



OFFICIAL REPORT
AITHISG OIFIGEIL

Meeting of the Parliament

Tuesday 28 May 2019

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

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Scottish Parliament

Tuesday 28 May 2019

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

Time for Reflection

The Presiding Officer (Ken Macintosh): Good afternoon. Our first item of business is time for reflection, and our leader today is the Rev Dr Fiona Douglas MBE, university chaplain at the University of Dundee.

The Rev Dr Fiona Douglas MBE (University Chaplain, University of Dundee): Presiding Officer and members of the Scottish Parliament, thank you for the opportunity to address you today.

“For everything there is a season,
And a time for every matter under heaven”.

For a university chaplain, this is a season of celebration. At graduation ceremonies across Scotland, we will rightly applaud our students’ academic achievements, toast their successes and wish them well on their future journeys. But it is also a time when we reflect on what we stand for as academic communities and on our common sense of purpose.

Our university forefathers claimed a moral mandate for what they did and for who they were. They believed that the purpose of education was to combine academic study with public virtue and service. Universities were essential builders of the common weal and learning in the fullest sense was about how to live well.

Such thinking embodied the work of Patrick Geddes, Victorian polymath, professor of botany at University College, Dundee from 1888 to 1919 and a Scottish pioneer of the environmental movement. He believed that education was a catalyst for social change; that interdisciplinarity was key to tackling the problems of the modern industrial age; that there was an intimate link between spatial form and social processes; and that the wellbeing of society depended on harmonious interaction between people and their environment.

At Geddes’s farewell lecture in Dundee, after asking his students

“How many people think twice about a leaf?”,

he said:

“Yet the leaf is the chief product and phenomenon of life. This is a green world, with animals comparatively few and small and all dependent upon the leaves. By leaves we live.”

These messages about active citizenship, about our connectivity and mutual dependencies and about conservation and sustainability are surely as relevant today as they were for Geddes. What better time to reflect on these matters as the Parliament celebrates its 20th anniversary. In the words of Geddes, “by creating we think” and “by living we learn”.

“For everything there is a season,
And a time for every matter under heaven”.

This is our time for new beginnings, for celebrating things past and for looking forward to all that is yet to be. With God’s grace, may we have the patience, strength and vision in all our working together to meet the challenges and the opportunities that lie ahead.

Topical Question Time

14:04

European Elections (Results)

1. **George Adam (Paisley) (SNP):** To ask the Scottish Government what its response is to the results of the European elections. (S5T-01676)

The Cabinet Secretary for Culture, Tourism and External Affairs (Fiona Hyslop): The Scottish Government welcomes the results of the European Parliament elections, which were a stunning success for the Scottish National Party. The elections have confirmed that there is overwhelming support in Scotland for remaining in the European Union. It is clear that the results from across the United Kingdom tell a tale of two countries that have different political views, values and visions for the future.

I congratulate all the Scottish members of the European Parliament, and especially the newly elected Christian Allard and Aileen McLeod who, as you will be aware, Presiding Officer, were formerly members of this Parliament. With the election of Sheila Ritchie of the Liberal Democrats, there is now gender balance in the Scottish contingent. In the absence from the chamber of any Labour member who might have done so, I also extend our gratitude for the service of David Martin, who has provided distinctive wisdom, commitment and advice on Scottish matters in the European Parliament for many decades. It is fitting that we pay tribute to him at this time. [*Applause.*]

George Adam: Does the cabinet secretary agree that the results were an astounding rejection of Brexit in Scotland, in that the SNP finished 23 percentage points ahead of the Brexit Party and took the highest share of the vote of any party in western Europe? Does she think that Scotland has again made itself clear that it is not for Brexit and that the issue should go back to the people in a vote, in which I am confident that, once again, its people will make the decision that their future lies in Europe?

Fiona Hyslop: Yes, I agree that the Scottish people's voice has been heard. The Scottish Government has consistently made clear that the best option for the future of Scotland and the UK is for us to stay in the European Union. The election results demonstrate that the UK political system has failed, and that it has also failed Scotland utterly. We are clear that continuing with Brexit would ignore the views of this Parliament and of the people of Scotland, which is why the Scottish Government will continue its efforts to secure that a further referendum is held on any deal that might be agreed by the UK Parliament. If Parliament

cannot support such a deal, the default position should be that we revoke article 50 and not that we would have a no-deal Brexit. We will continue to do everything that we can to stop Brexit and all the ensuing economic damage to Scotland that it would entail.

George Adam: The cabinet secretary will be aware of the shocking reports of EU citizens in Scotland and the rest of the UK being denied their votes on polling day. What pressure has the Scottish Government put on the UK Government to investigate that scandal? Can the cabinet secretary confirm that the UK Government was aware of the risks of that happening months ago but, until the last possible moment, made no preparations for the European Parliament elections, so causing the confusion that we saw ensue on polling day?

Fiona Hyslop: Participation in the European Parliament elections in whichever member state they have chosen to live in is a fundamental right of all EU citizens. The Scottish Government is therefore deeply concerned about the difficulties that were encountered by some EU citizens who were denied their right to vote. It is important that we understand that their experience was different in different parts of the country. However, Mr Adam is absolutely right. That challenge had been foreseen and the UK Government could—and should—have done something to ensure that no EU citizens were disadvantaged in exercising their fundamental rights. The Scottish Government has written to the UK Government to call for a full investigation and will share any response with this Parliament at the appropriate time.

Adam Tomkins (Glasgow) (Con): Is it not symbolic that, at a time when there are no longer any Labour MEPs representing Scotland, no Labour MSPs are present in the chamber to ask questions of the cabinet secretary on the elections?

Given that, whether we like it or not, Europe is the dominant political issue of our time, what is the Scottish Government's reaction to the fact that only two fifths of the Scottish electorate voted last Thursday, and that three fifths therefore chose to stay at home and not to vote at all? Is the Scottish Government content with that level of voter turnout? If it shares my concern that it is too low for a healthy democracy, what, if anything, does it propose to do about it?

Fiona Hyslop: I understand why the Labour Party and the Conservatives want to airbrush out the results of the European Parliament elections. However, let us be clear: the turnout was one of the highest ever for European Parliament elections—I think that it is the highest since 1994. Rather than people staying away, they deliberately went out to vote to make their voices heard, which

is to be welcomed—indeed, there was a high turnout across the European Union.

It is not good enough for the Conservatives to come here and blame the Scottish people. They should be reassessing the situation and ensuring that Scotland's needs are protected. The best thing that the Conservatives could do in this Parliament would be to join the rest of us to ensure that no deal is taken off the table, and that there is another opportunity for the Scottish people—and, indeed, for people in the rest of UK—to vote to remain in the European Union. We can stop Brexit if we act together.

Patrick Harvie (Glasgow) (Green): I offer my sincere congratulations to those who were elected, and my sincere hope that they will have the opportunity to represent Scotland throughout the entire term of this European Parliament. I also offer my commiserations to David Martin who—as the cabinet secretary said—has earned the sincere respect of colleagues from across the political spectrum.

Is the Scottish Government still committed to legislation that would ensure that the right to vote is based on residence and not citizenship? It seems to me that that is one of the most important things that we can do to address the concerns that Mr Adams raised and which I share about EU citizens being disenfranchised. Would ensuring that devolved legislation controls the franchise for all elections that take place in Scotland not be the simplest way to ensure that we are never in this mess again?

Fiona Hyslop: Patrick Harvie is right to raise that fundamental issue. I talked about the rights of citizens, and the legislation that we plan to bring forward recognises the importance of residence in relation to the franchise.

I reiterate that it is important that we gather information about different experiences, particularly in different parts of the country—I know that my own council area did not have the same issues that there were elsewhere. That underlines the fact that the issue could, and should, have been tackled, and that it is a disgrace and a scandal that many of our fellow citizens here in Scotland were not able to exercise their fundamental rights.

Buchanan High School (Health Concerns)

2. Fulton MacGregor (Coatbridge and Chryston) (SNP): To ask the Scottish Government what advice it is providing to North Lanarkshire Council, in light of reports that blue water at Buchanan high school may be linked to health concerns among staff. (S5T-01678)

The Minister for Public Health, Sport and Wellbeing (Joe FitzPatrick): The distribution and

storage of water on school property is a matter for the local authority. I understand that Scottish Water, the Scottish Environment Protection Agency and NHS Lanarkshire have been working with North Lanarkshire Council on the matter.

Fulton MacGregor: I thank the headteachers and all the staff at Buchanan high school and neighbouring St Ambrose high school, who have continued to act professionally throughout this speculation. Like all schools in the area, they deliver excellent outcomes for pupils against a backdrop of challenging demographic circumstances.

The minister will be aware that Professor Andrew Watterson of the University of Stirling's occupational and environmental health research group said:

“the reported ill-health cases do merit serious investigation and it is understandable that staff, pupils and others who work on the site are anxious.”

Does the minister agree that North Lanarkshire Council should investigate concerns properly and that parents, pupils and staff should be kept properly informed by the council, which could go some way towards mediating the anxiety that some may have?

Joe FitzPatrick: It is understandable that there is concern and anxiety. I absolutely agree that North Lanarkshire Council should take the concerns of parents, pupils and staff on this matter very seriously. Ensuring that there is a thorough investigation into what can be done to mitigate any potential risks is a sensible and pragmatic approach.

Fulton MacGregor: The minister may be aware that, in conjunction with local councillors, I will hold a public meeting on the matter on 6 June. North Lanarkshire Council has assured me that it will be attended by council officials, and I will ensure that the local MP and other ward councillors are invited. Would the minister consider the possibility of a Scottish Government official also attending the meeting?

Joe FitzPatrick: I am pleased that North Lanarkshire Council will attend, given that it has statutory responsibility for the school estate. I agree with Fulton MacGregor that it would be good for the Scottish Government to attend, too. If he sends us the details of when the meeting will happen, my office will ensure that that happens. I would also expect the local health board, NHS Lanarkshire, to be represented.

Margaret Mitchell (Central Scotland) (Con): Given that the school was built on toxic waste, is the minister satisfied that an appropriate environmental impact assessment was carried out? Is he aware of whether any related conditions were attached to the grant of planning permission?

Joe FitzPatrick: The grant of planning permission would pre-date my taking up office as Minister for Public Health, Sport and Wellbeing and almost certainly my time in my previous position, but I understand that people want answers to those questions. I am not aware of any direct link between copper, which it is suggested is the issue in this case, and particular cancers, but clearly something is going on and we need to understand it.

As Fulton MacGregor pointed out, it is important that the local authority carries out a full investigation and works with SEPA to make sure that the investigation is as robust as possible, in order to give people in the local area—particularly parents, children and staff—confidence in the safety of the school.

Alex Neil (Airdrie and Shotts) (SNP): In addition to the four teachers at the school—which was built on toxic landfill—who have developed the same rare cancer, the son of one of my constituents has become blind and there is a medial suspicion that the blue water, or some other toxic ingredient on the site, may have contributed to that. In the light of public concern, if the council does not carry out a satisfactory and robust independent inquiry into the matter to inform people and allay public fears, will the minister consider intervening? Public health is clearly a statutory requirement of the Scottish Government, as well as the council, Scottish Water and the health board.

Joe FitzPatrick: Alex Neil is absolutely right about the statutory responsibility. The Education (Scotland) Act 1980 places a statutory responsibility on all local authorities to manage and maintain their school estates. I sincerely hope that the local authority takes that responsibility seriously and that the investigation that we are talking about goes ahead, in order to give people confidence. Part of the discussion around what the investigation should look like needs to be with other agencies, such as SEPA and Scottish Water, and with public health officials in NHS Lanarkshire.

The Presiding Officer (Ken Macintosh): That concludes topical question time. We will take few moments before the next item of business to allow the minister and members to change seats.

Children (Equal Protection from Assault) (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Linda Fabiani): The next item of business is a debate on motion S5M-17342, in the name of John Finnie, on stage 1 of the Children (Equal Protection from Assault) (Scotland) Bill.

14:18

John Finnie (Highlands and Islands) (Green): I am delighted to be opening the debate on the general principles of the Children (Equal Protection from Assault) (Scotland) Bill. I give thanks to the convener and members of the Equalities and Human Rights Committee for their diligent and measured consideration of the bill, which was evident throughout all the evidence sessions, which I had the pleasure of attending.

I give special thanks to the committee's clerking team for its work and to parliamentary staff and those outwith the Parliament who facilitated the committee's many external evidence-taking visits. My thanks go also to the witnesses who gave evidence and everyone who contributed comments from the outset of the process. I welcome the 75 per cent support that my consultation drew and the backing of members from all parties in the Parliament.

I thank the many colleagues from all parties for their support and advice as my bill progressed from the start of the member's bill process. I am grateful to the Scottish Government for its support of my bill, and to the Minister for Children and Young People, Maree Todd, for her support—I look forward to her contribution to the debate.

I extend big thanks to Nick Hawthorne of the Parliament's non-Government bills unit and Catriona McCallum from the office of the solicitor to the Scottish Parliament for their work, and to my office manager, Steven Dehn, who has tirelessly led work on the bill in my office.

In June 2016, shortly after the Scottish Parliament election, I was approached by a coalition of children's charities—Barnardo's Scotland, NSPCC Scotland and Children 1st—and the Children and Young People's Commissioner Scotland's office to consider taking forward a member's bill on the simple proposal that children should have the same legal protection from assault as adults do. I am immensely grateful for their on-going support and encouragement since then.

That was not my first foray into the topic. Towards the end of the previous parliamentary session, working with Barnardo's, I had tried to squeeze an amendment on the issue into the

Criminal Justice (Scotland) Act 2015, but the then convener of the Justice Committee ruled it outwith the scope of the bill. In hindsight, I am grateful for that decision, because it has allowed our Parliament and wider civic society an opportunity over the past few years to broaden discussions about the rights of our children and young people in Scotland. I know that many members from across the chamber are looking forward to supporting the Scottish Government in incorporating the United Nations Convention on the Rights of the Child into Scots law. That was recommendation 16 of the Equalities and Human Rights Committee's report "Getting Rights Right: Human rights and the Scottish Parliament" in November 2018. I warmly welcome the committee's decision.

The period of debate and reflection has strengthened my proposals and has highlighted a lack of awareness around the issue. On many occasions, I have been contacted by or have even encountered people who are surprised at the need for the bill, many believing that physical punishment of children had been prohibited a long time ago. Of course, it was not, and this important issue has not been looked at for almost 16 years, since the last weeks of the first parliamentary session in 2003. I hope that the few members who were there for that debate will perhaps agree that now is the time.

My intention in bringing forward the bill is to bring clarity to the law by removing the defence of reasonable chastisement, sometimes referred to as justifiable assault, and to send a clear message that the physical punishment of children is not acceptable. The growing body of international evidence shows that the physical punishment of children is harmful to their development and is not an effective means of discipline. Professor Sir Michael Marmot of University College London, in the foreword to the report "Equally Protected?", published in 2015 by the charities I mentioned, stated unequivocally:

"The international evidence could not be any clearer – physical punishment has the potential to damage children and carries the risk of escalation into physical abuse.

It is now time for action. On the issue of physical punishment, Scotland is out of step with Europe and increasingly, the world. There is an urgent need for Scotland and the rest of the UK to comply with international human rights law and to prohibit all forms of physical punishment."

Dr Anja Heilmann, also of University College London, a compelling witness to the Equalities and Human Rights Committee, told the committee that the evidence from the research

"shows very clearly that such punishment has the potential to harm children;"

and importantly

"that it is not effective as a parenting strategy, because it tends to increase problem behaviour and children's socioemotional difficulties".

That is important, as those problem behaviours in children do not disappear at the age of 16; they are stored up and damage our future society.

I want to quote from the briefing that members have received—I am grateful to all the organisations that have provided briefings for our debate, which, as ever, are extremely helpful. If only I could find the one that I am looking for now, that would be even more helpful. Dr Tamasin Knight of the Faculty of Public Health in Scotland said:

"Childhood physical punishment is linked to adult aggression and anti-social behaviour, including aggression and sexual violence within intimate partner relationships."

Often in Scotland, we talk about zero tolerance of domestic abuse and violence, yet we allow the use of physical punishment for children. That sends a message to our children that hitting someone is a way of resolving a dispute or of showing that they do not like someone else's behaviour. The bill is a vital step in ensuring that we see the necessary change in our culture, much as the smoking ban was a necessary legislative step in making Scotland a healthier place to live.

Opinion polls asked different questions and showed a mix of views, with some against the bill. However, the consultation on the specific proposal saw 75 per cent in favour.

The Equalities and Human Rights Committee also heard that, in none of the countries that now prohibit the physical punishment of children was public opinion with the legislative change at the time of the change. I firmly believe that, as with the smoking ban, we will see public opinion change over time. As Bruce Adamson, the Children and Young People's Commissioner Scotland, told the committee:

"You need the legislation to deliver the culture change—we know that to be true. In that regard, this issue could be seen in the same way as seat belts in cars, drink driving and smoking in pubs. On such issues, you need to lead with the legislation in order to deliver the culture change."— [Official Report, Equalities and Human Rights Committee, 7 March 2019; c 9.]

It is worth noting the opinions of young people in Scotland, which are perhaps more aligned with the aims of the bill. We often refer to the Scottish Youth Parliament in this Parliament because of the good work that it does. In its manifesto, "Lead the Way", the SYP said that it consulted its members and received 72,744 responses from 12 to 25 year olds—an astonishing figure—of which 82 per cent agreed that all physical assault against children should be illegal.

Feedback from the 260 pupils who participated in the Equalities and Human Rights Committee meeting in a box, to gather evidence from children and young people, showed that 66 per cent of them supported the bill.

My bill aims to bring Scotland into line with what appears to be becoming the international standard in 54 countries. Sweden was the very first country in the world to adopt it in 1979, and Ireland adopted it in 2015. I thank Jillian van Turnhout, the former Irish senator, who secured equal protection for the children of the Irish republic, for her knowledge and support throughout this process. Nepal adopted the standard in 2018 and this year, the States of Jersey will also do so. That is the direction of travel.

I am sure that all parties will agree that we should work together to ensure that Scotland becomes the best country in the world for children to grow up in. I strongly believe that, if passed, my bill will play a vital part in making that aim come to pass. I am pleased to note the minister's comments that the Scottish Government is working closely with relevant organisations on the next steps to ensure that, should it be passed, the bill is implemented satisfactorily.

I take this final opportunity to repeat my thanks to the committee for its support for the principles of the bill.

I move,

That the Parliament agrees to the general principles of the Children (Equal Protection from Assault) (Scotland) Bill.

14:27

Ruth Maguire (Cunninghame South) (SNP): I am proud to speak in this debate on behalf of the Equalities and Human Rights Committee. I give my heartfelt thanks to our diligent and professional clerking team, who are an example to us all.

The bill has dominated our work programme for the past few months. It is an important bill for children and families and could affect a huge number of people in Scotland. We knew that, as a committee, we needed to hear directly from those affected, so we set out an ambitious programme of engagement. We went to meet parents and grandparents in Pollokshields, Sighthill and Midlothian. We visited young people in Kirkcaldy at the YMCA juniors club. To reach the parents and children we could not get to, we developed a meeting in a box, so that community groups could send us their views. We received responses covering more than 300 individuals. Finally, we held an external meeting and a fact-finding day in Portree on Skye.

We could not have heard from all those people without the help of a number of teams from around

the Parliament. On behalf of the committee, I thank our outreach team and the engagement unit for helping us to hear from so many voices. Our thanks also go to the members of staff—official report, media, web and social media—who travelled to Portree with us, particularly our security staff, who travelled through a snowstorm to support our meeting. We appreciated having them there.

Of course, our biggest thanks go to those who informed our scrutiny. More than 450 people, many of them individuals, took the time to write to us with their views. I know that many of them have concerns about the bill and its possible effect on family life. I say to them that the committee has heard their concerns. We met people who shared with us their fears about the bill, and we listened to their views. However, we also heard that many parents today do not smack their children and that Scottish society is moving that way in any event, but that we need legislation and support to help parents to find alternative approaches to discipline.

We also heard from children and young people, who told us their thoughts. Our particular thanks go to the children of Portree high school and bunsgoil Ghàidhlig Phort Rìgh, who shared their opinions intelligently and freely. The preparation that they put in ahead of our visit was most impressive. Tapadh leibh airson fàilte cho cridheil a chur oirnn ann am Port Rìgh.

Since the extension of its remit in 2016, the committee has, wherever possible, taken a human rights-based approach to its work. That approach informs our work with children and young people. A human rights approach recognises that children have the right to participate, to be listened to and to have their views recognised and respected. That has been central to our work on the bill, which, after all, has children at its core.

The bill is about rights; it is about the right that children have to be free from violence in every setting, including the home. Home should be a place of safety and comfort where a child is nurtured. Therefore, it is extraordinary that the home is the one place where children are allowed to be hit—and it is only children who are allowed to be hit, not partners or pets.

All of us have the right to have our private and family life respected. Much of the evidence that we heard questioned whether there was a conflict between the right of a child to be free from violence and the right of parents to raise children as they believe best. We were reassured by the many witnesses who told us that the right to family life does not include a right to use physical punishment. The Scottish Human Rights Commission said that the European Court of Human Rights has determined several times that

the right to family life is not interfered with by prohibiting physical punishment of a child. It went on to say that physical punishment clearly interferes with a child's right to dignity.

Because of their physical and mental immaturity, children are entitled to and require more, not less, protection from violence than adults do, and we, as adults and parliamentarians, have a duty to uphold the rights of all vulnerable people.

On our visits and as part of our engagement, we met parents who told us that they had been smacked and were fine, or that they smacked their children with no ill effect. We heard that there is a marked difference between violence against children and a "loving smack". Nevertheless, the evidence that we heard from experts and academics is that physical punishment has negative effects, which range from depression and mental health issues to an increased tendency on the part of those who are punished in that way to use violence themselves. As Jane Callaghan, professor of child wellbeing and protection at the University of Stirling, told us, it makes no difference whether those smacks were administered in love or in anger: the effect is the same.

In the course of our evidence taking, we heard many times that parents need to smack children in certain situations—the child might be reaching for something hot, or they might be about to run into the road—but Dr Louise Hill from the centre for excellence for looked-after children in Scotland put it best when she told us:

"as a parent of young children, if they run into traffic, my immediate response is to hold them. I get hold of my children and I keep them safe."—[*Official Report, Equalities and Human Rights Committee*, 28 February 2019; c 34.]

That is what the bill attempts to do—it shows children and young people that, as a society and as a Parliament, we want to keep them safe. It puts their rights at the centre of our policy making, and it aims to support families in doing so.

The majority of the Equalities and Human Rights Committee supports the general principles of the Children (Equal Protection from Assault) (Scotland) Bill.

14:33

The Minister for Children and Young People (Maree Todd): I am pleased to speak for the Scottish Government on the Children (Equal Protection from Assault) (Scotland) Bill. As the Minister for Children and Young People, I see the bill as forming a key part of our work to ensure that Scotland is the best place in the world in which to grow up.

I thank John Finnie and his team for their hard work and dedication in progressing the bill. I also thank Ruth Maguire and the Equalities and Human Rights Committee for their careful consideration and their reasoned and balanced report.

The Scottish Government supports removal of the reasonable chastisement defence, and I welcome the committee's support for the general principles of the bill, as set out in its report. There is a strong rationale for our shared position. The name of the defence—reasonable chastisement—is antiquated. At the heart of the defence is the concept that it can sometimes be reasonable to strike a child. That is completely at odds with our aim of Scotland being the best place in the world for children to grow up. We can contribute to that aim by providing children with the same legal protection from assault as adults have. That principle is at the heart of the bill.

Scotland can be at the forefront in the United Kingdom of providing such protection for children. Removal of the defence will help to deliver the best possible outcomes for children. It will assist them in growing up feeling loved, safe and respected so that they can realise their full potential. Removal of the defence is consistent with international treaties, with best practice in human rights and with the United Nations Convention on the Rights of the Child.

In addition, removal of the defence reflects the growing body of international evidence that shows that physical punishment of children is harmful and ineffective.

Liz Smith (Mid Scotland and Fife) (Con): I am listening carefully to what the minister is saying. If we are listening, has the minister given any consideration to the strong views of the majority of parents in Scotland, who find that the bill will be unworkable and, probably, unenforceable?

Maree Todd: When parents were asked, more than 90 per cent of respondents said that they believe that children should have the same protection against assault as adults have.

Oliver Mundell (Dumfriesshire) (Con): Can the minister set out how many people in Scotland thought it is appropriate to criminalise parents for such activities? Once the defence is removed, under what circumstances will parents be prosecuted?

Maree Todd: I will happily tackle that point in my summing up. We have been over that at committee: Oliver Mundell is regurgitating the same arguments.

By removing the current defence, the bill will provide helpful clarity to parents and carers about the law. The committee comments on that in paragraphs 121 to—

Oliver Mundell: If the minister wants to talk about clarity, is she able to give just one example in which a person would be criminalised for an action that would currently not be considered to be criminal because the defence exists?

Maree Todd: Let me be clear. The change in legislation does not create a new offence. The offence already exists: the offence is assault and there is currently a defence in law for it. The bill will remove the possibility of using that defence. When considering a particular case, the prosecutors will take into account all the things that they currently take into account. There might be an alternative defence—for example, self-defence. Prosecutors will take into account criminal intent and the age of the child: a number of things will be considered.

I cannot pre-empt particular situations and decide now who will be criminalised. I assure members that our intention is not to criminalise parents; our intention is to provide early support, using the GIRFEC—getting it right for every child—approach that we have been using for many years. We will continue to use it by recognising situations in which parents need support and by putting in that support—not by criminalising them.

Liz Smith: Will the minister give way?

Maree Todd: This is the last intervention that I will take.

The Deputy Presiding Officer: I can allow you a little extra time, minister.

Liz Smith: Can the minister explain with clarity, as I think is her role, why she believes that the current law is bad law?

Maree Todd: I make it absolutely clear that the Scottish Government thinks that it is not acceptable to use physical punishment on children. We believe that children should have the same protection in law as adults have.

By removing the current defence, the bill will provide helpful clarity to parents and carers about the law. The committee comments on that in paragraphs 121 to 128 of its report.

The minority statement in the report says at paragraph 281 that the committee has spent

“too little time listening to legal experts”,

but there is significant evidence from legal bodies. For example, the Law Society of Scotland’s supplementary written submission to the committee says:

“The Bill, as proposed, would introduce clarity of the law on what amounts to assault on children as far as children and adults are concerned. Assaults on children would not be justified. Children would therefore be afforded the same protection as currently available to adults. Whether

prosecution for an assault on a child results would follow a decision by the Crown Office and Procurator Fiscal Service as to prosecution being appropriate in the public interest.”

The Law Society goes on to say that

“If the Bill is passed, there is a need to ensure that there is effective communication of the change to all involved. That has to seek effective ways to ensure that those groups representing ‘protected characteristics’ are fully considered.”

The committee also makes that point in its report. As drafted, section 2 of the bill provides that

“The Scottish Ministers must take such steps as they consider appropriate to promote public awareness and understanding about the effect of section 1.”

If the bill is enacted with section 2 forming part of it, we will of course comply with that section. The Scottish Government has formed an implementation group that is considering what will be required if the bill is enacted by Parliament. The group’s work includes what will need to be done on public awareness.

The Scottish Government will continue to provide support for parents and organisations. We are not telling parents how to parent: we will continue to provide support for them so that they can decide for themselves the best way to take care of their children. I am a mum of three teenagers: we all know that parenting is a tough job. We know that children can be challenging and wonderful—sometimes at exactly the same time. Our approach to parenting support will continue to reflect the day-to-day challenges that parents face. We will continue to provide practical and realistic advice that parents can turn to for help with those challenges.

Awareness raising has cost implications: the stage 1 report asks about the cost implications of the bill generally. The Scottish Government will consult members of our implementation group, following which we will write to the committee before stage 2. In paragraph 241 of the report, the committee noted

“the divergence on costs for public awareness raising.”

There are a variety of views on exactly what should be done on awareness raising. It would be possible to raise awareness by taking steps that have low cost implications, such as putting material on websites. I note the oral evidence to the committee on 21 March from Jillian van Turnhout that, in Ireland, the “allocated budget was zero”, so there was no awareness raising or campaigning in relation to the change in the law there. We have discussed awareness raising and campaign work with our partners on the implementation group and we will take account of the points that the committee made in its report.

The committee also made points on restraint. The Scottish Government agrees with the

committee's conclusion in paragraph 62 of the report, which states:

"We do not agree physical punishment is required to protect children from harm. We conclude that the Bill as drafted will not change a parent's or carer's ability to restrain a child to keep him or her from harm."

We note the comment in paragraph 68, which states that

"Restraint in care settings is an area we believe requires much wider scrutiny, although we do not think that this Bill is the vehicle for that scrutiny."

We agree that the bill is not the right vehicle for that, but we recognise the importance of the issue of restraint in care settings. Mary Fee raised the issue in committee, and I will be happy to meet her any time to discuss the matter further.

The Scottish Government supports removal of the defence of reasonable chastisement. We welcome the committee's report. I believe that the bill is the right thing, as well as being a rights thing.

I ask members to support the general principles of the bill at stage 1 at decision time later today.

14:44

Oliver Mundell (Dumfriesshire) (Con): When I was elected in 2016, I did not imagine that I would be standing up in the chamber to oppose a bill that calls for equal protection of children from assault. The fundamental problem is that the bill will do more harm than good, and does not live up to its name. It is below the quality of legislation that the people of Scotland rightly expect from their Parliament. However well meaning it is, it represents an assault on family life.

Let me be clear: violence against children is wrong. On that point, I hope that we all agree. However, that is where I part company with members who speak enthusiastically in support of the proposal, because when it comes to the proportionality of subjecting good parents to criminalisation, and the suggestion that it is justified and reasonable for the state to intervene in family life when child welfare is not at risk, I cannot agree. To pass legislation to restrict parental rights and discretion would be bad enough, but to pass this particular bill, which lacks any threshold for involvement by the police or, indeed, for prosecution, is sheer madness.

John Finnie: Has Oliver Mundell read what the explanatory notes say about the public interest test? Does he understand that that is not changing? He was present when police and social work representatives joined together to say that, given their knowledge of their work, their view is that the bill will bring welcome clarity.

Oliver Mundell: I look forward to the Lord Advocate coming to the committee on 6 June to explain why, in its supplementary written evidence, the Crown Office and Procurator Fiscal Service recognised that there is a question involving situations in which mild force has been used by parents. I want to understand who will be responsible for taking the decision to prosecute parents, and under what circumstances that will happen.

I also wonder whether it will fall to individual police officers to decide whether to investigate families, and on what basis and when they will do so. I have not heard answers to any of those questions so far. That is why the bill represents bad law.

The bill will lead to more confusion, as was pointed out by Gary McAteer, who is a leading criminal lawyer from whom the committee did not have time to hear. The bill leaves us open to potential legal challenge. Other witnesses who spoke to the committee recognised that the proposal will create grey areas and problems, because the law of assault is quite wide.

Alex Cole-Hamilton (Edinburgh Western) (LD): Will the member take an intervention?

Oliver Mundell: I will not.

As legislators, our first duty must be to ensure that legislation is workable. My concern is this. I asked the Scottish Government's legal team whether it thought that it would be helpful to provide clarity for parents—as we do in relation to affected parties when we choose to legislate to modernise and fundamentally alter other common-law provisions—by setting out in statute in black and white, for all to see, the tests that one would expect to be met if use of force by parents were to constitute an assault. The team responded by saying that if we did that, we would end up with something that is close to what we already have. Therefore, the question is this: what is the point of the bill, and why has the Government not, in more than a decade in power, sought to do anything to address this seemingly burning issue?

I have already asked the question, but I would be particularly grateful if the minister or the member in charge of the bill could set out the circumstances in which parents who currently rely on the existing defence would be prosecuted if the bill passes unamended.

John Finnie: I say again that Oliver Mundell is implying that there will be some new change of regime regarding investigation and prosecution. Absolutely nothing is changing in that regard, as he would know if he had troubled himself to read the explanatory notes that accompany the bill, and to listen to the evidence that was presented.

Oliver Mundell: That comment is, quite frankly, insulting. It makes a fundamental error on a point of law, which is that, in this country, where a defence exists, it is considered by the procurator fiscal in deciding whether to prosecute, so the likelihood of that defence succeeding makes a difference with regard to whether prosecutors decide to prosecute.

We have heard from legal experts, including Pamela Ferguson at the University of Dundee, and Michael Sheridan, who is one of the leading criminal law agents in Scotland, that the change, although it will not create a new criminal offence, will criminalise behaviour that is currently lawful. That means that parents—perhaps not great droves of them—will be prosecuted and subjected to police investigation in circumstances in which they currently would not be.

As I have already said, even the Crown Office and Procurator Fiscal Service which, it can charitably be said, has been reluctant to engage with the bill to date, recognises that challenges will arise when the physical contact is of an extremely minor or trivial nature. Indeed, it is almost impossible to know when the Crown Office or Lord Advocate would consider that the public interest test was met. It will be even more difficult to establish when matters are considered to be sufficiently serious for the police to investigate, and it is not at all clear who will make that decision.

As a parliamentarian, I have deep misgivings about passing legislation in an area as sensitive and controversial as this, and which will give such wide discretion to individual police officers and prosecutors.

When it comes to legislating in statute to remove centuries-old common-law provisions, there is a duty on Parliament to provide absolute clarity and to set out our intentions, and not simply to make big, bold claims and pass on to others the responsibility for taking difficult and legally complex decisions. The failure, in the bill, to set out that clarity is an abdication of responsibility. The bill as drafted is so imprecise that it will fail to improve on the current state of affairs.

What is more, there was confusion among witnesses who appeared before the committee. For clarity, the law of assault does not require a forceful act and there need not be substantial violence or injury; indeed, it can include a slap, tapping someone on the back—

Gail Ross (Caithness, Sutherland and Ross) (SNP): Will the member take an intervention?

Rona Mackay (Strathkelvin and Bearsden) (SNP): Will the member take an intervention?

The Deputy Presiding Officer: The member is in his final minute.

Oliver Mundell: Assault can include a gesture that places a person in a state of fear, even if there is no physical contact. That seems to be a very broad category of behaviour on which to focus with regard to parents. It seems to me to be odd that witnesses such as the Children and Young People's Commissioner Scotland said that they could not foresee situations in which small physical interventions would end up in court, when the law of assault seems to suggest something different.

The problem with the whole bill is that we have not got into the legal detail. We spent far longer having an ideological debate about whether it is right or wrong to hit people and about whether it says in the Bible that people can hit their children. Those are not the right questions to ask. We have not investigated the bill properly.

It seems to be extremely odd to legislate to criminalise people for an action but then to hope that it does not happen.

14:52

Mary Fee (West Scotland) (Lab): I welcome the opportunity to participate in the stage 1 debate on the Children (Equal Protection from Assault) (Scotland) Bill. Let me say at the outset that just because legislation is centuries old, that does not mean that it is right. Parliamentarians and politicians have a duty and an obligation to be progressive and to lead change, and that is what the bill will do.

I am a member of the Equalities and Human Rights Committee, and I thank the individuals and organisations who submitted evidence on the bill. During our evidence sessions, including a meeting in Skye, the committee heard robust contributions from a range of experts. I will focus on our evidence sessions and what is in the report.

The bill seeks to give equal protection from assault by prohibiting the physical punishment of children by parents and caregivers. As we heard, the purpose of the bill is to abolish the defence of reasonable chastisement. Parents and others who care for children may currently use that defence if they are facing prosecution for assaulting a child.

Let me be clear. The bill is not about criminalising parents and carers. It is about giving children the same protection in the law that adults currently have.

Oliver Mundell: Can the member give a guarantee, then, that no parents will be prosecuted after the law changes?

Mary Fee: I think that the minister more than adequately covered that point when Oliver Mundell intervened during her speech.

I say to Oliver Mundell that I have struggled with people saying that we should not remove the defence of reasonable chastisement, when, if any one of us were walking down the road and saw a carer who was out with an adult who had a learning disability hit that person, I would hope that we would all be absolutely horrified. That adult has protection, and our children should have the same protection.

Liz Smith: I could not agree more with Mary Fee's point, but does she recognise that there is a fundamental difference in law between the terms "assault" and "reasonable chastisement"?

Mary Fee: Any kind of assault is an assault. It cannot be justified by saying, "It was reasonable to hit." If a person strikes another person, they are assaulting them.

The bill seeks to drive cultural change in Scotland to discourage the use of physical punishment. Evidence that we heard in committee demonstrated that physical punishment is harmful to children. We consistently heard that it is detrimental to the wellbeing of a child and is likely to lead to an increase in negative outcomes.

The evidence that we heard strongly showed that parents, children and family support services are best served by adopting methods that do not involve physical punishment. By removing that defence, we are protecting children from harm while also committing firmly to safeguarding children's human rights. Let us be clear: this Parliament is a guarantor of human rights and, once again, we have an obligation to protect the human rights of children. Martin Canavan from Aberlour Child Care Trust argued:

"There naturally exists an imbalance of power in adult/child relationships, and as a result it is critical that children are provided with as much protection in law as possible."—[*Official Report, Equalities and Human Rights Committee*, 7 March 2019; c 2]

The bill will help Scotland to meet part of its international human rights obligations under the UNCRC. Article 19 of the convention states that countries must take

"all appropriate legislative, administrative, social and educational measures to protect children from all forms of ... violence"

from any person who is caring for them. Scottish Labour is fully committed to the incorporation of the UNCRC into Scots law, and the bill is a step towards progressing that commitment.

Committee members heard a range of views both for and against the principles of the bill. Submissions from organisations that work with

and support children fully support the aims of the bill. I understand the concerns that many parents will have regarding the bill; indeed, the majority of individuals who made submissions did not support the bill's principles. Concerns included the suggestions that

"Banning smacking could overwhelm police and social workers",

"Loving parents should not be criminalised"

and that the ban would

"turn thousands of parents into potential criminals overnight".

Individuals stated that

"smacking is not child abuse"

and that

"There is a clear difference between child abuse and loving parental discipline".

I understand also the concerns that were raised by parents who argued that the bill could lead to an increase in criminalisation for parents who smack their children. The bill does not make changes to policing or prosecution procedures or practices. The committee has been assured by Police Scotland that it would continue to take a view as to whether there was enough evidence to charge a person and the prosecution authorities would decide whether there was sufficient evidence to support a case.

International experience from countries that have already addressed the use of physical punishment suggests that prosecutions would not notably increase following implementation. Ireland unanimously repealed its common-law defence of "reasonable chastisement" in 2015. The committee took evidence from Jillian van Turnhout, the former Irish senator who introduced the amendment that led to the prohibition of corporal punishment in Ireland. She said that, since the implementation of the law, Ireland had

"not seen a dramatic increase in prosecution of parents".—[*Official Report, Equalities and Human Rights Committee*, 21 March 2019; c 6.]

A key factor in the bill is its aim to facilitate a cultural change that will protect children from violence. The public education strategy will seek to work in the same way as that for the ban on smoking in public places and legislation requiring the use of seat belts—not to criminalise but to encourage positive change.

I will touch on restraint in care settings. I have seen first hand the use of restraint and the distressing impact that it can have on children and young people. We heard moving evidence from Amy-Beth Miah, a care-experienced young person who saw physical restraint as a violent and degrading experience. She said that the bill

“raises a grey area. When a child is removed from their family home to be placed in care, the state becomes the child’s corporate parent, and it is suddenly okay for the state to restrain the child and to act in an almost assault-like manner that breaches human rights.”—[*Official Report, Equalities and Human Rights Committee*, 28 February 2019; c 30.]

I welcome the Government’s commitment to look further at restraint in care and education settings. I welcome, too, the minister’s comments today, and I am happy to meet her to discuss restraint further.

By giving children equal protection from assault, we are protecting children and safeguarding their human rights. Through an effective public education strategy, the bill will aim not to criminalise but to create a positive culture change. Today is the first step in that journey. Scotland is not the only country that is on that journey. John Finnie spoke of other countries that have either introduced or are consulting on the introduction of similar legislation. I am sure that a number of amendments will be lodged at stage 2 not only to provide the clarity that many desire but to strengthen the bill. For those reasons, I urge all members to support John Finnie’s member’s bill.

15:00

Ross Greer (West Scotland) (Green): I am delighted to speak on behalf of the Scottish Greens in support of our colleague John Finnie’s bill to give children equal protection from assault. I know how hard John, his team and the wider equal protection campaign have worked and I am delighted to see the bill’s progress towards the stage 1 vote.

We widely recognise that children and young people in Scotland have rights, but as the evidence gathered during stage 1 has shown, our laws are not yet in a position adequately to protect those rights. In 1989, the United Nations proposed a treaty that would lay out the rights of children, which were acknowledged in the original Universal Declaration of Human Rights decades earlier. The United Nations Convention on the Rights of the Child was signed by the Government of the United Kingdom on 19 April 1990 and ratified by the UK Parliament in December the following year. The preamble to the convention affirms that, precisely because of their physical and mental immaturity, children need special safeguards, including appropriate legal protections. Children are afforded human rights just as any adult is, and we recognise that they require bespoke rights, just as other vulnerable groups do.

Article 19 of the UNCRC is unequivocal:

“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence”.

Article 37 requires protection for children from torture or other cruel, inhuman or degrading treatment or punishment, which reflects the European convention on human rights and other international treaties. Other articles reinforce a child’s right to physical integrity and protection of their human dignity.

Repeatedly, the UN’s Committee on the Rights of the Child has highlighted the continued failings of the UK in this respect. It has reiterated that the law as it stands in the constituent parts of the UK is in breach of that international treaty. The age of criminal responsibility, which is currently under consideration by this Parliament, is another example of that. It is all well and good for those rights to be enshrined at the international level, but the UK, as a dualist system when it comes to international law, has to give domestic effect to those rights. For a long time, the UK has treated international human rights law as an afterthought—as something not really applicable to us—and presumed that we were in compliance anyway.

Over the past several years, things have become far worse. In many cases, the UK’s approach to human rights has turned from an afterthought to one of outright attack and hostility. Just last week, the UK Secretary of State for Work and Pensions launched a blistering and utterly unfounded attack on the UN special rapporteur on extreme poverty, Philip Alston, for his report on the UK. That comes after similar responses by the UK Government to reports by the UN Committee on the Rights of Persons with Disabilities, which found grave and systematic violations of disabled people’s rights going on right now in the UK.

Here in Scotland, we must—and can—be better. We must take seriously our international commitment to human rights. Today, we have an opportunity to press forward with that commitment. Since we signed the UN Convention on the Rights of the Child, we have failed to uphold our obligations. The last time that this Parliament considered the matter, it tinkered around the edges, hoping, I think, that that would satisfy the UN committee. Of course, it did not, because the UK, including Scotland, was not willing to take the necessary steps—steps that I firmly believe we are ready to take now.

Although the bill is a clear step towards recognising the rights of young people in Scotland, there is the broader issue of whether we are living up to our human rights obligations. Like other members, I was delighted when the Scottish Government announced that it would support and lead on incorporating the UNCRC fully into Scots law, and I welcome the consultation that the Government has published in the past week to do just that. The credit for that really needs to go to

the Scottish Youth Parliament, whose campaigning for children's and young people's rights is an example for others across these islands and globally.

I hope that all parties can agree on the step, which will allow us to fulfil our ambition to make Scotland a human rights leader and the best country in the world for children to grow up in. The work that is being undertaken by the new human rights task force will be a vital part of that. I sincerely hope that the Government will seek to move forward without undue delay with the recommendations of the advisory group on human rights, which issued a report in December.

Human rights must have a strong domestic basis in Scotland so that we do not leave ourselves vulnerable to the disgraceful attacks on basic rights that have characterised the current Westminster Government. To do that, we must legislate on specific rights issues, as the Children (Equal Protection from Assault) (Scotland) Bill does, and seek to better incorporate international human rights law into Scots law.

I conclude by quoting Ian Campbell, who was the husband of Grace Campbell. As some members may be aware, Mrs Campbell led the court case more than a decade before I was born that led to the end of physical punishment in our schools. Explaining Grace's philosophy, Mr Campbell said:

"You just don't hit children. It's that simple."

It really is that simple. That is why, on a personal level, I have been deeply frustrated by some—a minority—who have used the faith that I share with them as an excuse to oppose the bill, and that is why I am very proud of the churches and other faith groups that have strongly supported the bill. I believe not just as a matter of political conviction but as a matter of deeply held personal faith that children have the same inalienable human rights that we all have.

Children and young people are rights holders in and of themselves. They have the right to be protected from assault. I urge all members to support the bill and tell the children of Scotland that they are unbeatable.

15:06

Alex Cole-Hamilton (Edinburgh Western) (LD): I offer my sincere thanks to John Finnie, and the full-throated support of Liberal Democrat members for his bill.

I am actually quite emotional. Members will know that, prior to being elected to the Parliament, I spent my entire career in children's rights. Over two decades, I have fought alongside colleagues in Children 1st, Aberlour Child Care Trust,

Barnardo's and other organisations to end the physical punishment of children in this country. We have had setbacks and failures but, were it not for their grit and persistence, we would not be here today. It was my great privilege to address them at a rally outside the Parliament this morning.

During the campaign 10 years ago, I appeared on Radio Scotland to debate physical punishment with an organisation that was opposed to change. Immediately after the programme finished, I got a call from my dad, who said, "You know, I'm really proud of you for helping to lead this campaign. I only ever hit you once. You were two years old and your mum was in hospital having your sister. You wouldn't eat your dinner and had a proper meltdown, so I slapped your legs. You turned around and you bit me in the face." He never hit me or my siblings again.

I cannot remember a more deliberative process in the stage 1 proceedings of any bill that I have helped to scrutinise. We heard evidence from academics, parenting experts, religious groups and criminal justice stakeholders. I thank each of them and our committee's parliamentary staff for the conduct of the process.

The overwhelming conclusion that the Parliament should arrive at from the evidence that we received at stage 1 is that we should join the ranks of the 54 countries that have extended to children in their societies the same protections that are enjoyed by adults. It is wholly wrong that children should be the only people in our society who are subject to assault without legal impediment.

There is an international imperative for us to pass the bill. The United Nations persistently points out that we are not meeting our commitments under either the United Nations Convention on the Rights of the Child or the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. We are among the last remaining countries in the Council of Europe not to have brought about the change.

To put it simply, if we are truly to become the best country in the world for children to grow up in, we will forever fail in reaching that aim for as long as we allow the physical punishment of our children. We will forever fail in our aim to eradicate domestic violence in the home while we legally or culturally sanction any kind of violence in our society, and we will fail in efforts to reduce violence in our streets as long as we allow parents to teach children that violence is an acceptable tool of sanction or anger. That is because, as we all know, children learn by watching adults.

Dr Lucy Reynolds from the Royal College of Paediatrics and Child Health offered our

committee empirical evidence of that reality from Bandura's Bobo doll experiment, which demonstrated that children who were shown a film of an adult picking up a toy mallet and whacking a clown doll in a room full of toys did likewise when they entered the room, whereas children who had not been shown the film did not do that. Her conclusion was:

"Children learn by mimicry, and if you hit children you are teaching them to expect either to dominate or to be dominated through physical violence."

My father realised that the second that I bit him.

Crucially, John McKenzie from Police Scotland backed up that view when he told the committee that

"there appears to be a link between violence in the home and violence in wider society."—[*Official Report, Equalities and Human Rights Committee*, 21 March 2019; c 9, 28.]

I am not blind to the controversy that the policy shift represents, but I have satisfied myself that none of the arguments that have been deployed against it holds water.

Murdo Fraser (Mid Scotland and Fife) (Con): I am listening with great interest to Mr Cole-Hamilton. Does he accept that parents discipline their children in a number of ways? They might put very young children on a naughty step, exclude children from watching television or playing games or ground children. None of those things would be acceptable if done to an adult—in fact, they would amount to domestic abuse—so why do children differ from adults in that respect?

Alex Cole-Hamilton: Murdo Fraser trivialises the question if he equates something such as a YouTube ban to the physical assault of another human being. I do not accept that in any way.

We have heard from the Conservatives that the bill amounts to an assault on parents' rights, but nowhere in international or domestic treaties is there a right for parents to hit their children. We heard the concerns of many who talked about legions of parents being marched through the courts for what they described as normal parenting behaviour, but they had no answer to the reality that countries such as New Zealand and Ireland, which are culturally comparable to us, have had virtually no additional prosecutions.

Oliver Mundell: Will the member take an intervention?

Alex Cole-Hamilton: I need to make progress.

Oliver Mundell: Will the member take an intervention on that point?

Alex Cole-Hamilton: Oliver Mundell did not take an intervention from me.

As with the smoking ban, such a change is designed not to criminalise but to effect a cultural change. I was gratified that Police Scotland confirmed that it would bring charges only if it were in the public interest to do so.

The most persistent argument against a change in the law that we came up against can be described as the idea of protective punishment. The argument, which was used on Radio Scotland this morning, is that, if a child runs out into traffic or moves to put their hand in a fire, a parent needs to retain the right to smack them so that they can learn not to do that again. I reassure people who make that argument that none of the 54 countries that have ended physical punishment of children has experienced an uptick in child deaths on the road or seen a spike in admissions to paediatric burns units.

That aside, the most compelling answer to that argument lies in the consideration of mental capacity. My friend the former Irish senator Jillian van Turnhout, who delivered similar legislation in Ireland, told our committee:

"The running-out-into-traffic argument was used in Ireland. Someone on the radio helpfully gave the example of her grandmother, who has Alzheimer's. She said that she would not think to hit her grandmother if she ran out into traffic, so why would we choose to hit someone of similar cognitive ability but who was smaller? ... Our law was saying, basically, 'You can hit someone as long as they are smaller than you'."—[*Official Report, Equalities and Human Rights Committee*, 21 March 2019; c 6.]

I agree with Jillian van Turnhout and every proponent of John Finnie's bill, and I repeat, that it is wholly wrong that the smallest people in our society should be the only ones people can raise a lawful hand to. I support John Finnie's bill.

15:13

Angela Constance (Almond Valley) (SNP): I confess that I find it pleasing that an ex-police officer has introduced the bill, because it tackles head on many of the lazy stereotypes about those who serve or have served in our justice system. Mr Finnie is to be commended because, although I support his bill unreservedly, it nonetheless raises an emotive subject that is difficult to discuss, because it taps right away into at least one of three things.

First, as has been mentioned, there are those who were smacked, skelped, hammered or leathered—members should insert whatever language they choose to use—and who say that that never harmed them. It is not my place to tell someone that their personal testimony is wrong, and we know that some folk are undoubtedly more resilient than others, but it is fair and accurate to point to a body of evidence that says that, overall,

physical punishment is more harmful than helpful and that, at the end of the day, it does not work.

Secondly, we also encounter adults who will recount their childhood experience with pain. Although their experiences may well have been in keeping with the times in which they grew up, that pain is not always associated with the severity of the physical punishment, but how the punishment made them feel. Not that long ago, I visited a day centre for older people. One lady was giving forthright opinions, as is her right, about how some young folk need to be brought into line. That resulted in one of the gentlemen present making one of the most emotional pleas that I have ever heard in my life about why no child should ever be hit.

Thirdly, another area that we bump up against makes this issue difficult to discuss: parents. Parents of today, with all our worries, are anxious about doing the right thing and whether we will be judged by those who are meant to be supporting us in doing what, at the end of the day, is the most important job that we will ever have.

Liz Smith: Will the member take an intervention?

Angela Constance: No, I will decline. I will not take any interventions today because, as is the case with good parenting, it is important to remain calm.

I point to the fact that today's parents are those least likely to smack or even to find doing so useful. In my experience, most parents do not want to smack their children. If they smack them, they do so because they are at the end of their rope and then instantly regret it. Yet, as citizens and as a society, we still find it hard to find the best and the simplest ways to support parents.

A number of years ago, I was at the shops. The scene that I am about to describe will be familiar to many members. A young woman was shouting at her wee one and yanking him up by his arm. It was really difficult to watch, because I thought that his arm might come out its socket. I had real anxiety about what I—the local MSP, a former social worker and, to boot, an education minister at the time—should do, if anything.

I did not want to ignore the distress of that mum or her wee one, but nor did I want to be intrusive or heavy handed. I started rummaging about my handbag, found a sweetie, sidled up to the mum and asked her if it would help if I gave the wee one that sweetie. That was just enough to interrupt the flow—the wee one glowered at me and then gobbled up the sweetie. All that I said to the mum was, "It's no easy, is it?"

The young woman had not only a toddler but a newborn. She was absolutely knackered. I would

not support the bill if I thought for one minute that it would increase the prospects of mums like that young woman being criminalised.

I accept that all countries and jurisdictions are different, but there is considerable comfort to be taken from the fact that 54 countries have travelled this road before us.

Oliver Mundell: Will the member take an intervention on that point?

Angela Constance: No, thank you.

The UK is one of only four European countries that has yet to travel this terrain, so we are not exactly blazing a trail. Although the bill is not a silver bullet, it will help us have a better discussion about parents hitting their kids and therefore a better response to supporting parents.

Let us remind ourselves about the detail of the need to be compliant with the UNCRC and the wholesale approach of article 19(1), which calls on Governments to

"take all appropriate legislative, administrative, social and educational measures to protect the child".

Surely, the bill is an incremental extension of GIRFEC.

We should be helping to support the behaviour change that is already happening, and the law needs to be clearer, with children having the same protection under the law as adults. By removing the defence of justifiable assault or reasonable chastisement, we would not be changing prosecution or child protection practice—the committee heard oodles of evidence that demonstrated that. In my view, Mr Finnie's bill does not just seek to do the right thing; he has also found the right way to do it.

15:20

Annie Wells (Glasgow) (Con): Throughout stage 1, I have been clear about my concerns about the Children (Equal Protection from Assault) (Scotland) Bill. None of us in the chamber would ever condone violence against a child, nor would the public. Yet we are debating a bill that, if passed, would see many loving parents criminalised. It is absolutely key to the debate that we make the distinction, which is recognised by the current law, between reasonable chastisement by parents and disproportionate punishment or assault.

Members may disagree with me on that point, but there is no way of escaping the fact that the bill would be practically unworkable. In 2002, the Justice Committee dismissed a similar proposal on the grounds that it would be unworkable and unenforceable and that there was no evidence to suggest that it would reduce harm to children.

This time round, the bill has been under the watch of the Equalities and Human Rights Committee, of which I am a member. As Oliver Mundell and I said in our minority statement, we are not convinced of parents' support for the bill. We also believe that it would not provide legal clarity and that, as currently drafted, it might be open to future legal challenge. In our view, the bill would create a small, but not insignificant, grey area in which the use or perceived use of physical force to protect a child's safety or for the purposes of restraint by parents might be misconstrued or reported to the police as assault. In practice, the police would, at the very least, have to instigate some form of investigation into the circumstances around extremely minor cases. Such situations would no doubt bring stress and angst to many loving and caring parents.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Will the member take an intervention?

Annie Wells: No. Like Angela Constance, I would prefer to keep the debate calm.

How frequently such referrals would be made to the procurator fiscal and whether they would lead to full-blown criminal trials is still unknown. The Crown Office and Procurator Fiscal Service stated to the committee that it is "quite possible" that reports to the police would rise. Police Scotland stated that the bill would increase reporting of crimes, with the potential cost and resource implications that that would bring. Many of the written submissions to the committee raised concerns that the bill would increase pressures on services such as the police, courts and social work.

Significantly, the Lord Advocate has not yet provided oral evidence to the committee. Given that, if the bill were to be passed, the Crown Office and Procurator Fiscal Service would have to make determinations on whether to criminalise parents, I believe that hearing such evidence is vital, and I am pleased that that will take place next week.

As we mark 20 years of devolution through the reinstatement of the Scottish Parliament, we should be thinking about how we can pass good, clear, uncomplicated legislation that must be workable—not legislation that, if it were to be passed, would potentially come under scrutiny for years to come.

I would like to raise a final point in relation to the Government's right to interfere with family life. Polling has shown that parents in Scotland do not support the bill. In 2017, a YouGov survey found that 54 per cent of Scots said that smacking should not be banned, and that only 25 per cent of people supported a ban. A month after the bill was introduced, a Panelbase survey found that only 30

per cent of people supported a prohibition on smacking, and that more than half—53 per cent—believed that it should be allowed.

Alex Cole-Hamilton: Does the member recognise that other surveys have shown that parents support giving children equal protection from assault? Does she feel that the Parliament should always follow public opinion, whatever it says? Should we not sometimes try to lead it?

Annie Wells: What I am trying to say is that we need to pass good legislation that is workable and enforceable.

Over the past few months, many constituents have come to me with concerns about the risks that the bill would pose to loving and caring parents. They feel that, despite its best intentions, the bill would represent an intrusion into family life. One individual stated that it suggests that the Government is above parents and will—if the bill is passed—have decision-making power in the home. Another stated that parents know their child best, and only they know how best to approach the sometimes very difficult task of parenting. As with the named person legislation, the bill implies that parents do not know what is best for their children, and that they cannot be trusted to make the distinction between reasonable chastisement and assault. The reality is that legislation already—rightly—makes that distinction.

If meaningful work is to be done on eradicating violence against children, we should not divert the focus of police and prosecutors on to good and loving parents who choose—often only very occasionally—to use mild physical intervention to discipline their own children.

Maree Todd: Will the member take an intervention?

The Deputy Presiding Officer: The member is in her last minute.

Annie Wells: The bill represents a heavy-handed approach that—despite its best intentions—may in fact distract from our responsibility to protect children. The current law already protects children from violence, and it works well. The reality is that a majority of Scottish people are against the bill, as it would criminalise loving parents. We should listen to those concerns, avoid the temptation to virtue signal and focus on passing good legislation. That is why I will not support the bill at stage 1.

15:26

Rona Mackay (Strathkelvin and Bearsden) (SNP): I am very happy to speak in the debate and state at the outset that I am fully supportive of the bill. I thank John Finnie for introducing it.

The Scottish Government has always strived to promote and protect children's rights, and the bill is an integral part of that. It would bring Scots law into line with the UN Convention on the Rights of the Child, which makes it clear that there should be an end to corporal punishment in all settings, including the home.

Presently, the United Kingdom is one of only four countries in the EU that have not legislated against the physical punishment of children in all settings. Scotland must lead the way here. Children do not have the same protection against assault that adults do, and that is simply shocking. Hitting children can never be justified. There is no such thing as justifiable assault—if the defence is not there for adults, why should it be there for children?

Alex Cole-Hamilton: The Conservatives have said several times during the debate that this law is unworkable. Does Rona Mackay agree that the defence of reasonable punishment or chastisement used to apply to men's assault of their wives and servants, but that—happily—that defence was repealed some time ago?

Rona Mackay: I absolutely agree that the defence of reasonable punishment is totally archaic and should be removed entirely.

If someone hits their child, it is an admission that they—as an adult—have lost control. In addition, lashing out can only send a message to the child that hitting will bring the desired result. We know that children are affected by learned behaviour, and that hitting them will result in problems for them at the start of their lives. For example, they will lash out at nursery or school to get the result that they want, and such behaviour can carry on throughout their life.

The bill is not just about changing the law. As the committee's stage 1 report stated, alongside a legislative solution, there needs to be

"a comprehensive public education and awareness campaign".

Many years ago, I witnessed a distressing scene outside my local supermarket. A mother and her young son—who was probably aged about 12—were physically fighting with each other, kicking and slapping in equal measure. Shoppers looked down, embarrassed, and nobody intervened, including—I am ashamed to say—me. That incident has stayed in my mind for years after I witnessed it. If the correct legislation had been in place, I am certain that people would have stepped in to say that that behaviour was unacceptable and illegal. However, nobody wanted to intervene, believing that it was a private matter. I never want to see anything like that scene again, and that is just one example of why I am entirely supportive of the bill.

In my view, there is no reasonable argument against equal protection for children. As we have heard, an excellent briefing from Children 1st, Barnardo's and NSPCC Scotland points out that former Irish senator Jillian van Turnhout—who was instrumental in legislation change in the Republic of Ireland—states that social workers say that they now have the ability to send a clear message to parents. They can say to them: "You're not allowed to hit your children, so let's talk about what you can do. Let's talk about positive parenting".

In Ireland, there is an overwhelmingly positive message from civil society organisations and state agencies regarding the clarity that the change in law has brought. I believe that civil society in Scotland will experience that, too. The bill, and raising public awareness of it, will help to create the culture change that has been seen in other countries, and which has been seen in Scotland around public health issues such as smoking and seat belts. It will clearly show that Scotland does not tolerate violence against anybody, particularly the smallest, most vulnerable people in our society: children.

I believe that legislators have a duty to act when it becomes clear that the law is out of step and out of date with what the evidence shows. The evidence shows that physical punishment does not work and can be harmful, and children and their families deserve a law that reflects that. The bill is about changing attitudes to the physical punishment of children in Scotland. It is not about making prosecutions easier or criminalising people, but about preventing others from carrying out such actions in the first place, because we know that they are harmful.

My grandchildren cannot believe that when I was at school, children were assaulted by the belt as a punishment. As they grow up, I want them to know that it was this Government in Scotland that gave them equal protection against all forms of violence. It is our duty to do so for future generations.

I am delighted to support the general principles of the Children (Equal Protection from Assault) (Scotland) Bill.

15:30

Rhoda Grant (Highlands and Islands) (Lab): I am sure that there are few parents who could put their hands on their hearts and say that they have never smacked a child. Not only were people of my generation used to being smacked as children; at school, we ran the gauntlet of the belt, which—I am pleased to say—is long gone.

It is clear that using different forms of non-physical chastisement works better and takes the

tension out of a situation. For example, a time out removes the emotion, but lets the child know that they have done wrong and have forfeited their freedom as a result.

As I said, in my youth, physical punishment was widespread at school and at home. Most of it was carried out proportionately, but some was not, and it was difficult to see where the line was drawn. When physical punishment was banned in schools, we heard the same arguments that we are hearing today. Children went home with bruised and bloodied wrists—how on earth was that right? I do not think that anybody would go back to those days.

I remember walking down the street ahead of some adults and children a number of years ago. One little boy was whingeing away—yes, he was annoying, but he was hardly bad. He was warned to “shut up” a couple of times, then I heard him being physically punished. I was ahead and could only hear it. I could hear the smacks raining down on him and I could hear his screams of pain—the more he cried, the more he was smacked. Alongside that came the verbal assault about how terrible a child he was. There was no love whatsoever in that punishment and the horror of it remains with me to this day. I am clear that it was not reasonable chastisement, but how could I prove that? Should I have intervened? To my shame, I did not. I went home, feeling sick to my stomach. I did not see it; I heard it. I wonder what became of that child. He will be an adult now, but his start in life left me with little hope for his future.

We have all witnessed a child doing something naughty, such as running into the road without looking. We have seen the parent grab an arm and pull the child back and heard the parent shout at them, telling them how dangerous it is. No one questions the reaction to a fright—frankly, we would do the same if an adult ran into the road, and no one would consider it assault.

Prosecutions need to be in the public interest and there has to be intent. We hear from other countries that removing the protection of reasonable chastisement has not led to an increase in prosecution, but it does remove a defence against abuse.

We all know the difference between assault and intervention to promote safety. To say that parents will be criminalised is, I believe, nonsense. That said, I am sure that there will be a few spurious reports, especially from parents who are at war. However, we have checks and balances in our justice system. There is a process to go through, including a police investigation, corroboration and the oversight of prosecutors, which provides safeguards against spurious prosecutions.

Liam Kerr (North East Scotland) (Con):

Rhoda Grant talks about people making spurious reports. Presumably, on her analysis, perfectly good parents who could be subjected to the criminal justice system would be seen as collateral damage. What is her view on that?

Rhoda Grant: That is not a reason to continue to allow the assault of a child. There will always be spurious allegations, but we need to deal with them and make sure that anyone who makes them is charged with wasting police time, apart from anything else. That does not mean that we should not legislate to protect children.

There are some who say that the change would interfere with family life. However, the law as it stands currently interferes in family life by allowing a different bar with regard to chastisement by a parent compared with any other adult. To follow that argument through to its conclusion, it could be argued that taking action against domestic abuse is also interfering in family life. For most of us, the family is the safest place to be: surrounded by loved ones who have our best interests at heart. That is not the case for all. We know child abuse happens. How many others like me did not interfere because the law allows reasonable chastisement? How does my reasonableness compare with someone else's? The law needs to protect young and old alike.

Oliver Mundell: The member raises an important point because people have different ideas about what is reasonable and what is severe enough to merit intervention from the police. Does the member agree that it would be better if the bill set out in detail tests that make it clear and obvious what is right and what is wrong?

Rhoda Grant: We all know the difference between assault and pulling somebody back from the road. We do not walk down the street wondering whether someone is being assaulted. If we see someone being assaulted, we know it, and it is the same with children.

Oliver Mundell: Will the member give way on that point?

Rhoda Grant: I want to make some progress. I answered the member's earlier intervention.

It is clear that we should not have a different bar for children from that which we have for adults, because we recognise what assault is. If we start trying to categorise that in the law, we will create loopholes, which would be unhelpful.

I understand that there are differing views about the issue. Who has not had a moment of fright with a child and grabbed them and smacked them? That does not mean that it is right. It takes time and consistency to make time out and other alternatives work, and we all know that parents

face competing demands. However, we are the adults. The parents are the adults, and we need to educate society on good parenting skills.

We need to learn patience with children. I will finish with this small point. How many of us have seen a child having a meltdown or a baby crying and seen people tutting at the parent for not controlling that child? On such occasions, I have also watched as other adults stepped in and helped out. We all need to be more tolerant and learn to step in and help rather than criticise.

15:37

Gail Ross (Caithness, Sutherland and Ross) (SNP): I agree with what Rhoda Grant said in the last paragraph of her speech.

I thank the member in charge of the bill, John Finnie, for bringing it forward, and his staff for all their hard work.

It is worth restating that article 19 of the UN Convention on the Rights of the Child says:

“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence”

from any person who has care of the child. We are incorporating the UNCRC into Scots law in the current parliamentary session. We introduced getting it right for every child; we have one of the most sophisticated, welfare-based systems of dealing with children who offend; we have a baby box; and we are becoming trauma informed. However, if a parent or a carer is charged with hitting a child, they can still fall back on a legal defence of “reasonable chastisement”.

As we have heard, the bill does not create a new offence; it removes a defence. It also aims to foster a change in societal attitudes with alternative methods of positive parenting that do not include punishing children physically. As John Finnie and Rona Mackay said, parallels have been drawn with other culture changes that began with legislation that might not have been popular at the start, such as the wearing of seat belts and the ban on smoking indoors in public places.

In evidence sessions at the Equalities and Human Rights Committee, the majority of witnesses agreed that the evidence in favour of removing the defence is overwhelming and the bill must become law if we are to see a change. I thank all the witnesses who gave evidence. I thank especially the clerks, who did a fantastic job in sometimes extremely challenging circumstances.

Despite what has been written in the minority statement, the convener and the clerks made every effort to get different views on whether the principles of the bill could be supported. We heard from some witnesses that smacking, used in the

context of a loving family setting and administered only in extreme circumstances, perhaps to communicate a message of safety, could and should still be used. However, the overwhelming volume of evidence explained why even what might constitute mild or reasonable smacking should not be used. NHS Tayside told the committee that physical punishment of children is associated with

“a range of adverse outcomes including emotional and behavioural problems, anxiety and depression, physical abuse and anti-social behaviour and violence in childhood and adulthood. Additionally, the evidence is that physical punishment doesn’t work—it is ineffective in achieving moral internalisation of the values and behaviours the discipline is trying to encourage.”

Why do parents smack? Is it just a momentary lapse of control, or is it used systematically by parents to communicate? Well, it can be both. I pressed the point in two of our evidence sessions, in order to understand better why smacking is used. I was told by one witness that

“smacking is communicating with a child through ‘light pain’”

and by another that it was, indeed, a “slightly painful thing”.

Should children learn through fear of pain? No, I do not think that they should. Children should learn through love and understanding.

Liam Kerr: The member knows that I have a lot of sympathy for what she says, but is the logical extension of that not that it is better to educate parents not to go down that route than to risk criminalising them?

Gail Ross: I am happy that Liam Kerr has raised that point, because I will address it later in my speech.

There were a number of concerns about criminalising parents and additional burdens being placed on resources and existing staff. We heard evidence that other countries, such as Ireland, that have introduced similar legislation have seen little or no increase in the prosecution of parents. Nevertheless, we envisage that there may be an increase in reporting and that resources will have to be put in place to deal with that. That will include more positive parenting advice and help for families for whom English is not a first language and who may come from countries where corporal punishment is used more widely. As has been mentioned, should the bill become law, there will also have to be an awareness-raising campaign and guidance for professionals and organisations.

Angela Constance, in her brilliant speech, talked about parenting not being easy. All the parents in the chamber will agree with that, but a person does not need to be a parent to know that this is

the right thing to do. We need to be very careful that the message does not make children who have been smacked think that they have been damaged in any way. We must also ensure that parents who currently use or have used smacking in the past are not made to feel guilty or that they have done something wrong. This is not an exercise in guilt; it is about education and understanding.

The bill sees the rights of children put on a par with those of adults. It encourages a culture change. It has been argued that, in this case, a change in culture cannot happen without legislation—that deals with Liam Kerr's point. If we were to undertake a public awareness-raising campaign that said there is no justification for hitting a child but there was still a justification for it in our legal system, that would send out completely the wrong message to parents.

I leave members with the words of Jillian Van Turnhout, a former Irish senator and a committee witness:

"We know that when a child is hit, they immediately forget everything that happened beforehand, because the person whom they love and cherish has hit them. There is no connection to what the child did."—[*Official Report, Equalities and Human Rights Committee*, 21 March 2019; c 7.]

The law is clear that a person should not raise their hand to another adult; it needs to be clear that they should not raise their hand to a child either. The bill brings that clarity.

15:44

Gordon Lindhurst (Lothian) (Con): It gives me no pleasure to speak in today's debate, but someone needs to speak up for Scotland's children, parents and families. Our current criminal law rightly prohibits parents from assaulting their children, and that is the way it should be. I think that that is a unanimously agreed proposition—at least, I would hope that it is. We already have the right laws and procedures in place to guarantee that. The misleadingly named Children (Equal Protection from Assault) (Scotland) Bill is not about protecting, supporting and nurturing our children and families; it is a misguided attempt to tell parents how to raise their own children under threat of being treated as criminals and facing the full force of the state if they do not.

John Finnie: Will the member take an intervention?

Gordon Lindhurst: I will not take one at this stage, as I want to address the imbalance that has existed in the debate before this place.

However well meaning some supporters of the bill may be, they overlook that crucial point.

Families are the bedrock of any stable and civilised society in which the best interests of children can be protected. The state cannot pretend to replace the family, and one that does so will fail.

Alex Cole-Hamilton: Will the member take an intervention?

Gordon Lindhurst: Not at this moment.

That point was clearly made by the UK Supreme Court in the named persons case.

In his recent Reith lectures, on BBC Radio 4, the recently retired justice of the UK Supreme Court Jonathan Sumption QC made a key point about the problem with a lot of current law making. He said:

"We are afraid to let people be guided by their own moral judgements in case they arrive at judgements which we do not agree with."

That is what we are dealing with here, and such bad law upsets good families.

Consideration of the bill before us has been a far cry from the informed, careful and considered approach that was taken with the current law, which was clarified in 2003. Supporters of the bill have had the free run of proceedings before the Parliament and in committee. In spite of an overwhelming response to the committee from members of the public who were against the bill, it chose instead to hear overwhelmingly in its public proceedings from supporters of the bill. Nor did it hear in those public sessions from many who made submissions against the bill, including, crucially, individuals in the front line who deal with the courts and child protection.

John Finnie: Will the member take an intervention specifically on that point?

Gordon Lindhurst: Not at this stage.

Those from whom the committee did not hear included experts in the practice in their field and in the workings of our current law. Surely the Lord Advocate, as the head of Scotland's prosecution service, should have appeared before the committee to answer questions on the bill, but he did not. We are told that he has been invited to give evidence later. In those circumstances, it is entirely unsatisfactory for Parliament to be asked to approve the bill.

What of the unsatisfactorily unresolved issue of the alteration of the committee minutes, which was rightly raised by my colleague Oliver Mundell in his point of order on 15 May, and the provision of parliamentary and other publicly funded resources to support and promote the bill on all sides, of which there was a lack of availability to those who wished to scrutinise the bill? Lack of openness and transparency, an unwillingness to listen and a

failure to respond to concerns that have been raised are issues that simply will not go away.

My fear is that the committee and the Parliament will receive a simple fail from the public on this one if the situation is not addressed now, because the message that is being sent out 20 years after the Parliament began is that it is neither the people's Parliament nor a listening Parliament.

We are being asked to approve a bill and a proposition that has not changed one iota since conception to coming to this point in spite of the information that the Scottish Parliament information centre has provided that points to crucial differences in other legal systems. The bill does not propose what is law in New Zealand or in other countries that are relied on. Those differences should have been the subject of full consideration and research. Such research has not been carried out, in spite of my request for it, and the unanimous public evidence from supporters of the bill to the committee that parents should not be criminalised by fining them or imprisoning them—which is what the bill provides for—has, equally, been ignored. If the bill needed amendment at the outset, it obviously does now.

Elected politicians should not assume that they have some sort of divine right to tell others what to do, so I will conclude by quoting the words of a mother and a constituent of mine who wrote to me last week:

"The State has ever made an awful parent. I am tired, of special interest groups, selective consultations, liberal virtue-signalling and media bias trumping plain decency and common sense. I confess, my faith in politicians to act in line with democracy is at an all-time low. Could you restore it, please—speak, act and vote against John Finnie's Children (Equal Protection from Assault) (Scotland) Bill?"

That is what I shall do.

15:50

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I congratulate John Finnie on his commitment to his member's bill. As someone who has had a few member's bills in this Parliament, I am all too aware of the time and effort that goes into the process.

Like everyone here, I understand but do not support someone smacking his or her children for wrongdoing. I also find it patronising to be told or for it to be alluded to—not by anyone in here—that people of a certain vintage do not want to ban smacking because they hold the view that "I was smacked and it did me no harm." I am not in that category. Times change—and rightly so. Ross Greer reminded us that the tawse was quite rightly

banned decades ago. My sons have never smacked or used physical punishment on their children, and neither do I on my grandchildren—what granny does?

I would be hard pressed to recall any time in recent years when I have seen a parent physically punishing a child in public. I have seen parents shouting and even screaming at their children in the supermarket, and, as a parent, I understand why that can happen, although that can be just as harmful. However, I have not seen parents hitting their children. Therefore, the first question is: do we need this legislation? Policies that have changed our views on disciplining and parenting, the provision of free nursery places and education and social mores have meant that, in public places, smacking is, to all intents and purposes, gone for good—or, at worst, takes place out of sight. Indeed, rights can be enshrined in common law and in case law, not only in statute.

The second question is: if this bill proceeds as it stands, what will the impact be in private places such as the family home? Will the parent who relied on so-called justifiable assault—a most unfortunate term—think twice? Will parents postpone punishment with the words, "Wait till I get you home"? If the bill is breached, who will report it? What will the evidence be? Will every instance require a police visit and a report? Corroboration would be required for any proposed prosecution.

Neil Hunter of the Scottish Children's Reporter Administration stated that

"the existence of a spectrum of violence in children's lives—particularly in the household—has a very adverse impact on their wellbeing and outcomes."—[*Official Report, Equalities and Human Rights Committee*, 21 March 2019; c 29.]

I could not agree more.

John Finnie: I note that the SCRA supports the bill.

Does the member acknowledge that much of what she has said in relation to assault on children in the house could apply to domestic violence, which is now rightly addressed through a different approach by not only the public but the statutory agencies?

Christine Grahame: I will address the point made by the children's reporter. Neil Hunter said that it is "particularly in the household" that violence has an adverse impact, and my concern is that, although the proposed legislation may do something in the context of public places, I cannot see how it could successfully operate in the home, where it would be difficult to police and difficult to prosecute.

The stage 1 report remarks on the small number of prosecutions that followed the introduction of the Criminal Justice (Scotland) Act 2003, which prohibited shaking and the use of an implement. However, the small number of prosecutions, which is referred to in the report, does not necessarily establish that the 2003 act changed behaviour—it may have, but we do not know. We are not told in the report how many police investigations there were, how many reports there were, how many of those cases went to the Crown and how many cases the Crown did not proceed with through lack of evidence or because it was not in the public interest to do so.

We need detailed evidence. Did parents stop shaking or hitting children—in public, at least—because of public pressure or because of the 2003 act? How many members of the public even know of the 2003 act and what it does? We know that children are still hit, shaken, beaten and smacked in private. We find out about that when cases end up with social work or when tragedies make front-page headlines. Will the bill change that? I do not know, but it seems from the social work evidence—at least as I read it—that the bill will not impact on the social work case load.

Then there is the necessity for clarity in the law. The bill states that the rule that

“the physical punishment of a child in the exercise of a parental right or a right derived from having charge or care of the child is justifiable and is therefore not an assault, ceases to have effect.”

According to that definition, such physical punishment would therefore be an assault. Whether the person would be prosecuted is another matter, but it would still be an assault. As I understand it, the definition of assault in Scots law is that it is a physical attack on another, or the threat of such, that is intended to cause bodily injury or that puts the victim in a state of fear that he or she may be about to suffer bodily injury. To me, those two definitions do not sit side by side.

Let us unpick this. If a child was slapped across the arm for some wrongdoing, that would fit with the member's definition of an assault, but would we call it an attack? By definition, it would be an assault, so some inquiry would be required, although, at the end of the day, the Crown might decide that it was not in the public interest to prosecute. I agree with other members that it is a shame that evidence was not heard from the Lord Advocate before the stage 1 report was produced. That evidence is crucial, as the Lord Advocate is the head of prosecutions and considers what is in the public interest in Scotland.

Sticking to public places, what is a parent to believe it is appropriate to do? A slap on the hand for reaching for the forbidden sweets at the check-out would certainly be an assault as defined by the

bill. Although I understand the member's entirely worthy motives, there are too many unanswered questions for me to support the bill as it stands. An assault, like an elephant, is better defined visually. We know an elephant when we see one, and we should certainly know an assault when we see one.

Statute or legislation can be a heavy-handed—forgive the metaphor—way of delivering social change. As the bill stands, it is not fit for purpose and has a whole host of possible unintended consequences. As Angela Constance rightly said, it will be good if the bill leads to a better discussion on parenting, but bills need to be robust and tested before they are enacted and become statute. We need more evidence—at least, I need it before I will support the bill. Accordingly, I intend to abstain at decision time. Good intentions must be matched with good legislation.

15:57

Claire Baker (Mid Scotland and Fife) (Lab): I thank the committee for the work that it has done in recent months to produce the stage 1 report. The committee has attempted to be thorough and to engage in the debate that surrounds John Finnie's member's bill. I also thank the member and his team for their work.

I recognise that the Conservative members of the committee have taken a minority position on the bill—one that questions some of the committee's work. However, as all of us who are on committees will recognise, it can be challenging to satisfy all views on what are sometimes contentious issues. As an MSP who has scrutinised the Census (Amendment) (Scotland) Bill, I have recent experience of that.

Some members will put the case that has been articulated during the stage 1 evidence: that the bill will negate the rights of parents and the right to family life, that it demonstrates the interference of the state, and that it will deny the right to religious freedoms. However, I do not find those arguments to be convincing reasons for stopping the bill's progress. I am convinced by the argument that children should receive, under the law, the same protection as adults. I agree with that general principle and support the bill's proceeding on that basis.

Although John Finnie introduced the bill in 2018, this is not the first time that the issue has been discussed in Parliament. My former colleague Scott Barrie, who was the first MSP for Dunfermline, argued the case in the early days of the Parliament and received quite a challenging time from the media. The then Scottish Executive introduced a consultation on the issue before going on to introduce legislative changes.

We can look back on that previous debate and reflect on why support was not broad enough at that time. The law was changed to give parents a justification of reasonable chastisement in certain circumstances. We did not then have a commitment to introducing the United Nations Convention on the Rights of the Child. The voices of children and young people were not heard or listened to as they are now, and Parliament in its early days was not free of controversy and questions about its relevance. All those factors contributed to the limited nature of the changes that were made.

The bill represents unfinished business for the Scottish Parliament. As a serious modern legislature that is committed to meeting its international human rights obligations and to not being in breach of the UNCRC, we need to remove the defence of reasonable chastisement.

We have been on a path that has dramatically changed our society's attitude to children and young people. We no longer have corporal punishment in schools, and we recognise children's right to protection. Furthermore, physical assault as a means of teaching or controlling children is increasingly unacceptable, and it is now recognised as being counterproductive.

As a society, we still have issues with violence, and although we can point to factors such as alcohol as aggravators in that regard, we should recognise that a society that views physical chastisement of children as acceptable needs to reflect on what terms that sets for adult and future parental relationships. Research into the effectiveness of physical punishment as a parenting tool finds that it is not effective in achieving parental goals. There is little evidence to suggest that it improves children's behaviour in the long term, and it can exacerbate problem behaviour.

Although the committee heard evidence from groups representing adults, it also took considerable evidence from children and young people, including Kirkcaldy YMCA Junior Football Club.

A few years ago, I watched an episode of "Supernanny" that featured a family with loving parents who used smacking as a means of exerting parental authority. The dad, who did the smacking, was not in a rage when he did it—it was a controlled reaction to bad behaviour—and the parents did not think that it caused any harm. However, the programme makers conducted a secret interview with the children in which the children expressed their love for their parents and said how happy they were, but also said that it upset them when they were smacked, and that it spoiled their relationship with their father. I remember that, when the parents saw the

interview, they were absolutely horrified that their behaviour was having that impact on their children. They could not conceive that what they thought was light parental control through smacking was causing their children that level of concern. It changed the behaviour of those parents.

Being a parent can, at times, be difficult. Children of all ages can be frustrating and parents wish to protect them from harm. However, I feel that the suggested examples of prosecutions arising from children getting a tap on the wrist after running into roads or reaching out to fires are trivial. There is no evidence to support the idea that that is what is happening in countries that have enacted similar legislation.

When Dr Louise Hill spoke to the committee, she said:

"The international research indicates that there is no increase in prosecutions as a result of a change in legislation. There is, however ... a decrease in the use of physical punishment and a decrease in physical abuse."

She also said:

"we think that there could be a reduction in prosecutions as a result of the bill, because of the culture change that will happen."—[*Official Report, Equalities and Human Rights Committee*, 28 February 2019; c 38-9.]

At present, the UK is one of only four countries in the European Union that has not legislated against physical punishment of children in all settings. There is no evidence to support concerns that loving parents will be criminalised, or that protection services will be overwhelmed. I respect those who have raised concerns about those issues, and they must be addressed in future stages of the bill or in accompanying guidance, but I believe that the bill is workable and can be implemented in a way that is understood by parents, the police and courts, and that it can be enforced in a way that is sensible and proportionate.

During stage 1, no one argued in favour of hurting children and no one supported violence against children. However, views differed on whether smacking is a violent act. Although the bill received significant support during consultation, there is still a challenge to address in public polling. There is support for smacking, but there is also strong support for protecting children, and some of us see that as a contradiction.

Smacking is not just about the degree of violence; it is about preferring a physical reaction over communication, and exerting power in a way that can be humiliating and hurtful. Adults who defend smacking because it did them no harm still remember that they were smacked, but they rarely talk about the good that it did them. The bill will extend to children the same legal protection as

exists for adults. I am pleased to support its general principles.

16:03

James Dornan (Glasgow Cathcart) (SNP): As others have done, I pay tribute to John Finnie for his tireless work and for his commitment to bringing the bill into being. His bill might not have unanimous backing among members of the Scottish Parliament or the public, but it is a vital step towards creating a fairer and more equal society for everyone in Scotland, at the very heart of which should be children and young people.

A few constituents on both sides of the debate have visited my surgeries to discuss the issue. Although I do not sit on the Equalities and Human Rights Committee, I have, as a father and grandfather, been very interested in the formation and progress of the bill over the past months. It has been worth it, for my part, to try to understand what young people think about being smacked, whether as a form of discipline or—as some parents suggest—as a form of guidance.

The Scottish Youth Parliament is an institution of which we should be immensely proud. Before I make my point, I want to thank publicly the two MSYPs in my constituency, Ellie Craig and Zanib Ahmad, for their hard work and commitment to our community. Of course, I also thank all the other MSYPs whose contributions often help to mould legislation and debates such as today's.

As John Finnie said, the Scottish Youth Parliament asked about physical punishment in a consultation in 2016, to which it received more than 72,000 responses from young people, 82 per cent of whom agreed that physical assault on children should be illegal.

It is pretty clear from research and anecdotal evidence that children find smacking hurtful and upsetting. An adult lifting his or her hand to a young child is a terribly traumatic experience that has no long-term positive effect.

I grew up in a home in which both parents were pretty strict and I was always well aware of where the line was. My father was able to command my respect and lifted his hand to me only twice. I can assure members that I completely understand why he felt the need to do that at the time.

The only time when I physically punished one of my kids was when we were crossing the road. He slipped out of my hand and stepped back into the road. I managed to grab him and pull him back to me. I then skelped his bahookie while hugging him at the same time. Talk about mixed messages.

The reality of course is that I did not skelp my son to teach him a lesson but out of instinct, based on my fear of what could have happened. He

would have got much more from my show of affection and concern than he ever got from the skelp. That was the case on the millions of occasions when my dad explained something to me or comforted and cared for me, as opposed to the two occasions that I mentioned, which did absolutely nothing for or to me. All that they did was embarrass my dad, just as I was embarrassed and ashamed by my behaviour after the wee yin had run into the road.

A few people have protested about the bill by saying things like, "My parents hit me when I was younger and it never caused me any harm." However, my generation can say that about many things in our youth. I rode my bike without a helmet: it was just luck that I never had an accident. We sat in cars with our children on our knees and prayed that there would not be an accident. I could keep on listing from my youth safety issues that never harmed me. The fact is that the behaviour could have harmed me—as, sadly, it harmed many people.

Legislation such as the bill is an important step in trying to alter our behaviour. That is why the Government and Parliament must take progressive steps to protect our children and encourage parents.

As I said, some constituents have come to my surgeries to express concern that their rights as parents and grandparents are being removed. I have no doubt that those constituents have at heart the best interests of the children in their families, but sometimes we have to acknowledge that our current ways are just not working.

If a member was standing next to an adult who had his headphones on, and lack of concentration led the adult to step in front of moving traffic, the member would pull him back, but definitely would not hit him. Why? It is because we know that that would be assault. What is the difference between that and me hitting my son?

As the law stands, whenever we choose to discipline children by corporal methods we can do so only if we have absolute certainty that in that moment we are feeling no malice, no anger, no rage, no frustration and no resentment towards the child. Who among us could be sure of that? I know that when I hit my son, I did so out of anger and frustration that I had not protected him and prevented him from doing what he did.

Corporal punishment is the most widespread form of violence against children. If the child is old enough to be smacked, they should be old enough for alternative consequences. Surely for the youngest people in our society, discipline should always be about educating them through better methods than that.

When we raise a hand or an object to a child, whatever their age, we signal to them nothing other than intent to cause pain and suffering. No adult will ever look back on their childhood with fond memories of their physical punishments, nor will anyone recall a stark change in their motivation to alter their behaviour. The overriding memory will be fear, pain and upset, all of which are catastrophic for a child's healthy emotional development.

Children are charged to us to care for, in the same way as we should care for all vulnerable people in our society. We must take care with the fragility of those who are in our care, and we must understand that each and every action that we take will impact on their life—not just in that moment, but for the entirety of their time on this earth.

Instead of more discipline, we need more tolerance, patience and love. Countries all over the world are taking steps to protect the rights of children by affording them equal protection. Some 54 countries have prohibited physical punishment of children, and a further 56 have committed to reforming their laws to ban physical punishment in all settings.

The United Kingdom is one of only four EU states not to have legislated to prevent physical punishment of children. I am therefore proud that this Parliament is taking the first steps towards a brighter future for all our children. I fully support the principles of John Finnie's bill.

16:09

Margaret Mitchell (Central Scotland) (Con): I welcome the opportunity to speak in this debate on the Children (Equal Protection from Assault) (Scotland) Bill. The stage 1 report states that the purpose of the bill is

“to abolish the defence of reasonable chastisement, and drive a cultural change to discourage the use of physical punishment. The defence of reasonable chastisement can currently be used by parents and others caring for or in charge of children if they are prosecuted for assaulting a child. The defence allows for physical force to be used to discipline a child, with some restrictions set out in the Criminal Justice (Scotland) Act 2003, s.51.”

Although I do not for a second doubt the well-intentioned motivation of John Finnie in introducing the bill, or that of those who support it, the fact is that rather than driving cultural change and discouraging physical punishment, the bill will criminalise reasonable chastisement and the parents who do not rule it out as a measured and proportionate tool in the box, to use in certain circumstances, should they consider it to be appropriate, effective and necessary.

Alex Cole-Hamilton: Will the member give way?

Margaret Mitchell: I will give way for this intervention, but I want to develop the argument.

Alex Cole-Hamilton: Margaret Mitchell referenced use of a “proportionate tool” and the Criminal Justice (Scotland) Act 2003, which sets the limits of physical punishment to banning head shots, use of implements and shaking. That is it. Does she not recognise that that creates confusion and a grey area that will lead to parents harming their children quite significantly in deploying that resource?

Margaret Mitchell: The confusion in the debate—for which Alex Cole-Hamilton, too, is guilty—is to talk repeatedly about assault and assault of children without taking any cognisance of what determines assault in law. Christine Grahame made the point very effectively that it is about context, the circumstances and the relationship. By abolishing the defence of reasonable chastisement, that whole law of evidence is being turned on its head.

Supporters of the bill insist that criminalisation is not what the bill aims to achieve. Nonetheless, that will, without doubt, be a consequence of abolishing the defence. That cannot be dismissed or glossed over. Put simply, it is not satisfactory or acceptable to legislate for one outcome and to hope for another. Above all, the law must provide clarity.

John Finnie: Will the member take an intervention?

Margaret Mitchell: If John Finnie does not mind, I realise that I am speaking in the minority, so I want to develop this argument, which I think is worth listening to.

The Crown Office and Procurator Fiscal stated in a written response to the Equalities and Human Rights Committee that it is quite possible that the reporting of the assault that is described by the bill will increase through removal of the defence of reasonable chastisement, and through the increase in reporting that will result from the publicity and awareness raising that usually accompanies legislation.

The Crown Office has acknowledged that there is a lack of case law to determine when physical contact that is of an extremely minor physical nature could be considered to meet the public interest test on prosecution. However, we know that, under the bill's provisions, cases are to be assessed individually, and that in order to establish whether there was criminal intent there will, at the very least, be a police investigation and a referral to the procurator fiscal, or even a criminal trial. A valid question to be posed is what

will happen to the children when those investigations are in progress. Will they remain with their parents or be taken into care?

John Finnie rose—

Margaret Mitchell: If the latter is to be the case, that could, given the delays in the court process, result not just in a lengthy separation but in all the other well documented trauma-related adverse consequences that are suffered by children in care. However, if, as John Finnie has said,

“The bill’s intention is not to criminalise parents, but to set out a direction of travel about child welfare and child upbringing”—[*Official Report, Equalities and Human Rights Committee*, 28 March 2019; c 21.]

and to support children, it seems to me that there is a better way to move forward.

Language is important. In the bill, light and rare physical chastisement is equated to child abuse and is described as assault. That is emotive language that polarises opinion and stifles informed debate about how to achieve the best child welfare policies.

More generally, further work requires to be done regarding, on one hand, use of restraint and physical intervention by a parent to keep a child safe, and on the other, restraint in education and care settings, where the behaviour of certain groups of children can be challenging, and in which restraint is used in order to contain them, not to punish them.

I accept that in order to drive the cultural change to discourage use of physical intervention there needs to be more awareness and clarification of the existing law, of what constitutes “reasonable chastisement” and, crucially, of the parenting support that is available to families. As was mentioned by Angela Constance and James Dornan, if a parent has smacked a child due to loss of control or stress, surely the focus should be on ensuring that the necessary support is available to help them to cope, and not on issuing a police warning or prosecuting.

At present, the routes that the Scottish Government will utilise to communicate with parents are not clear. The best and most effective way forward is not to rush to legislate to ban the defence of reasonable chastisement, but to support the Equalities and Human Rights Committee’s request for an outline of how the Scottish Government intends to reach families who are not currently engaged with relevant services, and details of the support that will then be made available to them.

16:16

Richard Lyle (Uddingston and Bellshill) (SNP): I remind the chamber that this is a

member’s bill from the Scottish Green Party. Today, I will be out of step with the majority. So be it. The bill raises the spectre of good parents being criminalised for using mild chastisement, and police and social workers having to waste time investigating decent families when they should be focusing all their attention on identifying child abuse.

I am very much against parents hitting, slapping or abusing their kids. It is wrong. Rightly, we are all committed to protecting children from any violence. The law is very clear on the matter—it prohibits all violence against children. Section 51 of the Criminal Justice (Scotland) Act 2003 specifically outlaws shaking and the use of an implement.

Supporters of the bill claim that the UN Convention on the Rights of the Child compels us to ban smacking, but I do not see that in the text of the convention. Article 19 of the UNCRC states that children should be protected from violence, abuse and neglect. It seems to me that Scotland already fulfils its obligations under the convention and that our law is clear and progressive. I remind members that the law in this area was updated as recently as 2004. Back then, another proposal to criminalise smacking was abandoned in what the then cabinet secretary described as a victory for common sense. We are a very long way from days of yore, when parents could belt a child or use the underside of a slipper. Any adult who does that in Scotland today can expect to be punished severely by the courts, and rightly so.

The member’s bill concerns the defence of justifiable assault or reasonable chastisement. That defence allows parents to use a tap on the hand or a smack on the behind without being prosecuted. That is all it does. I am not aware of any evidence from the courts or the police that the law is ineffective or allows parents to use unreasonable force on their children. It will make a tap on the hand or the bottom a criminal offence, which is why the newspapers call it a smacking ban.

My children grew up in a loving environment. I am a grandfather of three beautiful grandchildren, whom I have the privilege of spending time with regularly. They are my life and my wife’s life. My time with them has made me realise that the bill could or would hurt families. It is not uncommon to see a parent or a grandparent giving a child a wee tap on the backside in public, even in a playful way.

I saw that happening as I waited to collect my grandson from primary school one day. A grandfather had his granddaughter in his arms, and he gave her a playful tap. The little girl was laughing but, from a distance, that could have looked like a smack, and it could have been

reported to the police. What then? Someone could have reported that grandfather for what they mistakenly saw.

Supporters of the bill claim that the police will never prosecute those actions, but how can they be so sure? Under the legislation, smacking will be reported to the police, and the police will have to record that as a crime and investigate it. They might arrest a mum or a dad and question them, and that might mean getting a child in a room on their own and trying to get a statement from them against the mum or the dad. Under the legislation, the police and social services will be inundated with trivial reports, which they will have to treat as seriously as they currently consider abuse. I am sure that front-line professionals, who are already under great pressure, will not appreciate the additional workload, especially when resources are so stretched already.

Alison Johnstone (Lothian) (Green): Will the member take an intervention?

Richard Lyle: No.

I wonder how the legislation will be misused in domestic circumstances when relationships between parents have broken down. Dishonest parents might accuse their spouse of smacking in order to prevent access to children. *[Interruption.]* That happens. Do not think that it will not happen, because it will.

It is clear to me and the majority of people whom I represent in the Uddingston and Bellshill constituency that the law in question is unnecessary. The polls that I have seen confirm that 74 per cent of people do not want a smacking ban, and I have received numerous emails from concerned constituents that confirm that.

With the greatest regret, in my 43 years in politics, I have sometimes had to stick up and stick to my guns, even against the tide. Even against the majority, I cannot lend my name to the bill and, in all conscience, I have to abstain. I hope that my reasons for doing so are not misunderstood or misinterpreted by anyone.

The Presiding Officer (Ken Macintosh): Mike Rumbles will make a brief speech.

16:22

Mike Rumbles (North East Scotland) (LD): I was not down to speak in this debate, but I want to respond to Annie Wells, Gordon Lindhurst and Margaret Mitchell in particular.

The issue was raised 16 years ago, when I was an MSP in the first session of Parliament. Like the members whom I mentioned, I was worried about criminalising good parents and—to my shame—I did not support the measure. I am now a convert

to the cause, and I hope that my comments will reassure members such as Annie Wells, Gordon Lindhurst and Margaret Mitchell that their fears about criminalising parents are misplaced.

I changed my mind because of my experiences on the Health Committee in the second session of Parliament, in which we passed the ban on smoking in enclosed public places. We heard the same argument—that we would see a huge rise in prosecutions of previously law-abiding people.

Oliver Mundell: Will the member take an intervention?

Mike Rumbles: I have only one more minute.

That simply did not happen. Because of that, I do not believe for one moment that we will see previously law-abiding and loving parents being dragged into our courts. That will not happen.

Oliver Mundell: Will the member take an intervention?

Mike Rumbles: I have only one minute.

This is not about attacking the rights of good and loving parents or about the state telling parents how to bring up their children; it is about removing the defence in law of reasonable chastisement from people who are already likely to be in front of our courts. I say to members such as Annie Wells, Gordon Lindhurst and Richard Lyle that their worries are unfounded.

This member's bill is about our Parliament doing its job. I gently remind Gordon Lindhurst that this is only the stage 1 debate and that the bill could not be amended before stages 2 and 3. I am therefore somewhat puzzled by his earlier comments.

Gordon Lindhurst: Will the member give way?

Mike Rumbles: Unfortunately, I cannot, as I have only 10 seconds left.

I speak as a convert on the issue. I urge those who are worried about the bill to engage with it at stages 2 and 3. I hope that, after our further scrutiny of it, they will see the sense of the measure, as I have done. I only wish that I had done so 16 years ago.

16:24

Fulton MacGregor (Coatbridge and Chryston) (SNP): It is a great pleasure to speak in the debate as a member of the committee that scrutinised the bill at stage 1 and as a former social worker. I, too, thank John Finnie for introducing the bill.

The bill is really simple for me to support. Its simple premise is to give children equal protection to that for adults. As we have heard from other

members, it will remove an outdated defence that belongs firmly in history.

The Parliament has a strong track record of progressive legislation on, among other things, domestic abuse and children's rights. It is about time that we joined the 54 countries that have been mentioned and removed the defence of reasonable chastisement.

As other members have said and as the committee heard, the vast majority of the agencies that spoke to the committee and contacted us are for the bill, which has strong support from Barnardo's, Children 1st, Amnesty International and many other organisations. That in itself should tell us something. Those organisations support the bill because—to disagree with Tory members and some folk in my party—it is a no-brainer. If we were 20 years down the line, the proposal would be in secondary legislation, although I do not say that to diminish what Mr Finnie has introduced.

We know that physical punishment is harmful and can lead to aggressive behaviour; those points have been made well by others. The Tories have tried to make politics out of the situation—we heard that from Oliver Mundell and Annie Wells, who I mention because they are members of the committee but did not fully engage in the process. *[Interruption.]* They did not.

Annie Wells: Will the member take an intervention?

Liz Smith: Will the member take an intervention?

Fulton MacGregor: No.

Those members say that they are against violence against children, but they are not. They want to keep us in the deep past and they do not have the dignity even to alleviate the public's genuine concerns.

Liz Smith: Will the member take an intervention?

Fulton MacGregor: I will not, because I have not been able to make one intervention today.

Some members, including Tory members, and some in the public have not heard all the evidence, so I will try to alleviate the fears that have been expressed, which Christine Grahame, Richard Lyle and others raised. The bill is not about the criminalisation of individuals. I was a children and families social worker for about 12 years from 2004. In considering the bill and my experience, I thought about what would happen now if a referral was made because of an allegation of an assault or smacking. Social work services and other agencies would investigate and take a measured welfare and support-based approach. If there was criminality to be

considered, that would be dealt with through a joint investigative interview with the police, and a decision would then be made on whether to refer the case to the procurator fiscal, who decides on the public interest test.

The hypothetical situations in which parents would be criminalised for stopping their child running on the road are absolutely ridiculous. That would not happen now and will not happen if the bill is passed. Members should think of the process and the journey that would be required for that to happen. A child would need to say in school or in a health facility that their parent stopped them running on a road; the situation would then be investigated at that point of contact. *[Interruption.]* I see that Mr Mundell is laughing because he knows that that is true, because he is a member of the committee.

Oliver Mundell: Will the member take an intervention?

Fulton MacGregor: I apologise, but I will not.

Margaret Mitchell's example of parents being suddenly criminalised was scaremongering.

Oliver Mundell: Will the member take an intervention?

Fulton MacGregor: No.

Social Work Scotland and Police Scotland told the committee that nothing would change—not a thing—and that referrals would be dealt with in exactly the same way as now. From my experience, I cannot mind once thinking about the defence being used. When I went out to family situations with colleagues, I thought about the support that was around and how to safeguard a family, but I never thought once about a family using the defence.

Any occasions when criminal proceedings were pursued were clear. I started in social work not long after the 2003 act was passed and I probably was not exactly clear about the legislation, which I think is the case for many practitioners. A main principle of John Finnie's bill is to provide clarity for practitioners and parents. Most important, it will send a message about the country that we want to be.

The bill will make the law and processes clearer. Anyone who knows John Finnie and the committee members who are in favour of the bill will know that they can trust us. We have been through the committee process and we would never be in favour of the unnecessary criminalisation of parents, which is the last thing that is on our minds. The evidence from other countries is very clear that that would not be the case—in fact, far from it.

Make no doubt about it, the Tory policy is to degrade the rights of our children. Some people think that the bill is about state intervention. I say to those Tory colleagues of a more liberal standing and to my fellow SNP members who are thinking about voting against the bill to please not leave children with fewer rights in their own home than any adult or animal. Be assured that child support and protection processes in our country are robust and will not allow the fears that the right-wing fundamentalists on the Tory benches want us to believe. They say that people should not vote for the bill because they say that it is an assault on family life and child's rights. That is not on. Please vote in favour of the bill's principles at stage 1.

16:30

Iain Gray (East Lothian) (Lab): We sometimes have debates in which there is a great amount of consensus, but that has not happened today. Interesting points have been made, and I will try to address some of them.

It is worth going back to the basics of why we are pursuing the legislation. There are two significant reasons of principle. The first is equal protection—indeed, “Equal Protection” is part of the bill's title. As many colleagues have pointed out, the bill is not designed to create a new crime; rather, it would remove a defence that is available only when it comes to the chastisement of children. I think that it is difficult to get past the very simple statement that, if it is wrong to hit an adult, it must be wrong to hit a child. Mary Fee gave an example of a carer assaulting a vulnerable adult under their care. It seems clear that that is wrong; it is also very difficult to see why that would be right if that was a vulnerable child rather than a vulnerable adult.

Secondly, there is the principle of rights. A number of members have spoken about the rights basis for the legislation. Indeed, we know that the Government has committed to the incorporation of the UNCRC into our legislation. In 2016, Scottish Labour also promised in its manifesto to do that, so we support that measure.

Ross Greer and Gail Ross have clearly articulated that our current legislation breaches article 19 of the UNCRC. I know that Richard Lyle took issue with that, but I think that the expert opinion that the committee heard is that article 19 has been breached.

Those are two very strong reasons why we need the legislation.

Oliver Mundell: I hear what the member is saying about article 19, but does he not recognise that it is important to put that question to the Lord Advocate before we can say that definitively?

Iain Gray: I am absolutely sure that that opportunity will be taken during this legislative process, and that the point that I have just made and Richard Lyle's earlier point will be fully considered.

It is fair to say that a number of significant concerns have been expressed across the chamber. One concern is that parents would be criminalised, and we have heard about a number of hypothetical injustices relating to situations in which that would happen, but surely the strongest evidence is what has happened in countries that have introduced legislation similar to John Finnie's bill, notably Ireland and New Zealand. In those countries, there has been no sudden criminalisation of thousands of parents.

We have also heard the concern that the police will be inundated with cases. Again, in those two countries, that has not happened. In addition, we see in the committee report that, in their evidence to the committee, the police and the Crown Office and Procurator Fiscal Service did not consider that they would be inundated by reports arising from such a change in the legislation.

Oliver Mundell talked about the restriction of parental rights and discretion; some of his colleagues raised similar issues, including to do with the right to family life. The fact of the matter is that we already restrict parental rights and discretion—of course we do.

Oliver Mundell: Will the member take an intervention?

Iain Gray: No—I am short of time.

The right to family life is not an absolute right but a qualified one. As a number of members have pointed out, it is not protected to the extent that domestic violence within a family is allowed; it is not, because we consider such violence to be unacceptable.

The minister made the point that she supports the legislation, and the Government supports the bill because of its desire to make Scotland the best country in which to be a child. While that is a laudable objective, I have to say that if we want it to be true, we should not fool ourselves into thinking that passing the bill will achieve it. Only last week, we heard that 240,000 children in our country live in poverty. The Poverty and Inequality Commission has spoken of the failure of Government spending to address that. In a similar report, the Institute for Public Policy Research has spoken of the importance of fast-tracking the income supplement, on which the Government is dragging its feet. We should not kid ourselves that by passing this legislation, we will resolve all the difficulties and challenges that children in our country face today.

Some members have spoken about the last attempt to make a similar change, which was back in 2002. I was here at that time, and I believe that attitudes have changed significantly since then—Mike Rumbles’s attitude has changed, for one, and those of the public and civic Scotland have changed very much. Others have talked about the banning of the belt. When I look at a belt now, I cannot believe that, when I was a teacher, children as young as my own grandchildren were being hit by a Lochgelly tawse, which is a pretty big instrument made of leather. When that ban came in, people thought that it was going to cause all sorts of difficulties, yet it did not. Attitudes change over time. However, Ross Greer reminded us that that ban happened only because Grace Campbell went to court. We should change this law before we are forced to do so by a court.

16:37

Liz Smith (Mid Scotland and Fife) (Con): In recent weeks, political commentators have, quite rightly, observed that the 20th anniversary of this place affords us the opportunity to examine how well we do things, and whether we are delivering effective legislation to improve the lives of those whom it is designed to assist. They reflect that such an anniversary is a time to consider what we have got right or wrong, examine our parliamentary procedures and assess whether our political system is sufficiently robust as far as passing good legislation is concerned. I am grateful to Christine Grahame for her very interesting remarks about her earlier time in the Parliament, particularly in flagging up what has to be done in order to make good legislation. She spoke about the Domestic Abuse (Scotland) Bill and the facts that had to be put before the Parliament before we could agree to take action on that issue.

Good legislation must be clear and uncomplicated; based on fairness and maximising the common good; acceptable to the public, who must see it as both useful and beneficial; and, as far as possible, easily enforceable and not open to constant debates about its repeal. Like Margaret Mitchell, I do not doubt for a minute the good intentions of this bill’s promoter, but many of us in the chamber—and not just on the Conservative benches—have grave reservations about what we have before us. That is not just because it does not meet the tests for good legislation, but because it has exposed—

Alex Cole-Hamilton: Will the member take an intervention?

Liz Smith: I will not just now, if the member does not mind.

It is also because the bill has exposed failings in some aspects of parliamentary procedure, especially when it comes to laying the necessary evidence before Parliament, about which I will say more later.

Fulton MacGregor might wish to revise his earlier remarks. To criticise members of the Parliament because he believes that they have not taken due process into consideration is, quite frankly, a disgrace and undermines the respect that each member must show to others here.

As my Conservative colleagues have argued, the fundamental failing of the bill is its single proposal to classify reasonable chastisement as assault. Various members have tried to argue that the two can be classified in the same way. I simply do not accept that—and neither does the law. The bill also represents the unnecessary and unwanted transfer of power away from parents and the family to the state—and we know what the reaction of the vast majority of parents has been to that.

Whatever the bill’s proponents might like to argue, it will remove parental discretion and create the scope to criminalise parents’ actions if they administer a mild smack. That cannot be right, and it no doubt explains why so many parents oppose the bill. Nor is there any necessary clarity in the bill, because it is not supported by any evidence—including any conclusive evidence from other countries—that proves that it will make children safer. Indeed, the bill is so weak because of the grey areas that it contains, most of them resulting from the completely mistaken view that reasonable chastisement equals assault.

For example, are we really saying that when a parent administers a mild smack to a small child for safety reasons, to ensure that he or she does not touch an electric plug, they will be reported as having committed an assault? That is an open-ended question.

John Finnie: Will the member give way?

Fulton MacGregor: Will the member give way?

Liz Smith: I am interested in Mr Finnie’s view about that open-ended question, which—as the Crown Office acknowledges—creates confusion, misunderstanding and unnecessary additional anxiety for the parent.

John Finnie: Liz Smith assumes that the individuals who make decisions about children every day will suddenly suspend all the knowledge that they have applied thus far in relation to this issue—that is not the case.

Is Liz Smith in a position to tell the chamber when she thinks it is appropriate to commence chastising children? At what age is it reasonable to start hitting a child?

Liz Smith: I am perfectly happy with the current law, because I do not believe that anybody has provided the evidence to explain the bad aspect of the current law.

I refer to what Christine Grahame and Mike Rumbles said about the original legislation that we considered in 2002 and 2003, when we debated the issue for a long time. I will come on to what Jim Wallace said during that debate. First, however, my good friend, the late David McLetchie, made the point that

“The Scottish Parliament should learn to leave well alone and resist the temptation to interfere and legislate at every turn when it is unnecessary to do so”.—[*Official Report*, 18 September 2002; c 10822.]

Jim Wallace, who proposed the bill, accepted that it would not introduce any protections against actions that could not reasonably be dealt with by the courts—and the same remains true today. That is the fundamental problem with Mr Finnie’s bill. It is not supported by evidence that additional protections are required. There is no evidence.

Patrick Harvie (Glasgow) (Green): I am grateful to Liz Smith for giving way. I have tried to listen as closely as I can to those who do not support the bill. However, they all seem to have avoided one question: if they are right, why are the voices of children’s rights organisations so clearly behind the bill? Why, if so many people whose professional expertise is in children’s rights and wellbeing support the bill, do only the Conservatives have it right?

Liz Smith: Has Patrick Harvie listened to the opinion polls among parents? Those are the very people who, through their actions, would potentially be made into criminals by the scope of the bill. That is the problem.

I understand that many charities have spoken in favour of the bill. However, many parents across Scotland have taken the complete opposite view, which tells as much of a story as those who support it.

The remarks at the beginning of my speech were about the legacy of this Parliament after 20 years, and the question whether we can take pride in passing good legislation. As things stand, this bill—just as was the case with the deeply troubled named person legislation—is very wide of the mark on meeting the key tests that underpin good legislation. Just like the named person legislation, it does not have the support of the public.

Alex Cole-Hamilton: It is incomparable with the named person legislation.

Liz Smith: It is not incomparable. That is because it is unnecessary interference, and because it is unworkable.

I am also deeply troubled about the bill because of the manner in which it has so far been scrutinised, which has exposed fundamental weaknesses. I hope that you will agree, Presiding Officer, that it is entirely wrong that the stage 1 debate on the bill is happening prior to crucial legal opinion having been placed before the Parliament.

As a longer-serving member of this Parliament, I am frankly astonished that it has been seen as acceptable to proceed to stage 1 without the Lord Advocate having appeared before the committee to answer questions on the bill, and without the point of order that was raised by my colleague Oliver Mundell on 15 May having been properly addressed. Together with the fundamental failings of the bill, that is why I will certainly not support it at the end of today.

16:45

Maree Todd: I am grateful to those members who have contributed to the debate, and I will address some of the specific points that have been raised.

On the issue of criminalisation of parents, in other jurisdictions that have implemented similar legislation, there has not been a significant increase in prosecutions. We expect that to be repeated in Scotland. In Ireland and New Zealand, the change in law was similar to that proposed in Mr Finnie’s bill—

Oliver Mundell: Will the minister take an intervention?

Maree Todd: No, I will not take an intervention. I am sorry, but I wish to respond to a number of issues that have been raised during the debate, so there will be limited time for me to take interventions. Mr Mundell had multiple opportunities to intervene during my opening speech, and I hope to answer all the issues that have been raised during the debate in my closing speech.

In Ireland and New Zealand, the change in law was similar to that proposed in Mr Finnie’s bill—the removal of a defence—and neither country has seen a significant increase in prosecutions. In New Zealand, there were just eight prosecutions in the five-year period after the law came into force, and the committee heard that, in Ireland, the Office of the Director of Public Prosecutions

“has found no evidence of any increase in the number of prosecutions.”—[*Official Report, Equalities and Human Rights Committee*, 21 March 2019; c 12.]

Of course, the approach in other countries varies, as legal systems and approaches vary. Nevertheless, the point is that physical

punishment is wrong. The bill fits the legal system in Scotland.

Members have asked whether the bill criminalises smacking. As the Crown Office and Procurator Fiscal Service said to the committee in its supplementary submission:

“The Bill, as currently drafted, removes a defence to behaviour which otherwise falls within the scope of the common law crime of assault, rather than creating a new crime. The practical effect of that would be that some acts carried out as physical punishment, which may be commonly referred to as ‘smacking’, would no longer benefit from the defence of reasonable chastisement and would fall to be considered in terms of the law of assault as it applies generally.”

What is the approach to prosecutions? Decisions on prosecutions in individual cases are entirely a matter for the Crown Office, acting under the direction of the Lord Advocate. Similarly, it is for the Lord Advocate alone to consider whether guidelines in relation to prosecution will be drafted and published. The Crown Office prosecution code sets out the test that prosecutors apply when deciding whether to take prosecutorial action.

Richard Lyle raised the issue of unnecessary action being taken by the police and the Crown Office and Procurator Fiscal Service in trivial cases. The written evidence makes it absolutely clear that professional prosecution will follow the Scottish prosecution code, as it does now.

Oliver Mundell: Will the minister take an intervention?

Maree Todd: Can I please address the issues that were raised during the debate?

Oliver Mundell: The minister is making new points.

The Presiding Officer: Please continue, minister.

Maree Todd: First, prosecutors must establish whether any report that is received discloses a crime that is

“known to the law of Scotland”.

Secondly, prosecutors assess whether there is

“sufficient admissible, reliable and credible evidence”

that the offence was committed and that it was the accused person who committed it. Finally, prosecutors consider what action, if any, best serves “the public interest”. In doing so, the Crown Office takes into account a range of applicable criteria, such as:

“The nature and gravity of the offence ... The impact of the offence on the victim ... The ... personal circumstances of the accused ... The attitude of the victim ... The age of the offence ... Mitigating circumstances ... The effect of prosecution on the accused ... The risk of further offending”

and considerations relating to “public concern”. The Scottish Government considers that the main aim of the bill is to make it clear that the physical punishment of children is wrong, rather than to criminalise parents.

With regard to clarity in the law, as Rona Mackay said, the committee heard that, in Ireland, different civil society organisations and state agencies are positive about the clarity that was brought by the change in the law, and social workers have better relationships with parents because they can provide clear advice. That does not fit with the spectre that is being raised of a huge number of increased concerns and overburdened people having to respond to minor issues. It echoes the evidence that the committee received from Social Work Scotland, Barnardo’s Scotland, the NSPCC in Scotland, Children 1st, the Royal College of Paediatrics and Child Health, Parenting Across Scotland and the Law Society of Scotland. There is broad civic support for this change in legislation. All of those organisations agree that the bill will bring clarity to the law.

As a number of contributors, including Rhoda Grant, said, the bill will remove the judgment around how my reasonableness compares with that of others. It will send a clear message that the physical punishment of children is unacceptable. It is a clear message to society that clarifies the law. As the Crown Office put it, the common-law crime of assault is well understood and widely used to prosecute offending in courts across Scotland, resulting in a large number of convictions each year. The Crown Office added:

“The Bill proposes to remove this defence which means that the legal situation would be simplified and children would receive the same protection from assault as adults.”

Gordon Lindhurst said that the Lord Advocate had not given evidence, but I have to correct that. The Crown Office and Procurator Fiscal Service gave detailed written evidence to the committee. Gordon Lindhurst also said that the bill tells parents how to parent. It does not. It makes it absolutely clear that parents will still have a range of positive techniques at their disposal when disciplining their children.

On the issue of interference with family life, we are not aware of any international treaty provision that gives parents the right to physically punish their children. We note that the committee came to the same conclusion in paragraph 95 of its stage 1 report.

Murdo Fraser—I think—asked why the physical punishment of children is different from all the other forms of discipline that might be used, such as the removal of privileges and the naughty step. Let me be clear: the difference is that there is a solid body of evidence that physical punishment is harmful. I remind members that the bill is

supported by the Faculty of Public Health and the Royal College of Paediatrics and Child Health. There is even a statement opposing physical punishment from the American Academy of Pediatrics.

I will read the evidence that the Royal College of General Practitioners gave during the passage of the Welsh bill:

“The balance of evidence seems sufficiently clear and compelling to inform us that parental use of physical punishment of children plays no useful role in their upbringing and poses only risks to their development.”

That is from the Royal College of General Practitioners—scientists who are used to assessing the quality of the evidence that is available to them and coming up with advice to the people whom they serve.

Liz Smith: Will the minister give way?

The Presiding Officer: The minister needs to conclude, please.

Maree Todd: I again thank the committee for its consideration of the bill, and I thank Mr Finnie for taking it forward. I urge members to support the general principles of the bill.

16:53

John Finnie: I thank all those members who have participated in what has been an interesting debate. It started with the committee convener talking about the committee’s ambitious programme of engagement. I had forgotten about the snowstorm; it is commendable that people went to share their views with us. Mòran taing to all the kids at bun-sgoil Ghàidhlig Phort Rìgh.

The convener talked about a rights-based approach and said that the deliberations were about children being at the core. We forget at our peril that that is what the bill is about.

There was also early mention by the convener of a conflict of rights. We have made a clear statement that stopping the physical punishment of children does not interfere with the right to family life. The point about holding our children and keeping them safe was a good phrase in that speech.

The minister followed that speech by citing the evidence and talking about the work that the Scottish Government is doing to make Scotland the best place for children to grow up in. The concept of reasonable chastisement is antiquated and at odds with that aim, and I certainly share that view. I also share the minister’s view that there should be the same legal protection for all individuals, regardless of their size.

There was much speculation about the public interest test, and I tried to intervene. There is little

mystery about it. Indeed, it is covered in the explanatory notes, as are a lot of the points that were raised. In paragraph 13, on page 3, footnote 6 provides a link to the web page that explains all the factors that are taken into account. Nothing will change in relation to the public interest test.

The next contribution came from my good friend and colleague Mary Fee, who gave—as ever—an excellent speech. She cited the example of adults with a learning disability and what the public reaction would be if they were subjected to assault, giving the clear statement that assault is assault. That is unequivocal. Another important point that Mary Fee made was that the Parliament is a guarantor of human rights. That is absolutely clear. There is an imbalance at the moment, as Mary Fee rightly identified, and the bill will be part of a culture change.

My colleague Ross Greer gave a comprehensive résumé of the rights and shortcomings that exist. Those are acknowledged by the Scottish Government. Indeed, they were acknowledged by the Equalities and Human Rights Committee, which commended the approach for the incorporation of the UNCRC. I share Ross Greer’s view that the human rights task group’s findings must be acted on. “You just do not hit children” is a good statement. Ross Greer was brave to talk about personal faith, and I appreciate the faith groups’ contribution to the debate. I am particularly grateful to those that lend their support to the bill, not least the Quakers and the Church of Scotland. We are rights holders in the Parliament and we need to do that.

The next speaker was Mr Cole-Hamilton. I acknowledge his support throughout, the advice that he has generously shared with me and his long-standing commitment to the cause, which predates many of ours. His father’s face is in my thoughts at the moment, given the retribution that he took on his father. He is right to say that there is an international imperative.

Mr Cole-Hamilton also made the first substantive mention of the police. Chief Superintendent McKenzie gave compelling evidence to the committee, explaining—along with his colleagues from social work who were sitting by his side—what happens at the moment: the shared work that takes place, the interest of the child being at the forefront of deliberations and the public interest being a factor. He explained that nothing would change—that, if anything, greater clarity would be provided. “No right to hit” was a phrase that Mr Cole-Hamilton used.

I will not have time to cover everyone’s contribution, but Angela Constance made another excellent speech. Yes, I was a police officer, which might surprise some people. I was struck as a child and I struck my children, but we are all the

richer if we learn from our experience, and that is what it is. The unfolding evidence of the damage is irrefutable. The phrase “It never harmed me”—

Liam Kerr: Will the member take an intervention?

John Finnie: Yes, I will.

Liam Kerr: My colleague Liz Smith raised some important procedural points. Will the member come back on the points that Liz Smith raised?

John Finnie: If this is about accusations and what would happen, I can say that nothing would happen differently.

Liam Kerr: It is about the evidence.

John Finnie: I do not feel that it is for me to comment on that. Members’ views have been shared with the Presiding Officer. Unlike some committee members, I attended every evidence session, and we heard compelling and comprehensive evidence. I did not hear any attempt to stop our hearing evidence. There were also a significant number of written submissions.

Alex Cole-Hamilton: I can clarify that the committee went to great lengths to encourage representations from groups that are opposed to the bill and from the Crown Office and the Lord Advocate, with both submitting written evidence. I agree with the member that the evidence that the committee received was as comprehensive as it could be.

John Finnie: Annie Wells talked about legal clarity. It was not apparent to me that she had taken on board all the information that was available—she was certainly not at all the evidence sessions that I was at.

Rona Mackay was the next speaker, and she talked about learned behaviour, which is a significant factor.

How long do I have left, Presiding Officer?

The Presiding Officer: You can have two minutes, Mr Finnie, if you want.

John Finnie: Thank you.

Likewise, Rhoda Grant made a powerful speech in which she talked about verbal assault. We know that there are checks and balances in the system, which gives reassurance.

Gail Ross spoke about the incorporation of rights, the baby box and the general direction of travel.

I have to say that Mr Lindhurst, who would not take an intervention and who is clearly the Tories’ aspirant legal shock jock, was way off the mark.

Claire Baker said that she was convinced that children need equal protection and mentioned the

work of Scott Barrie in a previous session, which is to be commended. She was right to say that this is “unfinished business”.

James Dornan gave an excellent speech, and I am grateful to my colleague Mike Rumbles. It was courageous of him to say that he has changed his mind on the basis of the evidence that has been received.

That evidence has been overwhelming. It suggests that the physical punishment of children is ineffective and potentially has long-term effects. We know that young people support the proposed change, as do practitioners: the police, social work, health professionals and legal professionals. The children’s charities support it, along with members of all five parties in the chamber. It is time to give children equal protection.

Business Motion

17:00

The Presiding Officer (Ken Macintosh): The next item of business is consideration of business motion S5M-17432, in the name of Graeme Dey, on behalf of the Parliamentary Bureau, setting out a revision to the business programme. I ask Maurice Golden to move the motion.

Motion moved,

That the Parliament agrees to the following revision to the programme of business for Wednesday 29 May 2019—

delete

2.00 pm Parliamentary Bureau Motions

2.00 pm Portfolio Questions:
Health and Sport;
Communities and Local Government

and insert

1.30 pm Parliamentary Bureau Motions

1.30 pm Ministerial Statement: Next Steps on Scotland's Future

followed by Portfolio Questions:
Health and Sport;
Communities and Local Government—
[Maurice Golden.]

Motion agreed to.

Decision Time

17:01

The Presiding Officer (Ken Macintosh): There is one question to be put. The question is, that motion S5M-17342, in the name of John Finnie, on the Children (Equal Protection from Assault) (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Arthur, Tom (Renfrewshire South) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Cole-Hamilton, Alex (Edinburgh Western) (LD)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Denham, Ash (Edinburgh Eastern) (SNP)
Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Finnie, John (Highlands and Islands) (Green)
FitzPatrick, Joe (Dundee City West) (SNP)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Gougeon, Mairi (Angus North and Mearns) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Greer, Ross (West Scotland) (Green)
Griffin, Mark (Central Scotland) (Lab)
Harper, Emma (South Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Haughey, Clare (Rutherglen) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Glasgow) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Leonard, Richard (Central Scotland) (Lab)
Lochhead, Richard (Moray) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Martin, Gillian (Aberdeenshire East) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
McAlpine, Joan (South Scotland) (SNP)

McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Smith, Elaine (Central Scotland) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

That the Parliament agrees to the general principles of the Children (Equal Protection from Assault) (Scotland) Bill.

Against

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

Abstentions

Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)

The Presiding Officer: The result of the division is: For 80, Against 29, Abstentions 2.

Motion agreed to,

Universal Credit and Mental Health

The Deputy Presiding Officer (Christine Grahame): The final item of business is a members' business debate on motion S5M-17352, in the name of Mary Fee, on the Scottish Association for Mental Health report on universal credit and mental health. The debate will be concluded without any question being put.

Motion debated,

That the Parliament welcomes the publication of the SAMH report, *'It Was A Confusion' Universal Credit and Mental Health: Recommendations for Change*; notes that the report explores the experiences of people with mental health problems engaging with the universal credit system; believes that the system has created new barriers and added pressures for people with mental health problems; notes that the report contains eight recommendations for the UK Government, DWP and Scottish Government, with an overall message that no person on legacy benefits should be transferred to universal credit while it exists in its current form, and believes that the social security system should act as a safety net for all and support people in the West Scotland region, and across Scotland, and not make anyone poorer and more disadvantaged, regardless of circumstances.

17:04

Mary Fee (West Scotland) (Lab): Our social security system should be available to all in times of need. It should guarantee a level of economic safety and assistance to people who cannot work, people who find themselves out of work and people who are struggling to make ends meet. Instead, under a cruel and unfeeling Tory Government, the system offers neither safety nor assistance.

The Scottish Association for Mental Health report on universal credit and mental health gives us a significant insight into what is happening to the very people whom the social security system was designed to protect. I thank all my MSP colleagues who signed the motion, allowing us to have this debate. The issues that are raised in the report are not party political; they are the concerns and fears of many people with poor mental health. My sincere thanks go to SAMH and those behind the case studies that are discussed in the report. With their valuable input, the human impact of universal credit implementation is made clear.

The motion on the SAMH report gives a brief summary—it tells us clearly that universal credit is creating new and additional barriers for people with poor mental health. Those barriers, which include digital by default, the work capability assessment, the payment period and the sanction regime, are leaving people with more stress, more anxiety and more pressure on their mental health.

Rightly, we want people who are able to work to do so. However, any system that pushes people further from employment is not fit for purpose. The report makes a number of recommendations on changing the system, and I hope that the cabinet secretary will respond to the single recommendation that is aimed at the Scottish Government.

SAMH tells us that it welcomed the principle behind universal credit to simplify the complex United Kingdom social security system but that, unfortunately for many people, the aims

“have been undermined through its structure and delivery.”

The report's first recommendation calls for the scrapping of the digital by default policy. The Scottish household survey found that only two thirds of households with incomes of £15,000 or less per year have internet access. Citizens Advice Scotland found that

“68% of people seeking to claim a disability benefit ... require assistance to make an online claim”

and research by the Department for Work and Pensions found that

“24% of people with long term conditions could not register a Universal Credit claim online”,

that 53 per cent needed support to set up a claim, and that 38 per cent of claimants need on-going support. That is a burden for many, particularly for those with disabilities and mental health problems, because telephone applications for universal credit are limited and claimants must provide evidence that they are digitally excluded. Of course, for some, libraries are an option. However, with many libraries closing or restricting hours in recent years, and given the mental health of claimants, applying online is an extremely difficult barrier to overcome.

SAMH highlights that the work capability assessment does not work for people with mental health problems. The assessors cannot adequately judge claimants' mental health because they lack a full understanding of the wide range of mental health conditions and how they can impact on job searching and the ability to work.

While claimants are waiting for assessment, they may be required to undertake work-related activities and job searching. SAMH reports:

“This can be as much as 35 hours of job searching per week.”

If they do not do that, they can be threatened with sanctions. That is quite simply unjust and unfair for people with complex mental health problems, especially if those problems are coupled with physical problems.

Delays to assessments and lengthy waits can cause further distress and anxiety. In June 2018, the median waiting time from applying for universal credit to a final decision was 15 weeks. The report paints a clear picture that the process of applying for universal credit is flawed.

The process of managing the claim provides even more barriers for people with mental health problems. The first payment comes after five weeks and that delay is believed to be a deliberate choice by the DWP. I fully support SAMH's recommendation that the unjustified five-week waiting period should be abolished.

Citizens Advice Scotland has found that, in areas where universal credit has been fully rolled out, there has been a 15 per cent rise in rent arrears and an 87 per cent increase in crisis grant awards. In two areas, there have been rises of 40 per cent and 70 per cent in advice on food banks. People with mental health problems should not have to face increasing poverty and debt. The report tells us that 86 per cent of people with mental health problems believe that their financial situation heavily influences their mental health. The social security system should not be designed to put people into debt and poverty. Advance payments are available, but those worsen financial problems because they are loans. It is sickening that those who are in the most desperate need are pushed further into financial hardship. There is absolutely no morality in that.

I could spend the rest of the evening going through the many informative recommendations and conclusions of the SAMH report and how people with mental health problems are being let down by a system that should support them. However, in the time that I have left I want to discuss the section of the report on the Scottish flexibilities. I hope that the Scottish Government can make progress on the recommendation in the report, and I hope to hear more from the cabinet secretary on that.

Some aspects of the delivery of universal credit are devolved, such as the frequency of payment, the ability to pay the housing element of universal credit to a landlord and the ability to split payments between members of a household. SAMH welcomes those choices and comments that they

"will assist people in managing their money and avoiding financial hardship."

However, the report calls on the DWP and the Scottish Government to

"work together to urgently correct issues over the delivery of the Scottish Choices to provide assurance to Universal Credit claimants and landlords".

People with mental health problems need assurances that those choices will in no way impact on their mental health.

The report tells us that the administration of Scottish choices

"has caused some problems to social landlords",

because payments to landlords are made in arrears and do not match the monthly schedule for payments to claimants. I hope that no person with mental health problems is caused unnecessary stress and anxiety because of those administrative problems.

I thank SAMH and the individuals involved in the case studies for the informative and valuable report. Due to the volume of information that it contains, I have not been able to reflect on the information directly from the case studies. However, if those individuals are listening to the debate, my message to them is that I hear them and I will be in their corner, and the corner of all those who find themselves in the social security system. We need a system that respects people throughout their claim and into work, and one that provides security and assistance, especially for people with mental health problems and physical disabilities.

The Deputy Presiding Officer: I call Elaine Smith, who will be followed by Bill Kidd.

17:13

Elaine Smith (Central Scotland) (Lab): Thank you, Presiding Officer, for calling me early in the debate. I may have to leave before the final speeches and I apologise to Mary Fee and other members for that.

I thank Mary Fee for bringing the issue to the chamber. Most members will have assisted constituents who are suffering under universal credit and will want to challenge this unfair system and the way that it is working. Thanks are also due to the Scottish Association for Mental Health for the work that it has done to highlight the effect of universal credit and the processes that are involved in claiming it on the mental health of claimants. I should also mention Citizens Advice Scotland and thank it for its work.

The issue reveals yet another aspect of welfare reform that has been poorly planned and badly implemented and that penalises the most vulnerable in society. As the motion notes, the universal credit system

"has created new barriers and added pressures for people with mental health problems".

Shockingly, it is not that long since we began to consider mental health to be of the same importance as physical health. It is therefore unacceptable that our social security system is now actively contributing to mental health problems.

Being assessed for an entitlement causes anxiety for any claimant, but the impact on those with mental health problems is particularly harsh. One of the most harmful aspects of the application process is the work capability assessment. SAMH's report notes that the median time from application to final decision following a work capability assessment is 15 weeks, but there are cases where it has been significantly longer. It is easy to understand that such a timescale will cause distress and anxiety for some of the most vulnerable claimants.

Another issue is that of the online application, which can cause further stress and anxiety, particularly for people with no easy access to the internet—Mary Fee outlined the figures on that. The report shows that the DWP itself has found that 24 per cent of people with long-term conditions were not able to register for universal credit online.

A society can be judged by how it treats its vulnerable citizens, and the UK should be judged harshly for implementing a reformed system that piles anxiety on to people with existing health issues. Last week, Professor Philip Alston, the United Nations special rapporteur on extreme poverty and human rights, released his final report about his visit to the UK. He said:

“Much of the glue that has held British society together since the Second World War has been deliberately removed and replaced with a harsh and uncaring ethos.”

He also highlighted personal stories that he had collected that matched the growing body of research, such as SAMH's report, about the negative impact of universal credit on mental health.

One of SAMH's recommendations is that the DWP publish sanction statistics disaggregated by disability and medical condition. However, the report quotes a SAMH service user who said:

“The fear of being sanctioned is enough to ruin your life without [actually] being sanctioned.”

We need those figures, but we must also bear in mind the fact that the fear of being sanctioned can take a toll on people's health.

There is no evidence that benefit sanctions incentivise people with mental health issues to get employment—I am not sure that they do that for anyone, but there is certainly no evidence that they do so for people with mental ill health. However, there is compelling evidence that they take a toll on mental and physical health. We need to re-emphasise the fact that, as Mary Fee said, a mental health problem does not manifest itself only as a mental health problem but also affects physical health.

Another point that I wish to highlight is the inadequate collection of data with regard to eligible claimants. If we do not know who is entitled to receive universal credit, how can we best ensure that everyone eligible receives it? That issue was recently highlighted by the Resolution Foundation. I would be interested to hear from the minister—although I might not be here to hear it in person—how the Scottish Government intends to increase uptake among particularly vulnerable groups, including those with mental health difficulties.

As the motion states, social security should exist as a safety net for the people of Scotland. It should not make them poorer or more disadvantaged and it certainly should not make a claimant's health suffer due to the stress and anxiety that the system causes.

The SAMH report and the examples in it reveal yet another aspect of universal credit that is not fit for purpose, that penalises the vulnerable, that discourages applications and that needs reformed.

17:17

Bill Kidd (Glasgow Anniesland) (SNP): I thank Mary Fee for bringing this serious concern to the chamber.

I welcome the report from SAMH, which details the ways in which universal credit does not accommodate the needs of people with mental health problems. Beyond that, the report recounts how the numerous changes to welfare are exacerbating pressures on a vulnerable group of people and are, in some cases, worsening the mental health problems that they face.

Today, we also debate in the context of the final version of the report by Professor Philip Alston, a UN special rapporteur, on poverty and the impact of universal credit in the UK. Professor Alston's initial findings are referenced by SAMH. Over the past week, we have all seen the headlines and articles following that damning report on the extent of poverty. We have also seen the UK Government's response of shrugged shoulders, and Amber Rudd's point-blank denial of the report's findings. The official DWP response implied that the report was unrepresentative. It said that, if the rapporteur had spent more time in the UK—which it described as one of the wealthiest and happiest countries in the world—it is likely that he would have reached a different conclusion.

The trouble with that denial is that it reveals a disconnection from the reality of poverty. Rudd's response to the UN's findings betrays an unbelievably disconnected thought process that leads to the belief that, somehow, the fact that some people live in comparative wealth negates the levels of destitution or extreme poverty in the

UK. How else could her representatives suggest that a longer stay in the UK and exposure to different groups would change UN conclusions that were drawn in reaction to extreme poverty? The poverty still exists.

My Scottish National Party colleagues and I—indeed, the majority of elected representatives in this Parliament—see that the UN report's findings are not false. I think that the UN and SAMH reports have laid bare the daily struggles and injustices that the poorest in society experience. I also think that the poorest are in that position not as a result of their own fault or poor money management; we live in a country in which there is a huge amount of not just inherited wealth but inherited poverty, which makes it hard for people to move out of the poverty into which they were born.

Over the past six years, universal credit has come to life—if we can call it that—under the Tories, following years of austerity and the benefits freeze. The implementation of universal credit has been accompanied by a rise in the number of food banks across the UK. That includes my constituency: four months after the roll-out of universal credit in Drumchapel, another food bank opened.

SAMH has shown in its report that delays and the digitalisation of universal credit, which Mary Fee and Elaine Smith mentioned, have caused significant stress to recipients who are already struggling with mental health issues.

We live in a prosperous, innovative and culturally rich nation. The most dramatic inequality in society today is the extreme wealth inequality. We have a responsibility to people who face the hardship of poverty and the mental health issues often related to it, to recognise our ability as elected representatives to tackle poverty head on.

I am proud to represent a party and a Parliament that have used the powers available to us to prioritise tackling child poverty. Indeed, in talking about our new social security system, Professor Alston talked about

“ambitious schemes ... guided by the principles of dignity and social security as a human right”.

Scotland has worked hard to secure the lowest levels of poverty in the UK, but, unlike some voices in Westminster, I will not say that profound poverty does not exist. It does. By tackling the injustice that is poverty, we can create a situation in which people are accorded value and dignity, as they should always be. That should be our goal at all times.

17:21

Michelle Ballantyne (South Scotland) (Con):

For someone who is suffering from poor mental health, dealing with life is a challenge, even when things are going well and the person has all the support that they need. I know from my nursing and psychiatric experience how mental health impacts on individuals' ability to deal with stressful situations. Navigating the maze of benefits will never be anything but demanding.

For nine years, I headed a drug and alcohol unit. Many of my most vulnerable clients struggled with benefits and the lack of support that used to be the hallmark of jobcentres. It was left to voluntary agencies to get people financial assistance and opportunities to enter the job market. Alongside other agencies, SAMH provided excellent support in the Borders, so it is sad that it has had to close its doors in Galashiels.

The arrival of universal credit has seen major changes—not just in how benefits are delivered, but in how clients are supported in accessing help. SAMH's report explores some of the challenges, and recognises the barriers that people with mental health issues might face. SAMH has provided an effective overview of the challenges and has made good recommendations. Nonetheless, it is essential to recognise that the supporting evidence for the report predates many of the changes that are being trialled, or which have already been implemented during 2018 and 2019.

A lot of work has gone into ensuring that jobcentres are welcoming, with carefully designed layouts that minimise the stress that individuals might experience. All departmental staff who work with claimants now complete extensive training that prepares them for their role. Specific training is provided on working with vulnerable groups, including claimants with mental health conditions. An enhanced mental health training package has been delivered to 19,755 staff, and plans are developed for delivery to 34,000 more staff across a number of directorates.

Following a review in 2018-19 of delivery of training, and work with stakeholders including work psychologists, further enhancements have been made to learning and development material. The material has been tested as part of the test-and-learn phase, prior to national roll-out from June 2019.

In addition, the DWP announced earlier this year that claimants with mental health problems would be fast-tracked to support from the jobcentre. Medical experts will be stationed in jobcentres to give on-the-spot assessments, and will have the power to refer people for treatment. That new approach is being trialled in a joint

venture by the national health service and the DWP in Buckinghamshire and Milton Keynes. If it is successful, it will be rolled out across the UK.

Nearer to home, the DWP is trialling a virtual reality jobcentre in Glasgow to help people with autism or heightened sensory awareness to feel comfortable about accessing a jobcentre. Citizens Advice Scotland is now providing the help to claim service, which will support vulnerable claimants to ensure that they can navigate their entitlements and apply successfully. All claimants, including those with mental health conditions, receive continuous tailored support through their personal work coach.

I hope that colleagues across the chamber will welcome those developments, and that SAMH will watch them closely and report on their success in its next report. It is incumbent on all of us to ensure that all services that we provide are accessible and usable by all claimants. People who have mental health conditions need extra support and extra services. I, for one, am glad that people are taking notice of that, and are working to make sure that claimants get what they need.

17:25

Alison Johnstone (Lothian) (Green): Our social security system should do what it says on the tin. It should be there for all of us when we need it, to provide support and security. However, too often, it does the opposite: it can foster insecurity, anxiety and—as the title of the report that we are debating today acknowledges—confusion.

That is bad enough for anyone, but it is of particular concern for people who experience mental health conditions. Universal credit increases the scope of benefit sanctions without any strong evidence that they work. In fact, as Elaine Smith noted, there is clear evidence that they can do much harm, especially for people with mental health conditions.

A five-year research project, which was a collaboration between six universities, examined sanctions and found that

“application of welfare conditionality exacerbates many disabled people’s existing illnesses and impairments. Its detrimental impact on those with mental health issues is a particular concern.”

For mental health issues to be taken into account in the claimant commitment, they need to be disclosed, but the SAMH report tells us that the need for disclosure is a significant source of distress for people with mental health conditions, who might not have the confidence to discuss their mental health at their first meeting with a work coach. It is also not clear that work coaches are able to provide the necessary support when

mental health conditions are disclosed. The DWP’s research found that work coaches feel overwhelmed by the number of claimants with health conditions, and that they lack the time and training to identify vulnerable claimants confidently.

It also worth noting that, in contrast to the old system, conditionality can be imposed before health assessments are conducted. It is possible that someone might be subject to conditionality, and therefore to sanctions, while they are waiting for an assessment that will later exempt them from conditionality. In essence, they are presumed guilty until proven innocent. I was particularly proud to stand on a manifesto commitment to ensure that devolved employment programmes would be entirely free from sanctions, and even prouder to see that being implemented by the Scottish Government.

The report also makes it clear that the work capability assessments that are part of universal credit do not work for people with mental health conditions. As the SAMH report says, the assessments do not capture the impact of mental health and other fluctuating conditions, and assessors are not always aware of how mental health conditions impact on a person’s ability to work.

The WCA can make mental health conditions even more severe. A study from Heriot-Watt University and Edinburgh Napier University of 30 Scots claimants found that

“The WCA experience for many, caused a deterioration in people’s mental health which individuals did not recover from. In the worst cases, the WCA experience led to thoughts of suicide.”

That is made even worse by the fact that the WCA is, as the DWP admits, one of the major reasons for late payments, which disproportionately impact people with mental health conditions, and can leave people for months on end without certainty as to when they will get their full amount and what it will be, which itself can have an impact on mental health. That would be of concern to anyone.

Colleagues will have experience, as I have, of helping constituents who are worried sick about the WCA assessment. In many cases, it takes representations from members of the Scottish Parliament, MPs and welfare rights experts for pre-existing evidence to be considered properly, and for assessments that are a risk to health to be cancelled.

The report relates to UK universal credit, but there are clearly lessons to be learned for the new Scottish system, because a large number of people will be receiving a Scottish devolved

payment in respect of a mental health condition. We have made a good start.

As a result of a Green amendment, the face-to-face assessments that caused so much stress will be banned unless they are the only way in which evidence can be found, or a person requests one. However, we need to do more. I hope that all Social Security Scotland staff who interact with applicants will receive training in how their work can impact on people with mental health conditions.

The assessment criteria for disability assistance must recognise that introduction of the personal independence payment has meant that more than 50 per cent of those receiving disability living allowance for the two most common mental health conditions have either been denied PIP or have been given a reduced award.

I thank Mary Fee for bringing this important debate to the chamber, and I hope that it urges the UK Government and the Scottish Government to put respect for mental health at the heart of the reserved and devolved social security systems.

17:30

The Cabinet Secretary for Social Security and Older People (Shirley-Anne Somerville): I, too, thank Mary Fee for bringing this important matter to the chamber for debate. She said that social security should be available to all in times of need, but that the current system provides neither safety nor assistance. I could not agree more. It is sad but so very true that the current system does not do that.

The Scottish Association for Mental Health's report into the impact of universal credit on people with mental health problems makes for stark reading. It clearly shows that universal credit is causing hardship and emotional distress for people with mental health problems, and rightly makes several recommendations for change. The report adds to the growing evidence, and to similar reports from other organisations, about the impact that universal credit is having on the people who are forced to rely on it.

I would like to tackle some of the issues that the report raises about universal credit, although, as we know, the list is far longer than I have time for this evening. The minimum five-week wait for the first payment is simply not acceptable, especially when there is no guarantee of the correct payment at the end of that five-week wait. Mary Fee rightly pointed out how long people have to wait in reality, which is much longer than the minimum of five weeks. Many people are therefore left with little option but to take up the DWP's offer of an advance payment, which leaves them in debt from the very start of their claim, because they are

required to pay that back at a rate of up to 40 per cent of their standard allowance each month. That has had a damaging impact on the levels of debt affecting individuals and of course, understandably, on their mental health.

Many speakers mentioned the punitive sanctions regime that underpins universal credit, which is causing profound anxiety and stress for many people. There is mounting evidence—Alison Johnstone discussed a recent five-year study—that the current approach to sanctions and conditionality is not only ineffective but is having an exceptionally damaging effect on people's health and wellbeing, as well as pushing them further into poverty.

Elaine Smith and Mary Fee rightly pointed out concerns about the work capability assessment. Another issue is the digital by default policy. There can be nobody in this chamber who has not had heartbreaking constituency cases of individuals who have come to their surgeries who have no access to a computer, email or a mobile phone, and therefore no chance to apply, never mind keep their journal up to date. I am particularly struck—I am sure that others will be, too—by the individuals whom we have attempted to assist with that process. It is simply unacceptable that people are put in such a distressing position in the first place.

SAMH recommends that nobody should be transferred over to universal credit through the processes of natural or managed migration. The Scottish Government has repeatedly called on the UK Government to stop that from happening while the system is so clearly unable to cope. It is unacceptable that anyone should be forced to claim universal credit when it simply cannot provide them with the support that they require. We have raised those points and more with the UK Government countless times over the past few years. We know that universal credit is not fit for purpose, and yet people are still forced to rely on that broken system.

The report rightly recommends that the Scottish Government works with the DWP to overcome the administrative issues with the delivery of Scottish choices. I recognise that the DWP's existing payment scheduling process for direct payments to social landlords, which is used for UC Scottish choices, can make it difficult for landlords to accurately manage their income.

Although the policy on direct payments to landlords is devolved, the systems sit solely with the DWP, and only it can make changes to them. We have repeatedly called for the DWP to move on the issue, and I am pleased to say that it has now confirmed that it will develop a replacement method of payment by the end of 2019. I hope that that alleviates the concerns of social landlords and

their tenants, and that it will ensure that, under Scottish choices, landlords will be paid on the same day as their tenants.

I have spoken about the SAMH report adding to the growing evidence that universal credit is not working. Last week, the mountain of evidence grew further, as the United Nations special rapporteur on extreme poverty and human rights, Professor Philip Alston, published his final, damning report following his visit to the UK last year. It is exceptionally hard hitting and makes a very sobering read. Elaine Smith, Bill Kidd and other members have rightly mentioned its conclusions. Professor Alston was particularly scathing about universal credit, and he criticised many of the problems that the SAMH report raised. I know that Michelle Ballantyne tried to reassure members that a lot of work has taken place that the SAMH report perhaps did not take account of, but the United Nations rapporteur would certainly have been aware of all of that, and it would be fair to say that he is far from convinced on that argument.

The Scottish approach to the 11 benefits that we will take responsibility for in April 2020 could not be more different from the approach that we have seen with universal credit. We are building a system with people and we are listening to their experiences of the problems with the UK system, to ensure that we deliver a service that meets the needs of the people of Scotland. We see social security as a human right and an investment in the people of Scotland. Our system will be an inclusive and accessible one, and we will remove barriers for people, not put them in the way.

Members have picked up a number of particular points in the debate. For example, Elaine Smith spoke about the Scottish Government's requirement to improve the take-up of benefits. She will, of course, be aware that we are obligated to do so through the Social Security (Scotland) Act 2018. We will develop the take-up strategy, which is due for publication this autumn. That is not just because that is in the legislation; ensuring that those who are eligible are encouraged and supported to take up their eligibility is the right thing to do.

I want to pick up the point that Michelle Ballantyne raised about the practice of virtual jobcentres, which the DWP is introducing. That approach may work for some people, but I say with the greatest respect to Michelle Ballantyne that people need to have a real jobcentre to go to after that, that the closures of jobcentres in Glasgow and other areas make it increasingly difficult for people to be able to access what they are eligible for, and that that is causing extreme hardship and distress for many. I am afraid that virtual jobcentres simply do not cut it.

Alison Johnstone mentioned training staff for Social Security Scotland. I reassure her that the agency and I are taking that very seriously. That is training not just on mental health, but on all issues, to ensure that everyone who works for Social Security Scotland—not just client advisers—has an understanding of the barriers that people face and the challenges that people will face in even approaching or thinking about approaching the agency. I will, of course, keep the Social Security Committee, of which Alison Johnstone is a member, fully updated on our work on that issue.

I conclude by quoting the report. It says:

“structural issues with Universal Credit ... are direct obstacles to people with mental health problems accessing essential support and financial security.”

I could not agree more. I fully support the motion and urge the UK Government to consider the report very carefully along with the countless others and their findings, and finally to make the changes that universal credit so desperately requires.

Meeting closed at 17:39.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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