



The Scottish Parliament  
Pàrlamaid na h-Alba

Passage of the

**Convention Rights  
Proceedings (Amendment)  
(Scotland) Bill 2009**

SPPB 136





The Scottish Parliament  
Pàrlamaid na h-Alba

Passage of the  
Convention Rights Proceedings (Amendment)  
(Scotland) Bill 2009  
SP Bill 28 (Session 3), subsequently 2009 asp 11

SPPB 136

EDINBURGH: APS GROUP SCOTLAND

For information in languages other than English or in alternative formats (for example Braille, large print, audio tape or various computer formats), please send your enquiry to Public Information, The Scottish Parliament, Edinburgh, EH991SP.

You can also contact us by email [sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)

We welcome written correspondence in any language

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website  
[www.scottish.parliament.uk](http://www.scottish.parliament.uk)

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by  
APS Group Scotland.

**ISBN 978-1-4061-XXXX-X**

## Contents

Page

Foreword

### *Introduction of the Bill*

Bill (As Introduced) (SP Bill 28)

Explanatory Notes (and other accompanying documents) (SP Bill 28-EN)

Policy Memorandum (SP Bill 28-PM)

### *Stages 1, 2 and 3*

Extract from the Minutes of the Parliament, 18 June 2009

Official Report, Meeting of the Parliament, 18 June 2009



## Foreword

### *Purpose of the series*

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

### *Outline of the legislative process*

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:

- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
- Stage 2: the Bill returns to a committee for detailed consideration of amendments;
- Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the *Guidance on Public Bills* published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament's website ([www.scottish.parliament.uk](http://www.scottish.parliament.uk)).

The series is produced by the Legislation Team within the Parliament's Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

#### *Notes on this volume*

The Bill to which this volume relates was introduced on 18 June 2009.

The Parliament agreed at the start of its meeting on 18 June 2009 that the Bill should be treated as an Emergency Bill. Emergency Bill procedures are provided for by Rule 9.21 of the Scottish Parliament's Standing Orders.

Under the Emergency Bill procedure, Stages 1, 2 and 3 were considered by the Parliament on the same day. No Stage 1 Report is required for an Emergency Bill, so Stage 1 consists only of a debate in the Chamber on the general principles of the Bill. The Parliament agreed in the morning session on 18 June to the general principles of the Bill at Stage 1.

The Parliament then moved in the afternoon to Stage 2 which was taken by a Committee of the Whole Parliament. A Marshalled List and groupings were not produced for this Stage as no amendments were lodged. There was, therefore, no 'As Amended' version of the Bill.

Stage 3 proceedings were held immediately after Stage 2. A Marshalled List and groupings were not produced for this Stage as no amendments were lodged and no 'As Passed' version of the Bill was produced. The Bill was passed in its 'As Introduced' form.

ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 28-EN. A Policy Memorandum is printed separately as SP Bill 28-PM.

# Convention Rights Proceedings (Amendment) (Scotland) Bill [AS INTRODUCED]

An Act of the Scottish Parliament to amend the limitation period for bringing certain Convention rights proceedings by virtue of the Scotland Act 1998.

## 1 Limitation period for certain Convention rights proceedings

(1) Section 100 (human rights) of the Scotland Act 1998 (c. 46) is amended as follows.

(2) After subsection (3) insert—

“(3A) Subsection (3B) applies to any proceedings brought on or after 2 November 2009 by virtue of this Act against the Scottish Ministers or a member of the Scottish Executive in a court or tribunal on the ground that an act of the Scottish Ministers or a member of the Scottish Executive is incompatible with the Convention rights.

(3B) Proceedings to which this subsection applies must be brought before the end of—

(a) the period of one year beginning with the date on which the act complained of took place, or

(b) such longer period as the court or tribunal considers equitable having regard to all the circumstances,

but that is subject to any rule imposing a stricter time limit in relation to the procedure in question.

(3C) Subsection (3B) does not apply to proceedings brought by the Lord Advocate, the Advocate General, the Attorney General, the Attorney General for Northern Ireland or the Advocate General for Northern Ireland.

(3D) In subsections (3A) and (3B) “act” does not include the making of any legislation but it does include any other act or failure to act (including a failure to make legislation).

(3E) The reference in subsection (3A) to proceedings brought on or after 2 November 2009 includes proceedings relating to an act done before that date.”.

(3) In subsection (4), at the beginning insert “Subject to subsection (3D),”.



**2 Commencement and short title**

- (1) This Act comes into force on the day after Royal Assent.
- (2) The short title of this Act is the Convention Rights Proceedings (Amendment) (Scotland) Act 2009.





# **Convention Rights Proceedings (Amendment) (Scotland) Bill**

[AS INTRODUCED]

An Act of the Scottish Parliament to amend the limitation period for bringing certain Convention rights proceedings by virtue of the Scotland Act 1998.

Introduced by: Kenny MacAskill

On: 15 June 2009

Bill type: Executive Bill



# **CONVENTION RIGHTS PROCEEDINGS (AMENDMENT) (SCOTLAND) BILL**

---

## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

### **CONTENTS**

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Convention Rights Proceedings (Amendment) (Scotland) Bill introduced in the Scottish Parliament on 15 June 2009:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 28–PM.



## **EXPLANATORY NOTES**

### **INTRODUCTION**

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

### **THE BILL**

4. The Convention Rights Proceedings (Amendment) (Scotland) Bill amends the Scotland Act 1998 to create a statutory time limit for bringing proceedings under that Act alleging a breach of Convention rights by the Scottish Ministers or a member of the Scottish Executive. The Bill will ensure that the same time limit applies regardless of whether proceedings are brought under the Scotland Act or the Human Rights Act 1998.

5. In terms of section 57(2) of the Scotland Act a member of the Scottish Executive has no power to act incompatibly with any of the Convention rights. A person whose Convention rights have been breached by a member of the Scottish Executive may bring proceedings under the Scotland Act in respect of that breach. Section 126(1) of the Scotland Act defines “the Convention rights” to have the same meaning as that term has in the Human Rights Act.

6. Section 1 of the Human Rights Act defines “the Convention rights” as certain rights and fundamental freedoms, derived from the European Convention on Human Rights, set out in Schedule 1 to that Act. Section 6 of the Human Rights Act makes it unlawful for a public authority to act incompatibly with the Convention rights. The victim of an unlawful act in terms of section 6 may bring proceedings under section 7(1)(a). However, unless a stricter time limit is imposed by the procedure for bringing those proceedings, section 7(5) requires proceedings be brought within one year from the date of the unlawful act complained of. That time limit may be extended on equitable grounds at the discretion of the court or tribunal hearing the case.

7. The members of the Scottish Executive, individually and collectively, fall within the definition of a “public authority” for the purposes of the Human Rights Act. Proceedings may therefore be brought against them in respect of any alleged breach of Convention rights under that Act but subject to the one year time limit. Proceedings may also be brought against them in respect of any alleged breach of Convention rights under the Scotland Act. Proceedings brought under the latter Act are not subject to the one year time limit which would apply were they brought under the Human Rights Act (*Somerville v. Scottish Ministers 2008 S.C. (H.L.) 45*).

8. The Bill will amend the Scotland Act, by inserting provisions to create a time limit for Convention rights proceedings brought under it. The amendment will apply to all proceedings brought on the ground, whether in whole or in part, that an act of the Scottish Ministers or a



member of the Scottish Executive is incompatible with the Convention rights. The time limit the Bill will create is substantially the same as the time limit for proceedings brought under the Human Rights Act. It will apply to proceedings brought on or after 2 November 2009. It will not apply to proceedings brought by the Lord Advocate, the Advocate General for Scotland, the Attorney General, the Attorney General for Northern Ireland or the Advocate General for Northern Ireland (“the Law Officers”).

## **COMMENTARY ON SECTIONS**

### **Section 1 – Limitation period for certain Convention rights proceedings**

9. This section amends section 100 of the Scotland Act by inserting new subsections (3A) to (3E). Subsection (3A) explains what proceedings the time limit applies to. Subsection (3B) defines the time limit.

10. Subsection (3C) provides that the time limit does not apply to proceedings brought by the Law Officers. Subsection (3D) defines the word “act”. In terms of subsection (3A), the time limit will apply to proceedings premised on the ground that an “act” is incompatible with the Convention rights. As it is defined by subsection (3D) “act” does not include making legislation, therefore the time limit will not apply to proceedings challenging the Convention compatibility of subordinate legislation made by the Scottish Government. Subsection (3E) puts beyond doubt that the time limit will apply to proceedings brought on or after 2 November 2009, even if the act complained of took place before that date.

### **Section 2 – Commencement and short title**

11. This section provides that the Bill will come into force on the day after it receives Royal Assent and for its short title.

---

## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

12. This document relates to the Convention Rights Proceedings (Amendment) (Scotland) Bill introduced in the Scottish Parliament on 15 June 2009. It does not form part of the Bill and has not been endorsed by the Parliament.

### **COSTS ON THE SCOTTISH ADMINISTRATION**

13. It is not anticipated that the Bill will impose any additional costs. By placing a one-year time bar on human rights claims brought under the Scotland Act, the Bill should in due course deliver savings to the Scottish Administration.



## **COSTS ON LOCAL AUTHORITIES**

14. It is not anticipated that the Bill will impose any additional costs. The change to the law that would be made by the Bill relates only to legal actions brought under the Scotland Act against the Scottish Ministers or a member of the Scottish Executive in respect of alleged breaches of Convention rights, and thus will have no impact upon local authorities.

## **COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

15. It is not anticipated that the Bill will impose any additional costs. The Bill will restrict the ability of individuals who wish to bring legal actions under the Scotland Act against the Scottish Ministers or a member of the Scottish Executive in respect of alleged breaches of Convention rights, by requiring such actions to be brought within one year of the act complained of taking place (or such longer period as the court or tribunal considers equitable in the circumstances). However, the Bill will not directly restrict the range of matters for which actions can be raised or the amount of damages that might be claimed in respect thereof.

---

## **EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE**

16. On 15 June 2009, the Cabinet Secretary for Justice (Kenny MacAskill MSP) made the following statement:

“In my view, the provisions of the Convention Rights Proceedings (Amendment) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

---

## **PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE**

17. On 15 June 2009, the Presiding Officer (Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Convention Rights Proceedings (Amendment) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”



# **CONVENTION RIGHTS PROCEEDINGS (AMENDMENT) (SCOTLAND) BILL**

---

## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. This document relates to the Convention Rights Proceedings (Amendment) (Scotland) Bill introduced in the Scottish Parliament on 15 June 2009. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 28–EN.

### **PURPOSE OF THE BILL**

2. The purpose of the Bill is to establish a one year time limit, where no stricter time limit applies, for bringing proceedings under the Scotland Act 1998 alleging that the Scottish Ministers or a member of the Scottish Executive have or has acted in breach of Convention rights. The Bill will give the courts a discretion to allow proceedings to be brought after one year where it is considered equitable in the particular circumstances of the case. The time limit will not apply to proceedings brought by the Law Officers (that is the Lord Advocate, the Advocate General for Scotland, the Attorney General, the Attorney General for Northern Ireland or the Advocate General for Northern Ireland).

### **POLICY CONTEXT**

#### **Legal Background**

3. Under section 6(1) of the Human Rights Act 1998, it is unlawful for a public authority to act in a way which is incompatible with a Convention right. The Convention rights are those rights and fundamental freedoms drawn from provisions of the European Convention on Human Rights ("ECHR") set out in Schedule 1 to the Act. If a person claims that a public authority has acted, or proposes to act, in a way which is made unlawful by section 6(1), they may bring proceedings against the public authority under the Human Rights Act in the appropriate court or tribunal (section 7(1)(a)). They are only permitted to do so if they are, or would be, a victim of the unlawful act. A "public authority" includes the members of the Scottish Executive collectively and individually.

4. Similarly, section 57(2) of the Scotland Act provides that a member of the Scottish Executive has no power to act in a manner that is incompatible with Convention rights. This



means that where it is alleged that a member of the Scottish Executive has acted incompatibly with Convention Rights, proceedings can be brought against them under the Human Rights Act or under the Scotland Act.

5. Under section 7(5) of the Human Rights Act, proceedings brought under section 7(1)(a) must generally be brought within one year from the date of the alleged breach, unless a stricter time limit applies to the proceedings in question. A court or tribunal may permit proceedings beyond this time limit if it considers it equitable having regard to all the circumstances. The Scotland Act, however, contains no such explicit provision and the *Somerville* decision<sup>1</sup> established that the one year time limit does not apply in such cases. Therefore those bringing proceedings under the Scotland Act will have longer in which to do so than they would if they brought their claim under the Human Rights Act.

6. The Scottish Government is the only public authority in Scotland, and one of only a few in the UK, exposed to claims for damages arising from alleged breaches of Convention rights without a one year time limit.

### **The Somerville judgment**

7. This judgment, by the House of Lords in October 2007, arose from claims by 4 prisoners that their Convention rights had been breached by their removal from association (“segregation”) while in prison. It established that it was competent to seek damages for a breach of Convention rights in proceedings brought under the Scotland Act. Further, it was held that such proceedings could be brought outwith the one year time limit which would apply had the proceedings been brought under the Human Rights Act. It had previously been thought, and held by the Court of Session at an earlier stage of *Somerville*, that the same one year time limit would apply to such claims as under the Human Rights Act.

8. Whilst *Somerville* was concerned with the segregation of prisoners, the decision had wider ramifications. In particular it meant that a large number of claims for compensation in respect of doubled-up slopping out, which had previously been thought to be time-barred, could proceed. The total potential liability in respect of such claims arising from the judgment is estimated at around £67 million, of which over £11 million has been already been paid in compensation and legal costs in respect of such claims. Successful claimants typically receive £2,100 plus payment of their legal costs.

### **Addressing the legal issue**

9. The absence of a time limit for proceedings brought under the Scotland Act follows from the wording of the Act. The wording of the Act is largely protected from modification by the Scottish Parliament by Schedule 4 to the Scotland Act and therefore it has been necessary to obtain Westminster’s agreement for action to be taken. Accordingly, the Scottish Government approached the UK Government immediately after the judgment in order to secure such agreement. After lengthy discussions at ministerial and official level that agreement was obtained, and announced by the Scottish and UK Governments on 19 March 2009.

---

<sup>1</sup> *Somerville v Scottish Ministers* 2008 S.C (H.L.) 45.



10. In terms of that agreement, an Order in Council was to be made under section 30 of the Scotland Act to give the Scottish Parliament legislative competence in this area. This would be followed by a Bill to be introduced in the Scottish Parliament to amend the Scotland Act so as to establish a one year time limit. Drafts of such an Order and Bill were made available to the Parliament on 11 March 2009.

11. After further discussions between the Scottish and UK Governments on the precise terms of the draft Order and Bill, the draft section 30 Order was laid before the Scottish and Westminster Parliaments on 2 April 2009 and was subsequently approved by them. The Scotland Act 1998 (Modification of Schedule 4) Order 2009 (S.I. 2009/1380 (S. 8)) was made at the Privy Council meeting on 10 June 2009.

12. The intention is that the UK Government will subsequently seek the agreement of the UK Parliament to a comprehensive solution for all three devolved administrations via primary legislation, so putting all the devolved administrations on a consistent footing. That solution would be on the same basis as the present Bill and so any such legislation at Westminster will not change the substantive position in relation to Scotland.

#### **ALTERNATIVE APPROACHES**

13. The Scottish Government considered alternative ways of addressing the time bar issue raised by *Somerville*. No approach other than primary legislation was identified. Three possible courses of action identified were:

- (a) amending the general law on time bar in Scotland, for instance by imposing a one-year time limit for all cases brought before Scottish courts;
- (b) amending section 100 of the Scotland Act to make it clear that there is no right to damages under the Scotland Act, thus requiring all such claims to be brought under the Human Rights Act; or
- (c) amending section 100 of the Scotland Act to impose a one-year time bar for bringing Convention rights claims under that Act.

14. It was considered that option (a) would be a disproportionate response to the time bar issue arising from *Somerville*, since there is no evidence that the law of prescription and limitation in general requires radical overhaul. Instead, it was felt that since there was a specific problem with Convention rights actions against the Scottish Ministers, this should be addressed by a specific targeted solution. This option was therefore ruled out.

15. Option (b) was also considered to be a disproportionate response. There was not felt to be any need, or indeed justification, for completely removing the ability to claim damages under the Scotland Act.

16. It was concluded that option (c) would be the most suitable solution, since it would deal directly and effectively with the time bar problem exposed as a consequence of *Somerville* while not having wider and possibly undesirable implications. By providing that a one year time limit would apply to actions brought under the Scotland Act against the Scottish Ministers in respect of Convention rights claims, it would ensure that there was a level playing field in respect of the Scottish Ministers and other public bodies in the UK. It would also deliver greater consistency



by securing that the same time limit would apply to human rights actions against the Scottish Ministers whether those were brought under the Scotland Act or the Human Rights Act.

17. The possibility of option (c) being implemented by primary legislation at Westminster rather than in the Scottish Parliament was also considered. However, that would have required a suitable legislative vehicle at Westminster and no such vehicle was identified at the time of the discussions between the Scottish and UK Governments. There would thus have been the risk of a lengthy delay, possibly running to a number of years, before legislation would have been enacted at Westminster; during which time the Scottish Government would have been exposed to continuing uncertainty and potentially a substantially increased financial liability.

## **EFFECT OF THE BILL**

18. The Bill will establish a one year time limit for Convention rights proceedings under the Scotland Act, by inserting new subsections (3A) to (3E) into section 100 of the Act. This will mean that any claims brought against the Scottish Ministers or a member of the Scottish Executive, grounded wholly or partly on an alleged breach of Convention rights, are subject to the same time limit whether pursued under the Scotland Act or the Human Rights Act.

19. The wording of the proposed new subsection (3B) follows that of section 7 of the Human Rights Act, by requiring proceedings to be brought within one year beginning with the date on which the act complained of took place or such longer period as the court considers equitable, subject to any rule imposing a stricter time limit in relation to the procedure in question. The time limit will apply to all proceedings against the Scottish Ministers or a member of the Scottish Executive, except for proceedings brought by the Law Officers. This limited exception reflects the unique role of the Law Officers in relation to the devolution settlement; which is already recognised in section 100(2) of the Scotland Act. Any such proceedings brought by the Law Officers would be in pursuance of their constitutional role and it is therefore highly unlikely that any claim for financial compensation would be involved.

20. The Bill will, if passed, come into force on the day after it receives Royal Assent.

21. The Bill provides that the one year time limit will apply to all proceedings brought on or after 2 November 2009, including proceedings relating to an act done before that date. The change in the law will not be retrospective, so proceedings brought before that date will not be affected.

## **CONSULTATION**

22. The Bill has been prepared in consultation with the Ministry of Justice and the Scotland Office in the United Kingdom Government. There has not been any formal public consultation by the Scottish Government on the Bill; but the Scottish Government publicly announced its intention to seek a change in the law almost immediately after the House of Lords' judgment in *Somerville* was delivered in October 2007. This was reiterated in a statement to the Scottish Parliament by the Cabinet Secretary for Justice on 11 March 2009, which was accompanied by publication of drafts of the section 30 Order and of the Bill. The UK and Scottish Governments subsequently announced, on 19 March, their agreement to take matters forward on this basis.



23. The Scottish Government has since intimated the proposed time limit by sending letters to the Law Society of Scotland, the Faculty of Advocates and the Lord President; and by placing notices in the Scottish legal journals. Also, the Scottish Prison Service has notified all serving prisoners of the proposal.

24. Those intimations said that it was anticipated that the one year time limit would apply to proceedings brought on or after 31 July 2009. However, it was subsequently suggested that a later date would be appropriate in order to further reduce the scope for challenge on the ground of ECHR incompatibility. In response to those concerns the Bill stipulates a later date, namely 2 November 2009.

## **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

### **Human Rights**

25. The Scottish Government is satisfied that the Bill is compatible with the requirements of the ECHR.

26. The Scottish Government acknowledges that the Bill will impact on persons who seek to bring proceedings against the Scottish Ministers or a member of the Scottish Executive in respect of an alleged breach of their Convention Rights more than a year after the alleged breach. The Scottish Government has considered that this may raise issues in terms of Articles 6 and 13 of and Article 1 of the First Protocol to the ECHR. Article 6 protects the right of access to the courts. Article 13 enshrines the right of individuals to an effective remedy for any contravention of their other Convention Rights. Article 1 of the First Protocol protects the right to property which can, in some circumstances, include a legal claim which the petitioner has at least a legitimate expectation of being able to successfully vindicate in domestic law.

27. Having considered these issues the Scottish Government has concluded that the time limit the Bill will create is not inconsistent with those rights. The European Court of Human Rights has accepted that proportionate limitation periods imposed in pursuance of a legitimate aim do not breach those rights. The Scottish Government considers the time limit the Bill will create to pursue a legitimate aim. Without such a time limit the public purse faces the risk of costly litigation for an indefinite period of time in respect of any alleged breach of Convention rights. Furthermore stale claims carry a greater risk of injustice since they require the courts to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time. The Scottish Government considers the time limit the Bill will create to be proportionate. Twelve months should be sufficient time for anyone who considers their Convention Rights to have been breached to bring proceedings. If, for good reasons, it is not, the court will have a discretion to allow proceedings to be brought beyond the twelve month period. The Scottish Government notes that the time limit the Bill will create is the same as that which currently applies to proceedings brought under the Human Rights Act, which has not been successfully challenged since that Act came into force in 2000.



**Equal Opportunities**

28. The provisions of the Bill are not discriminatory on the basis of gender, race, age, disability or religion or sexual orientation.

**Island Communities**

29. The Bill has no direct effect on island communities.

**Local Government**

30. The Bill has no direct effect on local government.

**Sustainable Development**

31. The Bill has no direct effect on sustainable development.



**EXTRACT FROM THE MINUTES OF PROCEEDINGS**

**Vol. 3, No. 11      Session 3**

**Meeting of the Parliament**

**Thursday 18 June 2009**

Note: (DT) signifies a decision taken at Decision Time.

The meeting opened at 9.15 am.

**The Convention Rights Proceedings (Amendment) (Scotland) Bill:** The Cabinet Secretary for Justice (Kenny MacAskill) moved S3M-4395—That the Parliament agrees that the Convention Rights Proceedings (Amendment) (Scotland) Bill be treated as an Emergency Bill.

The motion was agreed to.

**The Convention Rights Proceedings (Amendment) (Scotland) Bill:** The Cabinet Secretary for Justice (Kenny MacAskill) moved S3M-4396—That the Parliament agrees to the general principles of the Convention Rights Proceedings (Amendment) (Scotland) Bill.

After debate the motion was agreed to.

The meeting was suspended at 2.57 pm

-----

**Vol. 3, No. 11A      Session 3**

**Committee of the Whole Parliament**

**Thursday 18 June 2009**

The meeting opened at 2.57 pm

**Convention Rights Proceedings (Amendment) (Scotland) Bill - Stage 2:** The Bill was considered at Stage 2.

Sections 1 and 2 and the long title were agreed to without amendment.

The meeting closed at 2.57 pm

-----



The meeting re-convened at 2.57 pm

**The Convention Rights Proceedings (Amendment) (Scotland) Bill:** The Cabinet Secretary for Justice (Kenny MacAskill) moved S3M-4397—That the Parliament agrees that the Convention Rights Proceedings (Amendment) (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).



## Scottish Parliament

Thursday 18 June 2009

[THE PRESIDING OFFICER *opened the meeting at 09:15*]

### Business Motion

**The Presiding Officer (Alex Fergusson):** Good morning. The first item of business is consideration of motion S3M-4395, in the name of Kenny MacAskill, which is to agree to treat the Convention Rights Proceedings (Amendment) (Scotland) Bill as an emergency bill.

09:15

**The Cabinet Secretary for Justice (Kenny MacAskill):** I propose that the Convention Rights Proceedings (Amendment) (Scotland) Bill be considered under the emergency legislation procedure. If Parliament allows the bill to be dealt with under that procedure, I will explain the background in more detail in the stage 1 debate. For now, I will outline why the bill should be handled under that exceptional procedure.

The need for the bill stems from the decision of the House of Lords in the Somerville case, which left the Scottish Government exposed to claims for damages that arise from alleged breaches of convention rights, but without the one-year time limit that was previously thought to apply. That has created uncertainty about which time limit—if any—applies in such cases and has led to tens of millions of pounds having to be put aside to meet possible compensation claims. It is generally agreed that the situation needs to be resolved as quickly as possible: passing the bill today would achieve that.

The bill deals with a particular problem that the Somerville decision highlighted. The bill is short and focused and its wording reflects the order under section 30 of the Scotland Act 1998 that Parliament recently considered and which gives Parliament the power to pass the bill.

**Robert Brown (Glasgow) (LD):** I accept the need for emergency legislation, but the bill was published only on 15 June. The cabinet secretary has told us that work has been done on the issue for quite a long time, and a draft bill was available for some time, but would it not have been helpful to have published the bill sooner, so that people could consider it in detail; to have consulted stakeholders, given that he announced his proposals in March; and to have asked the Justice Committee to examine the bill briefly, to ensure that we had got it right? We know from dangerous dogs legislation that such emergency legislation

has hazards. It is important that the details as well as the principle are right.

**Kenny MacAskill:** What Robert Brown said has much merit. It is clear that any Administration will use the emergency legislation procedure only sparingly. The Administration of which he was a part introduced emergency legislation that related to the circumstances of the Ruddle case. We would have preferred to deal with the current situation a considerable time ago but, because of the need for negotiations with bodies elsewhere, that did not happen.

That said, our intention has been on the public record. Through the media and other means, it is clear that people have been aware of the on-going matter. I give the assurance that we will not introduce emergency legislation as a matter of course. Normally, we will involve the Justice Committee—including Mr Brown as a member, and its eminent convener—to ensure that it plays its appropriate part in scrutinising proposals.

However, it is clear that it is in the public interest to act expeditiously now, before Parliament winds down for the recess. The Government makes no apology for proceeding under the emergency procedure, although I accept that in the normal course of events, legislation should be subject to the full procedure, which allows greater scrutiny. The proposals have none the less been subject to substantial scrutiny and have been a matter of public record.

I move,

That the Parliament agrees that the Convention Rights Proceedings (Amendment) (Scotland) Bill be treated as an Emergency Bill.

*Motion agreed to.*



## Convention Rights Proceedings (Amendment) (Scotland) Bill: Stage 1

**The Presiding Officer (Alex Fergusson):** The next item of business is a debate on motion S3M-4396, in the name of Kenny MacAskill, on the Convention Rights Proceedings (Amendment) (Scotland) Bill. We have a little time—a little flexibility—available in the debate.

09:19

**The Cabinet Secretary for Justice (Kenny MacAskill):** As I just mentioned, the bill stems from the House of Lords judgment in the *Somerville v Scottish Ministers* case. Members will recall that we made a commitment to introduce before the summer recess legislation to deal with the issue. We have delivered on that commitment, so I hope that Parliament will take the final step by passing the bill.

The judgment has meant that, unlike every other public authority in Scotland and the United Kingdom Government, the Scottish Government does not have the protection of a one-year time limit for human rights claims. The bill will remove that anomaly by establishing for human rights claims under the Scotland Act 1998 the same one-year limitation period as exists for claims under the Human Rights Act 1998.

This is not just a theoretical legal issue. As I have told Parliament, as a result of the *Somerville* judgment, the Scottish Prison Service had to set aside £67 million of public money to meet claims for doubled-up stopping out, more than £11 million of which has been paid out. The bill will enable us to draw a line under that liability and will provide protection against indefinite exposure to future claims that might arise from alleged breaches of convention rights.

Since the issue stemmed from the wording of the Scotland Act 1998, we needed to secure the UK Government's agreement to the proposed change. After lengthy discussions, we succeeded in securing that agreement. The Scottish Parliament then had to be given competence to legislate. An order that gave Parliament such competence was made on 10 June, having been approved at the Westminster Parliament and here at Holyrood.

The bill is straightforward and reflects the approach that I outlined to Parliament in my statement on 11 March. It will require proceedings against the Scottish ministers for an alleged breach of convention rights to be brought within a year of the alleged breach, or such longer period as the court or tribunal considers equitable, having

had regard to all the circumstances. That will bring the Scotland Act 1998 into line with the equivalent provision in the Human Rights Act 1998. The new time limit will apply to proceedings that are brought on or after 2 November 2009, which means that it will apply not only in cases where the alleged breach took place after that date, but in cases where the alleged breach took place before 2 November but the petitioner had not brought their claim to court before then.

The broad discretion that will be given to the court to allow cases outwith the one-year time period will serve as an important safeguard. It will ensure that the court can allow a case to proceed after one year when it is equitable to do so. In reaching a decision on that matter, the court will be required to act compatibly with the petitioner's human rights.

**Patrick Harvie (Glasgow) (Green):** How does the cabinet secretary respond to the suggestion that although the justification for the bill in relation to prisoners stopping out might have popular appeal—many people feel that prisoners whose human rights have been abused do not deserve compensation—the bill will have far wider applications?

The bill could prevent members of the public whose human rights might be infringed in the future from taking action, if they were unaware that actions had been taken. For example, a long process of freedom of information requests and appeals, followed by appeals to the Scottish Information Commissioner, might be necessary before someone had sufficient facts at their disposal to know that their human rights had been violated or infringed. Given that, how does the cabinet secretary respond to the Law Society of Scotland's proposal that the one-year time bar should relate to the date when an individual became aware of the facts rather than the date when the event took place?

**Kenny MacAskill:** As I said, the ability to seek to overturn the time limit will be available, as with all damages cases in Scotland. In damages cases, the triennium applies. If somebody breaks a leg or their flight is delayed and they are absent because of circumstances that are beyond their control, so that a claim cannot be lodged within three years, the court takes action. However, such judicial discretion is not intended to apply to somebody who has not bothered to take an interest or make an investigation. The same provision will apply to the one-year time limit in the bill.

On the Law Society's point, I make it clear that we are seeking not to introduce anything new, but to restore what was thought to apply in Scotland—the one-year time limit. That position will not be unusual to Scotland. We seek to apply to Scotland what applies elsewhere, to give the Scottish



Government the same rights as other Scottish bodies and bodies south of the border. That is not predicated on a whim or a fancy by either the Scottish Government or the UK Government. The one-year period has been fixed after debate and discussion in Europe. Indeed, in Europe it is viewed as the norm.

Damages claims are complicated matters on which, for example, Bill Butler always has interesting points to make. We have a great deal of sympathy with such points, but human rights cases are distinct from cases to do with injuries that may result from asbestosis or a car crash, which is why the European norm of one year should apply, as happened with the UK Human Rights Act 1998. It was the norm that we thought applied in Scotland before the Somerville case made us think again. We are therefore now simply seeking to reaffirm in Scotland the position that we thought was the law, and to ensure that rights here are consistent with those south of the border and elsewhere.

The Law Society of Scotland is perhaps gilding the lily. On the issue of the one-year period, people will still have opportunities to claim if they have good reason for not having been able to pursue a human rights claim. That is similar to the way in which people still have opportunities to pursue a damages claim within the triennium if they have good reason for not having been previously able to pursue a claim.

I thank members throughout the chamber for the consensus on this important issue. It has been a good example of how all parties can work together in the public interest. I hope that the consensus will continue throughout today's deliberations.

Following my original statement, consultation was mentioned. We acknowledge that people need to be made aware of the change that is being made. Robert Brown made a similar point earlier when we considered whether to treat the bill as an emergency bill. That is why we have informed a range of interests—including all serving prisoners—of the proposed limitation period.

We stated publicly our desire for a change in the law as long ago as November 2007, so the change should not come as a surprise to anyone. We originally envisaged that the time limit would apply from 31 July, but parliamentary officials expressed concerns that that deadline might breach convention rights. The Government does not accept that view but, given the importance of the issue, we want as much consensus as possible about the bill. The bill therefore provides that the new one-year time limit will apply to proceedings brought on or after 2 November.

There has, of course, been comment about our proposals since first we made them. Let us be

quite clear: as I said to Mr Harvie, the bill is not about removing anybody's right to seek redress for breaches of human rights. The grounds on which individuals will be able to make such claims will remain completely unchanged, and the time limit that the bill will introduce is the same as the time limit that currently exists under the Human Rights Act 1998. Any suggestion that the bill will somehow deprive anyone of their fundamental rights is completely unfounded.

The Law Society has proposed certain amendments that would change the period from which the one-year time limit runs: instead of running from the date of the alleged breach, it would run from the date when the person became aware of the breach. I cannot support the amendments for a number of reasons. First, and crucially, they are incompetent. The section 30 order, which gives Parliament the power to pass the bill, is narrowly drawn and requires the time period to run from the date of the alleged breach.

Secondly, the amendments are unnecessary. No evidence has been provided as to why the formulation in the bill is problematic. Thirdly, they are inconsistent with the time limit in the Human Rights Act 1998. Our aim is to ensure that a consistent time limit applies to all human rights-based claims against public authorities. We should be wary of any amendment that, in seeking to cure one inconsistency, ends up creating another.

From day 1, there has been general agreement that the anomaly that was identified by the Somerville decision needs to be addressed. The bill will do that fairly and effectively. I therefore hope that Parliament will endorse our approach.

I move,

That the Parliament agrees to the general principles of the Convention Rights Proceedings (Amendment) (Scotland) Bill.

09:29

**Richard Baker (North East Scotland) (Lab):**

The issue of compensation payments for prisoners as a result of slopping out has been extremely controversial, but the debate today should not be. We all agree that Parliament must act to ensure that the payments can be curbed.

There has, understandably, been great concern among the public that the payments have been made. Of course we want the several million pounds involved to go not to offenders as a result of their incarceration, but to investment in key areas of Scottish life, such as health and education. There has been anger that people who have been put in custody because of serious offences can, as a result of their time in jail, receive some £2,000 in compensation payments if



they can show that their rights have been breached.

The Somerville judgment greatly extended the potential for the number of claims. A loophole in legislation has been exploited as claims against Scottish ministers have not been subject to a one-year time bar, as they are for UK ministers or indeed for other public authorities. It is right to seek to close that loophole today.

We understand the need to achieve our aims through the curtailed parliamentary process for emergency bills. As the Law Society points out in its briefing, that process has not allowed for the usual consideration of amendments. I am pleased that the society has scrutinised the bill and raised important matters for consideration, but I am satisfied by the arguments that the cabinet secretary has just made that we should proceed without amendment. I understand the legitimate reasons why the bill must be passed as an emergency bill, and therefore why there is not the usual capacity for further debate.

However—this relates to issues that Patrick Harvie raised—I wonder whether other consequences could be considered by Parliament if the Scottish Law Commission's draft limitations (Scotland) bill were to be progressed. If appropriate, we could have further opportunities to discuss the issues that Patrick Harvie and the Law Society have raised.

In his statement to Parliament in March, the Cabinet Secretary for Justice told us that the Scottish Prison Service had had to make provision in its annual accounts for £66.7 million in the financial year to meet the costs of claims for slopping out. He made it clear then, as he has today, that the introduction of a one-year time bar would enable us to draw a line under our liability in relation to claims of the kind that are being made in respect of the Somerville judgment, and that the result would be the release of up to £50 million for spending on other, more worthy, purposes.

I am pleased that we can now introduce this one-year time bar, following the successful conclusion of dialogue between the Scottish and UK Governments. The clear intention is that, after we vote on this bill today, the UK Government will seek the agreement of the Westminster Parliament to a comprehensive solution for all three devolved Administrations through primary legislation. The process has not been simple; it has taken considerable time, and complicated legal questions have been discussed, and are being discussed again today. The initial House of Lords judgment on the Somerville case itself was a split decision. There has also been some debate over the best legislative vehicle to achieve change.

However, through the discussions it has been clear that the legislative solution that has been pursued by ministers has been the right one. I am pleased that UK and Scottish ministers were able to reach agreement. Ministers here have clearly been right to pursue this issue to what we hope will be a satisfactory conclusion. I am pleased that the Secretary of State for Scotland has, in turn, used his good offices to help the process. It is clear that since he came to office he, too, has appreciated the need for the speediest possible resolution.

I have no doubt that there will be debate about the history of the issue, but there can also be no doubt that, during the previous session of Parliament in particular, there has been massive investment in Scotland's prison estate in order to end the practice of slopping out in our jails. Chemical sanitation still remains in Peterhead—although that will have to be resolved, it is a different procedure. It was right to invest in our prison infrastructure, not only because the Scottish Government must not be exposed to the potential for such claims in the future, but because our prison estate must be fit for purpose. Human rights should not be infringed. However, a key issue is the restriction of further claims—although they may not be eradicated by this legislation today. It would be helpful to know from the cabinet secretary how many claims the Scottish Government still expects to receive in the future. However, clearly and happily, there should not now be the potential for 20,000 claims, as was opened up by the Somerville judgment.

The fact that this is a complex issue has also been borne out by the revised position on the commencement of the legislation, which will now be in November rather than in July. I understand that that was done not on the basis of legal advice to either Government but on the basis of advice from the Parliament. I will defer to legal opinion on this, although it seemed to me that a July commencement was reasonable, especially given the discretion that will be afforded to the courts under proposed new section 100(3B)(b) of the Scotland Act 1998. However, it would be useful to hear from ministers what impact that will have on potential future costs. Is it still hoped that there will be savings of some £50 million, or will that figure now be reduced? The other key question is about in what the Scottish Government intends to invest the savings.

There remain the issues of prison capacity and the proposal for a pilot community court in Glasgow. There is also the understanding that the cabinet secretary is to announce significant additional funding for community sentences. It would be helpful to know to what extent they can be funded from the savings. Of course there are pressures on public sector spending, but the



demands in the justice system are none the less important and significant.

There will be no savings if the bill is not passed, which is why we are pleased that it can be decided on today, in a single day, by Parliament. It is being concluded with co-operation between the Scottish and UK Governments and Parliaments.

Aware as we are of the need to pass the bill expeditiously, we intend to support it without amendment today.

09:35

**Bill Aitken (Glasgow) (Con):** We would all agree that the extraordinary procedures that are being adopted should be used only sparingly but, in this instance, it is totally justified to proceed in this fashion.

I concur completely with the views that the Cabinet Secretary for Justice expressed on the somewhat narrow legal points that exist. I accept the point that Patrick Harvie made and understand his concerns, but he must appreciate that those who have not been able to lodge claims timeously have always had available to them the remedy of application to the court for a waiver of the limitation of actions or the triennial prescription. The issues that he raised are perfectly worth raising, but procedures are in place to ensure that no one will fall through the cracks in that respect, so we can proceed with confidence.

The benefit of the bill—I do not wish to trawl through its history—is that it will remove a problem that has been a bit of a running sore for quite some time: there has been considerable public resentment at the fact that people who are considered to be undeserving can benefit at the expense of the Scottish taxpayer.

**Patrick Harvie:** I do not intend to press Bill Aitken on the point of substance, but does he at least agree that an individual whose human rights have been violated and who has then received compensation does not “benefit”? It is about something that should not have happened to them, not simply something that should not have happened to the public purse.

**Bill Aitken:** If Mr Harvie is asking whether I approve of slopping out, I state clearly that I do not. I have never suggested that prisoners should have to live in unsanitary or Dickensian conditions, but there is a simple way to avoid doing that: namely, not to commit crime and get a custodial sentence.

One or two issues are worth debating a little further. I concur with Richard Baker’s view on the date at which the bill comes into effect. The cabinet secretary and Government have similar concerns. On balance, we might have been as

well to pursue the 31 July date, but I appreciate that there are genuine risks in that and that, in the circumstances, it would not be wise or prudent to do other than what is proposed in the bill. We do not wish to be dragged once again through the courts and, possibly, to face losing recoverable revenue as a result.

I suspect that, in the days and months ahead, there will be various debates on budgetary considerations. For once we will, I hope, have more money than we thought we had. Members may have individual ideas as to how that money might be used within the justice account or elsewhere, but we must ensure that it is forthcoming.

What is happening today reflects well on everyone. The Westminster Government is to be congratulated—as, indeed, is the Scottish Government—for seeking to achieve an agreement that enables the bill to be processed as quickly as it will be. Were we not to pass it today, we would find ourselves under serious public criticism, bearing in mind the history of the matter. I reiterate the undertaking that I gave earlier on behalf of the Conservative party that we will process the bill as expeditiously as possible.

09:39

**Robert Brown (Glasgow) (LD):** Like other parties in the Parliament, the Liberal Democrats support the bill and have done so from the earliest stage. The need for it arose from a contentious and, as Richard Baker pointed out, divided ruling by the House of Lords in the Somerville case—which refers to an earlier contrary decision in the same case by the Court of Session—on the interaction of the Human Rights Act 1998 and the Scotland Act 1998. However, its real significance was the door that it opened to a flood of claims on slopping out as a result of the Robert Napier case.

It is clearly in the public interest that slopping out claims be restricted as narrowly as possible. It is also in the public interest that up to £50 million of public funds be released from compensating such claims to be spent on more beneficial public purposes. I agree with Bill Aitken that the action that the Westminster Government and the Scottish Government have taken to deal with the matter is a useful example of good co-operation.

At stage 3, I may say something about the further use of the funds, but this morning I will examine closely whether the bill is watertight, and will do what is intended and not do what is not intended. It is fine to agree to the principle of the bill, but it is the duty of Parliament and its committees to scrutinise its detail and to question the Government on that. That is why I asked whether it might have been possible, despite the



use of the emergency legislation procedure, to do a bit more to spread information about the issues and to have the opportunity for more detailed scrutiny earlier.

I will ask the Government some detailed questions. First, will it clarify precisely who and what the bill applies to? According to the bill, it applies to the Scottish ministers, but not to other public bodies such as councils. I think that that is for technical reasons that relate to the interaction of two acts. I presume that the bill applies to the Scottish Prison Service—that is its purpose—which is operationally independent of the Scottish ministers, but what about bodies such as NHS Greater Glasgow and Clyde, the Scottish Housing Regulator or Her Majesty's Inspectorate of Education? Is the Crown Office covered by the phrase "the Scottish Ministers"? What about the Scottish Children's Reporter Administration or, in this time of economic crisis, various enterprise bodies?

We must be clear exactly who and what the bill applies to so that we can understand its implications, which would have been the point of early scrutiny. It would be helpful if the minister would, when he replies, give a clear statement about those matters so that we know exactly what we are doing.

What does the bill apply to? We know from the Scottish Parliament information centre briefing that the independence of the planning system and inquiries into blood-borne infections from transfusions are the sorts of issues that might be challenged on human rights grounds. The issues are far wider than slopping out and apply not only to prisoners who, although they may have little public support, are entitled to their human rights. They cover all Scottish Government ministries and, I assume, agencies of various kinds.

The time bar is intended to provide a level playing field throughout the UK and, as I understand it, will be replaced by comprehensive UK legislation when a legislative opportunity offers itself. Will the minister confirm whether the wording is identical throughout the UK?

A more significant question is whether the extension to the one-year time limit is right as phrased. There is a difference between the wording of section 19A of the Prescription Limitation (Scotland) Act 1973, under which the judges have discretion over extending a time bar, and the provision in the bill, which perhaps supports the idea that they have discretion only over the length of the extension rather than over whether there should be an extension in the first place.

What of the date of knowledge and the date at which the time bar starts? Is the time bar one year

after the start of the breach of rights, as the Scottish Government apparently argued in the Somerville case or, as is more usual, after the end of the breach of rights—in other words, when it ceases? As Patrick Harvie pointed out and the Law Society's briefing stresses, there is no reference in the bill to the date of knowledge as there is in other prescriptive limitations. Are the bill's provisions tight enough to do what we want to do on the slopping out cases while not restricting too narrowly what might arise in other cases? In a slightly different context, asbestosis provided us with time-bar issues more recently.

The Liberal Democrats will support the bill, as I said, but it is appropriate that the Government respond in some detail to the technical questions that I have asked so that we know that we are addressing the matter in the right way and dealing properly with the application of the European convention on human rights, which Liberal Democrats support and which gives people across the board—some of whom we like and some of whom we do not like so much—rights that they are entitled to exercise against the Scottish ministers in appropriate conditions. Has the cabinet secretary got the detail right?

09:45

**Nigel Don (North East Scotland) (SNP):** I want to examine a number of issues in the bill, the first of which is, as Robert Brown has just highlighted, the time bar. I am grateful to Patrick Harvie for emphasising the Law Society of Scotland's point that there is a difference between the usual time bar for damages and injury claims and the one-year time bar in human rights legislation. We simply need to get our minds around that difference, which, I should add, is recognised throughout Europe. Of course, the question whether that is right is an interesting one, but perhaps not to be debated today.

However, I reiterate the question that Robert Brown posed: if a person is subject to certain conditions day after day for a year and, six months later, brings a claim under human rights legislation, can they claim for the whole year or only the last six months? That might seem like a legal technicality, but it is a significant issue, given that prison is all about serving time. I would be grateful if I received an answer to that question and was told the authority for it.

As I reflect on how we have reached this position, I cannot help but notice that even though the decision on the Somerville case was not substantive—the House of Lords was split on it—it has nevertheless produced a significant change in the law. Indeed, what comes to mind is the *Donoghue v Stevenson* case a couple of generations ago: although the House of Lords was



split on the matter and was never able to reach a substantive decision on the mythical snail, the decision changed consumer law out of all recognition. That highlights the interesting way in which our law can sometimes proceed.

**Robert Brown:** Does the member think that the decision of the House of Lords on *Donoghue v Stevenson* was a good one? After all, it sometimes makes good decisions, even though that is arguable in this case.

**Nigel Don:** I am not sure that it is worth commenting on whether the decision was good, given that everyone involved is now dead and buried. We certainly have reason to be very grateful for the way in which it changed the law, although it is not obvious to me whether the change had to happen then or would have come about later. The point is that, sometimes, changes in our law are precipitated by the most ridiculous things. That is the way it goes.

Clearly, we need to pass the bill. I entirely respect the point that people's human rights need to be looked after—they are, after all, our human rights as individuals—but I do not think that there is any serious desire among the public to pay significant sums of money to prisoners. The best way not to have a problem in prison is not to be put there in the first place. That is what I intend to do and I am sure that everyone else will be well advised to do the same.

09:48

**Angela Constance (Livingston) (SNP):** Although the crux of the bill is to ensure that the one-year time bar applies to human rights claims brought under the Scotland Act 1998, and although—notwithstanding issues about chemical sanitation—slopping out has become a thing of the past, I will for the record state my objections to the practice, as it forms an important backdrop to the bill. The situation that we are trying to rectify has arisen not only as a result of the House of Lords judgment but because of the time it has taken to end slopping out.

Anyone who has ever visited a prison and has had to interact with prisoners in cells with buckets of human waste sitting in the corner will know that the practice of slopping out adds absolutely nothing to the rehabilitation or punishment of offenders. The fact that it took so long to end slopping out was detrimental not only to our justice system but to public confidence in the system, as it created a situation in which people could make claims under human rights legislation.

The SPS's original target was to end slopping out by 1999, but a review in 2002 of the prison estate and plans to build two new prisons pushed the date back to 2008 at the earliest. In 2004, the

Napier case established that slopping out was indeed a breach of human rights. In 21<sup>st</sup> century Scotland, should it really have taken human rights legislation to end a Victorian practice? In that respect, we—and I mean that collectively—made a rod for our own backs to the detriment of taxpayers. The reticence of and feet dragging by politicians and the SPS showed what happens when we frame justice debates in terms of hard or soft measures instead of focusing on what is proportionate, what is right, what is just and what actually works. I hope that we can all learn this salutary lesson for future debates on the criminal justice system.

I have no doubt that, in overturning the Court of Session judgment on the *Somerville* case, the law lords were very erudite in the legal points on which they based their decision. What I did not understand was Jack Straw's reticence and the view that he expressed in December 2008 that he was not persuaded of the case for changing the law. As the Cabinet Secretary for Justice has made clear, it was wholly unjust and unacceptable for the Scottish ministers to be the only public authority in Scotland—and, indeed, in almost the whole of the UK—to be exposed to claims for damages under human rights legislation outwith the one-year time bar.

I am glad that the situation has been resolved and that, as a result of the bill, savings will be made to the public purse. Many people were alarmed to hear that the SPS had to set aside £67 million to deal with just over 1,200 outstanding cases and that it expected to deal with 200 new cases a month. I look forward to hearing how the cabinet secretary plans to put the savings to good use. For the record, I hope that some consideration is given to making extra funding available for community sentencing. Although I have never subscribed to the view that money alone can solve all the ills and difficulties faced by criminal justice social work departments and those who are tasked with supervising offenders, I think that, in introducing enhanced community payback orders and ending unconditional automatic early release, we have an opportunity to invest further in innovative and imaginative practices that will enhance public confidence in the criminal justice system.

09:52

**Mike Pringle (Edinburgh South) (LD):** I welcome this morning's debate. It has taken considerable time to reach this point, but it is my hope that if—as I fully expect—the bill is passed later today, the Scottish prison system will finally begin to move on from the slopping out row that has caused so much controversy in recent years.



I know that the Law Society of Scotland, among others, has expressed concern about the lack of public consultation on the bill, given its constitutional significance and the fact that its outcome will benefit the Scottish Government, and I note those concerns. However, given the nature of emergency legislation and the bill's purpose in bringing Scottish human rights law in line with that of the rest of the United Kingdom as a precursor to the Westminster Government introducing primary legislation at a future date, I am satisfied that the Government has thoroughly considered all the options and plans to do the right thing in resolving the legal anomaly. Surely it is not desirable to continue to allow claims that are brought against the Scottish Government under the Scotland Act 1998 to be subject to a different time bar to those that are pursued under the Human Rights Act 1998. The cabinet secretary gave a very full response to Patrick Harvie's question on that point.

As Bill Aitken and Richard Baker have pointed out, there has been some controversy over changing the effective date of the new time bar from 31 July to 2 November. The fact is that whenever one gets two lawyers in a room, it is always extremely difficult to get them to agree, and that seems to have been the case this time.

The crux of the matter, however, must be finding the correct balance between the rights of those who wish to make a claim under the Scotland Act 1998 and the Government's desire to make savings and allocate them effectively. As other members have said, if the Government is going to save substantial numbers of millions of pounds, surely it would be much better, in the current economic climate, to spend that money on schools, hospitals and other things that benefit us all.

Another factor that several members have remarked on is the issue of competence, and specifically the difficulty of an increased possibility of a legal challenge to a bill that the Presiding Officer indicated—because of the parliamentary lawyers—was outwith the Parliament's competence. I therefore welcome the fact that the parliamentary authorities and the Government have managed to reach a compromise position. By November, if someone has had more than a year to make a claim—and, in some cases, more than two years, since the Somerville ruling in late October 2007—and has not done so, they will have had a reasonable amount of time. The fact that a time bar has been drawn now is surely justifiable.

As noted in the policy memorandum, the European Court of Human Rights fully accepts that the proportionate limitation periods imposed in pursuance of a legitimate human rights claim do

not breach those rights. In adopting a compromise position, the bill will ensure that the letter and spirit of that statement are adhered to. I therefore fully support the aims of the bill, and welcome the fact that the legal loophole is finally being closed.

09:56

**Bill Aitken:** I will largely adopt the arguments that I previously canvassed on the subject. It is perhaps important to underline that no one disputes the fact that Lord Bonomy's decision in the original Napier case was correct. Clearly, slopping out is not acceptable, and Lord Bonomy was correct, in the terms of the European legislation, to find as he did. There is no point in raking through the history of the matter and speculating about what should then have happened, but, as Angela Constance suggests, action should have been taken much earlier.

Ms Constance commented on the use to which the £50 million might be put, but that is not a year-on-year windfall: once the £50 million has been spent, there will not be any more. In contrast, our considerations under the Criminal Justice and Licensing (Scotland) Bill are on-going. I flag up a danger sign that if we think that the £50 million will help us to cope with the increased expenditure in respect of alternatives to custody, we are wrong.

I have heard nothing this morning that dissuades me from my original proposition that the bill should proceed to stage 2.

09:57

**Paul Martin (Glasgow Springburn) (Lab):** The debate has shown us that members are united in one respect: in an ideal world, we would not want prisoners to benefit from compensation payments. As far as I am concerned, prison should be seen as punishment, not as an opportunity for compensation payments. As Richard Baker said—other members have referred to this—the issue is complex, and we have faced it for many years. Legal minds have been challenged on the rights and wrongs of the issue but, as others have said, we are now required to face up to the Somerville judgment in such a way as to bring us into line with the rest of the United Kingdom.

Like Richard Baker, I am pleased that we can now introduce the one-year time bar, following constructive dialogue between our Westminster colleagues and the Scottish Government. On Angela Constance's point, according to all the reports from ministers, that dialogue has been helpful and has allowed us to take matters forward.

I appreciate that Conservative members want to highlight the issues that may have exposed us to the claims in the first place. The Government



press release refers to the prison estate that the Government inherited. It is important to recognise the work that was carried out by the previous Scottish Executive, under the leadership of Jim Wallace and Cathy Jamieson, to modernise the prison estate. In 2005, the previous Executive announced an investment in HM Prison Edinburgh of £16 million. That included a new prison house block and a health education centre, which enabled slopping out in Edinburgh to end. At HMP Glenochil, a £28 million investment enabled the construction of a new prison house block and a health centre. That investment also allowed us to move forward. Under the previous Executive, an investment of more than £35 million in HMP Perth enabled the construction of a new prison house block, a health centre and an activity centre, which allowed the ending of slopping out in Perth.

I could go on, but the important point is that the previous Executive highlighted concerns about slopping out and took action to ensure that the number of cells in which slopping out was required reduced from more than 1,900 in 2001 to the figures that have been referred to today. It made a significant investment in the prison estate, at an unprecedented level.

Such investment in the prison estate does not fit with the populist agenda. Understandably, the vast majority of our constituents want money to be invested in schools, community facilities, health centres and so on, and politicians respond to that. The passage of the bill will lead to savings of an estimated £50 million, so perhaps we can meet the aspirations of our local communities in that respect. Given the cross-party co-operation that has been displayed in the chamber today, I hope that we can work with the Cabinet Secretary for Justice on how best those savings can be expended.

**Patrick Harvie:** I hope that Paul Martin would agree that as well as serving the populist aspirations of constituents to which he refers, Parliament has a responsibility to serve their interests. In recognition that more brutal prisons make more brutal prisoners, perhaps the £50 million would be better spent within the prison estate than elsewhere.

**Paul Martin:** I have already exhibited the unprecedented investment in the prison estate by the previous Scottish Executive. Although it is important that such investment takes place, we must recognise that the populist agenda does not necessarily involve investing in the prison estate. However, I appreciate Patrick Harvie's point—it is important that we have a modern prison estate. The Justice 1 Committee reviewed the prison estate in 2001, when I was a member. I refer Patrick Harvie to the *Official Report*, in which he will see that I emphasised that it is important to

invest not just in the prison estate but in the rehabilitation of prisoners to prepare them for release.

The issue will not go away. The passage of the bill is crucial and should be taken seriously, because it will minimise the risk to the public purse in respect of future claims. I call on members to support the Convention Rights Proceedings (Amendment) (Scotland) Bill.

10:03

**The Minister for Community Safety (Fergus Ewing):** I am grateful to all members for the constructive way in which this morning's proceedings have been conducted. We have, of course, discussed the issues previously, so it is not surprising—but nonetheless it is welcome—that we have been able to make such rapid progress. Other members have set out the important issues behind the bill and the reasons why we need to take action quickly. I will do my best to respond to the important points that have rightly and properly been made.

At the outset, Robert Brown raised the issue of consultation. The cabinet secretary rightly responded by referring to the circumstances in which the emergency bill process is used. In fact, it has been used five times, for the Mental Health (Public Safety and Appeals) (Scotland) Bill in 1999, the Erskine Bridge Tolls Bill in 2001, the Criminal Procedure (Amendment) (Scotland) Bill in 2002, the Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill in 2006 and the Budget (Scotland) (No 3) Bill in 2009. It is fair to canvass that for the sake of the record, and to provide a complete statement of the circumstances in which the procedure has been used.

Of course, the Somerville judgment has attracted a great deal of publicity. It became available in October 2007. Since then, it has been extremely well publicised, for obvious reasons, and has been a matter of great public concern for reasons that members have explained.

Robert Brown raised the issue of what opportunities there have been for consultation. Only in March were we able to proceed on the basis that we had the broad agreement of the UK Government that appropriate steps could be taken, and the Scottish Government gave ample notice of its intentions. Almost immediately after the judgment, in November 2007, we announced that we intended to seek the introduction of a one-year time bar. We then published a draft of the bill in March 2009. On 1 April, we announced the launch of the draft section 30 order. Finally, we advised a range of interests, including all serving prisoners, the Law Society of Scotland and the



Faculty of Advocates, of the planned legislation. That was the narrative of events.

**Robert Brown:** That is a helpful response. Nevertheless, does the minister accept that, although it was appropriate for the bill to proceed under the emergency procedure and although there is agreement on the general principles of the bill, it is important that we get the detail right and that, therefore, there might be scope for the Government to consider what might be done—when there is a little more time than was allowed by the Ruddle situation, which was urgent—to have wider involvement in the study of the detail of the bill? Could the bill be subject to an additional helpful process—maybe not a statutory process—through the committee system?

**Fergus Ewing:** We are always ready to respond to the parliamentary authorities' view on whether the emergency procedures need to be reconsidered. If Parliament decides that the matter should be revisited, we will be wholly co-operative in undertaking that task.

It would be not unreasonable for me to point out the extensive information and additional advice that has been provided to MSPs—and, therefore, made public to all those who are interested in the matter—in the policy memorandum and explanatory notes, which, perhaps because of the short time that is available to us this morning, have not been mentioned in detail. For example, in paragraph 13 of the policy memorandum we explained the alternative approaches that we considered and which could have been adopted. We did that because we wanted to be open and transparent in setting out the various approaches that could have been adopted in addressing the time-bar issue that the Somerville case raised. No approach other than primary legislation was identified. In other words, the first conclusion that we reached was that it was necessary to change the law by primary legislation, not secondary legislation.

Three possible courses of action were identified. The first was to amend the general law on time bar in Scotland by imposing a one-year time limit for all cases brought before the Scottish courts. However, we all agree that scrapping the triennium would have been absurd. It would have meant that the bill that we passed recently on pleural plaques was a bit of a nonsense. It would also have been extremely unfair and inappropriate for us to do that. We are dealing with a tightly focused situation, not the generality of all personal injury cases. The second option was to amend section 100 of the Scotland Act 1998 to make it clear that there was no right to damages under that act, thus requiring all such claims to be brought under the Human Rights Act 1998. The third option was to amend section 100 of the

Scotland Act 1998 to impose a one-year time bar on bringing convention rights claims under that act. It was considered that options (a) and (b) would be disproportionate and that, therefore, option (c) would be the most suitable.

It is important to point out that the Government's officials devoted a great deal of time and effort to addressing matters in thorough detail, describing all the options fully and explaining why we decided to proceed with option (c) in the documents that were submitted with the draft bill—which itself has been available for a considerable time.

Robert Brown asked whether the time bar will start to run one year from the start of the breach. The issue was considered but not determined in the Somerville judgment by the House of Lords. The lords who considered the matter took the view that the one-year period would run from the end of the breach. Ultimately, however, it is a matter for the courts to determine. Members will have noticed that proposed new section 100(3B) of the Scotland Act 1998 states:

“Proceedings to which this subsection applies must be brought before the end of—

(a) the period of one year beginning with the date on which the act complained of took place”.

It will be for the courts to determine the interpretation of that. That said, my understanding is that the date on which slopping out ceased was some considerable time ago, so I suspect that whether it happened four years ago or four and a half years ago will not be a practical question.

As the cabinet secretary has said, the time limit will apply from 2 November, so not only has there been the notice that I have described and incessant publicity on the issue since October 2007, and not only has every serving prisoner received notice of the matter, but there will be an additional period between 31 July and 2 November—effectively, August, September and October—for claims to be made. These proceedings are available to everyone in Scotland—including all solicitors in Scotland who are active in the field—to ensure that any client who wants to make a claim can make that claim before the cut-off date.

**Robert Brown:** I am sorry to intrude again, but the issue applies more widely than just to slopping out cases, as we know from other discussions. It is, therefore, important that we know the Government's policy intent in using the phraseology that it has used in relation to the start and end of the claims period. It is a matter for determination by the courts, but it is also the responsibility of the Government to make clear what it intends to happen.

**Fergus Ewing:** We intend to bring the position in Scotland into line with the position that has



existed in the rest of the UK since the Human Rights Act 1998 was passed. However, the precise interpretation is rightly entirely a matter for the courts.

I hope that I have time to answer all the other perfectly legitimate questions that Robert Brown has raised, of which I have a list.

Proposed new section 100(3B)(b) of the Scotland Act 1998, which I had not got round to quoting, also gives the courts discretion to set the time bar at

“such longer period as the court or tribunal considers equitable having regard to all the circumstances”.

In other words, not only are we bringing the law into line with the rest of the UK in respect of the one-year time bar, we are exactly replicating the UK provision on the circumstances in which a court has discretion to disapply that one-year time limit.

Robert Brown asked why we did not follow the wording in the Prescription and Limitation (Scotland) Act 1973, which I am sure he and I spent many a happy hour studying in our former lives. It is because the bill’s purpose is to bring human rights claims in Scotland into line with those that are brought under the Human Rights Act 1998 that the bill follows the model of section 7(5)(b) of the Human Rights Act 1998 rather than that of section 19A of the Prescription and Limitation (Scotland) Act 1973.

The substantive point—to get away from quoting sections of acts in a rather narrow legal debate—is that we are seeking to bring the law in Scotland entirely into line with the law in the rest of the UK, which is perhaps what many people thought was the law in Scotland until the Somerville judgment came along.

Robert Brown also, rightly, asked to whom and what the bill will apply. It is clear that the bill will apply to the Scottish ministers and any member of the Scottish Executive, including Scottish Government agencies such as the Scottish Prison Service. Other public bodies that are not caught within the definition in the bill are already caught by the Human Rights Act 1998. The bill will therefore ensure that a consistent time bar applies to all actions that are brought against public authorities in Scotland. That explains the methodology and the terminology that have been used in the bill.

Some members asked about the likely number of claims and whether the delay until 2 November 2009 will lead to increased costs. The later date will allow those with potential claims an additional three months within which to bring a claim, so it could lead to an increased number of cases before the time limit comes into effect.

Presiding Officer, I am not quite sure how much longer I have, but I will soldier on.

**The Deputy Presiding Officer (Alasdair Morgan):** The minister should not feel compelled to continue to speak if he does not wish to do so.

**Fergus Ewing:** I just want to ensure that I answer the main questions that members have asked. If any member feels that I have not answered their question, I would be happy to let them intervene.

**Bill Aitken rose—**

**Fergus Ewing:** I thought that I had cowed everyone into submission, but apparently that is not the case.

**Bill Aitken:** Should not Mr Brown and others who are concerned that prisoners and former prisoners might lack the appropriate knowledge to be aware that they have the potential to make a claim take some comfort from the fact that certain members of the legal profession—acting, no doubt, in accordance with philanthropic principles—have been actively canvassing such people to ensure that they are aware of the legal remedy that is available to them?

**Fergus Ewing:** I am certainly aware of the argument that Mr Aitken has made.

In conclusion, the need for action has been agreed on all sides, almost from the moment of the Somerville judgment. The bill is a good example of the rapid change that the Parliament can deliver when we work together. In that spirit of consensus, I am grateful to everyone who has taken part in the debate. It has been a very constructive morning.

**The Deputy Presiding Officer:** The question is, that motion S3M-4396, in the name of Kenny MacAskill, on the general principles of the Convention Rights Proceedings (Amendment) (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament agrees to the general principles of the Convention Rights Proceedings (Amendment) (Scotland) Bill.

**The Deputy Presiding Officer:** The bill will now proceed to stage 2. Members have until 2 pm today to lodge amendments with the legislation team clerks. The Committee of the Whole Parliament will meet at 2.55 pm to consider the bill at stage 2.

**The Minister for Parliamentary Business (Bruce Crawford):** On a point of order, Presiding Officer. Could you take a bit more time to explain to us the full procedure for the bill at stage 1, stage 2 and stage 3? I think that we all need to know a bit more detail about when votes may occur. In the



circumstances, what will you do to help Parliament to understand exactly what is required of it?

**The Deputy Presiding Officer:** Under the circumstances, that is a very helpful point, Mr Crawford. However, I simply refer members to previous *Official Reports* on such proceedings, which are not unknown in the history of this Parliament. Indeed, the first act ever passed by the Parliament in 1999—as members will no doubt recall—was an exemplar of such proceedings.



## **Committee of the Whole Parliament**

[THE CONVENER *opened the meeting at 14:57*]

### **Convention Rights Proceedings (Amendment) (Scotland) Bill: Stage 2**

**The Convener (Alasdair Morgan):** We move to stage 2 proceedings on the Convention Rights Proceedings (Amendment) (Scotland) Bill. The bill will be considered by the Committee of the Whole Parliament, for which the occupant of this chair is known as the convener.

*Sections 1 and 2 agreed to.*

*Long title agreed to.*

*Meeting closed at 14:57.*



## Scottish Parliament

14:57

*On resuming—*

### Convention Rights Proceedings (Amendment) (Scotland) Bill

**The Deputy Presiding Officer (Alasdair Morgan):** I reconvene today's meeting of Parliament. The next item of business is a debate on motion S3M-4397, in the name of Kenny MacAskill, that the Convention Rights Proceedings (Amendment) (Scotland) Bill be passed.

14:58

**The Cabinet Secretary for Justice (Kenny MacAskill):** I am grateful to members for their forbearance. There has been some turbulence in the journey to achieve what I think all of us recognise is necessary. I will attempt to deal with some points that were raised during stage 1 and allay concerns that Mr Brown and Mr Harvie expressed. Legitimate points were made. I thank members for the co-operation that has been shown.

It is clear that issues to do with the constitution and the Criminal Justice and Licensing (Scotland) Bill, which is being considered by the Justice Committee, will continue to divide us, but we are talking about a matter that affects the national interest. Therefore, it is right that members have united to ensure that the bill's provisions are delivered and that they recognise the considerable problem faced by the Scottish Prison Service and the anger that that was causing to people outside, who wanted us to deal with matters as expeditiously as possible.

Obviously, there was some turbulence in ensuring that matters were dealt with, with the requirement for co-operation from south of the border. However, I do not wish to go over old ground; suffice it to say, we are grateful for the eventual agreement that matters should be proceeded with. It is clear that action still has to be taken, but what has happened shows that, when there is a necessity to solve a clear and manifest wrong, that can be dealt with. I pay tribute to the bill team and everybody else who has ensured that matters have been dealt with as speedily as possible.

Many of the matters that have been raised can be summarised as questions of who, when and what. Clearly, the "who" is the Scottish Government and a number of agencies, such as the Scottish Prison Service, that need to be protected. Health boards, which might see

challenges in months and years to come, are currently protected by the Human Rights Act 1998.

The bill's purpose is to give the Government and its agencies the same protection that is available to other public bodies that might be pursued not under the Scotland Act 1998 but under the Human Rights Act 1998. Indeed, the protection that we seek is the protection that we thought that we had until the Somerville decision came out in the House of Lords. We want protection that, as Mr Aitken said during stage 1 of the bill, is uniform and is to the standard that was discussed in the European Parliament and elsewhere. In those discussions, it was agreed that a period of one year was appropriate for the matters with which the bill is concerned. We are not talking about accident claims or litigation about pecuniary affairs; we are talking about matters that relate specifically to human rights, so it is appropriate that we should operate under the European norm.

The question of "when" has two parts. One is the date when the bill should come into force. I am grateful for the forbearance of Mr Aitken and other members. Obviously, we had one view but, as in with legal matters, there exists legal advice that is of a different complexion. Again, we want to achieve consensus and ensure that we avoid challenge. We are conscious that, despite the fact that this Parliament united to bring in compensation in relation to pleural plaques, the Government is being pursued through the courts by those who represent the insurance companies. However, in that regard, I should say that even the first orders of the cases of those who are pursuing us appear to be taking considerably longer than the entire parliamentary process took. That perhaps explains why we look forward with interest to Lord Gill's report. Something is manifestly wrong if the parliamentary process is significantly quicker than the first order in a judicial review.

I am grateful to members for the points that they have raised, and I understand why people queried issues. We believe that the date in November for the arrangements to come into force will provide greater certainty. It will not prevent people from seeking to make challenges and, as Bill Aitken said during stage 1, there are those who trawl around for issues on which they can base challenges, but that is a bridge that we will just have to cross when we come to it.

The issue of when the arrangements will kick in was raised earlier. The issue arose in relation to the Somerville judgment, but, as Fergus Ewing said earlier, that judgment involved a point of principle rather than the question of when the wrong took place. The issues will involve facts and circumstances, to some extent, and the decision will be a matter for judicial interpretation. Clearly, a



breach of someone's human rights can take place over a short time or a long time. If someone has not done much about a breach that has gone on for 20 years and raises the matter after 18 months, it might be that that case will be treated differently from a breach that occurred when someone was detained for a shorter period.

To Patrick Harvie, I say that neither the Government nor the Parliament is seeking to prevent prisoners from being able to pursue claims against the Government or the Scottish Prison Service. We have signed up to certain standards, and the recognition of the European convention on human rights is within our founding principles. If there are manifest breaches of people's human rights by a Government agency, it is correct that those people—regardless of whether they are prisoners—should have the opportunity to pursue claims against it. The bill is about closing a gap and ensuring that the public purse—which was in danger of being bled dry—can be used to fund other things.

There will be instances in which there are opportunities to challenge, appropriately, the Government and its agencies. Rights are not being taken away; we are simply ensuring that we strike the right balance so that we can protect the public interest.

The question of "what" involves cost. There are savings but, as Bill Aitken said, they will not be recurrent. The saving of £50 million is to be welcomed, but it is one tenth of the sum of the cuts that we are facing as a result of decisions in Westminster. The opportunity for bounty, therefore, is limited.

I am grateful for the forbearance of the Parliament, and I thank members for their constructive attitude. It has been a long and difficult journey, which will doubtless continue and go through further turbulence.

I move,

That the Parliament agrees that the Convention Rights Proceedings (Amendment) (Scotland) Bill be passed.

15:04

**Richard Baker (North East Scotland) (Lab):**

This morning's stage 1 debate on this crucial issue was good and productive, as was stage 2—albeit that it was brief. Everyone in the Parliament realises the necessity to pass the bill today. The sums of public money at stake are high and there is substantial concern, and indeed anger, among the public, who think that payments to prisoners for slopping out should be restricted. The emergency bill procedure is rarely used because it curtails debate, but in this instance it has been entirely justified.

In the course of the day, I have been contacted by members of the legal community who are concerned about potential unintended consequences of the bill, which addresses a narrow situation. I was reassured by the comments that the Cabinet Secretary for Justice made in his speech and by his responses to Patrick Harvie's points in the stage 1 debate.

The issue of how the bill and the one-year time bar might affect other situations in which claims are made about breaches of human rights has been raised with me. I am persuaded by the discretion that the bill affords to the courts, which is an important aspect of the debate, but I acknowledge that others remain concerned. There is a strong argument for ministers to introduce into Parliament the draft limitation (Scotland) bill, which has been prepared by the Scottish Law Commission, because it deals with those issues more comprehensively, and I urge them to do so. The concerns that have been raised highlight the fact that the issue is complex, which has contributed to the time that it has taken to reach this point.

I take issue with what Angela Constance said this morning and what the First Minister said this afternoon. It is clear that there has been a genuine desire to resolve the situation. Co-operation between Governments has been to the fore in the way that the matter has been dealt with. The fact that we are uniting in the chamber to pass the bill is indicative of collaboration between parties here and between ministers at Holyrood and Westminster.

I do not think that there is any need to pick out further points of debate, although the issue of what the hoped-for savings should be spent on will be a matter for discussion. We will continue to have a debate about cuts or increased spending for the Scottish Government in the next two years, but I do not think that it would be productive to spend more time on that now. This morning I referred to potential areas for investment, to which I am sure that others will return this afternoon and on other occasions.

The key point is that we do all we can to limit further compensation payments in the future because they are unacceptable. For that reason, the emergency bill will receive support from the Labour Party and, I am sure, from members throughout the chamber.

15:07

**Bill Aitken (Glasgow) (Con):** Members might be aware that, just occasionally, I am perhaps not the most enthusiastic endorser of the European convention on human rights. That is not to say that I do not believe in human rights. I accept that we



are where we are, and I have to acknowledge that we are signed up to the convention whether I like it or not.

It is incumbent on us to recognise that the original judgment was correct. Although it sticks in the throat more than a little that some of the most undeserving people in Scotland were in effect ripping off the Scottish taxpayer for not insignificant sums, we have at last done something about it, which reflects well on all concerned—the Westminster Government, the Scottish Government and the Scottish Parliament.

The wider debate on the European convention on human rights will continue to tax us for some years. Some decisions from European courts and some legislation from Europe are problematic. That leads me to think that perhaps a one-hat-fits-all solution in respect of European human rights is not particularly appropriate. We have not been without our difficulties, but our record on human rights in the United Kingdom, and Scotland in particular, bears favourable comparison with records elsewhere. As such, I do not think that, historically, there has been a strong case for our having to sign up to what is in most cases common sense but which, unfortunately, in other cases seems to defy logical rationale.

That is all largely historical, because we have moved forward. There will be considerable public relief that we no longer face the prospect of compensation payments, which engendered considerable irritation, annoyance and anger. By 5 o'clock, that will all be finished, which is no bad thing.

15:09

**Robert Brown (Glasgow) (LD):** There is a certain sense of déjà vu in this afternoon's debate. That said, I confirm the support of the Liberal Democrats for the Convention Rights Proceedings (Amendment) (Scotland) Bill. We do so in the knowledge that the bill potentially affects not only prisoners in our jails who have made claims because of slopping out. This morning, we heard from Angela Constance about the real experience of slopping out. She is one of the few MSPs with personal and practical knowledge of the issue—I hasten to say that that is from her professional career in social work. She told the Parliament that the practice neither rehabilitates nor appropriately punishes people who have committed crimes.

This morning, I did my best to test out the detail of the Government's proposals for this emergency legislation. I believe that it is the duty of MSPs not only to agree and support the principle of legislation but to ensure that the detail stands up. We need to be sure that legislation does what it says on the tin—no more and no less—and,

particularly in the case of emergency legislation, that it creates no unintended consequences. I am grateful to the ministers for their full answers on the issues that I raised. In essence, they said that they want a uniform situation to prevail across the United Kingdom—and, indeed, across Europe. In this case, their wish has the full support of the Liberal Democrats.

I want to say a word on the implications of the bill. The primary aim—which is a great public good—is that up to £50 million of public funds will be released to serve a more positive purpose. As Bill Aitken rightly pointed out, it is a one-off and not a repeating annual sum—the cabinet secretary also touched on that in his speech. Nevertheless, the money is a substantial boost to the public coffers at a time of difficulty and constraint.

The SNP Government may already have spent the money in anticipation of its release—indeed, I suspect that that may be the case. However, just as it is manifest that slopping out had to be dealt with, it is clear that the increased number of community sentences that are consequent on the reduction in the number of short-term sentences under the Criminal Justice and Licensing (Scotland) Bill should be supported. Community sentences require up-front funding if they are to achieve their dual objectives of securing effective payback to communities that suffer from criminal and antisocial activities and of providing better rehabilitation of offenders so that they bother the public less in future.

Today is not the day for a detailed examination of the issues, but I want to say as clearly as I can that the cabinet secretary's stated desire to spend the money on pensioners not prisoners must also mean adequate investment in the criminal justice system. That funding is needed to support speedier, targeted and relevant community payback orders, which, if they do not work properly, give pensioners and the wider community so much angst and travail.

I know that that funding is not earmarked in a direct sense, but I want the cabinet secretary to be in no doubt that the support of the Liberal Democrats in due course for the worthwhile and necessary reforms that he has set out is likely to be closely dependent on the availability of significant funding to support those reforms and reassure communities. It would be a modern alchemy if we were to transform money that had been used for an unsatisfactory purpose into a resource with the potential to bring about real public advantage.

On this day of consensus, I want to distance myself from the Justice Committee convener's comments on the European convention on human rights. From time to time, the convention can have unanticipated consequences, but it nevertheless



offers a powerful analysis of and tool for our justice system—the dusty corners of which may not have been looked at for many years. The convention takes a modern approach and has been of particular advantage to our criminal justice system in Scotland.

There is not much more to say on the bill. It is a necessary and a desirable bill; one that is in the public interest. I am sure that the Parliament will pass it without dissent at 5 o'clock.

**The Deputy Presiding Officer:** We move to the open debate. I call Mike Pringle.

15:13

**Mike Pringle (Edinburgh South) (LD):** The closing debate, Presiding Officer.

**The Deputy Presiding Officer:** The programme that the Parliamentary Bureau agreed has no closing speeches—that was agreed for such a short debate. You can speak in any case, Mr Pringle.

**Mike Pringle:** Thank you, Presiding Officer.

As I said in my closing speech earlier in the day, many people have put in a great deal of work and effort over a considerable length of time in bringing the bill to the chamber. I congratulate all of them on getting it to this stage.

Today, we expect to resolve a legal anomaly. The bill represents a significant milestone in overcoming what has been a difficult period for Scottish prisons. As the cabinet secretary said, it will put Scotland into the same position as other parts of the UK and other countries in Europe. Of course, it is right to put Scotland in the same position as others.

There has been much talk about the money that will be saved—Richard Baker and Robert Brown referred to that. If the amount is £50 million—and I realise that it is a one-off payment—I hope, as Robert Brown said, that the money will be directed towards the criminal justice system in one way or another to the benefit of our communities.

The changes in Scotland's prison system since Jim Wallace began the reform process have been significant. I take this opportunity to acknowledge the great work that Andrew McLellan has done. He has made an immense contribution as Her Majesty's chief inspector of prisons, and I am sure that the whole Parliament will join me in wishing him all the best for his retirement.

In his final annual report, for 2008-09, Andrew McLellan captured the scale of change, particularly in accommodation standards, better than I could ever express it:

"The biggest single difference in Scotland's prisons in the last seven years has been the transformation in the living

conditions of prisoners. This transformation is not yet complete; but it has been remarkable. My earliest reports make comments like *'the conditions in "C" Hall (Perth) are dreadful; and conditions in Argyll and Spey Halls (Polmont) are very bad.'* Recent reports, on the other hand, say *'It provides a much improved standard of cell, furniture and toilet access'*."

That is what the bill is all about—improving conditions. As Andrew McLellan said:

"these better conditions are good for prisoners and also help to improve the working environment for staff".

He went on to remark:

"Unfortunately, it still cannot be said that all prisoners live in civilised accommodation."

While the practice of slopping out continues at HMP Peterhead, that might continue to be the case. However, there is no question but that, during Andrew McLellan's seven-year tenure, Scotland's prisons turned the corner. It is my hope that, with continued sentencing reform, prisoner rehabilitation will continue to improve.

15:16

**The Minister for Community Safety (Fergus Ewing):** I thank members for their contributions. I will briefly comment on the matters raised in this debate that were not raised in this morning's stage 1 debate or to which I did not respond this morning—thus avoiding repetition of what I did say this morning.

I say to Robert Brown and Richard Baker that no decisions have been made about how to spend money that, at this moment, we do not have. It is the Government's practice not to spend money that we do not have. I commend that practice, especially to the Liberal Democrats who are with us here in the chamber.

When I appeared in the sheriff court, like Mr Brown used to, I invariably found that I was slapped down when I strayed from relevance. It is fortunate that that does not always happen here, Presiding Officer. I will not respond to some of the other points that have been made.

We have made good progress today. The bill will end an anomaly, as all members have said. It will protect the public and strike a fair balance with the human rights of individuals.

I thank the officials for the work that they did on the bill. It was a sterling effort on their part, under considerable pressure, and they paid painstaking attention to detail. I am sure that we all wish to recognise the efforts that the officials made in that regard. Finally, I am grateful to all those members who have contributed to the debate. I hope that the Parliament will vote unanimously to pass the bill.

