The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 29 September 2015

Session 4

Tuesday 29 September 2015

CONTENTS

JUSTICE COMMITTEE
27th Meeting 2015, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Elaine Murray (Dumfriesshire) (Lab)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)
*Roderick Campbell (North East Fife) (SNP)
*John Finnie (Highlands and Islands) (Ind)
*Margaret McDougall (West Scotland) (Lab)
*Alison McInnes (North East Scotland) (LD)
*Margaret Mitchell (Central Scotland) (Con)
*Gil Paterson (Clydebank and Milngavie) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Mary Fee (West Scotland) (Lab)
Michael Matheson (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Justice Committee

Tuesday 29 September 2015

[The Convener opened the meeting at 10:02]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning. I welcome everyone to the Justice Committee's 27th meeting in 2015. I ask everyone to switch off mobile phones and other electronic devices, as they interfere with the broadcasting system even when they are switched to silent. No apologies have been received.

Agenda item 1 is a decision on taking business in private. Do members agree to consider in private item 5, which is on our budget scrutiny, and item 6, under which we will consider our work programme?

Members *indicated agreement.*

Criminal Justice (Scotland) Bill: Stage 2

10:03

The Convener: Agenda item 2 is day 3 of stage 2 proceedings on the Criminal Justice (Scotland) Bill. I welcome to the meeting the Cabinet Secretary for Justice, Michael Matheson, and the Scottish Government officials who are here to support him. As members are aware, they are not able to take part in the proceedings.

Members should have with them their copy of the bill, the marshalled list and the groupings of amendments for consideration. I aim to get as far as we can by around 11.40, as we have other items of business to consider. As members are aware, we will not get through all the amendments today, but we can get on with the remainder next week. I know that members are looking forward to continuing stage 2 of the bill.

Before section 1

The Convener: Amendment 223, in the name of the cabinet secretary, is grouped with amendments 224 to 229, 229A, 230, 230A, 231, 232, 232A, 233, 233A, 233B, 50, 51, 51A, 52 and 53.

The Cabinet Secretary for Justice (Michael Matheson): Good morning. I thank the committee for altering the normal order of consideration of amendments. As members know, the advisory group on stop and search was not due to report to me until 31 August, so the committee's scheduling has been extremely helpful in allowing us to debate the matter in light of the advisory group's recommendations.

I have given a commitment to implement the advisory group's recommendations, and it is important to look at this group of amendments in that context. My aim is to use the amendments to make the legislative change that we need in order to implement the advisory group's recommendations in full.

I asked the advisory group to consider whether consensual stop and search should end and whether any additional steps would be required, including any consequential legislation or changes in practice. I also asked it to develop a draft code of practice to underpin the use of stop and search in Scotland.

The advisory group had a broad membership that included Police Scotland, the Scottish Police Authority, the Crown Office and Procurator Fiscal Service, academics, representatives from Scotland's Commissioner for Children and Young People, and Anne Houston, who is chair of the

Scottish child protection committee chairs forum and former chief executive of Children 1st.

I asked the advisory group to report to a tight timescale to match the progress of the Criminal Justice (Scotland) Bill. I am grateful to the group, and in particular to John Scott, who led it, for delivering the report to last month's deadline. I am sure that the committee will agree that the report is comprehensive, balanced and considered, and that it makes clear and well-reasoned recommendations.

In the summer, I indicated that I would seek an early opportunity to legislate, and that is what we are doing now. I hope that that reassures the committee that we are serious about implementing all the advisory group's recommendations swiftly and delivering the new code of practice as soon as we practically can.

I thank Alison McInnes for her contribution to the stop-and-search debate over recent months, and for lodging amendments 50 to 53. As she knows from our recent discussions, it has not been possible to blend her amendments with those of the Government. In my view, implementation of the recommendations requires a co-ordinated set of amendments that are more detailed than amendments 50 to 53. We looked at the matter carefully, but amendments 50 to 53 simply do not lend themselves to being changed in the way that would be required. My conclusion was that the most effective way to ensure proper implementation of the advisory group's recommendations was to draft a new set of co-ordinated amendments as a single package, which is what we have done.

Amendments 223 to 233, in my name, form a set that hangs together. They form a new part of the bill that is divided into two chapters. The amendments will insert the new part, section by section.

Amendment 223 ends consensual stop and search of persons who are not in police custody. Its effect will be that police officers will be able to search such a person only when they are explicitly permitted to do so by an enactment or warrant. That is what has become known as statutory search.

Amendments 229, 232 and 233 require a code of practice to be implemented, after a period of consultation. The consultation, which is to be both public and with specific stakeholders, will be followed by a requirement for parliamentary approval, under the affirmative procedure. A copy of the code of practice is also to be laid before Parliament.

Amendment 230 provides for the code of practice to be kept under regular review thereafter. The original code will require to be reviewed within two years of coming into effect, and thereafter a review will be required no later than every four years.

Together, amendments 223, 229, 232 and 233 implement advisory group recommendations 1 to 4, and they follow the advisory group's recommendations in relation to making, publishing and consulting on the code of practice.

Amendment 231 gives the code the appropriate legal status. A court or tribunal in civil or criminal proceedings will have to take the code of practice into account when determining any questions arising in the proceedings to which the code is relevant.

Amendment 227 ensures that consensual stop and search will end under amendment 223 at the point at which the original code of practice comes into effect. Proposed subsection (1) of the new section to be inserted by amendment 227 achieves that by stating that the provision in amendment 223 is to commence on the same day as the original code of practice takes effect under the provisions in amendment 233. That implements advisory group recommendation 8.

Advisory group recommendation 6 is that the Scottish Government should hold an early consultation on whether to legislate to create a specific power for police officers to search children under the age of 18 for alcohol. I have said that we will carry out a consultation on that. The advisory group was unable to form a concluded view as to whether such a power was necessary or desirable, which is why it recommended that there should be a consultation. I will decide whether such a power is necessary after the consultation.

If, after consultation, I decide that such a power is necessary, I would wish to seek the Parliament's consent to introduce that power in a timely manner. Amendment 226 contains an enabling provision that would facilitate that. It would allow an affirmative Scottish statutory instrument to be made to provide a power to stop children under 18 and search them for alcohol. The amendment would also allow the SSI to provide a power to search a person who is over 18 where that person is hiding a child's alcohol in order to prevent it from being found. However, unlike consensual stop and search, such powers will only ever be able to be exercised where the police have reasonable grounds for suspecting that the person has alcohol in their possession. As I said, decisions on whether to make such an SSI will depend not only on the consultation outcome but, ultimately, on that SSI being approved by the Parliament.

The provision is also subject to the sunset clause in proposed subsection (2) of the new section that will be inserted by amendment 227.

The result is that, if no regulations are made within two years of the original code of practice coming into effect, the provision will cease to have effect.

Amendment 224 addresses the potential but limited gaps in statutory powers that we have identified. There is a possible lack of clarity in the current law and a risk that the complete abolition of consensual stop and search under amendment 223 might mean that the police lack the powers that they need to search persons in certain circumstances—in particular, persons who have not been arrested but who are nevertheless in the hands or safekeeping of the police under some other legal authority.

We have identified several circumstances in which the police have statutory power to hold and/or transport a person from one place to another to safeguard that person's safety and wellbeing. In order to look after that person and also to protect the police officers looking after them, the police need to be able to search them before holding and/or transporting them. In particular, there is currently no express power of search when the police take a drunk person to a designated place under section 16 of the Criminal Procedure (Scotland) Act 1995. There is no express power of search when detaining a person under the Mental Health (Care and Treatment) (Scotland) Act 2003 or under part 6 of the Criminal Procedure (Scotland) Act 1995, or when detaining a child for their own welfare under section 56 of the Children's Hearings (Scotland) Act 2011. As I am sure the committee will understand, the gaps that we have identified cannot be left unfilled.

Amendment 224 addresses those gaps. It contains a general provision that would allow constables to search a person in the circumstances that I have mentioned—that is, when the person is to be held or transported by the police under specific authority of an enactment, warrant or court order. It should be noted that the power of search is expressly limited to not just specific circumstances but a specific purpose, namely to ensure that the person who is in the hands of the police is not in possession of something that could be harmful. That power was not included in the advisory group's recommendations, no doubt because the circumstances that I have outlined were not within the group's remit. However, I believe that those powers are necessary for the narrow purposes of prevention of harm to self and others in the limited circumstances in question. The amendment will create a new power of statutory search in those limited circumstances whereby the new power falls within the authority for statutory search referred to in amendment 223. The committee may wish to know that John Scott is aware that we propose to introduce the new power and that he considers it to be a sensible proposal.

10:15

Amendment 225 imposes a duty on a constable, when deciding whether to search a child, to treat the wellbeing of the child as a primary consideration. That replicates the effect of section 42 in the context of stop and search. The amendment delivers the intention behind advisory group recommendation 7 and amendment 53, in the name of Alison McInnes. I shall return to that point later, when I talk about the non-Government amendments in the group.

Amendment 228 provides a definition of "constable" and "police custody" for the purposes of the proposed new chapter.

In summary, amendments 223 to 233, if accepted as a package, will deliver all the legislative changes required to implement advisory group recommendations 1, 2, 3, 4, 6, 7 and 8 in full.

For the sake of completeness, the committee will wish to know that implementation of advisory group recommendations 5, 9 and 10 does not require legislative change. Recommendation 5 concerns a transfer of information from Police Scotland to the Scottish Police Authority and the publication of that information. Recommendation 9 concerns the need for a detailed implementation programme, and recommendation 10 is that there should be discussions about the most appropriate way of dealing with children and vulnerable adults who come to notice during stop-and-search situations.

I turn to the non-Government amendments. For the reasons that I have outlined, I consider that the intentions behind amendments 50 and 51, in the name of Alison McInnes, are more effectively delivered by the fuller package of provisions contained in amendments 223, 229, 230, 232 and 233. I therefore ask Alison McInnes not to move amendments 50 and 51.

I also encourage Alison McInnes not to move amendment 52, which has been superseded by advisory group recommendation 5, which covers the transfer of information from Police Scotland to the Scottish Police Authority and the publication of that information. Although I support the principle of publishing information on stop and search, I do not consider that it is appropriate to include such a requirement in primary legislation. There are other, more appropriate ways to publish that information, as recommended by the advisory group.

Amendment 53, in the name of Alison McInnes, concerns the wellbeing of the child and mirrors advisory group recommendation 7. My initial instinct was to support amendment 53. However, on closer inspection, neither amendment 53 nor advisory group recommendation 7 would quite achieve what they seek to achieve, because of

their wording and the provision's proposed placing in the bill. Because of the provision's proposed position in section 42, and the fact that it is not restricted to children who are not in police custody, amendment 53 goes too far, because it targets all searches in all circumstances. That means that it would unnecessarily and inappropriately affect the power to search people who are being dealt with by the police under the regime for arrest, custody and questioning in part 1. Such people are already protected by section 42. Amendment 53 would also go further than advisory group recommendation 7, which is explicitly limited to children who are not in police custody. As I said, amendment 225 imposes a duty on constables, when deciding whether to search a child, to treat the wellbeing of the child as a primary consideration. That exactly delivers the intention behind amendment 53 and advisory group recommendation 7. I therefore ask Alison McInnes not to move amendment 53.

Amendment 229A, in the name of Alison McInnes, would have the effect of specifying the information that the code of practice must contain. As I said, my intention is to implement the advisory group's recommendations in full. The advisory group looked at the matter closely, and deliberately decided not to be prescriptive about what the code should contain. It provided a draft code and recommended that we carry out a consultation on the draft. That is what I intend to do, and I have asked John Scott and the advisory group to help us to develop the code of practice in light of the consultation responses. Parliament will have the opportunity to debate and vote on the code before it is finalised. The process for the code of practice is designed to ensure that the code contains everything that it should. I therefore encourage Alison McInnes not to move amendment 229A.

Amendment 233B, in the name of Alison McInnes, would provide that regulation to bring into effect the first code of practice must be laid within one year of the bill receiving royal assent. I agree that that is a reasonable time period and I thank Alison McInnes for lodging the amendment. I am content to support amendment 233B, but we may seek to refine the provision at stage 3 if that appears to be necessary on looking at it again when it appears in the bill. I undertake to work with Alison McInnes on the matter.

Amendments 230A and 233A, in the name of Alison McInnes, are about reviews of the code of practice. Amendment 230A seeks to ensure that each review of the code of practice is completed within six months of the review's start date. I agree with the intention behind ensuring that reviews are carried out as quickly as possible and would certainly agree that any review should be carried out within six months. I am therefore content to support amendment 230A and I thank Alison McInnes for lodging it. Again, we may seek to refine the provision at stage 3 if that appears to be necessary on looking at it again when it appears in the bill. Of course, we will work with Alison McInnes on the matter.

The effect of amendment 233A would be that, after each review of the code of practice, regulations would have to be laid for a new code to come into effect, whether or not the code had been changed. I agree with the principle that reviews of the code should be kept under scrutiny. However, I consider that amendment 233A would create an odd result, because it would require a revised code of practice to be brought into effect even when the earlier version of the code had not been revised.

In addition, amendment 233A would go beyond the advisory group's recommendation, which was that any revision to the code should be subject to parliamentary approval. Amendment 230, in conjunction with amendment 233, will ensure that that happens. Any revised code will not take effect until Parliament has had the opportunity to debate and vote on the matter. I therefore encourage Alison McInnes not to move amendment 233A.

Amendment 232A, in the name of John Finnie, would add the Police Investigations and Review Commissioner to the list of organisations that should be consulted when the draft code of practice is prepared. The PIRC would be covered by proposed new subsection (2)(h) of the new section that amendment 232 will insert, which refers to

"such other persons as the Scottish Ministers consider appropriate."

However, I have no objection to the PIRC being specifically included. I am therefore content to support amendment 232A, although we may seek to move the provision to a different place in the list at stage 3, for technical reasons.

I can summarise as follows. Amendments 223 to 233, if accepted as a package, will deliver all the legislative changes required to implement the recommendations of John Scott's advisory group. I am content to support amendments 230A, 232A and 233B, but I encourage Alison McInnes not to move amendments 50, 51, 52, 53, 229A and 233A.

I hope that it is clear to the committee that I have taken great care over how to approach stop and search and that I have taken into account suggestions made by Alison McInnes, John Finnie and other members on the amendments. I will continue to do so between now and stage 3, to build as much consensus on the issue as possible.

I move amendment 223.

The Convener: I thank the cabinet secretary for a very comprehensive trip round all the amendments. I think that members received some explanatory notes in advance, which was helpful, because the issue is complex. It would have been difficult if the information had just been put in front of everyone today.

Alison McInnes (North East Scotland) (LD): I will speak to most of the amendments in the group, if you will bear with me, convener.

For 18 months, I was repeatedly told by the Scottish Government that stop and search was an operational matter. Ministers insisted that they were comfortable with so-called consensual stop and search, despite it occurring on an industrial scale and targeting young and vulnerable people—even children.

My campaign to abolish so-called consensual stop and search and introduce a code of practice won the backing of dozens of charities, academics, the Scottish Human Rights Commission and Scotland's Commissioner for Children and Young People. As members will be aware, the Government has finally decided to adopt my plans after they were effectively endorsed by the independent advisory group that is chaired by John Scott QC. I have been pleased to work with the Government since that review was published, and I have reflected on the 11 amendments that the cabinet secretary has lodged, which benefit from the additional evidence that has emerged since I lodged mine in February. I am willing, if John Finnie will agree, not to move amendments 50, 51 and 53. However, it is essential that the Government's amendments are strengthened in a number of respects to ensure that there is no room for ministers to backtrack.

As the minister said, amendment 229A would specify the information that must as a minimum be included in the code of practice, namely the circumstances in which searches take place; the procedure to be followed; what records must be taken; and the rights of the subject to access those records. Those provisions are not onerous by any means and provide ministers with a great deal of flexibility to develop the code. However, they will establish what this Parliament expects, and I intend to press that amendment.

Amendment 230A specifies that reviews of the code should be completed in six months, again ensuring that reviews cannot just get stalled. I thank the Government for its support on that.

Amendment 233A is intended to reflect my belief that every time the code is reviewed, the Parliament should have an opportunity to reaffirm its support for the code or, if it wishes, initiate changes, even if the minister does not believe that change is necessary. However, having listened to what the cabinet secretary has said this morning, I will not move the amendment.

Amendment 233B is a significant one. It addresses an omission in the Government's amendment and requires the introduction of the code of practice and the abolition of so-called consensual stop and search to occur within one year of royal assent. With Police Scotland still conducting hundreds of thousands of these unregulated searches, we should not allow the code of practice to slip. I am grateful that the minister has agreed to support that amendment.

I am minded to move amendment 52, which requires the SPA to produce an account of the use of stop and search in its annual report to Parliament. That will encourage transparency and improved data collection methods. The committee will remember the difficulties with the figures that were being bandied about.

Scotland's Commissioner for Children and Young People warns us that amendment 226, which involves powers to search for alcohol, is premature. Children 1st indicates that it is concerned about the possibility that such a power could lead to unintended consequences for children, such as criminalisation and a higher rate of statutory stopping and searching for young people. I note that John Scott QC's review group reported:

"We have not been able to form a concluded view on whether a gap in powers exists that could not be dealt with by existing powers, and also on whether a power to search children for alcohol would be desirable. We therefore recommend that there should be a public consultation that involves children and young people."

The review group went on to say:

"We therefore recommend that this should be considered separately, subject to wider consultation, specifically involving children and young people."

I agree that there is no need to have this provision in the bill.

Dr Kath Murray's groundbreaking research into the prevalence of unregulated stop and search and the effects of the encounters in Scotland shone a bright light on something that needs to be challenged. For a long time, I was a lone voice in Parliament raising that challenge, but I am delighted that the evidence has vindicated that approach and that the committee is now on the verge of ensuring that every stop and search that is conducted by the police has a robust legal basis.

We are on the verge of ensuring that every search is justified, regulated and accountable. These changes to the bill will be the start of rebuilding community relations with the groups that have been disproportionately targeted by this thoroughly discredited tactic. However, there is

one more hurdle, and I hope that members will join me in ensuring that there is no room for delay or for future Governments to slide back. I hope that the committee will back my amendments.

John Finnie (Highlands and Islands) (Ind): Stop and search did not use to be a problem. There were all the statutes that could be invoked on stop and search and there was a lot of statutory guidance and case law on the matter. It then became a problem, and I am certainly very grateful to the cabinet secretary for setting up the review committee under John Scott, as it sent a very clear signal that the issues had been responded to. I think that we have heard a lot to suggest that that continues to be the case, and I will not repeat much of what my colleague Alison—ah—[*Interruption*.] Sorry—I mean Alison McInnes.

The Convener: It is still early and already you are falling apart.

John Finnie: I know. Forgive me, convener.

I will not repeat much of what my colleague Alison McInnes has said, but I am certainly grateful for the movement that has been made. I am therefore happy not to move my amendments.

10:30

Elaine Murray (Dumfriesshire) (Lab): Labour members also welcome the progress that has been made on stop and search and the move to putting it on to a statutory basis. However, I invite the cabinet secretary to make clear his views on amendment 226 and the concern that has been raised by Tam Baillie, Scotland's Commissioner for Children and Young People, about the use of the affirmative procedure, which he thinks is unlikely to allow for sufficient parliamentary scrutiny of a matter that is likely to have wide-reaching effects for children and young people across Scotland. I appreciate that amendment 227 contains the fall-back position of a sunset clause, which will be invoked if nothing comes forward, but is the Government prepared to consider putting in place a super-affirmative procedure to give Parliament the chance for additional scrutiny?

Margaret Mitchell (Central Scotland) (Con): I am happy to support the cabinet secretary's amendment on stop and search, which reflects the recommendation of the review committee chaired by John Scott. I also pay tribute to Alison McInnes, who has been relentless in her scrutiny of the matter and her campaigning against the undoubted abuses of the consensual stop and search procedure. I think that today is a victory for her, too.

I support amendment 229A, in the name of Alison McInnes, but I note that the cabinet secretary is not minded to support it, because he does not want to be too prescriptive. However, the amendment simply says "should include"; the content itself is not definitive. In any case, I think that it is eminently sensible for the circumstances of a search to be looked at and, crucially, for a record to be kept. How else are we to determine how many searches are taking place? Despite being a supporter of it, I am also happy that Alison McInnes is not seeking to move amendment 233A.

I am minded to support amendment 52, which seems to me to be sensible. It simply tightens up the provisions and makes them as effective as possible by ensuring that a record of the stop and search is included in the Scottish Police Authority's annual report.

Finally, I think that John Finnie's amendments make sense.

Roderick Campbell (North East Fife) (SNP): I have heard the point that has been made about amendment 229A being prescriptive but, for me, the important point is that Parliament will have the opportunity to debate and vote on the code of practice before it is finalised. It is therefore not something that will not come back to Parliament.

With regard to amendment 226, I recognise that the area is likely to be controversial. As far as I am concerned, as long as the Parliament has a proper opportunity in some shape or form to consider the outcome of the consultation, I have no particular problem with the Government's proposal.

Michael Matheson: I am grateful for the comments that various committee members have made.

The intention behind amendment 226 is not to pre-empt anything. Instead, it creates an enabling power to ensure that if, following the consultation as recommended by the advisory group, it is felt to be necessary to create the statutory provision for searching those under 18 for alcohol, the Parliament will have an opportunity to address the matter. The inherent danger and risk in not agreeing to this amendment and not taking forward the provision is that if, as a result of the consultation, a gap is identified and it is recommended that we have something to deal with it, we will have no legislative vehicle for pursuing that.

I am open to the idea of exploring, between now and stage 3, whether there is a way in which the provision could be further reinforced. For example, Elaine Murray has suggested that the provision should be subject to a super-affirmative procedure and, if the committee is minded that it should be, I am more than content to explore that idea further between now and stage 3. That would give the Parliament additional oversight before any such power could be introduced.

Nevertheless, I have serious concern about the possibility that we will conduct a consultation, as recommended by the advisory group, find that it identifies a legislative gap but then have no legislative vehicle with which to address that deficit in the law. If, during the course of the consultation, nothing is identified that would justify having such a statutory provision, we have the amendments that would create a sunset clause to remove the provision from the bill.

We decided not to accept amendment 229A primarily because of the recommendations of the advisory group, which considered the issue closely and decided not to be prescriptive about what the code should contain. It provided a draft code with the recommendation that we should have a consultation on that draft code, and that is what we intend to do. To assist that process, the advisory group will remain in place, with John Scott heading it up and other members supporting the consultation exercise and the drafting of the code, which will eventually be brought before Parliament for its consideration. The key point is that, as Rod Campbell said, the code of practice must be laid before Parliament and Parliament will have the ultimate say over whether its content is correct.

We have decided to reject amendment 52 because of the findings of the advisory group on the matter. In its report, the group highlights that the approach that Police Scotland currently takes on data has improved and, in recommendation 5, recommends that practical measures be taken on a regular basis by the SPA and Police Scotland to ensure that there is adequate openness and transparency. That recommendation will be fully implemented along with the other recommendations in the report. There is, therefore, no need to put anything in the bill to achieve that.

Amendment 223 agreed to.

Amendments 224 and 225 moved—[Michael Matheson]—and agreed to.

Amendment 226 moved—[Michael Matheson].

The Convener: The question is, that amendment 226 be agreed to. Are we agreed?

Alison McInnes: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McDougall, Margaret (Central Scotland) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Against

McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 8, Against 1, Abstentions 0.

Amendment 226 agreed to.

Amendments 227 and 228 moved—[Michael Matheson]—and agreed to.

Amendment 229 moved—[Michael Matheson].

Amendment 229A moved—[Alison McInnes].

The Convener: The question is, that amendment 229A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Ind)
McDougall, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 229A agreed to.

Amendment 229, as amended, agreed to.

Amendment 230 moved—[Michael Matheson].

Amendment 230A moved—[Alison McInnes]—and agreed to.

Amendment 230, as amended, agreed to.

Amendment 231 moved—[Michael Matheson]—and agreed to.

Amendment 232 moved—[Michael Matheson].

Amendment 232A moved—[John Finnie]—and agreed to.

Amendment 232, as amended, agreed to.

Amendment 233 moved—[Michael Matheson].

Amendment 233A not moved.

Amendment 233B moved—[Alison McInnes]—and agreed to.

Amendment 233, as amended, agreed to.

Amendments 50 and 51 not moved.

Amendment 52 moved—[Alison McInnes].

The Convener: The question is, that amendment 52 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Ind)
McDougall, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 52 agreed to.

Section 1—Power of a constable

The Convener: Amendment 111, in the name of the cabinet secretary, is grouped with amendments 112 and 37.

Michael Matheson: I will deal first with amendments 111 and 112, both of which are relatively minor, before turning to amendment 37 and the proposed definition of arrest.

Amendment 111 aims to improve readability.

Amendment 112 clarifies the meaning of an offence not punishable by imprisonment. Section 1(2) sets out an extra test that has to be met before a constable can arrest someone without a warrant if the offence that the person is suspected of committing is

"not punishable by imprisonment".

The phrase is meant to capture minor offences for which nobody would ever be sent to prison. On its own, however, the phrase could be taken to mean that the suspect whom the constable intended to arrest would not be liable to be imprisoned. Children, for example, are never liable to be imprisoned. Amendment 112 makes it clear that, in deciding whether section 1(2) applies, it is the nature of the offence that is to be considered, and not the identity of the suspect.

I turn to John Pentland's amendment 37, which would add a new section to provide a definition of arrest for the purposes of part 1.

I am not persuaded that amendment 37 would do any good; indeed, it could have the opposite effect. Definitions are there to clarify the meaning of the words and expressions used in the bill. The proposed definition of arrest would not make the meaning of part 1 more certain.

10:45

The proposed definition is in two parts. The first part refers to

"depriving a person of liberty of movement."

That phrase is open to interpretation and challenge. For example, would it cover those who were released on investigative liberation or on an undertaking or bail with conditions as to the places where they were permitted to go?

The second part of the proposed definition is that arrest means

"taking the person to a police station in accordance with section 4",

which might imply that nobody can be arrested at a police station. That proposed definition of arrest is circular: a person is under arrest within the meaning of the proposed definition if he or she is to be taken to a police station in accordance with section 4. Who is to be taken to a police station in accordance with section 4? Section 4 applies in relation to a person who has been arrested, so, the definition effectively states that a person is arrested if the person has been arrested.

The Convener: So far so good.

Michael Matheson: Part 1 is, in a sense, an extended definition of arrest. It sets out who can exercise the power of arrest, the grounds for doing so, the rights of the person who has been arrested and what is to happen following arrest. Picking out one element of that extended definition and saying that that is what arrest means for the purposes of the bill does not add anything.

There are many other statutes that use the word "arrest" without a definition and which work well without one. As Police Scotland indicated in its evidence, the bill as introduced will allow the police to work with the current legal understanding and definition of arrest, which is well understood by police officers and others in the justice system.

Although the practitioners understand the legal meaning, I acknowledge that there might be some misunderstanding among the general public of what arrest means, but defining the word in the bill will not help with that. As I said, the purpose of defining words and expressions in legislation is to inform the interpretation of the legislation in question. There is an onus on everyone who works in the criminal justice system to find ways to make the system more understandable and accessible.

I urge Elaine Murray not to move amendment 37 for the reasons that I have outlined.

I move amendment 111.

The Convener: I call Elaine Murray to speak to amendment 37, in the name of John Pentland.

Elaine Murray: I just want to say a few words regarding amendment 37, in the name of my colleague John Pentland. I should point out that, despite the hilarity over the wording of the amendment, it was actually drafted by the legislation team, not by Mr Pentland himself. If there is criticism there—

The Convener: I think that that is deuce.

Elaine Murray: It was drafted by people who know what they are doing.

However, as the cabinet secretary implied in his remarks, the reason why John Pentland lodged the amendment was to address the very issue that the meaning of arrest will change in Scotland. In Scotland we have a particular view of what arrest means. We think that people are arrested once they have been charged with an offence, not when they are helping the police with their inquiries and so on. John Pentland lodged the amendment to see whether there is a method by which we can clarify that in the public mind and, in particular, in the mind of the media.

When we took evidence on the bill many moons ago—it was probably about two years ago—we were advised that in England and Wales there have been quite high-profile instances of people having been arrested for a very serious crime and having been questioned, with the media then treating them as if they were suspects when in fact they were never charged.

If the bill is passed and the meaning of arrest in Scotland changes, it is important that efforts are made to ensure that people who are what would have been termed "helping police with their inquiries" are not necessarily considered to have been charged. I will come back to that issue later. I have other amendments to be discussed much later on—probably next week—that look at some of those issues.

That was John Pentland's intention with amendment 37, but I know that he is quite content for it not to be moved.

Roderick Campbell: I heard what Elaine Murray said. I am not sure that the reference to "helping police with their inquiries" is helping us in our discussions this morning.

I remind the committee of the comments made two years ago by Professor Chalmers, a distinguished professor from the University of Glasgow. He said:

> "the general term 'arrest' has been used successfully for quite some time, despite the fact that nobody can state exactly what the law in that area is."—[*Official Report, Justice Committee*, 8 October 2013; c 3353.]

I think that the main thing is to remove an artificial distinction between detention and arrest. If at some later stage somebody wants to attempt to define arrest, so be it—but not in the bill.

The Convener: I am no clearer after what has been said—I am probably more confused.

Michael Matheson: As I outlined in my earlier comments, the circular nature of John Pentland's amendment 37 means that it would not deliver what it was intended to. I should quickly add that it was the Parliament's legislation team who assisted in drafting of the amendment.

The Convener: I could see shock and horror on your colleagues' faces when Elaine Murray commented on the drafting.

Michael Matheson: No doubt Elaine Murray will wish to consider further before stage 3 the definition of "arrest". However, the point that Rod Campbell outlined and the evidence that the committee received previously on the matter indicate that any attempt to define "arrest" would create a lot of unintended consequences, with the danger that that would create further confusion and make it difficult to interpret the bill's provisions, which set out in part 1 what is almost an extended definition of "arrest" anyway.

Amendment 111 agreed to.

Amendment 112 moved—[Michael Matheson]—and agreed to.

The Convener: After we have dealt with the next group, we will have a little break.

Amendment 234, in the name of Margaret Mitchell, is grouped with amendments 235 to 237, 240, 241, 256, 257 and 259.

Margaret Mitchell: It is now two years since the Justice Committee took evidence on part 1 of the Criminal Justice (Scotland) Bill, on arrest and custody. This is a very important part of the bill that proposes changes to the police's current power to detain, arrest and charge.

Two years ago, the debate on and scrutiny of the bill focused on the particularly contentious proposal to abolish corroboration. There is now very real concern that the committee, whose composition has changed over the past two years—we also have a new Cabinet Secretary for Justice—has the opportunity to scrutinise properly what by any standards will be a very substantial and significant change to the traditional method by which the police carry out one of their basic functions in protecting the public, namely the power to detain, arrest and charge.

The terms "detain", "arrest" and "charge" are understood at present. The general public know that when someone is detained for questioning, they will either be released without charge or be arrested and charged. The committee pointed out in its stage 1 report that there is not the same

stigma attached to someone who is detained for questioning and who is helping police with their inquiries as there is to someone who has been arrested.

When we took evidence at stage 1, the convener stated that the public

"know that detention is different from arrest. They may not know the technical things that lawyers know, but they know that it is different from being arrested."—[*Official Report, Justice Committee*, 8 October 2013; c 3354.]

Sandra White, who was then a member of the Justice Committee, noted:

"The perception is that if someone is arrested, as opposed to being detained, they are suspected of being guilty of a crime." —[*Official Report, Justice Committee*, 1 October 2013; c 3294.]

However, Elaine Murray said:

"The problem is that, although the words may mean the same thing, the public think that, when someone has been arrested, the police have sufficient evidence that they may have committed a crime."—[*Official Report, Justice Committee*, 8 October; c 3354.]

The concerns about the proposed changes do not stop there. Crucially, as the Scottish Police Federation pointed out, if the proposed changes are agreed to, it will result in police officers having to be retrained. That, in turn, will have the adverse consequence of taking up precious police hours at a time when Police Scotland and its loyal and hard-working rank-and-file officers are already operating under immense pressure, and it will have adverse financial implications for Police Scotland's already strained budget.

As the Law Society of Scotland pointed out:

"the current system is working well and there is no requirement to move to a system of arrest on the basis that a constable has reasonable grounds for suspecting that the person has committed or is committing an offence."

Further, Calum Steele of the Scottish Police Federation said:

"I am not entirely convinced that"

the need for change

"has been demonstrated"—[*Official Report, Justice Committee*, 1 October 2013; c 3286.]

or that the proposed wording would be "more easily understood".

My amendments are probing amendments that I fully accept have technical flaws. However, they propose the retention of the status quo in an effort to allow us to have a much-needed discussion about why the proposals for the new terminology are necessary and can be justified, given the implications for Police Scotland, both in practical terms and financially. I will move amendment 234 to allow that discussion to take place.

I move amendment 234.

John Finnie: I listened intently to what Margaret Mitchell said, and I hope to allay her concerns. For example, on police training, earlier in our discussions, we unanimously agreed a package of measures that have implications for training. That is part and parcel of how the police respond to the democratic process. Laws are passed in the Parliament, and the police pick up on them. I would not be concerned about that at all.

I understand the traditional view of arrest and detention, to which I saw changes over 30 years. If an individual is wheeched away and put in a police van, it does not matter to them what we call that—it has the same effect. It is the protections that those individuals are afforded that are important to me. I am sure that we can get it right and that the Police Service will respond appropriately to whatever we decide in the committee.

The Convener: I look forward to seeing "wheeched" in the *Official Report*.

Roderick Campbell: I accept that we had a lot of evidence sessions on the matter two years ago, and that some members of the committee had the view that detention is different from arrest in some way. I am also mindful that Lord Carloway was fairly clear that we needed to do away with the distinction, which was increasingly blurred. I think that that was Professor Chalmers's view as well. Professor Chalmers was fairly clear that the public knew that there was a difference between being detained and being charged. Therefore, I am not sure Margaret Mitchell's amendment 234 is really helpful. I urge the committee to reject it.

The Convener: I think that Margaret Mitchell is probing, but we will get to that.

Elaine Murray: It is helpful that Margaret Mitchell lodged the amendments, even if we do not necessarily agree with them. She referred to the fact that the public have a different view of arrest. That is what I was trying to get at when we were talking about John Pentland's amendment 37. That is an issue, but I do not particularly recollect many people saying two years ago, "We shouldn't be doing this at all," or that part 1 of the bill should be thrown out.

I agree that we have to be careful about the way in which issues around arrest are transmitted to the public—people become aware of the fact that there is a difference—but I do not think that sections need to be taken out of the bill. I fail to see why it would be such a burden on the police to have just a slight difference in terminology, as they will not do anything terribly different. It will just be called something different. I am not convinced that there will be a huge burden on Police Scotland.

Michael Matheson: Margaret Mitchell's amendments 234 to 237, 240, 241, 256, 257 and 259 would remove all of chapter 1 of part 1 of the

bill as introduced, together with the related amendments on arrest. That would have the effect of retaining the current detention arrangements that are provided for in section 14 of the Criminal Procedure (Scotland) Act 1995, together with existing common-law and statutory powers of arrest. I believe that that would be a backward step when we should be moving forward and modernising our justice system.

The Criminal Justice (Scotland) Bill resulted from an independent review that was carried out by a respected senior member of the Scottish judiciary and from the responses to the Scottish Government's consultation on the thoughtful recommendations that Lord Carloway made in his report.

The report recommended that section 14 of the 1995 act, on detention, should be abolished and that the only general power to take a suspect into custody should be the power of arrest. The bill is the legislative vehicle with which we are implementing Carloway and taking forward the next stage in reforming the Scottish criminal justice system. It will ensure that rights are protected, while ensuring effective access to justice for victims of crime. The bill achieves those policy objectives and reflects Lord Carloway's carefully balanced suggestions in relation to police powers.

11:00

In its stage 1 report, the committee accepted that there might be benefit in simplifying the powers of arrest along the lines proposed in part 1. That is what I think we should be working to achieve. The bill will modernise and clarify the system of arrest, custody and questioning, and I believe that it will keep our communities safe while ensuring that the police continue to act with the consent of the communities that they serve. The common-law power of arrest for offences will be repealed and replaced with a power of arrest on suspicion of having committed an offence. All other common-law powers remain. Statutory powers to arrest suspects for specific offences, which are currently scattered across the statute book, will also be replaced by the single clear power of arrest, as set out in part 1.

I believe that the terminology used in the bill is clear and accurately describes the new regime. The term "arrest" does not imply guilt. Whether a person is guilty of committing an offence is a matter for our courts. The presumption of innocence remains. The terms "not officially accused" and "officially accused" have been used to differentiate between two distinct categories of persons: those who are suspected of an offence but who have not been charged are "not officially accused"; and those who have been formally charged with an offence, including accused on petition, indictment or complaint, are "officially accused".

It is also worth keeping in mind that the Carloway review concluded that the distinction between arrest and detention had been eroded to such an extent that there was little purpose in continuing with the two different states. Lord Carloway recommended that section 14 of the 1995 act, on detention, should be abolished and that the only general power to take a suspect into custody should be the power of arrest. Chapter 1 of part 1 of the bill as introduced implements that recommendation. I therefore urge Margaret Mitchell not to press her amendments.

Margaret Mitchell: It seems that the common-law power of arrest is to be abolished. When something is put into statute that was previously covered by the common law, with all the flexibility that that contains, there is always the possibility of unintended consequences. We are already seeing some of that when we look at whether the provisions include the power for someone to be arrested for their own safety. I do not know whether that has been or will be addressed.

The cabinet secretary has made much of Lord Carloway's recommendation simplifying the law. It seems to me that, if someone can be arrested and then not arrested, or "not officially accused" and then "officially accused", the provision does anything but simplify the law. It might make sense to academics and those steeped in the legal profession but it will not necessarily make sense to the ordinary man in the street, whom the powers will affect.

There also seems to be a justification for the change in Lord Carloway's recommendation to bring in two distinct means of taking a person into custody under Scots law in order to make matters more clearly in tune with the European convention on human rights. However, in practice, as the Law Society pointed out, the system, as changed in the light of Cadder, seems to have bedded in well. It is working well, without all these changes. I appreciate that many of the amendments that will follow today are aimed at improving the new terminology and I will consider them on their merits on that basis. However, I am not convinced that the new terminology—as opposed to the status quo—is the best way to progress.

I will not press my amendments but I urge the Scottish Government to look again at section 1, for there is most certainly a case to be made for taking the proposed changes to detention, arrest and charge out of the bill to ensure that they are given the necessary scrutiny and would in fact improve the current system.

Amendment 234, by agreement, withdrawn.

Section 1, as amended, agreed to.

11:05

Meeting suspended.

11:10

On resuming—

Section 2—Exercise of the power

The Convener: Amendment 113, in the name of the cabinet secretary, is grouped with amendments 114, 238, 239, 10 and 11.

Michael Matheson: This group of amendments deals with the information that suspects will be given after they are arrested. I am sure that we all agree that that is an important issue, given that for many people, particularly those who have not previously been in trouble with the police, being arrested might be a distressing and potentially confusing experience.

I am aware that at stage 1 the committee very much welcomed the added protections that the bill will give people when they are arrested. Amendments 113 and 114 extend the information that suspects will be entitled to following an arrest. Amendment 113 seeks to give a person arrested by a police officer who is not in uniform the right to see that officer's identification, while amendment 114 seeks to amend section 3 to add to the information that a police officer will be required to give a person who has been arrested. Specifically, the officer will be required to inform the person that they have the right to a lawyer, that they are in police custody and that they have the right to have a private consultation with a lawyer at any time while in such custody. Those rights are laid out in sections 35 and 36. The provisions will ensure that suspects are aware of those important rights from the earliest possible time after their arrest. Of course, section 5 already provides that they will be told about them when they arrive at the police station.

I appreciate that amendments 238 and 239 in the name of Alison McInnes and amendments 10 and 11 in the name of John Finnie are motivated by the same desire to ensure that suspects are fully informed of their rights. However, I am afraid to say that I cannot support Alison McInnes's amendments, which seek to amend section 5 to require the police to tell a suspect on arrival at a police station about the right to have a solicitor present during an interview under section 24 and the right for vulnerable adults to receive support from an appropriate adult under section 33. However, the fact is that not all suspects who are detained at a police station will be questioned and, in such circumstances, those rights will not be engaged. Section 23(2) already requires that suspects who are interviewed are told about their rights to have a lawyer present. Furthermore, section 5 already ensures that every suspect who is detained at a police station is told about their rights to have intimation sent to and a private consultation with a lawyer. As I have explained, amendment 114 will ensure that suspects are told about those rights even earlier in the process—that is, at the point of arrest.

Similarly, not all suspects who are detained at a police station have a right to support from an appropriate adult. The rights in section 5 that the police are required to tell suspects about are those which, in general, the suspect has some choice over whether to exercise, and the right to support from an appropriate adult is not that sort of right. If the suspect is assessed as needing such support, an appropriate adult will be provided. There is no point in having the police tell a suspect that they have a right to support from an appropriate adult if the appropriate adult is already there or en route. If the suspect has been assessed as not requiring support from an appropriate adult, the suspect will have no right under section 33 to be told about. I am afraid to say that, for those reasons, I cannot support amendments 238 and 239.

11:15

Amendments 10 and 11 in the name of John Finnie relate to letters of rights. Section 5 currently states that every suspect is to be given, "verbally or in writing", the information required by articles 3 and 4 of European directive 2012/13/EU on the right to information in criminal proceedings.

Since July 2013, it has been the practice throughout Scotland to provide suspects with that information in the form of a written letter of rights. The letter of rights is available in 34 languages, and from the start of this year a special easy-to-read version of the letter has been available to help children and suspects with learning difficulties to understand their rights fully. The Government is committed to keeping that letter under review so that it continues to be fit for purpose.

Amendments 10 and 11 would make it a requirement for the information always to be given both in writing and verbally to every suspect. I understand that the committee and the Lord Bonomy review group have been sympathetic to that requirement. The Government has therefore given careful consideration to the practical workability of the proposal. Unfortunately, it has become clear that such a change would have a significant impact on police resource, which the Government considers would be disproportionate to the benefit that suspects would get from the change in practice.

Around 200,000 suspects pass through police stations each year. Police Scotland estimates that the amount of police time that would be taken up each year to read the whole letter of rights to every suspect would be approximately 16,500 hours. That assumes that every suspect has a good grasp of English. Locating an interpreter to read out the letter of rights for those suspects who cannot follow it in English would be likely to cause considerable delay and to add to the time that the person spends in custody, deprived of their liberty.

Of course, I recognise that even the easy-to-read version of the letter of rights that I mentioned earlier will not be suitable for every suspect. For suspects who have difficulty with reading, officers will read out the letter of rights. It is precisely to allow flexibility in such circumstances that the bill says "verbally or in writing".

As I mentioned in my letter to the committee in August, Police Scotland is going to include in its new custody software a prompt to ask suspects whether they would like the letter of rights to be read out to them. I hope that committee members, and John Finnie himself, will agree that a more proportionate way to meet the good intentions behind his amendments is to have police officers read the letter to those suspects who need that, instead of having a huge amount of police time expended reading it out to suspects who are perfectly well able to read it for themselves.

Before leaving that subject, I would like to offer further reassurance to members of the committee and to John Finnie in particular. During my statement to Parliament on the report of Lord Bonomy's review group, John Finnie endorsed the group's recommendation that legal aid contributions for legal advice at police stations should be waived. I appreciate that there have been concerns that suspects, even when they know about their rights to legal advice, may waive them because they are worried about the potential cost implications.

The Government has previously confirmed that it plans to abolish legal aid contributions in all those circumstances. I can now confirm to the committee that the Government will lay regulations to do that before the end of this year. All suspects will be entitled to free legal advice while they are detained. That is a significant step and I believe that it demonstrates the progress and commitment that are being made to safeguard the rights of suspects and detained persons.

I hope that that provides further reassurance to members that steps continue to be taken to encourage the greater uptake of legal advice at police stations. We will monitor how the changes affect the number of suspects taking legal advice in custody and, as always, I will keep the committee informed of the results.

I therefore urge John Finnie not to move his amendments, which would pose significant resource problems for Police Scotland and give suspects no additional protection in the light of other steps that are being taken.

I move amendment 113.

Alison McInnes: Section 5 requires that persons in police custody must be informed

"as soon as reasonably practicable"

of their key rights. Those currently include the right to have intimation sent to another person, the right of children to access a parent or guardian and the right to remain silent. My amendments 238 and 239 would extend that list in two respects and ensure that persons in custody are also informed of their rights under sections 24 and 33, respectively.

Section 24 sets out the right to have a solicitor present while being interviewed. In response to a recent parliamentary question, the Scottish Government confirmed that approximately 75 per cent of those in police custody waive their option to consult or have present a solicitor. I consider that a troubling statistic.

The bill rightly ensures that people in custody are told of the right to have intimation sent to a solicitor and the right to a consultation with their solicitor at any time. However, unless people are also always told that the solicitor can assist them during the police interview, they may not choose to exercise their right to a consultation.

My amendment 239 would ensure that people are told of the rights that are listed in section 33 regarding the support available to vulnerable adults. I have listened to what the cabinet secretary had to say about that, but the bill currently places the onus squarely on a constable to decide whether someone is unable to understand sufficiently what is happening or to communicate effectively. If we inform everyone who enters police custody of the right to support in such circumstances, we will perhaps increase the chance of any individual who does need assistance volunteering that fact. It would provide a safeguard and increase the likelihood of needs being identified as early as possible.

My amendments 238 and 239 are supported by Justice Scotland, which has argued that both those key rights should be on the face of the bill.

Turning to the other amendments in the group, I welcome the cabinet secretary's amendments 113 and 114, which provide suspects with additional information on their arrest. I am sympathetic to John Finnie's amendments 10 and 11, and I will listen to his response to the cabinet secretary's concerns.

John Finnie: Amendments 10 and 11 relate to the information to be given at the police station and the request that it be given both verbally and in writing. Concerns raised by the Law Society highlighted some factors in relation to that issue that the committee already knows about and frequently comes across, namely the level of literacy among people who find themselves in custody, the fact that people in custody often are under the influence of alcohol or drugs and, as has been touched on, the level of brain injury among young people who find themselves in custody.

Amendments 10 and 11 are intended to ensure not simply that the letter of rights is in 34 languages and an easy-to-read version—I do not know whether an easy-to-read version is available in 34 languages—but that people are left in no doubt about their rights. The one message that we want this committee to give is that the legislation is robust and thoroughly scrutinised.

I have to say that I am bemused that Police Scotland says that advising people of their rights would have a significant impact on police resources. That someone has even costed out the hours is a misuse of police time.

The cabinet secretary talked about ensuring that every suspect has a grasp of English. The background to that is, of course, that we know that a lot of people do not have a grasp of English and that communication skills are another factor.

Another term used by the cabinet secretary that gave me no reassurance whatsoever was "flexibility" with regard to rights. There can be no flexibility on rights. Rather than there being a prompt in custody software, I want the prompt to be in the police mindset.

That said, I was very reassured by the cabinet secretary's finishing remarks about suspects receiving free legal advice. For that reason, I seek permission to withdraw amendments 10 and 11.

The Convener: They have not been moved yet.

Alison McInnes: Before we go to the vote, I remind committee members of my registered interest in and membership of Justice Scotland.

Christian Allard (North East Scotland) (SNP): On what John Finnie said about the misuse of police time, for people for whom English is not a first language, a written letter might be easier to understand than a verbal reading. To a certain extent, I can understand Police Scotland when it says that imposing a requirement for an oral reading of the letter of rights for everybody might be a misuse of its time. A lot of people might prefer to have the letter in writing.

The Convener: I wonder whether one of the available languages is French. You never know.

Gil Paterson (Clydebank and Milngavie) (SNP): I can see where John Finnie is coming from, but I know from my experience in the motor industry of dealing not with the police but with people over the counter how excited they can be when they present even with a simple accident to their car and how that can make them forget things. It is commendable to look after people who need help, who may be illiterate, and I support that idea, but I do not support the suggestion that we should do the same everywhere. It would be much better if the information was written down so that people could absorb it better. That way, they can look at what is available to them and decide what is important. I suspect that, when information is being read out, they are so excited and so worried about things that it would just pass them by, but if they had time to look at it and absorb it, things would be somewhat different.

However, I take on board what John Finnie is saying. If someone cannot read and does not understand what the bit of paper is about, obviously we need to find a way of reaching them.

I support him not moving the amendments.

The Convener: Does John Finnie want to say anything?

John Finnie: I simply want to say that the issue has been overtaken by events. The best advice will come from the mouth of a professional, rather than being read out by a police officer or being on a bit of paper.

Michael Matheson: I have listened with interest to the points that have been made by both John Finnie and Alison McInnes. I set out the reasons why we cannot support Alison McInnes's amendments at this stage. I understand the intention behind them, but I do not believe that the way in which they are presently framed would deliver their intent in an effective, proportionate and appropriate way. However, I would be more than happy to explore that further with Alison McInnes between now and stage 3 to see whether there is a way in which that can be achieved more effectively than would be the case with the amendments that we are considering now.

I turn to John Finnie's amendments. Notwithstanding his decision not to move the amendments, we should be aware of the level of police time that would be taken up in reading out the letter of rights, which is a five-page document, if officers had to read out all five pages in each individual case. It is not a question of having flexibility in rights—the rights are always there. It is a question of having flexibility in whether they are given verbally or in writing. If I was arrested, I would have no difficulty in reading the letter for myself.

The Convener: If you were arrested, it would be on the front page of the *Daily Record*.

Michael Matheson: More than the *Record*, I suspect.

My point is that we need to allow officers that flexibility so that, where they think it appropriate to read out the letter of rights, it can be read out for people. However, once members recognise that the letter is five pages long, they will acknowledge that a significant amount of time and police resource would be taken up to read it out for every single individual, irrespective of whether they require it to be read out.

Amendment 113 agreed to.

Amendment 235 not moved.

Section 2, as amended, agreed to.

Section 3—Information to be given on arrest

Amendment 114 moved—[Michael Matheson]—and agreed to.

Amendment 236 not moved.

Section 3, as amended, agreed to.

Section 4—Arrested person to be taken to police station

The Convener: Amendment 115, in the name of the cabinet secretary, is grouped with amendment 118.

Michael Matheson: Amendment 115 will amend section 4 to require the police to release an arrested person before reaching a police station, if the person is no longer suspected of an offence. The bill would currently require the police, where an arrest has taken place outwith a police station, to take every arrested person to a police station, even if they were no longer suspected of an offence. The amendment will ensure that people who are no longer suspects need not be held in custody unnecessarily in order to transport them to a police station. Information about all arrests must still be recorded under section 6. It will not be the case, therefore, that the power of release will encourage misuse of the system and an "Arrest first, ask questions later" approach by the police.

11:30

Amendment 118 is consequential on amendment 115 and will require the police to record the reasons for deciding that a person is no longer a suspect and releasing them before their arrival at a police station. The recording of such decision making will give further reassurance that arrest and subsequent release can be assessed and scrutinised.

I move amendment 115.

Amendment 115 agreed to.

Amendment 237 not moved.

Section 4, as amended, agreed to.

Section 5—Information to be given at police station

The Convener: Amendment 238, in the name of Alison McInnes, has been debated with amendment 113.

Alison McInnes: As the cabinet secretary has indicated a willingness to work with me on the intention behind amendment 238 in advance of stage 3, I will not move it.

Amendments 238, 239, 10, 11 and 240 not moved.

Section 5 agreed to.

Section 6—Information to be recorded by police

The Convener: Amendment 116, in the name of the cabinet secretary, is grouped with amendments 117, 121, 124, 132, 133, 138, 140, 194, 205 and 221.

Michael Matheson: The group consists of miscellaneous minor technical amendments that are intended primarily to maintain consistency in the drafting of the bill. Amendment 116 is the most substantive of them and will amend section 6(1), which specifies the information that must be recorded when a person is arrested. The amendment makes it clear that the recording requirements in section 6 relate only to arrest by the police, and not to arrest by a citizen, for example.

Amendments 117, 121, 124, 132, 133, 138, 140, 205 and 221 are technical amendments to sections 6, 8, 11, 36, 50 and 54. They will ensure consistency in terminology and easier reading of the provisions.

Amendment 194 is a technical amendment to section 39, which preserves the common-law powers of the police in relation to people who have been arrested. Those include the power to have the person take part in identification parades. The amendment replaces the reference to "identification parade" with a reference to "identification procedure", which will make it clear that the police retain common-law powers in relation to all identification procedures, including identification parades and more modern video identification procedures.

I move amendment 116.

Amendment 116 agreed to.

Amendments 117 and 118 moved—[Michael Matheson]—and agreed to.

The Convener: Amendment 119, in the name of the cabinet secretary, is grouped with amendment 148.

Michael Matheson: People who are accused of certain sexual offences, including rape and sexual assault, are prohibited from conducting their own defence. That protects victims and witnesses from the potential trauma of being cross-examined by the accused. Amendments 119 and 148 restate the existing law, which requires that suspects who are arrested under a warrant in connection with those offences, or who are charged with those sexual offences, be informed that they cannot conduct their own defence and must, instead, engage the services of a lawyer, failing which the court will do so. The amendments will not change the law but will update the approach and terminology to ensure consistency with part 1.

Amendment 119 will require the police to record the details of their compliance with the requirements that are set out in amendment 148. Amendment 148 is the principal amendment and restates the existing law in section 17A of the Criminal Procedure (Scotland) Act 1995. Amendment 119 is consequential and auxiliary.

I move amendment 119.

Amendment 119 agreed to.

The Convener: Amendment 120, in the name of the cabinet secretary, is grouped with amendments 170, 171, 176, 180, 181 and 188.

Michael Matheson: The amendments, in conjunction with related amendments in the two groups on rights of under 18s—the first is on "consent to interview without solicitor present, sending of intimation and access to other person, other support" and the second is on "minor amendments"—make additional provision for the protection of under 18s in police custody. The amendments have specific regard to child protection and wellbeing issues.

Amendment 120 will require the police to record the time at which intimation was sent to a local authority to establish whether or not there are likely to be child protection issues that would prevent intimation from being sent, under section 30 of the bill, that the person was in custody. The amendment is dependent on amendment 188.

Amendments 170 and 171 will allow the police to delay for a child suspect, on safeguarding and wellbeing grounds, the sending of intimation under section 30, but only for as long as is necessary to consult the local authority on whether it will arrange for someone to visit the child in custody. It is expected that the process will, in practice, be used when the police believe that some form of child protection consideration may exist.

Amendments 180 and 181 are technical amendments that are designed to improve the drafting of the bill. The amendments in the group are also associated with amendments in group 21 on "Rights of under 18s: minor amendments". The amendments will ensure that when it is not practical for the police to contact the person that they have been asked to contact, when the person who has been contacted refuses to attend, or when the local authority advises against contacting the person, the police do not have to contact the person or continue to try to contact them, as may be the case. In that case, the police must send intimation to an appropriate person, as defined in section 31(5) of the bill.

On intimation and access arrangements in respect of persons who are under 18 years of age who are being held in custody, amendment 188 will ensure that the police take cognisance of compulsory supervision orders that have been set by a children's hearing or a sheriff court. The effect of the amendment will be to ensure that the police will, when they believe that a person is subject to such an order, contact the relevant local authority for advice on how to apply, in compliance with the terms of the order, the intimation and access rights that are set out in sections 30 and 32.

Furthermore, the obligation to involve the local authority goes wider than compulsory supervision order cases to capture circumstances in which a supervision order may not exist but the police have concerns about the child's wellbeing. The concerns may be significant child protection concerns or there might be other forms of statutory restriction in place in respect of the child—for example, a court-issued child protection order or a compulsory supervision order that restricts contact or directs that no contact takes place, which would both mean that the usual steps of contacting a child's parent or guardian may not be appropriate. Amendment 188 will in such cases require the police to contact the local authority for advice on who should, under section 30, be sent intimation and be permitted access to the person in custody.

Amendment 176 provides that when a local authority, acting under the provision that will be inserted by amendment 188, has advised against sending intimation in accordance with section 30, intimation must be sent—in accordance—to an appropriate person, as defined in section 31(4). I ask the committee to support the amendments.

I move amendment 120.

Amendment 120 agreed to.

Amendment 121 moved—[Michael Matheson]—and agreed to.

The Convener: Amendment 122, in the name of the cabinet secretary, is grouped with amendments 123, 12, 125, 13, 126 to 131, 14, 134, 15, 16, 135 to 137, 17, 139 and 141.

Michael Matheson: Although the amendments all relate to keeping a person in custody under chapter 2 of part 1 of the bill, they address four distinct issues. Most of my amendments, and amendments 13 to 17 in the name of John Pentland, deal with the proposal to allow the maximum detention period to be extended from 12 to 24 hours. I will address that issue first before moving on to amendment 12, in the name of John Finnie, which relates to the rank at which decisions on whether to keep a person in custody should be made. I will then speak to amendment 130, which will make a minor adjustment to the test for whether a person can be kept in custody. Finally, I will cover amendments 139 and 141, which relate to the time spent travelling from hospital to the police station.

A key purpose of the custody provisions in chapter 2 is to strike an appropriate balance and ensure that no one is held unnecessarily or disproportionately and that the rights of suspects and victims are protected while the police have the flexibility to carry out effective investigations. The bill allows a person to be kept in custody for a maximum of 12 hours. That is a 12-hour reduction from the current detention period, which allows extensions to 24 hours. The system is designed to ensure that suspects are detained for only as long as is absolutely necessary, and the detention limit is not a target but an absolute maximum.

Strong safeguards are built into the system. The initial custody decision must be made by a police officer who has not been involved in the investigation, and a mandatory custody review must be carried out by an inspector after six hours. Keeping someone in custody can be authorised only if there are reasonable grounds for suspecting that they have committed an offence and if keeping them in custody is necessary and proportionate, with account being taken of the nature and seriousness of the offence, the need to enable the offence to be investigated and the likelihood of interference with witnesses and evidence. Section 41 also places a general duty on every constable to

"take every precaution to ensure that a person is not unreasonably or unnecessarily held"

in custody.

Conflicting views were expressed at stage 1 on the detention time limits, and the Scottish Government made a commitment to considering an extension of the detention time limit to 24 hours in exceptional circumstances. Having considered the arguments further, I believe that it is necessary to allow the extension from 12 to 24 hours. I am satisfied that the bill contains appropriate safeguards to ensure that the power will be used properly and that such extensions will not become commonplace.

It is possible to extend detention periods up to a maximum of 24 hours under the current legislation, but not under the bill as introduced, so the police would have to release suspects in some serious and complex cases if the 12-hour period were to expire before they had obtained sufficient evidence to charge the suspects with an offence. That would not prevent suspects from being arrested and charged later, but releasing them could endanger public safety or interfere with the proper investigation of offences.

The current power to extend detention periods to 24 hours is used in only a very small number—less than 0.5 per cent—of cases, which demonstrates that the police make appropriate and proportionate use of the power and that it is used only in exceptional cases. The power to extend is necessary in those cases, many of which involve serious and complex offences.

Various factors can contribute to creating exceptional circumstances in which an extension might be required. The factors that could combine to require an extension to 24 hours tend to involve the timing of the start of interviews rather than the length of those interviews, and the purpose of an extension would be to ensure that interviews are conducted in circumstances that are fair to the suspect and the victims and which allow the police to conclude inquiries properly and gather sufficient evidence in order to charge a suspect. Suspects and victims might be too exhausted, traumatised, drunk or under the influence of drugs to be interviewed immediately after a suspect is arrested and brought to a police station.

11:45

Urgent work might be needed to interview victims, to trace witnesses and to conduct other investigations. It might not be in the interest of public safety or the safety of the victim or suspects to release a person who is suspected of a serious and violent offence on investigative liberation while such investigations take place.

In some cases, it is considered best practice to examine a crime scene during daylight hours, even if an initial arrest took place at night. That may apply, for example, to the examination of bedclothes at a rape scene. Forensic medical examination may be required before interviews can take place. In areas of rural Scotland, victims and suspects may need to travel to specialist police medical suites or for examination by a police casualty surgeon. If a 12-hour detention

limit was applied, the examinations and the travel times involved might reduce the time that remained for conducting interviews.

Other people, such as interpreters and appropriate adults, may be required before interviews can commence. It is in the interests of justice and human rights that such people are present at interviews, but it may take time to assess what support is required for a suspect and to arrange for a specialist to attend. Delays are possible if a suspect's needs are not immediately identified because they were drunk or on drugs.

Those factors can reduce the available time for conducting interviews. In complex cases, extending the detention period beyond 12 hours may become necessary to conduct an effective investigation. I have therefore lodged amendments 122, 123, 125 to 129, 131, 134 and 135 to 137 to make provision for extending detention limits from 12 to 24 hours. Amendments 13 to 17, which John Pentland lodged, would make similar provision. I propose to deal with my amendments before moving on to consider his amendments.

Amendment 135 is the primary amendment to allow the detention limit to be extended to 24 hours. The power to extend is limited to serious offences, and it will be subject to safeguards to ensure that it is used only when absolutely necessary. The safeguards include a requirement for authorisation at inspector level and provision for the suspect to make representations. The existing safeguards in the bill will also apply, including the statutory test for keeping people in custody, mandatory custody reviews at six hours and the general duty under section 41 not to detain people unreasonably or unnecessarily.

The safeguards will ensure that extensions to detention periods can be authorised only in exceptional circumstances. Extensions are tempered by the safeguard of regular review, as recommended by the Carloway report.

My other amendments are all intended to ensure that the new powers to authorise extension are appropriately woven into the existing provisions about providing and recording information and conducting custody reviews. That includes the reorganisation of sections and adjustments to terminology.

Amendments 122 and 123 deal with recording information. Information about the authorisation process and the rationale for extending the period must be recorded. When initial authorisation is given to keep a person in custody under section 7, amendment 125 will require them to be told that their detention period may be extended.

Amendments 126 and 127 amend section 9. Amendment 126 will ensure that a custody review is carried out after the first six hours of an extension. Amendment 127 makes drafting adjustments. Amendment 129 amends section 10 to ensure that the test of necessity and proportionality must be met when deciding whether to keep someone in custody beyond the initial 12-hour period. Amendments 128 and 131 move sections 9 and 10 to after section 12. Amendment 134 amends section 11 to require the police to charge or release someone once any extension to 24 hours has expired. Amendment 136 requires the police to give a person certain information when authorisation has been given to extend the detention period beyond the 12-hour point. Amendment 137 is a technical amendment to allow time that is spent travelling to or from hospital or at hospital to be deducted from the extension period.

Amendments 13 to 17 were lodged by John Pentland. I wholly support the principle of allowing the detention period to be extended from 12 to 24 hours in exceptional circumstances, so I welcome the intention behind his amendments. However, I do not believe that they would offer the same protection to suspects as the amendments that I just outlined would. I therefore ask Elaine Murray not to move amendments 13 to 17.

John Pentland's amendment 15 would permit an extension up to 24 hours when both the current custody test under section 10 and the additional test of exceptional circumstances were met. Amendments 12 to 14, 16 and 17 are consequential on amendment 15.

My amendments will offer suspects greater protection than amendment 15 would. In particular, my amendments will ensure that an extension can be granted only in relation to serious offences. They will ensure that suspects can make representations about a proposed extension. They will require a custody review by an inspector after six hours and will set out a much more detailed requirement for recording and providing information.

I do not believe that the exceptional circumstances test is necessary. I am satisfied that the existing power to extend the detention period is used only in exceptional circumstances and that the safeguards that are set out in the bill will continue to ensure that that is the case. Setting out an exceptional circumstances test would further complicate the statutory test and create a risk of preventing extensions in cases in which they were genuinely needed.

Amendment 12, in John Finnie's name, would provide that, when a person was arrested without a warrant and was not charged with an offence, authorisation to keep them in custody could be given only by an officer of the rank of sergeant or above. In many of the more rural custody stations, the duty custody officer may be a constable. There

has to be a justifiable reason for continued detention, which has to be authorised by an officer who is not connected with the case. That provides an independent overview of the initial arrest and the continued detention.

Custody officers are trained in custody procedures and prisoner welfare. The authorisation to keep a person in custody also starts the 12-hour period for someone who is not officially accused. A duty custody officer of the rank of constable is perfectly able to carry out that function and afford people their rights. Amendment 12 proposes an unnecessary restriction on current practice that would lead to an increase in the requirement for sergeants across Scotland, even if authorisation were given remotely. The amendment would also lead to delays in the start of the 12-hour period as a result of waiting for an officer of a suitable rank to become available. For that reason, I cannot support the amendment and I ask John Finnie not to move it.

Amendment 130 makes a small clarification to the key test in section 10 for whether a person can be kept in custody. The test applies to the initial decision to keep someone in custody following their arrest. It also applies when the inspectors conduct custody reviews after someone has been in custody for six hours.

The police officer who decides to keep someone in custody must be satisfied that there are reasonable grounds for suspecting that they have committed an offence and that keeping them in custody is necessary and proportionate for the purposes of bringing them before a court or otherwise dealing with them in accordance with the law. Several factors may be taken into account in deciding what is necessary and proportionate. One of those is whether the person's presence is reasonably required to enable the offence to be investigated.

Amendment 130 will clarify that, when deciding whether to keep someone in custody, the police may consider whether the person's presence is required to enable the offence to be investigated fully. That has always been the intended effect of section 10. The amendment makes it absolutely clear that police have the ability to undertake a full investigation of an offence while a suspect is held in custody, subject to continued custody being necessary and proportionate for the purposes of bringing the suspect before a court or otherwise dealing with them in accordance with the law.

It is also important to note that section 41 will still apply, to ensure that police

"must take every precaution to ensure that a person is not unreasonably or unnecessarily held"

in custody. Amendment 130 will protect the balance between the public interest in ensuring a thorough and effective investigation and the rights of suspects, as recommended by Lord Carloway and reflected throughout part 1.

I turn to amendments 139 and 141. The bill already provides that the time that is taken to escort a person to a hospital for medical treatment and any time that is spent in hospital are not to be deducted from the 12-hour detention period, but it does not take account of the time that the return journey takes. In more remote areas of the country, a return journey from hospital could take a considerable time, so amendment 139 provides that the time that is taken to transport an individual back from hospital will not be deducted from the 12-hour detention period. That will ensure that there is still sufficient time to interview suspects effectively once they arrive at the police station.

Amendment 141 will protect suspects by ensuring that, should a suspect be interviewed while travelling from hospital to a police station, the time that is spent interviewing them will count towards the 12-hour limit.

I move amendment 122.

The Convener: Thank you, cabinet secretary. You will be glad to have a rest after that.

John Finnie: I am always keen to ensure that all our legislation is rural proofed.

The Convener: We know that, John.

John Finnie: I am acutely aware of the fact that the number of locations where people can be taken into custody in rural areas is diminishing.

Amendment 12 seeks to change the rank of the police officer who may authorise keeping someone in custody from constable to sergeant. Many, including the Law Society of Scotland, welcome Lord Carloway's recommendation that the maximum time for which a suspect can be held without being charged or advised that he or she is to be reported to the procurator fiscal should be 12 hours.

Elsewhere in legislation, the appropriate constable is someone above the rank of inspector. I do not accept the idea that authorisation cannot be given remotely or the idea that there can be independent overview but it cannot be exercised by someone of a supervisory rank. It is anomalous to have a constable authorising a peer's decision making in relation to the deprivation of liberty. That is a retrograde step rather than an advance, so I certainly intend to move and press amendment 12.

Elaine Murray: John Pentland's amendments 13 to 17 were intended to address the issue that, in exceptional circumstances, the police might have to extend the period of custody from 12 hours up to 24 hours. His amendments specify circumstances in which that might be the case,

such as when the person is under the influence of drugs or alcohol and is therefore unfit to be interviewed, when support for the person cannot be accessed before the end of the 12-hour period or when it is essential for their or another person's safety that the person remains in custody. A decision to extend the period in custody could be taken only by a constable of the rank of inspector or above.

As the cabinet secretary said, the Government's amendments in the group fulfil the same policy intention but are more technically competent as they apply to sections of the bill that are not covered in John Pentland's amendments. Today, the cabinet secretary is supported by an army of Government officials, whereas members who are not in the party of the Scottish Government are reliant on the efforts of the Parliament's legislation team. While those efforts are sterling, they are made by only two or three people, who have to deal with several bills at the same time. For that reason, I am prepared to admit that the Scottish Government's amendments are possibly more technically correct, so I am happy not to move John Pentland's amendments and will support the cabinet secretary's amendments.

I am very sympathetic to the intention of John Finnie's amendment 12. Like him, I have every interest in ensuring that people who are kept in custody in rural areas are dealt with appropriately, and I cannot see why it would not be possible for a sergeant to be available remotely, rather than a sergeant having to be available in the custody area. I am therefore inclined to support amendment 12.

Alison McInnes: The cabinet secretary's amendments in this group seek to extend the length of time for which anyone can be kept in custody to 24 hours in some circumstances. The evidence that the committee received on the issue at stage 1 was mixed, so we should be extremely cautious about departing from Lord Carloway's view. The cabinet secretary has set out a reasonable case, but I remain concerned about the situation of children and vulnerable young people.

Without wishing to get ahead of myself, I think that my support for the Government's amendments will be contingent on the Government backing my amendment 242 in the next group, which limits to six hours the length of time for which children and vulnerable adults can be held in custody. In conscience, I could not countenance extending the limit to 24 hours without additional provision being made for safeguards for children and vulnerable adults.

12:00

The Convener: You are getting ahead of yourself. We will come to that. I call Margaret Mitchell, to be followed by Roddy Campbell.

Margaret Mitchell: I speak in favour of John Finnie's amendment 12, which is sensible. I see no reason why authorisation could not be given remotely, and the amendment gives added protection to people in rural areas as well as those in urban settings.

Roderick Campbell: I want to comment briefly on the key amendment 135. It provides, in addition to the provisions under section 41 on not detaining people unreasonably or unnecessarily, that authorisation has to be given by an inspector, and it applies only to serious or indictable offences. Another bit of the amendment, which has not been mentioned, is that the inspector who gives authorisation has to satisfy himself that

"the investigation is being conducted diligently and expeditiously",

so it is not a laggard's charter. These should be rare occurrences.

Michael Matheson: The reasons that I outlined for not supporting John Finnie's amendment 12 stand, notwithstanding the points that Mr Finnie made with regard to the issue.

It is worth reflecting that the issue is about the quality of the decision making in a particular instance with regard to retaining someone in custody, and I am not convinced that higher rank will always lead to better decision making in these matters. A significant level of training is provided to constables, particularly those who have custodial responsibilities.

John Finnie: Will the cabinet secretary take an intervention?

The Convener: Let the cabinet secretary continue, then you can come in.

Michael Matheson: There is a growing level of specialism, with many policing responsibilities being made role specific as opposed to rank specific. Constables of whatever rank who fulfil specialist roles have a greater knowledge and understanding of a specific issue than those who do not deal with those matters on a day-to-day basis, who may be of a higher rank. Custody division is now a specialist role area due to the intensive training that is given to those officers on prisoner welfare and custody-related procedures, including the various pieces of guidance issued by the Lord Advocate.

We remain of the view that the decision making should be held at the position of constable.

The Convener: Before you go on, cabinet secretary, John Finnie wants in to say something about that.

John Finnie: I am not absolutely certain how custody division is configured, but I refer to what you said about the nature of rural areas, cabinet secretary. I am not casting any aspersions on the role of constable. I was one for 30 years and I absolutely acknowledge that it is the front-line, pivotal role. Constables will stand and fall by the decisions that they take on depriving someone of their liberty. My suggestion is that that would be enhanced by independent oversight. Custody division would not be there in a remote location, anyway, and the idea that people could phone and not get a sergeant anywhere in Scotland seems peculiar, to say the least.

Michael Matheson: The key here is not the rank but having someone with the appropriate knowledge and skills. Given that, it might be a constable who is contacted remotely for the purpose of getting a period of custody extended. It is about making sure that the officer has the necessary knowledge and skills to make the decision.

The committee will come to a decision on whether it believes that sergeant or constable is the appropriate rank for making those decisions. I welcome Elaine Murray's decision not to move John Pentland's amendments.

Amendment 122 agreed to.

Amendment 123 moved—[Michael Matheson].

The Convener: The question is, that amendment 123 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McDougall, Margaret (Central Scotland) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions

Finnie, John (Highlands and Islands) (Ind)
McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 123 agreed to.

Amendment 241 not moved.

Section 6, as amended, agreed to.

Section 7—Authorisation for keeping in custody

Amendment 12 moved—[John Finnie].

The Convener: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Ind)
McDougall, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 12 agreed to.

Section 7, as amended, agreed to.

After section 7

The Convener: Amendment 242, in the name of Alison McInnes, is in a group on its own.

Alison McInnes: The bill states that anyone can be held in custody for up to 12 hours. Members will recall that there were mixed views among witnesses on whether that length of time is appropriate. Some advocated the reintroduction of the six-hour limit while others favoured extending the limit to 24 hours in exceptional cases.

Shelagh McCall of the Scottish Human Rights Commission told the committee:

> "Parliament should think carefully about whether it is ever appropriate to hold a child or a vulnerable adult for more than six hours."—[*Official Report, Justice Committee*, 8 October 2013; c 3356.]

Scotland's Commissioner for Children and Young People, Tam Baillie, also drew attention to the need for stringent safeguards. The bill does not include any exceptions or variations, but there is a strong argument for reducing the 12 or 24-hour limit to six hours for children and vulnerable adults. That would recognise their unique vulnerability and the additional impact that being held in custody for long periods could have on them.

Amendment 242 would also encourage the police to deal with children and young people's cases as priorities and help to ensure that they are in custody for the shortest possible time. If further investigations are required after the six-hour

period in custody has expired, there would be the option of an investigative liberation.

I move amendment 242.

Elaine Murray: I admit that there were differences of opinion on the issue, but I do not agree that the limit should be six hours. That would cover some people who were under investigation for fairly serious offences. If the amendment was redrafted to say that a child or vulnerable adult could not be kept in detention for more than 12 hours, I might be inclined to support it, but six hours is too short a time.

Roderick Campbell: I agree with Elaine Murray on that point. I hope that the number of children affected would be very small.

John Finnie: A number of years ago, prior to external events affecting the police service, six hours was more than adequate.

Michael Matheson: Amendment 242 would prevent children and vulnerable adult suspects from being kept in custody for more than six hours. I strongly believe that we need to protect the rights of children and vulnerable adult suspects within the justice system, but the amendment would undermine one of the fundamental purposes of the bill and prevent serious crime from being properly investigated.

It is vital that all offences can be properly investigated in the interests of justice. In doing that, it is also vital to protect the rights of suspects. The fundamental purpose that underlies the bill is to balance those sometimes competing interests. That involves providing additional support and protections to ensure that children and vulnerable suspects are not disadvantaged in the justice process.

The Carloway review considered those issues in great detail, and the bill already reflects the delicate balance between the interests that the review identified. It provides strong protection to ensure that no one is held unnecessarily or disproportionately. That includes the test of necessity and proportionality under section 10, the requirement for custody reviews after six hours and the general duty on all constables to

"take every precaution to ensure that a person is not unreasonably or unnecessarily held in police custody"

under section 41.

When a child is involved, the police will have to treat their wellbeing as a primary consideration in any decision to keep them in custody. When a person has been held in custody for six hours, section 9 of the bill requires a custody review to be carried out by an inspector who has not been involved in the investigation, and the person must be released if it is no longer necessary and proportionate for them to be kept in custody. That important process ensures that any period that is spent in custody is tempered by the safeguard of regular review, as recommended in the Carloway report.

In relation to vulnerable adult suspects, the bill already strengthens the protection that is available, placing a duty on the police to seek support to ensure that such individuals understand what is happening and are able to communicate effectively, and preventing vulnerable persons from consenting to be interviewed without a solicitor being present. As is currently the case, the police will continue to balance the interests of justice with the particular circumstances, needs and vulnerabilities of the person who is being interviewed.

The bill also provides additional protection for children that includes the requirement to safeguard and promote the child's wellbeing as a primary consideration when custody decisions are made. Where custody is necessary and proportionate, the child must be kept in a place of safety rather than a police station, and protections are incorporated in the bill with regard to intimation to and attendance of parents or other persons at the custody centre.

In operational practice, Police Scotland attempts to ensure that children and young people are kept in custody for as short a time as possible. When very minor crimes are committed by children, it is common for them not to be taken to a custody centre but, rather, to be taken home and, if it is deemed necessary, cautioned or charged in front of their parents or carers. When children are in custody, the police's standard operating procedure states that, if they are to be detained for more than four hours, a custody inspector must review the case.

Currently, most people are released after six hours, but that period is not adequate in all cases. Police Scotland has provided assurances that children and vulnerable adults will be held past six hours only in a small number of cases and that it will ensure that robust operational guidance and monitoring are in place in relation to that power.

Before part 1 of the bill is brought into force, Police Scotland will update its standard operating procedures in relation to custody to ensure that they are in line with the new arrest and custody regime, and that process will include updating existing guidance documents on dealing with children and vulnerable adults in the custody system. Police Scotland will work with stakeholder groups to ensure that the guidance documents ensure that appropriate protection is provided to children and vulnerable adults in custody.

However, there will be cases where it is necessary to hold a child or a vulnerable adult for more than six hours. Children and vulnerable adults can be suspected of very serious or complex offences, and the interests of justice demand that such offences be fully investigated. It would not be in the interests of justice to require certain suspects to be released after six hours regardless of whether the offence has been properly investigated and whether it would otherwise be necessary and proportionate to hold them. I therefore cannot support amendment 242, and I ask Alison McInnes to consider withdrawing it.

Alison McInnes: Elaine Murray said that, if I had lodged an amendment that changed the period to 12 hours, she might have been able to support it, but when I lodged amendment 242, we had not seen the minister's amendment that changes the period in the bill from 12 hours to 24 hours.

The minister spoke about the delicate balance that Lord Carloway had regard to in relation to the rights of suspects and the responsibility to investigate crime, but the minister's amendment 135 affects that delicate balance. It is therefore all the more important that children's and vulnerable adults' rights are protected, so I press amendment 242.

The Convener: The question is, that amendment 242 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Ind)
McInnes, Alison (North East Scotland) (LD)

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McDougall, Margaret (Central Scotland) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab) Paterson, Gil (Clydebank and Milngavie) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 242 disagreed to.

Section 8—Information to be given on authorisation

Amendment 124 moved—[Michael Matheson]—and agreed to.

Amendment 125 moved—[Michael Matheson].

The Convener: The question is, that amendment 125 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McDougall, Margaret (Central Scotland) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions

Finnie, John (Highlands and Islands) (Ind)
McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 125 agreed to.

Amendment 13 not moved.

Section 8, as amended, agreed to.

Section 9—Review after 6 hours

Amendment 126 moved—[Michael Matheson].

The Convener: The question is, that amendment 126 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McDougall, Margaret (Central Scotland) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions

Finnie, John (Highlands and Islands) (Ind)
McInnes, Alison (North East Scotland) (Liberal Democrats

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 126 agreed to.

Amendment 127 moved—[Michael Matheson]—and agreed to.

Section 9, as amended, agreed to.

Amendment 128 moved—[Michael Matheson]—and agreed to.

Section 10—Test for sections 7 and 9

Amendment 129 moved—[Michael Matheson].

The Convener: The question is, that amendment 129 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McDougall, Margaret (Central Scotland) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions

Finnie, John (Highlands and Islands) (Ind)
McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 129 agreed to.

Amendment 130 moved—[Michael Matheson]—and agreed to.

12:15

The Convener: At last we get to Mary Fee. She has been sitting here for a long time.

Amendment 39, in the name of Mary Fee, is grouped with amendments 110, 41 to 45 and 260.

Mary Fee (West Scotland) (Lab): My amendments are designed to ensure that the issues that are faced by children and young people who are affected by their parents' involvement in the justice system are flagged up as part of early intervention and prevention procedures.

As the committee will know from the meeting on 8 September, I wish to see at all stages of the justice process more recognition of children and young people who are affected by their parents' offending behaviour, starting from the point of arrest. We need a more joined-up approach to supporting those children, which should include a raft of agencies, including the police. If the amendments are not accepted, I hope to receive reassurances from the cabinet secretary that the intentions behind them can be addressed in other, non-legislative ways.

More needs to be done to encourage the police to consider the impact of arresting a parent on their dependent children. There is undoubtedly a role for the named person to play. I would welcome the cabinet secretary's comments on how that can be done more effectively.

Amendment 39 would ensure that the factors to be met as part of the test in section 10 for keeping a person in custody under section 7(4) and for reviewing continuation of custody after six hours under section 9(2) would include the impact on the person's dependent child or children.

Section 10(2)(a) provides that one of the factors that the police may consider as part of that test is

"whether the person's presence is reasonably required to enable the offence to be investigated".

That recognises that the police can investigate an offence without necessarily requiring the person to be kept in custody. The amendment would extend that recognition to ensure that the police, in deciding whether to keep the person in custody, should also consider the impact of keeping the person in custody on the person's dependent child or children. That factor must be taken into account in cases in which it might not be necessary for the police to keep the person in custody in order to investigate the offence. That is particularly important where the person is the primary or sole carer for any dependent child or children.

Amendment 110 outlines the procedures to be followed by the police when a person with a dependent child or children is taken into police custody. It relates specifically to the provision of information to the named person, as set out in the Children and Young People (Scotland) Act 2014. Currently, the procedures that the police will follow where a person with a dependent child or children is arrested and taken into custody are unclear. The amendment seeks to provide clarity on what the police should do in such cases. They should act as an early warning system. For instance, if an adult with dependent children is arrested for a very serious offence or is a repeat offender and the police consider that that behaviour may have an impact on the wellbeing of any dependent children, they must share that information with the named person.

The Scottish Government's own guidance on the named person states:

"Practitioners should not wait until a situation has reached crisis point before sharing information. They should also share when there are smaller changes. This allows patterns to emerge—and these can often point to more serious concerns, allowing appropriate help to be offered at an early stage."

Amendment 110 is necessary because, although a child's own offending behaviour is an obvious and visible wellbeing concern, children who are affected by their parents' offending will not always be present or visible to the police, so there needs to be a trigger. The amendment would ensure that the police are always thinking about any dependent children whom a suspected offender may have and are consistently asking the question and considering at what point the behaviour of the suspected offender may start to have an effect on the wellbeing of any dependent children.

Amendments 41 to 45 are fairly minor amendments that provide clarification. They would extend the duty in section 42 to ensure that the best interests of any dependent children are taken

into account when arresting, holding, interviewing or charging a person with responsibility for a child. In 2012, the UK, with the Scottish Government's support, accepted a recommendation made in the course of the UK's human rights peer review at the UN Human Rights Council that asked the UK to ensure that the best interests of the child are taken into account when arresting, detaining, sentencing or considering early release for a sole or primary carer of a child. My amendments are consistent with that recommendation. Section 42 of the bill seeks to integrate the United Nations Convention on the Rights of the Child into Scottish criminal justice legislation. That is to be welcomed.

The focus on the best interests and wellbeing of the child as paramount is a positive step forward in ensuring that children and young people are treated appropriately within the criminal justice system. However, children and young people can also be indirectly drawn into the criminal justice system through the offending behaviour of their parents or primary care givers. My amendments would require a constable to consider the best interests of an offender's dependent children, from point of arrest through to being charged. That will help to ensure that the needs of those often forgotten children are met and that their wellbeing is considered a priority during what is often a trying period of their care givers' time in the criminal justice system. The more opportunities that there are, the more likely that a suspect will disclose that information. Only with the right information can statutory services link up and ensure that the right care and support is provided to children and young people affected by their parents' offending behaviour.

I move amendment 39.

Michael Matheson: Children can be seriously affected by parental arrest, custody and imprisonment. While there are already areas of good practice, I agree that we need to ensure a consistent multi-agency approach to addressing the impact on children when a parent is arrested or held in custody. That requires strong links between the justice system, statutory services and the voluntary organisations that work with children and families affected by imprisonment.

I have taken on board what Mary Fee has said regarding the interests and wellbeing of children during initial arrest. Mary Fee has met the Minister for Children and Young People on the matter, which I hope has gone some way to reassure her of our commitment to work with her to ensure that the intent behind her amendments is given effect.

I can reassure Mary Fee that the Scottish Government will take steps to address her concerns through implementation of the legislation and through guidance and practice material, under the Children and Young People (Scotland) Act 2014, to the police and other relevant agencies to ensure that the interests of children are properly protected. My officials are already engaged with stakeholders to ensure that that happens.

I support and commend the intention behind Mary Fee's amendments, but I believe that there are more effective ways to achieve the desired outcome of keeping children safe. As drafted, the amendments would alter the carefully balanced decision-making process for arresting, holding and charging adult suspects.

The bill is designed to deliver a balance between the rights of suspects and the powers of the police in order to serve the interests of justice. That was what was envisaged in the independent Carloway review. Police will be alert to the interests of the child while carrying out their duties under the bill. The police would never act in a way that would leave a child open to danger. While the member's amendments pursue the aims of protecting children affected by parental arrest and custody, that aim can be better achieved through the implementation of the Children and Young People (Scotland) Act 2014.

Amendment 39 would add to the test already contained in section 10 of the bill regarding custody decisions. That is a key test under the bill. It is used at various stages to decide whether a suspect can be kept in custody. It balances the needs of the police to manage a criminal investigation and the rights of the suspect, taking into consideration the needs of inquiry and public safety.

Amendments 39 and 42 would require the police to treat suspects with responsibility for children differently. In such cases, the effect on the child of keeping the person in custody would have to be a primary concern in making the decision on custody. As we know, children are affected by the arrest of their parents, but making that a primary concern when deciding whether to take someone into or keep someone in custody would be out of balance with the already finely balanced test contained in section 10. The interests of justice and public safety must remain primary considerations when making decisions about whether it is in the interests of justice and proportionate to deprive a person of their liberty.

Making custody decisions on that basis does not prevent the police from working to ensure that the immediate care and support needs of affected children are also met; in fact, that is part of their daily business. The police maintain a duty of care over the arrested person, and that duty naturally extends to any dependent children who have been left exposed by that arrest. It must be remembered that part of their core role is to keep all people safe. If the police become aware of concerns about any child's wellbeing, they will take

immediate steps to ensure the child's safety, be that tracing another parent or relative, engaging social work or bringing the child into a safe environment, and such work is often done through a close working relationship with social work partners. I believe that a case-specific approach is both preferable and more practicable than the catch-all approach that has been suggested in Mary Fee's amendments.

Amendment 110 seeks to ensure that when a person with parental responsibilities for a child is arrested the police contact the child's named person as identified in part 4 of the Children and Young People (Scotland) Act 2014. It would never be the case that, once the police were made aware of a wellbeing concern, they would leave a child to fend for themselves without taking action to ensure that the child's welfare needs were addressed. Under the 2014 act, the police have a duty to share relevant information relating to a child's wellbeing with the named person service when appropriate.

Amendments 41 to 45 seek to add to the test already contained in section 42 for child suspects. The current test set out in that section requires the police to take account of the wellbeing of the child before arresting, holding or charging them, and it seeks to ensure that, whatever the circumstances, children are arrested, held or charged appropriately and proportionately. The amendments would extend the test to cover all people with "responsibility for a child". In effect, before the police decided to arrest someone, hold them in custody, question or charge them, they would have to consider the wellbeing of any children for whom they might have responsibility. That would be out of step with the test already contained in the bill, which is intended to strike a balance between the public interest in investigating crime and protecting public safety and the rights of suspects.

Under amendment 260, which has been substituted for amendment 46, the scope of the definition of "responsibility for a child" is very wide and covers many people who might have legal responsibilities for children but who are not responsible for their care and support on a day-to-day basis. It is important to acknowledge that the police already take steps to identify any childcare issues of persons who are arrested and take necessary steps to ensure the wellbeing of children who are cared for in partnership with social work colleagues. The police also play a significant role in their localities in protecting children. Amendment 260, as drafted, could make the assessment that they currently undertake more about wellbeing than about the wellbeing and child protection that they assess at the moment. We do not want to lower the level of or lose the current practice that the police already carry out.

My colleague Aileen Campbell would be happy to meet Mary Fee ahead of stage 3 to update her on the progress with the development of practice material for children who are affected by parental detention and how that can better address their needs.

I therefore ask the member not to press amendment 39.

Mary Fee: I will be brief as I am conscious of the time. I thank the cabinet secretary for his mostly supportive comments. He was right to say that I have met the Minister for Children and Young People, and I am glad that he acknowledges that more work can be done on these matters. I am keen that we find a way to support this really vulnerable group of children and young people.

Given the comments that the cabinet secretary has made and his commitment to work with both me and other stakeholders, I am happy not to move my amendment 39.

12:30

The Convener: You have moved it. Do you wish to withdraw it?

Mary Fee: Sorry—yes.

Amendment 39, by agreement, withdrawn.

Section 10, as amended, agreed to.

Amendment 131 moved—[Michael Matheson]—and agreed to.

The Convener: I advise members that I am going to press on for a little so that we can get to the end of section 13, because most of the amendments have already been debated.

Section 11—12 hour limit: general rule

Amendments 132 and 133 moved—[Michael Matheson]—and agreed to.

Amendment 14 not moved.

Amendment 134 moved—[Michael Matheson].

The Convener: The question is, that amendment 134 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McDougall, Margaret (Central Scotland) (Lab)
Mitchell, Margaret (Central Scotland) (Con)

Murray, Elaine (Dumfriesshire) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions

Finnie, John (Highlands and Islands) (Ind)
McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 134 agreed to.

Section 11, as amended, agreed to.

After section 11

Amendment 15 not moved.

Section 12—12 hour limit: previous period

Amendment 16 not moved.

Section 12 agreed to.

After section 12

Amendment 135 moved—[Michael Matheson].

The Convener: The question is, that amendment 135 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McDougall, Margaret (Central Scotland) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions

Finnie, John (Highlands and Islands) (Ind)
McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 135 agreed to.

Amendment 136 moved—[Michael Matheson]—and agreed to.

Section 13—Medical treatment

Amendment 137 moved—[Michael Matheson]—and agreed to.

Amendment 17 not moved.

Amendments 138 to 141 moved—[Michael Matheson]—and agreed to.

Section 13, as amended, agreed to.

The Convener: That concludes the amendment process for today, but we will return to amendments next week. I hope that you have the stamina, cabinet secretary, because I think that it is going to be an even longer session.

I will suspend the meeting for a couple of minutes.

12:33

Meeting suspended.

12:34

On resuming—

Petitions

Self-inflicted and Accidental Deaths (Public Inquiries) (PE1501)

Fatalities (Investigations) (PE1567)

The Convener: Agenda item 3 is consideration of petitions; we have seven on-going petitions. Last week we considered two petitions, one of which related to fatal accident inquiries while the other related to the Megrahi conviction. Paper 1 provides background and options for action on the remaining five petitions. I will go through each in turn.

PE1501 and PE1567 are on investigating unascertained deaths, suicides and fatal accidents. PE1501 requests that an inquiry be held where, following suspicious death investigations, a death is determined to be self-inflicted or accidental. PE1567 seeks a change in the law and procedures in investigations of unascertained deaths, suicides and fatal accidents.

We are taking the two petitions together because they appear to make similar requests. In both cases, the petitions come from family members of a person who has died suddenly, who are not satisfied with how the death has been investigated. Since the papers were issued, both petitioners have submitted a small amount of additional material, which has been circulated to members.

The Scottish Government has said that it is not minded to introduce a form of inquiry similar to a coroner's inquest, which would take place at an earlier stage in the investigation of a death than a fatal accident inquiry. Members will see that the PE1501 petitioners have informed us that they are seeking not a replica of the coroner's system but a right to a judicial inquiry at the pre-FAI stage. Members will remember that the Crown Office and Procurator Fiscal Service intends to introduce a milestone charter setting out timescales for investigations and decisions in relation to a death that it is investigating.

What are members' views on the petitions? Possible options are set out on page 4 of paper 1.

It is awfully quiet. I am waiting for the tumbleweed to blow past. Members must be exhausted after the previous session.

Roderick Campbell: I do not have a problem in seeking further information from the Crown Office and Procurator Fiscal Service about how it evaluates suspicious death investigations.

John Finnie: I support Roddy Campbell on that. As one of the communications says, it is not helpful to say that recourse is available through a judicial review—families would not ordinarily resort to that. Therefore, we need to take the opportunity to get further information.

The Convener: Of course, the Solicitor General for Scotland has given the undertaking that, if no FAI is to be held, the family will not have to request information but will be told why that is the case.

Alison McInnes: I support pursuing the matter a bit further. At the heart of the issue is the need for families to be able to challenge the police's findings, particularly with PE1501, in relation to which an assumption was made that the death was self-inflicted.

The Convener: Do you want us to seek information from the Crown Office and Procurator Fiscal Service on how it evaluates suspicious death investigations—in other words, should we take option 3?

Alison McInnes: Yes, we should pursue option 3.

The Convener: Do members agree to pursue option 3?

Members *indicated agreement.*

Solicitors (Complaints) (PE1479)

The Convener: PE1479 is on the legal profession and the legal aid time bar. The petitioner seeks complete removal of the time bar for making complaints against the legal profession. The Scottish Legal Complaints Commission plans to increase the time bar from one year to three years, although there appears to have been a delay in implementing the change. The clerks have sought to find out from the SLCC why there has been a delay and when the changes will come into effect, but no answer has yet been provided. The SLCC was asked about the matter not just yesterday; it has had two or three weeks to reply. What are members' views on the petition?

Roderick Campbell: We should make a formal request, otherwise the matter might never be heard of again.

The Convener: I am trying to recall the procedure. There is always discretion so, even if the time bar were to be increased to three years, discretion might be applied in the case of someone who may not have known that they had anything to complain about.

Peter McGrath (Clerk): That is covered.

The Convener: That is covered. That is fine. We will chase up a response from the SLCC by sending a more strongly worded letter. I am getting good at sending such letters.

Peter McGrath: So far, we have dealt with the matter at official level.

The Convener: I will put my voice to it; that will be sure to make the wheels turn. We hope.

Emergency and Non-emergency Services Call Centres (PE1510)

Inverness Fire Service Control Room (PE1511)

The Convener: PE1510 concerns the closure of police, fire and non-emergency call centres north of Dundee. The clerk's paper 1 discusses the petition, along with PE1511. Since the committee last considered the petition, the Cabinet Secretary for Justice has announced that the police control rooms north of Dundee will not be closed until the new control rooms have the staff, systems and processes to take on the additional call demand.

PE1511 concerns the closure of the fire and rescue control room in Inverness. Issues highlighted in the petition were raised during our evidence session on 28 April with HM chief inspector of the Scottish Fire and Rescue Service and the Fire Brigades Union Scotland. What are members' views on both petitions? Possible options are set out on pages 6 and 7 of paper 1.

Alison McInnes: Things have changed since these petitions were submitted, given the interim review on police call centre control rooms, but I am particularly concerned to establish whether the fire service has taken proper cognisance of that particular report, even though it related to the police. After all, issues with regard to staff retention, vacancies and call handling are pertinent to the fire service, too. Given that we have not yet asked the service whether it has taken up that report, I suggest that we write to it on the matter.

The Convener: Are members agreed?

Members *indicated agreement.*

John Finnie: I support that suggestion; I also support keeping PE1510 open until the full report has been received and considered, which might be some time off yet.

The Convener: So we are keeping both petitions open. With one, we are waiting for the report to be received and considered and with the other, we are writing to the organisation that has been mentioned. Are we agreed?

Members *indicated agreement.*

Subordinate Legislation

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No 3) (Miscellaneous) 2015 (SSI 2015/283)

Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Child Welfare Reporters) (SSI 2015/312)

12:40

The Convener: Agenda item 4 is consideration of two instruments not subject to any parliamentary procedure. Both instruments have been drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee, the first because of a minor drafting error and the second because the meaning of articles 2 and 4 could be clearer. The issue of drafting is one for the Lord President's private office—not for the legislation team here, there or anywhere, whether the Government's or the Parliament's—and it has undertaken to correct the errors when the rules are next amended.

Are members content to endorse the DPLR Committee's comments on the instruments?

Members *indicated agreement.*

The Convener: Thank you very much. That concludes today's meeting.

Meeting closed at 12:42.

Published in Edinburgh by the Scottish Parliamentary Corporate Body

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk

Information on non-endorsed print suppliers
Is available here:

www.scottish.parliament.uk/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk