OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 23 April 2019

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 23 April 2019

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JUSTICE COMMITTEE
12th Meeting 2019, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Green)
*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
*Daniel Johnson (Edinburgh Southern) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Liam McArthur (Orkney Islands) (LD)
Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Neil Bibby (West Scotland) (Lab)
Bill Kidd (Glasgow Anniesland) (SNP) (Committee Substitute)
Gordon Lindhurst (Lothian) (Con)
Lewis Macdonald (North East Scotland) (Lab)
Humza Yousaf (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 23 April 2019

[The Convener opened the meeting at 10:00]

Subordinate Legislation

Justice of the Peace Courts (Sheriffdom of South Strathclyde, Dumfries and Galloway) etc Amendment Order 2019 [Draft]

The Convener (Margaret Mitchell): Welcome to the Justice Committee's 12th meeting in 2019. We have received apologies from Shona Robison. We welcome back to the committee Bill Kidd, who is substituting for her.

Agenda item 1 is an evidence session on an affirmative instrument. I welcome Humza Yousaf, who is the Cabinet Secretary for Justice, and his Scottish Government officials, Walter Drummond-Murray, who is a courts and tribunals policy officer, and Jo-Anne Tinto, who is from the directorate for legal services.

I refer members to paper 1, which is a note by the clerk. I invite the cabinet secretary to make a short opening statement.

The Cabinet Secretary for Justice (Humza Yousaf): Thank you, and good morning to you all. The order that is before the committee today delivers the relocation of the justice of the peace court in Coatbridge to a new facility a mile and a half away in Airdrie. The building in Coatbridge is no longer suitable; one response to the Scottish Courts and Tribunals Service's consultation described it as a building that

"had its best days ... in the last century."

The proposed facility in Airdrie will provide a modern, new building that will offer a far better experience for court users and staff. The new building is across the road from the existing sheriff court and offers the opportunity for the Scottish Courts and Tribunals Service to deliver more efficiently, as the same group of staff supports both courts and suffers inconvenience in shuttling between buildings. Additionally, there will be a small saving of £11,000 a year in reduced rents, rates and service charges. No posts will be lost as a result of the relocation.

Although parliamentary approval is required, I view this as a predominantly operational matter and a decision for the Scottish Courts and Tribunals Service, so that it can make the most efficient use of resources. The proposal enjoys the support of the SCTS board and the Lord President. I am happy to lend my support in bringing the instrument to Parliament for consideration.

The Convener: Do members have any comments or questions?

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning, cabinet secretary. The court is located in my constituency, so you would expect me to ask a couple of questions. Committee paper 1 states:

"Whilst the statutory obligations require a high level of consultation and consideration, in this case the proposal is fairly modest, and entails moving Coatbridge Justice of the Peace Court 1.4 miles".

I understand that the SCTS's decision is based on sound evidence. I have not had a lot of representation on the issue. What level of consultation was undertaken?

Humza Yousaf: It would be for the Scottish Courts and Tribunals Service to answer more widely. However, a number of organisations fed into its consultation. To give you some reassurance—I expect that, as the local MSP, you want reassurance—a number of factors were taken into consideration in making the decision. Given its previous experience of court closures and relocations, the SCTS looked at the bus and train transport links between Coatbridge and Airdrie. It took into account what the effect would be on court business if the court were to move, to ensure that any of your constituents who were going through JP court business would not face delays.

All those factors were considered. It is probably worth pointing out that Victim Support Scotland was one of the organisations that gave input, so potential victims who may well be constituents of yours were represented.

There was universal support for the proposal. A fair number of factors were considered as part of the conversation to relocate.

Fulton MacGregor: Thank you. I am in general agreement with the proposal. There is no doubt that the court in Coatbridge is situated very close to Airdrie. I am surprised that a move of 1.4 miles is involved; I would have guessed the distance to be less than that. I do not think that the impact will be massive, and I agree with the assessment of the condition of the building. I grew up in the street adjacent to the court so I know the building well; it is a historic landmark, but it is probably not the best when it comes to functioning as a modern office and court building.

Airdrie is a busy sheriff court and Coatbridge justice of the peace court is very busy. Did you get

any figures on what the impact would be on Airdrie?

Humza Yousaf: Yes. The impact was absolutely part of the Scottish Courts and Tribunals Service's consideration. The SCTS is confident that there will be no adverse effect upon performance at the sheriff court. In fact, the new facility has a provision for vulnerable witnesses that will also be available for cases in the sheriff court, so the new facility will help with some of the court business in Airdrie sheriff court as well as the relocated work from the Coatbridge JP court. No adverse effect on performance is foreseen, but clearly the impact was part of the SCTS's consideration and conversation.

Fulton MacGregor: Is there any anticipated adverse effect on staff? Are all staff expected to move to the new premises?

Humza Yousaf: It is quite the opposite to an adverse effect. Some staff were experiencing inconvenience; I know that it is a move of only 1.4 miles, but as you can imagine, for staff who shuttled between those two buildings the new facility's location adjacent to the sheriff court is very handy. As I mentioned, no job losses are anticipated as a result of the move.

The Convener: As a member for Central Scotland and a native of Coatbridge, I would add only that I am aware that the building is very old, so the move to a new and better facility is welcome. I have not heard any comments opposing the move.

Agenda item 2 is formal consideration of motion S5M-16769. The Delegated Powers and Law Reform Committee considered and reported on the instrument and had no comments on it.

Motion moved,

That the Justice Committee recommends that the Justice of the Peace Courts (Sheriffdom of South Strathclyde, Dumfries and Galloway) etc. Amendment Order 2019 [draft] be approved.—[*Humza Yousaf*]

Motion agreed to.

The Convener: That concludes our consideration of the instrument. The committee's report will note and confirm the outcome of the debate. Is the committee content to delegate authority to me as convener to clear the final draft of the report?

Members *indicated agreement.*

The Convener: I thank the cabinet secretary and his officials for attending and I suspend the meeting briefly to allow for a change of officials.

10:08

Meeting suspended.

10:09

On resuming—

Management of Offenders (Scotland) Bill: Stage 2

The Convener: Agenda item 3 is continued consideration of the Management of Offenders (Scotland) Bill at stage 2. I refer members to their copies of the bill, and to the marshalled list of amendments and the groupings.

I welcome back Humza Yousaf, the Cabinet Secretary for Justice, and his officials. For the avoidance of doubt, the officials are here to assist the cabinet secretary during stage 2 proceedings. They are not permitted to participate in the debate, which is why they do not have name plates.

At various parts of today's meeting, we will be joined by other members who have lodged amendments. I welcome Lewis Macdonald, who is already in situ. We will now begin consideration of the amendments.

Section 13—Deemed breach of disposal or conditions

The Convener: Amendment 93, in the name of the cabinet secretary, is grouped with amendment 104. Amendment 93 pre-empts amendments 54 and 55 in the group called "Part 1 terminology: relevant person". If amendment 93 is agreed to, I cannot call amendments 54 and 55.

Humza Yousaf: Amendments 93 and 104 are grouped as minor technical changes that are required as a result of amendment 118, which in turn extends Scottish ministers' powers to recall a prisoner from home detention curfew. Amendment 118 inserts a new subsection into section 42 of the bill, amending section 17A of the Prisoners and Criminal Proceedings (Scotland) Act 1993, to provide that a prisoner can be recalled from HDC if Scottish ministers consider that to be expedient in the public interest.

Amendments 93 and 104 tidy up references to section 17A of the 1993 act and other parts of the bill.

I move amendment 93.

The Convener: The question is, that amendment 93 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)

Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 93 agreed to.

Section 13, as amended, agreed to.

After section 13

Amendment 132 not moved.

Section 14—Documentary evidence at breach hearings

Amendment 56 moved—[Daniel Johnson].

The Convener: The question is, that amendment 56 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 56 agreed to.

Amendment 57 moved—[Daniel Johnson].

The Convener: The question is, that amendment 57 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 57 agreed to.

Amendment 94 moved—[Humza Yousaf]—and agreed to.

The Convener: I remind members that, if amendment 95 is agreed to, I cannot call amendment 58 because of pre-emption.

Amendment 95 moved—[Humza Yousaf]—and agreed to.

Amendments 96 to 98 moved—[Humza Yousaf]—and agreed to.

The Convener: I remind members that, if amendment 99 is agreed to, I cannot call amendment 59 because of pre-emption.

Amendment 99 moved—[Humza Yousaf]—and agreed to.

Amendment 60 moved—[Daniel Johnson].

The Convener: The question is, that amendment 60 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 60 agreed to.

Amendment 100 moved—[Humza Yousaf]—and agreed to.

Section 14, as amended, agreed to.

Section 15—Procedure for making regulations

The Convener: Amendment 101, in the name of the cabinet secretary, is in a group on its own.

10:15

Humza Yousaf: Amendment 101 changes the section 9 powers in the bill, which enable the Scottish ministers to make regulations in relation to the use of devices and information, to make them subject to the affirmative procedure. That was one of the recommendations in the Justice Committee's stage 1 report.

The regulation-making power in section 9 empowers Scottish ministers to make provisions about the use of information obtained through

monitoring, and expressly includes placing restrictions on the use or sharing of that information. Scottish ministers will be able to use the power to ensure that data is collected, retained, used and destroyed in accordance with data protection law.

I listened carefully to the Justice Committee's views on the use of devices and information. I lodged the amendment in recognition of the significance of the section 9 powers, which we are content to make subject to the affirmative procedure.

The committee also recommended the affirmative procedure for regulations that are made under sections 4 and 7 of the bill. Those sections enable the Scottish ministers to extend electronic monitoring into other criminal court disposals such as bail, or other forms of early release. I do not think it necessary to use the affirmative procedure for such regulations, as their effect would be only to widen the discretion of the courts and ministers in relation to electronic monitoring. The bill does not enable the creation of new criminal court disposals or forms of early release. Rather, it sets out those disposals and forms of early release that can be electronically monitored at the discretion of the court or of Scottish ministers.

The powers in the bill ensure only that, where a movement or consumption restriction can be imposed by a court or the Scottish ministers if it is deemed appropriate to do so, the electronic monitoring regime can be extended to include that restriction. For those reasons, I do not think that changes are required to the procedure for regulations made under sections 4 and 7, but I have lodged amendment 101 in relation to regulations made under section 9 on the use of devices and information.

I move amendment 101.

Amendment 101 agreed to.

Section 15, as amended, agreed to.

Section 16—Additional and consequential provisions

Amendment 61 moved—[Daniel Johnson].

The Convener: The question is, that amendment 61 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 61 agreed to.

Amendment 62 moved—[Daniel Johnson].

The Convener: The question is, that amendment 62 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 62 agreed to.

Section 16, as amended, agreed to.

Schedule 1—Court orders and electronic monitoring

The Convener: Amendment 103, in the name of the cabinet secretary, is in a group on its own.

Humza Yousaf: When an individual is convicted on indictment and is sentenced to imprisonment for less than four years, the court may impose a supervised release order—SRO—on the individual when it considers that it is necessary to protect the public from serious harm from the individual on their release. The SRO is imposed under section 209 of the Criminal Procedure (Scotland) Act 1995 and provides a period of supervision on licence for short-term prisoners who would otherwise be released into the community unconditionally. The SRO commences on the prisoner's release, cannot exceed 12 months and cannot extend past the sentence end date.

However, a short-term prisoner could become a long-term prisoner if they received a consecutive or partially concurrent sentence and those separate sentences formed a single term of four years or more. Therefore, although SROs are imposed only on prisoners who are sentenced to short-term sentences, a short-term prisoner with an SRO could become a long-term prisoner with

an SRO at a later date by virtue of receiving additional prison sentences.

Following changes to automatic early release that were made in February 2016, a long-term prisoner who is subject to a 12-month SRO that is imposed for a constituent part of their single-term sentence could be released on licence for only six months. In those circumstances, the 12-month SRO would extend for six months beyond the sentence end date. That would result in an inadvertent breach of the requirement in section 209 of the Criminal Procedure (Scotland) Act 1995 that an SRO cannot extend beyond the sentence end date. As long-term prisoners are always released on licence, there appears to be no need for an SRO to remain in place when a short-term prisoner becomes a long-term prisoner by virtue of the rules on single terming.

For the reasons that I have set out, I have lodged amendment 103, which will allow an SRO to fall when a prisoner becomes a long-term prisoner through the operation of the rules on single terming of prison sentences, and I ask the committee to support it.

I move amendment 103.

The Convener: Do members have any questions or comments?

Daniel Johnson (Edinburgh Southern) (Lab): I have a brief technical query. I understand what the cabinet secretary said, but it is important for rehabilitation that early release remains a possibility for long-term prisoners. I want to clarify that amendment 103 will not remove that possibility and that it is merely about technicalities to do with what form that will take for long-term prisoners. Is that correct?

Humza Yousaf: That understanding is correct. Although changes were made to automatic early release, a long-term prisoner will still have access to all the rehabilitation programmes that are available in the prison as well as the chance to progress through the normal routes to release on parole and so forth. Amendment 103 does not seek to change any of that. It is a technical amendment that needs to be made for the reasons that I mentioned.

Amendment 103 agreed to.

Amendment 104 moved—[Humza Yousaf]—and agreed to.

Schedule 1, as amended, agreed to.

After section 16

The Convener: I call amendment 63, in the name of Daniel Johnson.

Daniel Johnson: Not moved.

Liam Kerr (North East Scotland) (Con): I do not understand the process, convener. Can I move the amendment?

The Convener: Yes.

Amendment 63 moved—[Liam Kerr].

The Convener: The question is, that amendment 63 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

Against

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

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

Amendment 63 disagreed to.

The Convener: Amendment 1, in the name of Lewis Macdonald, is grouped with amendment 102.

Lewis Macdonald (North East Scotland) (Lab): I am very grateful that amendments 1 and 102 have been grouped together, because they serve the same purpose. Amendment 1 seeks to make completion of a declaration of income form mandatory, and amendment 102 seeks to subsume deduction of benefit orders into enforcement orders. In both cases, the purpose is to make the system work as it is intended to work and to ensure that, when fines are imposed by the courts, they are collected and the courts have the means to do that.

You might recall that, last year, I made a submission in relation to the bill that focused on the content of amendment 1—the declaration of income form. However, as I pursued the matter, it quickly became clear that the fact that benefit deductions were separate from other enforcement mechanisms was also a fault and a weakness in the current system. I am grateful to the cabinet secretary for discussing the matter with me some weeks ago and for writing to me on it last week.

Amendments 1 and 102 were prompted by a very ordinary, everyday case in Aberdeen that involved Michelle Gavin, a woman who was hard working but without money in the bank, if I can put it that way. She was the victim of a minor offence: an intruder broke her garden fence when avoiding a conversation with a police officer. Rather than

prosecute for an offence, the procurator fiscal offered him a compensation order whereby he would pay Michelle Gavin the £400 to fix her fence. In the three years since the order was made, the individual has paid £7.50. The court service has confirmed that it is not able to replace the penalty with an alternative one, such as compensation from the court that it could recover from the offender, and that it has no means to enforce the order, because it cannot require the individual to complete a declaration of income form, so it does not know his income.

Michelle Gavin is still £392.50 out of pocket. The individual has been subject to warrants on five occasions, and he has been held overnight on remand and has appeared in court a number of times. He made a small payment on one occasion, but, after all the other appearances in court in relation to this very minor matter, when he was offered and accepted opportunities to pay over a period of time, he failed to do so. In such situations, the courts need the ability to require people who have been found guilty of an offence or who have accepted an offer of a compensation order as an alternative to prosecution to pay up or, as a very minimum, to provide the information that is needed by the courts to pursue the matter.

Although both amendments are different in form, their essential purpose is the same. There is no dispute that the system has a weakness that needs to be addressed—that appears to be universally accepted. A Scottish Government report that was published in 2011 summed up cases like that of Michelle Gavin very well:

"There is still some 'churn' (in the system) ... in which non-payment is accompanied by limited information about defaulters, who are then cited to court, fail to appear, have a warrant issued, are given more time to pay, do not pay, are cited back to court, fail to appear, and so on. Improving access to information and therefore the ability of FEOs"—

fines enforcement officers—

"to pursue defaulters effectively could reduce this churn and limit the input of police and courts, improve the speed of fine payment and enforcement and potentially reduce the costs associated with enforcement whilst increasing fine payment and thus the credibility of the fine."

Therefore, the proposal to amend the law is a win-win. There would be no difference in the penalty that would be imposed on a person who was found guilty of an offence or who accepted a compensation order, but there would be more prospect of the money eventually being paid. That would make an enormous difference for somebody like Michelle Gavin, and it would be positive for many other victims of crime.

For those who become entangled in the courts because they have committed an offence, there would be much greater clarity about the consequences of a fine being imposed. During 2017-18, there were 48,000 court citations for the non-payment of fines for compensation, and 21,000 arrest warrants were issued. A vast amount of public resource is being used to no particular purpose. It would be far better used in actively securing payment according to the letter of the law, which is what the amendments are intended to achieve.

I move amendment 1.

Liam Kerr: I am grateful to Lewis Macdonald for his sensible explanation, and I would like to vote for the amendments. For clarity and reassurance, I ask whether amendment 1 is about means testing of fines.

The Convener: Lewis Macdonald can answer that question.

Lewis Macdonald: I am happy to reply directly that the amendment is not about means testing of fines. It would not alter the position of a person who was convicted and who accepted a compensation order other than that they would have to complete the declaration of income form, as the amendment says. At the moment, they are asked to complete the declaration in those instances but are not required to do so. In very many cases, they do not do so, and the courts are unable to proceed further.

10:30

Liam McArthur (Orkney Islands) (LD): I, too, thank Lewis Macdonald not just for his explanation this morning but for his helpful written note. I recognise that the amendments build on a submission that he made at stage 1, but I have anxieties about the lack of evidence at stage 1 on an issue that seems, from the figures that Lewis Macdonald quoted, to be part of a wider picture that should give all of us cause for concern.

My anxiety is more about creating a requirement from which there is no exemption for having a reasonable excuse. Amendment 1 would criminalise the failure to submit a declaration of income form and would impose a fine for that. In some circumstances, that could exacerbate the situation and accelerate a downward spiral of financial difficulties.

Lewis Macdonald set out the position clearly and illustrated it with a case in which I do not underestimate the frustrations for the individual who is involved. The issue is part of a wider question, and I would feel more comfortable in addressing it in the round by taking evidence from a number of stakeholders. However, it has been helpful to air the issue in the context of the bill and I will listen carefully to the cabinet secretary's response.

Daniel Johnson: I will speak briefly in support of the amendments. We need to recognise that people normally pursue such claims through the courts at the end of a prolonged period of stress and difficulty. We can understand why, if they fail to get the result that they wanted purely because a form was not filled in correctly, that causes not just frustration but a great deal of mistrust of and disappointment in the system. The proposal is sensible and would mean that a simple bit of bureaucracy would not stop the courts seeing through the process that they had been asked to undertake.

More important, although I well understand the points that Liam McArthur made, the impact of a fine on an individual should be considered when the judgment is made. Lewis Macdonald's proposal would simply ensure that judgments and compensation awards could be seen through once they had been made. I fully accept Liam McArthur's points about the impacts, but decisions in relation to them should be taken when the judgment is made.

For those reasons, I urge members to support the amendments, which would ensure that the processes are robust and do what they are intended to do.

Fulton MacGregor: I thank Lewis Macdonald for presenting his case and representing his constituent in such an articulate manner. However, like Liam McArthur, I have concerns about amendment 1. Before I could vote for it, I would need more information about its impact on the robust process that is in place to divert people from prosecution, which has cross-party support.

Nobody would disagree that there was an injustice in the example that Lewis Macdonald set out or that there is churn in the system, but the proposal needs to be looked at in the overall context. I would worry about introducing such a proposal at this point, so I am inclined to reject it, although I will listen to what the cabinet secretary says.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Like Fulton MacGregor, I have reservations about the amendments. We did not take evidence on the issue, so I do not feel that I know too much about it. I do not see the logic in fining people for the non-payment of a fine—in piling another fine on top of a fine. I agree that there is a problem, which was well described, but I do not see the logic in the approach.

John Finnie (Highlands and Islands) (Green): I recall Mr Macdonald telling this story before, and I have to say that I find it deeply frustrating. As has been said, one would hope that diversion from prosecution would be seen in a positive light, but the figures are clearly unacceptable.

I remain to be persuaded that what is proposed is the answer, because I do not know whether it is simply piling another list on to a charge sheet that will just be ignored anyway. Clearly, we cannot have a situation in which many people, including people around this table, who are encouraging alternatives to custodial sentences, are being discredited. As others are, I am very keen to hear what the cabinet secretary has to say. I do not expect him to say that he thinks that the status quo is acceptable, but if what is suggested is not the answer, perhaps he will outline what the answer could be.

The Convener: I think that the amendments are eminently sensible. I do not think that it is just that, having accepted a compensation order, the person should refuse to fill in a declaration form—not least because of the churn that that causes in court, the costs involved and the fact that a victim can, such as in the case that Lewis Macdonald highlighted, be left having received no payment three years later. For those reasons, I am absolutely minded to support the amendments.

Humza Yousaf: I thank Lewis Macdonald for articulating well his reasons for lodging the amendments, and for his consistent interest in the issue—not only from the side of the table at which he is sitting now, but when he sat on this side of the table during the time when his party was in government. As has already been articulated this morning, we all have a joint interest in ensuring that the fines system will work better than it does at the moment.

I will try to address some of the points that have been made. A number of committee members have expressed reservations about the amendments in the name of Lewis Macdonald. I have reservations for many of the same reasons—in particular, the lack of an evidence base on whether this course of action is working. That said, I realise that committee members including John Finnie, who spoke just a moment ago, have challenged the Government to say what might work, if what is being proposed is not the answer. I will try to address both points. I think that it is hugely important that I set the context, before I do that.

Fine collection rates in Scotland are very high. At the end of February, the Scottish Courts and Tribunals Service released figures showing that 89 per cent of the value of sheriff court and justice of the peace court fines that were imposed in the three years between 2015 and 2018 either had been paid or were on track to be paid.

The remainder will, of course, be a hard nut to crack. I appreciate that Lewis Macdonald is trying to fix that situation through his amendments, but I am not convinced that amendment 1 is the best way of doing so. As others are, I am concerned

about the circularity of creating a new offence and attaching the penalty of a fine where the individuals concerned have already demonstrated failure to engage with fines enforcement officers. Liam McArthur rightly asked about the evidence that shows that the approach would work. Our sense that the offence would be likely to be used but little comes from the fact that in England and Wales it is not used to the extent that people might think it would be used, and from experience there that suggests that the declaration of income form is not helpful at all.

In any event, there are technical issues with the drafting of amendment 1—the two most important being the lack of a deadline for filling in the form and the lack of provisions with regard to the person having a reasonable excuse. The lack of a deadline would make it impossible to know when the offence was actually committed, and the lack of provisions on having a reasonable excuse would make it a strict liability offence. I am extremely reluctant to take that approach, because people can fail to receive notice through no fault of their own, or might have perfectly good reasons for non-compliance, including serious illness, injury and so on.

There are other more technical difficulties with amendment 1 that I can discuss if the committee so wishes, but—I say this is in direct response to John Finnie—the Government will be working on arrangements that will make it unnecessary to seek information through declaration of income forms. Instead, it will be possible for the courts service to obtain relevant information directly from the Department for Work and Pensions and from Her Majesty's Revenue and Customs. The service has been seeking that power for some time, but reserved legislation was necessary, and that gap has now been addressed by the coming into effect of the Digital Economy Act 2017. Powers in that act enable information to be shared between public bodies for the purposes of taking action on debt that is owed to, and on fraud against, a public authority.

If they are approved, the regulations that we are planning will enable Scottish bodies to move towards using the debt and fraud powers. We plan to begin drafting, consultation on and scrutiny of the regulations in the next few months, with a view to laying draft regulations before the Scottish Parliament, where they will be subject to affirmative procedure, during 2019.

If the regulations are approved, the Scottish Courts and Tribunals Service will be able to take the necessary steps towards developing a data-sharing arrangement with the DWP and HMRC. Directly obtaining information from the DWP and HMRC would be a more effective way of dealing with the issue, without creating another circular criminal offence, particularly for individuals who have already proved themselves to be reluctant to engage with the courts service.

Given that that is a better way of improving the fines enforcement system, and given the difficulties that I have explained in respect of Mr Macdonald's amendment 1, I hope that he will not press it. If he does so, I will ask the committee to reject it.

I have concerns about both the content of amendment 102 and its legislative competence. On drafting difficulties, there are existing regulations that have been made under section 24(1)(a) of the Criminal Justice Act 1991: the Fines (Deductions from Income Support) Regulations 1992. Those regulations already provide that the court may, after making inquiry as to an offender's means,

"apply to the Secretary of State asking him to deduct sums from"

the relevant benefit, at any time where a fine has been imposed.

Given that the courts already have that power, I am not clear what the purpose is of re-stating it through amendment 102. Similarly, proposed subsection (2) in the amendment does not seem to add anything to the existing powers in section 226E of the Criminal Procedure (Scotland) Act 1995, which already gives the fines enforcement officer the power to

"request the relevant court to make an application".

Deduction from benefits for the purpose of meeting an individual's debts are explicitly reserved. The 1992 regulations on that topic were made and subsequently amended by the UK Government. The application is to the UK secretary of state. If amendment 102 were to be interpreted as a restriction on a court's ability to apply for a deduction from benefits order under the 1992 regulations, it might relate to reserved matters, which could lead to a vires challenge to the legislation as a whole. Therefore, we cannot support amendment 102.

I hope that Mr Macdonald will not move amendment 102, for reasons relating to competence and its content. If he moves amendment 102, I will ask members not to support it, should it be pushed to a vote.

The Convener: Before I bring in Lewis Macdonald, I would like to clarify a point with the cabinet secretary. You mentioned that the Digital Economy Act 2017 will allow for the relevant information from public bodies to be provided. However, if a person had private income, would that be covered?

Humza Yousaf: I do not think that that would be covered by information that is held by the DWP or HMRC. However, information on the tax that the person pays and so on could be received from HMRC, so that might cover that side of their income.

The Convener: It would be clearer if the person declared all their earnings in a declaration of income form.

Humza Yousaf: As I have said already, we have to understand the nut that we are trying to crack. I am not convinced that that would be the best approach, because of the circularity argument. The point has been made by several members—I agree with it—that piling another offence and fine on someone who has already shown reluctance to pay is not the way to address the problem that has been well articulated by Lewis Macdonald and others.

Lewis Macdonald: I have listened carefully to the cabinet secretary. His comments reflect what he said in his letter to me last week, which I acknowledge.

Amendment 1 would create a mechanism that would require a person who was before a court to provide information that the court requires. I welcome the steps that the cabinet secretary has mentioned, which would focus on finding another mechanism to do the same thing, from the other end.

The convener's question was sound. The measures that the cabinet secretary intends to pursue and to put in place in this calendar year would be helpful in enabling public bodies to seek from other public bodies information about benefits and other income, and they are welcome, but we need belt and braces. We need the measures in relation to public bodies that the cabinet secretary intends to implement, and we need the measures that Parliament has the opportunity to take forward in relation to individuals. That seems to me to be a sensible way to proceed. Although I welcome what the cabinet secretary said, I do not think that it precludes our ability to gain the advantages that would come from taking another approach at the same time.

10:45

Rona Mackay, the cabinet secretary and others asked whether the proposal could create a circular offence, with people being fined for non-payment of fines. I think that, in practical terms, when a court of law deals with minor offences and a declaration of income form is put before a person, either their lawyer says to them, "You don't have to fill that in," and they do not fill it in, or the lawyer says to them, "You have to fill that in," and they fill it in. That is the reality on the ground. I accept the cabinet secretary's point that the final version of the law ought to provide a deadline and provide for a reasonable excuse in order to avoid perverse and unintended consequences. If the committee agrees to amendments 1 and 102, I am sure that the cabinet secretary will lodge amendments on those specific points in order to ensure that the law works as intended. I hope that that will be his approach.

I understand the questions that members have raised around whether we have enough evidence about the impact on the system. I think that it is sufficient to go back to the views of the court, the sheriff clerks and the SCTS in relation to the case that I mentioned earlier. The SCTS says that, at this time, there are no further sanctions available to the fines enforcement team for the penalty. In order to make arrestment of income or benefits, the offender must first provide the court with information regarding his income, which he has failed to provide. The offender is not legally obliged to provide that information to the court. That is the view of the SCTS. It would love that individual case to be resolved, along with many thousands of cases like it, but it is powerless to do so under the current provisions.

I am asking the Government to provide the SCTS with an additional power that will enable it to carry out the duties that it is seeking to carry out. I know that those who are involved in the particular case that I mentioned would welcome that power, as would others in the SCTS.

The cabinet secretary expressed concern about whether amendment 102 is at risk of breaching vires, entering into reserved areas or limiting the ability of the court to apply the existing law. Again, the practical reality is that the courts can seek deductions from benefits by making an application in the way that the cabinet secretary has described. The problem is that, currently, that has to be done separately from other fines enforcement action, which means that it doubles the financial and administrative burden on those who seek to enforce fines. That is not an effective and efficient procedure.

Amendment 102, although it is less central than amendment 1, would certainly improve the efficiency of the system. I therefore wish for the committee to pass amendments 1 and 102. If the cabinet secretary's concerns around the technical aspects of amendment 102 are well founded, I am sure that he will, if the committee passes the amendment today, come back at stage 3 with appropriate amendments that will ensure that the amendment works as intended. It is simply meant to make it easier for the courts to do their jobs, and for fines enforcement to be carried out.

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

Members: No.

The Convener: There will be a division.

For

Johnson, Daniel (Edinburgh Southern) (Lab)
Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

Against

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 1 disagreed to.

Amendment 102 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 102 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Johnson, Daniel (Edinburgh Southern) (Lab)
Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

Against

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 102 disagreed to.

Sections 17 to 32 agreed to.

After section 32

The Convener: Amendment 105, in the name of the cabinet secretary, is grouped with amendments 106 to 110.

Humza Yousaf: Amendments 105 to 108 will make new provision in part 2 of the bill, which relates to disclosure of convictions. Stakeholders and the committee have generally welcomed the provisions in part 2 as a sensible and progressive reform to the system of basic disclosure. However, some stakeholders suggested the reforms could go further in one specific area.

As members will be aware, changes that will be introduced through the bill will result in a disclosure period being attached to custodial sentences of up to and including 48 months. That means that a person who receives such a sentence could, at some future date, know that their conviction has become spent. The bill will increase that threshold from 30 months. While welcoming the reform, some stakeholders expressed concern that that will still mean that people who receive sentences of more than 48 months will be left facing a lifetime of disclosure.

It is clearly the case that for a person to receive a sentence of more than 48 months, a serious offence must have been committed. However, a system that does not even permit the possibility of not needing to disclose under basic disclosure seems to be disproportionate. I emphasise the term “basic disclosure”. We are not looking to change higher-level disclosure through the bill.

Amendments 105 to 108 provide for an enabling power for Scottish ministers to lay regulations that would, in effect, create an independent review mechanism for certain sentences that are longer than 48 months. Not everyone who receives a sentence of longer than 48 months will be able to apply for a review. Amendment 105 provides that a person who is serving a life sentence will not be able to seek a review because that is not one of the currently excluded sentences that are mentioned as a relevant sentence for the purposes of review, in proposed new subsection (3).

Amendment 105 also provides that a person who is subject to sex offender notification requirements would not be able to seek a review.

It is important to stress that nothing in the amendments directly affects the operation of higher-level disclosure. As members will be aware, that system is based on the offence that was committed rather than on the sentence that was received: no changes will be made to higher-level disclosure by the amendments.

To give more detail, I point out that amendment 105 provides for certain matters relating to the review process, including setting the time periods during which a person can seek review. A person who has been convicted and has received a sentence of longer than 48 months when they were aged 18 or older will be able to apply for a review six years after the end of their sentence. A person who has received, say, a seven-year sentence will be able to apply 13 years after being convicted: that is, after the seven-year sentence and the six-year buffer period.

A person who has been convicted and has received a sentence of greater than 48 months when they were aged under 18 can apply three years after the end of their sentence, so someone who receives, say, a five-year sentence will be able to apply eight years after being convicted: that is, after the five-year sentence and the three-year buffer period.

Amendment 106 gives certain general details of the independent review process that may be provided for in regulations, including the process for making an application, fees payable, how applications will be determined and a number of other matters. Amendment 106 also provides that any consequential changes that might be needed to the operation of higher-level disclosure can be made through regulations.

Amendment 107 provides an enabling power that will allow Scottish ministers to adjust either the age at which different buffer periods apply, the length of buffer periods, or both, which are found in amendment 105. That flexibility will ensure that future changes can be made through secondary legislation if, for example, different buffer periods are considered to be appropriate in the future.

Amendment 108 provides that regulations that are made under amendment 105 and amendment 107 will be subject to affirmative procedure.

Organisations including the Howard League for Penal Reform in Scotland and the Scottish centre for crime and justice research called for steps to be taken to help those who receive longer sentences by allowing their convictions to be considered to be spent at some future date. The enabling powers will allow the Scottish Government to propose a future scheme, for full scrutiny by the Scottish Parliament through affirmative procedure, to allow exactly that.

I ask members to support amendments 105 to 108.

Amendments 109 and 110 are technical amendments that will make minor changes with no policy impact.

I move amendment 105.

The Convener: I note that the cabinet secretary makes it clear that the amendments refer to basic disclosure. We can take some comfort from the fact that the regulations will be laid under the affirmative procedure, so that there will be transparency when we come to debate the issue.

Amendment 105 agreed to.

Amendments 106 to 108 moved—[Humza Yousaf]—and agreed to.

Sections 33 and 34 agreed to.

Schedule 2—Rehabilitation of Offenders Act 1974

Amendments 109 and 110 moved—[Humza Yousaf]—and agreed to.

Schedule 2, as amended, agreed to.

Sections 35 and 36 agreed to.

Section 37—Appointment to be for fixed period

The Convener: Amendment 111, in the name of the cabinet secretary, is grouped with amendments 112, 113 and 124 to 127.

Humza Yousaf: Amendment 111 is provided for consistency and limits the extent of the amendment in section 37 so that the reference to "instrument of appointment" in the process of appointment to membership of the Parole Board for Scotland is no longer deleted. That is useful in anticipation of amendment 112.

Amendment 112 allows for the instrument of appointment to be annotated and reissued so as to show that the member is reappointed if and when that occurs by virtue of section 38. That is for completeness in the administration of the process of reappointment to the Parole Board.

Amendment 113 is a minor drafting amendment. The sense of the wording is better stated as inclusive, although no change in effect results.

Amendments 124 and 125 are reordering amendments. Sections 44 and 45 are moved to the top of part 3 in order to accommodate new provisions while leaving the part to unfold in logical order.

Amendment 126 will change the oversight body concerning the appointment of Parole Board members. Section 38 amends the current appointment procedure for the Parole Board and will provide that a Parole Board member can continue in office on a five-year rolling basis. Reappointment will continue in that way until the person reaches the age of retirement, provided that they meet the terms of reappointment and they are not for some reason removed from office.

An appointment to the Parole Board is a public appointment in Scotland, and the process is currently governed by the Public Appointments and Public Bodies etc (Scotland) Act 2003. The Parole Board falls under the remit of the Commissioner for Ethical Standards in Public Life in Scotland, who monitors how people are appointed to the boards of specified public bodies. At present, Parole Board appointments are governed by the code of practice that is set by the commissioner, which provides that a member's term of office must be no more than eight years in total. Section 38 will provide that appointments to the Parole Board can continue beyond eight years, which will ultimately put the Parole Board outwith the parameters of the commissioner's code. Therefore, amendment 126 removes the Parole Board for Scotland from the Public Appointments and Public Bodies etc (Scotland) Act 2003 and from the remit of the commissioner's code of practice.

However, to ensure that independent oversight is continued and to bring Parole Board appointments into line with appointments to other tribunals, amendment 126 also amends section 10 of the Judiciary and Courts (Scotland) Act 2008 to add the Parole Board to the remit of the Judicial Appointments Board for Scotland. That will result in the Judicial Appointments Board becoming the oversight body for the appointment of members to the Parole Board. To give the committee some reassurance, I point out that the Parole Board is content with the change.

Amendment 127 will change the long title of the bill in the light of the various changes that I am proposing to part 3. That is a technical change for the sake of continuing accuracy.

I move amendment 111.

Amendment 111 agreed to.

Section 37, as amended, agreed to.

Section 38

Amendments 112 and 113 moved—[Humza Yousaf]—and agreed to.

Section 38, as amended, agreed to.

Section 39 agreed to.

Before section 40

11:00

The Convener: Amendment 114, in the name of the cabinet secretary, is in a group on its own.

Humza Yousaf: This amendment to section 26C of the Prisoners and Criminal Proceedings (Scotland) Act 1993 is required to address a minor issue in the legislative provisions for releasing prisoners in order to benefit their reintegration into the community. Section 2 of the Prisoners (Control of Release) (Scotland) Act 2015 inserted section 26C into the 1993 act to allow the Scottish ministers to release a person up to two days early if that would be beneficial for their reintegration into the community.

The legislation that was previously passed by Parliament provides that a release date can be brought forward by two days. That wording creates a potential difficulty when a prisoner is to be released on a Monday when a public holiday such as Christmas day or boxing day falls immediately thereafter, as was the case on Christmas eve in 2018. Christmas eve is not a public holiday but there is limited service provision on that day and no service provision for two days thereafter. In those circumstances, releasing a prisoner two days early would not assist the prisoner, as they would be released at the weekend, when vital services are closed.

The Scottish Prison Service can liaise with local authorities and other service providers to ensure that services are in place instead of utilising the early release provision. Indeed, that approach was taken by the SPS on Christmas eve and hogmanay in 2018. The combination of weekends and public holidays that would cause the issue is not expected to occur again until 2029. However, if we are good at nothing else, the Scottish Government is good at forward planning.

We are taking this legislative opportunity to amend section 26C to provide that a release date can be brought forward by two working days. That would enable prisoners who would otherwise be released on a Monday when limited services are available to be released on the preceding Friday.

The change will bring the effect of the legislation into line with the original policy intent and will provide the flexibility to time release to benefit reintegration and access to services.

I move amendment 114.

John Finnie: I support the amendment. The cabinet secretary used the phrase “the original policy intent”, and I suspect that this issue was an unintended consequence of the previous, well-meant move. Although it will be some time before it will need to be applied, if it covers the committee’s concerns about having in place all the mechanisms for an effective release, this pragmatic approach is the way ahead and I am supportive of it.

Liam McArthur: Like John Finnie, I welcome the addressing of what is clearly an anomaly. Later on, we will come to amendments that address some of the committee’s concerns about the measures that are taken to maximise the success of reintegration into the community. How those amendments will fall remains to be seen, but addressing the current anomaly through this amendment is very welcome, and I thank the cabinet secretary for lodging it.

Amendment 114 agreed to.

The Convener: Amendment 115, in the name of the cabinet secretary, is grouped with amendments 118 to 120.

Humza Yousaf: Amendments 115 and 118 to 120 form part of a package of measures that respond to the two home detention curfew reports from Her Majesty’s inspectorate of constabulary in Scotland and Her Majesty’s inspectorate of prisons for Scotland. The other measures include the creation of the offence of remaining unlawfully at large, legislation to improve powers of recall and non-legislative improvements to revise guidance and interagency communication.

This grouping refers to changes that are specific to home detention curfew eligibility and operation.

HDC is a form of early release from prison and can currently be granted to long-term or short-term prisoners. Subject to certain requirements as to the time served by the prisoner, HDC can be granted in the six months leading up to the halfway stage of the prisoner's sentence. There is an added requirement for long-term prisoners that, for them to be released on parole at the parole qualifying date, the halfway stage of the sentence must be pre-approved by the Parole Board.

Amendment 115 repeals HDC for long-term prisoners—those sentenced to imprisonment for four years or more—leaving HDC available only to short-term prisoners. We consider that the repeal of HDC for long-term prisoners will ensure that the community monitoring regime for long—

John Finnie: Will the cabinet secretary take an intervention?

Humza Yousaf: I will.

John Finnie: In relation to amendment 103, in answer to a question from my colleague Daniel Johnson about supervised release orders, the cabinet secretary said that there will be no diminution of the range of facilities that are available for prisoners. Surely, amendment 115 will prevent long-term prisoners from accessing home detention curfew, as we are clearly told in a purpose-and-effect note, the source of which I presume to be the Scottish Government. When we are looking at the management of reintegration, surely removing an option is not a positive move.

Humza Yousaf: I will go on to address some of those concerns. It is probably worth giving, as some context, the number of long-term prisoners who are on HDC: it is around 0.5 per cent of all of those who are on HDC. We also know—I will come on to this point in greater detail—that long-term prisoners often do not take up HDC for a whole host of reasons including the risk that might be involved in their being recalled to prison.

We are taking important measures on the basis of two independent inspectorate reports to which we have to give weight. The member knows fine well my view that the pendulum may have swung too far the other way when it comes to HDC for short-term prisoners, but I think that the proposed move is a sensible one.

John Finnie: On the point about risk aversion and the concern that we have seen a significant drop in the number of long-term prisoners who are on HDC, the Government is legislating for a further drop. The number is small, but a range of options should be available to those individuals, including home detention curfew.

Humza Yousaf: Although I agree with the point—which has been made by a number of members—that there is a question about whether the pendulum has swung too far in the other direction, given that long-term prisoners account for only 0.5 per cent of those on HDC I am not convinced that amendment 115 is going to add greatly to that situation. That is not to take anything away from the principle of John Finnie's point.

There are a number of advantages to repealing HDC for long-term prisoners. Going back to the independent inspectorate reports, HMICS calls for a presumption against HDC for those who have been convicted of certain serious offences, and amendment 115 will achieve that aim in a more general sense. The length of a prison sentence generally reflects the seriousness of the offence, so removing HDC from long-term prisoners will remove HDC from those who have been convicted of more serious offences.

Liam McArthur: I echo the concerns that John Finnie has raised. During the committee's evidence sessions, we were told by both the cabinet secretary and the SPS that the new procedure for agreeing to HDCs is far more robust and that, therefore, the assessment of any risk is likely to instil greater public confidence. There must be some concern that, in generalising the removal of HDC, amendment 115 will cut across the discretion that can be used by those who are very senior and extremely experienced.

I accept that we are not talking about large numbers. However, given the accepted benefit of HDC in managing reintegration into the community, we are, as John Finnie said, effectively removing the option of assessing the risk and identifying the best way of managing the reintegration process for individuals.

Humza Yousaf: Liam McArthur has articulated his points well, and I fully accept the principle behind them, but I will make a couple of points. First, the SPS, as well as Police Scotland and the Scottish Government, agreed with all the recommendations of the inspectorate reports, so it will be fully aware of the comments of the individual inspectorate and the course of action that has been taken.

Secondly, the SPS has really substantial and robust rehabilitation processes and programmes in place for long-term prisoners and, depending on their offence, those prisoners will have gone through those programmes. Understandably, the overwhelming majority of long-term prisoners do not opt for HDC, because they feel that, if they were to do so, there would be a risk of their being recalled as a result of breaches and so on. I therefore think that there are good reasons for bringing this proposal forward.

Daniel Johnson: I wonder whether there is a slight contradiction in the cabinet secretary's logic

and whether he is conflating the seriousness of the offence with the length of the sentence. Given the point that he has just highlighted about the rehabilitation of long-term prisoners, there is reason to think that it might be safer to release somebody who has been in prison for a longer period than it would be to release somebody who has been in prison for a relatively shorter period. The crimes involved might, judging from the reports, have incurred a three or four-year sentence, whereas prisoners who have received substantially longer sentences might be in a very different category altogether. Their release from prison might be almost a lifetime away from the commission of the original offence, and they might well be very different people. I therefore wonder whether there is reason to question the cabinet secretary's logic—particularly the conflation of the seriousness of the offence with the length of the sentence received.

Humza Yousaf: In fairness, I said that it is generally accepted that the sentence length will often correspond and align with the seriousness of the offence. I accept that there will be some anomalies, but I think that, generally speaking, it can be accepted that that is the case.

The other advantage of having HDC just for short-term prisoners is that the process can focus exclusively on, and be tailored to, that range of prisoners instead of having to maintain a set of arrangements for those who are not likely to apply for them in large numbers. It is worth noting that there are currently no long-term prisoners on HDC, which demonstrates my point that very few long-term prisoners take advantage of it.

Obviously, the repeal of HDC for long-term prisoners would be introduced for those who were sentenced after a specific date, to avoid taking the benefit away from prisoners who are currently entitled to it. Work is on-going with stakeholders to explore and examine the operation of HDC for short-term prisoners and the new presumptions against HDC, and it is being led by advice from the Risk Management Authority on the factors that are more relevant to risk of serious harm. Converting the current presumptions against HDC into statutory exclusions might still be considered as an option and, if required, could be achieved by the Scottish ministers via subordinate legislation.

Let me turn to amendment 118. The only grounds for revoking HDC and recalling a prisoner to prison are a licence breach or a problem with remote monitoring. That contrasts with the provisions in the 1993 act on recall from parole and the provisions in the Prisons and Young Offenders Institutions (Scotland) Rules 2011 on recall from temporary release. The Scottish ministers must recall a prisoner from parole if that is recommended by the Parole Board. However, under section 17 of the 1993 act, they may also recall a prisoner from parole when a recall is expedient in the public interest. Moreover, under rule 137 of the 2011 rules, the governor may recall a prisoner from temporary release whether or not the temporary release conditions have been breached. The Scottish ministers therefore have a wider discretion to recall prisoners from temporary release and parole than they do to recall a prisoner from HDC. If an offender who is on HDC behaves in a way that causes concern but that does not breach the HDC licence conditions, it will be difficult for ministers to order the recall of that prisoner from HDC.

For that reason, amendment 118 completely repeals the current limited grounds for recall from HDC and introduces a new power for ministers to recall a prisoner from HDC when they consider revocation of the HDC licence and recall to prison as expedient in the public interest. That will bring the HDC recall process into line with the wide discretion that ministers currently have to revoke a parole or temporary licence and recall a prisoner to prison. We believe that the widening of the grounds for recall from HDC will tighten up risk management around the monitoring of those who are on HDC. Amendment 118 will ensure that ministers are able to recall a prisoner from HDC if that prisoner's behaviour in the community gives cause for concern but stops short of a breach of licence conditions.

11:15

I turn to amendment 119. The Scottish ministers can recall a prisoner to prison from HDC if the prisoner has breached their licence conditions or if there is a problem with remote monitoring. Currently, the Parole Board has a role in reviewing that decision in respect of long-term and short-term prisoners when the prisoner has made representations to the Scottish ministers, and it can direct—or decline to direct—ministers to cancel the revocation of HDC. Under section 17A(5) of the 1993 act, if the revocation of HDC is cancelled on Parole Board direction, the prisoner is, for the purposes of section 3AA of the 1993 act, which is the power for the Scottish ministers to release prisoners on HDC, to be treated as though they had not been recalled.

Previously, a prisoner who had been recalled from HDC was prohibited from obtaining HDC again in the future by virtue of section 3AA(5) of the 1993 act. Section 17A(5) therefore enabled prisoners who had been recalled but had had the recall cancelled to obtain HDC again in the future. That prohibition from HDC was repealed in 2016, and that repeal has largely removed the purpose of section 17A(5). Amendment 119 clarifies that the effect of cancelling a revocation of HDC is not

that an individual should be immediately re-released but that they should be reconsidered for release on HDC. That clarifies what we believe to be the original policy intent of section 17A(5) of the 1993 act and reflects how that provision has been operated in practice by the SPS.

Amendment 120 is a simple reordering of sections for drafting purposes and ease of reference.

I move amendment 115.

The Convener: Cabinet secretary, can you clarify whether amendment 115 applies to long-term prisoners and, therefore, everyone serving a sentence of four years or more? Given your comment that the provision covers the most serious offences and your reference to risk management, I presume that the raison d'être of the amendment is to eliminate possible risk to the public. However, if it covers all long-term sentences of four years or more, it will also cover, for example, fraud cases. In such cases, the person involved might not be a threat to the public but they would still be denied the opportunity to benefit from HDC. Given that consequence, it might be better if the cabinet secretary and the Government lodged an amendment that specifically spelled out which long-term offences they consider should be covered by the legislation.

Liam McArthur: I thank the cabinet secretary for being very generous in taking interventions. As he will have picked up, there are anxieties around amendment 115, but the other amendments seem to be far more straightforward.

Having listened to the cabinet secretary, I am still concerned. Although the number of individuals whom we are talking about is extremely small—there will be a variety of reasons for that—it appears that this option will be employed not across the board but in very specific circumstances. It strikes me that that is almost certainly because assessments will have been made of the risk, the specific circumstances and the benefits that would be delivered by reintegrating the individuals into the community.

I therefore urge the cabinet secretary not to press amendment 115 at this stage but to have discussions with me, Daniel Johnson, John Finnie and perhaps other colleagues to find some way of allaying the concerns that have clearly been expressed this morning about the direction in which the amendment is taking us. He will still have the opportunity to bring the amendment back to the chamber at stage 3 if he so wishes. I hope that he will take seriously the concerns that have been expressed, pause and not press amendment 115.

Daniel Johnson: I very much echo Liam McArthur's comments. I fully understand and, indeed, agree with the sentiments behind amendment 115 and the need to appreciate the recommendations made by HMIPS and HMICS. We need a much more robust approach to risk management with regard to HDC.

That said, the end of a person's time in prison and their coming out is a very delicate period. That is even more the case, I suggest, for long-term prisoners, and it is really important that we are able to monitor their behaviour, where they are living and so on. Sometimes, the focus in this area has been too much on shortening a person's time in prison. That is, of course, one element of HDC, but there is also the monitoring element, which is important for long-term prisoners, too. Although I agree with the intention behind amendment 115 and where it comes from, I worry that it will have unintended consequences. The cabinet secretary has justified the move because of the low numbers involved, but I wonder whether that means that these provisions could and should be used more often, especially for long-term prisoners, to ensure that the monitoring that I have mentioned can take place.

I reiterate my support for Liam McArthur's suggestion that we engage in talks on the matter, and I, too, ask the cabinet secretary not to press amendment 115, so that we can explore other options for pursuing the intention behind it.

Liam Kerr: I will be very brief. I entirely understand the principle behind amendment 115, but, having listened carefully to the debate, I am very keen to hear an answer from the cabinet secretary to Margaret Mitchell's well-made point about the differences between specific crimes.

I also associate myself with many of Daniel Johnson's comments, and I think that Liam McArthur's suggested way forward might be the sensible one.

Humza Yousaf: I thank committee members for their questions and the debate. In direct answer to your question, convener, I confirm that the amendment will cover all long-term prisoners including those in your example, who had been given a sentence of four years or more for committing fraud. It is worth reiterating that long-term prisoners will have a number of opportunities to attend rehabilitation courses in which they will be able to delve quite deeply into their offences and their reasons for committing them, to try to change some of their behaviour. That would not be the case for someone on a particularly short sentence. The change would also allow a focus on short-term prisoners instead of there being a set of arrangements covering short-term and long-term prisoners—and I again point out that there are no long-term prisoners on HDC.

Notwithstanding all that, I hear what the committee is saying. I have always tried to approach members with an absolutely open mind. I will therefore accept Liam McArthur's suggestion, will not press amendment 115 and will engage in conversations with the committee. We will see where we are at stage 3.

Amendment 115, by agreement, withdrawn.

Section 40 agreed to.

The Convener: I suspend the meeting for a short comfort break.

11:23

Meeting suspended.

11:30

On resuming—

After section 40

The Convener: I call Daniel Johnson to move amendment 135, in the name of Mary Fee, which is in a group on its own.

Daniel Johnson: First, I convey to the committee Mary Fee's apologies. The amendment relates to a subject that she is passionate about. Although I regret that she is absent, I am pleased to be able to move amendment 135, as it is important.

It is often said that it is not only the offender who serves a prison sentence, but their entire family. When someone goes into prison, it disrupts the lives of all manner of people who are related to and live with that person. It interrupts relationships between husbands and wives and between parents and children. The intention of amendment 135 is to ensure that such considerations are taken fully into account by the Parole Board when it is making its decisions. That is important. Time and again, when this committee has been taking evidence or has been on visits to prisons and charities that work in this area, we have heard about the impacts that prison sentences can have on families. I think, therefore, that it is only right that the Parole Board takes the holistic decisions that this amendment asks it to, and that it considers the impact on families when it is making decisions around parole.

I move amendment 135.

John Finnie: I acknowledge the considerable work that Mary Fee has done on the matter and I lend my support to the amendment. The term, "victim" is sometimes inappropriately used, but it is certainly the case that there are victims in the families of prisoners—they are victims of a system that is not of their making.

I suspect that we might be told that what the amendment calls for is happening anyway. If that is the case, that is good, but I nonetheless support the amendment, because including the proposal in the bill sends a clear signal that there are wider considerations in relation to the impact of custodial sentences.

Liam McArthur: Like John Finnie, I put on record my admiration for the work that Mary Fee has done on this issue over a number of parliamentary sessions, alongside Families Outside.

The evidence that we have heard reinforces the fact that the release of a prisoner can have quite profound impacts on the wider family. I suspect that those considerations have a bearing on the decisions that are made.

From what I can see, the language that is used in the amendment does not appear to be overly rigid. It seems simply to confirm what we assume takes place at the present time. Therefore, I will be interested to hear what the cabinet secretary has to say about the potential downsides of setting out the proposal explicitly in the bill. However, for now, I welcome the fact that Mary Fee has allowed this discussion to take place at stage 2.

Rona Mackay: I thank Mary Fee for lodging the amendment. I agree with everything that Daniel Johnson said; I am also passionate about the issue. However, I have a reservation to do with the timing of the amendment, as I think that the issue will be addressed under the Parole Board review. Families Outside has responded to the consultation, and I know that that response will be fully considered. Therefore, I think that the amendment should be put on hold—indeed, I think that it might be a probing amendment. Again, I repeat that I fully support the intention behind the amendment.

Fulton MacGregor: Like others, I put on record my appreciation of the remarkable work that Mary Fee has done in this area, alongside Families Outside. Like Rona Mackay, I am quite passionate about the issue.

However, I have some concerns at this stage. I do not know whether Mary Fee's intention was just to get a discussion going, as Liam McArthur said, and to come back at stage 3, but I would like a bit more discussion and more meat on the bones around the effects on licence conditions where there might be an exclusion zone in place, or on family members, for example. I certainly agree with the principle of the amendment, but it needs a wee bit more work and teasing out before I could be in a position to vote for it.

The Convener: I am happy to support amendment 135, which covers the impact that a prison sentence can undoubtedly have on the

wider family. I take the opportunity to acknowledge and commend Mary Fee's excellent work on the issue.

Humza Yousaf: I, too, add my thanks to Daniel Johnson for moving the amendment and place on the record the credit due to Mary Fee, who has been a long-standing advocate for the rights of the Families Outside organisation and families of prisoners more generally in wider society. Her work in the cross-party group is also worth commending.

Amendment 135 seeks to amend the Prisoners and Criminal Proceedings (Scotland) Act 1993 to create a new section 1ZAA, to provide that the Parole Board must assess and take into account the impact on a prisoner's family when making recommendations on the release of a prisoner, including any recommendation about the conditions of release.

My concern about the amendment is that the provisions would be misplaced in the 1993 act and would be more appropriate in the Parole Board (Scotland) Rules 2001. That is where the rules governing parole are located, for flexibility and to ensure that there is no rigidity, which primary legislation often brings with it.

I recently met Nancy Loucks, the chief executive of Families Outside, and we discussed some of the issues faced by prisoners' families. I can understand some of the problems that they face and I am sympathetic to their views. However, the consultation, "Transforming Parole in Scotland", which closed on 27 March, included proposals to provide additional support to prisoners in the parole process and asked whether we should also look at issues for the families of prisoners.

We are considering the consultation responses, including those from Families Outside, and some that advocate that consideration of a prisoner's family should be taken into account when the Parole Board is considering release. As such, I can offer assurances that the provision of assistance to prisoners and issues for their families will be fully considered in light of responses to the consultation. We will amend the Parole Board (Scotland) Rules 2001 as part of the implementation of the bill. We can also take the opportunity to look at the points that are being raised at that time.

I therefore ask that amendment 135 is not pressed and, if pressed, I ask the committee to reject it.

Daniel Johnson: I hear the comments about the need for detail and the questions about whether the bill is the correct place for the provision. However, I point out to members that this is a broadly stated amendment that makes provision for a broad consideration. It does not have detail. Indeed, there are many situations in which that is an advantage, because it provides flexibility. It certainly does not preclude further amendments such as those that the cabinet secretary has laid out. It makes sure that such considerations are made.

The broad nature of the amendment means that it is measured, sensible and in line with things that we are looking at. The very fact that there is potential for further legislation on the Parole Board means that further detail can be considered, but the amendment would put a legal duty firmly in place. For those reasons, I press amendment 135.

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

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

Against

Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)

Abstentions

McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 4, Against 4, Abstentions 1.

I will use my casting vote in favour of the amendment.

Amendment 135 agreed to.

Section 41—Re-release after revocation of licences generally

The Convener: Amendment 116, in the name of the cabinet secretary, is grouped with amendment 117.

Humza Yousaf: Section 41 of the bill amends section 17(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 to remove the word "immediate" to extend to all directions in respect of the release after recall to prison and replaces it with the words "without undue delay". As a consequence of the amendment to section 41 of the bill, it is necessary to amend section 10A to remove the word "immediately" from that section. Amendment 116 will achieve that objective.

Amendment 117 is part of a tidying-up of the operation of the licence recall/revocation system. Currently, the reasons for recalling a prisoner from a period of early or temporary release are

provided on recall or on return to custody. The change that will be made by the amendment will introduce a standard requirement and a more consistent operation of the system of recall, whereby the reasons for a prisoner's recall to prison from parole, HDC or temporary release are provided on the prisoner's return to prison. That also ensures that a failure to provide reasons at the time of recall from parole does not impact on the ability to recall the prisoner to prison in what might be urgent circumstances.

I move amendment 116.

Amendment 116 agreed to.

Amendment 117 moved—[Humza Yousaf]—and agreed to.

Section 41, as amended, agreed to.

After section 41

The Convener: Amendment 128, in the name of Daniel Johnson, is in a group on its own.

Daniel Johnson: The amendment stems from a fundamental principle that is really important, which is transparency when it comes to the exercise of the law. It is an important principle in a great number of areas of the criminal justice system—in particular, the Parole Board for Scotland. In this instance, it is important that the reasons for decisions are well understood by the public, both when it comes to the source of the decisions and the criteria that are applied in the decision-making process, but also when it comes to the decisions themselves.

The amendment seeks to require the Parole Board to do two things: first, to devise and publish a test or series of factors that it uses and takes into account when making its decisions and recommendations; and secondly, to publish, albeit with "modifications and redactions" where appropriate, the summaries of its recommendations. When it comes to improving the transparency of the Parole Board, those are important steps.

John Finnie: I will be honest with Daniel Johnson. I have an open mind on the matter—I want to understand. With regard to openness, transparency and redactions, what do you anticipate might be redacted?

Daniel Johnson: I thank John Finnie for that important intervention.

In part, because of one of the previous amendments that we have already agreed to, the Parole Board might take into account a great number of factors and considerations that might involve other individuals, whose privacy is important.

It would be an unfortunate consequence of the publication of a summary of those decisions if it compromised the privacy of an individual who had committed no crime, but whose circumstances are nonetheless material or relevant to whether someone else may be released on parole. An individual's associations and relationships are relevant to parole decisions. It is therefore important that the Parole Board has the ability to redact information when such considerations are involved.

11:45

In some ways, amendment 128 is brief and straightforward. That is important because we must not be overly prescriptive in black-letter law about what the tests or factors should be—that is a matter to be determined by the Parole Board. The fact that they are published means that it will be an open and transparent process.

I hope that amendment 128 is an important step forward in addressing some of the issues that arose around the Worboys case, particularly in relation to the nature of decision-making in the Parole Board for England and Wales and why it had taken particular decisions. I understand that the operation of the Parole Board for England and Wales is substantially different to that of the Parole Board for Scotland, but it is not difficult to conceive of similar circumstances arising in Scotland. The proposed step will improve transparency and help us to avoid similar situations.

I move amendment 128.

Liam McArthur: I thank Daniel Johnson for lodging the amendment and setting out clearly the intention behind it. The point that he makes on the importance of transparency in securing public confidence is pivotal. Like John Finnie, I recognise that the reference to modifications and redactions is Daniel Johnson's reasonable attempt to accommodate the restrictions on transparency that would be required. Those might relate not simply to third parties whose details would need to be redacted, but also to details about the individual themselves that it would not be appropriate to put in the public domain.

A little like John Finnie, I come to amendment 128 with an open mind. My anxiety is that there is a current consultation on the Parole Board to which this debate is germane and I would want it to be picked up there—I am less certain about whether it should be done in the 2001 Parole Board rules that the cabinet secretary referred to earlier.

Nevertheless, increasing public confidence through greater transparency is a point well made and, in that sense, the amendment serves a useful purpose.

The Convener: I am minded to support amendment 128, which would lead to greater transparency in the parole process, which would certainly be welcome.

Humza Yousaf: The openness and transparency of the Parole Board is an issue. I have spoken to the families of victims and, time and again, those families tell me that they wish to see greater openness and transparency. I am sure that that is reflected in the conversations that every committee member has had.

I am committed to an absolutely open and transparent Parole Board and I recognise that the amendments in Daniel Johnson's name go some way towards achieving that aim. I am supportive of what he is trying to do. I would be willing to work with Daniel Johnson to assist him to lodge an amendment at stage 3, which would provide for the Parole Board to publish the test of factors that it takes into account when making a recommendation. However, I would ask him to remove the requirement to provide a summary of recommendations. I consider that to be a matter that is more appropriate for the Parole Board rules of procedure and the most recent consultation—both of which have been mentioned.

I have some concerns about the technical details in relation to the redaction of information—both John Finnie and Liam McArthur have raised those issues. None of those points is insurmountable, so I would ask Daniel Johnson not to press his amendment, but to work with the Government to lodge at stage 3 an amendment that would fulfil his general aims, with the exception of the requirement to provide a summary of recommendations, about which I have some reservations.

The Convener: I invite Daniel Johnson to wind up and say whether he will press or seek to withdraw amendment 128.

Daniel Johnson: I thank the committee members and the cabinet secretary for their constructive comments and for acknowledging the intent behind amendment 128. On the basis of what has been said and what the cabinet secretary has offered, I seek to withdraw amendment 128. I look forward to coming up with a revised amendment for stage 3.

Amendment 128, by agreement, withdrawn.

Section 42—Representations by certain recalled prisoners

Amendments 118 and 119 moved—[Humza Yousaf]—and agreed to.

Section 42, as amended, agreed to.

Amendment 120 moved—[Humza Yousaf]—and agreed to.

After section 42

The Convener: Amendment 79, in the name of Gordon Lindhurst, is in a group on its own.

Gordon Lindhurst (Lothian) (Con): The purpose of amendment 79 is to ensure that proper representation is available to vulnerable prisoners at Parole Board for Scotland hearings. There appears to be a lacuna in the legislation at present. The drafting and lodging of amendment 79, a letter on the matter from the cabinet secretary and the Scottish Government consultation on transforming parole in Scotland, which closed on 27 March 2019, happened more or less simultaneously and could be said, in the old-fashioned expression, to have crossed in the post.

I thank the cabinet secretary for the letter that he sent me on the matter, which indicated that he wishes to consider matters further in light of the consultation that has just closed. The cabinet secretary might wish to make some comments at this stage, if the convener is minded to allow that.

I move amendment 79.

The Convener: Do members have any comments? On the face of it, what amendment 79 proposes seems very sensible, but I will be interested to hear what the cabinet secretary has to say on it.

John Finnie: There is a fundamental principle in amendment 79 that is worthy of support and which I hope will be picked up by the Scottish Government. It is fundamental that everyone who is involved in a process understands it; if they do not, it is clearly not a fair process. I hope that that issue will be addressed and I thank Gordon Lindhurst for bringing it forward.

Daniel Johnson: I very much agree with what John Finnie has just said. What the amendment proposes is sensible and progressive. I look forward to hearing what the cabinet secretary says about how it could be moved forward.

Liam McArthur: I echo what Daniel Johnson and John Finnie have just said. The crossing in the post might be the issue that we need to get round, but I hope that the cabinet secretary can offer some reassurance about how what amendment 79 proposes will be dealt with.

Humza Yousaf: I thank Gordon Lindhurst for his constructive approach on this issue. As well as writing to me, he has approached me about how to take forward an issue that has substance and merit—no doubt his considerable experience before becoming an MSP has contributed to that.

Amendment 79 refers to matters relating to the procedure that the Parole Board undertakes when considering a case. As I have said previously,

Parole Board procedures are set out in rules that are made by Scottish ministers under section 24 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. Those rules of procedure might require amendment to deal with new eventualities or to adapt to changing circumstances. It is for those reasons that rules of procedure are set out in secondary legislation. I am concerned that the approach that is adopted in amendment 79 would have a detrimental impact on the ability to amend the procedures of the Parole Board in those rules in the future.

If accepted, the amendment would result in part of the Parole Board procedures being provided in primary legislation, while the remainder would be provided in secondary legislation in the Parole Board rules. The result would be that any further change to the provisions that are set out in the amendment would require a further Scottish Parliament act, rather than secondary legislation.

In this instance, I remain of the view that it is entirely appropriate that matters of procedure for the Parole Board should be provided for by secondary legislation, which provides us with the speed and flexibility to change aspects of Parole Board procedure at a quicker pace. As I said, it should be in the Parole Board rules, rather than in this bill.

I agree that the proposal has some merit, but I would prefer to gain an understanding of how the appointment of a curator ad litem would work and what impact that would have on prisoners appearing before parole tribunals, who are already entitled to assistance by way of representation. If Gordon Lindhurst is not minded to press the amendment, I can give him further information on what the support for vulnerable prisoners at parole hearings looks like.

A number of members have referred to the consultation on parole, which closed just last month. I guarantee that the issue that Gordon Lindhurst raises will be part of our consideration and analysis of the consultation responses.

There are also a few technical issues with amendment 79, but I do not think that I need to go into any great detail on those. I ask Gordon Lindhurst not to press the amendment and to work with me after the meeting to discuss what is in the consultation on the rules for Parole Board hearings and to take matters forward thereafter. If he is not satisfied, he can lodge an amendment at stage 3.

Gordon Lindhurst: In the light of the cabinet secretary's commitments, I will not press the amendment.

Amendment 79, by agreement, withdrawn.

Section 43 agreed to.

After section 43

The Convener: Amendment 121, in the name of Humza Yousaf, is grouped with amendments 122, 122A, 122B, 122C, 122D and 123.

Humza Yousaf: The Scottish Government amendments in this group—amendments 121,122 and 123—relate to persons unlawfully at large. They have been lodged as part of the Scottish Government's response to the recommendations from Her Majesty's inspectorate of constabulary in Scotland. The Scottish Government's proposals provide a new and additional punitive element for those who remain unlawfully at large, and they also address the question of powers of entry for the police.

Before I go into the substance of the detail, I put on record my admiration for the McClelland family, whom I have met and listened to on a number of occasions. We have our differences—they will be the first to tell you that—but that does not take away from my admiration for them. The new offence and the subsequent changes to the HDC regime are a result of the inspectorate's reports in the aftermath of that terrible tragedy.

Amendment 121 is a more technical amendment in this grouping. Part 15 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011 provides a regime of temporary release for prisoners. Temporary release is considered to be a form of release on licence in practice and prisoners are issued with a temporary release licence with licence conditions. However, temporary release is not referred to as a form of release on licence in the Prisons (Scotland) Act 1989 or in the prison rules. Amendment 121 simply clarifies that temporary release is a form of release "on licence". That will mean that there can be a consistent approach to how we refer to parole, HDC and temporary release throughout the bill; they will all be forms of release on licence.

Amendment 122 creates the offence of remaining unlawfully at large. An offender can currently be unlawfully at large in any of the following circumstances: when the offender remains at large after being recalled from HDC; when the offender remains at large after being recalled from parole by ministers, either with or without Parole Board recommendation; when the offender remains at large after being recalled from temporary release by the prison governor; and when the offender fails to return to prison on the expiry of a period of temporary release. The policy intention is to mirror the offence in England and Wales and create an offence of being unlawfully at large and failing to return as soon as reasonably practicable.

It is important to stress that, following the creation of an unlawfully at large offence, there will be two aspects of being unlawfully at large. First, the recall of a prisoner to prison or the expiry of a period of temporary release means that the prisoner is unlawfully at large and can be arrested without warrant. When a prisoner is recalled to prison, the prisoner need not be aware of the recall order to be unlawfully at large. Secondly, if a prisoner who is unlawfully at large fails to return to prison as soon as reasonably practicable, the prisoner will commit an offence. The offence will be committed when the prisoner fails to return to prison as soon as reasonably practicable after being notified of their recall or after the expiry of a period of temporary release.

12:00

The unlawfully at large offence does not cover electronic monitoring that is imposed by a court in a community sentence; an offender cannot be unlawfully at large under a community sentence. When an offender breaches the terms of a community sentence, the court already has an ability to vary the sentence, impose a fine or return someone to custody, if that is deemed appropriate.

The unlawfully at large offence is framed so as to provide the offender with a number of defences to a charge of remaining unlawfully at large, such as these: they had a reasonable excuse for the delay; they were not notified or the notification was not properly effected; their return was as soon as possible in the circumstances; or, although they failed to return to prison, they took all reasonable steps to return.

Liam Kerr: I seek some clarity on the notification. We have had some detail about this, but what does it mean to be notified? By definition, if someone is unlawfully at large, they may well not be at a premises or location where they would otherwise be expected to be.

Humza Yousaf: The safeguards are to have both an oral and a written notification. In practice, the individual will have to provide an address where they are to be located during the period of the HDC—the curfew period—and every attempt will be made to get that notification out to them at that address. The reasonable excuses for delays that I have just outlined are for the absolutely exceptional cases in which someone did not receive a notification.

In the majority of instances, if someone is issued with a recall notice—I have seen this and I am sure that other members have been to the G4S centre, too—in the first instance an oral notification is most likely to be given and that will be followed up by a written notification. There are safeguards in place. The cases that I am talking about would be the exception rather than the rule.

I see that Mr Kerr has raised his eyebrow and may wish to come back on that.

Liam Kerr: I understand the point that you are making, but I am not necessarily persuaded. Imagine a scenario in which I am the person being recalled. I would have a defence if the authorities were unable to notify me, in accordance with the legislation, that I am to be recalled. Therefore, if I can set up a set of circumstances in which the authorities are unable to notify me, I can avail myself of a defence. That seems odd.

Humza Yousaf: That is not quite the case. I was perhaps not as clear as I could have been, so I will clarify that point. It is about being deemed to have been notified. If Liam Kerr were not at the premises—although he should be, because he would be subject to a curfew, which generally tends to be between 7 and 7—a written notification would be left at those premises and, even if he did not receive it, he would be deemed to have been notified, because he should have been at that address at that time. I hope that that reassures him on that point. The defence is only for exceptional circumstances.

I am open to members coming back to me for further clarification.

Daniel Johnson: One of the other scenarios that has cropped up is people giving an address outside Scotland. Can the cabinet secretary clarify what would happen if someone were to give an address in another part of the United Kingdom?

Humza Yousaf: One of the recommendations of the inspectorate's report was that a more robust regime should be put in place for interagency communication. I can clarify that there is now a point of contact for every force in England and Wales in respect of recalls—that was not the case previously. It would be the responsibility of the English or Welsh force to make the notification.

The offence that we are creating mirrors the offence in England and Wales, so you would think that the forces in England and Wales would be more aware and have some practical experience of what we are trying to do. To reassure Daniel Johnson, I say that the important point is that we now have a point of contact with every single police service in England and Wales, which was not the case previously.

The advantage of the unlawfully at large offence is that it enables the police to apply for a warrant to enter and search a property to apprehend a person who is suspected of committing an offence using powers in section 1 of the Criminal Justice (Scotland) Act 2016. It provides a criminal sanction that could act as a deterrent for such

behaviour. That will sit alongside other sanctions whereby the unlawfully at large offender is returned to prison and required to serve the remainder of their sentence and a period equivalent to the time spent unlawfully at large.

The provision reduces the need for further offences, such as cutting off a tag or breaching licence conditions in general, as anyone who breaches their licence conditions can be recalled, and their failure to return thereafter would be a criminal offence.

On amendment 123, once an offender is unlawfully at large, the police or a prison officer can arrest the offender without a warrant under section 40 of the 1989 act. There is a statutory power in section 40A of the Prisons (Scotland) Act 1989 to apply for a warrant to arrest an offender who is unlawfully at large, but section 40A does not make clear who can apply for a warrant or whether the warrant can include a power of entry and search. Accordingly, we propose to amend section 40A of the 1989 act to make it clear that only the police can apply for a warrant under that section, and that the warrant will include a power to enter and search premises to locate an offender who is unlawfully at large. We believe that that will address the lack of clarity that the inspectorate's report referred to in the responsibility for obtaining a warrant under section 40A. The McClelland family have also raised the issue with me on a number of occasions.

Liam McArthur: Will the cabinet secretary take an intervention?

Humza Yousaf: Of course.

Liam McArthur: The wording in subsection (3) of the proposed new section in the 1989 act refers to conferring power on a constable

"using such force as the constable considers necessary".

My understanding is that "reasonable force" is the standard language in those circumstances, rather than implying a level of discretion on either the individual constable or the police more generally. Will you reflect on whether that wording needs to be amended at stage 3?

Humza Yousaf: I am happy to reflect on that wording and thank Liam McArthur for raising it. The issue has not been raised with me before, so I will reflect on the point.

Amendment 123 also tidies up some of the language that is used in section 40 of the 1989 act and in section 9C of the 1993 act to make it clear that the warrant procedures in section 40A of the 1989 act apply to all offenders who are unlawfully at large.

I cannot support amendments 122A to 122C from Daniel Johnson. I propose to resist them on the basis that they would restrict the court's ability to determine how best to respond to the offence. The effect is unduly punitive and restricts the discretion of the courts to consider the circumstances before them and to sentence accordingly. This is an unusually regressive proposal from someone whom I know to be a progressive on such matters. The courts can already consider custody as an option. We have the highest prison population in western Europe, and our prisons are operating close to capacity, so removing at least the option for the court to consider non-custodial disposals in any situation needs careful thought and I am not convinced it is the right approach.

I also note that amendments 122A to 122C would remove the court's ability to impose a prison sentence alongside a fine in cases in which the severity of the offence merits such a penalty.

Amendment 122D is unnecessary because there are already legislative provisions covering the issue that Daniel Johnson seeks to address. In addition, the replication of existing legislation could cause confusion about which provision should apply in a given case.

When an offender commits an offence punishable by imprisonment while serving a previous sentence of imprisonment in the community, section 16 of the 1993 act enables that previous sentence to be restated by the court and the sentence for the new offence to be imposed consecutively. That enables the court to provide that the time between the commission of the unlawfully at large offence and the imposition of a further prison sentence for the unlawfully at large offence is to be served as a separate prison sentence.

Section 40(2) of the Prisons (Scotland) Act 1989 provides that time spent absent from prison without lawful authority does not count as time served towards the underlying prison sentence. That removes any need for amendment 122D, as the time that a prisoner spends unlawfully at large will require to be served by that prisoner when they are returned to prison.

Amendment 122D would create confusion, as it replicates legislative provision that is already in force. I urge Daniel Johnson not to press that amendment.

I move amendment 121.

Daniel Johnson: In broad terms, I support the new offence. This is an important issue, for the reasons that the cabinet secretary has set out.

I think that the Craig McClelland murder established that there are deficiencies in how HDC is being operated and, critically, in the powers of the police. The point about needing a warrant to

enter premises is a key aspect that came out of those circumstances, so I welcome the introduction of the offence—it is a positive step forward. However, it is important for the offence to have teeth, which is essentially what my amendments seek to give it. In short, their purpose is to add the time spent when someone is unlawfully at large on to the time that they serve in prison.

The cabinet secretary said that that is an "unusually regressive" proposal from someone who normally espouses progressive criminal justice proposals. I am indeed someone who tries to be progressive. However, my very firm principle is that the criminal justice system must provide people with the opportunity and ability to reform and be rehabilitated, and when they do not take that opportunity, or breach the conditions attached to an opportunity that has been extended to them, they must face the consequences. That is exactly what my amendments in the group seek to do.

Someone who is on HDC, or out on a tag, is participating in an alternative to spending time in a prison. When they breach those conditions and spend time unlawfully at large, it is important that there is a direct consequence. I think that that should mean that they have to return to prison, because they have been given an alternative to prison and they are breaking the conditions that have been set.

John Finnie: Will you comment on the cabinet secretary's point about the effect of the amendments in removing judicial discretion?

Daniel Johnson: I think that we need to be cautious. What I propose is not an isolated example, as the law sets out the penalties in a number of situations. My proposal is very simple: it stipulates that the time spent unlawfully at large—when someone is in breach of their conditions—is added on, and that non-custodial alternatives are not acceptable when someone breaches HDC conditions. Given that HDC is essentially an alternative to prison, I think that that is a sound principle.

Liam Kerr: I am broadly sympathetic to Daniel Johnson's amendments, particularly amendments 122A and 122D. However, I hear the cabinet secretary's point on amendments 122B and 122C. Will Daniel Johnson explain why he wants to remove the ability to fine as an alternative? That sounds rather harsh.

Daniel Johnson: I propose doing so for the simple reason that the public's confidence in HDC, how it operates and the consequences when people breach HDC conditions has been severely shaken. My amendments provide a very simple and understandable set of consequences for people who breach HDC conditions. The simple consequence is this: if someone breaches their conditions, the time that they spend unlawfully at large will be added on to their sentence. I think that that simplicity and clarity will help re-establish confidence in the HDC regime. That is why I have made those proposals.

12:15

Fulton MacGregor: Is there a possibility that you are trying to legislate for what might have been appropriate for the case that you referenced but might not be appropriate for all cases?

Daniel Johnson: I struggle to conceive of circumstances in which it would not be appropriate to return to prison someone who has breached conditions for HDC, which is an alternative to prison. HDC is put in place in lieu of someone serving time in prison. I am making the proposals with my amendments because of the simplicity of the circumstances. The consequence is an easily understood proposition.

Liam McArthur: I welcome the general direction of the Government's amendments in this group, which pick up concerns that were raised with us throughout our consideration of the bill at stage 1, notably those that arose from the tragic events of Craig McClelland's murder.

In my intervention on the cabinet secretary, I alluded to a drafting anomaly in amendment 123. There is one in amendment 122, too, and the Law Society of Scotland has raised concerns with me about the language that is used. There is a concern about proper notice being given "orally or in writing", as opposed to "orally and in writing", because the persons who are going on temporary release might not necessarily fully understand the details of their licence. It might be worth engaging with the Law Society about its concerns ahead of stage 3.

Similarly, proposed new sub-section 32C(2) of the 1989 act refers to individuals being "warned", as opposed to "advised". That language strikes a slightly discordant note.

There are also anxieties about the way in which language is used in relation to the fixed nature of the address to which notice would be sent and the implications that that might have.

None of that detracts from the value of the cabinet secretary's amendments in relation to the improvements that they deliver to the bill, but if the Law Society is raising such concerns about the drafting, I hope that they will be picked up by the cabinet secretary and his officials ahead of stage 3. However, on the basis of what he said, I will support his amendments.

Liam Kerr: I will take the amendments in reverse order.

This has been an interesting debate, and I have thought carefully about how I will vote. I am persuaded by Daniel Johnson's arguments, particularly on the matter of simplicity and clarity. For that reason—I say this with genuine respect, cabinet secretary—I do not think that it is helpful to label amendments as progressive or not.

Although I will support the Government's amendments in this grouping, they do not go far enough. I say that not because I am not progressive, but because the right thing to do is what my amendment 73 would have done, which is to make cutting off or tampering with a tag a criminal offence. I will lodge another amendment at stage 3, and I urge the cabinet secretary to consider it very carefully.

I will support the cabinet secretary on amendments 121 to 123, but I put it on record that they do not go far enough. I look forward to pushing further at the next stage.

The Convener: I will address Daniel Johnson's amendments. He said that it is important that the offence of being unlawfully at large has teeth, which I agree with. Public confidence in home detention curfew has been shaken. Adding time to a sentence when there has been a breach would be a deterrent—a fine would not be seen in that way, as the cabinet secretary suggested. For those reasons, I am minded to support Daniel Johnson's amendments.

Humza Yousaf: I thank members for a very useful and helpful discussion. I have just a couple of points to make.

We will pick up on the points that Liam McArthur made about the drafting. I have not seen the Law Society of Scotland's note, but I am sure that we can get a copy of it, and we can have a look at potential anomalies. We will reflect on those points.

To go back to Daniel Johnson's amendments, things have perhaps been done in the wrong order. Our amendments do not prevent the courts from imposing a custodial sentence for the offence of being unlawfully at large. That is at the discretion of the courts, as absolutely should be the case. Daniel Johnson's amendments do not allow for any other alternative to be considered, and that is the wrong way round. I leave it to Daniel Johnson to reflect on the fact that a Conservative member has suggested that he is being too punitive.

On Liam Kerr's points, I have previously articulated why making the cutting off of a tag an offence in itself is not wise. There are other licence conditions, and we would be creating a hierarchy. Having an offence of being unlawfully at large is the right way to go.

I ask Liam Kerr to reflect on the issue of not labelling people. I will remind him of that point the next time I see a press release from him that talks about "hard" or "soft" justice.

Liam Kerr: Will the cabinet secretary take an intervention? It is not on that point.

Humza Yousaf: Of course I will.

Liam Kerr: I enjoyed the point that the cabinet secretary made; it was amusing.

I appreciate that we are not discussing the cutting off of tags, but I would like to go back to that. I seem to recall that, in that discussion, the cabinet secretary did not support my amendment 73 because, as he said, people could cut off the tag for legitimate reasons. I do not expect him to answer this question now, but can he come back to me before stage 3 with data on how many tags have been cut off and the full range of reasons, such as medical reasons, why they have been cut off?

Humza Yousaf: I do not have the data in front of me, of course, but I will look into that. I suspect that the number is extraordinarily low and that that is the point that Liam Kerr is trying to make. However, the point of legislation is that we have to factor in the anomalies. That is why we have things such as reasonable excuses.

I will not go into too much detail on the point that I tried to make, because we are not debating the issue. Is that particular breach of the condition—the cutting off of the tag—worse than somebody approaching a school if they have a licence condition that says that they are not meant to, for example? If not, why is approaching the school, which would be a breach of the licence condition, not an offence, but the cutting off of a tag is?

There are questions there, but I will reflect on the issue. Liam Kerr said that he will lodge another amendment at stage 3. I will carefully reflect on what that amendment says, but I ask him to take those points on board and reflect on them before he lodges it.

Amendment 121 agreed to.

Amendment 122 moved—[Humza Yousaf].

Amendment 122A moved—[Daniel Johnson].

The Convener: The question is, that amendment 122A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Johnson, Daniel (Edinburgh Southern) (Lab)
Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

Against
Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 122A disagreed to.

Amendment 122B moved—[Daniel Johnson].

The Convener: The question is, that amendment 122B be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Johnson, Daniel (Edinburgh Southern) (Lab)
Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

Against
Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 122B disagreed to.

Amendment 122C moved—[Daniel Johnson].

The Convener: The question is, that amendment 122C be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Johnson, Daniel (Edinburgh Southern) (Lab)
Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

Against
Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 122C disagreed to.

Amendment 122D moved—[Daniel Johnson].

The Convener: The question is, that amendment 122D be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Johnson, Daniel (Edinburgh Southern) (Lab)
Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

Against
Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 122D disagreed to.

Amendment 122 agreed to.

Amendment 123 moved—[Humza Yousaf]—and agreed to.

The Convener: Amendment 64, in the name of Daniel Johnson, is grouped with amendments 65 to 67 and 129.

Daniel Johnson: I reassure the cabinet secretary that we are very much on progressive and cuddly ground with this group of amendments, which are probing amendments. Although I will move amendment 64, I will not press it or move the other amendments in the group, because I recognise that there would be considerable technical difficulty in implementing them. However, I am seeking to raise a fundamental issue that the bill could and should have addressed more fully.

As I understand it, the Management of Offenders (Scotland) Bill seeks to make provision to improve the process when someone's time in prison comes to an end. That very important time is when the criminal justice system will fail or succeed, because it is at the point of release that a person will or will not successfully reintegrate into society.

My amendments seek to set out simple ways to drastically improve people's ability to successfully reintegrate with society. At the moment, people are very often left to their own devices when they are released from prison, with £50 in their pocket. They have nowhere to go, no means of sustaining themselves and no access to healthcare. What on earth do we expect to happen when we release people in those circumstances and conditions?

For a great number of people who face those circumstances, the reality is that they will have no option but to reoffend, either because that is the only means by which they can sustain themselves, or because their situation means that they will immediately be reimmersed in the social and material circumstances that led to the offending behaviour that put them in prison in the first place.

Amendment 64 sets out the broad duties of providing access to a general practitioner, a

correspondence address and appropriate identification. Amendments 65 to 67 spell out those duties in a bit more detail.

At this point, I thank the Wise Group for allowing me to shadow one of its prison mentors. We literally spent the day going back and forth across Glasgow to help an individual get the medication that they needed to stay clean and off illegal drugs. If we had not done that, they would have returned to their street dealer and a life of illegal drug consumption. We had to do that because they were not registered with a GP, as they lost their registration when they entered prison.

The simple point of amendment 65 is to make it a legal obligation that a prisoner is registered with a GP at the point when they are released from prison. This is a simple bureaucratic matter. Many people will have been registered with a GP before they entered prison, so why can they not simply be reregistered with their GP? Alternatively, people receive medical care from general practitioners when they are in prison, therefore could that provision not be extended, albeit it on a temporary basis, to them following their release?

12:30

Liam Kerr: As Daniel Johnson knows, I am very sympathetic to what he is trying to achieve here. My concern is around the practicalities of mandating registration with a GP, which certainly would be a challenge in the north-east of Scotland at the moment. Will Mr Johnson speak about the practicalities of what would happen if the provision is introduced, but it is simply not possible for the Government to comply with it?

Daniel Johnson: I thank Liam Kerr for making that point, which raises a much wider point about access to GPs and the number of closed lists in Scotland. Certainly, in my constituency, the proportion of GP practices that are closed to new patients is around 60 to 70 per cent. Notwithstanding that issue, the reality is that people receive medical care while they are in prison and I wonder whether there is the possibility and flexibility to provide them with access to a general medical practitioner following their release from prison.

On the practicalities, the reality is that not registering people with a GP will lead to circumstances that will cause reoffending. It is challenging, but failing to do so will let that individual down and, more importantly, will create circumstances in which that individual may well reoffend.

Amendment 66 is on providing an address for prisoners. Although I would like to see a much more broadly stated requirement to ensure that accommodation is available for an individual when they are released from prison, I recognise that that is a huge ask. However, providing a correspondence address, so that an individual at least has the ability to make provision for themselves—by opening a bank account or taking other such measures—would be a major step forward. In Ireland, the postal service has recently announced plans to create free personal postal addresses to enable letter collection and to provide a formal address for people who are without permanent accommodation. It strikes me that such a scheme could work in these circumstances.

Amendment 67 relates to prisoners being able to prove their identity and I will explain some of the detail of it. Lacking proof of identity is a major hurdle for people who are coming out of prison, when applying for jobs and other things that they need to live their lives, but most importantly when applying for benefits. The DWP will simply not take applications unless people can prove their identity, which has to be with photographic ID. That is why my amendment specifies that the ID must be a driving licence, although I reassure members that that can be a provisional driving licence, so the person will not need to have passed a driving test. That is the only form of ID, other than a passport, that the DWP will accept. There are a number of proof-of-identity schemes out there, but I understand that they are not acceptable to the DWP. That is why either a passport or a driving licence is required and why I have specified a driving licence in the amendment.

Liam Kerr: Daniel Johnson knows my concern about that. I completely understand the reason for the amendment, which I think is a good one, and I completely understand Mr Johnson's rationale behind mandating a full or provisional driving licence and where he is coming from. However, I am not convinced that it is the right solution. People apply for a provisional licence for a particular reason: to be able to drive. I am not convinced that we should be using it as a circuitous route to allow people to apply for benefits. I hesitate to go into matters that are presumably reserved, but why would we not address the requirements of the DWP, and ask whether it is more appropriate that it accepts a wider suite of documents, rather than try to drive people towards a provisional licence, which was not created for that purpose?

Daniel Johnson: I understand the member's concern and I had reservations before I put the detail in the amendment. However, in the absence of any other photographic ID being officially acceptable, this is the only approach that we can take. The only other option would be to make provision for passport applications and, for very obvious reasons, we might not want to make it

more feasible for people who are released on licence to go abroad.

The best way of preventing someone from reoffending is to ensure that they have a job. That is intuitively correct and it is what the evidence shows us. Amendment 129 sets out that the Prison Service should take all steps within its power to ensure that someone has employment. Short of that, the Prison Service should make it possible for that person to apply for benefits in advance of leaving prison. We are all too familiar with the issues regarding applications for universal credit and with the time lag that is innate within that process. Amendment 129 makes provision to ensure that before the person is released, they make the necessary applications, either for employment or benefits, so that when they are released, they have not just £50 in their pocket but the means to support themselves. That will remove the issues that can lead to reoffending. The amendment reflects some of the good practice that already takes place in some parts of the Prison Service, notably in HMP Inverness, where such a scheme is in place. Amendment 129 simply seeks to make such provision a legal obligation, so that all prisoners can enjoy that support.

Fundamentally, the best way to keep our communities safe and prevent offending is to ensure that those who come out of prison are given the best opportunities for rehabilitation, so that they do not reoffend in the future. That is what the amendments in the group seek to do.

I move amendment 64.

John Finnie: I am very grateful to Daniel Johnson for lodging his amendments—what's not to like about them? Over the years, we have heard repeatedly from the Prison Service that preparing for release is crucial. The amendments stray into aftercare, which is equally important. If someone does not have a roof over their head or access to medical treatment, particularly given some of the challenges that people who have been to prison will have, we will have a problem.

The irony is that, relatively recently, medical provision transferred from the Scottish Prison Service to the national health service, which should make the steps easier. However, Daniel Johnson rightly identifies the challenges relating to closed lists for medical practices. A way around that challenge is to increase the use of salaried doctors, as was the case with salaried dentists, and I commend that approach.

In preparing for today's meeting, I had written a "Yes" against amendments 64 to 66. There are challenges but, unlike Liam Kerr, I am very happy to discuss reserved issues and say, "Best of luck trying to get changes quickly from the DWP", because, when the DWP visited the Inverness area, the grief that is caused by universal credit was clear. The damage is still being felt.

I am interested to hear what the cabinet secretary has to say, but I am certainly minded to support amendments 64 to 66.

Rona Mackay: I thank Daniel Johnson for the important points that he has raised, and I totally agree with him on them. However, I agree with Liam Kerr on the practicalities, because I am concerned about the wider consequences of the amendments. If such conditions could not be met, would the prisoner have to remain in prison, and for how long? The provisions would have huge financial implications, which are not addressed in the amendments. All the issues should be, and could be, raised outwith the bill, but they must be considered. I totally agree with everything that Daniel Johnson has said, but I do not think that the bill is the right place to make the provisions in his amendments.

Liam McArthur: I thank Daniel Johnson for lodging amendments that go to the heart of the importance of not just aftercare but throughcare and how it integrates with what goes on in the prison estate. He has identified instances in which we have got things right—maybe not entirely, but in large part—which begs the question of why a consistent approach is not being taken across the board. He has also identified areas in which improvements could yet be made, if we were to draw on experience from elsewhere.

I question whether including that in the bill is appropriate, but nevertheless it has served to illustrate where we are falling short. Daniel Johnson's point about reducing rates of reoffending is correct—it is about not just the welfare and wellbeing of individuals, but the safety and wellbeing of communities as a whole. Communities are ill served by pretending that releasing prisoners back into the community with none of the supports outlined in the amendments is a recipe for success.

I thank Daniel Johnson for lodging the amendments. My impression from his earlier comments was that he did not expect to press amendment 64 or move the other amendments in the group. However, he has given us an opportunity ahead of stage 3 to see whether there are ways of using the issues highlighted in the amendments to strengthen the bill.

Fulton MacGregor: I thank Daniel Johnson for lodging the amendments and I am sympathetic to his aims. I recognise that they are mostly probing amendments and that the goal was to start a bit of discussion—they have certainly done that. Most of the things that Daniel Johnson has talked about relate to operational matters, as Rona Mackay

was saying, rather than things that should be included in the bill. In my experience of working in the criminal justice system, I saw some really good examples of people being prepared for release as well as some really bad examples. We need to look at the multi-agency arrangements and learn from good practice. The Inverness example could be one to look at.

The only point that I was not clear on was the need to have a driving licence or a passport. I am not sure about that. However, in general, we need to ensure that the principles behind most of the amendments run right through the operation of criminal justice.

The Convener: I, too, thank Daniel Johnson for lodging the amendments. He said that he did not intend to press amendment 64 or move the other amendments in the group, but in lodging them he has allowed us to have a crucial discussion on the important issues about the services and support that should be available to prisoners on release from prison and that are all too often not there.

Daniel Johnson mentioned the Wise Group, which steps up to the plate for the offenders that it supports: it often helps to prevent reoffending that can result from the necessary services and benefits not being in place. However, not everyone is fortunate enough to be supported by the Wise Group. I look forward to hearing what the cabinet secretary has to say. If the home detention curfew is to work properly, the resources and support must be there so that, as the Wise Group says, we do not set up prisoners for failure when they are released from prison.

Humza Yousaf: I thank Daniel Johnson for his articulation of the amendments and the context in which he has put them. I appreciate the fact that they are probing amendments. That it is important because, although he is not necessarily going to press them, the discussion that we have had in committee has been very fruitful and there seems to be little in the way of disagreement. More can and should be done in relation to throughcare support for prisoners leaving our prison estate.

I will not go into all the details about why the amendments would not quite work, because they are probing amendments, but I will touch on a few points. Before I do so, I will say that we should work closely with members on some of the non-legislative options to try to realise some of the things that Daniel Johnson is trying to achieve.

12:45

We have discussed some of the issues in relation to amendments 64 to 67. Liam Kerr touched on some of the issues to do with GPs. Let me give some reassurance about the current guidance: the patient registration process is meant to be fair for all patients, including those who are leaving prison, and the guidance confirms that a GP practice cannot refuse registration if the patient cannot provide proof of ID or address. However, I accept what Daniel Johnson is saying, especially if it is informed by the Wise Group, which I hold in the highest esteem, as he knows. If that is not what is happening in practice, even though it might be the process on paper, we have to address that.

What ministers cannot do is compel an individual to register with a GP. Amendment 64 would prevent an individual's timely release if the person had chosen not to register with a GP, which is obviously unacceptable. Liam Kerr touched on that. Another issue is that changes to the registration process might entail changes to the national GP contract. I am not persuaded that that is a proportionate response.

Notwithstanding that, there absolutely is more that we can do about the health and wellbeing of people who are leaving the prison estate.

On amendment 66, on the provision of a correspondence address, a lot of work is taking place on the sustainable housing on release for everyone—SHORE—standards. I have met Kevin Stewart on a number of occasions to discuss the matter in greater detail. Again, perhaps I can provide Daniel Johnson with written details of how we are taking forward issues to do with housing.

If the aim of amendment 66 is to ensure that a postal address is provided to enable an individual to engage with key services, I can tell Daniel Johnson that common practice allows an individual to use a friend or relative's address or the address of a service provider such as a GP or jobcentre. I do not have details of the scheme in Ireland that he mentioned; I ask him to pass them on so that we can explore all avenues and ideas.

On amendment 67, on prisoners having a valid identification document—a driving licence, in this case—the SPS is reviewing the provision of ID for all individuals who leave its care. It has an identification process in place, which includes the provision of a standard photographic letter for individuals who are supported by throughcare support officers and do not have a form of ID. Despite what Daniel Johnson suggested, my understanding is that that letter is accepted as an appropriate form of ID by the Department for Work and Pensions, banks, GP practices and housing organisations. If Daniel Johnson, the Wise Group or anyone else has experience of that not being the case, I want to hear about that.

There are two other objections in relation to the provision of a driving licence. First, the cost is likely to be prohibitive for most prisoners. Secondly, the individual might be disqualified from

holding a driving licence, perhaps because of the offence that they committed.

Although I support the intention behind amendment 129, which would impose on ministers a duty to ensure that a released prisoner

"has suitable means of financial support",

there are probably practical and legal implications. A person might not want to apply for work or seek social security assistance. I accept that that would happen in a minority of cases, but amendment 129 provides no flexibility to manage a situation in which a person declined to consent to apply, which would mean that the prisoner could not be released. That would be a breach of the European convention on human rights.

We offer a safety net in the form of the Scottish welfare fund. An individual who leaves prison may make an application for a crisis grant to meet their immediate, short-term financial needs. However, I think that Daniel Johnson has in mind not just short-term, crisis interventions but long-term, sustainable, holistic support that will prevent the person from reoffending. He will meet no objections from me in considering how we can improve the regime in that regard. However, the way to do so would be through non-legislative means.

I ask Daniel Johnson not to press amendment 64 or move the other amendments in this group.

Daniel Johnson: I thank all members and the cabinet secretary for their constructive comments. The point of the amendments in this group is to establish core principles. It is vital that we ensure that people who leave prison have access to healthcare, an address and a means of supporting themselves. That is the best way to prevent reoffending.

I am interested in exploring ways to take these ideas forward at stage 3. This is not the last time that I will raise such issues or lodge similar amendments; I hope that there will be opportunities to do so in future. I accept what members said about the practical and operational issues to do with the amendments, but, that said, there is value in ensuring that there are legal duties and requirements, and in ensuring that a clearly understood benchmark is obtained for everyone. That is important, which is why some of these things may need to be enshrined in law, perhaps not today, but hopefully at a future point. With that in mind, I will withdraw amendment 64 and not move the other amendments in the group.

Amendment 64, by agreement, withdrawn.

Amendments 65 to 67 not moved.

Amendment 129 not moved.

Section 44

Section 44 agreed to.

Amendment 124 moved—[Humza Yousaf]—and agreed to.

Section 45

Section 45 agreed to.

Amendment 125 moved—[Humza Yousaf]—and agreed to.

Before Section 46

Amendment 126 moved—[Humza Yousaf]—and agreed to.

Sections 46 and 47 agreed to.

After section 47

The Convener: I am aware of the time. However, I intend to start the debate on the next group of amendments, which is an important group. I will allow the committee to debate the group and will put the relevant questions, then end consideration for today.

Amendment 71, in the name of Neil Bibby, is grouped with amendments 71A and 72.

Neil Bibby (West Scotland) (Lab): Thank you convener, and good afternoon to the committee and the cabinet secretary. I wish to speak to amendment 71 in my name, which would require that an inquiry take place under section 2 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016, in cases in which a death is caused by a person who is subject to a curfew condition, such as a home detention curfew.

The committee is well aware of the tragic murder of Craig McClelland—a young father who was killed in a violent and unprovoked knife attack, just minutes away from his Paisley home. The man who was convicted of Craig's murder was unlawfully at large when the attack took place, and had been for more than five months, having broken an electronic tag and violated the terms of his home detention curfew.

As the committee knows, the then Cabinet Secretary for Justice, Michael Matheson, subsequently asked both Her Majesty's inspectorate of prisons for Scotland and Her Majesty's inspectorate of constabulary for Scotland to conduct reviews into the HDC regime. They were described as process reviews by the Government, and were not tasked with looking specifically at what went wrong in that particular case. Recommendations were made, some of which will be acted on today, which is welcome. It was also established that there were significant failings leading up to the murder.

However, there has not been a specific inquiry into why the murder was allowed to happen and whether it could have been prevented. The shortcomings of the reviews were clearly demonstrated when Craig McClelland's family detailed over 30 key questions that were not answered in them.

A fatal accident inquiry, which is commonplace for deaths on the prison estate, is not automatic in such cases. There is a wide range of circumstances in which a fatal accident inquiry would be mandatory, but they do not include cases in which a prisoner who is on a home detention curfew commits a murder. The Lord Advocate could use his discretionary powers to instruct that an FAI should take place, but is under no obligation to do so.

The Cabinet Secretary for Justice could have instructed an independent public inquiry, but he has said that he is not persuaded by the case. He has met Craig McClelland's family, but has been unable to provide them with the answers that they need, or to fully explain why the system failed Craig.

I do not believe that the Government response to that tragedy has been adequate, which is why I have lodged amendment 71. The family need and deserve answers, and they should not have to plead for answers. What happened to Craig McClelland was a tragic failure of the system, and it is a disgrace that has horrified and appalled my community. That failure must be independently investigated, explained and exposed. There must be a full inquiry into the McClelland case and into all cases of that kind, whenever they occur. That should not be at the discretion of ministers or the Lord Advocate; it should be a matter of course.

My amendment 71 would ensure that when a death is caused by a person who is subject to a curfew condition, an inquiry is held under section 2 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016. That would apply to deaths that occurred on or after 15 January 2016 and so would include the McClelland case. An inquiry that is held under the 2016 act is presided over independently by a sheriff, and seeks to establish the circumstances of a death and to consider what steps, if any, might be taken to prevent other deaths in similar circumstances. It considers whether reasonable steps could have been taken to avoid the death, and whether there were defects in any "system of working" that could have contributed to the death in the first place.

It is therefore a type of inquiry that the family could have confidence in, and one that would serve the public interest, too. Let us be clear that ensuring that there is an inquiry into the McClelland case is absolutely in the public interest. More than 5,000 people have signed a petition demanding that an inquiry take place, and that an inquiry be automatic whenever a prisoner on HDC commits a murder.

Much of the committee's scrutiny of the bill has centred on the home detention curfew. In the wake of Craig McClelland's murder, you have rightly had to consider how to restore confidence in the system. I believe that the only way to restore confidence in the system is to ensure that families such as Craig's can have confidence in that system. Right now, they do not. The system has tragically failed them: it failed Craig McClelland and it failed his three children, who are now growing up without their father.

I ask the committee to consider my amendment 71 in order to ensure that the lessons of this tragedy and any future tragedies are fully learned.

I move amendment 71.

Liam Kerr: I will be brief. I completely associate myself with Neil Bibby's comments. He has made a persuasive and important argument, and I am grateful to him for that. He was right to lodge amendment 71, because it is right that Craig McClelland's family, whose particular circumstances Mr Bibby detailed, and people who are involved in similar situations, get the answers that they have been denied. Neil Bibby made an important point when he said that they should not have to plead. I strongly agree with that sentiment.

I will set out the reason for my amendment 71A. Mr Bibby seeks to ensure that an inquiry is automatic when a person on an HDC commits a murder. I simply wish to extend the scope of that to cover all prisoners who are released from prison on licence. A robust inquiry should be held into every death that is caused by someone who has been released early from prison—not least, so that the authorities that are responsible for the release are answerable for what has taken place. I seek the committee's views on that.

I move amendment 71A.

John Finnie: I am grateful to Neil Bibby for lodging amendment 71 and to Liam Kerr for lodging amendment 71A. There are a number of tragedies and, as someone who values every single human life, it would be easy for me to sit here and say that I think that the proposal is a good idea, but I happen to think that it is not.

Mr Bibby used the phrase

"as a matter of course"

and said that inquiries would be "required". In relation to deaths in prisons, he said that an inquiry is "commonplace". I do not know whether Mr Bibby was at the meeting when we discussed judicial discretion. I am very loth to change the

current situation, although we should never say never.

Mr Kerr talked about a "robust inquiry" into deaths. Of course, every death is subject to a robust inquiry. It may well be that individual family members are not content with the outcome but, at the direction of the Lord Advocate, Police Scotland undertakes inquiries.

13:00

I tried to think of what the unintended consequences of the proposal might be. It could well be that a family that has gone through the trauma of participating in a murder trial has a fatal accident inquiry waiting at the end of it. What would be the chronology of that? What would be the long-term effects? Over the years, the committee has discussed fatal accident inquiries on a number of occasions, and I have sat through a fatal accident inquiry. I have to say that at the end of an FAI there are often a lot of disgruntled people. The quest is to understand the background to a death. It is in the public interest to do so, just as we talk about prosecution being in the public interest. However, there will be complainers—because that is what they are, at that point, without a trial—who are dissatisfied.

It would be easy to keep my head down and vote for amendment 71, but we must think about unintended consequences. There will be occasions on which it is absolutely appropriate to have a fatal accident inquiry, but there will be other occasions on which it will, because of the individual case's circumstances, be inappropriate to do so. Therefore, unfortunately, I will not support amendments 71 and 71A.

Liam McArthur: Like John Finnie, I thank Neil Bibby for lodging amendment 71. I think that he was in the room when the committee was discussing the offence of being unlawfully at large. The amendments that we discussed in that regard have strengthened the bill and have addressed some of the concerns that arose out of the tragic murder of Mr McClelland.

I support Neil Bibby's proposal. I am conscious of the concerns that John Finnie raised and I am not deaf to them. However, our fatal accident inquiry system is not functioning as we expect it to function, which is damaging public confidence in it. Mr Bibby referred to the McClelland family's feeling that they are pleading for a fatal accident inquiry. If decisions on such inquiries were taken in a timely fashion, the McClelland family would not be forced to feel that way. We can all draw from a number of examples of fatal accident inquiries being long overdue, with people left waiting up to a decade for one to be held. It is difficult to understand how lessons can truly be learned when such delays are built into the system.

In the event that Mr Bibby's amendment 71 is not successful this afternoon—I suspect that it will not be—I hope that it will drive forward the process of improving the system of FAIs, which, at the moment, is broken.

Daniel Johnson: I also thank Neil Bibby for setting out very well the need for amendment 71. I would like to address John Finnie's comments. I agree with a great deal of what he said, and I understand his points; I think that we have to be careful about unintended consequences. There is sometimes a tendency to want every decision to be the subject of inquiry and process, but that is not always helpful.

We must also always be mindful when we are looking at bills, and amendments to them in particular, of anomalies and inconsistencies. I believe that amendment 71 addresses an anomaly and an inconsistency. Throughout consideration of the bill, I have time and again stressed the importance of the need to recognise that people who are released on licence and on an HDC are out in the general public in lieu of being in prison—they are still serving their prison sentences. At the moment, there is an automatic FAI when a death occurs in prison. However, we have a situation in which, when someone who is serving a prison sentence under licence in the community commits a murder—that is essentially what we are looking at when a death is caused by someone who is out on an HDC—there is no FAI. That is an anomaly, because if that death had occurred while the person was inside prison, there would have been an FAI.

To boil things down to the crude, raw factors, I say that we are dealing with a major system failure when a person who has been released and is subject to regular monitoring—because they are still serving a sentence—causes another person's death. In such situations, there is a dramatic, severe and critical systems failure that requires investigation and warrants an FAI. I think that amendment 71 will deal with that anomaly and ensure that an FAI always happens in such circumstances. That is important.

The Convener: I, too, think that Neil Bibby has made a powerful case in support of his amendment 71 by citing Craig McClelland's murder, into which no inquiry was held, despite the family's pleas for one. Therefore, I fully support amendment 71, which would provide for an automatic fatal accident inquiry when a death is caused by a person who is on curfew. It makes sense to me that amendment 71A, which would expand that provision to deaths that are caused by people who have been released on licence, should also be supported.

Fulton MacGregor: I thank Neil Bibby for lodging amendment 71 and for advocating and articulating the case so well on behalf of his constituents to the committee. As MSPs and members of the committee, we all feel the weight of responsibility arising from the tragic incident involving Craig McClelland. I know that the cabinet secretary feels it, too. It can be only small comfort for the family that the situation has had a major impact on the bill, including its being delayed and various other aspects, but I hope that a lot of good will come from it in the future.

I agree with John Finnie's sentiments on amendment 71 and do not think that there is enough evidence, at this stage, for an automatic FAI, although I will be interested to hear what the cabinet secretary says about whether something can be done at stage 3.

Liam Kerr: Will the member take an intervention?

Fulton MacGregor: I was just finishing, but I will.

Liam Kerr: I am listening carefully. You say that there is not enough evidence "at this stage". What evidence would you need to change that conclusion?

Fulton MacGregor: I would need evidence about unintended consequences. Perhaps the particular case that we have talked about warranted an FAI, if the Lord Advocate had decided to do that. However, as we have said about other provisions in the bill, the unique circumstances of every situation need to be looked at. As I said, I am interested to hear what the cabinet secretary will say, not just for today, but looking forward to stage 3.

Humza Yousaf: I will reflect the sentiments of members who have spoken. All of us are united in having our thoughts and sympathies very much with the family of Craig McClelland. I mentioned that when moving an earlier amendment, but I want to reiterate it.

I also thank Neil Bibby and Liam Kerr for amendments 71 and 71A. Neil Bibby and I have had exchanges that have sometimes, I regret, been difficult. Nonetheless, I do not doubt that Neil Bibby has lodged amendment 71 because he is advocating on behalf of people whom he represents.

From my perspective and the Scottish Government's perspective, we resist amendments 71 and 71A, and I will try to articulate the reasons why. The categories of mandatory FAIs were considered and legislated for in the 2016 act, which Parliament passed with unanimous support. I accept that that is not, in itself, a reason never to look afresh at FAI arrangements in the future, but we should be mindful that the 2016 act is a recent enactment that followed a careful review by Lord Cullen and lengthy consultation and parliamentary consideration. The end result specified a mandatory FAI in the narrow circumstances of deaths in custody and deaths in the course of a person's employment. We need to take great care before we disturb the conclusions that led to that most recent legislation.

My second point has already been touched on by a couple of members—John Finnie, in particular. When I was considering amendments 71 and 71A, I also, as you would expect, had conversations with the Lord Advocate, under whose remit FAIs fall. He was happy for me to say that he is concerned that the amendments would fetter his independent discretion and might result, for example, in a requirement to hold an FAI even when circumstances are uncontroversial and uncomplicated or, crucially—this perhaps relates to Liam Kerr's question and Fulton MacGregor's answer—when bereaved relatives do not want one. That sometimes already happens with deaths in custody.

Where the circumstances justify it, the Crown will undertake a death investigation and it may, in addition to any criminal proceedings, investigate any other matters that bear on the circumstances of the death, and can instruct a discretionary FAI. The Crown will always, in relation to any wider death investigation, engage with the families of victims both in the context of criminal proceedings and under the family liaison charter. There are mechanisms whereby, in appropriate cases, an investigation will be undertaken. Indeed, in the specified case—the McClelland case—the Crown will do this. If an FAI is justified in addition to any criminal proceedings, an FAI can be held, and there is no need for a statutory provision to that effect.

The ordinary course under the 2016 act is that, even in the case of mandatory FAIs, the Lord Advocate may determine that the circumstances have been adequately established in related criminal proceedings, and may determine on that ground that an FAI would not be justified. There is no equivalent qualification in amendments 71 and 71A, where it might be quite likely that there would be related criminal proceedings.

Finally, there are two points to make on drafting. First, "have caused the death" is a broad phrase that would cover deaths by homicide, deaths by careless or dangerous driving and circumstances that were wholly accidental and would not give rise to any suspicion of criminality.

Secondly, it is—as members know—most unusual to make retrospective provision in legislation, so a specific policy justification would be required. Given the existing powers to order a

discretionary FAI, I am not convinced that retrospective application of the provision would be justified.

For the reasons that I have provided, I ask the members not to press amendments 71 and 71A. If they do, I urge the committee to reject them.

Neil Bibby: I thank committee members for their contributions. As I explained, inquiries under the 2016 act are an established procedure, which is presided over independently by a sheriff, for ascertaining both the circumstances of a death and whether anything could have been done to prevent it. An inquiry is mandated by the 2016 act when a death has occurred in lawful custody or while the deceased person was at work, so FAIs into deaths on the prison estate are common. If a prisoner was to die or a prisoner was to kill another, an inquiry would be mandated under the 2016 act, yet where a prisoner commits a murder in the community while being the subject of a home detention curfew, an inquiry under the 2016 act is not mandatory. That leaves families such as the family of Craig McClelland in the horrendous position of having to plead for answers about what happened and why.

A fatal accident inquiry into the circumstances that led to the murder of Craig McClelland is demonstrably in the public interest. I note that some members and the minister are not persuaded by the case, but his family are, and the public are on their side. Over 5,000 people have signed a petition in support of an inquiry and of my amendment 71.

Amendment 71 is not an onerous amendment. The only case that I am aware of since 2016 that would be covered by it is the death of Craig McClelland. However, my amendment would also ensure that any future deaths in such circumstances would be the subject of an inquiry—not at the discretion of ministers or the Lord Advocate, but as a matter of course and a matter of principle.

I heard the comments from committee members and the cabinet secretary and I note the points that they made. The Lord Advocate would in unique circumstances have a power of exemption but, generally, fatal accident inquiries are described in legislation as mandatory when there is a death in custody. They should, therefore, be mandatory in cases such as we are discussing, which would be similar to the position for deaths in custody.

On the question whether what I propose is necessary, I believe that it is, because Craig McLelland's is a tragic case. It is actually a case study on why my amendment 71 is necessary. It is necessary because there has not been a public inquiry or a fatal accident inquiry.

It is clear from what members have said that there is not a majority on the committee in favour of the amendments to guarantee an inquiry into the McClelland case. My view has not changed: it is as strong as ever. An inquiry is essential and a change in the law is required to mandate that inquiry.

However, in the light of contributions to today's debate, I will not press my amendment 71 today. Instead, I will reflect on the comments that have been made, look at the issues that have been raised about drafting, and at the concerns that John Finnie and others have raised, and seek to lodge an amendment at stage 3 to guarantee that the proposal is debated further. At that stage, all members of Parliament, including those who represent the McClelland family, will have the opportunity to decide whether they are prepared to vote to secure an inquiry.

13:15

The Convener: I call Liam Kerr to wind up, and to press or to seek to withdraw amendment 71A.

Liam Kerr: I do not have a great deal to add to Neil Bibby's very coherent and important contribution. A couple of points came out during the discussion. I understand Daniel Johnson's and Neil Bibby's point about there being an anomaly, in that there appears to be a mandatory FAI for deaths in custody but not for deaths outwith custody. That feels odd, to say the least.

I understand John Finnie's point—the cabinet secretary made a similar point—that a family might not be in a place in which they want an inquiry. My counter-argument is that, as Daniel Johnson seemed to say, if something has potentially gone massively wrong, surely we have to understand fully what that is. An FAI would be one mechanism through which to do that. I understand the point that was made, but a failure of such significance needs investigation.

John Finnie: For the avoidance of doubt, I am not saying that an FAI would not be appropriate on occasions—indeed, it would be highly appropriate to have an FAI on many occasions. We are in an area in which tension always exists about the discretion that is afforded to the Lord Advocate, whether that discretion is related to this matter or in relation to prosecution. I am talking about the public interest versus those who are closest to the matter at hand, be they the complainer in a criminal case or the family when there has been a death. There will be instances when the family do not want an FAI. I can think of a very high-profile death into which people would like to have an FAI, but because the family do not wish to have one, it will not take place. Will the member acknowledge

that that tension exists and that it would be exacerbated by making FAIs mandatory?

Liam Kerr: I understand the tension and I fully understand John Finnie's point. Neil Bibby's conclusion that it would be prudent to go away, reflect on some of those points and bring back the matter to Parliament is a good one. For that reason, I will not press amendment 71A.

Amendment 71A, by agreement, withdrawn.

Amendment 71, by agreement, withdrawn.

The Convener: I propose that we conclude our consideration of stage 2 amendments now. We will continue next week with the remainder of the amendments.

I thank the cabinet secretary and officials for attending.

Due to time constraints, agenda items 4 and 5 will be taken next week.

Meeting closed at 13:18.

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