colleagues across all four UK nations to ensure that we are sharing learning and intelligence. That applies in particular to the learning from the vaccination programme. The work includes monitoring misinformation and disinformation that could adversely affect the success of the programme and proactively sharing information about such campaigns with stakeholders, once we are aware of them.

Research has shown that having Governments directly challenge conspiracy theorists can be counter-productive—although I do not think that we should ever rule that out—often because the conspiracy theorists use such attacks as a validation of their world view. Our policy, which is shared by other Governments, is to continually provide the public with information and reliable sources of truth about the vaccine, such as our own website and the information available on NHS Inform. I think that all MSPs and all politicians have a role to play in helping to ensure that we tackle misinformation and disinformation and that we encourage people to take up the opportunity of vaccination whenever that is available to them.

Pam Duncan-Glancy (Glasgow) (Lab): A constituent recently contacted me after they were wrongly administered four times the correct dose of the Pfizer Covid vaccine in one sitting. Despite UK Government guidance stating that any person who is given more than the recommended dose should be monitored and treated for symptoms, my constituent received only one phone call following that event. She was not monitored at all in the days following the error, despite displaying negative symptoms and repeatedly reaching out to health services.

I do not believe that the Scottish Government is doing enough to support hard-working NHS staff and patients. This situation reflects that. Does the First Minister agree that the NHS is in a critical condition, that it is critically underresourced and that that has resulted in patients not receiving the care and attention that they deserve? Will she act urgently to address that?

The First Minister: I do agree that the NHS is under significant pressure. We are working hard with the NHS to ensure that it can address that pressure, recover from Covid and get back on track in a range of ways.

I do not think that I could conclude from what I heard in the question that those pressures are responsible for the individual situation that was narrated, although it does of course sound unacceptable. I would be happy to ask the health secretary to look into that in more detail if Pam Duncan-Glancy wants to send me the details.

The arrangements for what should happen in the very small number of cases where errors are made in the administration of vaccine are clear and should be followed. If that has not happened in this case, we would want to ensure that the relevant health board reflects on that. If the details are sent to my office, I will ensure that that happens.

Evelyn Tweed (Stirling) (SNP): The announcement of the new £80 million Covid economic recovery fund, targeting support for businesses and communities, is welcome. Can the First Minister provide any further information about the flexibility that local authorities will have to ensure that that funding can be best used to maximise economic recovery in their respective areas?

The First Minister: The £80 million Covid economic recovery fund that I set out yesterday will give councils the ability to consider the needs of local businesses, communities and households in their local areas, and will let them target support and maximise economic recovery as we move into the new phase of the pandemic. We have given councils the flexibility on how to use that money. They may give money to individual businesses but also support initiatives such as Scotland Loves Local, business improvement districts or some place-based investment programmes as they see fit and in ways that they think best contribute to the recovery from Covid. I know that that flexibility has been welcomed by local authorities and the Convention of Scottish Local Authorities, and, as I was hearing from businesses in Edinburgh yesterday, that money will go a long way towards helping with that recovery process.

Gillian Mackay (Central Scotland) (Green): On behalf of the Scottish Greens, I associate ourselves with the solidarity with the people of Ukraine that has been shown across the chamber.

The UK Government's decision to scrap the requirement to self-isolate and to scale back free testing will undermine Scotland's ability to recover from Covid. It also signals the abandonment not only of a four-nations approach but of people who were previously asked to shield. How can those

people protect themselves from the virus if they do not know where it is? What steps can the Scottish Government take to mitigate the risk that is being posed to clinically vulnerable people and ensure that they continue to be protected and supported?

The First Minister: This is an important issue and I stress again that we are not changing our advice to people who test positive. That advice remains that they should isolate for the recommended period. We will keep the recommended period under review, but it is important that people who are positive with this highly infectious virus stay at home to reduce the risk of infecting others. That has always been in guidance in Scotland rather than in law. I think that the position is well understood and we are not changing that position.

Crucially, though—again, unlike the position that was outlined by the Prime Minister yesterday—we will retain self-isolation support grants for those who are eligible, in order to help people to do the right thing by isolating. I think that that is one of the most basic but most important things that we can all agree to do. The converse of that, of course, would be saying that it is fine for someone who tests positive with this highly infectious virus to go to work, to go shopping or to go to restaurants as normal, knowing that that would then allow the virus to circulate and infect others. That would be counter-productive overall in terms of our efforts to control the virus, but it would also make all of those settings much less safe for people who are highly vulnerable and are at highest clinical risk. I think that, as we return to normality, it is important that, as a matter of principle, we all get to return to normality and we do not create a situation in which those of us who have other health conditions or are, for example, frail by virtue of age have to continue to effectively shield while those of us who are not in that position can go about our normal lives.

Let us all continue to do the basic and important public health things to keep the country as safe as possible for everybody so that we can all get back to normal as safely as possible

Stuart McMillan (Greenock and Inverclyde) (SNP): Notwithstanding the Prime Minister's erroneous claim yesterday about immunity, in order to continue to help to protect the Scottish population, what would the monthly cost be to the Scottish Government of providing testing kits free at the point of need, and would that be borne solely from the health budget?

The First Minister: Those are details that we continue to work through ourselves but also with the UK Government. There is no doubt at all that the testing system that we have in place right now is extremely expensive and resource intensive—I think that the UK-wide cost is about £15 billion a

year. However, it is important that we recognise the cost of not delivering a testing system that is fit for purpose and helps us guard against these risks in future.

We want to be able to provide an appropriate testing system in Scotland—one that provides free access to testing for the people who need it, aligned with the purposes that I spoke about in my statement, allows us to have proper surveillance and respond to outbreaks and ensures that those who most need it get access to care and treatment. That is what we will be working on. We need the UK Government to provide clarity in order for us to set that out in detail, but it has not done so yet.

Craig Hoy (South Scotland) (Con): Yesterday, the First Minister announced the final allocation of Covid-related funding for businesses that have been hit hard by her Government's restrictions in December. Despite that, many businesses are still being overlooked and have had little or no support. Will the First Minister therefore urgently look into these two areas: support for outside catering operators such as Jo's Kitchen in East Lothian, which, despite losing £42,000 in orders in December, secured only £1,000 in support, and support for close-contact businesses such as Pure Spa and Beauty, which, despite employing 130 people at 12 locations across Scotland, qualifies for a grant of only £1,500?

The First Minister: As a result of the announcement yesterday, we will give money to East Lothian Council, which will allow it, using the flexibility that councils often ask us for, to consider whether the businesses that the member mentions merit that kind of funding. Given the stage that we are at, it is not for the Government to step in and make those decisions for councils. We have given councils the balance of funding so that they can make those decisions on the basis of what they think is right for their areas. I am sure that the member will engage with local councils on behalf of the—I am sure—excellent businesses that he just mentioned.

Clare Adamson (Motherwell and Wishaw) (SNP): Many households in Scotland face financial pressures as a result of the pandemic, which have been compounded by the additional pressures arising from the Tory cost-of-living crisis. What clarity has the Scottish Government received from the UK Government that the consequentials that were announced on 3 February are more than the position that was outlined in the spring budget revision?

The First Minister: We know that the position that we expected to be in at the end of the year is not as good as we hoped it would be and that the consequentials from the measures that the chancellor set out to address the cost of living

have not flowed through into a net increase in the Scottish Government's budget. The Cabinet Secretary for Finance and the Economy set that out when she presented the final stage of the budget just before the recess. She continues to discuss with the UK Government—the Treasury, in particular—those year-end issues, so that we can present a final position to Parliament as soon as possible.

Daniel Johnson (Edinburgh Southern) (Lab): I am pleased that the Scottish Government has announced the final tranche of £80 million of the original £370 million of business support funding that was initially announced in January. However, that was to deal with omicron. Given the urgency that many of those businesses face, when does the First Minister expect the £370 million to be fully paid out and in the hands of businesses? Although the change from regulation to guidance of public safety measures such as face masks will be welcome, there may be some confusion given the on-going recommendation to wear face coverings. Will there be updated guidance and information to avoid that confusion?

The First Minister: Yes, there will be updated guidance, and we will ensure that there are updated marketing and public awareness campaigns to help people to understand the changes that I have announced today. That is a very reasonable point to raise.

On the issue of funding, members often call for us to give local authorities more money and the flexibility to spend it. We have, rightly, given the balance of funding to local authorities to ensure that flexibility for the rest of the money that is flowing to businesses right now. For example, if we look at the management information on the local authority-delivered funds for hospitality and taxis, of the almost 23,000 applications that were received, so far almost 22,000 have been paid out.

There is a range of other schemes, such as those that are administered by Creative Scotland, and that money is also flowing to businesses. We will continue to work with the stakeholders that are responsible for delivering that money to ensure that it all gets to the businesses that need it as quickly as possible.

Michelle Thomson (Falkirk East) (SNP): Experience tells us that significant public health issues remain prevalent after a pandemic has ended. For example, the incidence of strokes and heart attacks increases after every flu season, infection of the brain can occur in patients with measles, and I have a friend who still suffers from post-polio syndrome 65 years after their illness. Given that, does the First Minister share my concern that the potential removal of wider infrastructure by the UK Government will impact on important data gathering and might ultimately

condemn more citizens to the longer-term consequences of Covid-19?

The First Minister: That is a really important point. We must and do recognise the possible longer-term impacts of Covid, including on heart disease and stroke. We continue to work with Public Health Scotland, for example, to understand that wider impact on the population as deeply as we can, but it will be some time yet before we properly and fully understand the impacts of the pandemic.

That underlines the importance of continuing to be very vigilant about any future threats that the pandemic presents for us, because such threats will also have long-term consequences. At the heart of living with Covid, which is the phrase that we hear more and more, must be a very robust and very developed system of surveillance, so that we can identify new risks very quickly and respond quickly to them to minimise the impact that they have on the population.

I hope that our discussions with the UK Government in the period ahead will allow us to have the clarity that enables us to set out our plans for a longer-term testing infrastructure that meets all those needs.

Sharon Dowey (South Scotland) (Con): The £2 million that was announced last week for the events sector is welcome, but the fact that it covers all events in Scotland means that independent music festivals might be short changed. It has been suggested that festivals are caught between the events and culture funding streams, with neither quite fitting the bill. Will the First Minister consider creating a dedicated fund for Scottish music festivals, to encourage festivals, artists and audiences back to Scotland?

The First Minister: I will take that point away and give it consideration, but the question is likely to be whether there is anything that we can do within the funding that has already been announced.

In addition to that funding, the money for local authorities that we announced yesterday gives local authorities additional flexibility to meet the needs of any businesses, organisations or events that have not been properly catered for by other funding streams. Local authorities will have the ability to look at music festivals in that context.

Beyond that, I will take the point away, give it further consideration and ask the minister to write to the member in due course.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): Douglas Ross referred to “personal responsibility” but, in my supermarket at the weekend, there was more than one group without face coverings. By no

stretch of the imagination were they all exempt—so much for their personal responsibility!

Will the First Minister remind us all that wearing face coverings in public places, lateral flow testing and isolation, rather than being for the person who does those things, are for others and that they protect not only that person’s family and friends and work colleagues but, more important, people whom they pass by, whom they will never know, who may be very vulnerable to the virus that they may give them?

The First Minister: That is possibly the most important point to make as we go into the next phase. Governments cannot impose legal restrictions that are not proportionate, which is why we are lifting the legal restrictions. However, that does not mean that the risk of the virus has gone away. Therefore, we will continue to encourage voluntary compliance.

Christine Grahame is absolutely correct in the point that she makes. We do things such as wearing a face covering, getting vaccinated and testing regularly to protect ourselves, obviously, but also to protect others and, in particular, those around us who—we may not have knowledge of this—may be clinically vulnerable and who, despite being vaccinated, may be at risk of serious illness or death if they get the virus. Therefore, taking such measures is about solidarity and looking out for—and looking after—one another. That will become more important as we go into the next phase, so I encourage everybody to continue to do all the right things for all the right reasons.

Jeremy Balfour (Lothian) (Con): The guidance around the 1m rule still applies. That is affecting universities and, as schools reopen more, it will affect parents’ ability to go into schools. Will the 1m rule be reviewed? If so, when will it be reviewed?

The First Minister: I have said today that we intend—assuming that there are no adverse developments between now and then—to lift on 21 March the requirement for businesses to take account of Government guidance, and to take all practicable measures to reduce the risk of infection on their premises. We will continue to update guidance to give businesses and other organisations the right steer on what to do. We anticipate moving to a position whereby none of those things is a legal requirement for businesses or for others. However, as we have just been talking about in the context of individual behaviour, businesses, for obvious reasons, will want to operate in sensible ways that allow them to keep their staff and customers safe. We will continue to engage with businesses about the nature of that over the coming weeks.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): As we lift Covid requirements, households continue to face significant financial pressures as a direct result of the pandemic—compounded, of course, by the additional pressures arising from the Tory cost of living crisis. On 3 February, the UK Government announced spending for England to tackle such pressures. *[Interruption.]* What clarity has the Scottish Government received from the UK Government that the associated Barnett consequential will provide additional funds overall to Scotland, over and above Scotland's spring budget revision, to allow the Scottish Government to tackle significant household pressures in Scotland?

The First Minister: People outside the chamber might not see this, but members on the Conservative benches seem to think that the cost of living crisis is something to laugh about. *[Interruption.]* I do not think that many people across the country share that view, and I encourage members to have more respect for the difficult circumstances that people face.

It is the case—as it is very often the case—that what the Treasury appears to announce does not translate into actual money for the Scottish Government. The UK “Supplementary Estimates 2021-22”, which were published today, confirmed that the Scottish budget is receiving £17 million less than the Treasury provisionally indicated before the chancellor's cost of living announcement.

That is something we have come to expect from the Treasury. We will continue to work with the UK Government to get the maximum support for people across the country, who are really suffering as a result of the pandemic and other factors that are driving up the cost of living—which might, unfortunately, be exacerbated by developments in Ukraine. Undoubtedly, we need the chancellor to take much more action in the days and weeks to come.

Paul O'Kane (West Scotland) (Lab): In anticipation of this announcement and in response to it, many people who have disabilities or who are immunosuppressed, and their carers, have expressed worries about what the new framework could mean for them and their loved ones. They have also expressed frustration about their lack of dialogue with the Government.

What engagement have the First Minister and the Government had with people who have a disability, carers and the organisations that represent such people, in the preparation of the framework? Will the First Minister commit to further engagement in the coming weeks?

The First Minister: We have had significant engagement with stakeholders who represent people who are more at risk, and that will continue. It is because we recognise the issue—I recognise the issue—that, even as we lift legal restrictions, we continue to recommend basic protections and mitigations. It is why we think that access to testing continues to be important. It is why we think that any of us who tests positive should continue to be asked to isolate, to reduce the risk to those who are most vulnerable.

We all have to recognise that the desire to get back to normal, understandable though it is, has to be tempered by the understanding that, for those at greatest risk, the anxiety is very real, so that we can all behave in a way that reduces the risk that people face and, I hope, reduces that anxiety.

The Scottish Government will continue to take those considerations very much into account as we take decisions in the future about the handling of the pandemic overall.

Ruth Maguire (Cunninghame South) (SNP): I know that the First Minister agrees that everyone should be able to benefit from a return to greater normality and that no one should be left behind. Like other members, I have constituents who previously had to shield or who were vulnerable because they could not get the vaccine, and they are feeling a bit scared at the prospect of restrictions being lifted and what that will mean for their quality of life. What further assurances can the First Minister give to those people that her approach, unlike the UK Government's approach, is taking their wellbeing into account as protections are relaxed?

The First Minister: Further to my previous answer, let me again give an assurance that we have considered, are considering and will continue to consider people who are at the highest clinical risk in every strand of the phased approach that we are taking to managing this pandemic.

There are a number of practical ways in which we give life to that. People at the highest risk continue to be prioritised for vaccination. Our testing programme continues, to support the effective management of Covid. People who are at higher clinical risk might also benefit from the new treatments that have been identified—I set out some of that in my statement. Also, as I said in my previous answer, we continue to encourage and recommend that everyone across the country adopts the safe behaviours and practices that help to keep the people who are most vulnerable as safe as possible.

This has been a collective endeavour from day 1. We have all had to look out for and look after each other. Even as we go into what are, I hope, calmer waters of this pandemic, that remains the

case. I urge everybody, however frustrated they may be about wearing a face covering or having to isolate when they test positive, to continue to do those things, because they are about the protection of those who are most vulnerable in our society.

The Presiding Officer: That concludes the First Minister's statement on a Covid-19 update. There will be a brief pause before we move on to the next item of business.

Made Affirmative Procedure

The Deputy Presiding Officer (Liam McArthur): The next item of business is a debate on the inquiry into the use of the made affirmative procedure during the coronavirus pandemic. I invite members who wish to participate to press their request-to-speak button now or as soon as possible, or to place an R in the chat function if they are joining us online. I call Stuart McMillan to speak on behalf of the Delegated Powers and Law Reform Committee for around seven minutes.

15:32

Stuart McMillan (Greenock and Inverclyde) (SNP): I am delighted to open the debate on the Delegated Powers and Law Reform Committee's inquiry into the use of the made affirmative procedure during the coronavirus pandemic.

At the outset, I thank all those who appeared before the committee and provided written evidence at very short notice. We agreed to hold the inquiry only in late November, so we were very grateful to hear from so many people in such a short space of time. I also thank the clerking team and the legal team, who were invaluable during the inquiry and ensured that our report was turned around in the short timeframe that we allocated ourselves.

Being able to hear from witnesses remotely allowed us to take evidence despite new restrictions due to the omicron variant. Although I know that meeting in person is always preferable and beneficial, virtual meetings have their place. As we know, they can sometimes be challenging, but they provide Parliament with another option to hear from witnesses, in addition to helping to reduce the carbon footprint of Parliament and individuals.

Before I cover the committee's main findings, I will first mention why this work was important and why it should matter to all of us in Holyrood, and not just the five members of the committee. The use of the made affirmative procedure since March 2020, which has allowed the Scottish Government to bring into force a large number of very significant powers immediately, is a classic case of a debate that predates us at the Scottish Parliament—namely, the balance of power between Parliament and the Government of the day.

Dr Ruth Fox, director of the Hansard Society, reminded the committee that debates on how statutory instruments are laid and scrutinised were taking place in the 1930s. Books were published in the aftermath of the second world war about government by diktat and the use of emergency provisions. Dr Fox told us that concerns about the

concentration of legislative power with the Executive and the shift of influence away from Parliament have been a “long-running sore.”

The committee’s report should be read in the context of that history. The committee is clear in the report that we do not wish to remove the made affirmative procedure. The committee has regularly acknowledged that made affirmative instruments have allowed the Scottish Government to respond quickly to the many challenges that have been presented by coronavirus. However, we want to ensure that bringing such substantial changes, which have often impacted on all aspects of our lives, into force immediately, before any parliamentary scrutiny, should be done only if essential, and that such emergency powers should not, as we often heard from witnesses, become a habit.

We want to ensure that the balance of power between the Parliament and the Government is indeed balanced, and each of the committee’s recommendations seeks to achieve that.

Our first set of recommendations focuses on the clarity and accessibility of law. We heard from Sir Jonathan Jones QC, the former head of the United Kingdom Government’s legal department, that in the Westminster context there were times during the pandemic when

“extreme urgency”

was prioritised

“over the quality and comprehensibility of legislation.”—
[*Official Report, Delegated Powers and Law Reform Committee*, 14 December 2021; c 7.]

The Law Society of Scotland highlighted concerns about the clarity and accessibility of made affirmative instruments that are subject to frequent and significant amendment. It suggested that, when amending an instrument, the Government should produce a consolidated version that shows the whole instrument as amended.

The committee agrees. We want all legislation to be properly and clearly drafted, so that it is legally accurate. It should be easy to find and able to be interpreted by all, particularly given that many of the regulations that were made during the pandemic placed significant restrictions and potential criminal sanctions on individuals and businesses. Our various practical recommendations seek to help to achieve that.

The report calls for a number of changes to how made affirmative instruments are brought forward. The majority are currently laid under the Coronavirus Act 2020 and the Public Health etc (Scotland) Act 2008. Under both acts, it is for the Scottish Government to determine whether regulations need to be made urgently. The

University of Birmingham’s Covid-19 review observatory found that the frequent use of the made affirmative procedure since the start of the pandemic has raised questions about how the urgency threshold is operating as a constraint. Others spoke of the potential for use of the made affirmative procedure to become a habit.

The Deputy First Minister told the committee that using the procedure is not the Scottish Government’s default view. He said that he would consider adding a statement of urgency to all made affirmative instruments. The committee has called on the Scottish Government to do just that.

If the committee is not satisfied with the Government’s justification of urgency, it reserves the right to seek to raise the matter in the chamber and to do so quickly. The committee has suggested options for how that might work in practice under current procedures. It has also invited the Standards, Procedures and Public Appointments Committee to explore further procedural options as part of its inquiry into shaping parliamentary procedures and practices for the future. The Delegated Powers and Law Reform Committee would be grateful if the SPPA Committee considered that as part of its work.

I will move on to the section on how the Parliament looks at proposals for made affirmative powers in new bills. That is already prescient, as the Delegated Powers and Law Reform Committee had an initial look at such proposals in the Coronavirus (Recovery and Reform) (Scotland) Bill this morning. Professor Stephen Tierney, who is professor of constitutional theory at the University of Edinburgh, told the committee that adequate scrutiny of the primary legislation that creates delegated powers is a key part of robust lawmaking.

The committee agrees. To ensure that robust approach, we have outlined a set of four key principles that we will use to scrutinise any such proposals. To go back to my opening comments, we hope that they will ensure that there is an appropriate balance of power between the Parliament and the Government of the day.

I will briefly highlight the expedited affirmative procedure. The affirmative procedure enables the Delegated Powers and Law Reform Committee and the lead committee to conduct their respective technical and policy scrutiny roles before proposed changes are made in law. Morag Ross QC, representing the Faculty of Advocates, noted that individuals might scrutinise legislation that is already in force differently from legislation that is still prospective. The committee would therefore be happy to consider with the Scottish Government, the COVID-19 Recovery Committee and the Parliamentary Bureau on a case-by-case basis when the use of an expedited affirmative

procedure as an alternative to the made affirmative procedure might be appropriate and what the parliamentary timescales for such scrutiny would be.

I refer members to paragraphs 106 and 107 of the committee's report. We acknowledge that the Scottish Government did not start out in 2020 with a plan to use the made affirmative procedure 146 times. However, we embarked on this short inquiry because of the importance of proper parliamentary scrutiny, which leads to good law that is accessible to all. I look forward to hearing the contributions in the debate.

15:39

The Deputy First Minister and Cabinet Secretary for Covid Recovery (John Swinney):

The Government welcomes the opportunity to participate in the debate. I listened with interest to the convener's explanation of how the committee conducted its inquiry and to his explanation of the committee's key recommendations. Yesterday, I made an initial response to the committee's conclusions, as requested by the committee, to give a sense of the Government's response to the issues that were raised. I will amplify that in my comments today, and I hope that the committee and its convener found the response yesterday helpful. We will, of course, reflect in full on this debate and on the report in due course, and submit a substantial response to the committee's inquiry.

It is important at the outset of this discussion to provide some context from the Government's perspective. When I gave evidence last month to the Delegated Power and Law Reform Committee as part of its inquiry, I put on record the Government's general position on the use of the made affirmative procedure. I emphasised that the procedure is a very unusual power, which is granted by Parliament in situations—which are usually related to safeguarding public health—when action might need to be taken more quickly than the normal affirmative procedure allows for.

I assured the committee that the Government does not take lightly the use of the made affirmative procedure. It is a quite exceptional power, but it has been required in these quite exceptional times. It is clear to me, from the vantage point that I have, that it has been an essential tool in enabling the Government to deal with the coronavirus pandemic. The Government has a duty to protect public health, and it is important that we continue to have the option of using the made affirmative procedure when urgent action is required to protect public health.

However, I recognise the challenges that the use of the made affirmative procedure gives rise to

in terms of parliamentary scrutiny and the challenges that that throws up for committees and for Parliament. I recognise why the committee wished to conduct an inquiry into how that power has been exercised and any lessons that can be learned from that experience.

I turn to the committee's report and its recommendations. I think that it would be fair to say that none of us could have envisaged at the beginning of the pandemic just how long the public health crisis would be with us. It would also be fair to say that none of us could have envisaged how regularly we would need to make regulatory changes to deal with the pandemic. Therefore, it is helpful that the committee's report recognises, at paragraph 108, that the made affirmative procedure has been

"a vital tool in the handling of the pandemic".

The committee rightly emphasises the importance of ensuring that regulations that are brought forward under the made affirmative procedure are robust, clear in their meaning and accessible to those to whom they apply. I share that view, and the Government aspires to those characteristics being in all the legislation that it brings forward.

The committee also rightly emphasises that the Government should make clear why it considers urgent action to be necessary when the use of the made affirmative procedure is proposed. I recognise that the committee expects that justification to be made on a case-by-case basis, and the Government accepts that.

However, I think that it is worth making a general point now, as I did when I gave evidence to the committee, about why it is necessary to have the made affirmative procedure at all, and that is because of the timing constraints that apply under the normal affirmative procedure. Standing orders allow for 40 days of committee scrutiny before a chamber vote is taken on whether regulations should pass. The reason for the existence of the made affirmative procedure is to enable regulatory action to be taken much more quickly to safeguard public health. As we have seen from our experience in the course of the pandemic, 40 days is an extraordinarily long period of time in the handling of the challenges of the pandemic that we have faced.

Graham Simpson (Central Scotland) (Con): Will the Deputy First Minister give way?

John Swinney: If Mr Simpson allows me first to provide an example, I will then give way.

At the end of November last year, the Government had a Cabinet meeting on a Tuesday at which we considered the pandemic to be in a relatively stable position. Forty-eight hours later,

my colleague Mr Matheson was on calls with the United Kingdom Government about the disclosure of the information on omicron and the advancing pace of the circulation of that form of the virus. That 48 hours changed fundamentally our view of the type of conditions with which we were wrestling. I make that point to register the fact that swift action can be necessary.

Graham Simpson: Would the Deputy First Minister accept that it is possible to have an expedited procedure, as was recommended in the report? Does he accept that Parliament can act at pace and does not need to take 40 days when we use an affirmative procedure, and that we could change things if we need to act quickly?

The Deputy Presiding Officer: I will give the Deputy First Minister his time back.

John Swinney: Thank you.

That is an eminently deliverable proposition, but it depends how long we are talking about—I do not want that in any way to sound like I am asking about the length of a piece of string, but it is relevant. I cited one example, and I could also go back to March 2020, when events moved at a ferocious pace. We had to take decisions of a dramatic nature in a very short space of time. Indeed, some decisions that we thought were dramatic were followed very shortly afterwards by ones that had to be taken even more quickly and were of an even more dramatic nature.

There is a possibility of doing what Mr Simpson has talked about. In the light of the pandemic, it may be valuable for the Government and the committee to consider, in a slightly more relaxed context, what that might look like so that we are all aware of what a super-expedited procedure—if we want to give it some terminology—could involve.

In relation to the points made by the committee, the Government is happy to explain what is driving urgent action on a case-by-case basis. However, the fundamental issue that the Government must determine is whether the action needs to be taken more quickly than is provided for under the normal affirmative procedure. That may open some of the space that I have just discussed with Mr Simpson for further dialogue.

The committee also rightly emphasises that the use of the made affirmative procedure should not become the new normal. I confirm to the Parliament what I said to the committee, which is that that is also the Government's view. I am happy to confirm that the Government has no intention of made affirmative powers routinely being included in Government bills. However, such powers have a place and the committee will know, for example, that made affirmative powers have been included in the Coronavirus (Recovery and Reform) (Scotland) Bill. In that context, it is

envisaged that the bill will create a set of powers that might have to be used because of the urgency and gravity of the situation that we face.

Martin Whitfield (South Scotland) (Lab): Would the Deputy First Minister agree that the bills that embed this procedure should be properly scrutinised by the Parliament before they progress?

The Deputy Presiding Officer: I would be grateful if you could begin to wind up, Deputy First Minister.

John Swinney: I agree unreservedly with Mr Whitfield's point, and that is what the Government is providing for in the parliamentary timescale that is available. The usual scrutiny at stages 1, 2 and 3 will be available for the Coronavirus (Recovery and Reform) (Scotland) Bill. I look forward to engaging with Parliament on that—indeed, Mr Whitfield might be an active player in the process. I fully accept that the Government will need to justify why such powers are appropriate for inclusion in the bill, and I note the set of principles that the committee has identified to support its scrutiny.

I emphasise that the Government accepts that the made affirmative power is an exceptional power. I welcome the committee's helpful analysis of the use of the power over the past two years, and I will reflect further on its recommendations. It is important that Parliament considers the impact of the pandemic on its legislative basis. That is why we have introduced other legislation which, as I confirmed to Mr Whitfield, will be subject to further scrutiny in Parliament.

15:48

Graham Simpson (Central Scotland) (Con): I am in my second spell on the DPLR Committee. My first was as convener, and members might be forgiven for thinking that I earned a second stint because my chief whip does not like me, which might well be true. However, I actually made the schoolboy error of telling him how important the committee is.

The DPLR Committee is the gatekeeper. We see everything, including the tricks that the Government is up to, although a committee report would never use such a phrase. However, that is what the inquiry was about. In layman's terms, the inquiry was about the way in which the Government has been making law without Parliament first scrutinising and voting on it.

John Swinney: Does Mr Simpson agree that the language that he is using belittles the challenges of the pandemic?

Graham Simpson: Not at all. That is the way that I see it, and the figures bear that out. Between

2012 and 2019, the made affirmative procedure had been used only nine times, but between March 2020 and 1 February 2022, it was used 146 times. When I described that as becoming the norm and John Swinney said that that was “ludicrous”, I was right and he was wrong.

At times, the situation has become ridiculous. Quite often, Parliament has been voting on things that are no longer in force. It has been a case of, “Now you see it, now you don’t.” It is like the Derren Brown school of legislating. The ridiculous Manchester travel ban is a good example. Nicola Sturgeon had come to her senses before MSPs could tell her to wise up. Had the matter come to us in advance, we could have spared the First Minister a needless spat with Andy Burnham.

I thank the committee clerks, all our witnesses and the convener for helping us to produce an excellent report. Sir Jonathan Jones QC told us that using the no-scrutiny route had become a habit here and at Westminster, and that it was a bad one. I agree. Dr Ruth Fox of the Hansard Society reminded us that the tension between Governments wanting to push the boundaries and Parliament wanting to keep them in check was as old as the hills. Professor Stephen Tierney agreed with me that, if we give Governments an inch, they will take a mile, which is what has happened. Morag Ross QC was of the view that rapidly changing legislation can become confusing. That led to our recommendation that legislation should be consolidated so that it can be easily read.

To use the no scrutiny route, all that a minister has to do is to decide that something is urgent. He or she does not have to say why; they do not have to justify that decision. The University of Birmingham Covid-19 review observatory said that “the urgency requirement is not an effective constraint”

on the use of the made affirmative procedure. It said that the use of the procedure should be justified, to ensure that all such Scottish SIs are treated as exceptional. The committee agreed with that.

The committee is clear that if ministers think that something is so urgent that they feel that they must legislate without the normal checks and balances, they need to say why, and that if the committee disagrees, the matter should be brought to the chamber. If such a matter is to be debated, it should be open to all members to contribute.

This Government has been ramming through legislation at will without scrutiny on a weekly—sometimes daily—basis, and that has to stop. We are long past the stage at which Governments need to legislate at a pace that might be justified in wartime. I would argue that we could have scrutinised every piece of legislation prior to it

coming into force. We certainly should be doing that from here on in. The committee makes just that point.

John Mason (Glasgow Shettleston) (SNP): Will the member take an intervention?

Graham Simpson: I think that I am in my last minute, but I will take an intervention if I am given time to do so.

The Deputy Presiding Officer: Yes, you can get the time back.

John Mason: Does the member accept that there are at least some cases, such as the travel restrictions to foreign countries, which apply at both UK and Scotland level, in which allowing two days before they came into force was probably too long? Such restrictions should have applied immediately.

Graham Simpson: I am making the point that I believe that this Parliament is up to the job of scrutinising any piece of legislation and that we can do so at pace. Given that we have a hybrid form of working now, people can do that from home. I would be prepared to work weekends, if that was necessary.

Stuart McMillan: I ask this question not as convener of the committee but as a member of the Scottish National Party. Does Graham Simpson acknowledge that, at the outset of the pandemic, hybrid working was a challenge, including for Parliament? When the Deputy First Minister spoke earlier about some of the early instruments that had to go through the Parliament, he said that hybrid working might not have been acceptable and suitable at that time.

Graham Simpson: Stuart McMillan has a point, because hybrid working was not in place initially, so we might have struggled. However, it is now in place. He might not be able to say it, but I think that Stuart McMillan actually agrees with my point that we could act at pace.

Both the DPLR Committee and the COVID-19 Recovery Committee have said that the affirmative procedure should be the default. Therefore, I hope that the COVID-19 Recovery Committee will reject forthwith anything that is done otherwise, unless it is to get rid of restrictions.

Presiding Officer, too many committee reports are ignored by the Government. This report is for the Government, but it is also for Parliament. I hope that you and your colleagues will take a stand, because you are there to defend Parliament. We have been bypassed for the past two years and it has to stop.

15:55

Neil Bibby (West Scotland) (Lab): I commend the committee for its thorough and insightful report. It is, of course, right that a Government should be able to act swiftly and decisively when faced with unprecedented challenges. When legislating, there is always a tension between urgency and scrutiny, but democratic accountability is vital. It is what Parliament is for. Therefore, the burden of proof for a proposal to sacrifice democratic accountability, even in the name of urgency, must be very high. That is the basic principle from which I and Scottish Labour approach the matter.

The Scottish Government went from using the made affirmative procedure on average once or twice per year, prior to the pandemic, to using it more than 140 times since the pandemic began. That is understandable. The Covid emergency necessitated urgent action that made the use of made affirmative powers entirely appropriate. Nevertheless, as the committee also acknowledged, proper parliamentary scrutiny is vital and we must ensure that those powers do not in any way become normalised.

Scrutiny and debate make for better legislation. Unrestrained and unaccountable ministerial powers do not. We therefore endorse entirely the committee's finding that there would be significant dangers in Government using such procedures if the public was not aware of what was being done and why, and if Parliament was not fully informed and able to hold the Government to account.

There are important concerns around the need to have high standards of drafting. High-quality drafting takes time and effort. Legislation made in a hurry is unlikely to be of the same quality as legislation to which due care and attention has been paid. Rectifying errors in drafting can also be complex and time consuming. I therefore echo the committee's call for the Scottish Government to outline its internal checks and balances in order to ensure that high standards of drafting are maintained when making changes to the law. That is entirely reasonable. Parliament and the people deserve to know what is being done in order to avoid errors in legislation.

In line with all of those concerns, the committee makes important recommendations regarding a test of urgency. Given the significance of the use of made affirmative instruments, it is wholly reasonable to ask for guarantees that they will be used only in exceptional circumstances. We therefore support the committee in its calls for the Scottish Government to publish criteria on whether a situation is suitably urgent, to provide a written statement prior to the instrument coming into force and to ensure that such regulations are published as quickly as possible, so that people who are

impacted fully understand the changes that have been made.

The committee raises a further important point regarding the parliamentary process. The report points out that there is at present no obvious mechanism by which members could debate a made affirmative issue with sufficient speed. The challenges of the pandemic have, perhaps, identified some weaknesses with scrutiny in the Parliament that need to be addressed more generally. Perhaps it is time to consider recommendations to strengthen the role of Parliament, including the use of an expedited affirmative procedure as an alternative to the use of the made affirmative procedure. That proposal is raised in the committee's report and it is worth looking at seriously.

The committee sets out four principles. First, the use of the affirmative procedure should be the default position in all but exceptional and urgent circumstances. Secondly, when use of made affirmative powers is proposed, Parliament should require an assurance that a situation is urgent and there should be an opportunity for debate in a timely manner. Thirdly, ministers should include an assessment of the impact on people affected by any instrument in the explanation that they provide. Fourthly, legislation containing a provision for use of the made affirmative procedure must contain sunset clauses. Those four principles are strong ones and should be supported.

The Deputy Presiding Officer: We move to the open debate.

15:59

Jenni Minto (Argyll and Bute) (SNP): I attended the Delegated Powers and Law Reform Committee as a substitute member for its meeting on 11 January 2022—unlike Graham Simpson, I was not steeped in the history of the committee. It was the final evidence session of the committee's inquiry into the use of the made affirmative procedure during the coronavirus pandemic. Evidence was being taken from the Deputy First Minister, as he has stated, so I felt no pressure at all that day.

Reading the evidence that had already been provided by the two earlier sessions, I found that there was much agreement among witnesses on the key areas of questioning, which were clarity and accessibility of law, how to define urgency, and scrutiny of the Executive by the Parliament. I will look briefly at each of those areas separately, which I can do from two points of view: first, as a parliamentarian and, secondly, from my previous life as a community activist, in which my fellow activists and I were looking for up-to-date and clear guidance that was set out in a way that was

easy to understand, because we passed it on to the people whom we were supporting during the Covid pandemic.

The law should be clear and accessible to all, especially when laws continually change or come into force with immediate effect, as has sometimes been the case during the pandemic.

Sir Jonathan Jones QC said:

“Ironically, it is probably true to say that it is easier to legislate for a lockdown with very tight controls and only minimal exceptions, by drafting very tight and clear laws, than it is to legislate—as we saw later in the pandemic—for partial closures and multiple exceptions.”—[*Official Report, Delegated Powers and Law Reform Committee*, 14 December 2021; c 7.]

I recognise that analysis from my experience during lockdown and our emergence from it. Throughout the pandemic, individuals, businesses and communities were looking for clear and timely guidance as to what they should or should not be doing. Emerging from lockdown was difficult. The resilience group that I was part of discussed long and hard how we could achieve that safely on Islay, and the Scottish Government’s route map provided the blueprint for our work.

To ensure that laws are clearly understandable for everyone who is affected, the DPLR Committee has concluded that policy notes and explanatory notes must be written in plain English and in sufficient detail.

Defining “urgency” was seen as key in determining the use of the made affirmative procedure. In her evidence, Morag Ross QC suggested:

“It would be tempting to think that we could narrow that down to say that ‘urgency’ definitely means X or Y and that it does not mean Z, A, B or C.”

She went on to say:

“Also, things change, so there must be flexibility to allow decisions to be made that respond to changing circumstances. ‘Urgency’ might mean one thing in week 1 and something else in week 2, so you have to allow for responses to be developed.”—[*Official Report, Delegated Powers and Law Reform Committee*, 7 December 2021; c 3.]

The example that the Deputy First Minister has just given in his speech mentioned 48 hours. In his evidence to the committee, he concluded by saying:

“In my book, that is why urgent action is required—because the situation has changed before our eyes in a very dramatic order and fashion.”—[*Official Report, Delegated Powers and Law Reform Committee*, 11 January 2022; c 23.]

In its conclusions, as other members have said, the committee asked for transparency in the criteria for determining whether a “situation is suitably urgent” to merit the use of the made

affirmative procedure; requested publication of a written statement of “justification and evidence” prior to an instrument coming into force; and asked the Government to ensure that any such regulations are published “as quickly as possible”.

All witnesses raised concerns about the increased use of the made affirmative procedure during the coronavirus pandemic, and how that has impacted on the Parliament’s scrutinising or holding the Executive to account. Professor Tierney said:

“from my work in scrutinising legislation over many years, I have come to realise that all Governments like powers: they like to get more of them.”—[*Official Report, Delegated Powers and Law Reform Committee*, 14 December 2021; c 3.]

In answering my question on what the Scottish Government has learned from the pandemic and how that could shape future decision making and the use of made affirmative procedures to allow proper parliamentary scrutiny, the Deputy First Minister said:

“In the circumstances of a global pandemic that requires swift action, the measures that have been taken are appropriate. However, we should always be open to learning lessons from the situation and the Government will consider with care any output from the committee’s inquiry.”—[*Official Report, Delegated Powers and Law Reform Committee*, 11 January 2022; c 22.]

The DPLRC report and its conclusions provide a number of suggestions about how decisions around the made affirmative procedure could be enhanced. I hope that the Scottish Government considers the committee’s findings with care.

16:04

Murdo Fraser (Mid Scotland and Fife) (Con): I welcome the opportunity to make a short contribution to this debate on the made affirmative procedure and its use during the coronavirus pandemic. I commend members of the Delegated Powers and Law Reform Committee for taking the time to look into the topic. I remind members of my entry in the members’ register of interests, in that I am a member of the Law Society of Scotland.

The debate may seem to be about a dry and arcane issue of parliamentary procedure but, in fact, it raises serious issues about our democracy and the proper parliamentary scrutiny of Government action.

It is important that we put all of this into context. An unprecedented public health emergency has required Governments across the world to act quickly in the public interest, restricting individual liberties and bringing in restrictions that, in normal times, would be deemed totally unacceptable. Because of the speed of changes throughout the pandemic, Governments sometimes had to act very quickly, without going through the normal

parliamentary processes and opportunities for scrutiny. All of that is understood.

However, an important point has been made by the committee in its report, in that the made affirmative procedure—in other words, regulations coming into force instantly on their being laid, with any scrutiny in the Parliament taking place retrospectively, perhaps weeks after the event—can lead to a poor quality of legislation and to bad law.

Giving evidence to the committee on behalf of the Faculty of Advocates, Morag Ross QC warned:

“In general, legislation that is made in a hurry is unlikely to be of the same quality as legislation to which great thought has been given and for which preparation has been undertaken.”—[*Official Report, Delegated Powers and Law Reform Committee*, 7 December 2021; c 8.]

A very good example of that situation arises in the case of vaccination passports. Vaccination passports remain a controversial part of the Covid legislation, and we have argued previously that there is little or no evidence of their effectiveness. Indeed, in the evidence paper that the Scottish Government published in November last year, it conceded, in effect, that vaccination passports had very little value in preventing the spread of Covid or in increasing the rate of uptake of vaccination. An hour or so ago, the First Minister confirmed that vaccination passports would be removed in a few weeks.

The Scottish Government used the made affirmative procedure to introduce the regulations for vaccination passports, albeit that there was time for a more considered approach. A month passed between the date on which the Scottish Government announced that vaccination passports would be introduced and the original implementation date for the policy. There was then a two-week grace period during which, the Government accepted, those regulations would not be enforced on businesses. There would therefore have been time for proper parliamentary scrutiny of what was being proposed, rather than that being done retrospectively, as was the case. If I remember rightly, the only reason that we had parliamentary scrutiny was because the Conservatives allowed Opposition debating time to be used to shine a light on the proposals.

I will briefly make two other points, which were highlighted by the committee. The first is about the clarity and accessibility of instruments that have been amended many times. That was raised by the Law Society of Scotland in its evidence. It cited the example of the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020, which were amended no fewer than 25 times. Undoubtedly, that causes a great deal of confusion for those who try to consolidate

the rules. The committee has called for improvements to the accessibility of the consolidation of such instruments. It has also called for criteria to be published by the Scottish Government for the circumstances in which it would use the made affirmative procedure in the future. That is a helpful recommendation, which I hope the Government will listen to.

I accept that there is a case for the use of the made affirmative procedure in emergency circumstances; however, my concern, which reflects that of the committee, is that the use of that procedure, bypassing proper parliamentary scrutiny, has become too frequent. As we move out from this phase of the Covid pandemic and relax restrictions, rather than imposing them, I hope that lessons will be learned by the Scottish Government for any future situation that arises.

The Deputy Presiding Officer: Thank you, Mr Fraser.

I am afraid that we have exhausted all the time that we had available, so I would be grateful if colleagues would stick to their time limits. With that, it is over to Martin Whitfield, for around four minutes.

16:09

Martin Whitfield (South Scotland) (Lab): Presiding Officer, I hear your cry to stick within the time, and I will do that for you.

I welcome the report and I thank the committee and its convener for their excellent work in taking evidence. I echo Stuart McMillan’s comments about the use of hybrid proceedings to allow people to contribute. It is interesting that, in comments that members have made in the debate so far, hybrid proceedings have been noted as a way in which better parliamentary scrutiny can take place. I know that both the Parliament and those outside it will look to that as we proceed.

I very much welcome the report’s conclusions. However, I am addressing the chamber partly as convener of the Standards, Procedures and Public Appointments Committee, so I also thank Stuart McMillan for his letter, which has been received, and I note that the subject will appear on our work schedule in due course, so we will take a look at it.

It is concerning that the report highlights an absence in the standing orders and parliamentary procedures regarding our ability to hold the Government to account. If a Parliament is to be of any use, it must be able to hold the Government to account. We have heard—and I welcome John Swinney’s comments on this—that this is an exceptional power to be used in exceptional situations. However, I have found that, as has been evidenced in other legislatures, a habit of

easy power sometimes develops and is repeated. I confirm that I am grateful for the Deputy First Minister's comments on that, but I hope that all those who hold his post and other Government posts in future will remember that this is an exceptional power to be used in exceptional situations.

Because of the nature of such powers, it is right for the Parliament to hold the Government to account for decisions that are made. Provision should be made so that the Parliament can do that, question ministers and hopefully—I say this carefully—improve legislation. As Murdo Fraser rightly pointed out, legislation that is put through too quickly often lacks clarity and is difficult to understand, which is then reflected in the understanding of those outside this place who read it.

The committee that I have the pleasure to convene has been invited to consider the matter. I cannot speak on behalf of the committee, but I say to both the Parliament and the committee that produced the report that we will discuss it and liaise with the convener of that committee to seek any additional information that may be available. There must be a way for the Parliament to hold the Government to account for its decisions that does not involve only the convener of that committee or the use of an urgent or supplementary question.

In order to allow the debate to continue on time, and to do what I undertook to do, I will conclude. I welcome the report, but I also welcome the Government's assurances that this will remain an exceptional power to be used in exceptional circumstances.

The Deputy Presiding Officer: Thank you, Mr Whitfield. That was impeccable timing.

I call John Mason, who will be followed by the closing speakers.

16:12

John Mason (Glasgow Shettleston) (SNP): Thank you, Presiding Officer. I can always use Martin Whitfield's extra time.

I am not currently a member of the DPLR Committee, although I have been a member of it and I have huge respect for those members who find its normal work interesting. However, I was keen to take part in this debate, particularly because I am a member of the COVID-19 Recovery Committee. It is largely because of Covid that more use has been made of the made affirmative procedure.

I think that virtually all of us accept that many decisions had to be made quickly during the pandemic and there was not time for the usual, often lengthy consultation and scrutiny process to

take place. We are all loyal to our parties and we generally vote along party lines. However, we also have responsibilities as parliamentarians to ensure that Parliament works well. I am convinced that, when Parliament works well, Scotland as a whole benefits. I was disappointed by some of Graham Simpson's comments, which I think got the balance wrong between taking a party line and being a parliamentarian.

I welcomed the fact that the DPLR Committee was carrying out its inquiry, and I commend it for its report. I accept that we need to strike a balance between, on the one hand, acting quickly and potentially giving a longer notice period to those who are affected by particular regulations and, on the other, acting more slowly to allow Parliament more time for scrutiny even though that means less time for those who are affected to know where they stand.

An example of that, as Murdo Fraser said, is the approach to vaccine certificates or passports, which is mentioned in paragraph 37 of the report. More time was given than with other decisions between the policy being announced and its coming into effect. That meant that the COVID-19 Recovery Committee had more time to take evidence from witnesses, and there was potentially time for the affirmative procedure to be used. On the other hand, nightclubs and other businesses were demanding certainty as far ahead as possible so that they could prepare. Their preference was for a decision to be made as quickly as possible—albeit only after their voices had been heard.

I particularly like the recommendation in paragraph 10.1 of the report that

“use of the affirmative procedure should be the default position in all but exceptional and urgent circumstances. Legislation making provision for the made affirmative procedure must be very closely framed and its exercise tightly limited”.

I also note paragraph 11, which says that an expedited affirmative procedure might be preferable to the made affirmative procedure on a case-by-case basis, and with the agreement of the Government, the Parliamentary Bureau, the lead committee and the Delegated Powers and Law Reform Committee. That would certainly be my personal preference if at all possible, and there was support for it within the COVID-19 Recovery Committee, as evidenced by our letter to the DPLR Committee, which is referenced in paragraph 93.

I take slight issue with paragraph 13, although that may be because of the way that it is worded. I agree that considering legislation before it comes into effect should not come at any cost, but I do think that it should become habitual—if that means considering it before it comes into effect.

I note the point that John Swinney makes, which is quoted in paragraph 46. We have had almost weekly statements in the past two years and have had ample opportunity to ask questions of the Government and to invite relevant witnesses to committees. I suspect that few other countries have had such opportunities. However, that is slightly separate from scrutinising the actual legislation, for which the timescales have been much more compressed.

Morag Ross QC makes the very valid point that we inevitably look at legislation differently depending on whether it is already in force and effectively a *fait accompli*, or will come into force in 28 days' time.

I commend the DPLR Committee for its inquiry and report. I think it was important that we as a Parliament considered the issue and I hope that it will be a learning experience for us all.

16:16

Paul Sweeney (Glasgow) (Lab): It was a pleasure to take part in the inquiry into the use of the made affirmative procedure, which is unusual in the history of devolution and, indeed, in the UK legislative framework. We all agree that circumstances were exceptional, but now that we have an opportunity in the coming months to reflect on how the procedure was used, the report will help to guide the Parliament in deliberating on how we can improve our processes and our scrutiny of the quality of legislation. I thank the convener for his effective chairing of the committee and I thank the convener of the Standards, Procedures and Public Appointments Committee. There is a symbiotic relationship in what we are doing to try to improve the Parliament and safeguard the quality of our legislation.

There will inevitably be tension between the Executive and the legislature. That was borne out by the witnesses who came forward. The convener mentioned Dr Ruth Fox's historical perspective. There has been a decades long debate about the nature of the tension between the Executive and the legislature. This particular situation offers an insight into what can be a ratcheting process. Although Government ministers might virtuously say that they will happily surrender powers as soon as they are not necessary, the general trend has been of a one-way, ratcheting effect. Power is hoarded by the Executive and the legislature must actively recover that power and scrutinise the Government. We are proposing a decent balance. The made affirmative procedure may be unusual, but the report offers us an opportunity to build a new type of legislative framework, which is what some of the witnesses to the inquiry suggested.

In 1976, Lord Hailsham described the House of Commons as an "elective dictatorship". The nature of the electoral system for the House of Commons means that it generally produces Executive control of the chamber. That is less likely in Holyrood because of our electoral system, which provides greater scope and opportunity for a balance of power that acts as an effective check on the Executive's execution of power. That is borne out in committees, where Opposition members hold the balance of power. That offers a welcome and effective check on Executive control.

I note in particular Sir Jonathan Jones's comment that

"we should go further and have a new statutory instruments act."—[*Official Report, Delegated Powers and Law Reform Committee*, 14 December 2021; c 25.]

He also mentioned the "very outdated" Statutory Instruments Act 1946, which is probably getting past its sell-by date.

Perhaps this is a watershed moment and a point at which the Government can reflect more fundamentally on the suitability of existing procedures to deal with the modern threats and challenges that we face as a legislature. It could also consider the innovations that were mentioned by the convener of the Standards, Procedures and Public Appointments Committee with regard to the opportunity for the chamber to be used in a hybrid fashion. We know that there are huge opportunities for us to work in real time. Why can we not have live committees meeting in real time—committees of the whole chamber if necessary—to work with the Government to craft those bills and fast-track those legislative processes?

John Swinney: Mr Sweeney says that the Government has to consider some of those issues. I think that there is also the scope and necessity for the Parliament to consider those issues. I am sure that he would accept that waiting 40 days for an urgent provision to be enacted is, in a public health emergency, just far too long. However, there are quicker ways of doing it, with good scrutiny, which the Government is happy to consider.

Paul Sweeney: I welcome the Deputy First Minister's comments on that, and I think that his words are important, particularly with regard to Professor Tierney's point about the need for there to be a legislative code that underpins what is done, because we cannot simply rely on the good will of ministers and parliamentarians to make it all work—the good chap theory of government has very much been put to the test in recent years and we have to look at a better way of codifying what we do.

In that spirit, let us work together to enact some of the recommendations of the report and build a better legislative framework, because we can build a new system of statutory instruments that better reflects the pace of change that is needed in our democracy today.

16:21

Craig Hoy (South Scotland) (Con): I thank my colleagues on the Delegated Powers and Law Reform Committee for the report that we are debating. I also thank the clerks and the wider committee team for their support.

Despite the nature of the issue, the debate has been neither technical nor dry, and that is because it goes to the heart of parliamentary democracy, as Paul Sweeney has just said. The debate answers the question why it is important that MSPs, acting independently and collectively as a legislative body, have the proper powers and processes in place to scrutinise laws and regulations and, through that, to hold the Government to account.

In the face of an unprecedented public health emergency, we handed powers to ministers to an extent that we would never have considered acceptable before. We did so on an emergency basis and on a temporary basis. We accepted the need for legislation to be brought in at speed, sometimes with little or no parliamentary scrutiny at all, and we also accepted that hastily written regulations that might prove through time to be far from perfect were, at the time, likely to be better than no regulations at all.

As the public health emergency recedes, it is time to ask ministers to hand those powers back to the Parliament and, ultimately, to the people, but ministers now want to permanently enshrine in law many of those powers, from shutting schools to closing pubs, and that leads me to conclude that ministers are drunk on powers that do not ultimately belong to them. Having got a taste of those powers, they want to keep them now and into the future. That is why, as Neil Bibby said, the four principles that are set out in the report are fundamental to the Parliament and its secure working in the future.

At this point in time, it is safe to conclude that the use of the made affirmative procedure is now a habit, and it is a bad habit. So is the shift towards using skeleton bills to give the Government greater powers through delegated regulatory processes, even if that is, as is identified in the report, a long-running sore. As my committee colleague Graham Simpson noted, between 2012 and 2019, the made affirmative procedure was used only nine times in this Parliament but, between March 2020 and 1 February this year, it

was used 146 times. Therefore, when it comes to whether I agree with Mr Simpson or Mr Swinney about whether that approach is now the norm, laying party loyalties to one side, I find myself, on balance, siding with Mr Simpson. That approach has become the norm, and the Parliament should rightly be concerned.

Had the Parliament been given the opportunity to fully scrutinise the Manchester travel ban or Covid passports, ministers would have been caught out passing laws that were disproportionate or ineffective or, in the case of vaccination certification, both disproportionate and ineffective. I suspect that, deep down, the Deputy First Minister knows that.

John Mason: Does the member at least accept that the COVID-19 Committee spent a considerable amount of time on vaccination certificates and looked at the issue thoroughly?

Craig Hoy: Yes, but only after we rejected the use of the made affirmative procedure, so that we could have more scrutiny. I recall asking some questions of the Minister for Parliamentary Business and being told that I was “a rascal” for doing so. That is the Scottish Government’s commitment to parliamentary scrutiny.

During the course of our inquiry, we heard witnesses raise real concerns about the increased use of the made affirmative procedure. Murdo Fraser rightly reflected today on the evidence from Morag Ross QC, who warned that

“legislation that is made in a hurry is unlikely to be of the same quality”—[*Official Report, Delegated Powers and Law Reform Committee*, 7 December 2021; c 8.]

as legislation that is carefully drafted over time.

The report could have gone much further, but it is solid and so are its recommendations. The debate has shown that the Government cannot simply brush it aside. Members are being sidelined, the Parliament is being bypassed and proper parliamentary scrutiny is being undermined. That is why I hope that MSPs, including those on the Government benches, will stand up to ministers on this important issue and that in turn, ministers will accept the report’s recommendations.

16:26

The Minister for Parliamentary Business (George Adam): Graham Simpson mentioned that he has been on the DPLR Committee for some time. I, too, did some time on the committee. It is an important part of the Parliament, which, as a minister, I appreciate. I also appreciate the work that most of our colleagues on the committee have done. I do not think that Mr Simpson’s chief whip does not love him—I do not think that in any shape

or form; it is just that Mr Simpson has expertise on the issue. I did not agree with a lot of what he said—maybe he will get there eventually.

It was interesting to hear members' comments in the debate. Paul Sweeney set out the case for us working together and finding solutions to the issues. I welcome that; perhaps we will continue to have that debate with him as time proceeds, giving us an opportunity to see how we can learn lessons from the past two years.

John Mason framed the debate and went through the committee report thoroughly. He added something a wee bit different to the debate: humour. I look forward to hearing more of that from him. We have to frame the debate in a way that relates to the past two years that we have all lived through.

Many members, including Murdo Fraser, mentioned the public health crisis that we have all had to deal with. The Government has had to balance that crisis and the parliamentary process, which has led to difficult decisions. As the Deputy First Minister has said on numerous occasions, not one of those decisions has been taken lightly. The idea that we as a Government have gone power mad and want to maintain the position is comical, and is not worth discussing any further.

Craig Hoy said that there has been a general shift towards framework bills. That is completely inaccurate, given what Stuart McMillan said. I followed a lot of what was said during the committee process. The convener mentioned that Dr Ruth Fox gave evidence that there was a problem with Governments retaining power, which I read as a reference to the lack of scrutiny of the UK Government, rather than a reference to the Scottish Government dealing with the public health crisis that we had in front of us.

The Government welcomes the spirit of the committee's report and will consider carefully all its recommendations. We have already acknowledged the importance of ensuring that regulations that are brought forward under the made affirmative procedure are robust, clear in their meaning and accessible to those they apply to. The Government always aspires to adhere to those principles with all legislation that it introduces and to be open to challenge, where Parliament sees fit to challenge it.

The Government is happy to engage with the committee on any issues around the justification of the use of the made affirmative procedure under existing legislative frameworks or in the event that it seeks parliamentary approval of any fresh use of the tool. From a Government perspective, the ability to use the made affirmative procedure is an exceptional power that Parliament has granted to ministers to use in exceptional circumstances. The

fundamental basis for the use of the procedure is to allow measures to be taken more quickly than use of the normal affirmative procedure would allow for.

We all know that it is not true that use of the made affirmative procedure leads to less scrutiny, because there has been scrutiny at all times. However, the committee's conclusion that the use of the made affirmative procedure should not be normal practice is an important one, and one that we all agree with, as the Deputy First Minister said. We all believe that use of the made affirmative procedure is not the way forward.

Over the past few years, we have had to deal with an unprecedented—that word has been used often—public health crisis. We have had to balance that with consideration of how to deal with the parliamentary process. Lessons have been learned and, as we move on, I look forward to working with colleagues to find new ways of working in the Parliament.

The Deputy Presiding Officer: I call Bill Kidd to wind up the debate on behalf of the Delegated Powers and Law Reform Committee.

16:31

Bill Kidd (Glasgow Anniesland) (SNP): I have taken a few notes and, to be quite honest, there has been a lot of jouncing about, if I can put it that way, in that a lot of what has been said has been fairly repetitive, although everyone has their own opinions. I will try not to miss anyone out, but if I get it wrong, members can sue me.

I am delighted to close the debate on the Delegated Powers and Law Reform Committee's inquiry into the use of the made affirmative procedure during the coronavirus pandemic. I am grateful to all members who have taken part in the debate and to the Government. A range of comments have been made about the committee's work, which I will try to compare with the committee's four sets of recommendations. That will be difficult, because not many members addressed those four sets of recommendations.

On the need for clear and accessible law, as has been said, the committee wants to ensure that all legislation is properly and clearly drafted. It should also be easy to find and able to be interpreted by all. The Deputy First Minister said that 40 days was too long a period to wait for public health legislation to be enacted during a pandemic and that the use of the made affirmative procedure was necessary when urgent action was required because of public health concerns. Despite that, he said that use of the procedure required oversight by the Parliament, and other members agreed.

Neil Bibby said that the fact that there were exceptional circumstances only emphasised the need to scrutinise the actions of the Scottish Government to ensure that fair and proper legislation was delivered.

Jenni Minto said that we must have clear and accessible law at all times for the benefit of broader society, and that everyone must be able to understand legislative proposals that are made.

Craig Hoy said that although the committee accepted the necessity for speed in legislating during Covid, the powers that were enacted must be repealed.

George Adam said that he did not believe that the made affirmative procedure was overused during Covid and that it had been used only when necessary, but that consideration would be given to how it may be used in future.

The report called for a number of changes to be made to the way in which made affirmative instruments are brought forward. In particular, the committee wants a test for whether proposed regulations do in fact require to be made urgently, although it acknowledged in paragraph 108 of its report that

“the made affirmative procedure has been a vital tool in the handling of the pandemic,”

and that the Scottish Government needed to use it in order to safeguard public health. The Deputy First Minister agreed, but said that the Scottish Government had no intention of using the procedure as a matter of course in the future.

Graham Simpson said that the made affirmative procedure was used only 20 times between 2012 and 2019 but 146 times during the one-year period of 2020-21, which suggested that the Scottish Government had fallen into a bad habit. He said that the power should be used only in exceptional circumstances and that its use should be scrutinised and debated in the chamber.

John Mason said that more time was given to discuss vaccination passports but night clubs and others were asking for urgency, and the Parliament had to try to address both elements.

Paul Sweeney said that a new type of framework should be built, to avoid powers being retained by Government. The Scottish Parliament is well set up to achieve that; we should be using the powers that we have.

Members talked about how the Parliament considers proposals for made affirmative powers in new bills. As members said, that is relevant given the powers in the Coronavirus (Recovery and Reform) (Scotland) Bill. Murdo Fraser said that the use of the made affirmative power on issues such as vaccination passports should have

had more time for scrutiny by the Parliament as a whole. He said that the power had been used too frequently.

Martin Whitfield said that overfast legislation is undesirable and that further use of hybrid procedures should be considered when it comes to holding the Government to account. He also welcomed the report and the Scottish Government’s statement that it wants to avoid having to use made affirmative powers. I think that he said that the Standards, Procedures and Public Appointments Committee will consider the matter. That approach was strongly supported by Neil Bibby.

I must conclude, Presiding Officer—if I have not already rambled on too long. I want to end the debate where it began, by emphasising what Stuart McMillan, the DPLR Committee’s convener, said about why all this matters. It matters because we have an interest in the balance of power between the Parliament and the Government. That is important, not just today but tomorrow and in the years to come.

In that vein, the committee recognises that its report is only a first step and hopes that its recommendations will help to guide the Parliament’s scrutiny of primary and secondary legislation in the coming months and years. It will work with the Scottish Government to ensure that the recommendations are delivered.

Nationality and Borders Bill

The Deputy Presiding Officer (Annabelle Ewing): I remind members that Covid-related measures are in place and that face coverings should be worn when moving around the chamber and across the Holyrood campus.

The next item of business is a debate on motion S6M-03270, in the name of Neil Gray, on the Nationality and Borders Bill, which is United Kingdom legislation.

16:38

The Minister for Culture, Europe and International Development (Neil Gray): It is with sadness that I say that my first debate as a minister is about a bill that I find repugnant and regressive. I would have preferred to talk about how Scotland is striving to live up to our global responsibilities as a place of welcome and sanctuary; instead, I am talking about the UK Government's Nationality and Borders Bill, which the United Nations High Commissioner for Refugees said is

"fundamentally at odds with ... the UK's international obligations under the Refugee Convention."

The bill proposes significant changes to UK asylum and immigration law, and it misdiagnoses the problems with UK immigration and asylum policy. It will not achieve the aims that the Home Secretary claims that it will achieve, because it does not address the problem of the incompetent management and ideologically misdirected policy of the Home Office and UK Government.

The bill will negatively impact people, communities and the provision of services. This Government condemns the bill and the UK Government's inhumane hostile environment. The Scottish Government developed our pioneering new Scots approach in partnership with the Convention of Scottish Local Authorities and the Scottish Refugee Council, and together with our public services, third sector and communities work, to support our vision of a welcoming Scotland where refugee and asylum seeker integration is supported from day 1.

We are ambitious about embedding human rights and trauma-informed practice to improve how we support vulnerable people, including victims of human trafficking, domestic abuse survivors and children. We recognise that we need an inward flow of people to support our economy and the growth of our businesses, to develop services and to support strong and diverse communities. We have long advocated for a flexible and humane approach to migration based on the principles of dignity and respect. All of that

is in jeopardy as a result of this UK Government bill.

The bill is a long and complex piece of legislation that was introduced last July and that has been roundly criticised since. The pace at which this sweeping and regressive piece of legislation has been pursued is purportedly due to an urgent need to give the Home Secretary more powers to fix the UK's broken asylum system. However, let me be clear: the provisions in the bill will not fix the problems with the UK asylum and immigration systems; instead, they will create barriers that will damage our communities and push already vulnerable people to the margins of society. They will add unnecessary complexity to the already challenging asylum system, restricting the rights of refugees on the basis of not their need for protection but how they arrived in the UK. Vulnerable people seeking protection will be criminalised, and push-back provisions will increase risk to life at sea.

The door will be opened to offshoring the accommodation of people seeking asylum, and there will be an increased risk of destitution, as no recourse to public funds restrictions will apply to more people. The Home Secretary will also have the power to revoke people's British citizenship without notice, which is quite astonishing.

Alex Cole-Hamilton (Edinburgh Western) (LD): I am grateful to the minister for giving way, and I welcome him to his post. Does he agree that age assessment for the purposes of child protection is a devolved matter that properly sits with social workers in an ethical framework here, in Scotland, and with the Home Office in an immigration context? Does he also accept that quasi-scientific assessments to determine the age of children or young people can be invasive and risk causing further trauma and that they can, if incorrect, have the devastating consequence of having a young person returned to the place from which they came?

Neil Gray: I thank Alex Cole-Hamilton for that intervention, as it pre-empted some of what I will say almost word for word. I fully agree with his intervention and look forward to his supporting the motion tonight.

The bill's provisions will increase the time that people spend in limbo waiting for a decision from the Home Office and unable to fully rebuild their lives. We already know that this puts pressure on people. It is detrimental to mental health, prevents people who are seeking asylum from using their skills in the workforce and restricts access to financial support unless people are destitute. That, in turn, shifts costs to our local authorities, public services, the third sector and communities.

The provisions will punish people who need protection, and they will do nothing to tackle the underlying inhumane issues with the asylum and immigration systems that the UK Government has created. If all of that were not bad enough, as organisations such as the Joint Council for the Welfare of Immigrants and the British Red Cross have pointed out, possibly worst of all, the bill risks creating the perfect conditions for criminals to exploit vulnerable adults and children. It does not just misdiagnose the problem; it is making the symptoms worse.

The Scottish Government's questions to the Home Office about key issues in the consideration of legislative consent were met with delays and a refusal to accept the need for the granting of legislative consent. However, the Scottish ministers are clear that the bill will impact heavily on Scotland's devolved competencies in a myriad of ways. Therefore, on 1 February, the Scottish Government lodged a legislative consent memorandum in the name of the Cabinet Secretary for Social Justice, Housing and Local Government, which set out two specific clauses that trigger the requirement for legislative consent.

The UK Government has form when it comes to ignoring the wishes of this Parliament, and I fear that it will not pay heed to the memorandum—just as it has ignored our concerns, the concerns of the Welsh Senedd and the concerns of many charities and support organisations. However, it is important that the Scottish Government is clear on our position and that we raise our opposition to provisions that will impact in devolved areas as well as our overall opposition to the damage that will be caused by the bill.

Let me turn to the two clauses that are raised in the memorandum. To be clear, the assertion in the Conservative amendment that the provisions do not fall within the legislative competence of this Parliament is entirely false.

Clause 49 legislates in the devolved area of the provision of care and support under children's legislation. The bill creates a national age assessment board, which will be empowered and resourced to scrutinise age assessment determinations—including those that are made by social workers in Scotland for devolved purposes. If local authorities refer an age assessment to the board, the outcome of the board's assessment will be binding on them for devolved functions. That reach into devolved services clearly goes way beyond reserved matters of asylum and immigration.

The bill will enable the board to use scientific techniques as part of age assessment although Scottish Government guidance has consistently advised against that, on child welfare and unreliability grounds. That position is shared by

medical experts such as the Royal College of Paediatrics and Child Health and the Royal College of Nursing. The United Nations Human Rights Committee describes such an approach as invasive, potentially harmful and likely to result in children being wrongly assessed as adults. Those concerns are echoed by the children's commissioners for Scotland, Wales and Northern Ireland. The proposals are a retrograde step that will not protect the welfare of these highly vulnerable children and, in fact, could cause harm.

The second clause that the LCM deals with is clause 58, which will constrain the Scottish ministers in how any future Scottish competent authority decides who is a victim of human trafficking. It will require late provision of information in support of a modern slavery or trafficking claim to be considered as damaging to a person's credibility.

When I consider the bill, I reflect on its basic lack of humanity and how regressive it is. The UK was a founding signatory to the 1951 UN Convention relating to the Status of Refugees. It played a key role in developing the convention's principles and, as recently as 2018, it reaffirmed those principles in the Global Compact on Refugees, yet those obligations are meaningless under the bill. Those are not just my views but those of the UNHCR and the opinion of legal experts who have considered the bill on behalf of the Scottish Refugee Council. That is deeply worrying, particularly as the bill sets out an interpretation of the 1951 convention that seeks, in effect, to establish the current Government's definitions as the basis for consideration by UK courts.

There is one area where I agree with the Home Secretary—the UK's asylum and immigration system is broken. However, the bill will not fix it. The bill could have been an opportunity for the UK Government to create a humane and fair immigration and asylum system, but that opportunity has been missed.

The bill will jeopardise the rights of thousands of people long into the future and will have a profound impact on our society. It is anti-refugee, anti-human rights and anti-democratic. I urge the Parliament to make clear its opposition to the bill.

I move,

That the Parliament notes that the UK Government's Nationality and Borders Bill proposes significant changes to UK asylum and immigration legislation, which will damage people living in communities across Scotland and the UK, now and in the future; recognises that the Bill contains two provisions that trigger the requirement for legislative consent and that a legislative consent memorandum recommending that the Parliament withholds its consent to those clauses was lodged on 1 February 2022; notes that the Welsh Parliament has refused consent; is concerned by the creation of a National Age Assessment Board with

powers to scrutinise age assessments using “scientific techniques”, which Scottish Government guidance advises against on child welfare and unreliability grounds; notes that these provisions will impose time limits and damaging measures affecting assessment of credibility in human trafficking applications; condemns these provisions, as well as proposals in the Bill for differential treatment of refugees based on how they arrived rather than their protection needs, measures that criminalise vulnerable people seeking protection, “push-back” provisions that will put lives at sea at risk and open the door for offshore asylum accommodation, and powers to revoke citizenship without notice, and agrees that the Bill will not achieve its aims or the change that is needed to ensure that the UK’s asylum and immigration systems are effective, efficient and deliver for people in need of humanitarian protection, according to international human rights obligations.

16:47

Donald Cameron (Highlands and Islands) (Con): I welcome Mr Gray to the front bench as a minister. Notwithstanding the fire and thunder that we have heard from him, the real issue that is before the chamber is narrow—not that members would know that.

I will first set out what the debate is not about. It is not about whatever aspect of the Nationality and Borders Bill the Scottish National Party Government finds objectionable and simply wants to criticise. It is not about the UK Government’s general immigration policy. There was ample time for Mr Gray’s colleagues to take issue with all of that at Westminster—as they did, where they opposed the bill. If Mr Gray was still an MP, I am sure that he would have taken that opportunity, too.

Today’s debate is about none of that; it is about whether legislative consent is required from this Parliament. We are debating a legislative consent memorandum. It took Mr Gray more than half his speech before he mentioned the words “legislative consent”. The question is legal, not political. Of course, any opportunity for the SNP to give the UK Government a kicking, especially on immigration and asylum, must be taken, so here we are.

I will focus on the actual issues that are at hand. It is intrinsic to the devolution settlement that immigration and asylum policy is a reserved matter. Notwithstanding that, the Scottish Government takes issue with two clauses that it believes infringe the legislative competence of the Scottish Parliament and the Scottish ministers.

Alex Cole-Hamilton: Does Donald Cameron recognise that some parts of the devolution settlement interface with immigration policy—no least age determination on the ground of child protection? What is his answer on that?

Donald Cameron: I disagree with that in terms of the bill, and I will deal with that in due course.

I will deal with those points forensically, starting with age assessment. The Scottish Government’s memorandum argues that clause 49, which relates to the age assessment of age-disputed persons,

“will directly affect the exercise of functions exercised by Scottish local authorities and health boards under devolved legislation”.

It goes on to reference three legal judgments that were determined in English courts, which obviously are not applicable in Scotland, to justify the Scottish Government’s belief that any new Home Office policy would impact the functions of local authorities here. It is argued that provisions in the bill

“would allow the Home Office to choose to deploy”

the national age assessment board

“in a more interventionist manner which would significantly alter age assessment processes ... in Scotland”.

We do not accept those arguments for one minute.

The Scottish Government is making hypothetical arguments about how the bill may be applied in respect of the functions of local authorities. This is the realm of possibility—a world of if and maybe rather than of definitive fact. To reinforce that point, the Home Office has noted that the national age assessment board

“will be a centralised team within the Home Office that Local Authorities can use”

—I repeat “can use”—

“if they do not want to conduct their own age assessments”.

It says “can use”—it will not be forced on local authorities but will be optional. That does not

“directly affect the exercise of function”

of Scottish devolved bodies, to use the Scottish Government’s phrase—quite the reverse.

The Scottish Government also criticises the “scientific techniques” that are part of the age assessment process, despite the fact that the use of those techniques is the norm in many European countries. There is no mention in the memorandum of how that impacts on a devolved area of law or of how it is a matter of legislative competence. That is nowhere to be found.

However, I will address the substance of that criticism. Across Europe, countries use those kinds of assessments. Finland, Norway, France and Greece use a range of different age assessments to define the age of an individual, and I would submit that the UK Government’s proposals are entirely in line with those international comparators.

Neil Gray: Will the member take an intervention?

Donald Cameron: I am sorry, but I do not have time. I will take one in a moment if I have the time.

There is a reason for those proposals: they stop abuse of the system and help those who are in genuine need. Adults who are seeking asylum should not claim to be children, nor should children who are seeking asylum claim to be adults. Those are uncontentious statements, not least because very serious safeguarding issues apply in both scenarios.

The United Kingdom Government has also said that it intends to create a scientific advisory committee that will be chaired by Dame Sue Black, who is the current president of the Royal Anthropological Institute, to oversee its work. I would say that the measures on age assessment that are proposed by the United Kingdom Government will be robust, fair and aided by the views of credible experts.

Neil Gray: The evidence that was provided by the Royal College of Paediatrics and Child Health and the Royal College of Nursing directly contradicts the points that Mr Cameron makes about the accuracy of those assessments and says that children will be misdiagnosed as adults. Why will he not reflect on those points from our own royal colleges?

Donald Cameron: I am entirely happy to reflect on them, but I say to Mr Gray that my statements that adults who are seeking asylum should not claim to be children and that children who are seeking asylum should not claim to be adults are, I think, uncontentious. Can he not recognise the safeguarding issues that apply?

I will turn to modern slavery, which is the second area that the Government takes issue with. Its specific objection is that the bill

“would constrain any future Scottish competent authority”.

That is an extremely tenuous argument, not least because it is predicated on a future event that is unlikely—namely, the coming into existence of a future Scottish competent authority. Also, as the Scottish Government’s own memorandum notes, decisions on who is considered to be a victim of human trafficking or modern slavery

“are currently made by one of two Home Office competent authorities under the National Referral Mechanism”.

The Scottish Government then tries to argue that if—again “if”—it set up its own competent authority, clause 58 would constrain ministers. Given that no such competent authority exists or is likely to exist, and given that the Scottish Government chooses to use Home Office competent authorities, it is, yet again, using hypothetical arguments to reject the bill.

Another point that is made by the Scottish Government is that the bill is about victims, and thus the issue is devolved. Well, it is about victims of human trafficking and modern slavery coming into the country. If anything, that is about the international definition of victims and it has nothing whatsoever to do with victims in a devolved context, in terms of crime or otherwise.

To demonstrate how far the Scottish Government has strayed from issues of competence, I will read from paragraph 34 of the memorandum, which says:

“The Scottish Government does not agree that potential victims of human trafficking should have the outcome of their claim influenced by the provision of information after an arbitrary deadline and as such consent should be withheld.”

Leaving aside the merits of that position, what does it have to do with legislative competence? Nothing. There is nothing in that paragraph about how the bill infringes on the devolved powers of the Scottish Parliament or ministers; it is just a point of substance with which the SNP disagrees. Those objections about competency are spurious in principle, even before we return to the salient point that the matters are explicitly reserved.

I have to confess to feeling some disappointment that, yet again, the Scottish Government has chosen to use a debate on the technicalities of a memorandum to make a partisan political point about such an issue. Practices such as the Government making flimsy claims about legislative consent or claiming that it has devolved competence over matters that are clearly reserved so that it can manufacture a new grievance are being used more regularly in the chamber. There is a wider question for the Presiding Officer and the Parliamentary Bureau about the purpose, timing, duration and nature of the debates on legislative consent memorandums.

The Deputy Presiding Officer: That is not a matter for the Presiding Officer; it is a matter for the bureau. Please conclude.

Donald Cameron: I submit that the aim of the UK Nationality and Borders Bill is to strengthen existing asylum and immigration legislation by delivering a fairer and more effective system for the most vulnerable people. I hope that the Parliament will support my amendment.

I move amendment S6M-03270.1, to leave out from “notes that the UK Government’s” to end and insert:

“agrees that the relevant provisions of the Nationality and Borders Bill, relating to age assessments and modern slavery, do not fall within the legislative competence of the Scottish Parliament, and recognises that the UK Government’s Nationality and Borders Bill will strengthen existing UK asylum and immigration legislation.”

The Deputy Presiding Officer: I call Elena Whitham to speak on behalf of the Social Justice and Social Security Committee. Ms Whitham joins us remotely.

16:56

Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP): The Social Justice and Social Security Committee has been holding stand-alone sessions to explore the breadth of its remit and to establish priorities for its work programme over the parliamentary session. Most recently, those sessions have focused on refugees and asylum seekers. The sessions went much broader than the subject of the LCM and focused on people having no recourse to public funds, on the Afghan citizens resettlement scheme, as well as on the Nationality and Borders Bill more generally.

Once it became apparent that the LCM was about the Nationality and Borders Bill, and given the likelihood that it would be referred to the committee, we pre-emptively used the sessions on 3 and 10 February to explore the LCM with witnesses. Our report, which was published yesterday, sets out that evidence in more detail. I will cover the main points that the witnesses raised with us about the bill and its impact, starting with clause 49 and age assessment.

Glasgow health and social care partnership explained that decisions about age are made by the local authority and the professional who knows the young person best. Decisions are made on the balance of probability, with a trauma-informed approach being taken to assessment. The partnership was concerned that the new national age assessment board could remove decision making from the local authority with no right of appeal or dissent.

JustRight Scotland, which provides information to help people to understand their legal rights, considered that the age assessment provisions in the bill would reach into Scottish child protection systems, because age assessments to determine eligibility for child services under the Children (Scotland) Act 1995 are usually conducted by Scottish local authorities. Andy Sirel from JustRight Scotland said:

“Scottish local authorities will be compelled by the Home Office to conduct age assessments on children and young people, or pass that on to a new national age assessment board. Its decisions will be binding on Scottish local authorities.”—[*Official Report, Social Justice and Social Security Committee*, 10 February 2022; c 18.]

The Scottish Refugee Council was clear that it wants consent to be withheld on the Home Office age assessment arrangement.

Glasgow city health and social care partnership also raised concerns around information sharing. It

argued that the new national age assessment board could instruct a local authority to share information that it might have gathered for other reasons. It considers that the Home Office should provide additional funding directly to the local authority to deliver age assessments. That would take account of the demands that are to be placed on already stretched local authorities.

On clause 58 and human trafficking, Glasgow city health and social care partnership explained to us that, currently, Glasgow is the only site for the Home Office’s devolved decision-making pilot, which seeks to identify children and young people who are at risk of child sexual exploitation and trafficking. In its experience, disclosures are often made within an established relationship of trust and when there is a sense of safety, and they might come later once a place of physical safety and stability is established. Glasgow city health and social care partnership was concerned that the bill poses a real risk of further victimising and retraumatising trafficking and exploitation victims by excluding access to support.

Furthermore, from a trauma-informed perspective, Glasgow city health and social care partnership considers that clause 58 is “wholly unacceptable”, because it requires the competent authority that is making decisions about whether someone is a victim of human trafficking to take account of late provision of information as being damaging to a person’s credibility, unless there are good reasons why the information is late.

Another issue that the partnership raised with the committee is that the bill might be discriminatory in its approach, because a greater percentage of women than of men experience human trafficking and sexual exploitation. In addition, there are concerns that the bill will reduce the number of people who are prosecuted for human trafficking and the number of victims who receive support.

Maggie Lennon from the Bridges Programmes, which supports refugees and asylum seekers, said that the bill would make it very difficult for Scottish courts to identify victims of trafficking and to work out how best to support them because the bill is based on an immigration approach. She also argued that it is against human rights.

In summary, I note that some of our witnesses had not taken an organisational view on the LCM and could comment only in general terms, while others had no relevant experience to draw on. The witnesses whom we heard from who have experience of age assessments and working with trafficking victims agreed with withholding consent for those two provisions.

However, it should also be noted that it was difficult for the committee to undertake in-depth

scrutiny on the LCM in the limited time that was available. For example, the committee was not able to hear from the Scottish and UK Governments, nor was it able to investigate the legal arguments. As such, the committee agreed to draw the Parliament's attention to the evidence that was received from local authorities and relevant stakeholders, and to note the Scottish Government's reasons for not recommending consent to the bill.

17:01

Sarah Boyack (Lothian) (Lab): I, too, welcome Neil Gray to his new role.

I make it clear that the Scottish Labour Party does not support the Nationality and Borders Bill. My UK Labour colleagues have opposed the bill; we do, too. The bill will not solve the problem of dangerous boat crossings that are putting lives at risk. It proposes unworkable solutions that will cost the taxpayer about £2.7 billion and it undermines international humanitarian conventions at a time when co-operation is needed more than ever.

In its excellent briefing, Amnesty International got straight to the point. It said:

"The draconian measures in the ... Bill will largely shut down the UK's asylum system as it fails to provide any safe and legal routes for those attempting to seek asylum in the UK."

It also noted that the bill will have far-reaching consequences for people who are living in Scotland under immigration control.

In their amendment, the Scottish Conservatives wash their hands of responsibility for the bill—they simply say that is outwith legislative competence. However, the Scottish Refugee Council and JustRight Scotland commissioned a legal opinion that highlights that the bill reaches into devolved competence, particularly around differential treatment based on route of arrival, age assessment, and human trafficking and exploitation. Therefore, legislative consent is required.

At the end of the day, LCMs are about respect: respect for devolution, respect for this Parliament and respect for our constituents. Avoiding scrutiny of a bill that will impact on Scotland's distinct criminal justice system and on our specific procedures relating to safeguarding, by avoiding debate, would be wrong.

I was disappointed by Donald Cameron's speech, because he did not acknowledge the fundamental problems with and the inequalities in the bill. He dodged around its impact on devolved responsibilities and on the need for cross-government work, whether that is between the UK

and Scottish Governments or between the Scottish Government and local government.

Earlier today, the Scottish Refugee Council contacted me and urged me to ask the Conservatives some questions. It wants to know whether they have considered

"the real-life and imminent implications of what they are saying? Are they comfortable with Scottish police and prosecutors picking up an Afghan woman arriving irregularly fleeing the Taliban? Or a Ukrainian family fleeing a Russian invasion arriving without papers? Both will be criminalised as a direct result of this legislation, inhumane in itself, and a gross waste of public monies. That is what the Conservatives are supporting. They are also disagreeing with ex-Prime Minister John Major, who described, rightly, this specific 'unlawful arrival' offence as 'punishment without compassion.'"

The UK Tory Government is promising that the bill will stop boats arriving and that it will return people who travel in them, despite the number of boats arriving having increased tenfold in the past two years. Border Force officials have privately said that a push-back policy for boat crossings is dangerous, unworkable and could put more lives at risk. France has refused to agree to receiving boats safely back, so such push backs cannot even happen in practice. Labour has said from the start that that is a dangerous and wrong approach. The UK Government should be doing everything that it can to stop more lives being lost; it should not be making those perilous journeys even more dangerous.

The reality is that nothing in the bill will deliver safety. It shifts the cost of UK Government incompetence on to people who are fleeing their homes for a safer life, and it undermines the international system that we have been operating under for more than 70 years.

Article 31 of the United Nations Convention relating to the Status of Refugees basically says that no one should treat a person who is looking for safety as though they are acting illegally. The principle understands that a person's decision to leave their home and their life is not taken lightly. When someone arrives without authorisation, they should not be penalised, provided that they

"present themselves without delay to the authorities and show good cause for their illegal entry or presence".

The Tories think that it is acceptable to give up on that foundational principle, but we have the return of the Taliban in Afghanistan, the continuing situation in Syria and, of course, the advance of Russian troops into Ukraine that is happening right now. How can the UK Government and its party counterparts here keep a straight face while defending the bill? The Labour Party signed the UK up to the refugee convention in 1951 and will not abandon it today.

The UK Government claims that the bill will stop trafficking gangs, but the Independent Anti-Slavery Commissioner has explicitly said that the bill

“will severely limit our ability to convict perpetrators and dismantle organised crime groups.”

It will remove key protections for victims of human trafficking and modern slavery by rowing back on the Modern Slavery Act 2015 and it will make identification and protection of modern slavery victims more difficult. We in Scotland have to be concerned about that.

Under the bill, if the Home Office wants to remove a person’s citizenship, it will no longer need even to warn them or tell them, which is a massive worry for people across the country. Citizenship is the right to live in a country. Without it, people cannot vote and might struggle to work, access education and healthcare and look after their children.

There is a risk that ethnic minority people and refugees will be treated unfairly and become second-class citizens. That is why Labour in Scotland, Wales and England opposes the attack on refugees, ethnic minorities and international law. I call on the Conservatives to think again, to look at the impact of the bill, including its impact on us in Scotland and on our devolved competence, and to withdraw their amendment.

17:06

Alex Cole-Hamilton (Edinburgh Western) (LD): I rise to speak for my party on this most important of topics. I welcome the minister Neil Gray to his place once again and thank him for bringing the debate to the chamber. I say from the outset that Scottish Liberal Democrats cannot offer consent to the Nationality and Borders Bill.

The Iranian-American novelist Dina Nayeri, who fled the threat of execution as a child, once said:

“It is the obligation of every person born in a safer room to open the door when someone in danger knocks.”

The Nationality and Borders Bill, which is close to being signed into UK law, does the opposite of that. It seeks to introduce various measures to “crack down” on people taking irregular routes to the United Kingdom, creating a two-tier asylum system that makes it harder for people to claim asylum while relegating many of those who are seeking help to being second-class refugees with fewer rights if their claim is unsuccessful.

The bill also allows for asylum seekers to be sent abroad, perhaps even back to the place that they fled, while their claims are processed offshore. The right to seek asylum is guaranteed under international human rights law. We cannot be a country that in any way criminalises asylum seekers. The bill does just that and it exerts

particular harm on children, women surviving male violence and LGBT people who are fleeing persecution.

As we have already heard, all of that has prompted Amnesty International to describe the bill as “draconian” and a fundamental repudiation of the UK’s asylum responsibilities under the refugee convention. It is exactly that. That is why my party agrees with the motion lodged in Neil Gray’s name that the bill would

“damage people living in communities across Scotland”

and that Parliament should withhold its consent to the

“two provisions that trigger the requirement for legislative consent”.

The route of using small boats to reach the shores of this country is dangerous and not something that anyone wants to see. However, we must ask ourselves how desperate we would have to be to get on board one of those dinghies, to risk our lives and the lives of our nearest and dearest—the people whom we love—to reach sanctuary on these shores. As the poet and teacher Warsan Shire says,

“No one puts their children in a boat unless the water is safer than the land.”

Perhaps the cruellest and most chilling aspect of the bill as introduced was that it would have criminalised not only those who make it to our shores but anyone who attempted to rescue people in danger of drowning, including even the Royal National Lifeboat Institution. Thankfully, the Government amended the bill to protect rescuers from prosecution, but only after much shock and outrage from people who still had their basic humanity intact.

The bill provides a deeply troubling insight into the characters of the people who have drafted it and those who have been its vocal supporters. Put plainly, the bill is a crushing weight on the right to safety of vulnerable people, survivors of human trafficking and people who have nowhere they can call home.

The bill goes so far as to give the Government the power to render former British citizens stateless, without even the requirement to inform them beforehand. Government ministers have said that that draconian measure will be used only in the most extreme circumstances, but that is not what the numbers so far suggest. The laws on revoking citizenship were relaxed 15 years ago and, since then, at least 464 people have had their citizenship revoked, with a huge spike in the past few years. Perhaps we should be asking what circumstances merit the use of the word “extreme” and who gets to decide that.

For a moment, I would like to address anyone who is watching the debate and who views the issue in a different light. They might look at the bill with a degree of apathy and think, “Well, it won’t affect me.” Some might think that there are already too many people arriving in this country via the Channel and that something must be done about that. However, those numbers are vanishingly small. Even if you are looking at the bill from a place of pure self-preservation, you should be firmly against it. If you consider yourself to be in any way liberal or progressive—a believer in the rights of the individual to be protected from overreach by the state—you should reject the bill. If it is your view that people who are in need of asylum should not be abandoned, criminalised or left to drown in the English Channel, you should reject it with every fibre of your being, as my party and I are proud to do.

There is no excuse for legislation that is immoral. There is no excuse for bad or dangerous law. By way of comparison, imagine for a moment that the death penalty still existed or that punishment could be meted out without the need for a trial or to inform the person whose life was to be ended. If we were told not to worry, that it would not affect us, our loved ones, our neighbours or our colleagues and that it would be used only in the most extreme circumstances, would we feel safer? Would we feel that it was a legitimate or positive step forward? I think that we would not. As Martin Luther King once said,

“Injustice anywhere is a threat to justice everywhere.”

The Liberal Democrats are proud to utterly reject the Nationality and Borders Bill and the regressive, dangerous and wholly illiberal politics that it represents.

17:12

The Cabinet Secretary for Social Justice, Housing and Local Government (Shona Robison): The Scottish Government is not alone in its position that the bill will cause damage, have negative consequences on people’s lives and have an impact on devolved matters and services. Last April, more than 75 charities, belief groups and community organisations in Scotland wrote to the Prime Minister to raise their significant concerns about the new plan for immigration. They highlighted the reach of the UK Government’s proposals into areas of devolved competence. The bill confirms those fears.

An independent legal opinion that was commissioned by the Scottish Refugee Council and JustRight Scotland concluded that the bill reached into or impacted the lawmaking or executive powers of the Scottish Parliament and Government. I would rather believe and support

those organisations than Donald Cameron’s comments at the beginning of the debate. Was it not interesting that Donald Cameron mentioned support for the bill only in his final sentence, so embarrassed are the Tories by their association with it?

Sarah Boyack was absolutely right that Donald Cameron and the Tories have tried to dodge the issue. She used some very real examples, particularly in the context of the potentially impending conflict in Ukraine. We could have people fleeing as refugees and ending up being criminalised. That brought into sharp focus the issues that we are dealing with in the here and now.

As Neil Gray outlined in his opening speech, the Scottish Government recommends that consent be withheld on clauses in the areas of age assessment and modern slavery that would trigger the need for legislative consent from the Scottish Parliament. Only last week, the Welsh Senedd also voted to withhold consent on the bill’s age assessment clauses.

For the UK Government to simply state that asylum is a reserved matter—that was parroted today by its Scottish Tory colleagues—ignores the complexity of the reforms that have been proposed. It also ignores the legitimate role of devolved actors in the functioning of the UK’s refugee protection system and the implications for devolved services and our communities.

I thank the Social Justice and Social Security Committee, which considered the legislative consent memorandum within a challenging timescale. Consideration of legislative consent was prolonged due to the complexity of the bill and the fact that significant amendments were tabled as it progressed through the Commons. I appreciate that the committee made time to ask witnesses who were already providing evidence about the bill and legislative consent, and I welcome the report that was published yesterday.

The UK’s asylum and immigration systems are in desperate need of reform. We need effective and efficient systems that are fit for purpose. We need systems that protect and prioritise child welfare and do not subject those who are most vulnerable to unreliable, invasive, unnecessary and potentially inaccurate age assessment techniques. We need systems that support the potential of new Scots and integration for the benefit of everyone in our communities.

Paul Sweeney (Glasgow) (Lab): The cabinet secretary is making a powerful speech, and I completely associate myself with the sentiments of the Government on what is a disgusting bill. Does she agree that the Parliament can show a lead in welcoming those who are subject to immigration

control to Scotland by taking practical steps within the restrictions of no recourse to public funds, for example by extending concessionary travel to all those who are under the asylum system?

Shona Robison: As Paul Sweeney will know, we had a very constructive meeting about that, and he knows that I want to go as far as we can in helping to support those who have no recourse to funds, while keeping within the law. I am happy to continue those discussions.

In conclusion, Presiding Officer, the bill blatantly breaks the UK's international obligations under the UN Convention relating to the Status of Refugees. Ultimately, it is about people. It is not hard to look around the world and find conflict, war, terror, persecution and violence. It should not be hard to find compassion and empathy for those who are forced to flee. Would we not seek to do the same to protect our lives and those of our families? The bill does not provide for that. I urge the Parliament to reject the Nationality and Borders Bill, and to support our motion.

The Presiding Officer (Alison Johnstone): That concludes the debate on the UK Nationality and Borders Bill.

Decision Time

17:16

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

The first question is, that amendment S6M-03270.1, in the name of Donald Cameron, which seeks to amend motion S6M-03270, in the name of Neil Gray, on the Nationality and Borders Bill, which is United Kingdom legislation, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division. There will be a short suspension to allow members to access the digital voting system.

17:17

Meeting suspended.

17:22

On resuming—

The Presiding Officer: The question is, that amendment S6M-03270.1, in the name of Donald Cameron, which seeks to amend motion S6M-03270, in the name of Neil Gray, on the Nationality and Borders Bill, which is UK legislation, be agreed to. Members should cast their votes now.

The vote is now closed.

Jim Fairlie (Perthshire South and Kinross-shire) (SNP): On a point of order, Presiding Officer. My app would not work. I would have voted no.

The Presiding Officer: Thank you, Mr Fairlie. We will ensure that that is recorded.

Audrey Nicoll (Aberdeen South and North Kincardine) (SNP): On a point of order, Presiding Officer. Similarly, my app would not work. I would have voted no as well.

The Presiding Officer: Thank you, Ms Nicoll.

Stephanie Callaghan (Uddingston and Bellshill) (SNP): On a point of order, Presiding Officer. My app would not work either. I would have voted no.

The Presiding Officer: Thank you, Ms Callaghan.

For

Balfour, Jeremy (Lothian) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Carlaw, Jackson (Eastwood) (Con)

Carson, Finlay (Galloway and West Dumfries) (Con)
 Dowey, Sharon (South Scotland) (Con)
 Findlay, Russell (West Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallacher, Meghan (Central Scotland) (Con)
 Golden, Maurice (North East Scotland) (Con)
 Gosal, Pam (West Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Gulhane, Sandesh (Glasgow) (Con)
 Hoy, Craig (South Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Kerr, Stephen (Central Scotland) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Lumsden, Douglas (North East Scotland) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Ross, Douglas (Highlands and Islands) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Webber, Sue (Lothian) (Con)
 Wells, Annie (Glasgow) (Con)
 White, Tess (North East Scotland) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
 Adam, Karen (Banffshire and Buchan Coast) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Boyack, Sarah (Lothian) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Brown, Siobhian (Ayr) (SNP)
 Burgess, Ariane (Highlands and Islands) (Green)
 Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
 Chapman, Maggie (North East Scotland) (Green)
 Choudhury, Foyso (Lothian) (Lab)
 Clark, Katy (West Scotland) (Lab)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Natalie (Renfrewshire North and West) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dunbar, Jackie (Aberdeen Donside) (SNP)
 Duncan-Glancy, Pam (Glasgow) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Neil (Airdrie and Shotts) (SNP)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lennon, Monica (Central Scotland) (Lab)

Leonard, Richard (Central Scotland) (Lab)
 Lochhead, Richard (Moray) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Gillian (Central Scotland) (Green)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Marra, Michael (North East Scotland) (Lab)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAllan, Màiri (Clydesdale) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McLennan, Paul (East Lothian) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 McNair, Marie (Clydebank and Milngavie) (SNP)
 McNeill, Pauline (Glasgow) (Lab)
 Minto, Jenni (Argyll and Bute) (SNP)
 Mochan, Carol (South Scotland) (Lab)
 Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)
 O'Kane, Paul (West Scotland) (Lab)
 Regan, Ash (Edinburgh Eastern) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robertson, Angus (Edinburgh Central) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Roddick, Emma (Highlands and Islands) (SNP)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Sarwar, Anas (Glasgow) (Lab)
 Slater, Lorna (Lothian) (Green)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Collette (East Kilbride) (SNP)
 Stewart, Kaukab (Glasgow Kelvin) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sweeney, Paul (Glasgow) (Lab)
 Swinney, John (Perthshire North) (SNP)
 Thomson, Michelle (Falkirk East) (SNP)
 Todd, Maree (Caithness, Sutherland and Ross) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Tweed, Evelyn (Stirling) (SNP)
 Villalba, Mercedes (North East Scotland) (Lab)
 Whitfield, Martin (South Scotland) (Lab)
 Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 29, Against 92, Abstentions 0.

Amendment disagreed to.

The Presiding Officer: The next question is, that motion S6M-03270, in the name of Neil Gray, on the Nationality and Borders Bill, which is UK legislation, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
 Adam, Karen (Banffshire and Buchan Coast) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)

Bibby, Neil (West Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Brown, Siobhian (Ayr) (SNP)
 Burgess, Ariane (Highlands and Islands) (Green)
 Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
 Chapman, Maggie (North East Scotland) (Green)
 Choudhury, Foysol (Lothian) (Lab)
 Clark, Katy (West Scotland) (Lab)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Natalie (Renfrewshire North and West) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dunbar, Jackie (Aberdeen Donside) (SNP)
 Duncan-Glancy, Pam (Glasgow) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Neil (Airdrie and Shotts) (SNP)
 Greer, Ross (West Scotland) (Green)
 Griffin, Mark (Central Scotland) (Lab)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lennon, Monica (Central Scotland) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lochhead, Richard (Moray) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Gillian (Central Scotland) (Green)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Marra, Michael (North East Scotland) (Lab)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAllan, Màiri (Clydesdale) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McLennan, Paul (East Lothian) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 McNair, Marie (Clydebank and Milngavie) (SNP)
 McNeill, Pauline (Glasgow) (Lab)
 Minto, Jenni (Argyll and Bute) (SNP)
 Mochan, Carol (South Scotland) (Lab)
 Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)
 O'Kane, Paul (West Scotland) (Lab)
 Regan, Ash (Edinburgh Eastern) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robertson, Angus (Edinburgh Central) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Roddick, Emma (Highlands and Islands) (SNP)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Sarwar, Anas (Glasgow) (Lab)
 Slater, Lorna (Lothian) (Green)

Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Collette (East Kilbride) (SNP)
 Stewart, Kaukab (Glasgow Kelvin) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sweeney, Paul (Glasgow) (Lab)
 Swinney, John (Perthshire North) (SNP)
 Thomson, Michelle (Falkirk East) (SNP)
 Todd, Maree (Caithness, Sutherland and Ross) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Tweed, Evelyn (Stirling) (SNP)
 Villalba, Mercedes (North East Scotland) (Lab)
 Whitfield, Martin (South Scotland) (Lab)
 Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
 Wishart, Beatrice (Shetland Islands) (LD)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Balfour, Jeremy (Lothian) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Dowey, Sharon (South Scotland) (Con)
 Findlay, Russell (West Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallacher, Meghan (Central Scotland) (Con)
 Golden, Maurice (North East Scotland) (Con)
 Gosal, Pam (West Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Gulhane, Sandesh (Glasgow) (Con)
 Hoy, Craig (South Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Kerr, Stephen (Central Scotland) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Lumsden, Douglas (North East Scotland) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Ross, Douglas (Highlands and Islands) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Webber, Sue (Lothian) (Con)
 Wells, Annie (Glasgow) (Con)
 White, Tess (North East Scotland) (Con)
 Whittle, Brian (South Scotland) (Con)

The Presiding Officer: The result of the division is: For 94, Against 29, Abstentions 0.

Motion agreed to,

That the Parliament notes that the UK Government's Nationality and Borders Bill proposes significant changes to UK asylum and immigration legislation, which will damage people living in communities across Scotland and the UK, now and in the future; recognises that the Bill contains two provisions that trigger the requirement for legislative consent and that a legislative consent memorandum recommending that the Parliament withholds its consent to those clauses was lodged on 1 February 2022; notes that the Welsh Parliament has refused consent; is concerned by the creation of a National Age Assessment Board with powers to scrutinise age assessments using "scientific techniques", which Scottish Government guidance advises against on child welfare and unreliability grounds; notes that these provisions will impose time limits and damaging measures affecting assessment of credibility in human trafficking applications; condemns these provisions, as well as proposals in the Bill for differential treatment of refugees based on how they arrived rather than their protection

needs, measures that criminalise vulnerable people seeking protection, “push-back” provisions that will put lives at sea at risk and open the door for offshore asylum accommodation, and powers to revoke citizenship without notice, and agrees that the Bill will not achieve its aims or the change that is needed to ensure that the UK’s asylum and immigration systems are effective, efficient and deliver for people in need of humanitarian protection, according to international human rights obligations.

The Presiding Officer: That concludes decision time.

OVO Energy (Redundancies)

The Deputy Presiding Officer (Liam McArthur): The final item of business is a members’ business debate on motion S6M-02948, in the name of Jim Fairlie, on redundancies at OVO Energy. The debate will be concluded without any question being put. I invite members who wish to participate to press their request-to-speak buttons now or as soon as possible, or to type R in the chat function if they are joining us remotely.

Motion debated,

That the Parliament notes with regret the reported decision by OVO Energy Ltd to seek 1,700 voluntary redundancies and the closure of various offices, including in Perth, which, it understands, the company could have used for its new training academy; notes the view that the reportedly “excellent team”; that the OVO Energy CEO, Stephen Fitzpatrick, referred to when acquiring SSE Energy Services deserves better treatment, including more clarity on what happens should the company not reach sufficient numbers of voluntary redundancies, and considers that this represents a disappointing betrayal of a hard-working, committed workforce.

17:28

Jim Fairlie (Perthshire South and Kinross-shire) (SNP): I thank members from all parties across the chamber—apart from yours, unfortunately, Presiding Officer—who have supported my motion, which refers to OVO Energy’s decision to seek 1,700 voluntary redundancies and the closure of various offices, including in Perth.

However, the story goes back much further than that, and it is important to take as a starting point an acknowledgement that my home town of Perth, and great swathes of Perthshire—admittedly, in John Swinney’s constituency of Perthshire North—have a long and proud history, dating back almost 80 years, of production and distribution of electricity that was clean and green long before its time. It is important that we acknowledge and respect the work of those pioneers who made it possible.

The North of Scotland Hydro-Electric Board was formed under the Hydro-Electric Development (Scotland) Act 1943 to deliver electricity to the Highlands for the first time. Scores of hydro dams and power stations were built across the Highlands, tapping into the area’s uniquely positioned but challenging terrain.

It was no easy feat. In 1955, workers at St Fillans in my constituency set a world record for tunnelling, grinding their way through 557 feet of rock in just one week. By the mid-1960s, Scotland could boast of 56 dams connected by more than 600km of rock tunnel, aqueducts and pipelines.

All of that was achieved by men who came from all over the world into the tunnels. Scots, Poles, Czechs, Germans and a huge number of Irishmen—particularly the tunnel tigers from Donegal—came to live in the camps and work in the hydro schemes. Many of them stayed, and their descendants are still at the heart of communities in many parts of Scotland, including in Strathearn. My dad was one of the workers on the Loch Turret dam above Crieff, alongside my now-deceased Uncle Eddy.

The dismantling of Tom Johnston's great legacy began with the privatisation of the electricity companies in 1990. However, the Perth connections remained, even when, in 1998, the private company Scottish and Southern Energy was formed and headquartered in my constituency.

SSE was the result of the merger of two former public sector electricity supply authorities. Scottish Hydro-Electric provided the "Scottish" part of the title, and the "Southern" part came from the former Southern Electricity Board, which distributed electricity in southern England—a distribution-only authority with no power generation capacity of its own. In effect, Perthshire was producing huge amounts of hydroelectricity for use across the whole United Kingdom. SSE was rapidly established as one of the big six energy suppliers in the UK market, employing almost 11,500 people across the country. Many of those jobs, and its HQ—the closure of which is now planned—were in my constituency.

In September 2019, SSE announced that it would sell its retail business to OVO Energy. The transaction was completed in January 2020, and 8,000 staff were transferred to OVO. Stephen Fitzpatrick, the chief executive and founder of OVO, declared:

"There is a lot of work to do to bring the two businesses together, but we have a really strong combination of great talent, technology and customer centricity that will enable us to succeed."

Alistair Phillips-Davies, the chief executive of SSE, added:

"We are very pleased to have completed this transaction, which we firmly believe is the best outcome for the business, its customers and its employees."

The *Daily Record* reported a spokesperson who said, at the time:

"We have a detailed integration plan that leaders from both companies have collaborated on since September and will share what we can, when we can. In the meantime, individuals and teams will continue to work as usual and nothing will change for the time being."

That last phrase should have rung the warning bell, because OVO backtracked only four months later, and hundreds were laid off in May 2020.

Less than two years later, we are told that hundreds more workers are set to lose their jobs, because OVO Energy's Perth office, where around 700 people are employed, is going to be closed as it axes a quarter of its UK workforce. Was Alistair Phillips-Davies, the CEO of SSE, fooling himself or us when he said that he firmly believed that the £500 million deal was

"the best outcome for the business, its customers and the employees"?

During a meeting with SSE and OVO when the takeover was announced, my colleague Pete Wishart, member of Parliament for Perth and North Perthshire, was assured that there would be no job losses. Time and again, both companies—SSE and OVO—gave repeated assurances to staff across the country that no redundancies would happen, that jobs were safe, that customer service was a priority, and that the talented and committed workforce was at the heart of quality service delivery. Both companies have utterly betrayed that workforce.

When the redundancies were announced, Stephen Fitzpatrick said:

"There is never an easy time to announce redundancies and this is a particularly difficult decision to take. But like all businesses, we face a new reality and need to adapt quickly to enable us to better serve our customers and invest in a zero carbon future."

I will come back to the phrase

"to better serve our customers"

in a minute. He also stated:

"We are seeing a rapid increase in customers using digital channels to engage with us, and in our experience, once customers start to engage differently they do not go back."

That was the most telling sentence of all. All the market analysis at the time of the takeover talked about the digital capabilities of OVO. Digital capability means that there is less need for people, and customers are forced to deal with an app rather than a human. My guess is that redundancies were always the aim. Should we be surprised? Probably not.

OVO is letting down not only its workforce but its customers. It is clear that Stephen Fitzpatrick sees automation as the way forward, but we all know from our own experience that sometimes people just want to speak to a well-trained, well-informed human being who can help them with their issue, whatever it might be. That resource—that human quality, and the ability to talk to someone who can actually help—is being lost.

In taking over, Mr Fitzpatrick praised the "excellent team" that he was inheriting. He should use that team, as Perth would be the ideal location for OVO's new training academy. Along with John

Swinney and Pete Wishart, I am due to meet OVO management again soon, and I once again call on Stephen Fitzpatrick, as the owner of the business, to attend that meeting himself. His assurances were at the heart of the public relations campaign around the takeover, and he should give his employees direct answers about why he can no longer stand by those assurances.

Where will his automation of service leave the digitally excluded? Will those people—who are most likely to be the less well off in our society—be forced on to higher-priced tariffs because of that digital exclusion? Are the older generation, from whom I have had the most contact on the subject, to be left behind? I am being asked questions like, “I don’t know how to do all this app stuff, son. What’ll I do if I can’t pay my bill? Will they cut me off?”

The company is causing anxiety for customers and staff, and they all deserve answers. When we meet Mr Fitzpatrick and his management team, I will press him to rethink the decision and maintain—or indeed, improve—the quality of the service that OVO currently provides. The best way to achieve that is by ensuring that the dedicated, skilled workforce who, for decades, have done so well to serve my community and communities across the country, keep their jobs.

17:36

Murdo Fraser (Mid Scotland and Fife) (Con): I congratulate Jim Fairlie on securing the debate and commend him on lodging his motion, which I was pleased to support. Like him, I have taken a close interest in the closure of the OVO Energy office in Perth and the impact that it will have on the wider economy.

OVO Energy currently employs approximately 700 people in Perth, and the loss of those jobs would be a huge blow to local families and to the wider Perthshire economy. OVO has said that 1,700 employees across the United Kingdom—up to a third of the company’s total workforce—are set to lose their jobs through voluntary redundancy. The number of offices across the UK will be reduced from 10 to three, and the only office left in Scotland will be located in Glasgow, which means the closure of offices not only in Perth but in Edinburgh, Cumbernauld and Dunfermline. The situation is causing real uncertainty for those who are unable or unwilling to relocate.

OVO has said that it is seeking to make those job losses through voluntary redundancy, but we do not yet know whether the job cuts could become compulsory if insufficient volunteers come forward. When my colleague Liz Smith and I recently met Adrian Letts, the retail chief executive

of OVO Energy, we made that point forcibly to him. Unfortunately, no reassurances were received.

Mr Fairlie has given us a history lesson. He and I have something in common, because my father also worked on a hydro dam—the Glascarnoch dam—in the Highlands. It is worth setting the latest developments in a historical context, as Mr Fairlie did. I am old enough to remember when, back in the 1990s, the then newly privatised Scottish Hydro-Electric company moved its headquarters from the west end of Edinburgh to Perth. That was a major economic boost for the city and for the local economy, as it created more secure and better-paid management-level jobs.

Over the years, Scottish Hydro-Electric was a success story, as it expanded to take over Southern Electric and became SSE, as it is today. Nonetheless, with its headquarters still firmly in Perth and with an ever-expanding workforce, it is a vital part of the local economy. Two years ago, SSE took the decision to dispose of its retail arm to OVO Energy. It is important to stress, however, that SSE remains headquartered in Perth and committed to the city. Although it is no longer involved in the retail sale of energy, it is heavily invested in electricity generation, particularly in the field of renewables, and in electricity transmission. Those jobs are not affected by the latest announcements, and we hope that they will be with us in Perthshire for many years to come.

When OVO Energy acquired SSE’s retail arm, it said—as Jim Fairlie mentioned—that it was committed to a presence in Perth. It is deeply disappointing that, two years later, that promise has been broken, causing the uncertainty that we see today for the staff, many of whom have been loyal to both SSE and OVO over a long period.

I do not know whether it is realistic to expect OVO to revisit its decision to close the Perth office, but from my dealings with the company I think that it is unlikely. However, we need to make sure that we avoid compulsory redundancies for people who do not wish to take a voluntary package.

I have urged OVO to explore the possibility of allowing individuals who live in Perthshire to work from home, rather than have to relocate to an office in Glasgow, and OVO has pledged that it will look at that. That would at least provide some comfort and protection for people who do not wish to take voluntary redundancy at this time.

In the longer run, it is inevitable that we will see a decline in the number of energy retail jobs through natural wastage, which is to be deeply regretted. Some weeks ago, I raised in chamber the question of whether the Scottish Government should look at relocating more public sector jobs out of the central belt to Perth to support the local

economy. I hope that that call would be widely supported by all local representatives, as it would undoubtedly be to the benefit of the Perthshire economy and help to replace the jobs that are being lost.

I close by putting on the record again my disappointment with the actions of OVO. I hope that we can see a brighter future for the staff who are currently very worried about the impact of the cuts.

The Deputy Presiding Officer: Alex Rowley joins us remotely.

17:41

Alex Rowley (Mid Scotland and Fife) (Lab): I join Jim Fairlie in expressing my anger and sheer disappointment in OVO Energy Ltd and its chief executive officer, Stephen Fitzpatrick, for the false and broken promises that they have made to their workforce and to communities including those in Perth and Dunfermline in the region of Mid Scotland and Fife.

To say that there is real anger in those communities would be an understatement, but people keep asking what we can do. I would say there are many things we as a Parliament and both the UK and Scottish Governments can do when companies lie to their workforce, their clients and the communities in which they operate.

Unite the union is calling on members of Parliament to order Stephen Fitzpatrick back to Parliament to explain what seems like misinformation that he gave to MPs when he last appeared before them. The union says that OVO Energy must “open the books” and explain why £40 million in loans and payments have been made to other companies owned by Stephen Fitzpatrick before it makes 2,000 staff redundant. Unite’s general secretary, Sharon Graham, said:

“Unite’s preliminary research shows there are a lot of questions that need answering about OVO’s accounts. At the very least there should not be a penny more of taxpayers’ money spent on OVO until they provide answers.”

Unite estimates that, in the past five years, the top directors of OVO have taken £4.6 million out of the company in salaries and benefits. The best paid director, who is not named in the accounts but is likely to be Stephen Fitzpatrick, earned almost half of that figure. They want to take people’s jobs away, but we have a right, as do the unions, to demand that they open up OVO’s books to scrutiny. Both Governments must do all that they can to make that happen.

I also want to put on the record the words of Unite’s national officer for energy, Simon Coop, who said:

“We warned the directors about blundering into the SSE takeover. In recent years the same directors have plundered the accounts for amounts estimated to be touching £5 million. So, the company must be subject to severe scrutiny before the union decides on our next moves, but if they move to compulsory redundancies they will be fully opposed by the union.”

There are serious questions to be asked and answered about and by OVO, but we must also ask what happened to the public energy company that voters in Scotland were promised. More than anything, I think that OVO Energy’s deceit will encourage much greater public support for public control and ownership of energy.

As Scottish Trades Union Congress general secretary Roz Foyer said:

“Workers were promised the Saudi Arabia of renewables, but all they got was a desert.”

Energy costs are spiralling out of control, and workers and communities across Scotland are getting a raw deal. The time to take control of energy is now.

The company must think twice. It must not move towards compulsory redundancies.

The bigger message is that the people of Scotland, through the Government of Scotland, must take control of energy in Scotland.

The Deputy Presiding Officer: Mark Ruskell joins us remotely.

17:45

Mark Ruskell (Mid Scotland and Fife) (Green): I thank Jim Fairlie for securing today’s timely members’ business debate.

We have heard that, in the recent round of job losses, OVO Energy announced that it will axe 1,700 jobs across its UK operations. That is a quarter of the company’s workforce. It will mean closing seven out of 10 offices. An estimated 700 staff are at risk in Perth alone, and a quarter of those staff are earmarked for OVO’s voluntary redundancy scheme. Those are the numbers. Behind the numbers are real people and families, who have ties to their communities, with children at school, friends and neighbours, and families that support and care for one another in the community.

Jim Fairlie spelled out how the roots of the energy business in Perth run deep—all the way back to SSE and the hydro board—and are built on the lives of generations of real people. The workers should not be seen as mere numbers on a spreadsheet to be redeployed at will across the UK.

After several meetings with the chief executive of OVO and contact with the unions, I, like many members, remain deeply concerned about the lack

of clarity on the next steps in the redeployment and retraining that are to be offered to staff and on whether compulsory redundancies could still be considered after the voluntary redundancy process concludes. Once again, OVO has left its staff in the dark, without clarity on the next steps, putting them under pressure to make serious decisions about the future of their careers and families in a matter of days.

The deadline for voluntary redundancy applications closed in record time, after just around a fortnight, and the lack of meaningful support for workers was such that it is no wonder that OVO's initial trawl did not secure the required number of voluntary redundancies in all areas of its business. Despite OVO's new-found confidence that it will reach its target for voluntary redundancies after an extension, when I met Adrian Letts just yesterday, OVO was still refusing to rule out compulsory redundancies. The lack of transparency in that regard instils fear that the impact of the job losses and office closures that have been announced might be only the tip of the iceberg. Hard-working staff at OVO deserve much better. They deserve much more than a situation in which they are levered and coerced into making life-changing decisions in just a matter of days.

Of course, this is not the first time that OVO has broken promises to staff and contravened the Government's fair work agenda. This is the latest in a series of broken promises from OVO to its hard-working staff. Let us remember, as other members have noted, that this is the company that promised job security when it took over in January 2020, only to lay off thousands of workers at the peak of the Covid-19 pandemic in May 2020.

We cannot allow companies such as OVO repeatedly to disregard basic fair work principles. It is high time that OVO took those principles seriously. I ask the minister to consider what sanctions can be applied to companies that undermine and break the fair work principles, and I agree with Alex Rowley that not a penny more of taxpayers' money needs to go to such companies.

We need transparency and a commitment to no compulsory redundancies. We need a longer period for voluntary redundancies, matched with a package of support for people who are looking to retrain and upskill in other areas of the company. Instead, OVO's response so far has left its workforce in a catch-22 situation in which workers must choose between applying for voluntary redundancy, even if they are interested in upskilling, or facing the risk of compulsory redundancy.

Several weeks ago, the Minister for Business, Trade, Tourism and Enterprise, Ivan McKee, promised that he would consider how the Tay cities deal could provide further support for those

who are affected by OVO's plans, in the same way that support was provided for workers after Michelin closed its doors in Dundee. I would like Tom Arthur, in closing the debate, to report back on what those options might be.

If OVO cares at all about its employees and its reputation, it must now work hard to change the course of its actions, to offer meaningful support to its workforce and to work with those workers to develop the business to meet customer needs.

17:50

Audrey Nicoll (Aberdeen South and North Kincardine) (SNP): I thank Jim Fairlie for lodging his important motion.

Having spent much of my childhood growing up in Stanley, just north of Perth, I still feel a strong connection to the city and the wider area. This must be an extremely worrying time for OVO's workforce across Scotland, and I would like to express my deep disappointment about the situation to everyone who is affected. We know that for every job loss, many others are affected, including our families, communities, businesses and, of course, the supply chain. The jobs in Perth and Dunfermline are invaluable to the local economy.

As we also know, the plans for redundancy were explicitly denied by the company when it took over SSE's retail arm in January 2020, at which time it stated that "nothing will change". Despite the promises, four months later, the company offered voluntary redundancy to 2,500 employees, and 18 months later its new plans were announced. The original promises have now been forgotten as the damaging plans to close offices across Scotland have come to light.

It is extremely disappointing that OVO's chief executive officer, Stephen Fitzpatrick, was unwilling to respond to questions from my colleagues about his plans. That reflected a clear lack of compassion on his part for the workers who made the company so successful in the first place. OVO's decision comes at the worst possible time, as we try to recover from the perfect storm of the pandemic, Brexit and poor management of the economy by the UK Government.

I commend the work that my colleagues in Fife and Perthshire have done to press the company on its plans and to seek assurances on the future of the workforce. In that regard, it may offer a ray of light to look at Dundee, where, not so long ago, a similar issue emerged when Michelin closed its doors after half a century, which cost more than 500 jobs in the city. In Dundee, the SNP administration worked collaboratively with Michelin to develop a proposal that has come to fruition. Work is now under way to transition the site to

become a new innovation park that will employ around 100 highly skilled staff. I would be delighted if a similarly creative approach could be considered in advance of the second meeting with OVO, which is planned to take place over the coming weeks.

At this point, it is important to note that such events make it clear why Scotland should have more powers over corporate governance and employment law. It is an unfortunate fact that decisions such as OVO's are indicative of a UK economy in which takeovers, major restructuring and, sadly and regrettably, redundancies are becoming too common. It is an economy in which companies can make promises and then break them, with nothing much being done to hold them to account. The result is that the UK has among the lowest average wages and lowest gross domestic product per capita of comparable nations in north-west Europe. As well as working long hours, we have among the lowest levels of job protection, the poorest sick pay and the lowest pensions, while productivity remains modest, at best. Those facts provide clear evidence of why we need full economic powers to sit north of the border.

I know that Jim Fairlie and other colleagues will do all that they can to support all OVO staff who are impacted by the company's announcement, and I will do all that I can to support them in their efforts.

17:54

Graham Simpson (Central Scotland) (Con): I, too, thank Jim Fairlie for, and congratulate him on, bringing this debate to the chamber. It is really important for those of us who represent areas that are affected by the closures—the Cumbernauld office is one of the offices that could close, and Cumbernauld is in Central Scotland, which I represent.

I have spoken to OVO staff in Cumbernauld. They took something of a risk when they spoke to me, because they told me that they had been contacted by the company and told in rather threatening tones not to breathe a word about the matter to anyone. That is an appalling way to deal with people. Those people spoke to me on the basis that I would not reveal who they were—and, of course, I will not. However, that should never be the case, and that left a sour taste in my mouth.

We have already heard a bit of the history of OVO and SSE and about how we came to be where we are. I have no real confidence in people being told that there will be no compulsory redundancies—I simply do not believe that. When companies close offices and create hubs, people tend to go whether or not they want to. The

Cumbernauld office is the nearest office to the so-called superhub in Glasgow. It might be said that that is the most convenient place, but it is not convenient for everyone. Not everyone can get to wherever that hub is. It does not suit some people who work part time whom I have spoken to—they will sometimes spend more time travelling than at work. That simply does not work.

I think that Jim Fairlie rightly mentioned the move to digital contact centres. I have experience of that. When the company that provided my electricity and gas at home closed down, I was switched to another provider—not OVO—and now I am on a tariff that means that I cannot speak to anyone. If I want to find out anything, it is impossible; I cannot speak to someone on the phone—I have to go through an app or a website. It is utterly ludicrous. I consider myself to be someone who is able to deal with most things, but I want to speak to somebody. Elderly customers who are perhaps not as tech savvy as I am will not be able to do that.

Murdo Fraser: I recently had the unfortunate experience of having to phone OVO Energy as a customer, and I think that I waited for 40 minutes before the phone was answered. Having to hang on for that length of time is an extremely inconvenient experience for anyone.

Graham Simpson: Murdo Fraser is right. That is utterly unacceptable.

I came across a quote from a spokesman for OVO, who said:

“Scotland is a great place for our business, which is why we are making it an operational centre of excellence and one of our three office locations.

We are opening a new OVO Academy in Glasgow ... While we are closing some of our offices, there is an opportunity for remote working. ... We are committed to investing in Scotland; creating higher skilled, better paid jobs in Scotland.”

If only I could believe that. I do not believe it, and OVO should think again.

17:59

The Minister for Public Finance, Planning and Community Wealth (Tom Arthur): I am grateful for the opportunity to respond on behalf of the Government. I commend Jim Fairlie for bringing this important debate to the chamber.

The debate highlights an issue that is, of course, of great importance to many in the chamber, but it is of even greater importance to OVO's employees in Perth, Cumbernauld, Dunfermline and Edinburgh. My ministerial colleagues and I were very disappointed to learn of OVO's announcement in January that it plans to close sites in Perth, Cumbernauld, Dunfermline and

Edinburgh and is seeking 1,700 voluntary redundancies across the UK. The news will have come as a great blow to the workers at the affected sites and those in the local areas.

Jim Fairlie was right to point out that, when OVO acquired the retail business from SSE, the company was very vocal in praising the quality of the team that it had inherited. It is disappointing, therefore, that the workforce was reduced first by the voluntary redundancies announced in 2020, and will be reduced once again by the company this year asking for large numbers of voluntary redundancies.

As we have heard in the debate, the subject is of constituency interest to several members alongside Jim Fairlie, including the Deputy First Minister and the Minister for Higher Education, Further Education, Youth Employment and Training. I understand that interested members had their own meetings with OVO last month—and will continue to have such meetings—but have been frustrated by the lack of clarity from the company.

My colleague the Minister for Business, Trade, Tourism and Enterprise spoke to Adrian Letts, the chief executive officer of OVO Retail on 19 January, and questioned him about OVO's rationale for the decision. He also challenged the company on its decision to open a new site in Glasgow instead of utilising existing properties. OVO, however, was clear in its response that it saw the establishment of the Glasgow office as the best choice for the company.

Mr McKee also wrote to the company seeking clarity on the numbers involved and the potential impact across sites in Scotland. Mr McKee spoke to the company again yesterday to seek clarity about its intentions for the workforce and to gain an understanding of the likely numbers involved. He also spoke yesterday with representatives of the trade unions at the company. He has written again to OVO for details on some of the points raised by the unions and updated local representatives.

Unfortunately, as is the case with other companies, we cannot force OVO to reverse the decisions that it is making, but we can work to ensure that the outcomes for those affected are as favourable as possible. Our priority, as always in such situations, is the workforce at the affected sites and we have acted quickly to ensure that our partnership action for continuing employment initiative is engaged with OVO. PACE met OVO on 20 January and outlined the support that could be offered to help any affected employees, which includes access to PACE information, resources and webinars, distribution of external employment opportunities and utilisation of the PACE call-back process.

That is in addition to OVO's own offering to the workforce which, I understand, includes an external redeployment team and a choice between one-to-one career transition support via an external outplacement provider or £500 towards the cost of learning. PACE will continue to work closely with OVO to ensure that any affected employees are offered the best possible support.

I will turn to some of the remarks that colleagues have made during the debate. Along with Jim Fairlie, Murdo Fraser eloquently noted the history of energy generation in his region and the important part that it plays in the community. He also noted—as did Graham Simpson—that there are options around home working. Those points were well made and timely.

Alex Rowley posed the question of what we can do, which was echoed by Mark Ruskell. I assure members that the Scottish Government is absolutely committed to Scotland being a fair work nation by 2025. Through the growth deals, the Tay cities region deal and the Glasgow city region deal, we are providing support for those economies that will be impacted more generally.

OVO's announcement has thrown into relief the issues that have been affecting consumers and suppliers in recent months. We know that the wholesale energy price increases have had significant impacts on consumers and energy suppliers alike. The setting of energy costs is reserved to the UK Government and, even in light of its announcement of support, we have challenged the UK Government to go further to support consumers. We have also remained in close contact with Ofgem and the energy industry.

We remain committed to ensuring a just transition as we seek to deliver on our ambitious climate change targets. That includes ensuring that people have access to good green jobs in new and growing sectors such as renewable energy. For example, as was set out in the Bute house agreement, we will scale up public investment to meet our heat decarbonisation targets and to secure a green recovery from the Covid-19 pandemic. We will invest at least £1.8 billion over the parliamentary session, allowing us to accelerate energy efficiency upgrades and renewable heating deployment, and creating new jobs and supply chain opportunities across Scotland.

Our vision for Scotland is to create a wellbeing economy: a society that is thriving across economic, social and environmental dimensions, and that delivers sustainable and inclusive growth for Scotland's people and places. We will shortly be delivering our new 10-year national strategy for economic transformation, which will outline how we will deliver a green economic recovery and

support new, good, green jobs, businesses and industries for the future.

In addition to extensive stakeholder engagement, the strategy has been shaped by a new advisory council, which includes representatives from industry, trade unions and academia. Transformational change is a national endeavour, and we have reached out to businesses, workers and stakeholders from across the country. We also ran a nine-week consultation, which received in excess of 260 responses.

I reaffirm that the Scottish Government is doing everything that it can to support those who are affected. We are working to put in place the foundations for our future economic recovery—one that is sustainable and inclusive.

We note OVO's proposal to introduce new net zero adviser roles and we would welcome the opportunity to understand its ambition for the academy and vision for zero-carbon advisers. We have set out an ambitious pathway to decarbonise homes across our economy and we already have good experience in advice provision through our national fuel poverty programmes and publicly funded services such as home energy Scotland. That makes Scotland an attractive place to anchor the growth of net zero adviser capability in the private sector. I encourage OVO to engage with Scottish Enterprise and the Scottish Government to explore ways in which Scotland and its workforce can benefit from that.

Meeting closed at 18:07.

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