



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# MEETING OF THE PARLIAMENT

Tuesday 8 December 2015

Session 4

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**Tuesday 8 December 2015**

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## Scottish Parliament

*Tuesday 8 December 2015*

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

### Time for Reflection

**The Presiding Officer (Tricia Marwick):** Good afternoon. The first item of business today is time for reflection. Our time for reflection leader today is the Rev George Fiddes of St Nicholas parish church in Prestwick.

**The Rev George R Fiddes (St Nicholas Parish Church, Prestwick):** Good afternoon. It is a delight to be here with you this afternoon. We are well into the season of Advent, when we look forward with anticipation to the celebration of Christmas. At the heart of Christmas is the nativity story of how Jesus was born in a stable and laid in a manger. The story stands up just as a good story, at the very least, but it is more than that: it is the coming of the Saviour into the world—God incarnate, God wrapped up in flesh.

There are a lot of similarities between faith and politics and our political views: we look for something better—a better world and a fair and just society in which to live—and we have our plans and our vision of how we might bring that about. We ask people to believe that we can deliver on the promise that we can bring to fruition the plans and the promises—the vision that we have—but sometimes, no matter how much we believe or work and struggle, we cannot bring about what we want.

In Jesus Christ, we have the promise of God being fulfilled. The promise, of course, was that God would send a deliverer—a saviour or redeemer who would deliver his people. For all that it has been 2,000 years since the coming of Jesus into our world, there does not seem to have been a great improvement in things. Our world has changed. Our morality is based on the Judaeo-Christian tradition, but things move on and our society is different.

A story is told of two friends. One was a pastor and the other was a manufacturer of soap, and they had long discussions about the Christian faith and a need to believe. The common criticism of the pastor was that Christianity did not work. As they walked down the street, they spotted a dirty child. The minister turned to the soap manufacturer and said, “Your soap doesn’t work.” In his defence, the soap manufacturer said, “The soap has to be applied—it has to be used.” The Christian faith has to be applied. We cannot leave it in a book or in a building. It must be part of our

communities and our lives. This is why Jesus came.

I hope that you all have a great Christmas and that you celebrate and rejoice, and eat and drink too much. Be assured that you have the prayers of the Church. We ask for God’s blessing on your work here in the Scottish Parliament.

## Business Motions

14:03

**The Presiding Officer (Tricia Marwick):** The next item of business is consideration of business motion S4M-15100, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a revision to the business programme for today.

*Motion moved,*

That the Parliament agrees to the following revision to the programme of business for

Tuesday 8 December 2015—

after

*followed by* Topical Questions

insert

*followed by* Ministerial Statement: Forth Road Bridge

delete

6.00 pm Decision Time

and insert

6.45 pm Decision Time—[*Joe FitzPatrick.*]

*Motion agreed to.*

**The Presiding Officer:** The next item of business is consideration of business motion S4M-15086, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Criminal Justice (Scotland) Bill.

*Motion moved,*

That the Parliament agrees that, during stage 3 of the Criminal Justice (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 4: 35 minutes

Groups 5 to 8: 1 hour 30 minutes

Groups 9 to 12: 2 hours

Groups 13 to 16: 2 hours 40 minutes.—[*Joe FitzPatrick.*]

*Motion agreed to.*

## Topical Question Time

14:04

### Storms and Flooding (Help for Communities)

**1. Joan McAlpine (South Scotland) (SNP):** To ask the Scottish Government what action it is taking to help communities affected by storms and flooding. (S4T-01209)

**The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney):** Storm Desmond over the weekend impacted on a number of areas—in particular, Dumfries and Galloway, the Borders and Tayside. I chaired meetings of the Scottish Government's resilience committee during the course of that event to ensure that all appropriate support was in place to mitigate potential damage. I am sure that Parliament will echo my thanks to public servants and volunteers who worked tirelessly to protect the communities that were at risk. The Minister for Environment, Climate Change and Land Reform visited Hawick this morning to see some of the impacts and to meet some of those who are involved in the response. I have activated the Bellwin scheme to provide support to local authorities to assist with the immediate and the unforeseen costs of dealing with the flood damage.

**Joan McAlpine:** We have seen the devastating consequences of the flooding in the south of Scotland and for our neighbours in Cumbria, in the north-west of England. I note that some of the areas in Cumbria that were most devastated had expensive flood defences in place. What lessons might we learn here from the failure of those defences, given that we are planning our flood defences for the future?

**John Swinney:** Obviously, the circumstances in the north-west of England were dramatically more difficult for the communities involved there than was the case throughout Scotland—although we had in Hawick, Newcastleton, Dumfries and Langholm some very significant flooding impacts. Very careful planning has to be undertaken in relation to flood alleviation schemes. It is essential that a very comprehensive assessment is made of the dynamics of water flows in particular areas, and the impact of the natural environment and the built landscape in that process. A particular challenge in the north-west of England was, of course, the fact that the rainfall that occurred was significantly greater than had been anticipated in planning the flood prevention schemes. It is important in the planning of flood prevention schemes that we look very carefully at a wide variety of factors to ensure that when we make the major capital investment that all such schemes

represent, we properly take into account all relevant factors to ensure the capability and the capacity of the flood prevention measures.

**Elaine Murray (Dumfriesshire) (Lab):** I start by thanking the major emergency team in Dumfries and Galloway for their very prompt action in getting flood prevention materials to communities, including the Whitesands and Friars Vennel communities.

A £2.1 million flood prevention scheme for Langholm is being developed by Dumfries and Galloway Council, the Scottish Environment Protection Agency and Scottish Water. Given the situation in Langholm last weekend—which was not as bad as we had feared it was going to be—will the cabinet secretary please encourage his colleagues and organisations that are responsible to the Scottish Government to work with the council to bring forward the Langholm scheme as soon as possible?

**John Swinney:** First, I echo the point that Dr Murray made. In each of the three principal local authorities that faced particular challenges over the weekend, preparations were well executed in advance to ensure that the authorities were as prepared as they could be. Without that preparation, the implications would have been significantly worse. The preparations that were undertaken in a number of areas meant that some serious impacts were avoided.

In relation to Dr Murray's substantive question, SEPA is looking at flood-risk strategies over a six-year flood-risk plan cycle. Those are long-term works that take time to deliver, and there will, of course, be decisions to be made about the schemes that will be included in that process. A number of schemes have already been advanced by the Scottish Government—in Selkirk, Galashiels, Brechin, the River Ness, Almondbank, the Water of Leith, Elgin and Forres—over the course of the past few years, and further decisions will be taken in that respect. I will ensure that the points that Dr Murray raised are properly taken into account in that process.

**John Lamont (Ettrick, Roxburgh and Berwickshire) (Con):** I, too, pay tribute to the emergency services and volunteers in the Borders who worked very hard to mitigate flood damage in that area.

My question relates to the flooding in Hawick. The cabinet secretary will be aware that a flood prevention scheme for the town has been in the pipeline since 2010. Will the Scottish Government now do everything that it can to accelerate the planning and creation of that scheme for Hawick? Specifically, can the Government commit today to providing the full funding allocation to Borders

Council so that there are no unnecessary delays in implementing the scheme?

**John Swinney:** First of all, I welcome Mr Lamont's comments about the emergency services. The Scottish Borders Council experienced the greatest degree of difficulty, with which it had to wrestle principally over two sites in Newcastleton and Hawick, although other areas were affected.

On the determination and prioritisation of flood prevention schemes, discussions are jointly taken forward between the Government and the Convention of Scottish Local Authorities. I know that the Hawick scheme is well advanced, and that decisions will be taken about the schemes that are being taken forward as part of the multi-year financial settlements that have been put in place as a consequence of decisions made jointly with COSLA.

**Jim Hume (South Scotland) (LD):** The minister mentioned that the Bellwin scheme is coming into play, which I welcome. I, too, acknowledge the efforts of all the emergency services and volunteers. We should also acknowledge that Cumbria received nearly 14 inches of rain.

I reiterate John Lamont's plea for Hawick's flood scheme to be progressed. I would also be interested in Mr Swinney's view on the Selkirk scheme, which may have been damaged. Would the Government be happy to provide support for any damage that may have been done to it? As Mr Swinney knows, the scheme has not quite been completed.

**John Swinney:** I saw photographic images of the challenges that were experienced in Selkirk. Of course, as part of the analysis, I would be very surprised if we do not find that even the partial completion of the Selkirk scheme was of benefit, and that householders and businesses were protected as a consequence of the work that has been undertaken.

I reiterate my comments made in reply to Mr Lamont's question: there will be a process of decision making about which schemes will be taken forward as part of the flood prevention investment by the Government and COSLA. That is a very active area of co-operation between the Government and our local authority partners. I will ensure that those issues are properly considered as part of that decision making.

**Bruce Crawford (Stirling) (SNP):** Is the cabinet secretary aware that, in Aberfeldy, Callander and three parts of the city of Stirling, which are all in my constituency, businesses and homes were inundated? Will he help to facilitate a discussion between SEPA and me to talk about how accurate its floodline information is, because the material

that came through did not reflect the actuality on the ground?

**John Swinney:** That is a significant issue. Obviously, we have invested heavily in the flood forecasting service and the floodline information. We point members of the public very directly to that information. It was obviously information that I was studying—to be frank, minute by minute—during the course of Friday and Saturday, and on Sunday morning. The importance of its accuracy must be assured, so I will certainly raise the issue with SEPA to ensure that members of the public are able to access quality information that will allow them to determine the best precautions for them to take.

### **Glasgow Bin Lorry Crash (Fatal Accident Inquiry)**

**2. Alison McInnes (North East Scotland) (LD):** To ask the Scottish Government what its response is to the findings of the fatal accident inquiry into the Glasgow bin lorry crash. (S4T-01205)

**The Lord Advocate (The Rt Hon Frank Mulholland QC):** Sheriff Beckett issued his detailed judgment yesterday, which included a series of recommendations that impact on the medical profession, the Driver and Vehicle Licensing Agency, local authorities and the Secretary of State for Transport.

The regulations on driver licensing and assessment are reserved to the United Kingdom Government. The fatal accident inquiry findings raise significant issues for consideration, which we trust will be reflected on and given the necessary due attention to ensure that road safety measures are as robust and effective as possible across Scotland and the UK.

The Solicitor General for Scotland wrote to the Secretary of State for Transport following the conclusion of the evidence in the FAI to set out the defects in the system and draw his attention to this and other FAIs that have covered the same issues. Yesterday, she wrote again to the secretary of state, enclosing a copy of the judgment and offering her assistance and that of the Scottish Government in implementing the relevant recommendations.

Letters are in process to the medical profession and local authorities to draw their attention to Sheriff Beckett's recommendations. I trust that those bodies will take forward and implement the detailed and sensible recommendations that have been made, with a view to preventing such a tragedy from happening again.

I take this opportunity to offer my heartfelt sympathies to all the families involved for their losses. This is a difficult time of year, leading to

the anniversary of the tragedy. They are in all our thoughts and prayers.

**Alison McInnes:** My thoughts are with the families, too. It must have been extremely difficult for friends and relatives of those who died last December to sit through the inquiry.

Although we now have some answers about how the tragedy unfolded, significant questions remain. Opportunities to prevent the crash were missed. The sheriff concluded that Harry Clarke

“repeatedly lied in order to gain and retain jobs and licences.”

It took just six short weeks for the police to conclude their investigation, and it took the Crown only a further four weeks to conclude that there would be no prosecution of the driver. I have a letter from the Lord Advocate that states that the driver was never formally interviewed by the police and never considered to be a suspect. In the light of that and the evidence that came to light during the FAI, is the Lord Advocate absolutely certain that the investigation into criminal proceedings was as exhaustive and rigorous as it should have been?

**The Lord Advocate:** No evidence emerged in the FAI that the Crown was unaware of, and nothing emerged in Sheriff Beckett's judgment that the Crown was unaware of. In my view, nothing in Sheriff Beckett's judgment undermines the decision not to prosecute the driver of the bin lorry.

As Alison McInnes will be aware, the Crown published detailed written reasons at the conclusion of the evidence in the FAI, which set out the legal and evidential basis for the decision not to prosecute. The Crown well appreciates that the decision is not popular, but the Crown cannot take decisions on the basis that they are popular but wrong in law. That would be unconstitutional and an abuse of process that would—rightly—result in severe criticism by the court and a loss of confidence in the Crown.

**Alison McInnes:** I remark that the Crown acts in the public interest in cases such as this one. The sheriff recommended that the Crown should review whether its policies prevent or discourage prosecutions under the Road Traffic Act 1988. Will the Lord Advocate confirm that the Crown will review that, what the timescale for the review will be and whether he will ensure that its findings are made public, so that the public can better understand the decision not to prosecute in this case?

**The Lord Advocate:** Sheriff Beckett's recommendation referred to sections 94 and 174 of the 1988 act, which both relate to making false statements and withholding material information from the DVLA and insurance companies. In his



determination, he noted that in making those recommendations he was not referring to any prosecution decisions relating to Mr Clarke. The recommendations related to the FAI evidence of Dr Parry of the DVLA that since 2005 there have been no cases of and no prosecutions for offences that relate to those sections. Sheriff Beckett was right to draw attention to that.

In answer to Alison McInnes's question, I say that the Crown will reflect on Sheriff Beckett's recommendation. The Crown has been in touch with its counterpart south of the border, the Crown Prosecution Service, to discuss the recommendation. We will take forward the recommendation with the CPS and the DVLA to ensure that prosecution policy for and reporting and investigation of such offences are fit for purpose and that there is no barrier to the investigation, reporting and prosecution of them.

**Jackie Baillie (Dumbarton) (Lab):** I feel great sorrow for the affected families, as I am sure all of us do. Given that the families have said that they intend to seek a private prosecution, what can the Crown and the Scottish Government do to facilitate that process?

**The Lord Advocate:** Jackie Baillie will understand that I cannot comment on that. I have not seen a bill of criminal letters, and her question relates to a private prosecution of Mr Clarke. It is not for me to comment on that. If and when such a bill is lodged, the Crown will carefully consider it and consider its position on it, and the Crown will make its position clear to the court and to the families.

I am well aware of the sensitivities of the situation, the tragic loss that all the families have suffered and their feelings on our decision. I reiterate that the decision not to prosecute was not taken in a vacuum, not taken without possession of all the necessary information and not taken without assessing what the sufficiency of evidence and corroboration was. The decision was looked at by a number of senior lawyers at the Crown Office—senior Crown counsel—and was endorsed by a law officer.

We will consider whether any bill of criminal letters establishes a sufficiency of evidence. Once we have had an opportunity to do that, we will make our position clear to the families and to the court.

## Forth Road Bridge

**The Presiding Officer (Tricia Marwick):** The next item of business is a statement by Derek Mackay on the Forth road bridge. The minister will take questions at the end of his statement, and there should therefore be no interventions or interruptions.

14:20

**The Minister for Transport and Islands (Derek Mackay):** I am grateful to Parliament for the opportunity to make a statement on the Forth road bridge. As members will be aware, on the night of Thursday 3 December, a necessary decision was taken to close the Forth road bridge to all traffic, cyclists and pedestrians. I will update Parliament on the reasons for that closure, providing information on the mitigation measures that have been implemented and the next steps that we are taking to repair the bridge and return it to normal operation at the earliest opportunity.

I thank the communities around the Forth road bridge, commuters and road users for their continued patience at this time. I reassure them that we are aware of the significant impact of the situation and that we are working with all our partners to minimise the impact where we can. It is an issue of national significance and, with everyone playing their part, we can limit the impact on the local, regional and national economies.

Following the discovery of a serious defect near the north-east tower on Tuesday 1 December, during a routine inspection, the decision was taken to restrict traffic to the northbound carriageway, away from the defective area. Detailed analysis of traffic and of different traffic load scenarios was then undertaken to evaluate the structure and determine whether it was safe to keep the bridge in operation. Results on the morning of Thursday 3 December showed that the existing restrictions needed to be augmented with a further restriction on vehicles over 7.5 tonnes except buses, which had been modelled into the load analysis.

The defect affected one of the two truss end links that support the main truss at the north-east tower. If a further failure had occurred, support would have been lost to the end of the main span-stiffening truss, which would have dropped by between 150mm and 700mm depending on the loading at the time. That would have meant that the load would have been redistributed across to the link on the north-west tower, increasing loads on other elements. The carriageways would also have dropped, further damaging the structure. That kind of damage was a likely outcome and would have required bridge closure for a repair that could have lasted several months.

The operating company, Amey, conducted a series of additional inspections and tests on the welds and joints to the other truss end link immediately after the initial defect was found. The focus was on first inspecting the welds of the adjacent member, which was carrying additional load from the failed member. The inspection and testing were completed by late afternoon on Thursday 3 December and the results were presented to Transport Scotland.

The results showed cracking having started at the same weld location and having spread along the load-carrying weld at the critical pin joint. At this stage, the extent is small but the implications are large. The main truss of the bridge relies on that joint being at full strength to cope with the additional loading due to the adjacent defect, but our experts concurred that, with continual loading, the identified crack would be likely to propagate, leading to the failure of the remaining truss end link. The timescales for that occurring could not be estimated, as a large number of factors are involved, many of which cannot be fully quantified at this stage. However, removing the remaining traffic load from the structure would reduce the loads and stresses on the remaining truss end link and ensure that the travelling public were not put at risk.

As a result of that advice, the decision was taken to close the bridge to all traffic from midnight on Thursday 3 December in order to safeguard the integrity of the structure.

It is anticipated that, following the completion of a successful repair, the Forth road bridge will reopen in time for people to return to work in the new year. The decision to close the bridge was not taken lightly. It is based firmly on the expert opinion of the engineers who operate the bridge day to day and that of independent experts in the field. Every effort is being made to open the bridge as quickly as possible, but safety is the main priority. Unfortunately, the works are weather dependent, given the height and location of the defect on the bridge.

We are aware of the potential economic impact for strategic traffic in the east of Scotland and on people who live in the local communities. This is an unprecedented challenge in the operation of the Forth road bridge. On balance and following the advice from engineers and independent experts, full closure is the right decision. It is essential for the safety of the travelling public and to prevent further damage to the structure of the bridge.

The bridge operators, Amey, have in place a robust inspection regime that aligns with industry standards for a structure of the bridge's nature. That regime is a continuation of the methodology used by the Forth Estuary Transport Authority.

Due to the thorough nature of the regime, specialist engineers are confident in their view that the defects have occurred only in the last few weeks.

We are taking every step we can to alleviate the impact of the closure. Action taken last week will mean that any closure will be much shorter than it might have been if we had waited to take action. We continue to work closely with all partners to co-ordinate our efforts to alleviate the impact of the closure. Every effort and resource available is being deployed to repair the damage to the Forth road bridge and minimise the disruption to the public.

To be clear, FETA reports that are being discussed in the media refer to the other end of the truss end link, where it connects with the north tower at the top, and not to the pin joint at the base of the link, where the defect has materialised. Works to the top of the truss end link were already under way. Specialist engineers believe that the new defect that was identified on Tuesday as part of a routine inspection occurred only in the past few weeks. For the avoidance of doubt, based on the advice and evidence that we have received from those engineers, we believe that the current fault is entirely unrelated to the above project and there is no indication that the on-going repair project in the towers has caused the defect.

The Scottish Government fully funded all FETA programmes after taking over the funding of the annual grant in 2008. Prior to the authority's dissolution earlier this year, FETA made decisions on its programme and priorities of repairs completely independently of Transport Scotland.

The timing of the closure was communicated to the public within minutes of ministers taking the difficult decision and was covered on evening news programmes, which advised people of the closure and the measures to take when travelling on Friday morning. Local authorities were involved from the early stages and undertook to inform their local communities where possible.

There is on-going consultation with business organisations such as Scottish Enterprise, the Federation of Small Businesses, the Scottish Chambers of Commerce and the Road Haulage Association. We are also in discussions with our other partners such as Police Scotland, other emergency services, NHS Scotland and public transport operators to minimise disruption and deliver our contingency plans.

A comprehensive travel plan was launched for commuters and affected communities on Sunday afternoon to allow people to plan their trips for the working week ahead. We also created a dedicated website, which had more than 85,000 hits on

Sunday. It has details of the travel plan along with some questions and answers to help people tailor their travel plans. That comprehensive travel plan was put in place in time for the Monday commute to work. With 100,000 people using the bridge every day, delays and longer journeys are inevitable. Therefore, it is important that everyone—workers and employers—be flexible in working arrangements during this period.

Together with public transport operators, we too will be flexible. The plan will be monitored and adjusted to give the best possible service to the travelling public. ScotRail has provided additional rail capacity as part of the full travel plan. That plan was made available to the travelling public on Sunday to allow people to plan for their journeys to work on Monday. As a result of our monitoring, it has been modified to accommodate commuters where possible. In response to passenger demand, an extra early morning train has been laid on, which leaves Inverkeithing before 6 am. Overall, an extra 8,000 seats are now being provided, and that number will increase further.

Additional subsidised bus services have also been provided. Thirty-three extra buses are providing 11,000 additional seats per day. Along with bus priority measures, they have allowed for reliable journey times to Edinburgh, even in the peak periods.

Both bus and rail services are being served by dedicated park-and-ride sites at Halbeath and Ferrytoll, and we continue to work closely with Fife Council to monitor the operation of those sites.

A dedicated heavy goods vehicle and bus route was implemented from Monday morning. That involved segregating traffic and ensuring that we put measures in place to prioritise bus movements to get the maximum number of people to work and ensure that journey times for HGVs were improved to reduce any impact on the economy.

The travel plan also included alternative routes for road users who use the Kincardine bridge and the Clackmannanshire bridge. Updates to the public were and continue to be broadcast using the traffic Scotland website and Twitter feed, the Traveline Scotland app and traffic Scotland radio. ScotRail and Stagecoach are also providing regular updates.

The plan will be monitored throughout the bridge closure and adapted as necessary. I thank the local communities of the areas for their patience throughout, as I am sure that the closure will cause additional disruption to them. Following our monitoring of the HGV and bus route, the restrictions on it have been relaxed between the hours of 8 pm and 5 am to help to ease the impact on local communities.

The plan is in place, and I will describe today's situation. Rail services commenced with the additional service at 5.52, which carried approximately 160 passengers. Services between Edinburgh and Fife have been busy, and they have been strengthened where possible to cope with additional passenger flows. Queuing systems have been in place at stations in Fife, and ScotRail staff are in attendance at all stations. The 6.13 from Dalgety Bay was full, and there was no room for 70 passengers at Inverkeithing nor a further 25 passengers at Rosyth. I understand that that service was the only one that passengers were unable to board this morning, but all those passengers were accommodated on the next train.

The A977/A907 Gartarry roundabout, the A977/A876 Kilbagie roundabout and the M876/A876/A895 Higgins' Neuk roundabout were heavily congested during the morning peak period, but traffic continued to move. Fife Council reported problems on the coast road through Culross. Congestion on the A9 at the Broxden roundabout was heavy at times, but the temporary traffic management at the A9 Keir roundabout worked well and kept the strategic traffic flowing. At 9.30, the roads were running free, but they were still busy at the key roundabouts.

The bus and HGV prioritisation on the A895 between the Cairneyhill and Longannet roundabouts operated well and facilitated park-and-ride buses from Ferrytoll and Halbeath. Stagecoach reported bus journey times of between an hour and 30 minutes and an hour and 45 minutes. However, uptake of the park and ride was low, with loadings averaging 12 per cent at Halbeath and 7 per cent at Ferrytoll. We are doing everything that we can to encourage further use of that bus service. I remind everyone that the successful implementation of the plan depends on the choices that people make. Again, we encourage the public to use the additional public transport services, particularly the bus services.

Emergency vehicles will still be able to use the bridge in blue-light situations, and arrangements have been made with NHS Scotland in respect of other critical medical appointments.

A call with business organisations, which was chaired by the Deputy First Minister, was held this morning. That was an opportunity to share information and identify any practical steps that could be taken. A number of suggestions have been made by business, and ministers have committed to look at all of them in detail.

This is an unprecedented transport challenge. The safety of the travelling public is of paramount importance, and the decisions that we have taken will ensure that that is maintained. Specialists are working day and night to return the bridge to

normality, and we will fix the problem as soon as we possibly can.

We continue to work with all partners and the emergency services to manage the impact of the closure and to help to ensure that diversions operate as efficiently as possible. We will continue to share all travel information through the dedicated website.

Members of this Parliament will be aware of the issues that have been raised previously regarding the suspension cables on the bridge and the subsequent action that FETA took to mitigate the impact and halt further deterioration. The residual risk of a potentially lengthy full-bridge closure remained, which supported the decision to progress with a Forth replacement crossing.

**Alex Rowley (Cowdenbeath) (Lab):** I thank the minister for the advance copy of his statement. The gravity of the situation and its impact on the ability of thousands of people to get to and from their work must not be understated.

We think that the Scottish Government took the right decision to shut the bridge, because public safety must be the absolute priority. I acknowledge that the minister has worked hard over the past few days to keep the Government's focus on the people and businesses that are affected, and to put in place emergency measures.

It is important that people have a way of feeding back information about what is and is not working. My party will continue to work with the Government to ensure that we are able to do everything possible to enable people to get to work, and to support businesses that have been impacted.

The minister referred to media reports about what has gone wrong and why. We must be clear; it is not just the media that are asking questions. How has the fault developed? Yesterday a top engineer claimed that key maintenance on the bridge was cancelled in 2010. We know that two senior engineers on the Forth road bridge resigned. It is understood that those specialists, who had years of experience on the bridge, left because the operation and maintenance of the bridge had, in effect, been privatised. What impact has privatisation of the bridge had on available expertise and, ultimately, on ongoing maintenance of the bridge?

We know that in 2012 Audit Scotland confirmed that there had been a capital funding cut in relation to the bridge. We also know that in 2007 Transport Scotland identified repairs that were needed on the bridge but which were never carried out.

People have questions and need answers, which is why I am calling for a parliamentary inquiry into the circumstances that led to the crisis.

A parliamentary inquiry is in the public interest, and I hope that the minister and the Government will support such an inquiry.

**Derek Mackay:** I thank Alex Rowley for his participation over the past few days.

Communication has been important in the context of improving the travel plan and sharing the message about safety, and the member made a fair comment about using social media to share information and listen to the public and communities. We are doing that in real time and have adapted the travel plan—for example, by lifting restrictions on the priority corridor. We are engaging with communities, local authorities, elected members and parliamentarians, and businesses. It is right to listen and to respond.

On the fault that has been identified, let me be clear. The fault was not predicted: it was not identified in the location on the member that has been deemed to be overstressed, therefore the fault was not predictable. Separate works were already under way on the rest of the member, but the specific element in question was not predicted to fail or to crack in the way that it has done.

Information from the comprehensive inspections and daily and weekly inspections lead our expert engineers to conclude that the fault occurred only in the past few weeks. There is the offer of a further technical briefing for parliamentarians, which I hope will assist them in their understanding of the fault that has occurred. We will be transparent about the nature of the fault, which I think shows that the Government has taken all appropriate action.

There are no critical repairs for which FETA has requested funding that have not been funded by Government or Transport Scotland. The operation and management of the bridge is independent of the Government and is led by the operating committee, and finance was in place to carry out the identified work programme.

Indeed, the work programme that FETA developed was being delivered by our operatives through the new operation. On staffing and the current practices of the bridge operator—Amey—there are more people working at the bridge than was the case before the transfer on 1 June, and their substantial—indeed, enhanced—expertise on the bridge is part of the current operating arrangements.

The nature of staff change was not as Mr Rowley described. Most of the staff who were working on the bridge before the 1 June transfer are still working on the bridge, and all the operating manuals on the history of the bridge have been maintained. There was a seamless transition to the new operator to ensure that continuity of work, and this Government—through

Transport Scotland and the operator—has prioritised elements of work that we inherited from FETA.

**Murdo Fraser (Mid Scotland and Fife) (Con):** I thank the minister for his statement and for advance sight of it.

It hardly needs to be stated how damaging the closure of the bridge is for the economy of Fife and for the east of Scotland more generally. I have been contacted by businesses that stand to lose considerable sums in an important trading period, and by commuters who face weeks of disruption, additional cost, and frustration.

The efforts of the Scottish Government, its agencies, and the transport companies to put alternative travel arrangements in place are appreciated. However, there are still problems; for now, the priority should be resolving those.

For example, this morning, I used the Ferrytoll park and ride, which was very quiet, but I still found myself waiting 40 minutes for the promised shuttle bus to Inverkeithing rail station, which is little more than a mile away. In fact, I could have walked the distance had I realised that the wait was going to be so long.

Although people travelling from Fife into the centre of Edinburgh have options that they can use, many of my constituents need to get to work in west Edinburgh, at Edinburgh airport, or elsewhere in the Lothians or in the central belt. What more can the Scottish Government do to provide them with public transport alternatives?

**The Presiding Officer:** Minister?

**Murdo Fraser:** Presiding Officer, there are two other points that I want to cover briefly, if I can.

**The Presiding Officer:** Very briefly, Mr Fraser.

**Murdo Fraser:** First, businesses that are losing large sums of money as a result of the bridge closure are understandably calling for compensation. What does the Scottish Government propose to do to assist them?

Finally, there has been a great deal of speculation, as Mr Rowley said, that the bridge closure was the result of inadequate maintenance. We have heard from John Carson, who has blamed “incompetence” on the part of Transport Scotland.

Will the minister now agree that we need a fully independent inquiry into what went wrong, reporting as early as possible in the new year, so that we can find out the truth of the matter and learn lessons for the future?

**Derek Mackay:** I thank Murdo Fraser for those questions and for his support in regard to the public transport alternatives. They have been

strengthened and there is real information on those alternatives to assist the public.

As regards alterations and improvements, we are looking at further strengthening the public transport interventions. I am happy to hear any constructive suggestions on how we may further improve those interventions as we enhance what is currently being provided.

On business support, the Deputy First Minister engaged with businesses this morning. As I said in my statement, any suggestions that are made will be fully considered. However, the key thing has to be to get the bridge open as quickly as possible, so we are working around the clock to do that.

The Government has taken the right decision in closing the bridge so that investigation, preparation and repair work can be carried out. I believe that we have averted a much more serious structural incident that would have been more damaging to the economy in the area, if it had occurred.

On transportation of goods and other support for businesses, we have prioritised HGVs and we are looking at extending that to support businesses further. By way of our intervention and prioritisation and our partnership working with businesses, we will continue to do everything that we can to support them at this difficult time.

**The Presiding Officer:** Thank you. We are very tight for time this afternoon and I have absolutely no scope to extend the statement and questions. I will therefore give priority to constituency and regional members whose constituents are most affected, and to constituency and regional MSPs who indicated to me by the usual time their wish to ask a question.

**David Torrance (Kirkcaldy) (SNP):** As I do, many of my constituents use rail to commute daily to Edinburgh. Will the minister clarify exactly what measures have been put in place on the rail network to minimise disruption? What discussions has the minister had with local authorities on the relaxation of parking restrictions and an increase in available parking spaces?

**Derek Mackay:** I will try to be brief in my answers, Presiding Officer.

Through ScotRail, we have identified extra carriages, which has enabled us to increase the number of carriages and trains and to provide an extended timetable. That has amounted to an extra 8,000 seats, and that capacity will be enhanced further. Staff are in place at all affected stations. We are sharing that information through the dedicated website.

Local authorities are key partners. Along with Police Scotland, they have worked in partnership with us to help to manage the local traffic impact.

Local authorities will consider actions including removing unnecessary road works to try to encourage free flow of traffic where possible. We will continue to engage with local authorities on our travel action plan.

**Willie Rennie (Mid Scotland and Fife) (LD):** I thank the minister for providing advance sight of his statement and for his engagement over the weekend. In particular, I was pleased with the announcement about the special arrangements over the bridge for chemotherapy and radiotherapy patients. However, I want to make it clear to the minister that I expect him to return to Parliament for a proper examination of the decisions that ministers have taken in the past few years and which might have contributed to the defect on the bridge.

Today, however, people want to know what changes the minister is going to make to the transport plan. In particular, will he agree to lift the restrictions on the A985 for off-peak travel during the daytime? The restrictions are having a dramatic impact on the local community and on traffic flows, so I would appreciate his looking again at that.

**Derek Mackay:** I have invited Willie Rennie to take up the offer of a technical briefing, and I believe that he has taken up that offer and will receive the briefing today. That will give him a fuller understanding of the technical issues about how the fault has occurred, which I referenced in my statement.

As a listening Government, we are adapting the travel plan to take account of local circumstances. There is on-going monitoring of the traffic system, as well as of demand for transport provision including the enhanced rail services. There is more capacity on buses and in park and ride facilities, so I again encourage people to use that. The priority route is working in providing a reliable journey time, but if we can relax the restrictions further to support businesses and communities, we will absolutely look at that. We have lifted some restrictions to reflect what was working, what was rational and what can make the biggest difference. I, of course, remain open-minded to the right interventions.

**Cara Hilton (Dunfermline) (Lab):** As the constituency member covering Dunfermline and west Fife, I know that very few of my constituents have not been detrimentally affected by the bridge closure. I am grateful to the minister for his speedy responses to the issues that I have already raised.

The minister is aware of the lack of parking at train stations, which is an on-going issue in west Fife, with spaces full before 8 o'clock in the morning. The bridge closure is causing a real headache for the growing number of commuters

who have no option but to travel. On Friday, I wrote to the minister asking that free shuttle buses be provided between Halbeath park and ride and local train stations. Did the minister discuss that option with Stagecoach and, if so, why is it not being pursued?

It does not surprise me to hear that the uptake of park and ride is low, because no commuter wants to spend two hours sat on a bus when they could be at their destination in half the time if a free shuttle was provided to the local train station. I would appreciate it if the minister would let me know what discussions have happened with Stagecoach, because our front-line workers have to be put before Stagecoach's shareholders. I would appreciate it if the minister would act on that.

**Derek Mackay:** The reason why Stagecoach has been deployed is that, frankly, it is the largest operator in the area and its expertise is very useful. The extra buses that have been provided have created capacity. There is huge demand on rail, which is perhaps because of the certainty around that. However, I want to correct the journey time that Cara Hilton mentioned, because the average journey time is actually an hour and a half, and not two hours.

**Cara Hilton:** That is not what my constituents are telling me.

**The Presiding Officer:** Order, Ms Hilton.

**Derek Mackay:** I think that that compares quite well with people using the private car. I understand that some people will continue to require to use the car but, for those who can use public transport, I direct them towards the bus provision. Rather than have more buses going from park and ride sites to railway stations, the approach is possibly more about trying to transfer some people from queueing at stations on to buses, where there is extra capacity.

I have been in regular communication with a number of members, including Cara Hilton. I have considered every suggestion that has been put to me and worked those through the system, and many of them have been implemented. The measures will remain under constant scrutiny and focus and they will be adapted if that makes sense.

**The Presiding Officer:** I need shorter questions.

**Roderick Campbell (North East Fife) (SNP):** In my constituency there is one business, 98 per cent of whose goods are exported out of Scotland, so I am grateful for the minister's comments about the dialogue between the Deputy First Minister and business. Will that dialogue continue so that the current urgent situation can be resolved?

**Derek Mackay:** Yes, it will. We will have constant dialogue with the key business representatives and, of course, major employers in the area.

**Claire Baker (Mid Scotland and Fife) (Lab):** It is clear from the questions that have been asked by members around the chamber that we would benefit from a parliamentary inquiry on the issue.

The minister said that it is anticipated that the bridge will be open for people when they return to work in the new year. How confident is he of that timescale? Which factors might lead to a delay? It is obviously of great concern to commuters in Fife, particularly shift workers, that the bridge is reopened as soon as possible.

**Derek Mackay:** The most recent briefing that I had, which I had just before I left the national traffic control centre, where the multi-agency response is being co-ordinated, to come to the Parliament, was that the work is on track as per the timetable that has been published.

Among the factors that may change that is the fact that the works are weather dependent, because we will not have people working in unsafe conditions, but we are working around the clock to get the bridge open as quickly as possible.

**Bruce Crawford (Stirling) (SNP):** For those who are being critical, there is a slang phrase that recognises that life is full of unpredictable events, but I had better not use it in here today.

In that light, what discussions has the minister had with the United Kingdom Government on a relaxation of the rules for HGV drivers who may face issues with working hours as a result of the diversions? I am sure that he will recognise that the haulage industry is very important to the Scottish economy.

**Derek Mackay:** It was because I recognised the pressures on business and the haulage industry that I moved quickly to have discussions with the secretary of state. He has had discussions with the Department for Transport, and there will be a relaxation of the rules on drivers' hours to support businesses at this time.

**Jayne Baxter (Mid Scotland and Fife) (Lab):** Given that 100,000 people use the bridge every day, a wide range of journey patterns and journey purposes are represented. In his statement, the minister mentioned a willingness to monitor and adjust the travel plan according to feedback. Has any consideration been given to offering a telephone helpline, which could gather first-hand experience and provide reliable advice and information, thereby enhancing the monitoring?

**Derek Mackay:** There is a telephone helpline available for people to use through Transport

Scotland and it has been scaled up in anticipation of demand.

**Jim Eadie (Edinburgh Southern) (SNP):** Although the main priority in the coming days and weeks must be the need to minimise disruption to the travelling public, once the bridge has reopened will the minister instruct the carrying out of a full and thorough assessment of the causes of the closure so that we can understand why we have arrived in this position and what lessons, if any, can be learned for the future? What further assurances can he give that the Government will act to ensure that there is proper transparency and accountability in relation to all the historical decisions that were taken prior to Transport Scotland assuming responsibility for the bridge?

**Derek Mackay:** That is a helpful question. We have shared a lot of the technical expertise that has come from expert engineers and we can continue to do that as we update people on progress on the bridge. Of course we will review systems, inspections and processes to ensure that, if there are any lessons to be learned, we will learn them. I think that that is the right thing to do, considering the unprecedented nature of this incident and the impacts of the closure, so I will commit to doing it.

**David Stewart (Highlands and Islands) (Lab):** After discussion with the haulage industry in the Highlands and Islands, I have two very quick practical points. First, can we relax the rules on drivers' hours? Bruce Crawford raised that important issue. Secondly, as an emergency measure, can we increase speed limits on single carriageways to 50mph in light of what is happening on the A9?

**Derek Mackay:** I have addressed the issue of drivers' hours: there will be a relaxation of the rules. That has been taken on board by the Scottish Government and the UK Government.

As far as speed limits are concerned, David Stewart and I have exchanged views on that issue in the past. A specific package of measures has been put in place to allow for an increase in the speed of HGVs on the A9, but I do not think that it would be appropriate for there to be a wholesale increase, and I do not think that an increase would be appropriate in this specific case, only because there would be an increased risk of fatalities and casualties if there were more incidents.

South of the border, where the UK Government is increasing the national HGV limit, it said in its own assessment that there would be an increased risk of fatalities and casualties, and I am afraid that that is not a gamble that I am willing to take with lives in Scotland.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** Does the minister recall my

announcing in June 2007 that there would be a new bridge delivered in 2016? Is it a result of a proper and permanent response then, and effective management now, that we are on schedule and £1 billion below the budget that I announced at that time?

**Derek Mackay:** I think that it is fair to say that, as well as all the other contingency plans that have been put in place as a result of the bridge closure, the decision that was made to build the replacement crossing is a rather substantial contingency plan. The events have vindicated the Government's decision to build a replacement Forth crossing, which is being delivered on time and under budget.

**Alex Johnstone (North East Scotland) (Con):** Does the minister have any comment to make on the document that was published on the public contracts Scotland website on 25 May 2010, which is headed "Truss End Links" and concerns the Forth road bridge, the status of which is now "Cancelled"?

**Derek Mackay:** I have offered all political parties a full technical briefing and an explanation of mitigation measures. The only party that I know has not taken up that offer is the Conservative Party, which is perhaps why Alex Johnstone is so ill informed. I would have thought that, in listening to the statement, Alex Johnstone would have understood some of the issues that he is asking about.

The key point is that FETA was in operation at the time. The works that the member has identified are not where the fault has occurred. The specific crack was not predicted. It has emerged in the past few weeks. It was identified on Tuesday, a recommendation was made to ministers on Thursday and action was taken within minutes.

FETA, which was responsible at the time, had a work programme that it was working through and it did not identify the fault. With regard to the technical nature of that contract, FETA re-scoped its own works and was getting on with the job. After 1 June, on transition to the Scottish Government and our operation with Amey, we inherited the work programme. We were delivering that and were strengthening brackets that had been identified when this quite unrelated fault emerged. Government took the swiftest action possible.

**Jackie Baillie (Dumbarton) (Lab):** I recognise the frustration for businesses and commuters and the cost to the economy, which is estimated at some £50 million.

The First Minister told the press today that there was not a cut to the budget. In its report on FETA, Audit Scotland said, at paragraph 34, that

"the budget for capital expenditure was cut significantly".

Is it not the case that Audit Scotland is quite right and that plans were made by FETA, in conjunction with Transport Scotland, in the context of reduced budgets?

**Derek Mackay:** It is not the case that budget decisions have had an impact in relation to the fault. As I said, the expert engineering advice is that the fault was not predicted and has appeared only in the past few weeks. FETA was amending its work programme, which the Scottish Government has inherited and is delivering. Of course, we will see through the necessary repairs.

On the issue of capital grant, there was on-going investment. Funding this year is £10.7 million, matching the programme of works that was developed by FETA, and it has not been subject to any reduction. In addition, we have never restricted funding for critical works.

**Colin Keir (Edinburgh Western) (SNP):** I thank the minister for his statement and the measures that have been put in place to deal with the closure of the bridge.

What steps is the Government taking to alleviate the difficulties that are faced by commuters using the already under-pressure Dalmeny railway station in my constituency—the first halt on the southern side of the rail bridge—who are unable to board trains due to capacity issues, as well as the local road congestion and parking problems around South Queensferry?

**Derek Mackay:** Extra carriages have been identified and deployed, there is staffing at stations to support commuters and the travelling public, and we are looking at further enhancing the number of seats, through extra carriages, and making further amendments to the timetable in order to support everyone who is affected on the rail line, which has been enhanced to support commuters at this challenging time.

**Sarah Boyack (Lothian) (Lab):** Will consideration be given to early services? I have had feedback to suggest that, for many commuters, it is simply not possible to use the train because services do not run early enough. That is having a big impact on businesses and the public sector in the Edinburgh area.

**Derek Mackay:** That is a very reasonable question because our advice is that, if people can avoid the peak periods, it will help to alleviate congestion in the busy periods. We have therefore extended the timetable for an earlier departure—the 5:52 service—and we are looking at further enhancing that with earlier trains and, if possible, overnight trains. Hopefully, we will increase the number of seats provided during the duration of the bridge closure by more than 10,000. We are



actively looking at that, and I will update members through the channels that I have established.

**Mike MacKenzie (Highlands and Islands) (SNP):** With the greatly increased number of commuters travelling by rail or bus, what discussions has the minister had with local authorities on relaxing parking restrictions or increasing the parking available?

**Derek Mackay:** Local authorities and Police Scotland have been asked to take all reasonable measures and are being proactive in doing so. That might include removing restrictions and supporting parking where appropriate and, as I said earlier, removing unnecessary road works to try to make our road system as accessible as possible. However, it is simply not possible to displace 70,000 vehicles on to the rest of the network and not expect a degree of congestion. That is why we are encouraging people to car share, to avoid travelling where possible and to use public transport.

On public transport, rail is in huge demand, so let us add the focus to bus, where there is plenty of extra capacity, prioritisation on the bus and heavy goods vehicle corridor, and journey times of around an hour and a half, which is much better than was anticipated.

**Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab):** I sympathise entirely with the plight of those in Fife and other areas that are most directly affected by the closure of the bridge, but the 8,000 additional train spaces that the minister spoke to have been brought to Fife and surrounding areas at the cost of some disruption in other parts of the country.

Can the minister assure me that that disruption will be kept to the very minimum? Will he speak to Abellio in future about the possibility of there being additional spare capacity in rolling stock? Already this year—between August and November—the constituents I represent have suffered disruption to services because of engineering works. They are now suffering disruption because of the closure of the Forth road bridge and will, during the period of the Edinburgh to Glasgow improvement programme, suffer a further 22 weeks' disruption. My fear is that—

**The Presiding Officer:** I think that you have made your point, Ms Ferguson.

**Derek Mackay:** First, all of the disruptive works that Patricia Ferguson has outlined are to achieve the outcome of more trains for Scotland; faster, greener trains; and, with more seats, capacity enhancements. The Edinburgh to Glasgow improvement programme will be about future proofing the railway. I appreciate that people have endured pain and disruption from works that are necessary for electrification and the refurbishment

of Queen Street station, but some of that will be worth it for the expanded rail service that will be provided.

On the second point about supporting Fife, I am sure that the whole country understands that this is an issue of national significance and that we need to pull together to support the region at this time. Again, I appreciate the impact that the bridge closure has had on some other people, but it is important to give the area as much support as we can in what is a very challenging period, as the main artery is not in operation.

Finally, we have used the rolling stock capacity to the max so that we are getting the best out of the railways with the rolling stock that we have. More trains have been ordered and will be delivered through the new franchise agreement. That will be a good deal for Scotland.

On the temporary impact, we asked ScotRail to identify carriages and rolling stock outwith Scotland first before impacting on services in Scotland. That has been achieved, in that some of the rolling stock has come from elsewhere, but there has been an impact on some ScotRail services. As I say, though, surely we all understand that the Fife area is under considerable pressure and that it was right to intervene in the way we did. We must pull together as a country and support that region in the way that most other members have been encouraging me to in the past few days.

**Liz Smith (Mid Scotland and Fife) (Con):** Will the minister ask his officials in Transport Scotland to ensure that the signposting for diversions is accurate, as that was not the case between the Cairneyhill roundabout and the Kincardine bridge yesterday?

**Derek Mackay:** Yes of course. We will try to make sure that all relevant information is accurate and updated in real time. Some of our equipment was subject to vandalism, but of course we will try to make sure that all information is as up to date as possible. The nature of this incident is that we, as a listening Government, are changing the travel plan according to what is working and what will provide the best intervention. All information should flow seamlessly from those decisions.

## Criminal Justice (Scotland) Bill: Stage 3

15:05

**The Deputy Presiding Officer (John Scott):** The next item of business is stage 3 proceedings on the Criminal Justice (Scotland) Bill. In dealing with the amendments, members should have the bill as amended at stage 2, the marshalled list and the groupings. The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. Members who wish to speak on any group of amendments should press their request-to-speak buttons as soon as possible after I call the group.

### Section A1—Limitation on what enables search

**The Deputy Presiding Officer:** We start with group 1. Amendment 5, in the name of the Cabinet Secretary for Justice, is grouped with amendments 7, 9, 13 to 15, 20, 23, 24, 28 and 31.

**The Cabinet Secretary for Justice (Michael Matheson):** Amendments 5, 7, 9, 13 to 15, 20, 23, 24, 28 and 31 move part A1 from its place at the start of the bill to after section 56. That reflects the importance of part 1 of the bill and, in particular, the new single power of arrest in section 1.

Moving part A1 will also help to avoid any possible confusion that could arise if part 1 was renumbered. Section 1 contains the new power of arrest, which replaces the current power to detain suspects under section 14 of the Criminal Procedure (Scotland) Act 1995 and a mixture of common law and statutory powers to arrest people. If part A1 was not moved, section 1 would be renumbered as section 14. That would create scope for unnecessary confusion with the old power of detention under the 1995 act, which the bill will repeal.

The new arrest and custody regime that is set out in part 1 represents a very significant change in police powers. Every police officer in Scotland will receive extensive training before the bill comes into force. That will help to ensure a smooth transition to the new system. However, there is bound to be a period where police officers and others working in the criminal justice system will take time to get used to the new legislation. Moving part A1 to later in the bill will also reduce the possibility of confusion. It will ensure that the new single power of arrest will continue to be contained in section 1 of the bill.

I move amendment 5.

*Amendment 5 agreed to.*

### Section B1—Cases involving removal of person

**The Deputy Presiding Officer:** We move to group 2. Amendment 83, in the name of the cabinet secretary, is grouped with amendments 6 and 8.

**Michael Matheson:** Amendments were passed at stage 2 to implement the recommendations of the independent advisory group on stop and search, which was chaired by John Scott QC. The bill will introduce a new code of practice after a period of consultation. When that code of practice comes into effect, the current practice of non-statutory, or consensual, stop and search will end. From that point on, searches by the police of people not in police custody will be carried out only where there is a statutory authority or a warrant to do so.

I have been keen to build consensus on this important issue, and since stage 2 I have continued to engage with members of the Justice Committee. I thank members for the constructive way in which they have approached our discussions and I look forward to continuing that engagement as we consult on the draft code of practice.

To complement the provisions that were added at stage 2, I have lodged amendments to address two potential gaps in powers. Section B1 gives police the power to search a person before that person is transported under a statutory power or under warrant from one place to another. That search must be only for the purpose of making sure that the person does not have anything on them that could cause harm to that person or to any other person.

However, there are occasions on which a person may be transported voluntarily from one place to another. There is currently no statutory power to search such a person. Amendment 6 will therefore allow the police to search a person in very limited circumstances. Accordingly, as long as the person is to be or is being transported, and that transport is necessary with respect to that person's care and protection, the police will have a limited power of search. The power of search is limited so that it can be used only for the purpose of making sure that the person does not have any item on them that could cause harm to themselves or to another. The power could be used, for example, in transporting a person with mental health issues from their home or from any other non-public place to a hospital.

Amendment 6 has been narrowly drafted to ensure that only those who are being genuinely

transported for the purpose of ensuring their care can be searched, and even then only in circumstances to ensure their own safety and that of others.

Amendment 83 is a technical amendment. Amendment 8 addresses another potential gap in statutory search powers. Police officers are often involved in carrying out searches as a condition of entry to sports grounds and other premises or events. The bill as it stands would make that unlawful. Amendment 8 therefore allows the police to search people as a condition of entry at relevant premises and events. Again, that is limited, and it is only for the purposes of ensuring the health, safety or security of people there. That is subject to specific conditions so that the power to search is not too general.

The premises or event must be open to members of the public; entrance must be controlled by the occupier or organiser; the occupier or organiser must have imposed a condition of entry that the person consents to being searched; and the person must inform the constable that they consent to being searched.

I move amendment 83.

**Alison McInnes (North East Scotland) (LD):** When I first read amendment 6, I was concerned that it seemed to be cast quite widely. I am therefore grateful for the cabinet secretary's reassurances this afternoon. However, if someone is being voluntarily transported to hospital, they can surely voluntarily undergo a search. Amendment 6 could perhaps be more precise to make it absolutely clear that it relates to a very small set of specific circumstances.

On amendment 8, when I consulted experts at stage 2 there were mixed views as to whether an amendment would be required to provide for searches to be undertaken at the entrance to events and venues. I note that the equivalent provisions in the PACE—Police and Criminal Evidence Act 1984—codes in England and Wales are arguably tighter, specifying that an exception to the rules on consensual searches can be made where it

“applies to searches of persons entering sports grounds or other premises carried out with their consent given as a condition of entry”.

How often are the police currently involved in those activities? Would the cabinet secretary expect these powers to be used sparingly—for example, in the provision of the robust security that is required for high-profile events such as the Commonwealth games and the Ryder cup?

Does the cabinet secretary expect that the powers that are set out in amendment 8 would be used regularly at a local level—for example, for those who are entering pubs or nightclubs? After

all, in Aberdeen we have seen the police undertake unannounced drugs tests at the doors of nightclubs against the wishes of some owners. Will that become the norm under amendment 8? We need assurances that the code of practice will set out when those powers should be used and that event organisers will always have the final say on whether the police turn up to conduct those searches.

Finally, will the use of searches at those events and venues be included in the figures that are reported by Police Scotland or the Scottish Police Authority so that the public can understand when those powers are being deployed and can be assured that they are being used responsibly?

15:15

**Alex Salmond (Aberdeenshire East) (SNP):** It is admirable that the cabinet secretary is looking for consensus but I would like to hear a bit more about whether he feels that the powers and amendments will be sufficient to keep the public safe from harm.

I am particularly concerned about knife crime. During my early years as First Minister, there was an epidemic of knife crime in Scotland and far too many young people ended up as victims to that epidemic. Members might remember that it was a significant issue in the 2011 Scottish elections. As various people around the chamber tried in good faith to tackle that issue, they found themselves driven into more and more extreme positions on the penalties that might be proposed as a deterrent to knife crime. One of the turning points of the election was when the Labour policy was portrayed as wanting a long custodial sentence for anyone who was caught in the possession of any instrument whatsoever, even if it was a garden implement. I well remember that point in the election campaign.

My concern is that there is in my mind a strong correlation between the decline in knife crime in Scotland, and therefore the casualties and deaths resulting from knife crime, and the police's use of stop and search powers.

In the report of the advisory group on stop and search, John Carnochan, a police officer who does nothing other than look for a range of ways to tackle the fundamental evils in society and who has elicited praise from all sides of the chamber on many occasions because of the various pioneering efforts that he has been engaged in, notes that non-statutory stop and search was appropriate for the time in which it was being deployed.

My question to the cabinet secretary follows. I would have liked to see the advisory group do far more analysis of the impact of stop and search on

knife crime. Knife crime is mentioned three times in the advisory group's report. In contrast, alcohol and drink is mentioned 16 times and it has an entire subsection to itself. I am concerned about the problems of underage drinking, drinking in society generally, and the various measures that have been brought forward to deal with that. I would love to see minimum pricing come in in this country to tackle that fundamental evil. However, I am really concerned to know whether stop and search powers have been effective in reducing knife crime and the number of deaths of young people in this country.

When the cabinet secretary is closing, I would like him to say whether he is absolutely satisfied that nothing in the change of powers will change the downward trajectory of knife crime in Scotland. We have seen much less use of stop and search in England in recent times and we are now seeing a rising level of knife crime in England and Wales. I want to be absolutely certain that everything that is being done is being done with that as the principal motivation.

Of course, members will be concerned about all sorts of other matters, but I am sure that no member will want to do anything other than make absolutely sure that the powers that will be available to the police will be the maximum necessary to ensure that knife crime continues to decline in Scotland. It is a great social evil, which consumed members' attention so recently, and rightly so, because of the damage that it inflicted on communities and families across this country. We need the police to have the powers that will enable them to make certain that safety is uppermost.

My final point—

**The Deputy Presiding Officer:** I must hurry you, Mr Salmond.

**Alex Salmond:** In that case, I will sit down.

**John Finnie (Highlands and Islands) (Ind):** I have a brief comment to lend the cabinet secretary my support for amendment 6. The amendment is a proportionate suggestion that will provide protection to the individual, to officers and to the wider public. Most important, it will be on a statutory footing and that is how I want to see all searches being undertaken.

**Elaine Murray (Dumfriesshire) (Lab):** At the beginning of Mr Salmond's speech, I was a bit concerned to find myself agreeing with him. He managed to break the consensus after a while, so I got back to my normal position. I agree that it is important to be able to keep the public and police officers safe. Recently, we have seen some appalling incidents internationally, and there are circumstances in which powers have to be in place

to keep the public safe. We will therefore support the Government on the matter.

**Michael Matheson:** First, I will deal with the points that Alison McInnes made. Amendment 6 is an attempt to address the matter in a proportionate way and protect the safety of the individual, police officers and members of the public, and it has been drafted in a specific way in order to fulfil that function. It will also be regulated by the code of practice that will be in operation, so there is an additional safeguard in how the provision will operate.

Alison McInnes also mentioned the matter that is covered by amendment 8. Part of the issue is that, as she identified, there are mixed views on the matter. We are making the statutory provision to ensure that there is absolute clarity in the area and that there can be no grey areas in the powers that the police have.

On how it will be included in the calculation of the detail that is held on stop and search, it should be kept in mind that the vast majority of searches at events and venues are conducted by people who are not police officers, such as event security officers. The aim is to ensure that, where the police are responsible for entrance to particular events, they have the power. As things stand, they would potentially not have the power in such circumstances.

Again, that area will be regulated by the code of practice when it is operated by the police, and we will look to see how it can be captured in the data that is to be taken forward overall in regulating stop and search.

I turn to the number of important points that Alex Salmond raised. I fully endorse his view about the need to ensure that the police have the necessary statutory powers to be able to undertake action that can help to reduce things such as knife crime. There is absolutely no doubt that, since 2006-07, there has been a dramatic reduction in the level of knife crime in Scotland overall. In particular, there has been a significant reduction in the west of Scotland, which has a correlation in that it has resulted in a significant reduction in the number of homicides.

Over the past few years, there has been a significant reduction in the amount of stop and search that Police Scotland has undertaken on a consensual, non-statutory basis. The statistics show that. There has been a significant drop-off over the past three years, and during that time knife crime has continued to decline. The key thing is to ensure that the police have the right statutory powers to intervene as and when they think it is appropriate to search someone, and to ensure that they are using the right type of intelligence for that purpose.

I am confident that, given the code of practice and the consideration that the advisory group gave to the matter, the police will have the necessary powers to allow them to continue that work, and to continue to ensure that we drive down knife crime and the problems that are associated with it.

I add that tackling knife crime goes much wider than stop and search. The no knives, better lives programme has been instrumental in our schools and local communities in changing attitudes around such crime, and the mentors in violence prevention programme has also been crucial in helping to change young people's attitudes to carrying sharp weapons and other offensive weapons.

I am confident that the combination of different factors, through the statutory powers that the police will have and those additional measures, will allow us to continue to see a reduction in knife crime overall.

**Alex Salmond:** I accept that point, which is why I praised John Carnochan. However, one of the key aspects of reducing knife crime is preventing youngsters from carrying knives for protection because they believe that other youngsters will have them. Stop and search was extremely influential in giving people—almost—a guarantee that there would not be widespread carrying of knives because of the extensive use of stop and search. Perhaps the cabinet secretary will address that point.

**Michael Matheson:** I agree. A big part of the challenge in dealing with the issue around the stop and search provisions was tackling the issue of gang culture. That particularly pervaded parts of west central Scotland, where there was a culture that a person was part of a gang and it was expected that they should carry a weapon.

There is no doubt that some of the approaches that have been used around stop and search have assisted in helping to deal with that issue and reduce its incidence. However, the statutory powers that the police will have for searching people in those circumstances will allow them to continue to undertake that type of work on the basis of intelligence. The police will still have the scope to be able to do that, but they will do so on a statutory footing. Given the advisory group's consideration of the issue and the fact that we have seen over the past three years a significant reduction in consensual, non-statutory stop and search being undertaken by the police, I am confident that we will continue to see a marked reduction in knife crime and in homicide in Scotland overall.

We want to ensure that the police have the necessary statutory powers to continue that work. I believe that the combination of the provisions

that we are making for the police—the statutory powers and the code of practice, which will also be consulted on and which the Parliament will have an opportunity to consider—will allow us to ensure that the police continue to have the necessary powers.

*Amendment 83 agreed to.*

*Amendments 6 and 7 moved—[Michael Matheson]—and agreed to.*

#### **After section B1**

*Amendment 8 moved—[Michael Matheson]—and agreed to.*

#### **Section C1—Duty to consider child's best interests**

*Amendment 9 moved—[Michael Matheson]—and agreed to.*

#### **Before section D1**

**The Deputy Presiding Officer:** Before we move to group 3, I point out that we are very tight for time today.

Amendment 10, in the name of the cabinet secretary, is grouped with amendment 32.

**Michael Matheson:** At stage 2, an amendment was passed that would oblige the Scottish Police Authority to include stop and search data in its annual report. I agree that that information should be published, but I consider it more appropriate for there to be an obligation on Police Scotland to publish it than on the SPA. Amendment 10 will therefore impose a duty on Police Scotland to publish stop and search data annually, and amendment 32 will remove the provision that would place that duty on the SPA.

I move amendment 10.

**Alison McInnes:** As the cabinet secretary said, amendments 10 and 32 build on one of my successful stage 2 amendments. The bill as amended at stage 2 will require the SPA to provide an account of the use of stop and search in its annual report to Parliament. The cabinet secretary's amendment 10 will break that link, and it will mean that the figures will not be reported directly to Parliament or even to the SPA; rather, the data will simply be published.

There have, of course, been numerous scandals surrounding data on stop and search—not least, the so-called consensual searches of under-12s. The national force told the BBC that more than 200 children had been searched in the six months after the instruction went out. Police chiefs subsequently revised that number down to 18, but then it went back up to 83, according to Her Majesty's inspector of constabulary in Scotland.

The police reviewed and recategorised stop and search figures again and again, but still could not get them straight for either Parliament or the SPA, and that has caused police inspectors to declare that they have no confidence in the data. Given that record, does not the cabinet secretary think that there is merit in an accountability framework that encourages the SPA to scrutinise the figures before they are reported in turn to Parliament?

**Michael Matheson:** I have listened carefully to what Alison McInnes has had to say on this issue. I would, of course, expect the data that are published by Police Scotland to be fully considered before being placed in the public domain. However, it is appropriate that the body that is responsible for collating the data is the body that actually reports the information and makes it publicly available. There is absolutely no doubt that the SPA will want to scrutinise the information and might want to consider its accuracy, and I have no doubt that Parliament will also want to consider the information.

I am very conscious that if Police Scotland were to publish data that were then passed to the SPA, and the SPA subsequently changed the data, there would be members in here—as tends to be the case when it comes to debating issues around policing in Scotland—accusing the SPA of manipulating the data that Police Scotland had published. I therefore think that it is important that we ensure that the data that the police publish are as accurate as possible. I have no doubt that the SPA will want to scrutinise the data, and to consider how accurate the information is and how it is used by the police to inform decisions that they make about future policy in such areas.

*Amendment 10 agreed to.*

#### **Section D1—Provisions about possession of alcohol**

**The Deputy Presiding Officer:** We move to group 4. Amendment 11, in the name of Dr Elaine Murray, is grouped with amendments 12, 84, 1 and 2. I point out that if amendment 1 is agreed to, I cannot, because it would be pre-empted, call amendment 13, which has already been debated with group 1.

15:30

**Elaine Murray:** Queen's counsel John Scott's review of stop search by Police Scotland has largely been implemented by amendments at stage 2, as we have heard. However, Mr Scott felt that there needed to be further consultation on whether Police Scotland should have a statutory power to stop and search young people under 18 who may be in possession of alcohol. Therefore, the bill will enable Scottish ministers to make

regulations to give police officers the statutory power to search under-18s for possession of alcohol if the consultation suggests that that would be desirable. The ability of ministers to make such regulations will lapse in two years if it is not used.

Some concern about the provision was expressed at stage 2: the Children and Young People's Commissioner Scotland in particular was concerned that ministers were prejudging the consultation results and that any such regulations might inadvertently criminalise under-18s who are caught in possession of alcohol and result in inappropriately high numbers of under-18s being subjected to statutory stop and search. At stage 2, I suggested that a way around those concerns might be to make changes in the regulations on stop and search of under-18s for possession of alcohol subject to the super-affirmative procedure.

Amendments 11 and 12 have been drafted for me by the Government's bill team, for which I thank the cabinet secretary. Amendment 11 specifies that, in addition to the public consultation, the chief constable, the Scottish Human Rights Commission and the Children and Young People's Commissioner Scotland must receive a copy of proposed regulations, as should any other person whom the Government considers to be appropriate.

Amendment 12 requires that the Scottish Government, on laying any draft instrument before Parliament, must also make available its reasons for wanting to make regulations, as well as a summary of responses to the public consultation and the representations that have been made by the specified people to which a copy of the regulations were sent. That will ensure that Parliament is fully informed of any concerns about potential regulations on statutory stop and search for possession of alcohol before deciding whether to agree to them.

Alison McInnes's amendment 84 is similar to my amendment. However, she does not specify that the Scottish Human Rights Commission and the Children and Young People's Commissioner Scotland must receive a copy of the draft regulations. In that respect, my amendments are more robust. Her amendment would also require ministers to have regard to resolutions of Parliament and to committee reports made within 60 days of the instruments' being laid. That is unnecessary, because ministers would be unable to pass the regulations without the recommendation of the Justice Committee—or appropriate committee—and Parliament's agreement.

Amendment 1, in the name of Alison McInnes, would remove section D1, which will empower ministers to make regulations on stop and search of young people for the possession of alcohol.

Therefore, if the consultation results were such that the police ought to have the power to stop and search young people and children for alcohol, primary legislation would be required to implement the consultation recommendations.

All the other recommendations of the Scott review are being implemented through legislation, so it seems to be sensible to provide in this bill the power to introduce regulations that might be suggested by further consultation.

**Alison McInnes:** Elaine Murray has made reference to the Scott review recommendations. Does she agree that it did not recommend that provision?

**Elaine Murray:** The Scott review did not recommend the provision, but it recommended consultation. Amendment 11 is a mechanism for taking forward the results of that consultation, if the results of the consultation come out in favour of stop and search for possession of alcohol.

I am afraid that we will not be supporting Alison McInnes's amendments. Her amendment 2 is inconsequential on agreement to her amendment 1.

I move amendment 11.

**The Deputy Presiding Officer:** I call Alison McInnes to speak to amendment 84 and the other amendments in the group.

**Alison McInnes:** As the cabinet secretary will be aware, although it is not an offence for children to be in possession of alcohol, officers have the power to confiscate it. Why, then, is the Government intent on paving the way for the creation of a search power in relation to an activity that is not illegal? That is a reckless and, to be frank, dangerous precedent for Parliament to set, and it risks a return to legitimising and normalising stop and search, which has been entirely discredited.

The case for creating search powers for alcohol has not yet been made. According to Dr Kath Murray, between June and August 2015, 90 per cent of underage alcohol detections resulted from statutory powers of search—powers that are available to the police. Just 7 per cent resulted from non-statutory searches.

John Scott QC's review group did not request the provision. The majority of the group concluded that there is no gap. The Children and Young People's Commissioner Scotland says that the approach is premature; Children 1st said that it could lead to the criminalisation of children.

Today, I am presenting members with two options. My preference is for members to back amendments 1 and 2, which would remove section D1 entirely. Secondary legislation should be used to establish comparatively minor details, but the

creation of potentially sweeping police search powers is anything but minor, so it is no way to legislate for something so important. Despite the justice secretary's assurances, every member should know that an order-making power leaves no real scope for proper parliamentary scrutiny and, as it stands, the creation of the new power of search for alcohol would be at the behest of just a few committee members.

Given our constituents' experience of stop and search during the past two and a half years, members must surely recognise the need for both evidence and caution. The creation of new search powers must be the subject of in-depth consultation, keen democratic scrutiny and rigorous debate. That is why I ask members, if they do not back amendments 1 and 2, at least to support amendment 84, which would make the introduction of new search powers subject to the super-affirmative procedure.

If section D1 is unamended, there is a real risk that Parliament will allow our young people once again to be disproportionately targeted. They might once again be the subject of intrusive mass searches that contravene their human rights. If it is unamended, the section could allow the return by the back door of the discredited so-called consensual searches.

**Michael Matheson:** I am content to support amendments 11 and 12, which were lodged by Elaine Murray, and I thank her for lodging them. The amendments require that, as part of the existing requirement for consultation on any regulations allowing the search of children for alcohol, key stakeholders including the Commissioner for Children and Young People Scotland and the Scottish Human Rights Commission will be sent copies of draft regulations. In addition, they will require ministers, when laying such regulations in Parliament, to lay a statement that summarises the responses to the consultation and gives the reasons for making the regulations. Amendments 11 and 12 will ensure that the role of key stakeholders in the consultation process is enhanced, and that Parliament is fully informed of the consultation that we carry out, the responses that we receive and our reasons for laying the regulations. The regulations are, of course, already subject to affirmative procedure. I believe that the provisions in the amendments will further enhance their necessary parliamentary scrutiny.

Amendments 1 and 2, which were lodged by Alison McInnes, would delete section D1; that would remove the provisions that allow regulations to be laid. I cannot support those amendments. Section D1 does not pre-empt our consultation on whether there should be a power to search children for alcohol. I assure members that the

purpose of the consultation will be to gather views on whether there is a need to legislate at all. We will also seek views on whether such a power would have any detrimental effects on children and/or their relationship with the police.

We will consult stakeholders, including John Scott QC and organisations that represent children's interests, when we draft the consultation paper. If, after consultation, it was decided that such a power is necessary, I would wish to seek Parliament's consent to introduce that power in a timely manner. The effect of amendments 1 and 2 would be that we would, if the consultation identified a gap in powers, have no legislative vehicle to address that. I therefore urge Alison McInnes not to move amendments 1 and 2.

Amendment 84, which was also lodged by Alison McInnes, overlaps Elaine Murray's amendments 11 and 12 and duplicates several of their provisions. It also duplicates provisions that are already in the bill, regarding publication of proposed regulations. Amendment 84 could therefore result in unclear and potentially confusing legislation because of the way it overlaps with and duplicates existing provisions. In addition, it requires that a consultation on proposed regulations must last for 60 parliamentary sitting days, which would take to 100 the total number of sitting days that would be applicable to the regulations. That could result in a significant delay in our ability to act in abolishing consensual stop and search, should the consultation identify a gap in powers that needs to be filled before that can take place. I therefore urge Alison McInnes not to move amendment 84.

**Elaine Murray:** I will wind up very briefly on the issue of criminalising children. If it is considered after the consultation that regulations should be made, their purpose would not be to criminalise children. The criminals are the people who supply alcohol to children, not the children themselves.

My amendments provide the necessary degree of consultation and democratic accountability. I hope that Parliament will accept them.

*Amendment 11 agreed to.*

*Amendment 12 moved—[Elaine Murray]—and agreed to.*

*Amendment 84 not moved.*

*Amendment 1 moved—[Alison McInnes].*

**The Deputy Presiding Officer:** I remind members that, if amendment 1 is agreed to, amendment 13 will be pre-empted.

The question is, that amendment 1 be agreed to. Are we all agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division. I suspend the proceedings for five minutes to allow the division bell to be rung and members to return to the chamber.

15:41

*Meeting suspended.*

15:46

*On resuming—*

**The Deputy Presiding Officer:** We move to the division on amendment 1.

**For**

Hume, Jim (South Scotland) (LD)  
McInnes, Alison (North East Scotland) (LD)  
Scott, Tavish (Shetland Islands) (LD)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
Allard, Christian (North East Scotland) (SNP)  
Baker, Claire (Mid Scotland and Fife) (Lab)  
Baker, Richard (North East Scotland) (Lab)  
Baxter, Jayne (Mid Scotland and Fife) (Lab)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Biagi, Marco (Edinburgh Central) (SNP)  
Bibby, Neil (West Scotland) (Lab)  
Brodie, Chic (South Scotland) (SNP)  
Brown, Gavin (Lothian) (Con)  
Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
Buchanan, Cameron (Lothian) (Con)  
Burgess, Margaret (Cunninghame South) (SNP)  
Campbell, Aileen (Clydesdale) (SNP)  
Campbell, Roderick (North East Fife) (SNP)  
Carlaw, Jackson (West Scotland) (Con)  
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
Constance, Angela (Almond Valley) (SNP)  
Crawford, Bruce (Stirling) (SNP)  
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)  
Davidson, Ruth (Glasgow) (Con)  
Dey, Graeme (Angus South) (SNP)  
Don, Nigel (Angus North and Mearns) (SNP)  
Doris, Bob (Glasgow) (SNP)  
Dornan, James (Glasgow Cathcart) (SNP)  
Dugdale, Kezia (Lothian) (Lab)  
Eadie, Jim (Edinburgh Southern) (SNP)  
Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
Ewing, Fergus (Inverness and Nairn) (SNP)  
Fabiani, Linda (East Kilbride) (SNP)  
Fee, Mary (West Scotland) (Lab)  
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)  
Fergusson, Alex (Galloway and West Dumfries) (Con)  
Findlay, Neil (Lothian) (Lab)  
FitzPatrick, Joe (Dundee City West) (SNP)  
Fraser, Murdo (Mid Scotland and Fife) (Con)  
Gibson, Kenneth (Cunninghame North) (SNP)  
Goldie, Annabel (West Scotland) (Con)  
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
Grant, Rhoda (Highlands and Islands) (Lab)  
Gray, Iain (East Lothian) (Lab)  
Henry, Hugh (Renfrewshire South) (Lab)  
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
Hilton, Cara (Dunfermline) (Lab)



Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kelly, James (Rutherglen) (Lab)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)  
 Lochhead, Richard (Moray) (SNP)  
 Lyle, Richard (Central Scotland) (SNP)  
 MacAskill, Kenny (Edinburgh Eastern) (SNP)  
 MacDonald, Angus (Falkirk East) (SNP)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 MacKenzie, Mike (Highlands and Islands) (SNP)  
 Malik, Hanzala (Glasgow) (Lab)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McDougall, Margaret (West Scotland) (Lab)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McLeod, Aileen (South Scotland) (SNP)  
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)  
 McMahan, Michael (Uddingston and Bellshill) (Lab)  
 McMahan, Siobhan (Central Scotland) (Lab)  
 McMillan, Stuart (West Scotland) (SNP)  
 McTaggart, Anne (Glasgow) (Lab)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Paterson, Gil (Clydebank and Milngavie) (SNP)  
 Pentland, John (Motherwell and Wishaw) (Lab)  
 Robertson, Dennis (Aberdeenshire West) (SNP)  
 Robison, Shona (Dundee City East) (SNP)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Salmond, Alex (Aberdeenshire East) (SNP)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Stewart, David (Highlands and Islands) (Lab)  
 Stewart, Kevin (Aberdeen Central) (SNP)  
 Sturgeon, Nicola (Glasgow Southside) (SNP)  
 Torrance, David (Kirkcaldy) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Yousaf, Humza (Glasgow) (SNP)

#### Abstentions

Finnie, John (Highlands and Islands) (Ind)  
 Harvie, Patrick (Glasgow) (Green)  
 Johnstone, Alison (Lothian) (Green)  
 Wilson, John (Central Scotland) (Ind)

**The Deputy Presiding Officer:** The result of the division is: For 3, Against 103, Abstentions 4.

*Amendment 1 disagreed to.*

*Amendment 13 moved—[Michael Matheson]—and agreed to.*

#### Section E1—Matters as to effect of sections A1, B1 and D1

*Amendment 2 not moved.*

*Amendment 14 moved—[Michael Matheson]—and agreed to.*

#### Section F1—Meaning of constable etc

*Amendment 15 moved—[Michael Matheson]—and agreed to.*

#### Section G1—Contents of code of practice

**The Deputy Presiding Officer:** That takes us to group 5. Amendment 16, in the name of the cabinet secretary, is grouped with amendments 17 to 19, 21, 22, 25 to 27, 29, 30 and 77.

**Michael Matheson:** This group comprises minor and technical amendments.

Amendments 16 to 19 are minor technical amendments to provisions that relate to the contents of the code of practice.

Amendments 21 and 22 are minor technical amendments to provisions that relate to reviews of the code of practice.

Amendments 25 and 26 make technical changes to the provision in the bill that adds the Police Investigations and Review Commissioner to the list of organisations that are to be consulted on the draft code of practice.

Amendment 27 is a minor amendment to provisions about consultation on the draft code of practice to allow consultation to begin as soon as possible.

Amendments 29 and 30 are minor technical amendments to the provisions that bring the code into effect.

Amendment 77 provides for technical reasons why the sections of the bill that relate to the code of practice will commence on the day after the bill receives royal assent.

I move amendment 16.

*Amendment 16 agreed to.*

*Amendments 17 to 20 moved—[Michael Matheson]—and agreed to.*

#### Section H1—Review of code of practice

*Amendments 21 to 23 moved—[Michael Matheson]—and agreed to.*

#### Section I1—Legal status of code of practice

*Amendment 24 moved—[Michael Matheson]—and agreed to.*

### **Section J1—Consultation on code of practice**

*Amendments 25 to 28 moved—[Michael Matheson]—and agreed to.*

### **Section K1—Bringing code of practice into effect**

*Amendments 29 to 31 moved—[Michael Matheson]—and agreed to.*

### **Section L1—Police powers of search: annual reporting**

*Amendment 32 moved—[Michael Matheson]—and agreed to.*

### **Section 4—Arrested person to be taken to police station**

**The Deputy Presiding Officer:** We move to group 6. Amendment 33, in the name of the cabinet secretary, is grouped with amendments 34, 35, 37, 38, 53 and 79 to 81.

**Michael Matheson:** This group of amendments deals with the process by which the police can bring someone who is on bail back to court to have the person's bail reviewed when the police suspect that they have broken or may break a bail condition.

Section 28 of the Criminal Procedure (Scotland) Act 1995 gives the police a power to arrest someone on suspicion that the person has broken or may break a bail condition. It also gives the police a power to continue the detention of someone whom they have arrested on some other basis if they come to suspect that the person has broken or may break a bail condition. In either case, section 28 of the 1995 act goes on to require the police to bring the person before a court for a bail review.

The Government's intention now is that section 28 of the 1995 act should continue to operate as it presently does once the bill is passed and is in force. The approach that is being taken is slightly different from that which was set out in the bill as introduced. Therefore, amendment 79 removes the amendments that schedule 1 of the bill would have made to section 28 of the 1995 act, and amendments 80 and 81 put other amendments in their place.

Amendment 80 makes a series of amendments to the powers of arrest and detention under section 28 of the 1995 act to ensure consistency with the bill. New subsection (1ZA) will require officers who are not in uniform to produce identification when they arrest someone for breach of bail, just as section 2 of the bill will do in relation to arrests under section 1. New subsection (3A) of section 28 of the 1995 act will require a person

who has been arrested for breach of bail to be released when they are no longer suspected of breaching bail, and proposed section 28(3B) of the 1995 act allows a person to be brought before a court for a bail review by television link.

Amendment 81 inserts a new section 28A into the 1995 act. That applies the protections in part 1 of the bill with modifications to people who have been arrested for breach of bail. It ensures the right to have intimation sent to a solicitor, and the protections in relation to child suspects will also apply to people who have been arrested for a breach of bail.

The other amendments in the group are minor changes to part 1 of the bill to explain its interaction with the section 28 process.

Amendment 33 would disapply the section 4 requirement to take an arrested person to a police station where the person was arrested for breach of bail but was then released under proposed section 28(3A) of the 1995 act because they were no longer suspected of breaching bail.

Amendments 34, 38, 35 and 37 are amendments to sections 7, 9, 11 and 12A of the bill to highlight the possibility of a suspect's detention being continued under section 28(1A) of the 1995 act for the sake of bringing him before a court to have his bail reviewed.

Amendment 53 is a technical amendment to section 56 to recognise that section 28 of the 1995 act provides an alternative to section 18 of the bill as a statutory basis on which a person who has been arrested might be brought before a court.

I move amendment 33.

**John Finnie:** I am very happy to support the cabinet secretary's amendments in group 6. Only last week in the Justice Committee, we heard a harrowing tale from someone about the effects of an offender who continually breached bail. What can the cabinet secretary do to ensure that, if we agree to the amendments, the courts will take breaches of bail more seriously?

**Michael Matheson:** It is, of course, important for the courts to be able to consider those matters at those particular times. One of the most important issues is that, when someone is in breach of bail, they are brought before the court quickly in order for it to come to a determination on the issues. However, I am sure that the member also respects the fact that it is a matter for the independent judiciary and sheriffs to determine what decisions they then make on the basis of the information that has been presented before them at a bail review hearing.

*Amendment 33 agreed to.*

### Section 7—Authorisation for keeping in custody

*Amendment 34 moved—[Michael Matheson]—and agreed to.*

### Section 11—12 hour limit: general rule

*Amendment 35 moved—[Michael Matheson]—and agreed to.*

### Section 12A—Authorisation for keeping in custody beyond 12 hour limit

**The Deputy Presiding Officer:** We move to group 7. Amendment 3, in the name of Alison McInnes, is grouped with amendments 36 and 4.

**Alison McInnes:** Amendment 36, in the cabinet secretary's name, is a step in the right direction, but it does not go anywhere near far enough to protect children, nor does it make exceptions for other vulnerable people.

At stage 2, the cabinet secretary, presenting almost no evidence to the committee, extended the length of time for which someone could be kept in custody from 12 hours to 24 hours in certain circumstances. Amendments 3 and 4 in my name would ensure that children and vulnerable adults could not be held in custody for more than 12 hours.

When the committee took evidence at stage 1 it heard from the Children and Young People's Commissioner Scotland and the Scottish Human Rights Commission about the need for safeguards and the dangers of what at that stage was a 12-hour limit. I wrote to our witnesses after the cabinet secretary increased the limit to 24 hours and Tam Baillie replied, describing the change as excessive.

The Scottish Human Rights Commission told me that it is not aware of concrete evidence that a 24-hour detention period is necessary and described the lack of exemptions for vulnerable people as disappointing. Professor Alan Miller stressed that to comply with the European convention on human rights,

"justification must be on the basis of evidence, not anecdote."

He said:

"The Commission is unaware of any evidence which suggested that prior to"

the introduction of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010, which quadrupled maximum detention periods,

"the police were systematically hampered in their efforts to investigate crime by the limits of the 6 hour detention period."

If the Government opposes amendments 3 and 4 it will defy the Scottish Human Rights Commission and the children's commissioner. It will also defy Lord Carloway's recommendations, on which the bill is founded. It will deny the evidence; more important, it will deny the rights of children and vulnerable adults to be protected from heavy-handed police procedures.

I move amendment 3.

**Michael Matheson:** Amendments 3 and 4 would prevent any vulnerable adult or child suspect from being kept in custody for more than 12 hours. The Government is clear that the rights of such suspects must be protected and there are many measures in the bill to ensure that such people are not disadvantaged in the justice process.

However, setting a lower detention limit for children and vulnerable adults could prevent serious offences from being properly investigated and could place the public and vulnerable suspects at greater risk. Amendment 36, in my name, would instead increase the safeguards that must be in place before detention extensions can be granted for children.

It is vital that all offences can be properly investigated in the interests of justice, while protecting the rights of suspects. All constables will have a general duty to take every precaution to ensure that a person is not unreasonably or unnecessarily held in police custody. A test of necessity and proportionality must be satisfied whenever a sergeant makes an initial decision to keep a person in custody, an inspector carries out a six-hour custody review and an inspector decides whether to extend the detention limit from 12 to 24 hours. Those decision makers must be independent of the investigation.

The detention limit can be extended only if the investigation is being conducted diligently and expeditiously and relates to a serious, indictable offence. The safeguards will ensure that the initial 12-hour detention period and any 12-hour extension period cannot operate as blanket detention periods for any suspect.

More than 80 per cent of people are released within the first six hours. It has therefore been argued that the detention limit should be six hours, but Lord Carloway recognised that

"any timescales set must be sufficient to accommodate the effective investigation and prosecution of crime",

and concluded:

"There is therefore little, if any, doubt that a six hour maximum is unrealistic in many ... cases."

16:00

It is necessary to hold some people beyond six hours. In a very small proportion of cases, it is also necessary to extend detention from 12 to 24 hours. Twenty-four hours is a low detention limit compared with many other jurisdictions, but I am satisfied that it is sufficient to ensure, for example, that vital interviews need not take place in the middle of the night and that police are able to examine certain crime scenes during daylight hours.

The bill recognises that children have needs that adults do not. It provides specific rights and support for children and creates an overarching duty on every constable to treat the need to safeguard and promote the wellbeing of the child as a primary consideration. That new duty ensures that the wellbeing of the child suspect will be a primary consideration in any decision to keep them in custody.

Police standard operating procedures further protect the rights of children and vulnerable adults who are in custody. They will be updated before the bill is implemented.

It is standard policy that children should be brought into custody at a police station only when it is unavoidable and that they should be kept in custody for as short a time as possible. Children are held past six hours only in a small number of cases.

Vulnerable adult suspects are also entitled to additional support to ensure that they can understand and communicate effectively with the police. The definition of "mental disorder" covers a very wide spectrum, but the vast majority of individuals with mental disorders are fit to remain in police custody and are fit to be interviewed. In urgent situations and after psychiatric assessment, there are mechanisms to remove an individual from police custody if it is necessary. The majority of vulnerable adult suspects will be released within six hours.

It is unfortunately the case that under-18s and vulnerable adults are sometimes suspected of very serious offences, including murder and rape. Police Scotland figures indicate that 27 children have been detained for murder and culpable homicide since June 2010. The interests of justice require that such offences should be fully investigated before it is decided whether to charge or release a suspect. There is nothing to suggest that serious offences that involve child or vulnerable adult suspects can be properly investigated in a shorter period than offences that involve other suspects.

A child suspect could be too exhausted, traumatised or drunk to be interviewed immediately. Some types of crime scene need to

be examined during daylight hours, even if an initial arrest took place at night. Other people, such as an appropriate adult, may need to attend interviews. It may take time to assess what support is required for a suspect.

Alison McInnes's amendments would mean that under-18s and vulnerable adult suspects in serious cases would have to be released after 12 hours, regardless of whether the offence had been fully investigated. Compressing such investigations into a shorter period would not be in the interests of justice, the victims or the suspects themselves.

An absolute 12-hour limit would create pressure to carry out interviews during the 12-hour period in circumstances that might not be wholly fair to the suspect, for example, late at night. That could place the suspect's human rights at risk and lead to prosecutions failing in serious cases because evidence had been unfairly obtained.

We need to provide the right protections for children and vulnerable adults without jeopardising investigations that are necessary to protect the public. I believe that the bill already provides sufficient protection for vulnerable adult suspects.

I recognise the Children and Young People's Commissioner's views and his suggestion that the detention limit for under-18s should be 12 hours. Having considered the types of complex cases involved and the additional protections for under-18s, I am firmly of the view that the Scottish Government's amendment 36 provides an appropriate balance. It will require at least a chief inspector to authorise custody extensions for under-18s. Occasionally, it will be necessary to extend custody periods for children, but I believe that that power needs very close scrutiny before it is used. Children's organisations, including the Children and Young People's Commissioner's office, will have the opportunity to inform the guidance during the implementation of that provision.

**Elaine Murray:** I am afraid that I disagree with Alison McInnes that there was little evidence that a 24-hour detention period is necessary in some cases. We heard evidence from Police Scotland illustrating that, although that period is not required on many occasions, it is required occasionally. My colleague John Pentland submitted amendments at stage 2 that were similar to the Government's amendment 36.

It is unfortunate that my colleague Graeme Pearson is not able to be here as he has commitments to a constituent. However, I discussed the issue with him, as he has 30-odd years' experience in the police. He agreed with many of the points that the cabinet secretary has made. On occasion, a young person or vulnerable

person might have to be kept in detention for more than 12 hours. The reference to a chief inspector deciding on whether that should happen when a person is under 18 is an appropriate safeguard, so we will support that.

**John Finnie:** I welcome the Scottish Government's acceptance of something that it did not accept at stage 2, when it knocked back my amendment that would have introduced a requirement for supervisory oversight by someone unconnected with the case. That is to be welcomed.

That said, with regard to Elaine Murray's comments, for many of the 30 years that Graeme Pearson spent in the police, he did not benefit from a six-hour detention period, let alone 12 hours of detention. We now have a 12-hour period, and I do not accept that that is proportionate for a child or vulnerable adult. Proportionality has been referred to a number of times, but the proposal is disproportionate. The cabinet secretary would be quite right to refer to two bodies that have been put in place to provide guidance to the Scottish Government—namely, the Scottish Human Rights Commission and the Children and Young People's Commissioner. They are unequivocal on the issue. For those reasons, I will support my colleague Alison McInnes.

**Roderick Campbell (North East Fife) (SNP):** I echo Elaine Murray's comments on the evidence that was put before the Justice Committee. We should remember that extensions beyond 12 hours are used in only a very small number of cases—at present, it is less than 0.5 per cent. The provisions are limited to serious offences.

We have moved beyond the position at stage 2 in respect of children. At stage 2, we talked about inspectors giving authorisation, but the Government now proposes that it should be chief inspectors. The chief inspector will have to satisfy themselves that the investigation is being conducted "diligently and expeditiously", so it is not a blackguard's charter.

In relation to children and vulnerable people generally, the bill is full of safeguards. Children have needs that adults do not, but the bill provides rights and support for children, underneath the overarching aim of safeguarding and promoting the wellbeing of the child. I simply do not accept the argument that there are no circumstances or serious cases in which a child should be detained beyond 12 hours. Those cases will, I hope, be few and far between, but the power should remain.

**Margaret Mitchell (Central Scotland) (Con):** I support amendment 36, in the name of the cabinet secretary, which is proportionate and provides the necessary safeguards to protect children under

the age of 18 in the rare circumstances in which they might be detained for in excess of 12 hours.

**Alison McInnes:** I remind members that, just a few years ago, the police managed with six hours of detention and that the fourfold increase is significant. It is pretty rich of the cabinet secretary to quote Lord Carloway, because he maintains that 12 hours is sufficient.

Members should also remember that the bill allows for investigative liberation, which seems to me to be a more appropriate way in which to deal with young people under difficult circumstances. I repeat that the Scottish Human Rights Commission and the Children and Young People's Commissioner endorsed amendments 3 and 4. I am disappointed that the cabinet secretary has once again chosen to dismiss not only my arguments but their reasoned and principled pleas to protect children and vulnerable adults from intrusive and illiberal police custody procedures. He has once again chosen to reject a vital safeguard. I will press amendment 3.

**The Deputy Presiding Officer (Elaine Smith):** The question is, that amendment 3 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### For

Finnie, John (Highlands and Islands) (Ind)  
Harvie, Patrick (Glasgow) (Green)  
Hume, Jim (South Scotland) (LD)  
Johnstone, Alison (Lothian) (Green)  
McInnes, Alison (North East Scotland) (LD)  
Wilson, John (Central Scotland) (Ind)

#### Against

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
Allard, Christian (North East Scotland) (SNP)  
Baillie, Jackie (Dumbarton) (Lab)  
Baker, Claire (Mid Scotland and Fife) (Lab)  
Baker, Richard (North East Scotland) (Lab)  
Baxter, Jayne (Mid Scotland and Fife) (Lab)  
Beamish, Claudia (South Scotland) (Lab)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Biagi, Marco (Edinburgh Central) (SNP)  
Bibby, Neil (West Scotland) (Lab)  
Boyack, Sarah (Lothian) (Lab)  
Brown, Gavin (Lothian) (Con)  
Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
Buchanan, Cameron (Lothian) (Con)  
Burgess, Margaret (Cunninghame South) (SNP)  
Campbell, Aileen (Clydesdale) (SNP)  
Campbell, Roderick (North East Fife) (SNP)  
Carlaw, Jackson (West Scotland) (Con)  
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
Constance, Angela (Almond Valley) (SNP)  
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)  
Davidson, Ruth (Glasgow) (Con)

Dey, Graeme (Angus South) (SNP)  
 Don, Nigel (Angus North and Mearns) (SNP)  
 Doris, Bob (Glasgow) (SNP)  
 Dornan, James (Glasgow Cathcart) (SNP)  
 Dugdale, Kezia (Lothian) (Lab)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Fee, Mary (West Scotland) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Findlay, Neil (Lothian) (Lab)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Goldie, Annabel (West Scotland) (Con)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (East Lothian) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hilton, Cara (Dunfermline) (Lab)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kelly, James (Rutherglen) (Lab)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lochhead, Richard (Moray) (SNP)  
 Lyle, Richard (Central Scotland) (SNP)  
 MacAskill, Kenny (Edinburgh Eastern) (SNP)  
 MacDonald, Angus (Falkirk East) (SNP)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 MacKenzie, Mike (Highlands and Islands) (SNP)  
 Malik, Hanzala (Glasgow) (Lab)  
 Marra, Jenny (North East Scotland) (Lab)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McLeod, Aileen (South Scotland) (SNP)  
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)  
 McMahan, Michael (Uddingston and Bellshill) (Lab)  
 McMahan, Siobhan (Central Scotland) (Lab)  
 McMillan, Stuart (West Scotland) (SNP)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Paterson, Gil (Clydebank and Milngavie) (SNP)  
 Pentland, John (Motherwell and Wishaw) (Lab)  
 Robertson, Dennis (Aberdeenshire West) (SNP)  
 Robison, Shona (Dundee City East) (SNP)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Salmond, Alex (Aberdeenshire East) (SNP)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

Stewart, David (Highlands and Islands) (Lab)  
 Stewart, Kevin (Aberdeen Central) (SNP)  
 Sturgeon, Nicola (Glasgow Southside) (SNP)  
 Torrance, David (Kirkcaldy) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Yousaf, Humza (Glasgow) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 6, Against 103, Abstentions 0.

*Amendment 3 disagreed to.*

*Amendments 36 and 37 moved—[Michael Matheson]—and agreed to.*

*Amendment 4 not moved.*

### Section 9—Custody review

*Amendment 38 moved—[Michael Matheson]—and agreed to.*

### Section 14—Release on conditions

**The Deputy Presiding Officer:** Group 8 is on investigative liberation: release on conditions. Amendment 39, in the name of Elaine Murray, is grouped with amendment 85.

**Elaine Murray:** Amendments 39 and 85 relate to the conditions that are imposed when a suspect is released while further investigation is carried out by the police. As introduced, the bill read as if those conditions related to how the further investigation was to be carried out rather than to the behaviour of the suspect during that period. At stage 2, I proposed amendments that would delete that reference and instead refer to the behaviour of the suspect on release—they could not, for example, obstruct the investigation or interfere with witnesses. The wording of my amendments was resisted by the Government, but the Government's bill team has provided me with a form of words that implements my intention by including among the conditions that may be imposed on release not interfering with witnesses or evidence, for example.

The bill changes the point at which a person is described in Scots law as being arrested. Arrest will occur when the person is held by the police under investigation rather than when they are charged with an offence. That will bring Scots law into line with the law in the rest of the United Kingdom. I and other members of the Justice Committee had expressed concerns that the public and the media would not be aware of the changes, and that there would be a perception that, if someone was arrested, they had been charged. Of course, everyone is presumed innocent under the law until proved otherwise but, unfortunately, that does not stop some of the mud sticking.

At stage 2, I proposed an amendment that would have prohibited the police from releasing the names of persons who had been arrested but not charged, but it turns out that, because persons who are held by the police under investigation are now termed as having been arrested, the release of their names is now covered by the Contempt of Court Act 1981. Therefore, that amendment was unnecessary.

However, I also wanted to ensure that complainers and potential victims can be informed that the person who may have committed an offence against them has been released on investigative liberation. Amendment 85 would enable a police officer to disclose information relating to an alleged offence to persons against whom the alleged offence has been perpetrated or, in the case of a person who has been killed, to their family. Amendment 85 is a probing amendment, as such circumstances might already be covered. However, in light of the fact that an arrested person who has been released on investigative liberation is subject to the Contempt of Court Act 1981, I seek the cabinet secretary's assurance that that would not prevent alleged victims from being informed that the person who may have committed an offence against them has been released on investigative liberation.

I move amendment 39.

**Michael Matheson:** I am happy to support Elaine Murray's amendment 39. It is important that investigative liberation conditions are tailored to meet the needs of the particular investigation. Any condition should be both necessary and proportionate for the purposes of ensuring the proper conduct of that investigation.

Investigative liberation will be used when an offence is still under investigation and a person has not been and may never be officially accused. Therefore, it is particularly important to ensure that any condition that is imposed is necessary for the investigation and does not unduly impact on the individual's private life. Elaine Murray's amendment 39 preserves that important link to the needs of the investigation while also making it clear that investigative liberation conditions can be intended to prevent interference with witnesses or with evidence. I am grateful to her for lodging the amendment and I am happy to support it.

16:15

Amendment 85 seeks to ensure the safety of alleged victims when a suspect is released on investigative liberation. I am sympathetic to the intention behind the amendment. Upholding the rights of alleged victims and ensuring their safety is crucial to ensuring a fair criminal justice system. That includes ensuring that, where they may be at

risk, alleged victims are informed of a suspect's release on investigative liberation and any relevant conditions.

Since stage 2, Scottish Government officials have met Police Scotland, the Crown Office, Scottish Women's Aid and the advice, support, safety and information services together, or ASSIST, project in order to discuss the various aspects of victim notification that are required for undertakings and investigative liberation. The Crown Office and Police Scotland have provided reassurance that operational guidance will be produced regarding victim notification in those areas.

The Scottish Government has also set up an implementation group for part 1 of the bill. The group will include Police Scotland, the Crown Office, the Scottish Legal Aid Board and the Scottish Courts and Tribunals Service, with the first meeting due to take place on 16 December. The group will consider various aspects of the bill's implementation, from staff training to updating guidance documents as a result of the bill. The Scottish Government also intends to invite other interested groups, including Scottish Women's Aid, the ASSIST project, Barnardo's Scotland, Children 1st and other stakeholders, to feed into the group with information and advice to assist the formulation of the guidance.

At stage 2, I was able to provide reassurance that Police Scotland would be updating its standard operating procedures to take account of the new provisions in the bill. The amendment that was agreed to at stage 2 that requires the Lord Advocate to produce a code of practice on investigative functions will also shape guidance in this area.

Consideration of how to adopt a consistent and proportionate approach to notification, bearing in mind existing arrangements that relate to the provision of information to alleged victims, will continue as part of the work to implement the provisions in the bill. I am content that amendment 85 is not required in order to ensure that appropriate information can be provided to those who may be at risk.

I ask Elaine Murray not to move amendment 85, but I am happy to support amendment 39.

**Elaine Murray:** I intend to press amendment 39. However, I am satisfied with the reassurances that we now have on the record with regard to the information that is provided to alleged victims, so I will not move amendment 85.

*Amendment 39 agreed to.*

**After section 17**

*Amendment 85 not moved.*

### Section 20—Release on undertaking

**The Deputy Presiding Officer:** Group 9 concerns the rank and independence of a constable required to take certain decisions. Amendment 40, in the name of the cabinet secretary, is grouped with amendments 41, 42 and 45 to 50.

**Michael Matheson:** Amendments 41, 42 and 45 to 50 will ensure that important decisions to withhold or delay rights must be made by a constable who is of the rank of sergeant or above and who is independent of the investigation.

Chapters 4 and 5 of part 1 confer crucial rights on suspects, including, among others, the right to have a solicitor present during interview, the right to have someone else informed that they are in custody and the right to a private consultation with a solicitor at any time. There are also key provisions about access to persons under 18 who are held in police custody. There will be exceptional circumstances in which those rights cannot be delivered or need to be delayed. The bill already sets very demanding tests before that can happen.

I said at stage 2 that I would also consider raising the rank of constable required to make those decisions. I consider that raising the rank to at least that of sergeant will ensure that those decisions are made by constables with suitable rank, knowledge and expertise in custody-related matters. It will also be consistent with the role of sergeants in making initial decisions to keep people in custody. It would usually be during that initial authorisation process that any requests would be made to delay notifying solicitors or named persons, to interview without a solicitor being present or to restrict access to a person under 18 years of age.

The custody sergeant who makes the initial custody authorisation will be independent not only of the investigation but of the local policing division. I therefore consider that they would generally be best placed to consider those other rights-based decisions. The amendments set the minimum rank for those decisions. It will be open to Police Scotland to make more tailored provision in its standard operating procedures and to require officers of higher rank to make decisions in particular circumstances.

The code of practice on investigative functions to be issued by the Lord Advocate could also be used to provide the police with guidance relating to the interviewing of suspects, including the rare circumstances in which it may be permissible to interview without a solicitor present.

Amendment 40 is a minor drafting amendment to allow undertaking conditions to be set by a constable who is more senior than a sergeant.

Currently, section 20 allows that to be done only by a sergeant and not by a constable of a higher rank.

I move amendment 40.

*Amendment 40 agreed to.*

### Section 24—Right to have solicitor present

*Amendments 41 and 42 moved—[Michael Matheson]—and agreed to.*

### Section 25—Consent to interview without solicitor

**The Deputy Presiding Officer:** Group 10 is on minor consequential and drafting amendments. Amendment 43, in the name of the cabinet secretary, is grouped with amendments 51, 54 to 64, 74 to 76, 78 and 82.

**Michael Matheson:** Amendment 43 and the amendments with which it is grouped are minor and technical in nature. I will run through them briefly.

Amendment 43 changes the word “in” to “by” in section 25 for consistency with section 33.

Amendment 51 aligns the wording used in section 52A to describe the consequences of breaches of the code of practice on investigative functions with the wording in section 11 used in relation to breaches of the code of practice on searches.

In both cases, a court or tribunal in civil or criminal proceedings will be required to take into account any breach of the code when determining any question arising in the proceedings to which the code is relevant. The wording used to explain that in section 11 was carefully considered by John Scott’s independent advisory group on stop and search, and it is appropriate to take the same approach in relation to the code of practice on investigations.

Amendment 54 removes section 64 from the bill. Its job has now been done by the Courts Reform (Scotland) Act 2014.

Amendment 55 substitutes the word “heading” for “cross-heading”.

Amendments 56 and 57 remove references to stipendiary magistrates. That office will be abolished on 1 April next year when the relevant provisions in the Courts Reform (Scotland) Act 2014 come into force.

Amendment 58 adjusts the way in which a solemn court is described, for consistency with the approach elsewhere.

Amendments 59 to 64 make changes in consequence of the Courts Reform (Scotland) Act



2014, in particular by replacing references to the High Court that should now be references to the new Sheriff Appeal Court.

Amendments 74 to 76 cure some grammatical and stylistic errors in section 86, which were inadvertently introduced by amendments at stage 2.

Amendments 78 and 82 fix some cross-references in consequence of the moving of some provisions at stage 2.

I move amendment 43.

*Amendment 43 agreed to.*

### **Section 26—Questioning following arrest**

**The Deputy Presiding Officer:** Group 11 is on questioning following arrest. Amendment 44, in the name of the cabinet secretary, is the only amendment in the group.

**Michael Matheson:** Amendment 44 is a technical amendment to clarify the position of questioning following arrest in section 26.

Section 26(2) provides that, where a person who has not been officially accused is in police custody, a constable may put questions to them in relation to the offence for which they are in custody. There is currently a common-law rule that limits police powers to interview a suspect about the offence for which they have been arrested.

At present, suspects are questioned while detained under section 14 of the Criminal Procedure (Scotland) Act 1995—section 14 detention—and are only arrested at the point of charge. Section 26(2) is intended to make it clear that, once section 14 detention is abolished and replaced with arrest under section 1 of the bill, it will still be possible for the police to interview someone who has not yet been charged. There was never any intention that section 26(2) would limit the power of the police to question a suspect in other circumstances or about other offences while in police custody.

Amendment 44 is intended to make it absolutely clear that section 26(2) removes only the common-law rule about interviewing people who have been arrested and does not otherwise limit the ability of the police to interview people. The police are already under a duty to ensure that all interviews are carried out in accordance with the protections in the bill, meet the common-law test of fairness and are also compliant with human rights obligations. Those rules ensure that interviews will not be unnecessarily long or oppressive in nature.

I move amendment 44.

*Amendment 44 agreed to.*

### **Section 30—Right to have intimation sent to other person**

*Amendments 45 and 46 moved—[Michael Matheson]—and agreed to.*

### **Section 32—Right of under 18s to have access to other person**

*Amendment 47 moved—[Michael Matheson]—and agreed to.*

### **Section 32A—Social work involvement in relation to under 18s**

*Amendment 48 moved—[Michael Matheson]—and agreed to.*

### **Section 36—Right to consultation with solicitor**

*Amendments 49 and 50 moved—[Michael Matheson]—and agreed to.*

### **Section 52A—Code of practice about investigative functions**

*Amendment 51 moved—[Michael Matheson]—and agreed to.*

### **Section 53A—Further provision about application of Part**

**The Deputy Presiding Officer:** Group 12 is on power to modify application of part 1. Amendment 52, in the name of the cabinet secretary, is the only amendment in the group.

**Michael Matheson:** Amendment 52 is a technical amendment to a power added to the bill at stage 2. It will allow the provisions in part 1 to be disapplied or to be modified as they apply to persons who are arrested on a basis other than section 1 of the bill.

Section 1 creates a new single power for the police to arrest a person without a warrant on suspicion that the person has committed an offence. It will replace a mixture of common-law and specific statutory powers to arrest on suspicion of an offence without a warrant. The rest of part 1 of the bill goes on to set out the procedures and consequences when someone is arrested.

The police also have powers to arrest in other circumstances. They can, for instance, arrest people under the authority of a warrant, and they also have some statutory powers to arrest without a warrant that do not relate to suspected offences.

Most of the part 1 provisions apply to all arrests, not just to arrests under section 1. The power in section 53A, which was added to the bill at stage 2, allows ministers to tailor the application of part 1

to cases in which a person has been arrested for a reason that does not relate to an offence.

16:30

The point is that some of what part 1 says may need to be adjusted to make the bill work properly in those contexts. In some cases, it may be more appropriate to disapply it altogether. For example, if a witness is arrested under a warrant so that he or she can be brought to court, it would not make sense to have section 4 of the bill apply so that, instead of being taken straight to court, he or she is taken to the police station.

Section 53A, as added at stage 2, would allow part 1 to be disapplied or modified only in relation to people who are arrested otherwise than in relation to an offence. That may be too narrow. Amendment 52 will widen the power to cover other arrests that may be related to an offence but in relation to which it would not be appropriate to have the full set of part 1 provisions apply without some modification. One example might be where the court issues an arrest warrant solely to allow the police to take samples from an accused.

The amendment creates the flexibility to cater for such arrests and to disapply part 1 arrest provisions or to apply them with modifications.

I move amendment 52.

*Amendment 52 agreed to.*

### **Section 56—Meaning of police custody**

*Amendment 53 moved—[Michael Matheson]—and agreed to.*

#### **After section 56**

**The Deputy Presiding Officer:** Group 13 is on the age of criminal responsibility. Amendment 86, in the name of Alison McInnes, is grouped with amendment 91.

**Alison McInnes:** My amendment 86 would raise the age of criminal responsibility from eight to 12. My amendment 91 specifies that that would occur only at least 18 months after royal assent. That would provide ministers with time to make any additional changes that the current advisory group, which was set up following my amendment at stage 2, recommends through secondary or even primary legislation.

Increasing the age of criminal responsibility to 12 would bring it into line with the age of criminal prosecution and would reflect the wealth of evidence that children should not come into contact with the justice system any earlier. To suggest that children as young as eight can be deemed responsible for their actions is completely

out of touch with our understanding of their capacity and maturity.

Children can still receive convictions that require to be declared for decades or even for the rest of their lives. How is curtailing their life chances in that way getting it right for every child? The law must change and prevent that destructive response. Instead, we must address the source of children's disturbing behaviour, whether that is trauma, neglect, maltreatment or abuse.

Scotland has the lowest age of criminal responsibility in Europe. Tam Baillie, the Children and Young People's Commissioner, was right to say that criminalising children as young as eight has "long tarnished" our international reputation. It has also led to Scotland being reported to the United Nations.

The UN Committee on the Rights of the Child has stated that 12 is the "absolute minimum" that it expects. The Scottish Government told the UN committee that it would "do the right thing" and increase the age in the current session of Parliament. The fact that we are still trailing so far behind international best practice should shame and embarrass each one of us.

The fact that the Scottish National Party Government is picking and choosing which human rights to uphold sends a dreadful message, and the fact that it is not using the powers that it has at Holyrood to prevent violations of international law undermines its bid to block the UK Government's attempt to abolish the Human Rights Act 1998.

The Scottish Parliament is not just free to do things better; it is bound by its founding documents to act in accordance with human rights legislation.

The cabinet secretary will no doubt seek to persuade Parliament to oppose my amendments, citing the group that he has set up. That is too timid, and I urge him to confirm today that it is inconceivable that he or his advisory group would suggest an age lower than 12 for criminal responsibility. If he does not want to support my amendments today, he needs to set out a clear legislative timetable for ending this national disgrace.

I move amendment 86.

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** I sympathise with my Justice Committee colleague's arguments. She rightly refers to the expert group that is considering the matter and is due to report in 2016. To clarify, under the age of eight, there is no legal capacity to commit a crime. Between the ages of eight and 12, a person cannot be prosecuted in the criminal courts.

There is an issue to be addressed here, but the Justice Committee did not take any evidence on it and it is far too substantial to deal with by way of amendment. Following the review, I hope that the Government will take cognisance and perhaps consider coming more into line with what we expect of other European countries.

As the member knows, my casting vote was against the amendment at stage 2 because there was insufficient evidence to support it. If there is sufficient evidence, I will be content to support it another time.

**Elaine Murray:** The thing I cannot understand is why in Scotland we have not already done this. We do not prosecute children who are under the age of 12 so why do we continue to consider children who are between the ages of 8 and 11 to be criminally responsible? As Alison McInnes said, Scots law is lagging behind much other good international practice.

Christine Grahame rightly said that the matter was not in the bill but this has been an issue for years and there is plenty evidence out there. It is time that we acted on that evidence and all that we have heard over the years. I urge members to support Alison McInnes.

**John Finnie:** I rise to support Alison McInnes. We do not need sympathy; we need action. We are told that we do not have evidence but, of course, we do have evidence in the advice of the children's commissioner and the position of the UN.

The bill can be the vehicle for bringing us into line with everyone else and the 18 months that amendment 91 would afford would certainly give an opportunity to address all the other issues that would arise.

**Roderick Campbell:** I have every sympathy with Alison McInnes's intention but I do not think that the bill is the right way to go about it. We heard evidence in the committee from Professor Leverick and Tam Baillie, the children's commissioner, that the bill is not the right place to do it. I am grateful that the cabinet secretary has set up a working group. There are important issues still to be considered, such as the interrelation with children's hearings. It is unfinished business and we need to get on with it.

**Neil Findlay (Lothian) (Lab):** We have just heard classic Christine Grahame there. As she did with the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill and court closures she shows great sympathy but will slavishly follow the whips when they tell her what to do.

**Michael Matheson:** I welcome the opportunity to make a statement about a change to the

minimum age of criminal responsibility. I thank Alison McInnes for lodging amendment 86.

Alison McInnes's amendment was closely debated at stage 2. I make it clear that we are open to future change to the minimum age of criminal responsibility. Scotland has a proud record of promoting children's rights, and it was this Government that raised the minimum age of prosecution to 12 years.

I acknowledge that the headline minimum age of criminal responsibility is damaging our standing as well as impacting on the life chances of young children. Amendment 86, however, does not address the policy or legislative and procedural implications of change, or offer any additional safeguards that might be required to respond to serious sexual or violent behaviour.

The advisory group, which I committed to establishing at stage 2, is up and running. Intensive work, focusing on disclosure, risk management, police powers, children's hearings and victims' issues, is under way. The issues are complex and the group is working at pace. The group meets next week and I expect to get an update before Christmas.

I understand that there is a strong commitment from all partners to addressing the underlying issues and the implications that would arise from a change. The plan is to make recommendations for consultation in early 2016.

This is a priority area and senior representatives from organisations that are responsible for children and how they interact with Scotland's justice system are fully engaged in the process. They include the Children and Young People's Commissioner Scotland, Together—Scotland's alliance for children's rights, Police Scotland and Victim Support Scotland. The terms of reference for the group and details of the membership have been published.

The responsible view to take here is that no change should be made to the minimum age of criminal responsibility without the implications of any proposed approach being properly co-produced, consulted on and scrutinised. The Children and Young People's Commissioner for Scotland, Tam Baillie, has provided to all MSPs a briefing that confirms that, although he supports the sentiment behind Alison McInnes's amendments, they run the risk of pre-empting the findings of the expert group and should not be supported.

Our intention is to publish a consultation in early 2016, once the advisory group's report has been completed. The group is expected to report to ministers shortly after its meeting on 11 February. A change of this nature should be undertaken with full parliamentary involvement and scrutiny

throughout all stages of primary legislation. I would strongly resist the temptation to support any amendment in respect of a change to the minimum age of criminal responsibility without having allowed the advisory group to complete its work.

**Alison McInnes:** Are you really telling the Parliament that it is possible that you, as justice secretary, would come back to the chamber and suggest that the age should be nine, 10 or 11? Really?

**The Deputy Presiding Officer:** Could members speak through the chair, please?

**Michael Matheson:** We have set up an independent advisory group to come back to us with key recommendations on what the age should be so that we can then take the matter forward. The member will recall that we were the Government that raised the prosecution age to 12 years. It is right that, having set up the independent advisory group, we allow it to complete its work and provide a report. A full public consultation can then be undertaken. I urge the Parliament to ensure that we take the matter forward in that way, and to reject the amendments.

**Alison McInnes:** The cabinet secretary said that Scotland has a proud record on human rights—well, it does not on this subject.

It is interesting that an approach that the cabinet secretary endorsed earlier—relating to a suspended introduction to do with stop and search for alcohol—is suddenly not appropriate here.

I am grateful for the support of other members in the chamber this afternoon and, indeed, of Aberlour Child Care Trust. I acknowledge the deliberations of the working group and its examination of the practicalities, but they should not prevent us from making good on the minister's promises to the UN.

**Bruce Crawford (Stirling) (SNP):** I want to get to the bottom of this, so I wonder whether Alison McInnes could outline for me what consultation on the proposal has taken place and how we can make it cohesive with the rest of Government policy. That would help me to make up my mind. [*Laughter.*]

**The Deputy Presiding Officer:** Order, please.

**Alison McInnes:** I have lost count of the number of times that this Parliament has discussed the subject and taken evidence on it. The SNP's timidity on this is astonishing. [*Interruption.*]

**The Deputy Presiding Officer:** Order, please. Order!

**Alison McInnes:** The cabinet secretary's rhetoric seeks to conceal the fact that the SNP has

been in power for eight years now and two major criminal justice bills have come and gone. It could have introduced dedicated primary legislation at any time to end the systematic violations of internationally recognised human rights. It has not been devoid of chances; it has been devoid of political will. If it had not been for my amendment at stage 2, there would not even be an advisory group.

The Government is failing to meet the demands of the UN Human Rights Committee but, more important, it is failing some of Scotland's most vulnerable children. This is the last chance to change that in the current session of Parliament, and that is why I press amendment 86 and challenge the Government to finally put its efforts into ending this national shame.

**The Deputy Presiding Officer:** The question is, that amendment 86 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Fee, Mary (West Scotland) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)  
 Findlay, Neil (Lothian) (Lab)  
 Finnie, John (Highlands and Islands) (Ind)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (East Lothian) (Lab)  
 Harvie, Patrick (Glasgow) (Green)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Hume, Jim (South Scotland) (LD)  
 Johnstone, Alison (Lothian) (Green)  
 Kelly, James (Rutherglen) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Marra, Jenny (North East Scotland) (Lab)  
 McArthur, Liam (Orkney Islands) (LD)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McDougall, Margaret (West Scotland) (Lab)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahan, Michael (Uddingston and Bellshill) (Lab)  
 McMahan, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pentland, John (Motherwell and Wishaw) (Lab)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Scott, Tavish (Shetland Islands) (LD)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Stewart, David (Highlands and Islands) (Lab)  
 Wilson, John (Central Scotland) (Ind)

**Against**

Adam, George (Paisley) (SNP)  
 Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (SNP)  
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
 Biagi, Marco (Edinburgh Central) (SNP)  
 Brodie, Chic (South Scotland) (SNP)  
 Brown, Gavin (Lothian) (Con)  
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
 Buchanan, Cameron (Lothian) (Con)  
 Burgess, Margaret (Cunninghame South) (SNP)  
 Campbell, Aileen (Clydesdale) (SNP)  
 Campbell, Roderick (North East Fife) (SNP)  
 Carlaw, Jackson (West Scotland) (Con)  
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
 Constance, Angela (Almond Valley) (SNP)  
 Crawford, Bruce (Stirling) (SNP)  
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)  
 Davidson, Ruth (Glasgow) (Con)  
 Dey, Graeme (Angus South) (SNP)  
 Don, Nigel (Angus North and Mearns) (SNP)  
 Doris, Bob (Glasgow) (SNP)  
 Dornan, James (Glasgow Cathcart) (SNP)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Goldie, Annabel (West Scotland) (Con)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)  
 Lochhead, Richard (Moray) (SNP)  
 Lyle, Richard (Central Scotland) (SNP)  
 MacAskill, Kenny (Edinburgh Eastern) (SNP)  
 MacDonald, Angus (Falkirk East) (SNP)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 MacKenzie, Mike (Highlands and Islands) (SNP)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McLeod, Aileen (South Scotland) (SNP)  
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)  
 McMillan, Stuart (West Scotland) (SNP)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Paterson, Gil (Clydebank and Milngavie) (SNP)  
 Robertson, Dennis (Aberdeenshire West) (SNP)  
 Robison, Shona (Dundee City East) (SNP)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Salmond, Alex (Aberdeenshire East) (SNP)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

Stewart, Kevin (Aberdeen Central) (SNP)  
 Sturgeon, Nicola (Glasgow Southside) (SNP)  
 Torrance, David (Kirkcaldy) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Yousaf, Humza (Glasgow) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 40, Against 75, Abstentions 0.

*Amendment 86 disagreed to.*

**Section 64—Citation of jurors**

*Amendment 54 moved—[Michael Matheson]—and agreed to.*

16:45

**Section 67—First diets**

*Amendment 55 moved—[Michael Matheson]—and agreed to.*

**Section 73—Sentencing under the 1993 Act**

*Amendments 56 to 58 moved—[Michael Matheson]—and agreed to.*

**Section 76—Extending certain time limits: summary**

*Amendments 59 to 61 moved—[Michael Matheson]—and agreed to.*

**Section 80—Advocation in summary proceedings**

*Amendment 62 moved—[Michael Matheson]—and agreed to.*

**Section 81—Finality of appeal proceedings**

*Amendment 63 moved—[Michael Matheson]—and agreed to.*

**After section 81**

*Amendment 64 moved—[Michael Matheson]—and agreed to.*

**Section 82A—Duty to undertake a child and family impact assessment**

**The Deputy Presiding Officer:** We move to group 14 amendments, on children affected by parental imprisonment Amendment 87, in the name of Mary Fee, is grouped with amendments 88 and 89.

**Mary Fee (West Scotland) (Lab):** I start by thanking the Justice Committee for supporting my original amendment at stage 2 of the bill process. I also thank the Cabinet Secretary for Justice, the Minister for Children and Young People and their

officials for the very constructive dialogue that has enabled us to reach the stage that we are at today.

Evidence shows that children and young people affected by the imprisonment of a parent are particularly at risk of negative outcomes such as stigma, bullying, trauma and mental health problems. That issue has been raised previously in Parliament and addressing it has received cross-party support. There are an estimated 27,000 children in Scotland with a parent in prison, but an estimate is the best that we can do at the moment, as we have no way of systematically collecting or recording information about those children. Until we can accurately identify them and the impact on them of a parent being imprisoned, their needs will not be properly taken into account by local authorities and other public bodies, and they will continue to slip through the net.

Amendment 88, in my name, would place a duty on Scottish ministers to ensure that all individuals sent to custody are asked to provide information about dependent children. If children were identified during that process, information would be passed to the child's named person. There would be a presumption that having a parent in prison was a potential wellbeing concern, and the named person would ensure that such children had a wellbeing assessment. That would lead to any necessary support being provided, as appropriate, under the provisions in the Children and Young People (Scotland) Act 2014.

Amendment 88 sets out proposed links between the child wellbeing provisions in the Children and Young People (Scotland) Act 2014 and the needs of children affected by parental imprisonment. The intention of amendment 88 is to ensure that Scottish ministers start to identify and collect data on the number of children affected by parental imprisonment. Again, that is one of the key issues that we need to address in order to provide appropriate support to such children.

Amendment 89 sets out the definitions that underpin amendment 88, including clarifying that "penal institution" means any prison—other than a military prison or police cell—any remand centre or any young offenders institution.

Amendment 87 would remove my previous amendment, which would be redundant.

Too often, the voices of children are lost in a justice system geared towards adult offenders; and too often, those children will end up in the justice system. Amendment 88 would make huge progress towards ensuring that those children are identified, their voices are heard and their needs are met. Scotland has the chance to be world leading in recognising and acknowledging the

children affected by parental imprisonment—the silent victims of crime.

Through the cross-party group on families affected by imprisonment, of which I am the convener, we have sought to raise awareness of those children's needs. We have had useful meetings with ministers, professionals and Scottish Prison Service representatives; we have also heard from affected families. That has all helped to build a cross-party consensus that we must do more to support these children; they cannot remain, as Barnardo's Scotland puts it, the hidden victims of crime. My amendments are an important step on that journey. I would urge all members to support them.

I move amendment 87.

**Christine Grahame:** I rise in support of amendment 87. I congratulate Mary Fee on not just her thorough submission to the Justice Committee, which I am sure persuaded the cabinet secretary to change his mind about certain things, but her support for families affected by imprisonment. The member has made a huge inroad into that area. I also congratulate her on making strong the link between the Children and Young People (Scotland) Act 2014 and this bill. I know that, at one time, the Government was relying on that act. The member's amendments would ensure that the link is embedded in the legislation. I have huge regard for her for doing that and I support her amendments.

**Alison McInnes:** I, too, commend Mary Fee for her work in this area. The Scottish Liberal Democrats welcome her amendments, which would encourage the identification of the 27,000 children who experience parental imprisonment in Scotland and, where necessary, the provision of co-ordinated support. Nonetheless, I would be grateful if the cabinet secretary could tell me whether the process would include an assessment of the impact of imprisonment on any dependent children, because it would be important that this does not simply become a box-ticking exercise. Would there be robust guidance? For example, would there be a code of practice for all the professionals involved? Would the framework also include training for staff in prisons?

**Michael Matheson:** I thank Mary Fee for bringing to light this very important subject at stage 2. I thank her again for her patience as we have worked to find a solution to ensure that children who may be affected by the imprisonment of their parent are appropriately supported.

The amendments in group 14 seek to remove the original amendment lodged at committee and to replace it with a version that we know would deliver improved outcomes for any child whose parent is sent to prison.

Amendments 88 and 89 complement the existing provisions on named persons in part 4 of the Children and Young People (Scotland) Act 2014. The amendments seek to ensure that, when a person is imprisoned, information that they disclose about any child they parent can be shared with the child's named person service provider.

The amendments will ensure that information provided will include the fact that the child's parent is in prison, and any other information that may be relevant to the named person's functions. That in turn will ensure that any wellbeing needs of a child with a parent in prison are properly assessed and that the child's named person has the opportunity to consider whether any advice, information, support or services are necessary to help to promote, support and safeguard their wellbeing. That is consistent with the named person's role under the 2014 act.

The amendments set out clearly how and when information should be passed and where the responsibility for that lies. I hope that members agree that, by working together, we have found an appropriate way forward that is in the best interests of children, and I hope that they will support the amendments.

**The Deputy Presiding Officer:** I invite Mary Fee to wind up and indicate whether she intends to press or withdraw her amendment.

**Mary Fee:** I will be brief. I thank again the members of the Justice Committee who supported me at stage 2 and allowed me to progress my amendments to this stage: Alison McInnes, John Finnie, Margaret Mitchell and Margaret McDougall. In addition, it would be remiss of me not to acknowledge the tremendous work that Nicki Wray from Barnardo's has done to progress us to this point. Without her tenacity we would not be here today.

I am grateful for the supportive comments of members across the chamber today. I am happy to continue the very constructive dialogue with the cabinet secretary and his ministerial team as we progress the provision in the amendments and work on the guidance and how we roll it out.

*Amendment 87 agreed to.*

#### **After section 82B**

**The Deputy Presiding Officer:** Group 15 is on support for vulnerable persons: appropriate adult services. Amendment 65, in the name of the cabinet secretary, is grouped with amendments 66 to 73.

**Michael Matheson:** Section 33 places a duty on the police to request support for vulnerable suspects in police custody in order to enable such

individuals to understand what is happening and to communicate effectively. In practice, that support is delivered by people who are known as appropriate adults, who are specifically recruited for their communication skills, expertise and experience of working in the field of mental health. They are often social workers or health professionals.

The bill does not identify where responsibility for providing appropriate adults lies. When the bill was introduced, it was considered that the appropriate adult system was working well and that a light-touch approach should be adopted. However, the Justice Committee and various stakeholders have raised concerns about that, and about the accessibility and consistency of service provision, the exact remit of appropriate adults, and the funding for the service.

As I said at stage 2, I am sympathetic to the various issues that have been raised, which warrant serious and careful consideration. It is vital that we protect the interests of vulnerable persons, and it is clear to me that we need a new model to afford that protection to those who require it, and that the model must be sustainable over the long term.

At stage 2, I undertook to set out our proposed approach to addressing those issues at stage 3. Over the past two months, significant work has been undertaken, and in that time I have met Alison McInnes, who has a particular interest in the area, to discuss the progress that we have made to date.

A high-level options paper was issued on 24 September to those with a key interest at a national and local level, including Police Scotland, local authorities, the Mental Welfare Commission for Scotland and Social Work Scotland, to inform the development of options for appropriate adult service provision. The paper sought views on viable options for a new model in relation to service delivery, training, support and guidance, inspection and oversight.

Constructive meetings have taken place with Police Scotland, the Mental Welfare Commission, the Care Inspectorate and the Convention of Scottish Local Authorities, and consensus is developing around the key delivery and oversight functions for any new model. However, it is clear that further work and engagement is required to ensure that any model that is put in place is truly effective and sustainable.

Our position on the provision of appropriate adult services in Scotland is very clear. We want to resolve the issues that have been raised and put in place a sustainable model, and we understand that that work must take place promptly. However, getting the model right is

absolutely vital, and it simply has not been possible to resolve all of the issues by stage 3. In particular, further discussions are required to fully address how the developing model will work in practice, what body or bodies are best placed to deliver the service, and how much it will cost.

It is crucial that we work collaboratively with those who deliver and utilise appropriate adult services, such as COSLA and Police Scotland, and I am determined to seek consensus if significant changes are to be made. To that end, the amendments in this group are designed to provide the flexibility that is required to put in place a new model once that vital work is complete.

Amendments 65 to 73 insert a package of regulation-making powers that will enable the Scottish ministers to place a duty on a person or persons to ensure adequate provision of appropriate adults; to provide robust oversight of any service, including assessing quality and making recommendations; and to provide effective training for those who actually deliver the service. The amendments also allow the scope of appropriate adult services to be revisited in the future, should that be necessary.

17:00

The regulation-making powers are broad, but I consider that that is necessary in order to provide the flexibility for us to act once a new model for appropriate adult services has been developed and agreed. Reflecting the significance of the proposed powers, a public consultation will be required before any regulations are made, and they will be subject to the affirmative procedure so that Parliament is given a proper opportunity to consider the proposed model.

The issues that have been raised in this area have not been straightforward, and I am grateful for the constructive input from Police Scotland, the Scottish appropriate adult network, the Convention of Scottish Local Authorities, local authorities, the Law Society of Scotland, the Justice Committee and many others throughout the bill process. I have listened carefully to the concerns that have been raised, and I believe that the amendments that are being proposed today will allow us to take the necessary steps to put in place a sustainable model for the long-term delivery of appropriate adult services in Scotland.

I move amendment 65.

**Alison McInnes:** I raised the matter in a probing amendment at stage 2, and I am grateful that the cabinet secretary has engaged with me on the issue and has sought to address the concerns that I raised.

Lord Bonomy's post-corroboration safeguards review recommended that the bill be amended to identify a body or organisation with the responsibility for ensuring the adequate provision of persons with appropriate skills or qualifications to provide support for vulnerable people in custody. It is important that we identify who is responsible for providing those crucial services, and I am grateful that the cabinet secretary agrees. The amendments will pave the way for regulations.

**Dennis Robertson (Aberdeenshire West) (SNP):** Can the cabinet secretary confirm whether the groups that will be trained will include appropriate interpreters for people who are deaf or hard of hearing?

**Michael Matheson:** I am grateful for Alison McInnes's comments.

On Dennis Robertson's specific point, it is important that we ensure that the needs of all individuals are appropriately met. That will include supporting those who require help with communication issues with, for example, the provision of sign language.

*Amendment 65 agreed to.*

*Amendments 66 to 73 moved—[Michael Matheson]—and agreed to.*

*Amendments 88 and 89 moved—[Mary Fee]—and agreed to.*

#### **Section 86—Live television links**

*Amendments 74 to 76 moved—[Michael Matheson]—and agreed to.*

#### **After section 86A**

**The Deputy Presiding Officer:** That brings us to group 16, which is on the recovery of documents in sexual offences cases: legal representation. Amendment 90, in the name of Margaret Mitchell, is the only amendment in the group.

**Margaret Mitchell:** I thank Alison McInnes for her support for amendment 90, which seeks to ensure that legal aid is made available to victims of serious sexual assault or rape when the defence seeks to recover their confidential psychiatric, psychological and/or medical records.

The background to the amendment is as follows. In Scotland, when access to documents such as those records is sought in cases of sexual offences and other crimes, a petition for recovery of the documents is lodged. The holder of the documents, which could be the national health service or a general practitioner, is notified. The complainant or third party to whom the documents relate is also notified.



It is important to stress that such records are confidential between the medical profession and the patient and that it is well established that all patients have a right to privacy in relation to their records under article 8 of the European convention on human rights. There is a hearing to determine the application and, if the complainer or the haver of the documents wishes to oppose the application for recovery of the confidential records, the next stage is to instruct legal representation to represent their interests before the court at the hearing. That recognises that complainers have a right to be heard.

Although it is competent to take that approach in Scotland, it is not the usual practice for the victim in a criminal case to be legally represented at such application hearings. Rape Crisis Scotland, Scottish Women's Aid and other support groups for victims of sexual crime and domestic abuse state that the reason for that is the lack of legal aid. I ask members to compare that with the situation in England and Wales, where legal aid is available to complainers on the basis that, were it not, the complainant's right to privacy under article 8 could be infringed.

In England and Wales, the right to be heard has developed through case law and can be found in the Crown Prosecution Service's guidelines. In Scotland, the argument has been advanced that the Crown Office will take into account the complainer's situation and look out for his or her interests. However, as Roddy Campbell stated in committee at stage 2, the Crown represents the public interest, not the complainer's personal interest. That is an important point and is why it is essential that legal aid be made available in such cases to allow the complainer to be represented. It is surely totally unacceptable that rape victims in Scotland whose case proceeds to prosecution will not have their right to be heard through legal representation protected unless they have the means to provide for that, whereas their counterparts in England and Wales have such a right.

The amendment would not require a change in the law; it would enact what already happens in practice. Crucially, it would allow access to justice and ensure that complainers in rape and violent sexual assault cases could enforce the right that they already have under article 8 of the ECHR. If the cabinet secretary and the Parliament genuinely want to improve conviction rates in such vexing serious sexual assault and rape cases, they will support the amendment.

I move amendment 90.

**Roderick Campbell:** I declare an interest as a member of the Faculty of Advocates.

Margaret Mitchell referred to my comments at stage 2. Her comments about the distinction between the public interest and the complainer's personal interest are right. However, this is a matter of principle and something that we need to get right.

At stage 2, we rejected an amendment that dealt with sexual history—for want of a better term—in relation to section 275 of the 1995 act, and amendment 90 is a kind of reformulation of that. Amendment 90 is important. I understand that the cabinet secretary has moved on since the Bonomy report, in so far as one of the matters that are being investigated is the history of such applications in practice. That research could certainly influence our view. It is also important to remember that Lord Bonomy made no recommendation on independent legal representation, so the matter is still in the air.

There is one point that the amendment does not really deal with. Margaret Mitchell referred to rape cases. The proposed amendment is to section 301A of the 1995 act, which simply refers to cases in the sheriff court, be they solemn or summary. That would not include rape cases, which can be heard only in the High Court. Therefore, the Government should not be happy to support the amendment.

Finally, there is the important issue of where the money would come from for all this, particularly at a time of considerable challenge to the legal aid budget and other demands on public resources.

**Elaine Murray:** In the past, I have resisted similar amendments—to the Victims and Witnesses (Scotland) Bill and to the Criminal Justice (Scotland) Bill at stage 2. To be honest, when I read the previous amendments, I was never quite certain how things would work in practice and whether we were talking about legal representation in court. The situation would become quite difficult if there was a legal representative of the victim in court, plus the Crown representing the public interest and somebody representing the defence.

Amendment 90 is a lot clearer than the previous amendments were about how it would operate. It is more explicit and a lot tighter in the matters that it deals with. The Government has written to committee members about research on sections 274 and 275 of the 1995 act, but the amendment is specifically about access to medical records that ought to be confidential to a victim who has been a patient. I know that the amendment has a lot of support from victims groups and Justice Scotland, which probably has a fair handle on the legal issues that are involved.

I am therefore inclined to support the amendment. We need to make progress on how

we support victims of such offences and on addressing how their privacy is infringed or can be infringed at times. Enabling them to have legal advice on what may and may not be released could well be beneficial. After considerable discussion with many people over the past few days, we are inclined to support the amendment.

**Alison McInnes:** I support Margaret Mitchell's amendment 90 and commend her for the sterling work that she has done to promote the needs of victims in such cases. I welcome the fact that, since stage 2, the Government has taken a tiny step forward on applications under sections 274 and 275. I appreciate that move, but it is not to be confused with what amendment 90 seeks to do. The amendment focuses on a clear anomaly, which has been addressed in England and Wales.

Like Margaret Mitchell, I am keen to right the situation that prevails, whereby a complainer in a rape or serious sexual assault case often has no voice in opposing an application for the release of their medical records. I stress that that is a pre-trial process, as Elaine Murray has acknowledged. The release of those records is of huge concern to women, as it is often used against them in an attempt to discredit their testimony, and I have no doubt that it is an inhibiting factor in people's reluctance to come forward in the first place.

Our medical records are the most sensitive of private data, so a victim has a clear and unequivocal right to be heard. That right is bestowed by article 8 of the ECHR, and there is a right to be heard before the determination is made on whether to release the records.

As Margaret Mitchell said, the approach is competent in Scotland, but it does not happen in practice. That is only because legal aid is not available.

In this instance, the Crown does not and could not represent the victim's interests. The Crown Office and Procurator Fiscal Service balances responsibility for a number of interests at that point, including the public interest, the complainer's interest and the accused's interest in a fair trial. The complainer cannot instruct the Crown to make their case and prosecute it properly for them.

I am disappointed to have heard Roddy Campbell ask where the money will come from. This is a human rights issue. Yet again, the Government talks a good game on human rights but fails to take action.

There is an opportunity to give justice to those who currently cannot afford it. The proposal is a small step and is perfectly competent. The locus is there, and I urge the cabinet secretary to support Margaret Mitchell.

17:15

**Michael Matheson:** Like all other members, I very much agree with supporting complainers in sexual offences cases. I am grateful to Margaret Mitchell for giving us the opportunity to consider the best way of doing so.

At stage 2, Margaret Mitchell sought to introduce a requirement for complainers to have access to legal advice and representation in sexual offences cases. I could not agree to such a major innovation in our criminal law, which at the time appeared untested. My concern was shared by the majority of members of the Justice Committee and Margaret Mitchell's amendment was not agreed to.

Amendment 90 would provide for legal representation at an earlier stage, when medical and similar documentation was being sought, but it would have the same effect of introducing a third party into the court's proceedings. That is still a major change. The High Court recently described

"the absence of any right of a victim, or relative of a deceased victim, to participate directly in the criminal process"

as a

"central tenet of criminal proceedings".

I would be very concerned about sweeping away a central tenet of criminal proceedings at stage 3 of a bill, given that no evidence on such a significant change was taken at stage 1—or through any public consultation.

During his review, Lord Bonomy considered independent legal representation for complainers. Having done so, he did not recommend the introduction of such an approach in his final report, which had the support of his entire reference group, including Rape Crisis Scotland.

I recognise the need for more information. I recently advised the Justice Committee that we will take forward a research project on the use of the provisions that permit character and history evidence to be led, in restricted circumstances, in sexual offences trials.

I make it entirely clear that amendment 90 would add significantly to the costs of the legal aid fund. I am not convinced that paying to have more lawyers involved is the right answer; instead, the Government is strongly committed to providing the support that is needed directly and sensitively to victims.

In March, the First Minister announced an unprecedented additional £20 million to deliver a comprehensive package of measures to tackle and eradicate violence against women and girls. That will enhance support for victims of domestic abuse and sexual violence.

The funding is being targeted to areas that need it most. We have allocated £2.4 million each year over three years to reducing waiting times for domestic abuse and sexual offences cases. That will reduce the stress and inconvenience that witnesses experience as they wait for their cases to be called.

**Alison McInnes:** That is all very welcome, but is the cabinet secretary saying that women's article 8 rights are not important?

**Michael Matheson:** No—I am not saying that. I am emphasising that we are undertaking a range of work to support victims of the crimes that we are talking about.

In September, I announced £1.85 million of additional resource to support victims of sex crimes across Scotland. That money means that Rape Crisis Scotland, in partnership with Scottish Women's Aid and the Highland centre, can develop services to enable victims in Orkney and Shetland to access the specialist support that they need, which is not currently available. It will also almost double the current funding for each rape crisis centre in Scotland until 2018 and provide a dedicated advocacy worker in West Lothian.

The funding will ensure consistent provision of specialist services across the country. It will ensure that support is provided to the brave individuals who report crimes to the police, as well as those who might be considering reporting or who have been through the court process. We have allocated funding to the Edinburgh domestic abuse court service, to ASSIST—the advice, support, safety and information services together project—to Medics against Violence and to the mentors in violence prevention programme, and we have contributed to the advertising campaign for Police Scotland's disclosure scheme for domestic abuse.

Work has started on focused action plans to address the structural inequalities in our society that are both a cause and a consequence of violence against women. The Government is absolutely committed to that agenda. I hope that that reassures members that we will continue to support complainers and victims in the sensitive cases that we are talking about.

However, it is important that we accept that relevant evidence should be put before a court. Our current laws set out a clear process for that. The compatibility of those arrangements with the European convention on human rights was recently considered by the courts. As recently as 24 November, a High Court judgment confirmed:

“we do not agree that the absence of any formal mechanism to place the views of a complainer before the court creates any incompatibility with her convention rights.”

The potential denial of evidence to an accused has not been examined in that way. We would have to consider the rights of accused persons carefully before reducing access to evidence that might properly exculpate them. The courts undertake that consideration and they are best placed to do so. We must not lose sight of the fact that the courts already have an obligation to prevent malicious and irrelevant use of character or history evidence.

Before making significant changes, we want evidence of what actually happens in court. I recently wrote to the Justice Committee to confirm that an exercise to monitor applications to lead character or history evidence will begin in the new year. Following that exercise, the Government that is elected in May can consider what additional research might be needed. That could include examining whether and why documents that were recovered under section 301A of the 1995 act were used in those applications. I consider that approach to be a better way forward than rushing today into a substantial reform that might have many unintended potential consequences.

I give the warning that amendment 90 would not achieve its basic aims. Among the problems that need to be addressed is the fundamental one that it would not apply to rape cases. Section 301A refers to proceedings in the sheriff and justice of the peace courts, but rape cases must be indicted in the High Court, so the amendment would not affect those cases at all.

I understand and sympathise with Margaret Mitchell's intentions. However, her amendment would represent a major departure that has not been fully considered and which could have unhelpful consequences, so I ask her not to press her amendment.

**Margaret Mitchell:** Well, there we have it—now it is laid completely bare, Presiding Officer. By providing legal aid for such victims to be heard, we have an opportunity today to address gender issues, which the First Minister has made an absolute priority. The First Minister, the cabinet secretary and the whole Parliament must know that such medical records are damaging in these cases, but they are depriving the affected individuals of the right to be legally represented in order to have their view heard—that is not happening at present.

The cabinet secretary talked about the rights of the accused, which are for the court to decide. However, if amendment 90 was agreed to, at least victims of serious sexual assault would have the right to be heard—a fundamental right under article 8 of the European convention on human rights and one that is available in England and Wales.

Opposing the amendment makes a complete sham of all the rhetoric that we have heard in the Parliament about the Scottish Government, the First Minister and the justice secretary wanting to protect the rights of those victims of serious sexual crimes. It is laid bare today that the reason for the Government's opposition to the amendment is nothing to do with third-party rights or any fundamental change that would be insurmountable; its opposition is about money. The Government is not prepared to put in money to support such victims.

I press amendment 90.

**The Deputy Presiding Officer:** The question is—*[Interruption.]* Order, please.

The question is, that amendment 90 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### For

Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Brown, Gavin (Lothian) (Con)  
 Buchanan, Cameron (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Davidson, Ruth (Glasgow) (Con)  
 Dugdale, Kezia (Lothian) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Findlay, Neil (Lothian) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (East Lothian) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Hume, Jim (South Scotland) (LD)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kelly, James (Rutherglen) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Marra, Jenny (North East Scotland) (Lab)  
 McArthur, Liam (Orkney Islands) (LD)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahon, Michael (Uddingston and Bellshill) (Lab)  
 McMahon, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pentland, John (Motherwell and Wishaw) (Lab)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Scanlon, Mary (Highlands and Islands) (Con)

Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland Islands) (LD)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stewart, David (Highlands and Islands) (Lab)

#### Against

Adam, George (Paisley) (SNP)  
 Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (SNP)  
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
 Biagi, Marco (Edinburgh Central) (SNP)  
 Brodie, Chic (South Scotland) (SNP)  
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
 Burgess, Margaret (Cunninghame South) (SNP)  
 Campbell, Aileen (Clydesdale) (SNP)  
 Campbell, Roderick (North East Fife) (SNP)  
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
 Constance, Angela (Almond Valley) (SNP)  
 Crawford, Bruce (Stirling) (SNP)  
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)  
 Dey, Graeme (Angus South) (SNP)  
 Don, Nigel (Angus North and Mearns) (SNP)  
 Doris, Bob (Glasgow) (SNP)  
 Dornan, James (Glasgow Cathcart) (SNP)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (SNP)  
 Lyle, Richard (Central Scotland) (SNP)  
 MacAskill, Kenny (Edinburgh Eastern) (SNP)  
 MacDonald, Angus (Falkirk East) (SNP)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 MacKenzie, Mike (Highlands and Islands) (SNP)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McLeod, Aileen (South Scotland) (SNP)  
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)  
 McMillan, Stuart (West Scotland) (SNP)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Paterson, Gil (Clydebank and Milngavie) (SNP)  
 Robertson, Dennis (Aberdeenshire West) (SNP)  
 Robison, Shona (Dundee City East) (SNP)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Salmond, Alex (Aberdeenshire East) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Stewart, Kevin (Aberdeen Central) (SNP)  
 Sturgeon, Nicola (Glasgow Southside) (SNP)  
 Torrance, David (Kirkcaldy) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)

White, Sandra (Glasgow Kelvin) (SNP)  
Yousaf, Humza (Glasgow) (SNP)

#### Abstentions

Finnie, John (Highlands and Islands) (Ind)  
Harvie, Patrick (Glasgow) (Green)  
Johnstone, Alison (Lothian) (Green)  
Wilson, John (Central Scotland) (Ind)

**The Deputy Presiding Officer:** The result of the division is: For 50, Against 61, Abstentions 4.

*Amendment 90 disagreed to.*

#### Section 90—Commencement

*Amendment 77 moved—[Michael Matheson]—and agreed to.*

*Amendment 91 not moved.*

#### Schedule A1—Breach of liberation condition

*Amendment 78 moved—[Michael Matheson]—and agreed to.*

#### Schedule 1—Modifications in connection with Part 1

*Amendments 79 to 82 moved—[Michael Matheson]—and agreed to.*

**The Deputy Presiding Officer:** That ends consideration of amendments.

## Criminal Justice (Scotland) Bill

#### The Deputy Presiding Officer (Elaine Smith):

The next item of business is a debate on motion S4M-15087, in the name of Michael Matheson, on the Criminal Justice (Scotland) Bill.

**Elaine Murray (Dumfriesshire) (Lab):** On a point of order, Presiding Officer. Given that the consideration of amendments has finished a lot sooner than expected, I wonder whether there is a possibility of bringing forward decision time to liberate members so that they can carry out their other duties thereafter.

**The Deputy Presiding Officer:** Thank you. That matter is being considered and members will be advised in due course.

Members who wish to speak in the debate should press their request-to-speak buttons now.

17:27

**The Cabinet Secretary for Justice (Michael Matheson):** I am delighted to open the stage 3 debate on the Criminal Justice (Scotland) Bill. As members are aware, the bill has had a unique passage through Parliament since it was introduced in June 2013. It was quite rightly subject to thorough scrutiny by the Justice Committee at stage 1. The committee undertook detailed and challenging evidence sessions and it is clear that its hard work has greatly helped to shape the content of the bill that is before us today. I extend my thanks to the clerks and all members of the committee, past and present, for their thoughtful examination of these important reforms. In addition, I thank the clerks and members of the Finance Committee and the Delegated Powers and Law Reform Committee for their knowledge and expertise in examining the relevant effects and provisions of the bill for those interests. I also pass on my thanks to my predecessor, Kenny MacAskill, whose passion and belief in bringing forward these significant reforms is to be commended.

The current content of the bill also owes a great deal to the work of four independent review groups. First, I thank Lord Carloway for his review of criminal law and practice. Many of the provisions in the bill have been developed from his recommendations. In particular, there are the reforms to modernise arrest and custody procedures.

It would be remiss of me not to mention the one important recommendation that we are no longer taking forward in the bill: the corroboration reforms. As I previously advised the Parliament, given the substantial and important nature of Lord Bonomy's recommendations, the Scottish

Government accepted that it was not appropriate for the reform to continue at this time. That was one of the key areas in which the Justice Committee significantly influenced the proposed legislation.

Although I realise that the Government has been criticised over how it handled the reform, I believe that our actions show that we listened to the committee and the evidence of the stakeholders at stage 1. That led to the decision to take forward Lord Bonomy's post-corroboration additional safeguards review and, ultimately, to the postponing of the bill until that review reported.

**Christian Allard (North East Scotland) (SNP):**

As a member of the Justice Committee, I think that the abolition of the absolute requirement for corroboration had a place in the bill and I am sorry that it has not been taken forward. However, I look forward to the proposal returning in the next parliamentary session.

**Michael Matheson:** I recognise Christian Allard's particular interest in the matter. It is not the first time that he has expressed concern about the removal of the corroboration provisions from the bill. However, I will set out the Government's intention, which I hope will give him some confidence in our continued commitment in that area.

I again thank Lord Bonomy. We are continuing to consider his recommendations alongside other relevant reforms. The bill already includes a number of his recommendations: it places the prosecutorial test on a statutory footing and it requires codes of conduct to be issued to the police on the interviewing and identification of suspects. My initial view was that the latter provisions would be better considered as part of the wider consideration of Lord Bonomy's review, but I have been persuaded in the interim that the addition of that requirement to the bill is helpful, and I thank Alison McInnes for lodging her amendment on that at stage 2.

Before I move on, I wish to make some further comments on the reform of corroboration. Although it was not possible to build a general consensus for the abolition of the corroboration rule at this time, I still consider that concerns about that rule—and, in particular, the very detrimental effect that it can have on people when the crime is committed in private—remain. On this day, we should not forget about the victims who have been affected by that legal requirement.

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** I am sure that the cabinet secretary would accept that most crimes are committed in private and that it would be impossible to select certain categories of crime in which one could abolish corroboration.

**Michael Matheson:** I am not disputing that point; I recognise the point that the member makes.

I understand that many members who opposed the reform of corroboration did not do so out of a lack of concern for such individuals. Indeed, as a Parliament we have shown that we are often united in standing up for the most vulnerable in society and leading the way on key issues. I hope that the work that we undertake in considering the Bonomy recommendations and other reforms will enable a future Parliament to consider and, I hope, find consensus for such an important change in our law.

The third review that led to a number of provisions in the bill was Sheriff Principal Bowen's review of sheriff and jury procedure. The provisions in the bill that have been developed from his review will make improvements to the effective management of such cases, so I extend my thanks to Sheriff Principal Bowen for his work in that important area.

Finally, there was the most recent review of the use of stop and search. John Scott QC and his advisory group worked tirelessly to produce a thorough and balanced report. I again pass on my gratitude to John Scott and all the members of his group for their hard work, as it has enabled us to include detailed provisions in the bill.

I realise that I have been talking about the past and the extensive work that has brought us to this point, but it is equally important that we look to the future and the real and positive changes that the bill can bring about. The stop and search reforms complement the provisions that were already in part 1 of the bill. Part 1 clarifies powers of arrest by creating a new single power to arrest someone on suspicion of having committed an offence. It replaces a complicated mixture of common-law and statutory powers of arrest. The reforms bring greater clarity to the process of arresting and holding suspects in custody while ensuring that the police have the necessary powers to carry out their role in investigating and detecting crime.

I am always proud to pay tribute to the hard work of our police officers who are committed to protecting our communities and our country on a daily basis. The new legal framework will support them in continuing to do their job as effectively as possible. The bill also enhances the rights of suspects to legal advice. It is only fair that those individuals who are brought into police custody are fully informed about their legal rights, and all suspects will now have a right of access to a lawyer, regardless of whether they are to be interviewed. We will also shortly bring forward regulations to seek to remove legal aid contributions for police station advice.

However, it is clear that some people in police custody require even more protection to ensure that they are fairly and appropriately treated according to their needs. That is why the bill, building on the Carloway recommendations, includes specific provisions for vulnerable adult and child suspects. The bill includes, for example, the vital safeguard that where a person who is aged 16 or over is assessed as vulnerable owing to a mental disorder, they cannot be interviewed without a solicitor being present. The bill will also ensure that appropriate adult support is sought by the police to facilitate effective communication with such individuals. The bill strikes an appropriate balance in introducing additional protections for children while recognising the greater level of self-determination of 16 and 17-year-olds.

I want to recognise Mary Fee's work on highlighting the important issue of children who are affected by parental imprisonment. Although the Government was unable to support her previous amendment at stage 2, we understood the positive intentions behind the proposed change. Our concerns were more specifically about how workable the exact amendment might be in practice. Since stage 2, we have given the matter serious consideration and I am delighted that we were able to support the revised provisions that Mary Fee brought forward today. I consider the change to be a constructive and positive step.

Part 2 and onwards contain a number of equally important and modernising reforms that should greatly benefit our justice system. I mentioned earlier that reforms in the bill take forward recommendations from Lord Carloway and Sheriff Principal Bowen to enhance efficiency for appeal procedures and sheriff court solemn cases. I consider that those reforms will have a positive effect on our court practices and procedures.

There are many other important reforms in the bill. Members will be aware of specific and devastating cases in which Scots have lost their lives because of knife crimes. Much progress has been made in recent years, with offences of handling offensive weapons down 67 per cent since 2006-07. However, we must continue to do all that we can to discourage individuals from carrying offensive weapons. That includes ensuring that our courts have sufficient powers to deal with individuals who continue to carry such weapons in public, despite being aware of the terrible consequences. I am pleased that Parliament supports our policy, expressed in the bill, to increase the maximum custodial term for carrying such offensive weapons, including knives, from four to five years.

If we are to continue to have a justice system to be proud of, we must ensure that our justice sector

partners are not prevented from using the most appropriate technology. The provisions in the bill will assist in that aim, first by opening the door to the greater use of television links in our courts, including for people appearing from police custody, and secondly by giving our courts the power to make rules on the greater use of technology in criminal procedure.

The bill represents a significant step forward in ensuring that our criminal justice system continues to be modern and efficient and strikes the right balance.

I move,

That the Parliament agrees that the Criminal Justice (Scotland) Bill be passed.

17:38

**Elaine Murray (Dumfriesshire) (Lab):** As we have heard, the bill was introduced almost two and a half years ago, in June 2013. It has gone through a number of transformations in that period. It was brought to Parliament to implement many of the recommendations of Lord Carloway's review of Scottish criminal law and practice, which was set up in 2010, following the Cadder case. As members know, after the Cadder case, emergency legislation had to be introduced in the form of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010.

Lord Carloway's review group made 76 recommendations, including recommendations on a new system of arrest and detention, avoiding unnecessarily long periods of detention and liberation subject to conditions while the police carry out further investigation. Recommendations were also made regarding suspects' right to legal advice, the nature of police questioning and safeguards for children under 18 and vulnerable adults. Most controversially, the bill as drafted would have ended the requirement for corroboration in Scots law. That was accompanied by proposed changes in jury composition and jury majority. I think that some of that will be revisited with Michael McMahon's bill—the Criminal Verdicts (Scotland) Bill—when it comes before the Justice Committee shortly.

The proposal to end the corroboration requirement caused many of us much deliberation in weighing up the potential benefits to victims of one-on-one crimes such as rape and domestic abuse, as more cases would be likely to be prosecuted, with other concerns, such as whether successful prosecution was any more likely, and the possibility of miscarriages of justice for individuals accused of other crimes on only one piece of evidence.

The bill was suspended after stage 1, which it narrowly passed, for Lord Bonomy to undertake a

review of additional safeguards required if and when the requirement for corroboration was removed. While the current cabinet secretary understands the concerns that many of us had, I am afraid that his predecessor castigated us roundly for them at the end of the stage 1 debate. Although the present Cabinet Secretary for Justice probably disappointed some on his own side, he was correct to remove the parts of the bill relating to the removal of the requirement for corroboration to enable the remainder of the bill to continue its passage through Parliament.

The original bill contained other proposals that have since been taken forward by alternative means. Sections 83 and 84 of the original bill created two statutory aggravations relating to people trafficking. However, the issue of human trafficking was addressed through a much more robust, stand-alone human trafficking bill, the Human Trafficking and Exploitation (Scotland) Bill, which was based on a member's bill proposed by my colleague Jenny Marra.

The original bill did not contain measures to change the terms of release of long-term prisoners, but the intention had been to introduce those as stage 2 amendments. When the bill's progress was suspended after stage 1, the proposals were progressed through the Prisoners (Control of Release) (Scotland) Bill, which turned out to be much more controversial than had been expected. It is fortunate that the measures were not introduced as amendments at stage 2 and were subject to full scrutiny at stage 1 of the subsequent bill. That was an advantage of suspending the passage of the bill.

Despite those deletions, many of Lord Carloway's recommendations remain in the bill as we considered it during its final stage today. On first consideration, committee members had concerns about the change in the use of the term "arrest" from what we were used to in Scotland, complex as that might have been. Instead of meaning that a suspect is charged with an offence, it means that a suspect will be arrested when they are questioned on suspicion by the police in connection with the offence.

We had concerns that the general public and the media would not be aware of the change in the use of the term and that persons who had been arrested would be assumed to have been charged. Although, in our legal system, everyone is innocent until proved guilty, some suspicion is unfortunately commonly still attached to individuals who have been arrested, as that term is commonly understood. It will be necessary to educate both the public and the media on what the change in use of the term means. In England and Wales where the term "arrest" has been used, I

am afraid that I have often assumed that the person has been charged.

I was at my mother-in-law's home one Christmas when there had been a terrible murder down south and an individual was arrested for questioning. The assumption seemed to be that the poor guy had been charged. He turned out to be innocent and was not charged; someone else had done it. In changing the use of the term "arrest", we need to ensure that everybody understands what the term "arrest" means, so that suspicions are not cast on people who have not done anything.

Many concerns have been expressed recently about stop and search, and it is to be welcomed that most of the recommendations from John Scott's review have been included in the bill.

At stage 2, Mary Fee was successful in introducing an amendment to ensure that a child and family impact assessment will be undertaken when a person is remanded in custody or imprisoned. That assessment will determine the likely impact of detention or imprisonment on dependent children and identify any support and assistance necessary for their wellbeing. The amendment is extremely welcome.

Committee convener Christine Grahame also introduced a stage 2 amendment, which has survived in the final form of the bill. She was concerned about changes that were brought about in the emergency legislation in 2010 that related to the relative powers of the Scottish Criminal Cases Review Commission and the High Court and which enabled the High Court to overrule decisions of the SCCRC and not accept cases referred to it.

A requirement on the Lord Advocate to publish the prosecutorial test—a statement on the general criteria that a prosecutor requires to be satisfied in order to proceed with criminal proceedings—was originally proposed as a safeguard if the requirement for corroboration was abolished. Despite the latter being dropped from the bill, the prosecutorial test was introduced nevertheless and I believe that it will provide a welcome understanding regarding how decisions to take a criminal case to court are made.

Lord Carloway also proposed that anyone under the age of 18 should be considered to be a child for the purposes of arrest, detention and questioning. That would accord with much of the legislation that we have recently passed. At stage 2, I lodged a number of amendments that would have introduced parity for anyone below the age of 18; some parts of the bill treat 16 and 17-year-olds differently from younger children, which is probably right. Children 1st was concerned about the fact that we had not changed every reference



to 16-year-olds to 18-year-olds. Having heard the reasons for that, given the other legislation that has been passed, Children 1st, like me, is content that some things have to be introduced more gradually. The general intention to treat people aged under 18 as children has been accepted; indeed, it applies in much of the bill.

Children 1st was also concerned about the use of the term “wellbeing” of a child in the bill, which it considers to be less well understood than the more-often-used phrase “best interests”. However, I believe that it was less concerned on learning that there will be training for police officers and other professionals around the Children and Young People (Scotland) Act 2014 and this bill, to which it has offered to contribute.

The bill has travelled a long and rocky road and Scottish Labour members have expressed concerns about it and suggested improvements to it. Most of our concerns have been addressed and some of our suggestions have made it through to the bill’s final form, which we are very happy about. Unlike at stage 1, we will support the bill tonight.

17:46

**Margaret Mitchell (Central Scotland) (Con):**

This stage 3 debate on the Criminal Justice (Scotland) Bill presents the final opportunity to thank the many witnesses and stakeholders whose contributions have helped to shape the bill and to pay tribute to the work that the Justice Committee clerks have undertaken, together with members of the committee and the convener, at the various stages of the bill.

The bill before us this evening has taken over two years to reach its conclusion, having been introduced to the Parliament in the summer of 2013. It sought to implement recommendations from two expert reviews: Sheriff Principal Bowen’s review on sheriff and jury procedure and Lord Carlaway’s review on criminal law and practice.

Since then, some of the original provisions relating to automatic early release and corroboration have been removed. It is fair to say that the debate on corroboration dominated the stage 1 proceedings and ultimately resulted in the postponement of the legislative process until the Bonomy review reported many months later. Although that delay was welcome, it undoubtedly came at the expense of effective scrutiny of the bill, given the huge time lapse between stage 1, stage 2 and today’s stage 3 proceedings.

However, among a number of reasonable and sensible provisions in the bill are changes to solemn procedure, the statutory requirement for out-of-court discussion between the prosecution and the defence and the increase in the maximum

custodial sentence for handling offensive weapons from four to five years. The bill also allows for greater use of live television links between prisons and the courts and includes provisions to mitigate delays in progressing appeals. Those are practical provisions that have received cross-party support from the outset.

However, at stage 1, the Justice Committee expressed concern about the change in terminology to use the term “arrested” to describe suspects who are taken into custody for questioning but who are not charged, which risks unfairly stigmatising people who may simply be assisting the police with their inquiries. The terms “detained”, “arrested” and “charged” are well understood by the public, who, as the Justice Committee’s convener pointed out at stage 2, know that being detained is different from being arrested, even if they do not fully understand the procedural and legal distinctions between the two.

Furthermore, in its submission to the Justice Committee on the 2016-17 budget, Police Scotland highlighted the cost implications of the bill for the forthcoming year.

I am glad that the cabinet secretary has listened to some of the concerns that have been expressed, but I remain unconvinced about some of the proposals.

I turn to the subsequent additions to the bill at stage 2, in particular the provisions relating to stop and search, which have codified what became a controversial tactic employed by Police Scotland. Together with the associated public consultation, that will help to restore the public’s confidence in Scotland’s policing. It is only right to acknowledge Alison McInnes’s considerable efforts to put those changes on a statutory footing.

Mary Fee’s amendment at stage 2 was withdrawn and lodged again today to make reference to the named person. For the avoidance of doubt, the Conservatives, although we voted for that amendment, remain opposed to the universal application of the named person policy. However, we recognise that, if the named person policy goes ahead, it should be targeted at vulnerable children such as the children of people in custody or in prison. The amendment has the potential to make a significant difference to the unacceptably high number of children of prisoners who go on to offend and I congratulate Mary Fee on lodging it.

However, I rather fear that the bill will be remembered for all the wrong reasons: not just for the debacle over corroboration, but most decidedly for the opportunity that has been missed today to provide legal aid for a complainer in cases of serious sexual assault in Scotland to ensure that they are able to oppose an application for the release of their psychiatric, psychological and

medical records. That amendment would have represented a small but hugely significant step for victims in sexual offence cases. The amendment would have addressed many injustices. It would have put victims in Scotland on an equal footing with victims in England and Wales; it would have addressed the age-long issue of medical records being misused to discredit victims; and it would have upheld those courageous individuals' basic human right to privacy under article 8 of the European convention on human rights. The victims of rape and sexual assault bravely subject themselves to what is often a traumatic process and it is a travesty that an opportunity to help them to see justice served has been lost.

The Scottish Conservatives recognise that the bill has not had an easy passage and that it has posed a lot of difficulties for the Scottish Government. We voted against it at stage 1, but the subsequent changes and concessions that have been made since then—notwithstanding my huge disappointment and dismay at the failure of the legal representation and legal aid amendment—mean that my party will support the bill at decision time.

17:53

**Roderick Campbell (North East Fife) (SNP):** The final words of the introductory music to the Scandinavian crime noir, "The Bridge", which is currently showing on BBC Four, are:

"everything goes back to the beginning."

If we go back to the beginning of this process, we find a bill that sought to build on the Carloway report. Part 1 of the bill tackles the somewhat confusing statutory issues of detention and arrest, and Lord Carloway sought to create a modern approach to powers of arrest that initially confused the members of the Justice Committee. However, we finally got to grips with it, and that part of the bill now contains important provisions for suspects to have a right to legal advice at police stations. Rather importantly, it will also provide for the removal of legal aid contributions for that advice.

We touched earlier on issues relating to the length of time for which suspects can be held for questioning. We have indeed gone further than Lord Carloway recommended in his report. In our committee there were differing views, but in my view the position that we have now agreed strikes a reasonable balance. I say to Alison McInnes that I hope that the use of the powers to extend beyond 12 hours interrogation in the investigation of crimes involving children will indeed be very limited. Investigative liberation was recommended by Lord Carloway. It is a somewhat ungainly term for a new system of continuing an investigation. I suspect that it will quickly come to be used and the

28-day maximum period seems to be a reasonable balance.

Issues in relation to child and other vulnerable suspects occupied the committee for quite some time. There were understandable concerns about a proper balance between the right to investigate crime and the rights of children and vulnerable people. Whatever else, we must hope that the safeguards that are provided by the legislation are properly adhered to. While child impact assessments were a controversial amendment at stage 2, I am glad to hear that discussions between the Government, Mary Fee and children's organisations have borne fruit and we were able to agree the amendments earlier this afternoon.

No discussion of the bill would be complete without referring to the C-word: corroboration. Lord Carloway's initial recommendation to abolish the requirement for corroboration was and remains controversial. It evoked strong emotions from the committee members, in the chamber and throughout civic Scotland. The problem remains as to how to create a system that balances the rights of the accused with the victim's rights and access to justice. That conundrum will remain for the new parliamentary session and we await the results of the further work that was carried out following Lord Boney's recommendations. In particular, what will the results of jury research reveal? Will it impact on the views on jury majorities, for example? We are, however, embarking on the publication of a prosecutorial test and a code of practice in connection with the identification and interviewing of suspects.

The current cabinet secretary responded quickly to concerns about consensual stop and search. We were perhaps slow to follow the example of our southern neighbours in putting these matters on a formal basis, but they operate it in a slightly different culture. I am also mindful of the former First Minister's earlier comments about knife crime. I do not quite understand the current position with regard to section 60 of the Criminal Justice and Public Order Act 1994, under which, when there is a reasonable belief that persons are carrying dangerous instruments or offensive weapons, the police can organise a search. That is to be covered by the code of practice; we await that with interest.

We also debated provisions for children's possession of alcohol and consensual searching. Now that the Parliament has voted on that, we need to move on and accept the cabinet secretary's assurances. We should also remember that the bill contains recommendations on sheriff and jury cases from Sheriff Bowen. They might be dry but they are nevertheless important.

**The Deputy Presiding Officer (John Scott):** You should draw to a close please.

**Roderick Campbell:** I will leave the question of the Scottish Criminal Cases Review Commission and the interests of justice to my colleague Christine Grahame.

This important bill modernises Scotland's criminal justice system, but it is certainly not the final word on the subject.

17:57

**Mary Fee (West Scotland) (Lab):** I am delighted to be able to take part in the stage 3 debate on the Criminal Justice (Scotland) Bill. I reiterate my thanks to Barnardo's Scotland for its support and encouragement on the amendments that I lodged at stage 2, for bringing them through to today and seeing them passed at stage 3. I particularly thank Nicki Wray for her tireless work in progressing this important issue. I also offer my gratitude to the Scottish Government for working with me ahead of today's debate to bring about what will be a substantial change for the children of imprisoned parents.

It will come as no surprise to members that I intend to focus my speech on the children and families who are affected by imprisonment. The amendments in my name that we agreed are a turning point for children and families who are affected by imprisonment in Scotland.

Children are often the forgotten victims of crime. Many witness the arrest and, in some cases, the crime that leads to the arrest. The children of prisoners face stigma, poorer educational outcomes, mental health problems and behavioural problems. Research shows that children who have a parent in prison are more likely than their peers to become incarcerated as adults. With the right support, we can prevent today's children becoming the prisoners of the future.

The Scottish Government has a number of initiatives to reduce reoffending. In my view, my amendments are a step towards preventing offending.

I mentioned the stigma that is attached to imprisonment, and the Children and Young People's Commissioner, Tam Baillie, in supporting what I seek to achieve through the amendments that we have agreed to, also referenced that. Research in the "Not Seen, Not Heard, Not Guilty" report by the commissioner shows that many children of prisoners find it difficult to ask for help.

Ahead of today's stage 3 debate, I visited Perth prison, where I met a number of fathers who have been working with a parenting programme that is run in the prison by the thrive project. Funded by the Scottish Government, it is an excellent programme that needs to be rolled out across

Scotland's prison estate. The project, which is run by Barnardo's and Enable, aims to identify families that are in need of support, create greater engagement with them and respond to the needs of both the adults and the children. The fathers spoke of the positive benefits that they see from the parenting programme, the positive effect that it can have on their children and the importance of the bonds that they want to have with their children when they are released.

One father spoke about how he never thought of his children when he was offending and said that he did not understand the impact that it could have on them until he was sentenced and the children started to visit. The father, who is working with the thrive project and the parenting programme, told me how hard it is for him to watch his young daughter cry as she leaves the visiting room, and he said that he never wants that to happen to him or his child again once he is released.

I am grateful to the fathers that I met for being so open and honest in the short time that I spent with them. Promoting positive family relationships is essential in criminal justice. It is a route out of prison and a tool to reduce reoffending, and it can help to tackle the inequality that we see in society.

Once the Criminal Justice (Scotland) Bill has been passed, I will be happy to work with the Scottish Government further to ensure that my amendments do what they are designed to do. We will soon know how many children in Scotland have a parent in prison, and with that information we can get it right for every child. I look forward to the day when children are no longer the forgotten victims of crime.

18:02

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** The Criminal Justice (Scotland) Bill is a wide-ranging and substantial bill. We need only to read its purposes to determine that. As others have said, it has had a long and tortuous journey. It was introduced to the Parliament in 2013 and, following the stage 1 debate in 2014, the Government narrowly won a majority to proceed, including on abolition of the requirement for corroboration.

I have long opposed that abolition, not because I wish the accused to be let off with a sexual assault or a rape or those who are accused of those crimes in particular to escape conviction, but to ensure that victims, with the requirement for corroboration, have enhanced prospects of a successful prosecution and conviction. It is not about people having their day in court; it is about people having their day in court and the accused being convicted and sentenced.

I note that we may return to the subject—perhaps in the next session of Parliament, depending on who is in government—and I hope that, at that time, we will take in a comprehensive review of other issues, such as the size of the jury, the jury majority and the three verdicts that are currently available, in the High Court in particular.

The second issue on which I was in disagreement with the Government is not the stuff of headlines, but it is of considerable relevance to the Scottish justice system. It is the role of the Scottish Criminal Cases Review Commission, which colleagues throughout the chamber have mentioned today.

Following the decision in the case of *Cadder v Her Majesty's Advocate* in 2010, the Scottish Government introduced by way of emergency legislation the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010. All three stages took place on one day, which is not a good way to legislate. The act reduced the power of the Scottish Criminal Cases Review Commission and increased the power of the High Court sitting as the court of appeal when the SCCRC referred cases to it.

Let me explain. Before the 2010 act, a referral from the SCCRC had to be accepted by the High Court, and if the appeal was successful, it had to grant the appeal. The 2010 act changed all that and made two radical changes. First, although the SCCRC will always have considered the interests of justice and whether there might have been a miscarriage of justice, the 2010 act endowed the High Court with the power to reject a referral, even before it heard any evidence, if in its view the referral was not in the interest of justice. Secondly, even if a referral passed that second test, the High Court still had the power, notwithstanding a successful appeal, not to grant the referral if it considered that it was not in the interests of justice.

Therefore, the High Court had a gatekeeping role over its own appellate procedures, and the 2010 act created two categories of appeal: those coming straight from the High Court to the appeal court, if successful, were successful, but if they came from the SCCRC, they might be successful but then not permitted or allowed. It is simply wrong to have two categories of appeal.

At stage 2, I moved an amendment successfully, by a majority against the Government, to take us back to pre-2010 rules and I am delighted that the Government has accepted the reasons behind that amendment. I think that order has been restored.

Therefore, I am personally delighted by what has happened regarding corroboration and the role of the SCCRC. It is a pity that Mr Findlay is

not present in the chamber to hear that, as he boorishly accused me of somewhat falling to the Government's whip. I put this quite simply for him: put that in your pipe and smoke it, Mr Findlay.

18:06

**Alison McInnes (North East Scotland) (LD):** What a difference a couple of years makes. No other Government bill has taken this long to get through Parliament and no bill has undergone such a dramatic and crucial transformation.

At the stage 1 debate, the then Cabinet Secretary for Justice won the vote but lost the plot, attacking opponents of abolishing corroboration as a unionist cabal intent on

"selling out the victims of crime."—[*Official Report*, 27 February 2014; c 28376.]

More worrying than that was that the justice secretary revealed his contempt for this Parliament by recklessly promoting what he knew by then to be seriously defective legislation. We know that he knew that, because he had belatedly and hurriedly appointed a 17-strong panel of distinguished minds who were expected to patch things up after the bill was passed. The newly appointed dean of the Faculty of Advocates described that approach as asking MSPs "to buy a pig in a poke."

Let us not forget that 64 MSPs in this chamber, including the current Cabinet Secretary for Justice and the current First Minister, were happy to do just that. I think that that was a low point for this chamber and the Parliament because, whatever members' views about corroboration, it became a matter of how Parliament legislates. As a business manager, I believed that our Parliament's credibility was at stake.

In the absence of any willingness to remove the offending section of the bill, I took a different tack and urged the Government to put the whole bill on ice. Thankfully, at the 11th hour, the Government agreed to my request to suspend the bill, allowing time for Lord Bony's corroboration review. His report not only vindicated that approach; his findings exposed the willingness of ministers to jeopardise the integrity of Scotland's justice system on the basis of scant evidence and blithe assurances to this chamber.

As I said, what a difference two years makes: there is now cross-party support for the bill. Perhaps there is a wider lesson here for us on how our unicameral legislature operates, as more time between stage 1 and stage 2 for reflection and mature discussion can radically improve the quality of legislation. There is now a great deal to welcome in the bill. It will help to ensure that arrest and custody procedures are fairer, more transparent and compliant with the European

convention on human rights. My successful stage 2 amendment means the introduction of codes of practice governing how the police identify suspects and conduct interviews, which is akin to the Police and Criminal Evidence Act 1984—PACE—codes that have existed in England and Wales for decades.

For months, ministers told Willie Rennie and me that they were comfortable with so-called consensual stop and search. I am therefore, of course, delighted that the Scottish Liberal Democrats' campaign for its abolition will conclude today and that that discredited, intrusive and, frankly, illegal tactic will cease. It is a tactic that has damaged the relations between the police and the communities and young people they targeted; and it is a tactic that was dogged by scandal and deployed hundreds of thousands of times a year without justification.

I hope that the whole chamber will join me in thanking those who offered expert opinion and thoughtful, evidenced interventions on the issue, not least John Scott and Dr Kath Murray. However, it remains galling that the Scottish National Party Government's reaction to Dr Murray's landmark stop and search findings was to engineer a delay in their publication in an effort to pre-empt and discredit her research.

It is similarly worrying that the Parliament has paved the way for the creation of a search power for something that is not illegal—the possession of alcohol. Elsewhere in the bill, ministers have failed to protect children by permitting their being held in custody for 24 hours and shelving plans—for a third time—to raise the age of criminal responsibility. This Government speaks a lot about human rights, but its actions are timid.

Speaking of unfinished business, what next for corroboration? Irrespective the future of corroboration, Parliament must continually strive to improve reporting and conviction rates, particularly for sexual offences and other crimes that occur behind closed doors. Therefore, I am disappointed that the Government did not support amendment 90 in Margaret Mitchell's name. The cabinet secretary is obstinate on the matter, but I can only conclude that he has been ill advised. There is no doubt that an individual has a locus on the narrow point, and the amendment was not about banning access to any medical records but merely about giving victims a voice at the time when those records are sought.

Lord Bonomy provides a starting point on measures that are worth while regardless of the future for corroboration. As I said, it is disappointing that we have not taken the opportunity to allow people to be represented in court.

**The Deputy Presiding Officer (Elaine Smith):** Could you draw to a close, please?

**Alison McInnes:** Nevertheless, the Scottish Liberal Democrats will support the bill at decision time. We are proud to have been pivotal to the bill's success by ensuring that the law better protects us all from miscarriages of justice and illegal police intrusions and that the integrity of our justice system remains intact.

**The Deputy Presiding Officer:** Thank you. I ask that our next two members keep to their four minutes, please. I call Alex Salmond.

18:11

**Alex Salmond (Aberdeenshire East) (SNP):** I welcome the opportunity to contribute, not least to defend Kenny MacAskill, who was a fine justice secretary. I say not just to Alison McInnes but to the whole chamber that the impact of the Salduz and Cadder rulings has brought into serious examination the issue of corroboration and whether it can be sustained, particularly in the matter of sexual offences. Of course, it is a subject to which this Parliament will have to return. To believe, as Alison McInnes seems to, that there is outstanding wisdom on the matter is entirely wrong. The issue will have to occupy this Parliament again. I am just commenting on the certainty with which Alison McInnes put forward her remarks.

I congratulate the current Cabinet Secretary for Justice. Even over a two-year period, it is no inconsiderable achievement to bring a criminal justice bill to a point of almost success, as he has done.

I hesitated to intrude into this reunion of the Justice Committee by making a speech, but I want to return to the subject of knife crime, not least because I want to make a point about John Carnochan, who I respect enormously. He is not an opponent but a supporter of moving stop and search from a non-statutory to a statutory basis. However, he has pointed out that non-statutory stop and search played a considerable role in the diminution and breaking of the knife culture, which had infected many parts of our communities in many areas of Scotland. It is to that issue that I want to devote some examination.

Alison McInnes said that the stop and search statistics were a scandal. The statistic keeping on stop and search was perhaps mistaken, unfortunate and inadequate, but it was not the scandal. The scandal was the level of knife crime, which resulted in the tragedies and deaths of young people. The achievement—what we should take pride in—through a range of initiatives, many of which John Carnochan was connected with, should be understood.

We have seen a situation where the total figures on the handling of an offensive weapon have reduced from 10,110 in 2006-07 to 3,795 in 2013-14. That is a spectacular reduction—not an elimination—of knife crime and other offensive weapons offences. That huge reduction is a massive achievement. People such as John Carnochan, his colleague Karyn McCluskey, and others from the Scottish violence reduction unit, as well as those from the no knives, better lives campaign—indeed, from the whole range of initiatives—deserve our thanks and congratulation. A part of that achievement was the stop and search tactic employed by the Scottish police service.

We should remember that, in England, over the past few years, there has been a substantial decline in stop and search statistics, both under section 1 of the Police and Criminal Evidence Act 1984 and section 60 of the Criminal Justice and Public Order Act 1994. However, in the past year, there has been a rise—of no less than 13 per cent—in the key statistic of knife crime. We should be extremely careful in dismissing whether there might not be a connection between those two changes.

We would make a fatal bargain if, in pursuit of finding an absolute certainty of how we conduct our operations, we did not acknowledge that our primary duty is to make absolutely sure, whatever else we do as far as the relevant part of the bill is concerned, that the decline in knife crime and therefore the decline in fatality and tragedy as a result of that crime is not in any way impeded. I am certain that this justice secretary will have that uppermost in his mind as he pursues the new statutory base for the policy.

**The Deputy Presiding Officer:** I remind members that they should not turn their backs to the chair.

18:15

**John Finnie (Highlands and Islands) (Ind):** Section 1 of the bill is about the power of a constable and section 2 is about exercise of that power, which has been a key part of what we have discussed in the course of looking at the bill.

If I noted him correctly, the cabinet secretary talked about the complicated mixture of statutory and common law that the bill will address. One power that I fear may have been lost of those that surround stop and search is the power of discretion—indeed, there is a suggestion that discretion is not being exercised at all.

Some additional powers are being given. I was happy to support amendments 6 and 8 on transport of individuals and sports grounds respectively. I supported them because they were

proportionate and have put searches on a statutory basis. I am very pleased that a code of practice will be put in place, and I am happy that the Police Investigations and Review Commissioner will be included in the list of people who will be consulted on that. That is important, because PIRC is one of the organisations that deal with complaints that arise from misuse of the powers. I hope that there will not be any such complaints.

Members have referred to the work of John Scott QC and his committee. The cabinet secretary described his report as “thorough and balanced”; I concur with that view. I also concur with my colleague Alison McInnes’s comments on Kath Murray’s excellent work. When I met Mr Scott, I was aware of the tensions that remain in the police service regarding uncertainty among junior officers. Those officers have used so-called—I still struggle with the term—consensual non-statutory stop and search. Lots of members have commented on the powers that constables have; they have common-law powers and statutory powers, but I was not aware that they have non-statutory consensual powers. That is the challenge. I acknowledge what Alex Salmond said, but there have always been common-law search powers. We should recognise that having everything on a more formal basis is perhaps the way ahead.

When I met Mr Scott, we talked about human rights. I am delighted that, as a result of an amendment that I lodged when we considered the bill that introduced the single police service, human rights is now part of the police oath. Mr Scott said—I think that he said it in his report; I hope that I quote him correctly—that police officers are the front-line defenders of the public’s human rights. That is important; the police should defend human rights with pride. It is also very important that the police recognise the power that they have to impact on individuals’ rights.

We have talked in the debate about the rights of children and young people. I share the disappointment that the advice of the Scottish Human Rights Commission and the Children and Young People’s Commissioner Scotland has not been taken on board.

I welcome some of the changes that have been made, particularly on supervisory oversight and the important decisions that are made about individuals’ liberty. Police Scotland will, of course, have its standard operating procedures, which I hope will accurately reflect the intent of the bill. The change regarding access to a lawyer is a very important development.

There is a lot to be said, but in the few minutes that I have left I want to quote the policy objectives, which say that the bill contains the

“next stage of essential reforms to the Scottish criminal justice system to enhance efficiency and bring the appropriate balance to the justice system so that rights are protected whilst ensuring effective access to justice for victims of crime.”

If we get individuals’ rights and victims’ rights correct, we will be doing no bad.

**The Deputy Presiding Officer:** I am afraid that members have gone slightly over the time that has been allocated for the debate, so I would appreciate it if closing speakers could keep to their time or use slightly less.

18:19

**Gavin Brown (Lothian) (Con):** The bill has indeed—to quote the justice secretary—“had a unique passage”. One point that is worth making at the outset is that, despite a number of controversies, huge swathes of the bill—large parts of the 100 or so sections—have gone through the process without any real change or controversy, and with all parties signing up to them at the first available opportunity.

The sections through which solemn procedure will be improved by facilitation of better preparation of sheriff and jury cases are to be welcomed. Also welcome are the sentencing aspects that have been touched on—in particular, the increase in the maximum sentence for carrying a knife or offensive weapon, and the provisions covering people who offend while on early release—and the appeals section, which addresses delays in determining a number of types of appeal. Those are large parts of the bill that have gone through the process fairly easily, so I am glad to see them go through today.

The biggest controversy—the subject that dominated stage 1—was the section that would have removed the general requirement for corroboration. It was certainly wrong at the time, but criticism of the Government can be levelled mostly because of the fact that, at that time, the Government appeared to be unwilling to listen to expert evidence and to opposition parties. The demeanour of a number of members of the Government and the governing party towards those who opposed them was deeply unwise. I therefore commend the current justice secretary for his very different approach and for, ultimately, deciding to delete that section at stage 2.

The proposal was probably a genuine attempt to address a weakness in the law, but the Justice Committee received weighty submissions that suggested that removing the requirement for corroboration would not increase the number of safe convictions, so it would not solve the problem that the Government wanted it to solve. At the same time, there were credible fears that its removal could lead to an increase in the number of

miscarriages of justice. It would not have solved the problem that it was intended to solve and it could have created a new problem.

If the Government decides to reconsider the matter, it ought to be careful, because the complexities of removing the requirement for corroboration are enormous. The Bonomy review made it clear that if we were to do that—it had to assume that it was going to happen—we would need to make at least four changes in respect of suspect interviews, at least three changes in respect of the evidence of identification, three changes in respect of the code of practice, two changes to the prosecutorial test and four changes to the way in which juries operate. Probably most important—even though the review was told to assume that corroboration would no longer exist—is that it made the firm recommendation that the requirement for corroboration should be retained in relation to hearsay evidence and confession evidence.

In my final minute, I return to Margaret Mitchell’s amendment 90. Parliament and the Government ultimately rejected the amendment, as is their right, but the Government expressed some sympathy for it. There is a loophole whereby legal aid is not available to complainers who want to oppose applications to access their medical records. I say to the cabinet secretary—who will, I presume, close for the Government—that the Government has expressed sympathy for amendment 90 even though it rejected it. What, therefore, does the Government intend to do to right that injustice? Groups all around the country will be disappointed that the amendment was not agreed to, but they will be extremely keen to hear what the Government intends to do. Perhaps they will hear that in early course.

18:23

**Elaine Murray:** I assume that decision time will be brought forward. That is pleasing because after two or more years of considering the bill, I think that I might be running out of things to say about it. I will, however, do my best to fill the time.

I closed the stage 1 debate for Labour in February 2014, when my colleagues and I were told that we were selling out our principles and, indeed, that we had sold our souls. I am glad that today’s debate has been much more constructive, even when there has not been agreement.

One issue that has concerned members is the need to improve access to justice for victims of one-on-one crimes—in particular, crimes of sexual and domestic abuse. Much of the consideration of the requirement for corroboration concerned that issue. Today, Margaret Mitchell and Alison McInnes argued passionately in favour of

introducing the right to legal representation for victims of sexual abuse when application is made to access their medical records. I know that both Justice Scotland and representatives of women's organisations were supportive of the proposal, but the amendment was not agreed to. Nevertheless, I have recently become aware that the right is available to rape victims in England and Wales, so I think that we need to address the matter here.

I am pleased that the Government is doing research on sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995 but, as I said in the recent debate on violence against women and girls, I hope that Parliament will, in the next session, return to gender-based violence with more comprehensive legislation.

Similarly, I am in favour of increasing the age of criminal responsibility from eight to 12 and hope that, in the next session of Parliament, that measure will be in a bill from its start so that it cannot just be glossed over.

Much as I respect our children's commissioner, Tam Baillie, I am not able to agree with him on the powers in the bill to introduce stop and search of under 18s for alcohol. Those powers may not be used if the consultation suggests that they should not be. Even if they are used, the people who will be criminalised are the people over 18 who supply alcohol to young people. I hope that the children's commissioner's concerns will be discounted. It might be that the consultation will come out against stop and search in those circumstances, so we need to wait to see what will happen on that.

Mary Fee lodged important amendments on children and families who are affected by imprisonment, on which she is to be congratulated. As she said, children are often the forgotten victims of crime. She told us about how the stigma and related problems that young people can have result in it being more likely that they will become involved in the justice system themselves and perpetuate the cycle. I was interested in what she said about Perth prison and the thrive parenting programme for male offenders. It was also interesting to hear about the impact of a parent's imprisonment on children and how it affects the offender. I can think of little that might be more valuable in the prevention of reoffending than making a parent aware of the effect that their offending has on their child.

Christine Grahame expressed the concerns that many of us had when it came to abolition of the requirement for corroboration and how and whether that issue will come back to us. That issue will not go away and extensive consultation on it will be required in the future.

I congratulate Christine Grahame on noticing the issues with the emergency legislation on the Cadder case. The High Court used to have to accept cases that the Scottish Criminal Cases Review Commission referred to it, but changes made through emergency legislation meant that the High Court might not accept successful cases. It is important that that situation has now been reversed.

Alison McInnes also referred to the corroboration debate and reminded us that the majority of the committee members had asked for the section on corroboration to be removed. She made an important point that lessons need to be learned from the passage of the bill. The way in which it has been improved through its extended passage perhaps provides us with some lessons that we could learn for future legislation.

Alex Salmond also referred to corroboration, but made an important point about knife crime, John Carnochan and the role of the violence reduction unit. Before any of us become too sanctimonious about it, we need to remember that it was my good friend Cathy Jamieson who implemented some of the measures that have been mentioned. They have resulted in a reduction in knife crime, so it is a question of not throwing the baby out with the bath water when good work has been done. We have been concerned about many of the effects of the increased use of stop and search, but that does not mean to say that stop and search never has a role or has no value.

It is important that John Finnie reminded us that there always were common-law powers of stop and search. Sometimes, there is great value in people who have police experience being members of Parliament, because they can remind us of such factors; I am grateful to him for doing that.

I thank the clerks and the witnesses for all their hard work with the committee at all stages of the bill over the extended period—two and a half years—that it has been going through Parliament.

18:29

**Michael Matheson:** I listened with interest to all the comments that were made and views that were expressed during the debate. I am conscious that a number of members who spoke have been involved with the process from its beginnings back in June 2013. The bill has probably been in the parliamentary process for the longest period of any bill in the Parliament's history.

I will pick up on a few issues that members have raised. As she did at stage 2, Elaine Murray raised the important issue of the reporting on those who may be on investigative liberation, how that will be presented and how it can be portrayed. I



recognise the concerns and anxieties that she expressed about how that might be presented as if someone had been arrested and charged. Someone who was on investigative liberation might not be or would never be charged with an offence. There is a piece of work to be done on education and promoting understanding of the difference that the bill will create among those in the media and in stakeholder groups that have an interest in the matter.

With the good will of the Parliament in passing the bill, the implementation group that has been established will be responsible for looking at specific media and press matters and at how the media and the press can help to promote understanding of the bill's provisions. I expect the implementation group to consider what I recognise is an important issue that Elaine Murray has raised.

I turn briefly to the issue that Margaret Mitchell raised in her amendment 90, which was on legal representation for those in the court process and related to personal and detailed information. On several occasions, she has referred to provision in England and Wales that is not available in Scotland. I presume that she was referring to a particular High Court judgment on such an issue in England and Wales. That judgment was in a case that was brought by a complainer who sought legal aid to take action to prevent the disclosure of her confidential counselling records. Although the High Court correctly found in her favour, that was only on the extent to which her rights to exceptional public funding had not been properly considered by the director of legal aid casework.

The Legal Aid (Scotland) Act 1986 allows exceptional cases to be provided for in the same way as applied in the case that I presume that the member was referring to, which appears to be the only one on record in England and Wales in which a judgment was made in favour of the complainer. However, there is no requirement in either jurisdiction that makes legal aid provision necessary. The difference in Scotland is that we have not had a judgment on that. In England and Wales, there was a judgment, which said that the case had not been properly considered. That is different, but that is not to say that there is provision in England and Wales that is not available in Scotland.

Exceptional cases can be considered in Scotland in exactly the same way as in England and Wales. For accuracy, it is important that we do not get ourselves locked into the idea that there is a provision somewhere else in the United Kingdom that is being denied in Scotland, when the legal case that I referred to is clearly not as Margaret Mitchell presented it.

On the important issue of the imprisonment of parents, which Mary Fee raised, we have been able to get to a point of agreement in a constructive way. One of the main challenges for us as a country is putting the right provisions in place to support children who might be affected by their parents being imprisoned, but we as a country also have to face up to the fact that we have the second-highest prison population level per head in western Europe, which includes the rate for females. That is because we as a country have failed to implement much more progressive and effective means of achieving desistance from committing offences.

If we are serious about the matter, we should not be closing stable doors once the horse has bolted; we must have a serious debate and dialogue about how we can use our prison system so that, while those who have to go to prison go there for public safety and punishment, we are also serious about and committed to taking forward policies that assist us in dealing with those who can be more effectively dealt with by alternative means.

If we get that right, we will do more for children in Scotland than an amendment to the bill would do—I mean no disrespect when I say that. We will demonstrate that we are big enough to be progressive in our penal policy rather than continue with a model that has remained largely unchanged in almost 200 years.

Let me turn to the issue that has also—*[Interruption.]* My microphone appears to be off. I do not know whether that is an indication that you want me to stop speaking, Presiding Officer.

**The Presiding Officer (Tricia Marwick):** I promise you that I did not touch the switch for your microphone.

**Michael Matheson:** Okay—I believe you, of course.

Alex Salmond raised the issue of tackling the knife culture. There is no doubt that there has been a massive reduction in knife crime in Scotland since 2006-07. In parts of west central Scotland, there have been massive reductions of more than 50 per cent in that period. A huge amount of that has come about through policing, engagement programmes such as the no knives, better lives programme, and the violence reduction unit—the tremendous work of John Carnochan and Karyn McCluskey has changed perceptions and communities.

The report of the advisory group on stop and search quotes John Carnochan as saying:

“I believe now is the time to Police our communities a little differently. When the medication works and the patient's condition is stabilised or even improves we don't usually increase the dosage; that would be a waste of time,

energy and resource and it often makes the patient worse. Now is the time for all agencies, including the Police, to engage with the communities, particularly the young people in our poorest areas in a positive way to help prevent violence. It was these young people who received by far the largest dose of the stop search medicine. It is them who have shown most improvement on this course of treatment. They now need help to stay healthy and violence free. Good community policing can help that happen.”

John Carnochan got that right.

Our provisions on stop and search will not prevent the police from stopping individuals whom they think might be carrying offensive weapons in order to search those people. The police will still be able to target the approach; the only thing that is ending is the non-statutory provision for that. I want knife crime to continue to decrease in this country, as I am sure that all members do. I am confident that we will achieve that.

When I came into post, I was conscious that it would be challenging to get a consensus in the Parliament on the bill. I hope that all members agree that the bill is balanced and effective in addressing the need for improvement in our criminal justice system and that it will help to deliver a modernised approach to various elements of the system. I call on all members to take the opportunity to support this important bill and continue the modernisation of our criminal justice system.

## Motion without Notice

18:38

**The Presiding Officer (Tricia Marwick):** I am minded to accept a motion without notice to bring forward decision time to now.

*Motion moved,*

That, under Rule 11.2.4, Decision Time be brought forward to 6.38 pm.—[*Joe FitzPatrick.*]

*Motion agreed to.*

## Decision Time

18:38

**The Presiding Officer (Tricia Marwick):** There is one question to be put as a result of today's business. The question is, that motion S4M-15087, in the name of Michael Matheson, on the Criminal Justice (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament agrees that the Criminal Justice (Scotland) Bill be passed.

## Marischal Square

**The Deputy Presiding Officer (John Scott):**

The next item of business is a members' business debate on motion S4M-14804, in the name of Kevin Stewart, on Marischal Square. The debate will be concluded without any question being put.

*Motion debated,*

That the Parliament notes the concerns of the Reject Marischal Square Development campaign group (RMSD), who have published a report on what they believe to be a lack of openness and transparency regarding Aberdeen City Council's decision to enter into a deal over Marischal Square, where, according to RMSD's Facebook site, in the worst case scenario "Aberdeen tax payers will be underwriting the risk of under-occupancy of the development by guaranteeing £175 million to Aviva shareholders over 35 years"; understands that, in answer to a freedom of information request by campaigners dated 9 November 2015 asking for a copy of the business plan for Marischal Square, the council stated that "there is no business plan at this time"; is concerned that there seems to be no business plan for what it considers to be a complex financial deal, and understands with regret that many Aberdonians feel that their voices have been ignored on this issue.

18:40

**Kevin Stewart (Aberdeen Central) (SNP):**

First, I thank the colleagues who signed my motion, which has allowed us to have this members' business debate on Marischal Square. I also welcome the reject Marischal Square development campaigners to the public gallery.

It would be fair to say that almost every Aberdonian was pleased to hear that the former council headquarters, St Nicholas house, was to be demolished. It was regarded as a monstrosity, an eyesore, and a blot on the landscape. Many hoped that its demise would lead to a sensitive development of the site and the construction of a city square to complement the iconic Marischal college and the historic Provost Skene's house, which had been hidden from view for decades. Alas, that was not to be and the Labour-led council has pushed on with a scheme that is about as popular as a visit by King Herod to the Bethlehem nursery.

Dave Urquhart, a contributor to the reject Marischal Square development campaign Facebook site, talks for many when he says:

"When the old St Nicholas house was demolished we could finally see Provost Skene's House and Marischal College in their glory. The people of Aberdeen are crying out for this to be an open space, a civic square but those who are meant to represent them are not listening."

He goes on to say:

"Why could this be? What financial millstone have these councillors draped around the people who live in Aberdeen, who work in Aberdeen and are proud of Aberdeen?"

Fellow objector David McLeod says that the scheme is

“An architectural disaster, perpetuating its predecessor, and imposing a financial burden on Council Tax payers for many years to come.”

Many feel that the planning process was flawed and that the full impact of the scheme did not become apparent until 3D imagery of the development was produced by Pinnacle Visualisation. It would be fair to say that folk were extremely disappointed that the Scottish Government did not call in the application. However, I do not want to concentrate on the planning aspects. Instead, I want to focus on the perceived lack of openness and transparency around the financial deal that Aberdeen City Council has entered into with Muse Developments and Aviva.

The reject Marischal Square development campaign group has been assiduous in trying to get to the truth about the deal and Mr Bill Skidmore has been at the forefront of those investigations. In a freedom of information letter to the council, Mr Skidmore asked for a copy of the business plan for the scheme and received a reply from the council that said,

“there is no business plan at this time”.

There is no business plan at this time and yet, according to the campaigners, in the worst-case scenario,

“Aberdeen tax payers will be underwriting the risk of under-occupancy of the development by guaranteeing £175 million to Aviva shareholders over 35 years.”

It has been said by a great number of folk that it is somewhat ironic that Aberdeen City Council is willing to take on a risk that a multinational insurance company is not prepared to underwrite.

In recent days, campaigners have managed to acquire two pages of the summary of the bids for the Marischal Square development and I will hand a copy of those pages to the minister after the debate this evening. I will also send those documents to Audit Scotland for its perusal.

Yesterday, Mr Skidmore wrote to all Aberdeen city councillors about the content of those documents. In his letter, he said:

“I got the impression when reading the Summary Bid information that the author was trying to steer Councillors away from Muse. Too many unquantifiable risks, the need for a full life costing, a ‘risk’ fund and a ‘sinking’ fund to limit the damage of unquantifiable void periods over the full life of the lease. Instead, Councillors were taken in by the prospect of £2.6M income from the property or nearly £100M over the 35-year lease period—for a FULLY LET SCHEME!”

He also said:

“This is undeniably a bad investment decision, one that represents ‘Worst Value’ for the city when compared with the other bid proposals.”

Of course, all these grand plans, schemes and strategies were drawn up at a time when the oil price was high, when Aberdeen was booming and property was at a premium. Sadly, the outlook has changed, but has Aberdeen City Council’s Labour-led administration changed its business plan to manage the new risks that have appeared over the horizon? No, because, as we have already established, it does not have a business plan.

There is no business plan but, according to the summary bid information, the council is required to upkeep, manage and maintain the building. The document says that those costs can generally be recovered from tenants, but what if there are only a few tenants? The document goes on to point out a number of other pitfalls that, unfortunately, I do not have time to go over today.

**Michael Russell (Argyll and Bute) (SNP):** I commend the member for achieving this debate. Unfortunately, I cannot stay for the full debate, but I am very struck by what the member has said and by what the group has put forward in the documents that I have read, because there are strong parallels with things that have gone wrong in my area of Argyll and Bute. Will the member and the minister reflect on the need for greater supervision of local authorities? To say the least, Audit Scotland does not appear to be well equipped to deal with such lack of democracy.

**Kevin Stewart:** I agree with Mr Russell on that point. I know that he has been working assiduously to try to deal with some of the problems in Argyll and Bute. There are certainly similarities between the two situations.

I hope that the documents that I will provide to the minister and to Audit Scotland will be pored over and they will look very carefully at them.

I will leave the final words to Kathleen Paterson, whose words reflect the feelings of a great many Aberdonians. She says:

“The heart of the beautiful city of Aberdeen is being gradually murdered with every brick that is laid in this awful development!”

She continues:

“How can the councillors sit at their desks listening to the work going on, in the knowledge that they are imposing something horrendous on their town, something which will more than likely cost its taxpayers dearly and which, given the current and predicted economic climate of the North East, will surely stand half empty for years to come!”

She says:

“Open your eyes and ears Aberdeen Council, admit mistakes were made and rethink this project, with the help of all of those concerned, bewildered, angry and heartbroken citizens of your town!!”

18:47

**Lewis Macdonald (North East Scotland) (Lab):** I welcome this debate and I congratulate Kevin Stewart on obtaining it.

I welcome the desire of all concerned to support regeneration of the city centre of Aberdeen. Marischal Square has its origins in the decision that was taken by the previous administration to relocate Aberdeen City Council's headquarters from St Nicholas house to Marischal college. That was a large-scale and ambitious proposal that divided opinion; indeed, it was the financial millstone that left the city council substantially in debt. Leasing Marischal college from the University of Aberdeen entailed a debt of £60 million. The demolition of St Nicholas house has cost several million more.

**Mark McDonald (Aberdeen Donside) (SNP):** Will the member give way?

**Lewis Macdonald:** I would be delighted to.

**Mark McDonald:** I recall from my time as a member of that administration that Lewis Macdonald and his colleagues said that the Marischal college project would cost the council more than £80 million. It cost the council less than £60 million. Surely the member welcomes the fact that the project was brought in so heavily under the budget that he assumed it would cost.

**Lewis Macdonald:** That is a remarkable contribution. Mr Stewart has just talked about the financial millstone that has led to the Marischal Square development, and Mr McDonald wants to boast that the financial millstone is a little lighter than it originally looked as if it was going to be.

**Kevin Stewart:** Will Mr Macdonald give way?

**Lewis Macdonald:** I will in a moment, I am sure, but let me make some progress.

Mr Stewart will recall that he was convener of finance on the city council at a key point in the process. He urged fellow councillors not to forget "the multi-million pound asset that is St Nicholas House".

The value of that asset could fund the costs of Marischal college. That is of course precisely what is happening now. Despite the controversy, no party or group on the council has brought forward proposals to leave the site of St Nicholas house undeveloped, because doing that would simply not pay the bills.

After some debate, Aberdeen City Council chose to demolish St Nicholas house and enable new development. As we have heard, it has now sold the site to a pension fund on a leaseback arrangement, with the right to buy it all back at a nominal price after 35 years. That is clearly a better deal for city taxpayers than the long lease of

Marischal college, which generates debt rather than income, but as the campaigners have rightly argued, it comes with a degree of risk.

**Kevin Stewart:** The lease of Marischal college is an extremely good deal over a 175-year period. Beyond that, the foresight of the previous administration saved an iconic Aberdeen building. Does Lewis Macdonald think that the buildings that are currently going up will be classed by any Aberdonians as iconic?

**The Deputy Presiding Officer:** Mr Macdonald, I will give you extra time, given the length of the interventions that you have taken.

**Lewis Macdonald:** Thank you very much, Presiding Officer—I am very grateful.

I certainly think that it will be a lot easier for Aberdeen City Council to recover value from the Marischal Square development than from Marischal college, which it is clear is simply a drain on revenues for the council. It will take quite a lot of income to pay off the £60 million of debt that Mark McDonald mentioned.

However, there is a degree of risk, as has rightly been said. A report from the accountants EY yesterday commented on the "remarkable resilience" of the Aberdeen economy over the past year in the face of a low oil price and large-scale redundancies. We must hope that that continues, but there is, of course, a risk that that resilience will fail to prevent recession, and there is consequently a risk that the council's income from Marischal Square will fall short of the annual rent that it has committed to pay under the leaseback arrangements.

In that context, it is worth noting last week's report by the Parliament's Local Government and Regeneration Committee, which is convened by Kevin Stewart, which said that local councils should work with pension funds to secure infrastructure investment.

**Kevin Stewart:** Will the member take an intervention on that point?

**Lewis Macdonald:** Not at the moment.

Mr Stewart and his colleagues urged councils to take a less cautious approach. They said:

"without some degree of risk taking, innovation will not happen."

That is quite right.

Audit Scotland has looked at the innovative financing arrangements for Marischal Square. It concluded that the risks had been well understood and managed, and it advised the council to

"continue to manage its financial exposure to mitigate these risks accordingly."

I hope that the council will heed that advice, but I also hope that it will heed the advice of Mr Stewart's committee not to be unduly risk averse.

Aberdeen City Council can clearly demonstrate a proactive approach to the wider risks to the regional economy. Its proposals for a city region deal, which are with ministers, have cross-party support. Now Opportunity North East is bringing together public and private sector partners to strengthen and diversify the regional economy with generous support from, among others, Sir Ian Wood. They recognise that investing so that the local economy continues to grow is the best way to ensure that Marischal Square pays for Marischal college rather than simply adding to the existing debt.

I commend the campaigners who are here today for asking difficult questions. As they will know, the project that they did not want is now well under way, and I suspect that, despite what Kevin Stewart said, they will hear no actual proposals this evening that would change that. Nonetheless, I hope that they will maintain their commitment to our living, changing city, and that they and all of us will continue to strive for Aberdeen's future success.

18:53

**Mark McDonald (Aberdeen Donside) (SNP):** I pay tribute to the campaigners and in particular to my constituent, Bill Skidmore, who has sent a great deal of information to MSPs in advance of this evening's debate. It has certainly made for interesting reading.

My colleague Kevin Stewart helpfully focused on the lack of a business plan and the questions that arise off the back of that. I want to consider some of the wider impacts and risks that I think that the development poses. However, I cannot allow some of the things that Lewis Macdonald said to go unchecked and unchallenged.

First, I think that most people would accept and agree that the redevelopment of Marischal college has been a fantastic benefit to the city of Aberdeen. If Lewis Macdonald's view is that any capital expenditure should be viewed as a millstone or a risk, it is a wonder that anything ever gets developed in the city of Aberdeen. I give the example of new school buildings, which cost tens of millions of pounds. Lewis Macdonald appears to believe that we should not make such investments of tens of millions of pounds because of the potential debt that might arise.

**Lewis Macdonald:** Will the member give way?

**Mark McDonald:** No, I have more to come to yet. Let me develop further.

Of course, Lewis Macdonald turns around and says that the Local Government and Regeneration Committee has spoken about using pension funds for infrastructure investment. That is something that I have spoken about, too, particularly with regard to public pension funds. The idea is that pension funds that invest in that way recoup their investment over time, rather than the burden of risk of the investment simply being transferred on to the local authority, which is what is happening in the circumstances that Lewis Macdonald is talking about.

Then Mr Macdonald says that the Local Government and Regeneration Committee has said that councils should not be too risk averse. There is a fundamental difference between not being risk averse and being essentially blind to or ignorant of risk. That appears to be a dividing line that the Labour-led administration in Aberdeen has fallen over quite spectacularly.

**Lewis Macdonald:** Clearly, Audit Scotland has not considered the handling of the matter to be either blind or ignorant. However, if Mr MacDonald is suggesting that, in some way, Aberdeen City Council should cease to seek an income from Marischal Square, can he tell us how he would have the council pay off the debt accrued at Marischal college?

**Mark McDonald:** One of the things that Aberdeen City Council ought to have done is to have had a much more open and transparent process from the beginning, focusing on the views of Aberdonians with regard to the options that they want to be developed, and then examining how those could be delivered. I am pretty sure that what is currently being developed would not have been top of any of the considerations.

One of the other things that Aberdeen City Council did erroneously was to vote—against the wishes of the group that I was a member of—for the council itself to incur the costs of the demolition of St Nicholas house, with no guarantee of what would come after, thereby taking on an up-front cost with no guarantee of future income. That was another example of carelessness in the face of risk assessment.

I want to consider some of the wider issues in terms of impact and risk. Union Street, the flagship street in the city of Aberdeen, needs support and investment as part of a strategic approach. I fail to see any sign of such an approach. Indeed, it seems that the development and the proposed development in and around the city centre are designed almost to prevent the recovery of Union Street rather than to assist that. The Marischal Square development will be another part of that problem, because it will have a financial impact.

Opportunities are coming to the council and, as Lewis Macdonald is now keen on the council not being risk averse, I am sure that he will join with the calls that have been made by my colleague Councillor Jackie Dunbar for Aberdeen City Council to look to use the new powers that are being given to it in relation to business rates to consider a targeted approach to business-rate reduction in order to encourage independent retailers on to Union Street.

I believe that that should be coupled with ideas about how the upper levels of Union Street buildings could be better used. For example, they could be converted to flats and other properties, which would enable the provision of accommodation in the centre of Aberdeen and reduce the space of buildings that is being let to retailers. That would encourage the smaller independent retailers that exist in areas such as Rose Street and Thistle Street on to Union Street, which would give them greater exposure and greater footfall.

That is the kind of approach that we want to be taken in our city centre—not what is being done with Marischal Square at the moment, which, instead of promoting the smaller independent retailers, only gives an opportunity to chain retailers that do not have a local presence to set up shop in Aberdeen and potentially divert business from them. For me, that is one of the great shames about this situation.

18:59

**Nanette Milne (North East Scotland) (Con):** I am pleased that Kevin Stewart has secured this debate, because it allows us to discuss some real concerns about the Marischal Square development and the planning system in Scotland today, particularly with regard to public engagement in the process when a major development proposal is being considered.

At this point, I should declare that my husband is a committee member of Aberdeen Civic Society, but neither he nor I had any direct input into consideration of the proposals to develop Marischal Square in Aberdeen.

I would also like to acknowledge the detailed briefing material that was sent in by the reject Marischal Square development campaign group ahead of the debate, most of which I unfortunately do not have time to deal with today. It raised many issues with the process that was followed by the city council, including the financial process. The latter has been thoroughly investigated by Audit Scotland, and I think that, at this stage, we must accept that financial due process was followed by the council.

Marischal Square is a site of major importance to people in Aberdeen and far beyond, neighbouring as it does two of the city's most historic buildings: Marischal college and Provost Skene's house. Any development in Marischal Square would have a major impact on their setting. With the removal of St Nicholas house, widely seen as a blight on the landscape of the city centre, there was an opportunity to do something iconic with the space that was opened up and to develop the site in a way that is sympathetic to Provost Skene's house and which showcases and compliments Marischal college, giving space and attracting people to the area. The development that has been approved and is now under construction has shocked many Aberdonians by its sheer size, scale and density—it is already obliterating the imposing granite façade of Marischal college.

At a recent summit held to discuss the effects of the downturn in the oil industry on the economic future of the north-east and the steps required to secure it going forward, it was stated that Aberdeen needs an attraction that not only brings visitors to the city but shows people from other parts of the world, with the skills that we need to attract, that Aberdeen is a great place to live and offers an excellent quality of life. However, there is widespread feeling throughout the city's communities that the opportunity to develop an iconic attraction has been lost with Marischal Square, as it was just a few years back, when proposals to develop Union Terrace gardens were rejected by the council, although that was before they reached the planning stage. In fact, I think that that would have been a catalyst to the issues that Mark McDonald mentioned in relation to Union Street.

Public opposition to the Marischal Square development has been intense, with residents who have never before been active taking to the streets with placards and loudhailers in protest against it. Even at this late stage, campaigners are asking the Government to call in the planning application and are seeking a moratorium on building until the public engagement exercise can be rerun. That is because they feel that the public's voice has not been listened to as part of the planning process, leaving them feeling totally disenfranchised from it.

The Marischal Square development has exposed some fundamental problems with our current planning system. The public do not understand the process. When they turn out in large numbers at pre-application hearings and other public consultation events, as they did in the case of Marischal Square, they think that they have registered their objections, unaware that, to be valid, those objections must also be formally submitted to the planning authority within the time allowed. In this case, the many hundreds of

objections expressed resulted in only 44 formal submissions on the planning application. Understandably, people are outraged that their views were therefore not considered by the council.

In my opinion, that is simply not good enough in 21st-century Scotland, when we are encouraging community involvement in all aspects of life. When important major developments such as this are at issue, the process really needs to be changed to enhance community input. I urge the minister to consider that as a necessary and urgent improvement to the planning system that is currently in place.

19:03

**Alison McInnes (North East Scotland) (LD):** I first congratulate Kevin Stewart on securing this important debate—I am happy to support the motion. I have received many emails and letters from my constituents on the Marischal Square development, and all of them are against the scheme. Not one person wrote to me asking me to publicly support it. I completely understand their concerns, and I, too, pay tribute to the tenacity and determination of the campaigners.

In my opinion, the scheme is utterly uninspiring and lacks any vision. It does nothing to improve the area aesthetically. It detracts from and overshadows an iconic building, and it is a missed opportunity to do something distinctive that reflects the architectural heritage of the north-east. A series of planning decisions has left the city centre fragmented. There was a chance to use this site to create a civic heart of which the citizens could be proud. I am not saying that Aberdeen should not have a new development or that the city should remain as it is. What I am saying is that this development should have been much more ambitious. I mean—how many more shopping malls does the city need?

However, this debate is not about aesthetics; it is about the financial irresponsibility of the city council in approving the bid by Muse. I am very much aware that the building works have already started, but it is important to reflect on the mess and what got us here. We heard from Kevin Stewart about the lack of business plans. We also heard about the financial risks involved in the deal that Aberdeen City Council made with the developers and the secrecy surrounding it.

We have to reflect on the facts that the Labour-led administration has regularly shown contempt for the city's residents; the design was never subject to a proper public consultation; and Labour's finance convener either sought to mislead the public or was simply being incompetent when he claimed that cancelling the

scheme would cost £100 million in fees. Those are important matters that deserve our attention.

Muse previously stated that it hoped that a big-name oil company would lease office space in the new development. Unfortunately, the past year or so has shown us in the north-east how volatile the oil and gas sector is, how quickly opportunities fade, and how too much reliance on a single sector can damage other areas of the economy.

**Mark McDonald:** Does the member agree that, given the developments at Prime Four and ABZ business park by the airport, it is unlikely that oil companies will seek city-centre locations, when other available sites are located more advantageously for access to the airport and the Aberdeen western peripheral route?

**Alison McInnes:** Mark McDonald makes an absolutely fair point.

Employment and the retail and hospitality sectors have all been impacted. The city council, above many others, understands that we have to deal with the peaks and troughs of the oil industry. The reality is that currently most oil and gas companies are looking to cut down on staff and office space.

Aberdeen City Council and Muse agreed the deal when the city was in a better financial situation than it is in just now. However, the council should have had a robust business plan for the project and it should be able to show proof that it has contingency plans. It should be able to assure everyone that this new building will have a purpose and that it will be financially viable even in the toughest of times, and yet it cannot—those assurances are missing.

It is disgraceful to accuse those who raise these valid concerns of playing politics. I support Kevin Stewart's motion.

19:06

**Graeme Dey (Angus South) (SNP):** Like, I suspect, others who have contributed already, I rise to speak as much as an Aberdonian as an MSP. Even though I have lived longer in the constituency that I represent than I lived in the granite city, Aberdeen will in many respects always be home, so it pains me to say that Aberdeen city centre has been destroyed by the planning decisions of successive local government administrations, with Union Street a deathly pale imitation of what it once was and, indeed, what it ought to be.

However, along came a wee glimmer of hope in the shape of the demolition of the blight that was St Nicholas house, which offered a chance to create an open space and let Provost Skene's house breathe. More than anything, it was an



opportunity to allow Aberdonians and visitors alike to view Marischal college and Greyfriars kirk in all their glory.

I managed fleetingly to avail myself of that opportunity when I was home in the summer. I have driven up Upperkirkgate many times over many years but in the summer, for the first time ever when I travelled those yards, I was able to gaze upon the magnificence of Marischal college, which was a genuine “wow” moment. That magnificent piece of granite architecture was at long last free of obstruction and able to be viewed as it ought to be viewed. However, that would not be the case for long, because work was already under way to construct Marischal Square.

Let us consider what Marischal Square is offering. It offers 173,500 square feet of grade A office accommodation and associated car spaces, but there is no shortage of available office space to be found within the granite city. It offers 26,500 square feet of retail and restaurant space. Forgive me, but are the Bon Accord and St Nicholas shopping centres not located within a couple of hundred yards of this spot, offering just that? Do we not already have the Union square development enticing shoppers away from the retail heart of the city? Marischal Square offers a 126-room hotel, but I thought that Aberdeen was pretty well served in that regard. Indeed, in recent months, it has seen a 30 per cent underoccupancy rate for hotels.

On the shopping element, do not listen just to us politicians; let us consider the views expressed by Mary Portas, who I am told is an expert in town-centre retail. On a recent visit to the city, she tweeted:

“Aberdeen Council are letting a shopping build in Marischal Square while Union Street is slowly dying ...What?!”

She continued:

“Beautiful granite stone buildings on Union Street being left while money pumped into a new build by Aberdeen Council. Madness!”

To be fair, the development does allow for a 14,500 square feet civic space in front of the historic Provost Skene’s house. However, although people will be able to gaze on the splendour of that construction, they will not be able to see Marischal college, because, apart from a narrow passageway, it will be completely blocked out by some of the buildings hosting these retail, restaurant and hotel facilities.

It is the missed opportunity represented here that is so sad—the chance to say “enough is enough” to these sort of developments, turn the spotlight on the beautiful buildings that the city already has and, in retail terms, concentrate on reviving Union Street.

There is also the financial aspect of the deal, involving Aviva investors and Muse Developments, whereby Aberdeen taxpayers are underwriting the risk of underoccupancy of the development by guaranteeing shareholders £175 million over 35 years. That financial arrangement potentially creates a significant problem for the council that goes beyond the threat of having to fund an underutilised Marischal Square.

If Marischal Square is underoccupied, the arrangement potentially places councillors in a rather difficult position when they come to decide on future planning applications. If they turn down applications for significant-sized city-centre retail, restaurant or office developments, would that potentially lay them open to accusations that they are doing so in order to protect Marischal Square and the council’s financial exposure there?

Perfectly valid and justifiable decisions could be called into question on those grounds. Legal challenges could be mounted, based on claims that councillors may have been predisposed to reject such applications because of the possible implications for council budgets if they were granted. The Marischal Square project, if it is not a rip-roaring success, could create all kinds of difficulties for future council administrations in the coming decades.

For me, it all comes down to one simple question: can Marischal Square be justified on any grounds? I and many others believe that the answer is no.

19:11

**Richard Baker (North East Scotland) (Lab):** I, too, congratulate Kevin Stewart on bringing the debate to the chamber. The future of Aberdeen city centre is an extremely important issue and rightly excites strong opinions, including those from the reject Marischal Square development campaign group, whom I welcome to the Parliament this evening. People care greatly about the city centre and are concerned about its current state, as we heard from a number of members. They know that its improvement is vital for our local economy, particularly in these greatly challenging times for the oil and gas industry.

The Marischal Square plans have—as we heard—been at the centre of very heated debate, as the proposals for Union Terrace gardens were before them. As someone who supported the previous exciting plans for a new contemporary arts centre to be based in the gardens, I am disappointed that ultimately those plans did not go ahead. However, in the midst of all the debate on Marischal Square and amid much disagreement, there is a consensus that our city centre must change and must be improved.

I know that Aberdeen City Council is absolutely committed to making that change happen. The Marischal Square plans are part of that, but on an even wider scale there is the on-going work on the city centre masterplan to which the council administration is committed—Mark McDonald referred to the strategic approach to that.

Whatever views there may be on the plans for Marischal Square, we should all be able to agree that the new development will be a significant improvement on St Nicholas house, which stood on that site for so many years and which, as Nanette Milne said, was not a building that was widely regarded or cherished by the residents of Aberdeen.

**Kevin Stewart:** It is interesting to hear Richard Baker now coming out in favour of the Marischal Square development, given that he would not do so in the run-up to the general election in which he stood as a candidate.

I disagree with Mr Baker, and I ask him for the proof that folks think that the new development will be better than the St Nicholas house situation. I have heard from residents of the city that we are simply replacing one ugly skyscraper with four ugly skyscrapers.

**The Deputy Presiding Officer:** I will give you a little extra time, Mr Baker.

**Richard Baker:** That is not what I have heard at all. Of the great majority of people in Aberdeen to whom I speak, no one has expressed to me the idea that the development will be detrimental in comparison with St Nicholas house. Indeed, I expect that even some of the members who have said in the debate that they are not in favour of Marischal Square hold that opinion.

I accept that there are people who do not support the plans, but there are others who want to see the kind of environment for retail and leisure in the city centre that Marischal Square will provide. Union square has already proved to be highly popular and it has plans to expand.

**Christian Allard (North East Scotland) (SNP):** Will the member give way?

**Richard Baker:** I do not have time—I apologise.

An important element concerns the finances that will accrue to the council through the Marischal Square project. Given that our city council receives significantly lower levels of funding than other local authorities, that must be a key consideration for the council administration as it seeks to protect funding for services. Although concerns have been raised during tonight's debate with regard to the scheme's finances, I point members towards the Audit Scotland report on the financial plans, which found that good practice had been followed. On the business plan, I understand

that there was no business plan for the Marischal college scheme either.

The work on Marischal Square—

**Kevin Stewart:** Will the member give way?

**Richard Baker:** The work is proceeding, but doubtless the wider debate—

**Kevin Stewart:** Will the member give way on that point?

**Richard Baker:** No.

**The Deputy Presiding Officer:** The member is not giving way, Mr Stewart.

**Richard Baker:** The wider debate on the future of Aberdeen city centre will continue because it is such an important issue for the future of the city—on that we can all agree.

I know that there is also broad agreement on the need for an Aberdeen city region deal. That is important given the fact that infrastructure and investment are key elements of the deal, offering further opportunities to develop our city centre. It is good that the city region deal bid offers the opportunity for the transformation of the city and that it is supported across parties, across Governments, and by the two councils.

Aberdeen city centre can be the attractive and vibrant place that we all want it to be, helping to bring more people to visit, work and live, and to enjoy all that our great city has to offer. That is the goal that lies at the heart of the work of our council and should be a common endeavour for all who represent the city. I hope that the minister will confirm his support for that vital work at the end of this evening's debate.

19:15

**The Minister for Local Government and Community Empowerment (Marco Biagi):** The subject of the motion is clearly an important issue, as we have seen from the debate this evening. I say that not just as the local government minister, but as one city-centre MSP to another. The key questions that are triggered here—about heritage, finances and how to plan best use of the short supply of space in a city centre—are big questions, and feelings run deep. The evidence of that was made clear by Aberdeen's street protests, one of which was led by the member who has led tonight's debate, and which had thousands of participants. As Graeme Dey highlighted, even Mary Portas weighed in.

We have seen a sustained campaign to influence local decisions. In the spirit of recent Scottish politics, I commend people's willingness to get involved with debates, regardless of which side we or they are on, and I commend the

willingness and energy that the citizens of Aberdeen have shown by becoming active and engaged on the issue. Whichever position people take, their determination has been something to behold and our society would benefit if more people engaged so actively with local issues.

**Kevin Stewart:** I will correct the minister. I did not lead any of the protests; they have been led by the citizenry of Aberdeen, and have shown the groundswell of opinion that there has been.

Does the minister think that the Community Empowerment (Scotland) Act 2015 can make a difference in allowing folks the opportunity to have their voices heard, unlike the situation under debate, in which they have been ignored?

**Marco Biagi:** I used the word “led” in the purely physical sense, based on a photo that I saw. The Community Empowerment (Scotland) Act 2015 is really important in this regard. I was about to comment on some of the wider issues that the debate has raised before homing in on the specifics.

The community empowerment agenda is all about tackling not just the inequalities of wealth and income that we have in this country, but the inequalities of power and influence. Sadly, only 22 per cent of people in Scotland feel that they can influence local decisions. That figure must be made higher.

There is a range of community empowerment initiatives that try to get away from adversarialism and in stead to focus on positive suggestions and partnership working. We are rolling out participatory budgeting in order to get people directly involved in spending decisions. Perhaps crucial for the debate tonight are participatory planning initiatives—for example, charrettes, of which we have funded 31 since 2011. They are an intensive way of getting communities proactively involved at the start in order to provide the vision of what people want. In July, we committed £300,000 more for 2015-16 and, as ever, we received more applications than we could fund, but the appetite for that form of empowerment is clear.

**Mark McDonald:** The minister might be aware that a charrette was undertaken in my constituency in relation to the Grandhome estate. That charrette predated the Marischal Square process, so the process ought not to have been alien to the council when it was undertaking the Marischal Square project.

**Marco Biagi:** Mark McDonald has made his point. Charrettes have been around for a while and they represent a particular way of doing intensive participative planning. The principles are good practice that can be deployed through all kinds of other methods in planning.

To answer Nanette Milne’s point, we have an independent panel reviewing the Scottish planning system at the request of the Cabinet Secretary for Social Justice, Communities and Pensioners’ Rights. Its membership includes Petra Biberbach of PAS—formerly Planning Aid for Scotland—and it has identified community engagement as one of its key issues. The call for evidence closed on 1 December, and the report is expected in May, with any changes to be based on the recommendations to follow after that.

All that is the generality; here is the specific. There is no doubt that this is a crucial issue to Aberdeen, and it brings home that we should not treat council elections lightly. Local authorities are responsible for vital services, for emotive decisions and for £16.5 billion of gross expenditure every year. Local democracy matters, and it gives councils a mandate and a way of being held accountable for decisions that are not supported by their electorate—just as we are held to account in the Parliament.

**Dennis Robertson (Aberdeenshire West) (SNP):** As the minister said, local democracy matters. Nanette Milne said that only 44 submissions came in against the planning, but many hundreds of people were out in protest. The council ignored democracy.

**Marco Biagi:** There is clearly an on-going debate and people from all sides are having their say. People will have all kinds of opportunities to have their say through the electoral and democratic processes.

We, as a Government, believe in local decision making. We intervene only in extreme cases and we have powers to direct only in specific circumstances. We have no general power to direct local authorities: to be frank, long may that remain so. Any power that we have goes through the statutes that are passed in this Parliament, and it applies in limited cases. In that respect, Marischal Square lies beyond any reach of the Scottish ministers at this point. Planning permission has been formally granted by the local authority, so it cannot be recalled by ministers, and we must act with respect for that decision. Nor is there any evidence that the council has failed in a statutory duty under the Local Government (Scotland) Act 1973, which could trigger powers.

Audit Scotland concluded in its 2014-15 annual audit of Aberdeen City Council that

“relevant transactions have been appropriately”

accounted for, and that

“Appropriate processes have been followed”

in a financial sense. The Scottish Government’s power to direct following a recommendation by the Accounts Commission will therefore not be

engaged on the ground of best value. There have been criticisms of Audit Scotland this evening, but it is our established independent audit body and the Scottish Government must have regard to it; indeed, the Government's powers in this respect are triggered only when, through its work with the Accounts Commission, it makes a recommendation.

I return to where I started on the matter. Audit Scotland looked at the finances, but this is a political decision. There are issues that are much wider than the finances, such as the opportunity cost, other uses of the square and the advisability of investing in one project over another. All those things are within the scope of reasonable local political debate, and it is understandable for people to come to different conclusions about the advisability of the plan, just as it is within people's scope to view administrations positively or negatively. Planning permission was passed on a close vote of councillors, as was the Muse deal. The issue has been controversial and I expect that controversy to continue. Kevin Stewart, who has brought the debate to the chamber, is to be commended for acting on his views as a local representative and for giving the debate more space.

This Government is subject to constant attacks from parties on either side of me about centralisation, but it is also called on to intervene in local decisions on everything from planning to social care. This minister believes in local democracy.

In conclusion, let me restate clearly what my predecessor said to Kevin Stewart last year. Our actions do not constitute approval for the proposal or agreement with decisions that have been taken by the council. We are merely acknowledging that the matter is in the council's area of responsibility.

Just as we want empowered communities, we want responsive democracies. Having the first without the second would lead only to cynicism and disengagement. It is only when all levels of government are truly realising the Christie principles of prevention, performance, people and especially partnership and participation that we will have flourishing villages, towns and city centres, and everyone will be able to look with pride on the place that they call home.

**The Deputy Presiding Officer:** Thank you all for taking part in this important debate.

*Meeting closed at 19:24.*

This is the final edition of the *Official Report* for this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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