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AITHISG OIFIGEIL

# Meeting of the Parliament

Tuesday 10 September 2024

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# Scottish Parliament

*Tuesday 10 September 2024*

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

## Time for Reflection

**The Presiding Officer (Alison Johnstone):**  
Good afternoon. The first item of business is time for reflection. Our time for reflection leader today is Father Gerard Hatton of St Patrick's church in the Cowgate, Edinburgh.

**Father Gerard Hatton (St Patrick's Church):**  
In the words of the prophet Isaiah, which Jesus Christ referred to during the cleansing of the temple,

"My house shall be called a house of prayer."

It was not the fact that animals were being sold and money exchanged in the temple that bothered him, because those were needed for ritual offerings. What bothered him was the exploitation of God's people and the fact that the devout were being overcharged, injustice reigned and the temple had become a "den of thieves". The temple in Jerusalem had been constructed to be a place of encountering God in prayer and was built to be the dwelling place of God on earth.

That quotation—

"My house shall be called a house of prayer"—

is also the motto of an Oratorian community to which Archbishop Leo Cushley entrusted St Patrick's church in the Cowgate. It is the nearest Catholic church to this Parliament and will celebrate its 250-year jubilee on 9 October, marking the unique history of a place that has been a house of worship to Episcopalians, Presbyterians and Catholics.

It is a fitting home for Father Ninian Doohan and me, and the motto reminds us that it is intended to be a house of prayer for the people of Edinburgh today and for its many visitors from all over the world. It is a house that sings praises to God and a place for learning and discovering the holy scriptures and meeting God. It is a house for the lonely and the confused, and for people of much faith or little. It is a refuge for sinners, as many come to sacramental confession, and it is a house of joy, as they leave it free, enriched by the beauty of the liturgy and ready, with the gift of grace, to brave the day.

The church on the Cowgate is not a political movement or pressure group. St Patrick's stands to give God the glory and to be a gate through

which all may witness a little bit of heaven here in Edinburgh.

St Patrick's is dedicated to prayer and to the transformation that will come. We see that in our parishioners, in our homeless friends, in works of charity and in the people from near and far who have a connection with St Patrick's.

I hope that you have a place that is holy to you, where you can be yourself. I know that my St Patrick's helps me to be and that it provokes me to be more.

Have a good afternoon.

## Topical Question Time

14:05

### Cladding Remediation Programme

**1. Stephen Kerr (Central Scotland) (Con):** To ask the Scottish Government, in light of the publication of the Grenfell report, what plans it has to ensure that the reported 107 buildings identified in its cladding remediation programme are fixed, including how many will be remediated this year. (S6T-02083)

**The Minister for Housing (Paul McLennan):** We are determined that lessons are learned from the Grenfell inquiry report and that delivery is accelerated. Pilot assessments have been undertaken for 30 entries, with works to mitigate or remediate risks having started on five.

With the Housing (Cladding Remediation) (Scotland) Act 2024 and the single building assessment specification now in place, 107 pilot entries are undergoing necessary pre-assessment checks before proceeding to assessment. We have identified 12 pilot entries that are in scope without a linked developer, where we will commission SBAs as a priority this autumn. When a developer is identified, we expect them to play their part in assessment and remediation.

**Stephen Kerr:** I thank the minister for his reply. I did not quite catch the detail of what he said, or the numbers, so let me ask him again if I may. It was reported in the press last weekend that only £11 million of the £97 million that the Scottish Government received in 2020-21 for cladding remediation has been spent. Is that true? How much of the £97 million has been set aside for remediation this year and next year? The newspaper story also said that the Scottish Government had spent the balance of the money that it had not spent on remediation on something else. Is it budgeted for this year and next year? If so, for how much?

There are 107 buildings in the highest category of risk—is that correct? How many have been surveyed and how many have been remediated?

**The Presiding Officer:** Let us keep our questions concise, Mr Kerr.

**Paul McLennan:** I will try to touch on the points that the member has raised. About 30 pilot assessments have been undertaken, and work on immediate assessment has started on five. There are 107 entries going through pre-assessment checks before proceeding to assessment. There are 12 pilot entries in scope that are without a linked developer, and we will commission SBAs as part of that. When a developer is identified, we

expect them to play their part in assessment and remediation.

As part of the funding, £97 million in consequential was set aside. This year, we have identified an allocation of £29.07 million in 2023-24 and a further £41.3 million in 2024-25.

On the process, we have to undertake the pre-assessment checks and then the SBA process to identify the exact line of work that is required at any particular time. Until we undertake the full assessment, we will not know that, so we cannot spend the funds. We are talking with the United Kingdom Government about a building safety levy. Of course, developers have to play their part, and we have also been undertaking discussions with developers on that.

**Stephen Kerr:** Unfortunately, the minister's answer suggests that not a lot of remediation has happened. That is the focus of the anxiety that many residents of high-risk buildings are living with.

A question arises. Why do we, in Scotland, seem to be so far behind England and Wales? What assessment has the minister made of the capacity of the Scottish construction sector to undertake the remediation? When will the surveys be done? When will the work be completed? Will the Government publish a timetable? If so, when?

**Paul McLennan:** That is a lot of questions. I will write to Mr Kerr on specific points. I have already talked twice in my answers about the pilot assessments that have been undertaken and the others that are undergoing pre-assessment checks, but I am happy to write to the member on that specific point.

We acknowledge that the pace of work needs to be quickened. That is part of the reason why Parliament passed the Housing (Cladding Remediation) (Scotland) Bill last year. Of course, we have to accelerate the pace, and that includes working with developers to make sure that they play their part. However, we need to go through the SBA process first to identify what work is required to be carried out. I am happy to write to Mr Kerr on that point in further detail.

**Ben Macpherson (Edinburgh Northern and Leith) (SNP):** A significant number of the affected buildings are in my constituency, and it is an issue of concern for many of my constituents, which is why I lodged a portfolio question on the matter for tomorrow. In the interim, I ask the minister to provide an update on how provisions in the Housing (Cladding Remediation) (Scotland) Act 2024, such as the cladding register, can improve the confidence of residents of affected buildings as their buildings are assessed and remediated. Can the minister give a general update on the implementation of the act?

**Paul McLennan:** I was delighted to take the bill through Parliament in May in order to quicken the pace.

The 2024 act will provide confidence to high-risk residents in a number of ways. It will provide confidence that assessment and any required remediation will be carried out to robust standards, backed by statute. We have published the technical specification for the single building assessment, to enable parties to get ready for assessment, and we have met Ben Macpherson and his constituents to discuss that.

The act will provide confidence that any steps that are necessary to make buildings safer are identified and can be taken. Its provisions on a responsible developers scheme will provide confidence that developers are playing their part in addressing the problems that are identified. Its provisions on a cladding assurance register will provide confidence that work has been done, and residents will be able to demonstrate that to lenders and insurers.

**Mark Griffin (Central Scotland) (Lab):** Diamond and Company has published research showing that there are potentially up to 5,500 high-rise buildings in need of remediation. Given that we have remediated only one building in Scotland since Grenfell, seven years ago, has the Government had a chance to analyse the 5,500 figure? Is it setting a target for remediation completion?

**Paul McLennan:** I saw the press reports over the weekend, but I have not heard directly from Mr Diamond. I am sure that he will write to us with details, and we will be happy to consider where he found the figure. I am happy to write to Mr Griffin on that particular point.

On the figures that I talked about, single building assessments have to be carried out first. The pilot programme will identify any work that has been carried out, any work that needs to be carried out and what the timescales are. I am happy to write to Mr Griffin with more detail on that.

### Commonwealth Games 2026

2. **Neil Bibby (West Scotland) (Lab):** To ask the Scottish Government what its position is on the Commonwealth games potentially being hosted in Glasgow in 2026. (S6T-02092)

**The Cabinet Secretary for Health and Social Care (Neil Gray):** Discussions with the Commonwealth Games Federation, Commonwealth Games Scotland and the United Kingdom Government on a proposal for Glasgow 2026 are on-going. Scottish ministers have been clear about the financial pressures that the public purse faces. We have a duty to balance potential benefits with the associated risks and to ensure

that staging the 2026 games would be the right thing for Scotland at this time.

Given the proximity of the event, we are obviously working closely with stakeholders to confirm a final decision in the coming weeks.

**Neil Bibby:** On the table is £100 million of direct inward investment from the Commonwealth Games Federation for Glasgow, if the city hosts the games in 2026. That investment incentive is unheard of. It would help to lever in £150 million in economic benefits to the Glasgow city region, provide multimillion-pound upgrades to venues such as Tollcross and Scotstoun, and provide opportunities for job creation, local procurement and tourism. Does the minister agree that the £100 million investment that is on the table and the associated economic benefits present an opportunity that the Scottish Government should seize?

**Neil Gray:** I absolutely appreciate the work that Commonwealth Games Scotland and the Commonwealth Games Federation have done to get the revised concept for a new Commonwealth games to this point. It is precisely because we understand its potential benefits, as well as its importance to elite sport in Scotland, that we continue to engage in and consider the matter. Alongside that, we are considering the potential risks that exist from exposure to public funding costs that we cannot cover.

The discussions are on-going. Obviously, we understand the potential benefits for the Glasgow economy, tourism, Scottish elite sport and the future of the Commonwealth games itself, which is why we continue to give it very serious due consideration.

**Neil Bibby:** We should be ambitious for Glasgow and Scotland, and we should seize the opportunity of that £100 million inward investment, which would not come from public funds. Hosting the games would provide sporting benefits as well as economic ones. Seizure of that opportunity would act as a catalyst for motivating volunteering in sport and for creating international competitive pathways for our athletes, as well as showcasing Glasgow and Scotland to the world.

We all here remember the fantastic Commonwealth games in Glasgow in 2014. However, we should focus not on the past but on the future. Every child in Scotland under the age of 16 either was not born or would struggle to remember those games. Innovative and new-format games could provide children and young people in Scotland today with a unique opportunity to witness and be inspired by world-class athletes on their doorstep.

Does the minister therefore agree that hosting the games would show that we are ambitious not

just for Glasgow, our economy and our athletes but for our young people?

**Neil Gray:** Of course we are ambitious for Glasgow and for Scotland, and we understand the potential opportunities. However, it is important to stress that the concept is not a replica of the 2014 Commonwealth games. We must understand and appreciate that it would not be a rerun of 2014, and the budget that has been set aside for the 2026 games, compared with what was invested in 2014, serves to illustrate that fact.

However, as a former athlete who had a career-ending injury while on a Commonwealth games pathway, I understand as well as anybody the importance of the games to elite and grass-roots sport in Scotland.

However, there are inherent risks that we need to bottom out. We are working with the UK Government, Commonwealth Games Scotland and the Commonwealth Games Federation to understand this new and untested concept. The figures that we have been quoted are ambitious. We continue to be ambitious, but an ambitious programme and an ambitious target within the financial envelope inherently draw risk. We have already set out the situation in respect of the public purse, so we need to be mindful of that as we continue the discussions with the UK Government, Commonwealth Games Scotland and the federation.

**The Presiding Officer:** I am keen to allow as many members as possible to ask questions, so concise questions and responses would be helpful.

**Bill Kidd (Glasgow Anniesland) (SNP):** Come on, Glesga.

Has the Scottish Government been advised whether cities in England or Wales have been approached to host the games? Has there been confirmation that the UK Government would fully fund such an endeavour?

**Neil Gray:** We have not been made aware of any cities in England or Wales having been approached by the federation to host the games in 2026, and we are therefore not aware of any decision having been requested of, or made by, the UK Government to fully fund such an endeavour. We are in continuing discussions with the UK Government in order that we can understand its position on that in relation to Glasgow.

The UK previously considered a four-nations proposal in 2023. In December 2023, the UK Government announced that such a proposal would not be supported and that it would be in the best interests of the movement for the games to be hosted elsewhere.

**Sandesh Gulhane (Glasgow) (Con):** Glasgow is an incredible city with amazing people who would undoubtedly put on a fantastic show. We trust that the sun would, like the last time, shine on our city during the games. If—or, I hope, when—the 2026 Commonwealth games come to Glasgow, what are the Scottish Government's specific strategies to ensure that hosting the games would deliver lasting social, economic and cultural benefits for Glasgow's communities? The evaluation of the 2014 games showed limited improvement in population-level health, physical activity and sports participation.

**Neil Gray:** Ensuring a lasting legacy in terms of infrastructure, sports participation and population-level health benefits, as well as wider cultural aspects, is at the heart of our major events strategy. The revised concept of the games on a much reduced budget, compared with what we had in 2014, makes that more challenging—as, I am sure, Mr Gulhane appreciates.

I reiterate to Mr Gulhane, as I did to Mr Bibby, that the games would not be a replica of 2014. The proposal is for a smaller version of the games, with fewer sports over fewer sites. Therefore, Glasgow would carry a reputational risk as well as a financial risk because—he is absolutely right—Glasgow and Scotland have an international reputation for major events hosting and for doing so incredibly successfully. I point to the world cycling championships and the world indoor athletics championships as the most recent examples of that. Therefore, we need to ensure that the concept as well as the financial considerations around it are right for Scotland at this time.

**Patrick Harvie (Glasgow) (Green):** If the Government concludes that the balance of risks and benefits is positive, I would certainly welcome the Commonwealth games coming to Glasgow. Although it would not be a replica of 2014, it would still be a major event for the city, and we would need to mitigate any unintended consequences. Therefore, will the cabinet secretary work with Glasgow City Council to ensure that there is rapid use of the visitor levy powers to ensure that some of the money that could be generated from the related economic activity would be invested back in social purposes?

Will he also ensure that, if the provisions of the Housing (Scotland) Bill are not yet in force, the Government considers use of temporary rent control measures in the region to prevent price gouging, which we have seen during the periods of some major sporting events?

**Neil Gray:** Glasgow City Council would, of course, be a central partner in delivery of the games coming to Glasgow. It has a very strong and internationally renowned reputation for the



delivery of major events going back to 2014 and beyond.

Some of the points that Mr Harvie raised would be part of the consideration, but the immediate consideration for us is whether the prospect and the concept that has been devised are right for Glasgow and for Scotland. Because we understand the importance of the Commonwealth games and their future to Scottish elite sport, we will continue discussions to look at every eventuality until the point at which we take a final decision.

**Paul Sweeney (Glasgow) (Lab):** The cabinet secretary has outlined some of the issues that he is wrestling with, but the Commonwealth Games Federation has highlighted that it will have to come to a conclusion sooner rather than later. Will he highlight to the Parliament what the approaching deadline is and what timeframe we are looking at? Is it a matter of weeks or months?

**Neil Gray:** As I said in my first answer to Mr Bibby, we are looking to conclude matters in the coming weeks. Obviously, every passing day makes delivery of the event in itself more challenging, because we already have a very tight timescale. One of the additional considerations around risk is whether delivery can be achieved within the time that is available. We want to give clarity to Commonwealth Games Scotland and the Commonwealth Games Federation as soon as possible, which is why engagement with the United Kingdom Government and others has intensified so that we can arrive at a decision.

### **Dog Attacks (Restrictions on XL Bully-type Dogs)**

3. **Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** To ask the Scottish Government, in light of the recent reported dog attack in Aberdeenshire, what effect the restrictions on XL bully-type dogs have had on the incidence of dog attacks. (S6T-02090)

**The Cabinet Secretary for Justice and Home Affairs (Angela Constance):** I thank the police for their swift action and I wish the people who were injured in the incident a speedy recovery. Although I cannot discuss details of live cases, incidents such as these illustrate the dangers that arise if any dog is not kept under effective control, which is why we support responsible dog ownership, whatever breed of dog is owned.

The Scottish Government took action to introduce safeguards in relation to XL bully dogs specifically to ensure public safety following the impact in Scotland of steps that the United Kingdom Government took in England and Wales. Those new safeguards include measures that mean that XL bully dog owners must ensure that

their dogs are muzzled and on a lead in order to reduce risk when they are in a public place.

We continue to work with key stakeholders to encourage responsible dog ownership no matter the breed of dog, in order to help to drive down the incidence of dog attacks.

**Christine Grahame:** I endorse the cabinet secretary's words about the people who were horrifically attacked. Although the cabinet secretary did not actually answer my question, I ask her whether the Government holds data on, say, the top 10 breeds that are known to have been involved in attacks on people—or, indeed, on other dogs? If she does not have that data to hand, perhaps she could write to me with it.

**Angela Constance:** I will try to answer Ms Grahame's questions better. Data is available from the national health service on in-patient and day-case admissions to hospital when a dog attack was recorded as the reason. Information is also available from National Records of Scotland on deaths from being bitten or struck by a dog. However, data is not recorded on the breed or type of dogs that were involved, so there is no central record in Scotland—or, indeed, in the UK—of the sort that the member asked about. However, my ministerial colleagues Siobhian Brown and Jim Fairlie would be happy to engage further with Ms Grahame to discuss what more can be done in that area to gather more data.

**Christine Grahame:** I would welcome progress in trying to identify which breeds are involved. As members know, my party's long-standing policy has been that it is about the deed, not the breed. My Welfare of Dogs (Scotland) Bill tries to address the issue by making sure that people become responsible owners. Can the minister advise me what information is held on the circumstances of such horrific attacks and, if so, where it is kept? I note that she mentioned the NRS. Such information would help to inform policy and behaviour.

**Angela Constance:** Ms Grahame has raised a fair point. Some of the information that is held is top level and somewhat general. She may be interested to know that, on 20 September, ministers Ms Brown and Mr Fairlie will hold a responsible dog ownership summit, to look in general at dog control and good practice, but also at dog welfare. I would be very surprised if data was not discussed at that meeting.

**Jamie Greene (West Scotland) (Con):** The restrictions in Scotland were somewhat delayed, relative to the rest of the United Kingdom. That led to suggestions that there was perhaps an influx of dogs across the border. Is there any evidence that that was the case?

From a statistical point of view, how many XL bully-type dogs have been registered in Scotland, and are there any estimates whatsoever of the volume of unregistered or illegally held dogs of that type?

**Angela Constance:** If I may resist Mr Greene's attempt to rewrite history, I say that it is important to put on the record, once again, that the engagement of the previous UK Government with the Scottish Government on this very serious matter was absolutely woeful. My colleague Siobhian Brown found out about its new legislative measures via the BBC, and when she sought to clarify matters the experience was somewhat frustrating.

It is also worth remembering that it was the previous UK Government that created the loophole that caused an unacceptable risk to public safety and animal welfare.

The number of exemptions that have been granted is 3,385. It is somewhat difficult to establish precise numbers of dog owners—never mind the precise numbers of dog owners who own specific breeds.

**Emma Roddick (Highlands and Islands) (SNP):** I have heard from constituents who feel stigmatised and worried about the health and behaviour of their pets as a result of measures that were introduced through the XL bully legislation. How is the cabinet secretary reacting to calls from such owners to revisit the legislation, given the detrimental impact on the wellbeing of them and their pets?

**Angela Constance:** The Scottish Government was faced with a difficult situation due to the actions of the previous UK Government, which affected Scotland. We needed to take action—I am glad that we did—to balance public safety interests with the rights of XL bully dog owners. I believe that we have found that balance—for example, through the longer period for owners to seek an exemption in Scotland than they would have in England and Wales, and a more flexible approach to neutering.

Regular engagement with dog welfare stakeholders such as the Scottish Society for Prevention of Cruelty to Animals, the Dogs Trust and the British Veterinary Association continues to help to minimise any undue impact on dog owners and, of course, on the wellbeing of their dogs.

**The Presiding Officer:** That concludes topical question time. I will allow a moment for the front benches to organise before we move to the next item of business.

## Police (Ethics, Conduct and Scrutiny) (Scotland) Bill: Stage 1

**The Presiding Officer (Alison Johnstone):** The next item of business is a debate on motion S6M-14398, in the name of Angela Constance, on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill at stage 1. I would be grateful if members who wish to speak in the debate were to press their request-to-speak buttons.

14:29

**The Cabinet Secretary for Justice and Home Affairs (Angela Constance):** I am pleased to open the debate on the general principles of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill. I thank the Criminal Justice Committee for its scrutiny of the bill. Its stage 1 report raised several important points, which I have considered carefully. I also thank the organisations and individuals who have provided evidence to the committee and who have engaged intensively with the bill. The bill has been shaped by those who have had lived experience of the police complaints system, many of whom felt that the whole system was against them, that they became the victim and that there was no independent body to turn to.

I thank, too, everyone in Police Scotland: the officers and staff who work tirelessly to protect and support our communities, the vast majority of whom conduct themselves with integrity and professionalism. Ensuring public trust in the police service is vital, and we need strong processes in place to deal with complaints and allegations of wrongdoing about the police in order to secure that trust. That is at the heart of the bill. It aims to strengthen public confidence in Police Scotland, a service that operates under the principle of policing by consent.

The bill gives prominence to ethical policing and supports further processes for the handling of any conduct that falls short of the high standards of professional behaviour that the public rightly expect. The bill provides greater consequences for gross misconduct and enhances independent scrutiny of policing.

In 2018, the Scottish Government and the Lord Advocate jointly commissioned Dame Elish Angiolini to undertake an independent review of complaints handling, investigations and misconduct issues in relation to policing. Dame Elish's review was the catalyst for systemic cultural change and organisational development to deliver significant improvements in the police complaints and police misconduct processes. Those improvements are helping to make both systems easier to navigate for members of the

public, as well as increasing consistency, efficiency and timeliness.

The bill builds on the transformative change that has already been delivered by policing partners. It makes direct changes in primary legislation and paves the way for a range of further measures that will follow in secondary legislation.

The provisions in the bill cover three main themes—ethics of the police, police conduct and independent scrutiny of the police by the Police Investigations and Review Commissioner. Police Scotland officers must act in a way that secures and maintains the respect and trust of the public. They have a strong focus on respecting human rights, and Police Scotland already has a code of ethics. The bill will make it a statutory obligation to keep a code in place, reflecting its significance in setting out what the public can expect from the service, its constables and police staff.

Having a range of key stakeholders as statutory consultees helps to ensure that the code is of high quality. Reflecting views that were heard at committee, I propose to add the Scottish Human Rights Commission and Equality and Human Rights Commission to the list of mandatory consultees that the chief constable must consult when drafting the code.

I also plan to reflect on the evidence that was heard by the Criminal Justice Committee to add further sources that the chief constable must refer to when preparing the code. As Dame Elish set out in her review, those who hold the office of constable and the powers of that office have a higher duty than others to account for their actions and record what they did or saw in the execution of their duties. The bill proposes to introduce an explicit duty of candour on individual constables and also on Police Scotland as an organisation. A duty to be candid is already implied within standards of professional behaviour. However, introducing a statutory duty of candour will make clear to all what we can expect of the police service.

I very much recognise the committee's views on the application of the individual duty of candour to police staff who have statutory powers and duties in operational roles. I intend to work with Police Scotland and the Scottish Police Authority on how that could best be progressed. I am happy to confirm that I propose to amend the bill's duty of candour provision to make it clear that such candour is also required in investigations of police staff and Scottish Police Authority staff, not just those of fellow constables.

**Martin Whitfield (South Scotland) (Lab):** My understanding of the duty of candour is that the individual duty currently applies to the office of constable and the organisational duty will apply to

the chief constable. Are any consequences envisaged for breaches of that duty of candour, both at the level of the constable and, perhaps more importantly, at that of the chief constable?

**Angela Constance:** Very clear responsibilities are laid on the chief constable via the 2020 legislation in that the primary focus for holding the chief constable to account is the Scottish Police Authority.

As for the potential consequences of either the code of ethics or the duty of candour, it is important to recognise that the professional standards and behaviours expected of police constables are set out in regulations. Although it is important that some matters are not conflated, there can be an overlap.

In its stage 1 report, the committee made a number of key recommendations on strengthening the framework on vetting. My officials have engaged extensively with policing partners, with a focus on how those recommendations can be delivered in practice. I am happy to confirm that I am considering in detail how best to implement the recommendations of His Majesty's Inspectorate of Constabulary in Scotland ahead of stage 2.

The bill also proposes changes relating to the handling of police misconduct cases. Dame Elish's review recommended the transfer of certain functions from the SPA to the PIRC

"to enhance independent scrutiny"

and

"remove any perception of familiarity"

between those subject to allegations and the person considering the matter.

The bill amends the Police and Fire Reform (Scotland) Act 2012 act to enable the expansion of the role of the PIRC in senior officer misconduct cases, through measures to be established in secondary legislation. Currently, where there is an allegation of misconduct and the subject officer resigns or retires, any live proceedings come to a halt. The committee heard that that creates a perception that officers who are guilty of serious wrongdoing can escape scrutiny and consequences.

The committee also heard from officers who were frustrated that they could not clear their name. There is therefore a strong public interest in dealing with allegations of gross misconduct after officers leave the service. The bill delivers on that by ensuring that disciplinary procedures can apply to former constables in the most serious cases.

I agree with the committee that investigations into former officers should be completed as timeously as possible. I am very much aware that any delay prolongs the impact on victims and on

officers, and I commit to exploring with policing partners ways to mitigate such delay.

The bill provides for the police advisory list and the police barred list, which will help in capturing and sharing information about former police constables who have, or who are suspected of having, engaged in serious misconduct. That will support police vetting across the United Kingdom.

There is also provision to remove the requirement for the SPA to determine senior officer misconduct cases, which will pave the way for an independent panel to determine them. That will address any concerns about perceived proximity between the authority and senior officers and will strengthen the independence of proceedings.

The primary purpose of the PIRC is to increase public confidence in policing through independent scrutiny of Police Scotland's actions. As Dame Elish said, the organisation's higher purpose is to be a body that people can go to when they are dissatisfied or do not have trust and confidence in the police. The bill adds a suite of new powers for the PIRC that will strengthen independent investigation and oversight of the police complaints system. It extends the ability of the PIRC to investigate offences where it is suspected that the offence was committed by a person who was or is serving with the police, regardless of whether they were on or off duty at the time. That will avoid the police investigating someone when there could be concerns that the investigator has a connection with them.

The bill puts beyond doubt the PIRC's power to review complaints made by persons serving with the police. Police officers and staff who experience poor service will have the ability to request a complaint-handling review by the PIRC, or to request that the PIRC call in their complaint. That gives police officers and staff an external body to go to if they are dissatisfied with the way in which their complaint was handled.

The PIRC already has the ability to make recommendations to Police Scotland regarding the handling of individual complaints, but the bill will put that into statute, alongside requirements for the SPA or the chief constable to respond to the recommendations made. The bill provides the PIRC with a power to decide to take over consideration of complaints. That will strengthen the role of the PIRC, enabling faster resolution and greater scrutiny of Police Scotland and the SPA's complaint handling. In turn, that will provide reassurance that there is an independent oversight body if the complaint in question has not been properly considered.

I very much welcome the committee's recommendation that the bill should be amended

to provide for an expectation that the PIRC will publish the responses of Police Scotland and the SPA to PIRC recommendations, unless there are operational reasons not to do so. I can confirm that I will lodge a stage 2 amendment to address that.

The bill gives the PIRC the duty to audit the handling of whistleblowing complaints to improve how public interest matters of that sort are investigated. That will encourage people to speak up when they see wrongdoing, and it provides an opportunity for Police Scotland and the SPA to learn and to address the issues raised. The bill also gives the PIRC new functions for investigating serious incidents or criminal offences in Scotland that involve constables from forces outside Scotland. That will help provide a basis for discussions to put in place reciprocal powers for other UK jurisdictions.

In order to support Police Scotland to improve, the bill will provide the PIRC with a specific new power to review a policy or practice of the SPA or Police Scotland. That new power could be used when the PIRC becomes aware of a trend, theme or practice emerging in the discharge of its other statutory functions. The bill also enables regulations to be made to allow the PIRC direct access to Police Scotland's complaints database independently and remotely, with the intention of improving transparency and public confidence in the system.

The bill introduces a statutory advisory board for the PIRC on governance and administrative matters. The governance design will ensure the commissioner's operational independence and decision-making autonomy.

I again thank the Criminal Justice Committee for its support for the general principles of the bill, which will make improvements to policing. I very much look forward to the debate and to members' contributions.

**The Presiding Officer:** I call Audrey Nicoll to speak on behalf of the Criminal Justice Committee.

14:43

**Audrey Nicoll (Aberdeen South and North Kincardine) (SNP):** I am pleased to speak on behalf of the Criminal Justice Committee. As ever, the committee is very grateful to our clerking team, the Scottish Parliament information centre and other Parliament staff for their assistance and support during our scrutiny of the bill. I am grateful, as ever, to members of the committee for the conciliatory way in which we have worked together.

The committee gave detailed consideration to the proposals in the bill. I will focus on gross misconduct proceedings, the introduction of barred and advisory lists, the time taken to deal with complaints, the new powers proposed for the PIRC and whistleblowing.

I place on record our sincere thanks to those who told us about their experiences of the police complaints and conduct systems and provided their views on how they should be improved. We heard from people who had made complaints, as well as from a former officer who had been the subject of a complaint. Their evidence highlighted the need for an effective, fair and transparent police complaints system that works for members of the public, police officers and staff.

The conclusions and recommendations in our stage 1 report were agreed without division. However, for some members of the committee, their support for the general principles of the bill is dependent on the provision of an updated financial memorandum at stage 1.

During stage 1, the Cabinet Secretary for Justice and Home Affairs provided the committee with the most up-to-date cost estimates and gave a commitment to provide a revised financial memorandum if the bill is amended at stage 2.

I would like to highlight some of the main findings of our stage 1 report. The bill contains a number of provisions that aim to improve confidence in the police complaints and conduct systems. The committee recognises that

“the vast majority of police officers and staff are dedicated, honest and hardworking, and do an incredibly difficult job”

on our behalf. We welcome the introduction of a statutory code of ethics and consideration being given to the committee reviewing the draft code.

We also welcome the introduction of a duty of candour and the Scottish Police Authority’s consideration of whether such a duty should apply to staff. I welcome the cabinet secretary’s update in her speech regarding a duty of candour for staff.

The committee recognises that when the standard of behaviour of officers falls below what the public might expect, there needs to be accountability. A key issue that the bill addresses is that of enabling gross misconduct proceedings to continue or commence when a person ceases to be a constable. The procedures will apply when a preliminary assessment of the misconduct allegation finds that the conduct of the person while they were a constable would, if proved, amount to gross misconduct.

We heard about the impact on those who make complaints as well as on those who are the subject of a complaint when gross misconduct proceedings are not brought to a conclusion. In

their evidence to us, June and Hugh Mcleod described the devastating impact on their family when an officer retired just days prior to facing a disciplinary hearing for gross misconduct. Mr and Mrs Mcleod said that that

“clearly denied us justice and had left us seeking answers over the police investigation into our son’s death.”

Former police officer Ian Clarke told the committee that if the misconduct proceedings had continued to a conclusion after he had retired, he would have a record that there had been no misconduct on his part. Mr Clarke said in his written submission:

“To be accused of something and to have no formal resolution is wrong. It allows the guilty to walk away with no consequences and the innocent to have suspicion hanging over them for the rest of their lives.”

The committee welcomes those provisions. Although there is not a specific provision in the bill, we considered what would be a proportionate length of time in which to commence gross misconduct proceedings when a person had ceased to be an officer. We concluded that

“cases should be able to commence up to 12 months after an officer has left employment and that any cases that are raised after 12 months should be subject to a public interest test.”

The committee recommends that that should be

“a clear commitment and contained in regulation.”

We also recommend that the Scottish Police Authority monitors the process over the initial years to ensure that gross misconduct cases are dealt with timeously.

The Scottish Government confirmed that its intention is that gross misconduct proceedings can continue to a conclusion, however long that takes. Those measures should provide confidence to the public that officers will be held to account for gross misconduct, and provide a conclusion for those officers who wish to clear their name.

I turn to vetting. Section 7 of the bill enables the Scottish Police Authority to

“establish and maintain”

a

“Scottish police advisory list ... and”

a

“Scottish police barred list”.

A person would be entered on the advisory list where disciplinary proceedings had been brought against them for gross misconduct either after they ceased to be a constable or where they ceased to be a constable before the proceedings were concluded. A person would be entered on the barred list if they were dismissed for gross misconduct or would have been dismissed had

they not already ceased to be a police officer at that point.

The committee welcomes the introduction of those lists. They are an important vetting tool that will provide a consistent approach across police forces in Great Britain. We recommended that Scotland follows the practice in England and Wales, where the barred list is published but only relevant organisations are able to access the advisory list.

Another key issue is the time that is taken by policing bodies and the Crown Office to deal with complaints. In its report, the committee concluded:

“The evidence we received clearly indicates that the Bill, as introduced, will have little impact on the length of time taken to consider and conclude police complaints.”

I welcome the Scottish Government's clarification that the current regulations do not prohibit misconduct proceedings from happening when there are possible criminal proceedings, and its confirmation

“that there may be a workable solution”

to address that issue in a way that does not require legislation.

The Scottish Government also confirmed that it

“is consulting with the Scottish Police Consultative Forum on”

the introduction of

“accelerated”

gross

“misconduct hearings for all ranks”

of officers under certain circumstances. Those measures are welcome; however, the committee would like further measures to be introduced to address the time that is taken to deal with complaints, and in particular to provide robust oversight and monitoring of the effectiveness of Police Scotland's centralised professional standards department.

The committee welcome the provisions in the bill that strengthen the role of the Police Investigations and Review Commissioner. Section 11 of the bill allows the commissioner to

“carry out a complaint handling review”

without a request from the complainer, Police Scotland or the Scottish Police Authority, if the commissioner considers

“that it is in the public interest to do so”.

Section 11 also includes a requirement for the SPA and Police Scotland to respond to the commissioner's recommendations within the timescales that are set out in the PIRC's report.

In response to the committee's recommendations that

“the SPA and Police Scotland”

should

“be under a duty to comply with PIRC's recommendations”, the commissioner welcomed

“some element of accountability for organisations in receipt of our recommendations, in respect of implementation or compliance.”

However, the commissioner also highlighted the benefits of retaining flexibility to remedy an issue in a different manner.

Section 12 provides the commissioner with a power to take over consideration of, or call in, complaints that are being dealt with by the chief constable or the SPA under certain circumstances. Those could include

“if ... the Commissioner ... has reasonable grounds to believe that ... the appropriate authority”

is not handling, or has not handled,

“the complaint ... properly”,

and

“it is in the public interest for the Commissioner to consider the complaint.”

Section 15 provides the commissioner with a bespoke power to review the practices and policies of the police generally, not just in relation to a particular incident. That would enable the commissioner to address a recurring issue that was being raised by members of the public.

Section 16 enables Scottish ministers to make regulations allowing the PIRC to access Police Scotland's conduct and complaints electronic storage system, or an SPA electronic storage system, if required.

Those new powers for the commissioner have the potential to improve the transparency and robustness of the police complaints process, and to improve public trust and confidence in the handling of police complaints.

Finally, I turn to whistleblowing. The bill provides the commissioner with powers to audit and report on the arrangements that are in place for the investigation and on information that is provided in a whistleblowing complaint.

The committee recommended that the PIRC and the SPA should be prescribed as independent third parties that can investigate whistleblowing complaints by those working in policing in Scotland. It is important that there are relevant independent third parties for employees of Police Scotland and the SPA to report whistleblowing concerns to. We understand that that will require changes to UK legislation, and it would be helpful

if the cabinet secretary could confirm whether she supports that recommendation.

The bill contains a number of measures to ensure that robust, clear and transparent mechanisms are in place for investigating complaints, allegations of misconduct or other issues of concern about the conduct of police officers in Scotland. If Parliament agrees to the general principles of the bill today, the Criminal Justice Committee, as ever, stands ready to scrutinise the bill at stage 2.

14:55

**Russell Findlay (West Scotland) (Con):** I, too, thank the committee clerks for the incredible work that they do on our behalf.

Scotland's police officers are true heroes. They serve the public with great care, professionalism and integrity. Their shift patterns are tough on work-life balance and the hours are long, and their job is often dangerous and thankless. I was pleased to attend last year's Scottish Police Federation awards, which showcased officers' life-saving bravery and commitment to their communities. Yesterday, we were able to remember and recognise that ethos of selfless duty on emergency services day, which is supported by His Majesty the King.

Shockingly—I make no apologies for raising this issue again today—officers in Scotland are still not protected by body-worn cameras. For years, body-worn cameras have been standard kit across the rest of the UK, and they are proven to prevent vexatious complaints against officers.

I will begin my stage 1 speech by explaining why Scotland's police officers—and the public—expect and deserve a fair, efficient and effective system of regulation and complaints. I will end it by asking whether the bill will do the job that it is supposed to do. Will it provide remedy to those who have been wronged? With immense pressure on policing budgets, is it affordable?

Police Scotland was created 11 years ago, in 2013. The surrounding landscape of regulation and complaints is complex and confusing. Frankly, it just does not work. The Scottish Police Authority is supposed to hold Police Scotland to account on behalf of the public, but too often, it does not do so.

The Police Investigations and Review Commissioner investigates the misconduct of officers above senior rank, not the rank and file, which means that the vast majority of allegations that are made against officers are handled by the police. Things are kept in house.

As an MSP, and before that as a journalist, I have represented those who have been wronged

by way of negligence, misconduct or even criminality. Some of those people gave up their time to give evidence to our committee and I thank them for doing so. Those people are often deprived of natural justice. The complexity of the process is daunting and secretive. Too often, cases drag on for far too long.

There have been shocking cases in which Police Scotland has watered down serious allegations of criminal acts, including an alleged rape, by recording them as "incivility". On other occasions, Police Scotland failed in its duty to report to the Crown Office criminal allegations made against officers.

If complainers get as far as the PIRC, they often discover that the police watchdog is pretty toothless. Stephanie Bonner was one of those who gave up her time to give evidence to the committee, and I again thank her personally for doing so. Following the unexplained death of her teenage son Rhys, Stephanie's pain was compounded by her dealings with the police. She described the process as a "hellish merry-go-round".

I do not know, but perhaps some in the policing establishment believe that a process that helps to get rid of what they see as troublesome complaints is a good thing. I disagree. The reality is that an unfair system only fuels injustice and risks harming all officers by eroding public trust and confidence. If lost, that will be hard to repair.

The broken system fails officers just as badly as it fails members of the public. As a politician and as a journalist, I have represented police whistleblowers who tried to report wrongdoing, only to then become targets. The full power of Police Scotland was weaponised against them and used to tie them up in knots, ostracise them, silence them and crush them. Many of those officers are female. They made a brave stand against sexist bullying long before two successive chief constables held up their hands and admitted to institutionalised discrimination.

In a few cases, the officers emerged with some compensation and an apology. In others, the misery has continued. It is an absolute scandal that so many good officers have had their careers, health and finances so needlessly destroyed. I know of one officer who took his own life after becoming trapped in the complaints process. His family and colleagues believe that that was a contributory factor in his suicide.

Against that backdrop, the Government finally took action, in 2018, by asking the former Lord Advocate Lady Elish Angiolini to investigate. Her final report, which was published in November 2020, is truly damning. For me, one of her many critical words that stood out is "inaccessible". It is

not a harsh word, but it helpfully encapsulates the near impossibility of the task for those seeking justice and redress. I refer back to my earlier observation about a system that deters and deflects valid complaints. The short-term gain of a difficult issue disappearing potentially yields the greater long-term harm of increased public mistrust.

Lady Elish Angiolini made 111 recommendations, some of which require legislation, which is why the bill is in front of us. It is welcome that many of her non-legislative recommendations have been enacted. Just as encouraging is the ready acceptance of them by Scotland's policing establishment. In recent years, I have also detected a willingness to change the policing culture from within, because a changed culture might achieve more, or as much, as a code of ethics and the duty of candour in the bill.

We like parts of the bill, such as the measures to increase transparency, with some serious misconduct hearings being held in public and investigations continuing in the event of officers leaving their posts. However, it would take longer than the 10 minutes that I have for my speech to properly set out some of our concerns about the bill.

The Criminal Justice Committee detailed its concerns in our lengthy stage 1 report, to which members can refer. I am certain that many of today's speakers will raise the most pressing issues in greater detail, but one of them relates to the cost of the bill. The initial financial memorandum stated that the cost would be just over £1.4 million. That price tag has rocketed to £5.8 million and, as we all know, that number is likely to go in only one direction. It was alarming to hear the Scottish Police Federation tell the committee that it thought that the total cost could rise by as much as tenfold.

It is also deeply concerning that the Parliament's Finance and Public Administration Committee said that the Government had provided figures that it knew were "completely inaccurate". Our party expects full clarity on the cost. We did not formally include that as a condition of supporting the bill at stage 1, but it can be taken as read that we will not be writing a blank cheque.

Since the Criminal Justice Committee's stage 1 report was published, we have received responses from various policing bodies. Those responses are, of course, welcome, and they are not without their own concerns. For example, the PIRC has provided a 20-page response that contains various points, including concerns about its role and responsibilities if the bill is passed unchanged. One of the main Angiolini recommendations was to give the PIRC greater powers and to make it answerable to the Parliament instead of ministers.

The Government does not seem to be keen on that proposal, but my party intends to explore it further.

I welcome the proposed amendments that the cabinet secretary mentioned, and we will examine them fully in due course. My colleagues and I intend to lodge various amendments of our own. Those are a work in progress and will be for another day.

Although we support the bill at stage 1, this is very much unfinished business. Scotland's brave and dedicated police officers and those who rely on them know that we have to get this right. A modern, transparent, speedy and fair system is the prize.

15:05

**Pauline McNeill (Glasgow) (Lab):** Scottish Labour welcomes the opportunity to discuss the main provisions in the bill and how we can ensure the highest standards of conduct in the police service, but we are clear that the Government must resolve the issues around the financial memorandum.

It is important that victims and families are given more robust accountability, but it is unclear whether the bill will change much for ordinary people and for members of the public who have been dissatisfied when they have complained about the police service. The cabinet secretary talked about "faster resolution" and more "independent scrutiny". The bill must be able to demonstrate that that will be the case if we are to vote for it at stage 3.

The bill creates a new duty of candour. Clearly, the vast majority of police officers already adhere to the principles that are contained in a duty of candour. The Government said in its response to the stage 1 report that the aim is

"to bring about measurable change."

It went on:

"Most tangibly, the duty is to become a standard of professional behaviour for police constables. This means that if constables fail without any good reason to evidence candour, they could be subject to disciplinary proceedings".

I do not think that we have previously used the word "candour" in legislation, so we must be absolutely clear on what it means and what the implications are. The stage 1 report specifically noted that the duty of candour applies to

"circumstances that happen off duty."

In its response to the stage 1 report, Police Scotland asked for care to be taken when asking officers to adhere to a duty of candour when they are off duty, because of the possible impact on



their private lives. I have sympathy with that position. Police Scotland said:

“Extending a Duty of Candour into off-duty circumstances could have potential Article 8 ECHR implications in relation to officer rights and impact on their private ... lives, where they may be expected to provide candour in relation to a matter which may have significant and disproportionate implications, not only on them ... but also on the lives of a family member.”

That issue needs further discussion, as it has been raised by Police Scotland. I would like more clarity on what the measure means in practice. For example, does the Government expect more conduct hearings as a result of adopting that phrase in legislation when the new duty comes into force?

I want to talk about the proposal for accelerated disciplinary hearings that has been proposed by Police Scotland. Conduct hearings are often incredibly lengthy. Deputy Chief Constable Alan Speirs told the committee that Police Scotland has

“an officer who is probably three years into their suspension”.—[*Official Report, Criminal Justice Committee*, 22 May 2024; c 42.]

David Kennedy from the Scottish Police Federation noted that

“the timeline is supposed to be 35 days from start to finish”

but

“The vast majority are probably 365 days or more”.—[*Official Report, Criminal Justice Committee*, 8 May 2024; c 40.]

We can see that an incredible amount of work needs to be done on that.

The stage 1 report notes that DCC Speirs described the conduct regulations as

“not fit for purpose”

and said that there is an

“inability to fast-track a process”.—[*Official Report, Criminal Justice Committee*, 22 May 2024; c 42.]

It seems reasonable that there should be an amendment to expedite conduct hearings, as has been asked for. Certainly, when an officer does not accept the charge of misconduct, those proceedings should follow to allow the officer to rebut the charges. However, in instances where the charge is already accepted, there does not seem to be any reason why the process should not be expedited.

I want to talk about gross misconduct proceedings. We should be clear that, when we talk about gross misconduct, that is quite a separate matter from misconduct. I listened carefully to the cabinet secretary on that point, and she interchangeably used the terms “misconduct” and “gross misconduct”. That is important, because the term “gross misconduct” usually

implies a more serious matter than “misconduct”. I think that the committee members would all agree that some of the terminology in the bill has been hard to follow. We are sometimes talking about senior ranks and sometimes about all ranks, and sometimes we are talking about misconduct and sometimes about gross misconduct.

The 12-month timescale within which gross misconduct proceedings can be commenced is not in the bill. As the stage 1 report states, the cabinet secretary confirmed that that

“is not a hard and fast statutory requirement”,

and that it would be for the commissioner

“to make a judgment on public interest and fairness”.—[*Official Report, Criminal Justice Committee*, 29 May 2024; c 20.]

That would be based on all the facts and circumstances. I think that some of those caveats should be written into the bill, because we require certainty when we are creating something new.

The Government’s response says that, if proceedings are commenced within the time period, they can

“continue until conclusion, however long that takes.”

I do not find that satisfactory. Whether or not a month is the right time period, I think that there should be a time period for completion of proceedings.

The committee wrestled with quite a number of structural changes that would result in more independent scrutiny. For example, the PIRC has been given a greater role in misconduct proceedings for senior officers. In fact, the PIRC does not agree with all the recommendations, which is also a cause for concern, because if a body is being asked to take on more responsibility, we would hope that the body would be happy and content to do that.

Following the stage 1 report, Scottish Labour said that we would not vote for the general principles of the bill unless the question of finances were resolved. We will take in good faith the fact that, since the report was published, the Government has clarified that it is not possible to amend the financial memorandum at stage 1 but that it will take that issue on at stage 2.

As Russell Findlay has also said, we will listen carefully. It is really not satisfactory to make substantial changes to a bill if it will cost money to make those changes but the Government is not prepared to provide the money that is required. If we do not get a guarantee of that, Scottish Labour will not vote for the bill at stage 3. Let us hope that we can make progress at stage 2.

In her opening remarks, the cabinet secretary said that she would also look at recommendations

from HMICS at stage 2. I hope that she will forgive me if I should know what those recommendations are but, as I said, I am struggling with all the acronyms and recommendations. It would be helpful if, in summing up, she could say exactly what those recommendations are so that we can have some advance warning of what we might be facing at stage 2.

15:12

**Maggie Chapman (North East Scotland) (Green):** On behalf of the Scottish Greens, I welcome the bill and the reforms that it contains. Those reforms, as we have already heard, represent a further step in the implementation of the Angiolini review into complaints handling, investigations and misconduct in relation to policing.

I thank members of the Criminal Justice Committee for their meticulous scrutiny of the bill at stage 1 and look forward to further discussion of the points that they have raised. I also thank the committee clerks and researchers for all the work that they have done and for their support for the committee and thank all those who contributed at stage 1, including the individuals and organisations who gave evidence as witnesses or who submitted briefings and other information during that process.

We live in a society where the institution of the police holds considerable power, both in the acts or omissions of individual officers and in its corporate response to scrutiny. That power has often been misused—sometimes with the tragic consequences of which we have heard some examples today—so it is our duty as lawmakers to recognise, respond to and help to redress those wrongs.

People who have experienced harm from police action or inaction deserve to receive respectful, timely and appropriate treatment, through processes that are clear and fair and have outcomes that include full and candid truth telling, reparation where that is needed and an assurance that lessons have been learned.

There is much in the bill that can, if properly implemented, help both to reduce the level of misconduct by police officers and to improve the process by which misconduct and injustice are investigated and addressed.

It is important that every police officer understands, accepts and lives out the ethics that we expect of them. Those ethics have, rightly, deepened and developed in recent decades, but they cannot always be taken for granted.

It is important that every police officer bears and follows the duty to be open and truthful when

something has gone wrong. The existence of that duty will be a benefit to the majority of police officers, who will want to be able to fully explain what has happened without the sense that, in doing so, they are somehow letting down their colleagues or their corporate body.

In the implementation of these provisions, it is crucial that the rights of workers, police officers and civilian staff are properly protected. We must have clear and independent processes for calling the police to account, including senior officers and those who leave the force before their actions are investigated. We must have a means of ensuring that, if a police officer has behaved badly in one part of the UK, they are not able to do the same elsewhere. Robust vetting procedures can help to ensure that the right people are recruited and that they continue to be the right people to be trusted with the exercise of police power. The work of the Police Investigations and Review Commissioner must be effective and efficient, getting both its functions and its governance right.

However, legislation alone cannot bring about all the changes that we need to see. There are fundamental problems with the institution of a police force—any police force—that will not be easily fixed. It is not an accident or a weird anomaly that Police Scotland has been acknowledged by its own senior officers as being institutionally racist and discriminatory. It is not an accident that the victims and survivors of police misconduct, injustice and brutality are overwhelmingly those who are already marginalised, whose identities are already viewed as problematic and whose voices are already silenced.

The historic roots of the police in Britain and beyond lie in colonialism, the suppression of democratic movements and the capitalist imperative to defeat organised labour. Those foundational purposes might not be overtly present today, but they determine why we have something called a police “force” at all and they cannot help but underlie what Governments, media, political discourse and police officers expect that force to do.

In many ways, we can be rightly proud of Police Scotland when comparing it to other police forces across the UK and around the world. Much good work has been done, and much more is continuing. We have all, I imagine, had positive encounters in our work and in our personal lives with police officers who are kind, thoughtful, sensitive and empathetic. However, we must recognise that Scottish exceptionalism in that, as in other areas, is not always justified. Policing by consent too often means only the consent of people like us in places like this.

So, yes, the Scottish Greens will vote for the principles of the bill today. We will work with others across the chamber and civil society to make it as fair, effective and worth while as it can possibly be during the coming weeks and months. However, as I have indicated, we have some broader questions to ask—not just here, but here is a good place to start.

In closing, I look forward to hearing more of the debate this afternoon and to returning to the issues in the days and weeks ahead as we grapple with amendments to the bill, as we must.

**The Deputy Presiding Officer (Annabelle Ewing):** We move to the open debate, with back-bench speeches of around six minutes. I advise members that we have some time in hand, so if members wish to seek to make or take interventions, that would be very helpful.

15:18

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** As a member of the Criminal Justice Committee, I welcome the chance to speak in today's important debate. The bill has been drafted using the recommendations from the 2020 "Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing" by Lady Elish Angiolini.

First, I recognise the fantastic work of Police Scotland and its officers. I am confident that, for many officers, the bill will be a bit inconsequential to how they conduct themselves on a day-to-day basis in their role in our communities. One recent example was the anti-racist demonstration in Glasgow's George Square last weekend, where police organised calmly and efficiently to avoid clashes between protesters. Local police in my constituency of Strathkelvin and Bearsden took part in a recovery walk last week, which was organised by a fantastic aftercare recovery charity called Group Recovery Aftercare Community Enterprise. The police were praised by everyone in the community for the good-natured and friendly way in which they took part.

However, during committee evidence, we heard witnesses—police and members of the public—tell of experiences that were concerning due to the lack of transparency and communication and, crucially, the long delays in getting matters resolved. Russell Findlay highlighted those acute issues. Lady Elish's recommendations reflect on those matters, and the bill aims to ensure that our police service is held to a high ethical standard throughout all aspects of the role, to help public confidence in the service and encourage greater transparency. I believe that, with amendment, the bill will achieve what it sets out to do—particularly in relation to improving the culture and public

confidence in how complaints are dealt with. However, the bill's progress and effectiveness must be reviewed and monitored, as that was raised as a concern in the committee's stage 1 report.

The bill will make changes in four key areas. First, there is a requirement for a code of ethics, which will be drawn up by the chief constable with the assistance of the Scottish Police Authority and which will be reviewed every five years. The Scottish Police Federation is of the view that the non-statutory code of ethics that exists at the moment is sufficient. However, HMICS believes that the code will set in statute what is expected of officers, and the Association of Scottish Police Superintendents views it as an opportunity to improve Police Scotland's internal culture, although it says that it must include refresher training in equality, diversity and inclusion for all officers.

I thank Russell Findlay for highlighting the long-standing problems of sexism and bullying in the service. The issue of the culture has been repeatedly raised. In my view, anything that can be done to embed equality and inclusion in the police service can only be a good thing.

Section 3 seeks to give legal recognition to a duty of candour on individual police constables and includes the principle that Police Scotland should police in a way that is "candid and co-operative", particularly in regard to the investigation of officer conduct. I am pleased that the cabinet secretary has said that she will amend the bill to include operational staff in that duty of candour. Not surprisingly, witnesses and those with experience of the police complaints procedure were broadly in favour of those measures, although some expressed doubt about what difference it would make if there were no sanctions for officers and staff who chose not to co-operate with investigations.

Regarding police misconduct, the bill will help to strengthen public confidence—for example, by ensuring that officers can no longer resign to avoid being held to account for gross misconduct allegations against them. An advisory list and a barred list will be created of people who are or have been subject to the procedures for misconduct, and our convener outlined articulately the effect that that will have.

The Police Investigations and Review Commissioner—or the PIRC, as it is known—will be given significant new powers, which, in turn, will strengthen its governance and accountability arrangements. The PIRC will have the ability to investigate when it is suspected that an offence has been committed by a person who formerly served with the police.

The committee recommends, and I am of the strong view, that the PIRC should continue its policy of reducing its reliance on employing former police officers and introduce procedures to ensure that people who have worked together previously must declare an interest and are prevented from investigating one another.

The bill will provide the PIRC with the power to take over the consideration of complaints that are being dealt with by the chief constable or the Scottish Police Authority. To improve transparency, the PIRC will have a duty to audit the arrangements for investigating whistleblowing complaints, which will encourage people to speak up when they see wrongdoing. It will also be given new functions to investigate serious incidents or incidences of criminal offending that occur in Scotland but that involve constables from forces outside Scotland.

To improve efficiency, transparency, independence and public confidence in the complaints process, the bill will pave the way for the PIRC to independently and remotely have direct access to audit and review files in Police Scotland's complaints database. To strengthen decision making, the bill will put in place a statutory advisory board to advise the PIRC on governance and administrative matters.

The committee would have concerns if any investigations into gross misconduct took longer than was necessary. That is a really important aspect of the bill. The Government is looking into ways to ensure that any investigations into an officer who has left the force have to be completed as timeously as possible.

The bill will improve how complaints about the police are dealt with, help to increase transparency and strengthen public confidence. It aims to simplify the way in which complaints, allegations of misconduct and other concerns about the conduct of police officers are investigated. Crucially, it will help to assure the public that, if police officer conduct or behaviour falls short of expectations, that will be properly dealt with.

15:24

**Jamie Greene (West Scotland) (Con):** The words "ethics, conduct and scrutiny" are in the title of the bill, and there are few places in public life where those words are as important as they are in policing. Arguably, politics is one of those areas, but they are certainly important in policing. When it comes to the power that we afford our fellow citizens, as commissioned, to arrest and investigate each other, ethics, conduct and scrutiny are essential not just to protect us, as members of the public, but to protect trust and

confidence in those very powers, as other members have mentioned.

However, it has been six years since the Scottish Government first announced an independent review of Police Scotland complaints processes, and it has been four years since the much heralded Angiolini inquiry report was published. A preliminary report and a final report containing nigh-on 100 recommendations were published, and a number of those recommendations have yet to be implemented. The bill will certainly not address all of them, but it goes some way towards addressing some of them.

I thought very carefully about what I might say in today's debate and how I might say it.

**Angela Constance:** Will the member take an intervention?

**Jamie Greene:** Yes, I will in a minute, but I want to make some progress first, because I want to make a wider point.

It is very difficult to legislate in such areas because, in effect, we are saying that we want to make changes or further improve the ethics and code of conduct of our police force. In doing so, we acknowledge the hard work that it currently does. However, as legislators, we have a duty to protect the public and to ensure that there is a constant process of revising and reviewing whether those things are working. The Angiolini inquiry report was very good at identifying many areas where those things are not working.

However, we also have a duty to protect police officers themselves, and we must be careful about the tone and language that we use in debates such as this. Other colleagues have mentioned the incredibly difficult circumstances in which many of our police officers work. We have all been to the SPF awards at Dynamic Earth, across the road from this building, and have met some of the hard-working officers. We know about some of the difficulties that they face.

However, this review is important because, as we have heard, the current complaints processes are met with a number of responses. Words that were used in evidence to the committee with regard to those processes include "clumsy", "cumbersome", "complex", "off-putting" and "takes too long". Those are all big red flags that something needs to be addressed. All MSPs will have dealt with casework involving people who are finding it very difficult to make complaints about the police to the police.

We also have a duty to improve practices that root out individuals who have somehow failed to be identified by the vetting process. That is inevitable, given that, between its commissioned

and civilian staff, Police Scotland is an organisation of more than 23,000 people. It is a big public sector body and, in any large organisation, people will fall through the cracks and there will be bad-faith actors. However, it is important that the public has confidence that we are addressing that situation, which comes back to the other point about the public's faith in processes, because policing by consent is necessary and necessitates robust codes of conduct and on-going review of how effective they are.

My final point in that regard is about protecting officers themselves, because malicious complaints can and do happen, and the processes that are in place to deal with those complaints must be effective. Much of the work on those processes has come about over the past few years as a result of well-publicised and horrific situations in which serving members of various police forces have committed horrific crimes, the most famous being the case of the Metropolitan Police officer Wayne Couzens.

I was struck by the response of the Met to this wider societal debate in comparison with the response of Police Scotland. The Met immediately introduced a number of changes, which I found to be very welcome. There was an immediate independent review of its culture and practices. There was a review of all current investigations into sexual misconduct or domestic abuse in which the accused was a police officer. Sampling was done of cases from the past 10 years, there was a root-and-branch review of its recruitment and vetting processes and, more importantly, there was an increase in the number of investigators employed to deal with the timescales and the backlogs—which still exist here in Scotland.

We might say, "That's the Met. They've had issues for a long time. How is that relevant to us?" I get the distinct impression that, with the exceptionalism that we often have, we think that we do not have problems on that scale because we have not had the types of high-profile attack that have happened south of the border. However, that does not negate the problem here. In Scotland, nearly 2,000 complaints remain unsolved, of which 1,200 are yet to be allocated to an investigator and 684 have been allocated to an investigator but are yet to be concluded. I suspect that they are taking a very long time.

In the limited time that I have remaining, I want to address the duty of co-operation or duty of candour. The Government has implied that the duty of candour in section 3 is simply different in terminology from the duty of co-operation that was proposed in the Angiolini report and that has been introduced in England and Wales. I hear that some amendments may be lodged in that regard and I

will read them with great interest, but at present it is unclear whether there is a belief, particularly on the part of the PIRC, that the duty of candour goes far enough to meet the requirements of a duty of co-operation.

A number of sections seek to make sweeping reforms of the PIRC's powers. The thing that struck me most strongly in the PIRC's response to the stage 1 report was that some of the powers are unwanted. The commissioner, Michelle Macleod, stated that the PIRC would be carrying out the preliminary investigation and the assessment, making the decisions and presenting the case, and that there would perhaps be a perception that there were no checks and balances in that process. That is an important point of feedback. A legal representative said that their biggest criticism of the bill was that the vast majority of complaints would still be made to and handled by the police and that there might be a perception that there was not enough independent or autonomous investigation.

In the interest of time, I will not rehearse the arguments about finances, but a financial memorandum that is £4 million out at stage 1 really needs some serious consideration. The Finance and Public Administration Committee will certainly have words to say about that. Government ministers, but also the senior civil servants who support them in relation to financial memorandums, need to have a serious think about some of the charges that are laid against them in that respect.

I will close where I started. In this country, policing is done with the consent of its citizens but, for the police to have that consent, they must maintain the public's respect and confidence. That has been rattled in recent years, but we can fix that. The bill will go some way towards doing that, but I question whether more could be done here and now while we wait for the bill to be passed. I think that the answer is yes.

15:32

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** Following on from what Jamie Greene said, I say that I think that all of us in Parliament can be proud that we live in a country that abides by the principle of policing by consent. At its most basic, that means that I and, I think, the rest of the Scottish public view our Police Service as being legitimate, with the implicit understanding that the police will be transparent about their powers, act with integrity while using those powers and be accountable for their actions.

As other members have done, I outline at the beginning of my speech that I fully trust that Scotland is greatly served by the outstanding

diligence and commitment of our police officers and by the work that they do every day across the country to keep our communities safe. The Police (Ethics, Conduct and Scrutiny) (Scotland) Bill can be seen as a way to strengthen the social contract by reinforcing public confidence in our standards of police conduct.

As a member of the Criminal Justice Committee, I record my thanks to all those who gave evidence at stage 1—in particular, those with lived experience of the system. I also thank the excellent clerking team, who ably helped us to navigate what is clearly a very complicated landscape. I am very much with Pauline McNeill on that.

A recent Scottish Parliament information centre briefing acknowledges that news stories

“and incidents within the public domain across the UK may have contributed to an undermining of public confidence in the police and concerns around scrutiny of their behaviour”.

The bill seeks to improve how complaints about the police are dealt with in order to help to increase transparency and strengthen public confidence, which might have been undermined. The bill will benefit both the public and the police force.

The bill's genesis, as we have heard, was the commissioning by the Scottish Government and its Lord Advocate of the independent review of complaints handling, which was led by the former Lord Advocate, Lady Elish Angiolini. Following the publication of the final report in late 2020, the Scottish Government ran a public consultation, feedback to which demonstrated broad support for the legislative changes that were recommended in the independent report.

I will take some time to go over each area of the bill, although, as I said, the committee felt that it is a complex area with a lot of interacting factors that must be taken into account, so this will be a brief overview.

Sections 2 and 3 cover police ethics. They include the creation of a statutory obligation for Police Scotland to have a code of ethics and will place a statutory duty of candour on individual officers and on Police Scotland, as an organisation. Not only will there be an obligation to introduce a code of ethics, but it will be the responsibility of the chief constable to regularly review and disseminate that code.

Those sections reflect the acknowledgement that those who hold the office of constable and have the powers of that office have a higher duty than others to account for their actions and record what they did or saw in the execution of their duties. An explicit duty of candour on individual constables and Police Scotland as a whole will therefore be introduced.

Sections 4 to 8 cover aspects of police conduct. They include amendment of the functions that can be conferred on the Police Investigations and Review Commissioner by providing the power to allow misconduct procedures to be applied to former officers, by introducing police advisory and barred lists, and by amending the misconduct procedures for senior officers.

The ability to allow misconduct procedures to be applied to former officers is an important way to ensure that justice can be pursued even after a police officer retires or resigns. Public confidence will also be greatly improved by the creation of barred and advisory lists, which will stop those who do not meet the high standards that are expected of police officers from gaining employment in policing.

As is highlighted in our report, the committee heard conflicting evidence on the merits of holding gross misconduct hearings in public. I welcome the cabinet secretary's response, which provided clarity that any changes will be brought forward in secondary legislation. If that proposal goes ahead, provisions for vulnerable witnesses must be put in place. Given the evidence that we heard, I remain open minded as to which is the best option, and I am not totally convinced of the merits of the proposal. As we go forward into stage 2—assuming that the bill passes stage 1 tonight—we must ask what we are we trying to achieve through hearings being held in public. There were good arguments on both sides about that proposal.

Sections 9 to 16 refer to the functions of the Police Investigations and Review Commissioner. Those sections will grant significant new powers to the PIRC and will, in turn, strengthen its governance and accountability arrangements. Although those sections cover an extensive range of new powers, the key processes that they will introduce include the following: giving the PIRC the ability to investigate, when it is suspected that an offence was committed by a person who formerly served with the police; giving the PIRC the power to take over any consideration of complaints that are being dealt with by the chief constable or the Scottish Police Authority; placing an obligation on the PIRC to audit the arrangements for investigating whistleblowing complaints; granting the PIRC the means to review a policy or practice of the authority or Police Scotland, if the PIRC considers that that would be in the public interest; and giving the PIRC direct access to audit and review files in Police Scotland's complaints database. Although that list is not exhaustive, those are some of the ways in which the bill seeks to enhance the efficiency, transparency and independence of the police complaints process and public confidence in it.

Section 17 covers governance of the PIRC and requires that there be a statutory advisory board to the commissioner. I believe that such a board will strengthen the PIRC's decision making and will be beneficial to counselling the PIRC on governance and administrative matters.

From my time scrutinising the bill in committee, I can confirm that the committee acknowledged that the police complaints system must improve, both for those who make a complaint and for those who are the subject of a complaint. As others—in particular, the convener—have outlined, we heard compelling evidence from people who have experienced the system.

The committee believes that measures in the bill will improve the robustness, accountability and transparency of the police complaints system, and it welcomes greater powers for the PIRC and increased transparency around its investigations. The policy objective of the bill is

“to ensure that robust, clear and transparent mechanisms are in place for investigating complaints, allegations of misconduct, or other issues of concern in relation to the conduct of police officers in Scotland.”

I again record my gratitude to the hardworking and committed individuals who deliver such a high standard of policing in Scotland. The bill is mutually beneficial to those who work in the Police Service of Scotland and to the general public across Scotland, although, as others have highlighted, there will still be a lot of work to do if the bill progresses to stage 2. I will support the general principles of the bill this evening; I call on all my colleagues across the chamber to do likewise.

15:39

**Claire Baker (Mid Scotland and Fife) (Lab):** I start by thanking the Criminal Justice Committee for its work on the bill and for the thorough report that it has produced. Although the committee has backed the bill, it has expressed concerns about whether the reform that it seeks will make sufficient improvement to the police complaints system, the culture within policing and the confidence of the public about police complaints being dealt with effectively.

Concerns need to be addressed as the bill progresses, so this afternoon's debate is an opportunity to focus on where improvements can be made.

Other members will talk more about the approach of the police or about their legal understanding of the bill, but I will focus my remarks on what it seeks to do to improve the experience of victims and the public more generally.

The bill needs to be looked at in the wider context of work to improve the police complaints and conduct systems, but that also means that we need to consider the environment in which the legislation will operate. We need to consider the system as it stands, public opinion of the service and the experiences of those who have gone through the processes that have been in place up to this point.

Before I move on to the committee's report and recommendations, I will speak briefly about Sheku Bayoh, who died in police custody in 2015. After more than nine years since his death, the public inquiry into the circumstances surrounding it is ongoing, and his family and friends are still seeking answers about what happened, as they continue to cope with the impact of their loss. They were not treated well immediately after Sheku's death, and experienced a lack of information and engagement during a time of trauma and distress, which unfortunately continued as investigations went on. Through the process, his family lost faith and confidence in the police investigation and in the ability of the PIRC. It is with their experience in mind that I have read the committee's report and its recommendations.

It has been recognised and endorsed across the chamber that the vast majority of police officers and staff are honest and hardworking in what can be very challenging roles, but it is also true that there has been unacceptable conduct and behaviour from a minority within the service. When it comes to the oversight role of the SPA, there needs to be confidence that, when such behaviours occur, robust measures are in place to deal with them. The committee heard evidence of unacceptable practice in Police Scotland, but why such practice was not identified and addressed by the SPA, and what is changing to ensure that others will not have the same experience, are not clear.

The public need to have confidence that the culture in policing is being addressed. Since the Angiolini review, steps have been taken to improve police complaints and conduct, and the bill is one aspect of that. However, as the report states, it is hard to have a definitive view on what stage of progress things are at or on whether the provisions in the bill will sufficiently improve the experience for the police or the public.

The duty of candour needs to be more than a symbolic gesture. There is a perception, which is expressed in the report, that the police have each other's backs, and that there is a working environment in which it is difficult to admit mistakes or to call out inappropriate behaviour. We need to think about how the duty will do more than the existing requirements to address that. That underlines why the legislation has to sit within

a broader cultural shift. Without tackling that, it is difficult to see what will change.

I welcome the fact that the evidence highlights work such as Police Scotland's policing together programme, which recognises the need to enable a more open environment that allows for early intervention. I recognise that the Angiolini review called, as part of the conduct regulations, for a duty of co-operation that would apply if officers were called as witnesses. However, the Scottish Government has said that that would not be free-standing. In line with the committee's call, I would like further information on why that will not be introduced, particularly in the light of the evidence from the PIRC in support of it.

I will touch on some of the other aspects of the bill that could have positive impacts for the public. In allegations of misconduct where a police officer resigns or retires during investigations, a case has to be made for those processes to be concluded. We need to consider the public expectation that, in instances of gross misconduct, a conclusion has to be reached.

The committee noted broad agreement in the creation of a Scottish police advisory list and a Scottish police barred list, which would bring consistency with other forces and improve vetting. Publishing the barred list, but allowing only relevant organisations to have access to the advisory list, as is the case in England and Wales, could provide some reassurance in terms of protection and accountability for the public.

The committee was not able to agree on whether gross misconduct hearings should be held in public. It has called on the Scottish Government to set out the case for that. Lady Elish Angiolini is in favour of those hearings being held in public and pointed to the importance of transparency around any abuse of power, as well as to similarities in other professional proceedings. I accept that concerns about privacy have been raised, but there should also be safeguards in place. We should remember that we are talking about cases of gross misconduct. If we are serious about improving transparency and assuring the public, an approach of that kind could help.

Finally, on complaint handling reviews, the bill would allow the PIRC to carry out a review without a request by the complainer, Police Scotland or the SPA, if that were in the public interest, and it could make recommendations to which the SPA and the police would be required to respond.

We know that some victims' experiences of the PIRC have not been positive. The committee heard evidence of a lack of transparency from the PIRC when it comes to reporting the outcomes of reviews, including in relation to the time that has been taken and understanding the decisions that

have been reached. In considering the bill at this stage, we must ensure that there is transparency around both that process and the publication of information. Making everyone concerned aware of any relevant review, and of whether the outcome will be made public, would be welcome steps.

**The Deputy Presiding Officer (Liam McArthur):** I call Jackie Dunbar, to be followed by Alexander Stewart. You have a generous six minutes, Ms Dunbar.

15:45

**Jackie Dunbar (Aberdeen Donside) (SNP):** As a substitute member of the Criminal Justice Committee, I am pleased to take part in the debate. As the bill that is before us is about policing, I have been reflecting on my time as a councillor in Aberdeen, which included being a member of the Grampian joint police board and of its sub-committee that dealt with police complaints. I attended numerous meetings of the community council and committees where police officers were also in attendance, and I had catch-ups with officers who worked tirelessly across my ward and across Aberdeen.

I have also been reflecting on my former colleagues on Aberdeen City Council. When I stood down from the council, more than a quarter of my colleagues in the Scottish National Party group had served in the police in some way or other. Audrey Nicoll, who is now the convener of the Parliament's Criminal Justice Committee, was among them.

The common themes that I have drawn from all my experiences with police officers, both serving and retired, have always been their professionalism and the personal standards that they upheld. The reputation of the police force meant a lot to them, and it helped them in carrying out their duties.

When we consider the situations that police officers often find themselves in—dealing with folk who are angry, upset or grieving and who are generally at the extremes of a range of emotions—two aspects come to mind. The first is that the presence of a police officer can help to calm a situation, because folk have an expectation of how that officer will act and behave. Such an expectation comes from the high standards that we demand—and receive—from thousands of police officers across Scotland.

On the other hand, frequently putting our officers in such situations increases the chance that they will be there when something goes wrong, or that, even when everything is done right, the outcome is distressing or someone is aggrieved. It is in those situations in particular that I hope that the bill can improve the experiences of



police officers and complainants alike, and that it will help to protect the reputation of Police Scotland, which officers across Scotland so often rely on.

I stress the point that the reputation of our police force benefits and helps to protect every single officer. However, that is not unique to the police. The best comparison is with our armed forces, whose members also work tirelessly to maintain their standards and reputation, which go to great lengths to protect their reputation and which, over the years, have seen that that pays dividends during operations.

In looking at all the work that the committee did, it is clear that a number of folk—both people who raised complaints and people who were the subject of complaints—felt that the current arrangements could and should be improved. It is pleasing that the committee supports the general principles of the bill and that it welcomes many of its proposals.

Equally, there needs to be recognition of the hurdles that the bill will have to overcome after today. I note that there was disagreement among committee members on whether gross misconduct hearings should be held in public. There were also questions about what “in public” means. In all honesty, I can understand both sides of that argument. The Scottish Police Federation and the Association of Scottish Police Superintendents both raised concerns about allowing former constables to be investigated, although one witness spoke of their preference that the investigation into their conduct had been allowed to conclude after their resignation.

As the cabinet secretary said in her opening remarks, there were also questions about time limits for investigating complaints against former officers, with a period of 12 months being spoken of, although not as a hard-and-fast statutory requirement. It was said that it would be for the commissioner to make a judgment on public interest and fairness. I wonder whether we will see situations in which officers who leave the force before the bill is passed will be investigated under the act. What considerations have there been around the retrospective element of that? Perhaps the cabinet secretary could address those matters in her summing up.

The committee’s report also notes the concerns about costs. In this new era of Labour austerity, every penny will be a prisoner.

There is much for the committee and the Government to consider as the bill moves forward, but today is about its general principles, which I am pleased to support. The bill is of course part of a wider picture, whereby Police Scotland and the Scottish Government have implemented a number

of changes in recent years, prompted by the review led by Dame Elish Angiolini. There is a lot that both Police Scotland and the Scottish Government have already implemented following the work that Dame Elish undertook, and I look forward to the bill moving forward, becoming legislation, complementing that work and helping to build the Scotland that we all want to see.

15:50

**Alexander Stewart (Mid Scotland and Fife) (Con):** I am grateful for the opportunity to speak in this stage 1 debate on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill.

Scotland’s brave police officers play a hugely important role in keeping our communities safe. Those individuals work in some of the most challenging circumstances imaginable. They are often forced to put their own safety at risk in order to support others and do their job effectively. No one would question that police officers deserve our utmost gratitude and respect.

At the same time, given the important role that police officers play in keeping our country safe, it is right that they are held to the highest professional standards. Indeed, public trust in our police depends on that being the case. Public trust also depends on there being a robust and transparent complaints system, so that any perceived abuse of authority can be challenged reasonably and fairly.

I was a member of Tayside joint police board for 15 years when I was a councillor, and I had the privilege of serving on the complaints sub-committee. I saw many of the issues that are being raised here today at first hand.

We can see that the current system is far from perfect. In her report, Dame Elish spoke about the current police complaints system being “inaccessible” to the public. That is a major issue if that is to be believed and is the case.

It is important for us to understand the range and complexity of complaints. When taking evidence on the bill, the Criminal Justice Committee heard from several witnesses who felt let down by Police Scotland’s professional standards department, including one witness who said:

“the system needs to be changed completely ... It should be scrapped, reset and replaced with something completely new”.—[*Official Report, Criminal Justice Committee, 17 April 2024; c 25.*]

If that is the case, that sounds alarm bells as to what the public think when they are dealing with that department.

Many MSPs will have dealt with constituents who have felt let down by the process, which has

failed to engage with them and address their concerns. I have been assisting a constituent who has navigated the police complaints process for more than two years. After feeling that police officers had turned a blind eye to his concerns, he proceeded with a lengthy complaint-handling review. At the end of that ordeal, he now feels exhausted and frustrated by a complaints system that he believes let him down. It is not transparent, and it should be fixed. I have no doubt that other members across the Parliament will have heard similar stories. We have heard from members about such cases already this afternoon.

The Conservatives welcome the proposed new legislation, which seeks to make improvements. There will be support for that from across the chamber if that is truly going to be achieved. That is why it is vitally important that the bill delivers genuine change, instead of just appearing to bring change. It is obvious that, in its current format, the bill will not deliver on some of the bold objectives that we want it to fulfil. We welcome changes such as the introduction of a Scottish police barred list, as well as the closing of loopholes such as those that allow officers to avoid investigations by retiring or resigning.

The Criminal Justice Committee's report highlights that, overall, the bill is unlikely to improve the time that it takes to deal with complaints, which is one of the biggest problems with the current system.

The Scottish Police Federation has highlighted that the proposed code of ethics is likely to have no noticeable effect on overall police standards. Again, that is concerning. For my constituent, and for many others who have felt let down by the current system, the reforms in the bill are a missed opportunity.

A number of concerns have been raised around the bill's cost implications, and some of those have been expressed during the debate. Since the financial memorandum was published, entirely new costs have been introduced for some aspects of the bill. For example, there are revised costs of more than £1.5 million for one-off Police Scotland training costs.

Given that, it is hardly surprising that the Finance and Public Administration Committee has accused the Scottish Government of providing figures that it already knew were inaccurate. Inaccurate figures should not be being provided at this stage.

I welcome the fact that the justice secretary has confirmed that an updated financial memorandum will be provided by stage 2, but that should have been provided, as far as possible, at stage 1. At the same time, it is disappointing to hear that the bill's costs could still rise even further, which my

colleague Russell Findlay spoke about in his opening remarks.

The important work that is carried out by the police across Scotland requires significant authority, but that, in turn, requires accountability. We all recognise that. It is important that the system that is in place to hold police officers to account is transparent, fair and robust, and that the public have confidence in it.

The bill makes a lot of the right noises about making improvements and tackling issues in some of the areas that I have mentioned, and it ticks some of the boxes that individuals and organisations have talked about in relation to its general principles. However, it has a long way to go to deliver the reforms that many people want.

I hope that, as the bill progresses, there will be an opportunity for genuine reform, so that we can have real change.

In conclusion, Presiding Officer, we welcome the bill and want to see it progress, but it must progress through the provision of real opportunities, not missed opportunities, by the Scottish Government.

15:57

**Ben Macpherson (Edinburgh Northern and Leith) (SNP):** As a new member of the Criminal Justice Committee and as a constituency MSP, I am pleased to speak in today's important debate on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill at stage 1.

As members across the chamber have remarked in the debate, we are served very well across Scotland by the exceptional dedication and commitment of Scotland's police officers and all the diverse work that they do to keep communities safe. In Edinburgh Northern and Leith, I am grateful for the weekly collaboration that I engage in with people from Police Scotland to serve constituents on a range of matters. Their professionalism is exceptional.

However, no organisation is perfect—we all know that—so, if things go wrong, the police must be held to account, and improvements must be made and lessons learned. Justice in relation to internal complaints must be thorough and robust, and sanction must be used where it is appropriate and right. Some of the hardest cases that I have dealt with as a constituency MSP in terms of complexity and sensitivity are those regarding complaints about the criminal justice system, and I am sure that that is also the experience of colleagues.

As a country that polices by consent, a principle that, as others have said, is central to our justice system, we must have appropriate and strong

accountability. New laws, such as the one that we are considering today, must be brought through in due course, through modernisation and to future proof public confidence in standards of police conduct.

The vital safeguards that are set out in the bill will enhance the professional service that is already delivered by officers as they perform their privileged duties to keep us all safe. I will say more about that in a minute but, before I get into the bill's key proposals, I will touch a bit more on the point about policing as an essential service and a privileged duty. Although I do not want to discuss too much the jurisprudence of the legislation, I note that fair and accountable enforcement is key to the rule of law. If the state is to have a monopoly of violence, and if that is to be for just and benevolent ends, at least in the modern period—as Maggie Chapman highlighted, it was not necessarily the case historically—we must rely on a strong police service to enforce the rule of law and uphold democracy, and that enforcement must be fair and accountable. The bill will enhance that.

The bill will put the pre-existing code of ethics that is currently embedded throughout policing on a statutory footing in a way that will ensure that there is a thorough review process and accountability for its widespread publication. The bill will make the code of ethics legally binding, and I welcome that.

With regard to complaints against the police, the bill, as other members have touched on, aims to simplify the process—I welcome that, as will my constituents—in order to ensure that there are robust mechanisms in place to investigate complaints in a timely way, and to investigate allegations of misconduct and other issues of concern in relation to the conduct of police officers in Scotland.

The bill also provides greater powers for the PIRC and places on Police Scotland and the Scottish Police Authority requirements to respond to the PIRC's recommendations and to provide the commissioner with direct access to relevant information, including on the commencement and conclusion of gross misconduct proceedings, regardless of whether the person leaves the police or continues in the service.

I think that those powers will be warmly welcomed, but I ask the Government to comment on one point in summing up, although this may be for stage 2 or 3. What initiatives will the Government undertake to continue to raise awareness among members of the public of how to lodge a complaint in an appropriate manner if they have concerns about the service that they have received?

Other measures in the bill that are to be welcomed include the introduction of the Scottish advisory and barred lists, and the setting out of a duty of candour to ensure that the police cooperate fully during investigations of allegations against constables.

There is more in the bill, and I look forward to the stage 2 debate. I conclude by quoting an important statement from Lady Angiolini with regard to formalising the delivery of the majority of the recommendations that her review made in 2018. In evidence to the committee, she said:

“I do not think that having a voluntary version is good enough for an organisation that has so much power. It is really important that there is a structure to that.”—[*Official Report, Criminal Justice Committee*, 16 May 2024; c 8.]

For those who may question the necessity of this legislation in ensuring that we formalise the recommendations in Lady Angiolini's review, I think that that statement is worth remembering.

16:04

**Martin Whitfield (South Scotland) (Lab):** It is a pleasure to follow Ben Macpherson, and I echo his comments about the move from a voluntary code to a statutory code.

I will use the relatively short time that I have to discuss three aspects of the bill. Before doing so, I, like other members, thank the committee for its phenomenal work and for the full report that it has published, and I also thank the Scottish Government for its response to that report.

I start with a discussion about ethics. Much of the bill is about ethics, as was much of the evidence that the committee heard. The issue of ethics—what we mean by it and the fact that it underpins what normal conduct is and enables us to distinguish between acceptable and unacceptable behaviour—is important.

Much of this afternoon's debate has revolved around the effect of those ethics sinking into the police force and those who work for it. However, the reason for having those ethics is to underpin public security, and the public's belief and confidence in the police. They complete the foundation on which our approach to policing in this country is built: policing by consent.

Even though the bill is mostly about ethics—it is about other matters, too—it is right to remember the public. It is only by the police showing a higher ethical standard than others that continued confidence in them—and, indeed, a rebuilding of confidence in the police on the part of some of the elements of our communities—will occur.

The intentions behind the bill are truly welcome. It is right that we have a robust, transparent statutory process for the investigation of

misconduct and complaints, and that we uphold the very high standards that are expected of Scotland's police officers and Scottish police staff. A significant majority of existing police officers and those who serve in the Scottish police already adhere to those standards. We should celebrate that good practice; no one should fear an ethics-based police force.

Ben Macpherson mentioned the existing code of ethics for the police. The bill seeks to put that code on a statutory footing. One question that I would like to ask the Government is about the envisaged five-year review. Will that be a five-year review of the first code—elements of which are based on a code that goes back many decades—or is the Scottish Government envisaging reviewing the code over a much shorter period, to show that it represents the policing by consent that our communities want? I would find it useful if the cabinet secretary could comment on that.

The second issue that I want to turn to is the duty of candour, which is contained in section 3. There is no definition of candour in the bill. I think that most people would define it as being open and honest and telling the truth. However, it is quite difficult to do that sometimes because of events that have happened to the individual or, indeed, to their colleagues.

One challenge that I am glad that the Government has tried to deal with through the bill is to open up the relationship between police officers at different levels in various roles and staff in the police service, to allow that duty of candour to come through, and to enable them to tell the truth in difficult circumstances.

I note—the cabinet secretary has confirmed this—that the individual duty applies to the office of constable and the organisational duty will apply to the chief constable. I intervened earlier because we already have a duty of candour defined in Scotland—the national health service duty of candour—and I want to know whether the Scottish Government has considered whether having a similar statutory definition for the police would be of assistance, particularly in relation to the chief constable element. I draw attention to Scottish statutory instrument 2018/57, the Duty of Candour Procedure (Scotland) Regulations 2018, which sets that out. Would that be an appropriate vehicle that should be considered on the issue?

The final issue that I will deal with is one that a number of members across the chamber and, indeed, the committee have referred to: the financial memorandum. There seems to have been not a misunderstanding but a disagreement, perhaps, about the role that financial memorandums play, and when and how they play that role. Standing orders clearly set out that the financial memorandum that should accompany the

bill must give the best estimate of the timescales over which costs, savings and changes to revenue would be expected to arise. Subsequent to that, unless there are substantial changes in the bill, a further financial memorandum would not be needed.

However, in this case, as with a number of recent bills, there was a substantial difference between the bill that was envisaged and the proposals that came forward even before the stage 1 debate. There is a heavy onus on the Scottish Government to ensure that the financial consequences of a bill are calculated more accurately. I welcome the fact that the cabinet secretary, when speaking to the Finance and Public Administration Committee on Tuesday 7 May, recognised that there was perhaps a shortfall in this case and that the bill being presented to the committee was substantially different from the one that was originally envisaged when the first financial memorandum was written. As a Parliament, we should look at that issue.

As members across the board have done, I very much welcome the bill, with reservations, and we will see how it develops through our discussions and arguments.

**The Deputy Presiding Officer:** Before I call the final speaker in the open debate, I give a reminder that all members who have participated in the debate should be in the chamber for the closing speeches.

16:11

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** I, too, congratulate the Criminal Justice Committee on its report. At this stage of the debate, much has been said, so I apologise in advance for revisiting points that have already been made.

Let me preface my speech by stating clearly, as others have done—I think that we all endorse this view—that the overwhelming majority of police officers carry out their vast range of duties professionally and ethically. Those duties range from dealing with theft, attending road traffic accidents, carrying out drug investigations, helping folk with mental health issues, dealing with disputes between neighbours, dealing with domestic abuse and social disorder to investigating murders. The circumstances can vary as much as the incidents that I have identified. Police officers might simply need to be gently helpful, they might need to deal with someone who is confused or they might have to deal with threats to their life by a mob or an individual—they have to be ready for practically anything.

That is in a society in which regard for the police is not as it was in the days—here I will show my age; everyone over 70 will understand this—of the fictional “Dixon of Dock Green” or even the more recent but still distant “Z-Cars”. These days, respect for those in any position of authority has to be earned, which is not necessarily a bad thing. Thankfully, in this democracy, police also police by consent. Therefore, trust in the police must prevail, and that is most tested when policing goes wrong.

In every organisation, there will be bad eggs, and the police force is no exception. Who suffers from bad policing? It is the public and, of course, the individual, but it is also every other police officer.

On the Police Scotland website, there are currently directions on how to complain. For example, there are headings such as “What is a complaint?” and “Investigating your complaint”. There is an explanation of the Police Investigations and Review Commissioner and the criminal allegations against the police division, which is part of the Crown Office.

What if someone is unhappy about their complaint? What happens to it? The Police Scotland website says:

“If the reasons for your complaint are clear and we see it’s a minor, non-criminal complaint, we will record it. An officer from our Professional Standards Department will contact you to discuss the details of your complaint.

It may be that we can resolve your complaint quickly by providing information or explanation.

If we need to look at your complaint in more detail, our Professional Standards team will record it and contact you to explain the next steps. Your complaint may be allocated to an investigator to carry out further enquiry.

If you make a complaint direct to the Police Investigations & Review Commissioner (PIRC), they will direct you back to Police Scotland. We will then follow the same process as if you had contacted us directly.”

As Dame Elish Angiolini conceded, the system was reasonably good already, but there was room for improvement. One of the major parts of the bill that will strengthen the system is that an offending officer will not be able to escape discipline and punitive measures simply by retiring and, therefore, avoiding the outcome of a finding of gross misconduct. That practice is too often used as an escape route, and it is totally indefensible. The bill will also create barred and advisory lists to stop people who do not meet the high standards that are expected of police officers from gaining employment in policing anywhere in the UK.

I will conclude this brief contribution by referring to my experience as an MSP in my dealings with the police. In the vast majority of cases, we worked as a team, often in the interests of a vulnerable constituent, but—however rarely—I have experienced slipshod policing, as has been

referenced by previous speakers. In those cases, only the use of what pressure I could bring to bear ensured that my constituents’ concerns were appropriately addressed. That should not have been necessary. However, I repeat that my contact over 25 years has been overwhelmingly positive.

I welcome the fact that the bill will weed out those who fail to meet the high standards that are rightly required of our police service, make those who are found guilty of gross misconduct pay the price for that, and strengthen the PIRC to ensure public confidence in the whole complaints procedure—by which I mean either complaints by the public against the police or complaints by police against fellow officers. However, there is one important issue. We must ensure that the balance is struck between fairness to the complainer and fairness to those who are subject to a complaint. That is crucial.

**The Deputy Presiding Officer:** We move to the closing speeches.

16:15

**Maggie Chapman:** I thank colleagues for their contributions to the debate. As someone who does not sit on the Criminal Justice Committee but follows its work from the outside, I always find it interesting to see how different committee members and others from outside, such as myself, understand and interpret committee proceedings.

If we were starting from scratch to empower our communities to deal with the problems in their midst—problems of violence, theft and damage; problems of how to keep people safe at large gatherings on streets and highways; problems of contested uses of public space; and problems of acting, as the police so often do, as the agency of last resort for people with histories of pain and trauma—I do not think that the creation of the institution of a police force would be our chosen answer, or at least it would not be the only one.

We need to think about how to reform the way in which police do their work and how they are accountable; how to enact those reforms and ensure that they are properly implemented; and how to scrutinise and exercise the power that the police have. It is right that we as citizens expect the highest of standards in all aspects of the work that the police do. As Jamie Greene, Russell Findlay and others have said, that process of reform is not a one-off—it must be on-going.

Policing by consent relies on trust, and it takes only one bad experience or one negative headline to destroy that trust. Unfortunately, we have had more than one bad experience or one negative headline as far as institutionalised discrimination in the police is concerned. The committee heard too

many examples of breaches of that trust by individuals. Once that trust is broken, it takes concerted effort and no small amount of time to rebuild it. The bill is part of that process of reform and of rebuilding that trust.

I share the concerns that some members have raised that many of the Angiolini review recommendations are not dealt with in the bill. I would welcome the cabinet secretary's provision—if not today, then in the future—of further information as to how her Government will approach those. I will not rehearse the points about the elements of the bill, which we have already heard so much about this afternoon, such as the ethics code, the duty of candour and the changes to the PIRC and its governance. However, I am interested in the details of the amendments that have been suggested, and I will listen with interest to the cabinet secretary's closing remarks in that regard. I hope that ongoing discussions during stage 2 will address some of the questions that Pauline McNeill and others have raised.

As I said earlier, I believe that, as part of the ongoing reform of our police service and the way in which it works, we need to think about how we might divest the police of functions that are better carried out by other agencies and other workers, without the punitive load that the police inevitably bring to every encounter, whether or not they want or intend to. Ultimately, we need to ask ourselves whether what we say is the central function of the police—to keep people safe—will ever be compatible with what historically has been its actual *raison d'être*: to preserve the establishment and the status quo, to protect elites by suppressing some marginalised groups and to resist the transformation of society that we now, in our overlapping crises, need more than ever to survive.

I know that many police officers recognise those contradictions and want to be part of a positive transformation. While we make the incremental changes that we can, including through this bill, let us keep faith with those within and outside the police who look to us for a vision of something more—one of a police system that serves all members of our community and of a society in which we can all trust it to do what it is here to do.

16:20

**Katy Clark (West Scotland) (Lab):** As has been said, the bill comes before us as a result of the Angiolini review. The Criminal Justice Committee heard evidence from a number of witnesses who had complained about their treatment by the police. As the convener said, we also heard evidence from a former police officer who had had a complaint made against him.

I think all members of the committee would agree that some of the evidence that we heard was harrowing and shocking and raised serious issues about policing in Scotland. As Maggie Chapman said in her opening contribution, power has sometimes been abused. It is far from clear to me that the contents of the bill that we are discussing today, if enacted, would have made any difference to the experience of those witnesses. Police Scotland itself has accepted that it has been institutionally racist and discriminatory.

The testimony by many women police officers about the sexist and misogynist treatment that they have experienced in the police force is unacceptable. As Rona Mackay said, cultural change is essential. The appointment of the first woman chief constable is very welcome and we hope that that will be part of the acceleration of that cultural change.

Ben Macpherson and my colleague Martin Whitfield spoke about the code of ethics, which Mr Whitfield has said should be reviewed. I believe that, as we look at the bill before us, we should consider whether the changes in it will make a real difference.

The barred list included in the bill is very welcome. It is unclear whether legislation is necessary to enable that to happen, but the Sarah Everard case is probably the most high-profile recent UK case to demonstrate why a barred list, along with continuous and robust scrutiny of the suitability of police officers for their role, is required. I welcome the fact that additional resources have already been put into that work.

Claire Baker spoke about the Sheku Bayoh inquiry and Jackie Dunbar spoke about her experience of the policing committee. We must also look carefully at the wider structures for police accountability. The cabinet secretary is correct in stating very clearly that trust in the police force is of paramount importance. The ethics, conduct and governance of the police require an appropriate framework and any legislation that we pass must drive greater public confidence.

The duty of candour already exists. It is unclear whether a higher standard of behaviour is required, should the legislation be enacted. For example, the duty of candour that exists in the health service is wide ranging. As Pauline McNeill said, we should clarify what the duty of candour will mean in a police setting. On that, and on many other technical aspects of the legislation, it is Scottish Labour's view that the detail should be written into the bill. We look forward to seeing the cabinet secretary's amendments regarding the duty of candour for operational staff and hope that there will be clarity about the implications that that will have for individuals. We also hope that she will

address the concerns raised about that duty by the police civilian trade union, Unison.

Many of the issues that were raised in the committee relate to the individual employment rights of police officers, and their rights must be respected. However, the overriding concern of the bill must be to ensure greater transparency and a more speedy and just resolution of complaints that are made by the public and, indeed, by other police officers.

Alexander Stewart said that improved standards were essential. The PIRC has indicated that it does not wish to have some of the powers that are being suggested should be transferred to it under the bill. I agree with Jamie Greene that that is concerning, and I hope that the cabinet secretary will specifically address that and give an explanation for it.

Scottish Labour has made clear our concerns about the financial memorandum. As Pauline McNeill said, we will support the bill today in good faith, on the basis that those concerns will be addressed at a later stage of the bill. We will support the bill today, even though we are not convinced that it will make the significant cultural shift that is essential if we are to address some of the significant concerns raised by witnesses who gave evidence to the committee. I therefore believe that much more needs to be done, some of which might not require legislation, to ensure that we deal adequately with complaints about the police, drive the cultural change that is clearly essential and ensure that the people of Scotland can have the highest trust and public confidence in their police force.

16:26

**Sharon Dowe (South Scotland) (Con):** As a member of the Criminal Justice Committee, which is considering the bill, I have been involved in scrutinising it for some time. I take the opportunity to thank all the clerks, the other staff and the Scottish Parliament information centre for their help in the process. I also make special mention of Seán Wixted, who I am sure is at home watching us live on screen as we are speaking. Let me also declare at the outset that my husband is a former police officer.

The bill aims to improve the police complaints system, which is failing not only victims but ordinary officers who just want to get on with their job and serve the public. We all agree on the need for reform, but it must be the right kind of reform, as many MSPs have said so eloquently. Today's debate has been productive and useful and MSPs from across the chamber have made many strong points that are worthy of consideration.

The debate has highlighted some areas of the bill that must be improved, and it has thrown up particular problems that the Government must address. Although we all agree on the need for reform, we also need to ensure that the bill is accurately costed and that it achieves its intended aims.

The PIRC has produced a substantial response to the committee's stage 1 report. The bill seeks to enhance the PIRC's powers, but the PIRC has raised significant concerns about its ability to take on some of those functions and their appropriateness. It might be prudent of the Scottish Government to consider those concerns in greater detail going forward.

Before I come to the specific points that have been raised by various MSPs, I want first to outline the main issue that must be looked at in the aftermath of today's debate. The cost of the bill appears to be the most significant issue. Taxpayers must get good value for money, and they must be made fully aware of the cost of the legislation before it is passed, as must MSPs across the chamber.

As many have noted, the cost of the bill appears to have been significantly underestimated by the SNP Government. The initial financial prediction was £1.4 million. It is now £5.8 million. That is an increase of £4.4 million, and we might still not have the final figure. A significant portion of the increased cost is for ensuring that all constables and police staff have read and understood the statutory code of ethics.

As Dr Genevieve Lennon stated during an evidence session of the committee,

"Putting the code of ethics on a statutory footing is symbolically important. Without making it a disciplinary code, I am not sure how much difference it will make day to day."—[*Official Report, Criminal Justice Committee*, 8 May 2024; c 10.]

We need to make sure that the bill that we pass will make a difference.

I will jump on a comment that Russell Findlay made in his opening remarks about body-worn cameras, because I want to talk about the use of body-worn cameras with regard to value for money. The cameras offer significant advantages to both police officers and victims. They would reduce the need for extensive follow-up with individuals, alleviating the burden on not only victims but officers. The cost effectiveness of implementing body-worn cameras is substantial, as it would solve many current issues in the criminal justice process.

Unfortunately, and disappointingly, it looks as though the body-worn camera roll-out could be delayed until 2025, despite its clear benefits. However, the technology needs to be prioritised

and rolled out swiftly. As Michelle Macleod—the PIRC—noted during an evidence session,

“I add that the roll-out of body-worn cameras will be a game changer for us and for police officers against whom allegations are made. In many cases, we will be able to look at the body-worn camera footage and make a much more rapid decision than we can currently if no such footage exists.”—[*Official Report, Criminal Justice Committee*, 15 May 2024; c 35.]

Body-worn cameras have the potential to significantly change behaviours and improve outcomes across various areas, including mental health and victim protection. If we are looking for value for money, I urge that they are rolled out much more quickly.

The Finance and Public Administration Committee accused the Scottish Government of providing figures that it knew were completely inaccurate. It is possible that the financial provisions could be revised further upwards. I would have liked to have received a guarantee today from the Cabinet Secretary for Justice and Home Affairs that that will not happen, but I do not believe that such a guarantee would be possible.

I await the revised financial memorandum, which has been promised, with great interest, because it seems entirely likely that the costs are still not close to reality. Since the Government’s initial financial predictions, predicted total one-off costs have nearly tripled and predicted total recurring costs have nearly quintupled. If that is not enough to set alarm bells ringing, I do not know what is.

Given the SNP’s record of financial mismanagement and the current situation that it finds itself in after 17 years of being in charge of the country’s finances, it is vital that the true costs of the bill are established quickly. The Government cannot wait until the last minute to produce full and detailed costings that accurately reflect how much the bill will cost taxpayers. The fiscally responsible and accountable thing to do would be to provide all available information as soon as possible. I hope that that happens, but we need to make sure that we have transparency.

I turn to the excellent contributions from MSPs across the chamber. Jamie Greene spoke about the scale of complaints against the police that go unsolved. Although I believe that the overwhelming majority of police officers do their jobs with the utmost professionalism and dedication, a very small minority do not, yet they do not appear to be facing the consequences.

Russell Findlay spoke about specific examples of misconduct and the struggle for victims to have those incidents investigated. The disturbing examples that he raised are exactly why reform of the system is so essential.

Fulton MacGregor rightly outlined the fact that not only is the complaints process broken for the public but it is failing officers themselves. The bill is not about criticising good police officers. It is about helping them, supporting them and freeing them to go about their work without suffering misconduct, abuse or harassment. The Scottish Police Federation has mentioned “error terror”; we need to ensure that the police feel confident that, if something has happened and it has been a mistake, they can go and admit that to their superiors without fear.

Rona Mackay and Martin Whitfield made well-considered points about the code of ethics. Given the importance of getting this right, it is vital that the code is of the highest standard. I do not believe that the Government has yet set out clearly enough the detail around the development of the code. The statutory obligation would be on Police Scotland to prepare the code, but there are still many questions that the Government needs to answer about its scope.

Pauline McNeill also raised the issue of the proposed duty of candour and the lack of clarity around that.

Claire Baker raised the issue of misconduct proceedings and their reaching a conclusion. Part 6 of the bill allows for gross misconduct proceedings to continue or commence in respect of persons who have ceased to be constables. The committee asked the Scottish Government to clarify the timeframe for the continuation of misconduct proceedings and raised concerns about those taking longer than is necessary. Alexander Stewart was also right to raise those issues and highlight the need for more work on that element of the bill. Major concerns about timescales came up on quite a few occasions during the committee’s evidence taking.

Another point that the committee raised that has been discussed at length today is the need for the Scottish Government to consider the strong objections of the Police Investigations and Review Commissioner with regard to how the bill would enhance that role. There appears to be a need to give further consideration to objections that relate to whether the PIRC could assume the role of the presentation of cases at senior officer misconduct hearings, and I hope that the cabinet secretary will provide further clarification of that in due course.

Although we agree with the need for such a bill, we are concerned about some aspects of the legislation before us. The need for reform is clear, and we can all fully get behind that, but it should not mean taxpayers writing a blank cheque to the SNP Government. The costs of the bill must be properly established to allow us to scrutinise it properly, and transparency should not be treated as an inconvenience by the Government.



The Scottish Conservatives want to see reform that improves the police complaints system and ensures that it is fair, effective and delivered in a cost-efficient manner. Although we welcome the intent behind the bill, we need further clarity and confirmation of its true cost, to ensure that we create a fair, efficient and transparent complaints system.

**The Deputy Presiding Officer:** Thank you, Ms Dowey. I call Angela Constance. Cabinet secretary, you have a very generous 10 minutes.

16:36

**Angela Constance:** Thank you, Presiding Officer. It is very unusual for you to say that to me. All that I can say in return is, "Be careful what you wish for."

I start by thanking all members for their contributions. I will do my best to answer the questions that have been raised, but, if I run out of time or cannot read my own handwriting, I will endeavour to write to members with the further detail that they seek.

I will make sure that I stick to the subject of the bill in my remarks, with one exception. I agree with members who have stressed the central importance of body-worn cameras, because I agree 100 per cent that they protect officers from malicious allegations and allow for quicker and more efficient resolution of complaints, which can only be in the interests of victims, too.

I also want to highlight that I provided—the Scottish Government provided—the SPA and Police Scotland with funding for 2024-25 at record levels, to provide them with the resource that they needed to roll out body-worn cameras to police officers. Notwithstanding the fact that there are operational aspects that are absolutely for Police Scotland to decide, I am assured that it is being held to account by the SPA and that progress has been made, particularly on the progression of the contract for body-worn cameras.

I will start by talking about the money and addressing issues and concerns around the financial memorandum, because I want to say to everybody in the chamber that there is, indeed, no blank cheque. I heard the frustrations that were expressed by the Criminal Justice Committee and the Finance and Public Administration Committee, and I shared some of my own frustrations during that process, too. The bill was introduced as far back as June 2023, and the best information that was available at the time was included in the original financial memorandum. The information and the financial assessment changed.

Police Scotland, for good reasons, changed its assessment of the costs on its organisation, but I

assure Parliament that I want to test that robustly, because every public pound is precious. I reassure all members that the most up-to-date information is available to them. I note for the record that there will be a revised financial memorandum at stage 2, as per standing orders. I have acknowledged that prompt information should have been available to both committees. I highlight that the permanent secretary and the Minister for Parliamentary Business are, indeed, engaged on this. On whether costs will increase any further, I will be looking to all members for financially modest stage 2 and stage 3 amendments, because I do not want costs to increase any further.

I turn to the progress that has been made. Most members have spoken of the importance of culture change, and progress on that started not with the bill but with a very honest acknowledgement that significant change was needed. That started when Lady Elish Angiolini's review was commissioned and it progressed when both the Scottish Government and the Crown Office responded to the recommendations in that review, in February 2021.

There were 111 recommendations, and I confirm—Parliament is already aware of this through earlier information—that 59 of the 72 non-legislative recommendations were completed prior to stage 1 proceedings on the bill. Nine recommendations are still progressing, two are nearly completed and two are being reviewed. The purpose of the bill is to take forward the remaining recommendations by Lady Elish that require to be put in statute through legislation. Lady Elish told the Criminal Justice Committee:

"Instant results are seldom possible and seldom sustained. Changing the culture is a long game but it is worth investing time, effort and resource now to lay solid foundations".

That is what we, as a Government, and, I believe, the Parliament are invested in.

Pauline McNeill asked about my reference to His Majesty's Inspectorate of Constabulary in Scotland. I was referring to the HMICS vetting report, which contained one recommendation on vetting for the Scottish Government. It was:

"The Scottish Government should place into legislation the requirement for all Police Scotland officers and staff to obtain and maintain a minimum standard of vetting clearance and the provision for the Chief Constable to dispense with the service of an officer or staff member who cannot maintain suitable vetting."

I confirm that, today, the Cabinet sub-committee on legislation agreed to a vetting amendment at stage 2, and I will lodge it.

**Pauline McNeill:** I thank the cabinet secretary for clarifying that. As we will head into stage 2 shortly after stage 1, I ask her whether she will

take cognisance of something that I said in my opening speech. The bill is full of detail that it is hard for people to get their heads round. Police Scotland has said that it wants accelerated hearings, but the cabinet secretary said that those already exist under the regulations. What is her understanding of that request about accelerated hearings? I can understand why, if somebody fails a drug test, we should not have to wait for a long process to conclude, but there might be other circumstances in which accelerated hearings would not be appropriate. Does the cabinet secretary agree that we need clarity on what is being asked for?

**Angela Constance:** In short, I take cognisance of that and we will endeavour to give as much clarity as possible. Obviously, with many of the recommendations, when it comes to the detail and how amendments are narrated and drafted, we have to be cognisant of unintended consequences. I reassure members that we are delving into the detail, as always, and will endeavour to provide clarity as much and as soon as is possible.

Members also raised the issue of time limits. I remind members that statutory time limits were considered by Lady Elish Angiolini's review, but she concluded that they were not appropriate for legislation. Nonetheless, she said that timescales should be reviewed and published in guidance.

Other members spoke of the professional standards department. It is important to remember that the PIRC conducts an annual audit of PSD triages in relation to complaints; the reports of those audits, including learning points, are now published; and the Scottish Police Authority also regularly does some dip sampling of complaints. All of that is scrutinised by the Scottish Police Authority via its complaints and conduct committee—where appropriate, it gets input from Audit Scotland.

A question was raised by Russell Findlay—I think—about who holds the PIRC to account. I will make one thing absolutely crystal clear: there will be no legislative change to the PIRC's accountability to the Parliament. There are various bodies to which the PIRC is accountable. In some instances, it may be the Lord Advocate; in others, it may be the Scottish Parliament, the Scottish Government, the Auditor General or the Scottish Public Services Ombudsman.

I also note the discussion about different views. On the one hand, I have heard it narrated that the PIRC does not have enough powers—that it is, allegedly, toothless. On the other hand, I have heard people raise legitimate concerns that the PIRC has narrated that it is not convinced by all the additional powers in the bill. Of course, it is for all of us, as makers of policy and law, to resolve

differences of opinion, but maybe we should be less worried about organisations that are not at the forefront of grabbing powers but that have a natural reticence about that.

I will take Ben Macpherson's intervention.

**The Presiding Officer (Alison Johnstone):** I believe that that was an error.

**Angela Constance:** Okay, that was a mistake. I will continue.

I will respond to Martin Whitfield's points. I make it clear that, in my first response to him during my opening statement, I was referring to the 2012 legislation—I was convinced that I said "2012", but somebody has whispered in my ear that I may have said "2020" instead.

Again, I highlight that the initial code of ethics to be introduced will be subject to consultation before it is put in place. The code of ethics will then be updated every five years. It will be the duty of the chief constable to seek to ensure that the policing of Scotland is done with due regard to the code of ethics.

I turn to Mr Whitfield's perhaps more complex point about whether there should be a definition of "candour". He referred specifically to the chief constable's organisational responsibility. Although we do not specifically have any plans for that, the commentary and evidence that was given by Lady Elish aligned with the Government's view that the bill as drafted achieves the outcomes that it sought. However, it would be remiss of me not to pay some cognisance to the wider debate across the UK on issues of duty of candour among public servants. I say to Mr Whitfield that am alive to that debate.

On Ben Macpherson's point about public awareness raising, it is crucial that there is clear signposting on all policing partners' websites. We will continue to discuss that with members.

When the convener, Audrey Nicoll, was speaking about section 13 of the bill, she said that the committee is of the view that both the PIRC and the SPA should be added as prescribed persons in UK legislation and that that would provide a relevant, independent third party for employees of Police Scotland and the SPA to report whistleblowing concerns to. In short, the Government is happy to consider the matter. As I stated in my response to the committee, the matter is outwith the bill, but we remain open minded. It is, of course, a reserved matter, but we want to be clear to the committee about what benefits the action would provide. If a very clear case were to be made, we would enter into discussions with the UK Government.

I hope that, in the time that has been made available to me, I have been able to demonstrate

that, since the publication of Lady Elish Angiolini's review, policing in Scotland has been on an improvement trajectory. That does not, for a minute, mean that our journey is over. I pay tribute to the collective commitment and actions of our policing partners, which have delivered 59 of Lady Elish's recommendations to date and continue to progress those few remaining recommendations that do not require legislation.

In her evidence to the Criminal Justice Committee earlier this year, Lady Elish said:

"the system in Scotland is possibly nearly as good as you can get it. It is always possible to improve the system, and to incorporate good ideas that could enhance it, but, generally, it is significantly better than it was when I started as a young fiscal depute."—[*Official Report, Criminal Justice Committee*, 16 May 2024; c 11.]

That is to be welcomed. However, as many members have warned, there is never any room for complacency. As the bill moves from stage 1 to stage 2 to stage 3, we have to immerse ourselves in the detail. The changes since Lady Elish's review have provided much more transparency and accountability. They have improved the accessibility and outcomes for complainants already, and they are sustainable improvements that will set the course for the future.

Lady Elish also told the committee that we will not be looking at the issue again for a while and that she wants to get it right. I could not agree more with that. It is the responsibility of all of us in the chamber to ensure that the systems that are in place serve the best interests of the public and respect the rights of all involved. That is why I hope that Parliament will agree to the general principles of this important bill, which will improve policing for everyone in Scotland.

I thank all members for their contributions. If there are points in relation to the bill that I have not addressed specifically, I am happy to follow those up in writing.

**The Presiding Officer:** That concludes the debate on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill.

## Police (Ethics, Conduct and Scrutiny) (Scotland) Bill: Financial Resolution

16:54

**The Presiding Officer (Alison Johnstone):** It is time to move on to the next item of business, which is consideration of motion S6M-13797, in the name of Shona Robison, on a financial resolution for the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill.

*Motion moved,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3A of the Parliament's Standing Orders arising in consequence of the Act.—[*Angela Constance*]

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

## Committee Announcement (Finance and Public Administration Committee)

### The Presiding Officer (Alison Johnstone):

The next item of business is an announcement by the Finance and Public Administration Committee on quality and consistency of financial memorandums. I call Kenneth Gibson, the convener of the committee, to make the announcement. You have up to three minutes, Mr Gibson.

16:55

**Kenneth Gibson (Cunninghame North) (SNP):** I am grateful for the opportunity to make this announcement on behalf of the Finance and Public Administration Committee on a matter that is relevant to us all in the chamber, and regards scrutiny of legislation. As members will be aware, the committee is responsible for scrutinising the financial memorandum of each bill. We have repeatedly identified issues with the quality of information that is presented in financial memorandums, as well as a general lack of consistency in how that information is presented. We have highlighted our concerns in successive reports and letters to lead committees and to the Scottish Government.

In response, the Scottish Government sought a consolidated list of committee expectations on financial memorandums. We subsequently reviewed our scrutiny of recent FMs and the recommendations that we made against the guidance that is available to Scottish Government bill teams, and found that most of our concerns would not have arisen if that guidance had been consistently applied by the relevant bill teams. Many of the recommendations that have been made in our letters and reports are already covered in the Scottish public finance manual.

We therefore wrote to the Minister for Parliamentary Business in June, asking the Scottish Government to put in place enhanced training and development for bill teams in order to improve the quality and consistency of presentation of future financial memorandums. We reiterated a number of specific recommendations in relation to margins of uncertainty, the standard usage of the gross domestic product deflator measure of inflation, our preference for financial information to be set out by reference to specific provisions in a bill, the use of summary tables; and our expectation that unnecessary replication of text from other bill documents should be avoided.

We welcomed the ensuing commitments from the Minister for Parliamentary Business that the bill handbook and other guidance will be updated

to reflect our recommendations, and that the Scottish Government will seek to ensure that there is consistent application of that guidance in the development of future FMs.

The committee suggested that requested updates on bill costings—for example, for the financial memorandum for the National Care Service (Scotland) Bill—should be presented in a co-ordinated way annually, alongside the Scottish Government's medium-term financial strategy. We will continue to pursue the matter with the Cabinet Secretary for Finance and Local Government.

We also urged the Scottish Government proactively to write to the committee as soon as it becomes aware of any significantly revised figures, including margins of uncertainty, for FMs during stage 1 of a bill's passage. Again, the committee welcomes the minister's commitment to revise the Scottish public finance manual to emphasise that requirement.

The Finance and Public Administration Committee will continue to monitor the quality of and the detail that is provided in FMs, including in relation to framework bills, which can be more challenging to scrutinise and in respect of which it can be more challenging to establish their overall costs. It is hoped that the updated guidance and renewed focus on training will lead to improvement in the information that is presented to Parliament and, consequently, in the scrutiny of such documents in the future.

I invite members to draw upon the committee's work in their scrutiny of legislation.

## Motion Without Notice

16:58

**The Presiding Officer (Alison Johnstone):** It is time to move on to the next item of business. I am minded to accept a motion without notice, under rule 11.2.4 of standing orders, that decision time be brought forward to now. I invite the Minister for Parliamentary Business to move the motion.

*Motion moved,*

That, under Rule 11.2.4, Decision Time be brought forward to 4.58 pm.—[*Jamie Hepburn*]

*Motion agreed to.*

## Decision Time

16:58

**The Presiding Officer (Alison Johnstone):** There are two questions to be put as a result of today's business. The first question is, that motion S6M-14398, in the name of Angela Constance, on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill, at stage 1, be agreed to.

*Motion agreed to,*

That the Parliament agrees to the general principles of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill.

**The Presiding Officer:** The final question is, that motion S6M-13797, in the name of Shona Robison, on a financial resolution for the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3A of the Parliament's Standing Orders arising in consequence of the Act.

**The Presiding Officer:** That concludes decision time.

## UK Internal Market Act 2020

**The Deputy Presiding Officer (Liam McArthur):** The final item of business is a members' business debate on motion S6M-14113, in the name of Kenneth Gibson, on repealing the United Kingdom Internal Market Act 2020. The debate will be concluded without any question being put.

### *Motion debated,*

That the Parliament recognises the ongoing and potentially far-reaching implications of the United Kingdom Internal Market Act 2020 (UKIMA) as, it considers, a repeated and systematic undermining of devolution and the Scottish Parliament; considers that, despite the previous UK administration's stated commitment to work through intergovernmental structures during the Brexit process, the UKIMA is one of four instances where UK Conservative ministers chose to disregard the Sewel Convention, following the European Union (Withdrawal) Act 2018, the European Union (Withdrawal Agreement) Act 2020, and the European Union (Future Relationship) Act 2020; understands that the introduction of the mutual recognition and non-discrimination principles obligate Scotland to accept goods and services from other parts of the UK, even if they do not meet Scotland's higher regulatory standards, or correspond with key local policies such as minimum alcohol unit pricing, which has an exemption in the Act but, it considers, can still technically be caught by the UKIMA's non-discrimination principle, or the prohibition of certain single-use plastics, as well as other devolved areas if deemed to undermine barriers to trade under the UKIMA; considers that UK ministers can now impose market access principles on devolved policy areas without input from the devolved legislature, most concerningly in areas such as healthcare, where the UK Government can subject "healthcare services provided in hospitals" and "other healthcare facilities or at other places" to market principles in Scotland; highlights its concern following the current UK Secretary of State for Health and Social Care's reported proclamation to "[hold] the door wide open" to private interests in the NHS; considers that UK ministers can now make spending decisions on devolved matters and have already used these powers to replace programmes previously administered via European Structural Funds; understands that the Labour Party, Liberal Democrats, Scottish National Party and Green Party rejected the UKIMA in the House of Commons and that it received the largest government defeat in the House of Lords since 1999; further understands that the UK Government did not seek legislative consent from the devolved legislatures; recalls that the Scottish Parliament voted on a motion for debate refusing consent, which was supported by the Scottish Labour Party, Scottish Liberal Democrats, Scottish Green Party and Scottish National Party, which it understands was only the second instance since the Parliament's establishment in which consent has been withheld, following the European Union (Withdrawal Agreement) Act 2020; understands that, during the passage of the United Kingdom Internal Market Bill, a range of stakeholders, including business and farming organisations, environmental groups, public health charities and professional organisations, raised concerns, which it considers were downplayed or not acknowledged by the UK Government, and notes the calls on the UK Labour administration to repeal the UKIMA, restore respect for the devolution settlement, and ensure that the rights and interests of the people in the Cunninghame North constituency and elsewhere in Scotland are upheld.

17:01

**Kenneth Gibson (Cunninghame North) (SNP):** I am grateful to Scottish National Party and Green MSPs for supporting the motion on repealing the United Kingdom Internal Market Act 2020 and enabling the debate to take place. I am deeply disappointed that Labour and Liberal Democrat MSPs, who opposed the passage of the 2020 act in the Scottish Parliament, while their colleagues in the House of Commons did likewise, did not support such a debate taking place. However, I hope that the members of those parties who are in the chamber today will contribute to the debate.

The 2020 act represents a blatant threat to devolution. Sir Keir Starmer, when in opposition, condemned the act as

"Seriously undermining the fabric of the United Kingdom."

Labour was right then, so I hope that we will see a commitment from it to that principle now.

We should remember that the act is far more than the dry, technical trading legislation that the Tories said that it would be. Rather, it gives United Kingdom Government ministers the power, at the stroke of a pen, to legislate in any area of devolved governance, possibly behind closed doors, without democratic scrutiny or consent.

As Willie Rennie said of the United Kingdom Internal Market Bill,

"The bill is unnecessary. It is rushed. It is ill conceived. It will undermine the United Kingdom partnership, put power in the hands of just one minister and break international law. The Scottish Parliament should reject the legislative consent motion and the UK Government should withdraw the bill without delay."

The 2020 act is a direct assault on the principles of devolution, the autonomy of our legislature and the democratic will of the Scottish people. It is also a breach of the vow, which was made almost exactly a decade ago, to put Scotland at the heart of the UK Government. In fact, the UK Government is now able to drive a stake through the heart of Scotland.

Beneath the surface, the act is yet another steady erosion of the Scottish Parliament's powers—a trend that has been clearly observed as part of the Brexit process. Alex Rowley aptly stated:

"For the avoidance of doubt, the bill is a full-on attack on the existing devolution settlement."—[*Official Report*, 7 October 2020; c 79, 75.]

His Labour colleague Mark Drakeford, the former First Minister of Wales, said:

"The UK government instead of relying, as we wish, on agreement on discussion on finding common ways to address common problems, their answer is to smash and grab the devolution settlement".

The Welsh Senedd joined the Scottish Parliament in overwhelmingly opposing the bill.

We have witnessed at first hand that, contrary to UK ministers' assurances, the 2020 act does not simply replicate the European Union single market's regulatory coherence, nor mirror the internal market rules of other devolved or federal states. Rather, the 2020 act systematically undermines the devolution settlement. A pertinent example of that was the introduction of the shared prosperity fund, with UK ministers awarding themselves, and any future Governments, spending powers that were previously exercised by Scottish ministers under the EU structural fund.

The delicate balance that previously aimed to ensure that decisions were made locally and that they reflected Scotland-specific needs and factors, while allowing other policy objectives to be pursued alongside market goals, is now directly undermined by the 2020 act.

Before Scotland was taken out of Europe, we witnessed at first hand Scottish ministers' informed spending decisions regarding EU structural funding, with them investing in programmes such as the modern apprenticeship scheme and the low-carbon infrastructure transition programme. The centralisation of that fund, combined with the heavy-handed common branding approach that has been imposed by UK ministers, risks undermining the Scotland-focused progress that has been made over the past 25 years.

Prior to the implementation of that policy, the Scottish Council for Voluntary Organisations was among many organisations that urged that funding priorities should be set at a devolved level to tackle inequalities and enhance human rights. Those warnings went unheeded and, four years on, those concerns remain. Scotland now has a significantly constrained devolution settlement, with no vote being cast to mandate such constraint.

To be clear, devolution was never intended to be a footnote in the UK's—unwritten—constitution; it was meant to provide the devolved nations with a meaningful role in shaping policies that are unique to their specific circumstances.

The act undermines devolution domestically, but it also curtails our international influence, especially in the area of trade. Although trade policy is reserved, trade deals are no longer the neat, compartmentalised affairs of decades ago—they sprawl across a wide range of policy areas, many of which are devolved. The act forces Scotland to manage the consequences of those trade decisions, despite its having no representation in the decision-making process. That undermines initiatives that members of the

Scottish Parliament were democratically elected to deliver, such as the banning of single-use plastics.

Indeed, under the act's principle of mutual recognition, goods that fall short of Scotland's stringent environmental standards can still be traded here, facilitated by more lenient regulations that are upheld elsewhere in the UK or by trade agreements that have been forged without the Scottish Parliament being consulted, let alone with our consent.

In order to fully appreciate the implications of the act, it is crucial to consider how it would intersect with some of the major successes of devolution, were they to be introduced today. According to Public Health Scotland, since the introduction of the policy, minimum unit pricing

“has reduced deaths directly caused by alcohol consumption by an estimated 13.4% and hospital admissions by 4.1%”.

Although minimum unit pricing has been heralded as a “life saving policy” by Alcohol Focus Scotland, the policy, as introduced, would have been caught by the 2020 act's mutual recognition principle if it had been proposed today.

Although the UK Government reluctantly amended the United Kingdom Internal Market Bill to exclude “manner of sale” requirements from the mutual recognition principles, minimum unit pricing could still be caught by the 2020 act's non-discrimination principles—if not by automatic application, by private actors making challenges with reference to non-discrimination. That is not just a legal technicality; it is a slow drip-drip erosion of devolved powers under the guise of maintaining market harmony.

Scotland's devolved Government has a track record of pioneering market interventions that protect public health, the environment and social welfare. The ban on raw milk sales, restrictions on plastic cotton buds and microbeads, strict recycling targets and, possibly, the Smoking, Health and Social Care (Scotland) Act 2005 all demonstrate the creative policy making that devolution was designed to foster. However, the lingering question remains as to whether existing protections are strong enough to safeguard those policies, which were put in place to protect Scots, the environment and devolution, from future legal challenges or political pressures that could erode their effectiveness.

The 2020 act is far from a mere legislative tool; it strikes at the heart of devolution. By granting UK ministers authority over decisions that should rest with the Scottish Parliament, it reduces the ability of devolved Governments—whoever is in power—to govern, which is, no doubt, the intention.

If devolution is to remain meaningful, it cannot be left vulnerable to Westminster's shifting agenda

or eroded under the guise of market cohesion. The new UK Labour Government must repeal the 2020 act, which it has long opposed, if it truly values the integrity of devolution. Otherwise, we risk seeing the very foundation of our autonomy—such as it is—being chipped away, piece by piece, until it becomes a mere shadow of its former promise.

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

17:07

**Stephen Kerr (Central Scotland) (Con):** I am grateful to Kenny Gibson for lodging the motion. I must say that I have respect for him, as he is undoubtedly one of the finest conveners of the Finance and Public Administration Committee that the Parliament has ever had. I also dare not speak against him personally, on the basis that he is a fellow alumnus of the University of Stirling. However, if there was a *Holyrood Magazine* award for the motion with the greatest content of manufactured grievance, he would win it by a landslide. For Kenny Gibson to quote minimum unit pricing as a success on this day of all days, when we hear that the number of deaths of our fellow Scots from alcohol-related disease is at a 15-year high, was a mistake, which I hope that he will recognise.

**Kenneth Gibson:** I was quoting directly from Alcohol Focus Scotland, which I believe has more expertise in the area than you or I do. It looked at what would have happened in Scotland had minimum unit pricing not been introduced, and the situation would have been considerably worse.

**The Deputy Presiding Officer:** I can give you the time back, Mr Kerr.

**Stephen Kerr:** I do not dispute that the esteemed body that the member mentions is more of an expert than I am, but I can understand basic statistics, and the number of alcohol deaths is at a 15-year high.

When we think of the billions of pounds of trade that we do with the rest of the United Kingdom, and the hundreds of thousands of jobs in businesses that are engaged in that trade, it beggars belief that anyone would argue against UKIMA. However, here we are again, having another debate—which verges on the meaningless—against the very idea of Britain and British, and the British marketplace. Thank goodness that the people of Scotland have seen through the nationalist mirage, which is based solely on ideological fanaticism.

UKIMA creates the single market regulatory alignment that is needed to support internal domestic trade, creating more jobs and more prosperity across Scotland. It also gives us the

ability to strike trade deals. The comprehensive and progressive agreement for trans-Pacific partnership, which is the latest trade deal, is one of the most exciting opportunities for British businesses in a generation and has been widely praised by industry across all sectors. Without the structure of a regulated single market in the United Kingdom, we would not be able to do any of those trade deals. If the storied history of the people of these islands is about anything, it is about our on-going appetite for trade with every quarter of the world.

I did not hear the SNP say—

**Kenneth Gibson:** Will the member give way?

**Stephen Kerr:** I will.

**Kenneth Gibson:** If you are so keen on regulated trade—

**The Deputy Presiding Officer:** Speak through the chair, please.

**Kenneth Gibson:** —why are you against the single European market, which would include—

**Stephen Kerr:** Not only is Kenny Gibson a graduate of the University of Stirling, but he is a mind-reader, because I was about to say that I did not hear the SNP say a word against the European single market. Kenny Gibson has just confirmed that. The credit for that very much belongs to Margaret Thatcher and a Conservative UK Government. Even her sternest critics give her credit for the work that she led in its creation.

As a unionist, I am, of course, mindful that we live in a devolved setting. The United Kingdom Parliament remains sovereign, especially in matters that underpin the cohesion and prosperity of all parts of the union. Nationalism works by cynically manipulating concocted slights and by stoking our fears and worst instincts. I admit that—members will be very interested to hear this, although this is not a new comment from me—there are gaps in the constitutional machinery that should work to bring the Governments and Parliaments of these islands together. I contend that those gaps become a wide open space for the manufacture of the kind of grievance that we heard from Kenny Gibson.

**Clare Adamson (Motherwell and Wishaw) (SNP):** Will the member take an intervention?

**Stephen Kerr:** I will. I hope that I have time to do so.

**The Deputy Presiding Officer:** I can give you the time back. Briefly, I call Clare Adamson.

**Clare Adamson:** I congratulate you on using Brexit as an example—



**The Deputy Presiding Officer:** Speak through the chair, please.

**Clare Adamson:** —because the post-Brexit Northern Ireland trade settlement is very different, and we look on with admiration as that country is still in the European single market.

The member talked about manufactured grievance, but the Constitution, Europe, External Affairs and Culture Committee, of which I am the convener, is in line with the House of Lords, the Senedd and Stormont in criticising the position. In fact, the House of Lords Select Committee on the Constitution has said that the legislation

“risks de-stabilising this integral part of the UK’s constitutional arrangements—at a time when it has never been more important for central and devolved governments to work together”.

In addition the Senedd has said that the legislation

“represents a new restriction on the ability of devolved legislatures to effectively implement new laws in areas of devolved competence.”

That is not grievance from SNP members; it is grievance that is contained in the criticism of committees of this Parliament, of the Senedd and of Stormont. We do not recognise—

**The Deputy Presiding Officer:** Interventions need to be briefer. I call Stephen Kerr.

**Stephen Kerr:** This is exactly about nationalist grievance from SNP members. I am making the case—*[Interruption.]*—if the member would care to listen, for a review of the constitutional arrangements by which the Governments and Parliaments on these islands work together.

I have long said—I said this when I was an MP, and I say the same as an MSP—that the devolution arrangements do not sufficiently encompass and underscore a vision of partnering. There are still inadequately robust structures for formal departmental and intergovernmental working or for local government agencies or other national agencies to work together.

**The Cabinet Secretary for Constitution, External Affairs and Culture (Angus Robertson):** Will the member give way?

**Stephen Kerr:** I think that I am trying your patience now, Presiding Officer.

**The Deputy Presiding Officer:** You can take an intervention, if it is brief, and then you can start to conclude.

**Stephen Kerr:** I might be the only speaker who is speaking in this fashion. I give way to the cabinet secretary.

**Angus Robertson:** I want to provide a short point of information. Stephen Kerr is aware that common frameworks were introduced before the

United Kingdom Internal Market Act 2020. That was supposed to be the mechanism through which to regulate such issues. There is agreement about that. Does he believe that they work, or does he believe that they do not work?

**Stephen Kerr:** I am grateful to Angus Robertson for his intervention. I hope that he heard me say that I believe that the current arrangements and structures are inadequately robust to facilitate that level of working together. For example, having an established process for dispute resolution is long overdue. I hope that the Labour Government will now pick up on those gaps and, working across the parties at Westminster and here, create robust systems of working between the UK Government and the devolved Administrations and mayors. That will create the basis for collaboration and leave no space for the kind of pettifogging grievance that is embodied in the motion.

**The Deputy Presiding Officer:** I call Christine Grahame to speak for around four minutes.

17:15

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** You caught me on the hop.

I thank Kenneth Gibson for lodging the motion, the subject of which seems, on the surface, to be esoteric, in legalese and, true to Gibson form, very lengthy. However, I say to Mr Kerr that it is significant, not meaningless.

By way of background, the Labour Party, the Liberal Democrats, the Scottish National Party and the Green Party rejected the UK Internal Market Act 2020 in the House of Commons, and it received the largest Government defeat in the House of Lords since 1999.

The UK Government did not seek legislative consent from the devolved legislatures, and the Scottish Parliament debated and voted on a motion to refuse consent, which, again, was supported by the Scottish Labour Party, the Scottish Liberal Democrats, the Scottish Green Party and the Scottish National Party.

Although the 2020 act has had a far-reaching effect on the devolved Administrations, there was no discussion or agreement with them. I say to Mr Kerr, who is looking for dispute resolution, that the key to that is mutual consent, respect and partnership—none of which happened in all of those years under the Conservative Government.

What does the 2020 act do? It is best to give some examples, which are all connected to the sale and price of certain goods in Scotland, such as the banning of fireworks, vapes, rodent glue traps and animal snares, and matters that relate to

safety and animal welfare—policy issues that are reserved to this Parliament. Much though we might have wanted to ban the sale of glue traps or snares, even if there were a unanimous vote by this Parliament, a ban on their sale could not be introduced unless the UK Government mandated it. The way around that would be for us to ban their use, which would make it pretty pointless to sell or buy them, but that should not be necessary. Fortunately, England has banned the use of glue traps. Indeed, the rules on sales and pricing could have impacted on alcohol minimum unit pricing but, as my colleague Kenneth Gibson has already said, that measure was already in force and predated the 2020 act and, therefore, is exempted.

Anything that could be deemed by the UK to cause a barrier—and I will stick to trade—within the UK would fall foul of the legislation, such as price differentials. That would be the case even if, for the best of reasons, Scotland wanted those price differentials. The 2020 act is an example of the UK policing devolution, and I do not think that it is by accident.

When a devolved policy has the backing of this democratically elected Parliament, if it affects sales or prices—either upwards or downwards—compared with England, why should that policy require the affirmative nod from the UK or even be blocked? It is an erosion of devolution.

As well as the internal market's penetration into devolved areas, there is the reallocation of funds that previously came directly to the Scottish Government from the EU and are now allocated directly by the UK Government to communities, which bypasses our devolved responsibilities—Michael Gove labelled that as “levelling up”. That is bad enough, but it is compounded by the fact that Scotland voted by 62 per cent to remain and, therefore, clearly rejected Brexit. There was a face-saving announcement that those funds would be dispersed in partnership, but there was no partnership and there is still none. There is no new respect for devolution.

For example, the restrictions on winter fuel payments were announced and imposed without so much as a phone call to the Scottish or Welsh Governments. Under Labour, the Scottish Office, under the stewardship of Ian Murray, has its own funds for investment. The figure is £150 million, and, according to the oracle for Labour, the *Sunday Mail*,

“Labour is set to change the law within months to allow Scottish Secretary Ian Murray to bypass Holyrood and directly fund anti-poverty schemes.”

Incidentally, he could have passed that over to the Scottish Government to allow all pensioners to access the winter fuel payment, but of course he did not.

The proposed new UK legislation—

**Stephen Kerr:** Will Ms Grahame take an intervention?

**The Deputy Presiding Officer:** Briefly, Mr Kerr.

**Christine Grahame:** Certainly—I am delighted to do so, although I do hope that it is worth while.

**Stephen Kerr:** I am not sure who in this place decides whether things are worth while. Quite a few contributions might be censured.

Is Christine Grahame seriously objecting to more money being directed to help the poorest people in the communities of Scotland? Is she seriously objecting to that on the basis of process? Is not what really matters what is aimed to be achieved? Is not what really matters what good comes from this, rather than bleating on about process?

**The Deputy Presiding Officer:** I call Christine Grahame.

**Stephen Kerr:** I remind Christine Grahame that we are in a devolved Parliament.

**The Deputy Presiding Officer:** Mr Kerr, I am calling Christine Grahame.

**Christine Grahame:** Unfortunately, Mr Kerr, you are an expert in bleating, and that intervention was not very worth while.

**The Deputy Presiding Officer:** Speak through the chair, Ms Grahame.

**Christine Grahame:** I beg your pardon.

Mr Kerr bleats regularly, and that just bypasses me, thankfully—rather as funding on devolved issues bypasses the Scottish Parliament.

Of course poverty is important. Incidentally, we would not be so poor if we had not had so many years of the Tory Government and its austerity, which is now continued by Labour. However, that is another matter.

**Patrick Harvie (Glasgow) (Green) rose—**

**Christine Grahame:** Heavens, I seem to have stirred a bit of interest. I will take an intervention from Patrick Harvie.

**The Deputy Presiding Officer:** Patrick Harvie, please be brief.

**Patrick Harvie:** I wonder whether Christine Grahame agrees that Stephen Kerr, by suggesting that the mere process involving whether something is devolved or reserved should not prevent a Government from taking action, has made a case that this Parliament and this Government should be able to do whatever it likes on reserved matters.

**Christine Grahame:** Strangely enough, I agree, but that is for a debate on independence.

The proposed new UK legislation would massively expand the powers of the Scotland Office. It was started by the Conservatives but, of course, Labour is just following happily in their footsteps, like a puppy. Does it matter? Of course it does. Policies on domestic issues such as poverty are made here in Scotland, for Scotland, by the Scottish people. Perhaps we should all repeat the mantra that power devolved is power retained. We are watching this happen before our very eyes. There is not even an attempt by any UK Government—Tory or Labour—to hide it.

I will finish with a quote from Tony Blair, because we seem to be seeing Blair policies again.

**The Deputy Presiding Officer:** Be brief.

**Christine Grahame:** This is from just before when the Scottish Parliament was established. He explained:

"I don't see what the problem is. We will not raise the basic or top rate of income tax. That is our commitment here in Scotland as much as it is our commitment in England and that will remain ... The Scottish Labour Party is not planning to raise income tax and once the power is given it is like any parish council, it's got the right to exercise it".

He said what he really thought of the proposed Scottish Parliament. A "parish council" seems to be the route that Labour is taking. That is what it really thinks of us. We must remember that what the UK says it gives, it can take away.

17:22

**Daniel Johnson (Edinburgh Southern) (Lab):** I find myself with somewhat mixed feelings, given the debate so far. I have just heard Christine Grahame describe the Labour Party as a puppy. Given her long-standing commitment to the welfare of dogs, I will take that as a compliment—that being a puppy is a good thing. I also have to say that Ian Murray will be very concerned that he now has an ardent supporter in Stephen Kerr. He should be greatly worried.

On a serious point, I am encouraged by the debate, and I will take an optimistic view in it, because what we have heard so far is an earnest discussion about the nature of devolution and how it should be. There has been a fair challenge from Kenny Gibson about how we take that forward—what the relationship between the two Governments should be. Critically, we have also heard from perhaps one of the more ardent unionists in the chamber—if Stephen Kerr will forgive me for describing him as such—who recognised the deficiencies of devolution and the need to understand and maybe entrench it

permanently in our constitutional settlement. Maybe—just maybe—we can hope that there might be some points for agreement.

Let us be very clear. After 14 years of Conservative Government, we need a fresh approach. We need a different approach from the UK Government, and I hope that we will see that. Within the short first 10 weeks of the new UK Government, there have been meetings at Bute house not just between the Prime Minister and the First Minister but involving the Deputy Prime Minister and the Chancellor of the Exchequer. It may be a bit of a hyperbole, but I do not recall so many such meetings at Bute house over the past 10 years. That might not be strictly accurate but, clearly, there is a commitment on both sides to renew the levels of commitment and engagement. Ultimately, that is the problem with the internal market act.

**Christine Grahame** rose—

**Daniel Johnson:** I am happy to give way to Christine Grahame.

**The Deputy Presiding Officer:** I encourage those who are making interventions to press their buttons as well.

**Christine Grahame:** I beg your pardon.

Does the member therefore consider it, to put it very—[*Interruption.*]

**Daniel Johnson:** Deputy Presiding Officer, it is my understanding that we are not allowed to use visual props. I seek your guidance on whether audio props are similarly disbarred from the chamber. [*Laughter.*]

I think that the member was going to challenge me about what that means, but I will be very clear. Already from this Government, we see a renewed commitment to our international partners. The UK Government has agreed to a bilateral treaty with Germany, which will come into effect in early 2025. That is a very substantial and material difference—

**Stephen Kerr:** Will the member take an intervention?

**Daniel Johnson:** If Mr Kerr will forgive me, I would like to make some progress.

Let us be very clear that, with the 2020 act, we are not where we would want to start. We did not want the act to pass, but we have a great deal—

**Christine Grahame:** On a point of order, Deputy Presiding Officer. I apologise to Daniel Johnson and to the other members in the chamber for my incompetence in handling my phone. I am very sorry—I genuinely am.

**The Deputy Presiding Officer:** Thank you for that, Ms Grahame.

**Daniel Johnson:** If we are going to have to make apologies for incompetence, I might need some more time to account for mine.

The key point is that we have scarce and valuable parliamentary time. We must absolutely keep the 2020 act and seek reform where possible. However, Kenny Gibson brought up some important points about the principle of devolution and about ensuring that we protect its unique role.

Let us be clear about what the Labour manifesto sets out. It says that we will renew the devolution relationship, in relation both to the devolved nations and to the metro mayors. It also says that we will seek to strengthen the Sewel convention and to ensure that UK bodies are far more representative of our nations and regions. That includes representation of Scotland on the Industrial Strategy Council and other bodies.

**Kenneth Gibson:** I have a very simple and straightforward question—will the Labour Party repeal the 2020 act?

**Daniel Johnson:** I do not know, is my accurate answer. I do not have a hotline to number 10 open right now. I was hoping to set out the real commitments, not just in intent but in substance, to put in place the mechanisms that Stephen Kerr alluded to in relation to the requirement. We need that mutual recognition. My reflection is that, to date, we have focused too much on the legislative interactions between Westminster and this devolved Parliament. We need to enhance and improve the intergovernmental structures, such as they are. That way, we enhance devolution.

**Stephen Kerr:** Will the member take an intervention?

**Daniel Johnson:** I am afraid that I am out of time.

I hope that people hold the new Labour Government to account on the changes to the devolution relationship and that we see greater progress towards improved intergovernmental relationships. Ultimately, that will enhance the United Kingdom Government's ability to govern and enhance this Parliament's ability to work in partnership with the UK Government.

17:28

**Michelle Thomson (Falkirk East) (SNP):** I thank my colleague Kenneth Gibson for securing the debate. We all know that my preference is to have independence for Scotland rather than to protect devolution, but devolution is all that we have at the moment. I am surprised that there are

not more members from other political parties who have previously claimed to respect devolution wanting to speak in the debate.

We know that the United Kingdom Internal Market Act 2020, brought about in the wake of Brexit, has been a significant re-centralisation of power away from the devolved Administrations. For example, as has already been mentioned, it gives new spending powers to the UK Government in devolved areas, allowing it to bypass the devolved Governments and fund activities and organisations directly. We have already heard reference to October 2020, when the then bill was rejected by this Parliament.

Kenneth Gibson quoted a little of what Alex Rowley said, but Alex Rowley, in addition to describing the bill as

“a full-on attack on the existing devolution settlement”,

also said:

“we will not give support to any measures that will reduce and constrain the competence of the Scottish Parliament.”—[*Official Report*, 7 October 2020; c 75.]

How right Alex Rowley, representing the Labour Party in Scotland, was then. As has already been asked, is that still Labour's position today? It is clearly not.

The Tories were the only party in this Parliament that supported the UK Internal Market Act 2020, following the bidding of one of its architects, Michael Gove. It is such a pity that, in the early days of this new UK Labour Government, Michael Gove's influence seems to continue unabated. Frankly, the truth of the matter is that, since coming to power, the new Labour Government has made no moves to eliminate, or even to raise or discuss, any of those measures that reduce and constrain the competence of the Scottish Parliament—indeed, the situation is quite the reverse.

**Daniel Johnson:** Will the member take an intervention?

**Michelle Thomson:** If the member can confirm on the record that the Labour Party—the new UK Government—has active plans to roll back the 2020 act, I will be delighted to accept his intervention.

**Daniel Johnson:** Again, I am encouraged that members have such confidence in my influence on my UK colleagues. Does the member not recognise that commitments around things such as the Sewel convention and intergovernmental structures will radically alter the nature of the relationship between the two Governments and make some headway on the member's points?

**Michelle Thomson:** I rather think that the member makes my point for me, because it is still

referenced as just that—a convention, which is therefore inherently weak.

Labour's pre-election commitment to give £150 million of so-called levelling-up funds to the Scottish Office, therefore bypassing the Scottish Parliament, is warning enough that Labour is not to be trusted to look after Scotland's interests. The avoidance of scrutiny, accountability, good governance, efficiency and effectiveness and a lack of respect are just some of the reasons why bypassing this Parliament is poor. *[Interruption.]* I might take another intervention in a little while.

I take what Daniel Johnson says in good faith, but the problem is that the Labour Party in Scotland has no power, and that is the way that it has always been. This example of disrespecting this Parliament is also not an aberration, given that the Chancellor of the Exchequer has announced an attack on pensioners by taking away their universal winter fuel payment—something that Labour's own research said could kill up to 4,000 people and would represent the

“single biggest attack on pensioners in a generation”.

Christine Grahame made it clear that this massive policy change has been made without consultation with any of the devolved administrations. Labour did not even consult charities and others who might have to pick up the pieces. Therefore, I suggest that an arrogant culture has been allowed to develop around the UK Internal Market Act 2020, and, given that, if there is to be any substantive change, I will be looking at the real meaning of that.

When the UK Internal Market Bill was being debated, some thought that the Sewel convention might come to this Parliament's aid, but, as the optimists now realise, the Sewel convention is just that—a convention, with no legal effect. There is, therefore, no need for any UK Government to respect the views of this Parliament, and they often do not. It is a pity that the respective branch offices—for that is what they are—of Labour and the Tories—do not either. Ultimately, that is a huge disrespect to the people of Scotland.

**The Deputy Presiding Officer:** I call the final speaker in the open debate. Mr Harvie, you have around four minutes.

17:33

**Patrick Harvie (Glasgow) (Green):** I thank Kenny Gibson for bringing this debate to Parliament and congratulate him on doing so. I was very happy to put my name to the motion.

The stated purpose of the United Kingdom Internal Market Act 2020 needs to be recognised, and I think that ensuring continued trade and preventing the creation of unnecessary trade

barriers is a legitimate purpose. I suspect that most of us would agree with that basic purpose. In fact, it is worth acknowledging that, whether we believe in a well-regulated market that is made to operate in the public interest or a deregulated free market—wherever we sit on that left-to-right spectrum—there is a case for having a large single market between countries without trade barriers. I believe in that as an objective.

However, there is a very deep irony in the fact that the act was brought about by the party that gave us Brexit—the party that took us out of such a large international single-market arrangement.

I have just rejoined the Constitution, Europe, External Affairs and Culture Committee. I did not take part in the committee's inquiry into the trade barriers that have emerged post-Brexit, but we looked at its report at my first meeting back. What struck me was that not a single bit of evidence that the committee had taken suggested anything other than that significant trade barriers had emerged, and that not a single politician on the committee—from any political party—tried to deny the fact that Brexit has created trade barriers. The Conservatives must be the first right-wing party that derides anyone who criticises capitalism but then joyfully and gleefully creates new trade barriers where they do not need to exist. They pretended that they did not believe in trade barriers but then introduced legislation to prevent them.

It is worth acknowledging that the European Union has a much wider international, multinational single market. It has mechanisms to prevent unnecessary trade barriers from being created, which it put in place without the need to take the draconian powers that the then UK Government took in the 2020 act.

Other members have mentioned the political parties—Labour, the Lib Dems, the SNP and the Greens—that voted against the legislation in the UK Parliament and against giving legislative consent in this Parliament. Therefore, it is clear that the defence of the 2020 act is not the mainstream position in our political landscape and that opposition to that legislation is the mainstream position.

It is not that the 2020 act could be used to constrain devolved Parliaments rather than to ensure co-operation, dialogue and mutual agreement—it has been used to do that. It is clear that the then UK Government did not care about gaining legislative consent to interference in devolved powers. The act allows the UK Government to unilaterally override devolved decisions on devolved competencies without any notice.

I will mention the then UK Government's abuse of its power in relation to the deposit return scheme. For years, that Government had a policy commitment to introduce a deposit return scheme in England. In fact, it was going to consult on it five years before the end stages of Scotland's attempt to get a deposit return scheme working. Five years on from that commitment, there was no detail in the UK Government's policy. It had not developed its policy, legislation or regulations; it had not done anything to advance that agenda. From the point of view of the then UK Government, the main premise for undermining Scotland's scheme was the need for a UK-wide approach, yet years after making the commitment to introduce such a scheme, there was no detail on what exactly Scotland was supposed to align with. That was an abuse of power: the then UK Government said that we had to align with a UK approach while utterly refusing to say what that approach was.

It is clear from all that, and it was clear in the Scottish Government's response to the then UK Government, that the latter would not hesitate to use the 2020 act to undermine, override and rewrite devolved legislation, disregarding—not seeking—a four-nation approach.

This is about more than just the United Kingdom Internal Market Act 2020. We have seen the abuse of power in the 2020 act, the abuse of power in the use of the section 35 order in the Scotland Act 1998 and the willingness of a UK Government to persistently and routinely ignore decisions on legislative consent motions. With those three elements combined, we no longer have the devolution settlement that we voted for back in 1998. If the UK Labour Government is at all serious about wanting a reset—whatever that means—of the relationship between the Governments, it must end all three forms of abuse of power.

**The Deputy Presiding Officer:** I call Angus Robertson to respond to the debate. You have around seven minutes.

17:39

**The Cabinet Secretary for Constitution, External Affairs and Culture (Angus Robertson):** I congratulate Kenneth Gibson on securing this members' business debate on a matter that should be of the utmost importance to every member of this Parliament, across all parties. It is a topic that should transcend party politics as it goes to the heart of the principles and the purpose of devolution and the powers of this Parliament, which were endorsed decisively by the people of Scotland a quarter of a century ago.

I will consider some of the contributions that we have heard in a moment, but first I will make a few comments of my own.

The first is a point so obvious that it should hardly need to be made—namely, that no one wants to see unnecessary barriers to trade. It is perfectly possible to have a properly functioning market across the United Kingdom while also recognising and respecting devolution. The argument that the United Kingdom Internal Market Act 2020 is a necessary or indeed proportionate measure to preserve trade across these islands is frankly entirely without merit. That it was the previous UK Government that ushered in new trade barriers with the world's largest and most integrated single market and then imposed the act on this Parliament is an irony that is lost on no one, except perhaps Stephen Kerr.

I mention the European single market because the comparisons with the act are telling. The single market operates on principles of co-decision and consent. There are enforceable legal protections for the powers of its constituent parts, robust proportionality tests and the proper balancing of economic considerations with wider social and environmental concerns across the European Union. Those are all fundamental features of a properly functioning market regime, but all are missing from the act, and they are missing from it by design.

The act undermines and threatens the devolution settlement in a way that would surely never have been envisaged by the Labour Government that delivered this Parliament's founding statute and set its powers, and it goes against the grain of the new UK Government's stated ambition for further devolution across the United Kingdom.

We have seen the act being used to frustrate the will of this Parliament, to thwart the delivery of Scotland's deposit return scheme and to bypass democratic oversight of how money is spent on devolved matters in Scotland. As Kenneth Gibson noted, it also creates the risk of a regulatory race to the bottom and leaves the door open to the marketisation of the national health service at the stroke of a pen.

I will reflect on some of the contributions that members have made. Kenneth Gibson is absolutely right to raise the issue of minimum unit pricing for alcohol. I have absolutely no doubt that, had that policy been proposed when the previous UK Government was in office, that Government would have used the act to torpedo it. That is why I sought to intervene on Stephen Kerr—I wanted to get an insight and understanding from the only party that voted against the cross-party consensus in this Parliament when we refused to give legislative content to the act.

Common frameworks might seem to some people to be dry constitutional arrangements, but they are really important. For those who do not know about them, common frameworks were agreed as the basis on which the UK Government and the devolved Administrations would work through the challenges of policy divergence. Devolution is about being able to make different decisions—Christine Grahame made that self-evident and important point powerfully—but the act was seen as a vehicle by the previous UK Government for driving a coach and horses through devolved decision making, although we have been elected by the people to make decisions and deliver on policy choices. We hope that no other Government will see the act in that way, but, so long as the act is there and operates as it currently does, it could.

**Stephen Kerr:** Will the cabinet secretary accept an intervention?

**Angus Robertson:** Forgive me; I need to make some progress and want to ensure that I reflect everyone's contributions.

I very much welcome Daniel Johnson's acknowledgement of the shortcomings of the act. Those shortcomings are why I and colleagues welcomed the fact that the Scottish Labour Party, with others in this chamber—the only exception being the Scottish Conservative party—voted in favour of the repeal of act. It was such a flawed piece of legislation that Labour believed that it should be repealed.

I hope that Mr Johnson's comments signpost genuine change from the incoming United Kingdom Government. We were relentlessly promised change and told that things would be different, so I am surprised that the Scottish Labour front-bench spokesman does not know what his UK Government intends to do in relation to the act. It would be good if, before the next time we debate the issue, his colleagues would tell him the line that he should pursue in this chamber.

Michelle Thomson was absolutely right to underline the concern that the Scottish Labour Party, having voted to repeal the legislation, cannot even tell the chamber what its position is or what it will do at Westminster. I very much hope that Daniel Johnson's colleagues look closely at this debate and realise that the issue should be a priority, regardless of the present legislative timetable, because it has to be dealt with.

**Daniel Johnson:** I hope that Angus Robertson will acknowledge that I spoke about the substance of the material change that the Labour Government hopes to bring about. Really, the key point was about the precise mechanisms for delivering that.

**Angus Robertson:** Then I will of course look closely at that.

Finally, to Patrick Harvie—

**Stephen Kerr:** Will the cabinet secretary take an intervention?

**Angus Robertson:** No, I will not, because I am running out of time.

Patrick Harvie made the absolutely right connection between what Brexit did and how the previous UK Government acted, especially in relation to the deposit return scheme. It does not have to be that way. We have common frameworks and we now have an offer to do things differently. The Scottish Government has been working with the other Governments across the United Kingdom to finalise common frameworks and on intergovernmental mechanisms to manage policy divergence by agreement and in a manner that respects devolution.

There is an agreed process to exclude the work of the common frameworks from the 2020 act's effect. That process was, unfortunately, not just ignored but routinely misrepresented by the previous UK Government. We now have the opportunity to work with a new UK Government that was elected on a manifesto commitment to reset relations with the devolved Governments to ensure that the exclusion process is scrupulously observed and that, in future, we take an approach that is based on mutual respect, proportionality, transparency and the use of evidence. What a welcome change that would be after recent years.

However, a properly observed process for excluding some matters from the act can only ever be a workaround, because the flaws in the act go much deeper and must be addressed. That was recognised in Parliament last October, when every party in the chamber, bar the Conservatives, supported a motion calling for the act's repeal. The act is wholly discredited and hopelessly flawed. The Scottish Government stands ready to work with the new UK Government and the Governments of Wales and Northern Ireland to build a better system that is based on agreement and respect for the principle that drove the delivery of devolution: that decisions affecting Scotland are best taken in Scotland by this democratically elected Parliament.

**The Deputy Presiding Officer:** That concludes the debate, and I close this meeting of Parliament.

*Meeting closed at 17:47.*





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