OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 30 April 2019

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 30 April 2019

CONTENTS

JUSTICE COMMITTEE
13th 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:

Bill Kidd (Glasgow Anniesland) (SNP) (Committee Substitute)
Humza Yousaf (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 30 April 2019

[The Convener opened the meeting at 10:00]

Decisions on Taking Business in Private

The Convener (Margaret Mitchell): Good morning, and welcome to the 13th meeting in 2019 of the Justice Committee. We have received apologies from Shona Robison, and I welcome Bill Kidd back to the committee as her substitute.

Agenda item 1 is decisions on taking business in private. Does the committee agree to take in private item 4, which is consideration of a draft report on the Brexit subordinate legislation that the committee has considered to date, and item 5, which is the committee's forward work programme?

Members *indicated agreement.*

Management of Offenders (Scotland) Bill: Stage 2

10:00

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

I welcome back the Cabinet Secretary for Justice, Humza Yousaf, and his officials. At various points in the meeting, we may be joined by other members who have lodged amendments.

After section 47

The Convener: Amendment 75, in the name of Liam Kerr, is grouped with amendment 134.

Liam Kerr (North East Scotland) (Con): In recommendation 182 of its stage 1 report on the bill, the committee recognised that:

> "Robust risk assessment procedures are critical to the effective use of HDCs and other forms of electronic monitoring. The Committee agrees with the calls made in the evidence taken about the importance of ensuring that decisions on electronic monitoring are informed by proper and appropriate assessments."

The report goes on to note that we need more information on the risk assessment tool; indeed, I highlighted that point in my speech in the stage 1 debate. I recall the cabinet secretary's response in what I felt was a very good debate, but I remain of the view that, before we do anything to increase the number of people on electronic monitoring, we need a robust and trusted assessment tool.

I understand, from comments made previously by the cabinet secretary, that it will take time to develop such a tool, but we cannot allow things to drag. Indeed, I have significant concerns about that. Another committee of which I am a member is looking right now at another piece of legislation that required the Scottish Government to develop a database, and, nine years later, that work has not even been started. We cannot risk that sort of outcome with this legislation.

Amendment 75 therefore requires the Scottish Government to develop a risk assessment tool, in order to press the importance of not delaying that work. It also makes it clear that the courts "must have regard to" that tool when disposing of cases, and it requires ministers to publish a report on the tool's operation. It is the right amendment, and it is important that it goes into the bill.

On amendment 134, in the name of Daniel Johnson, I entirely see where the member is going, and I am interested in hearing his

representations with regard to its operation. In principle, I think that it has a lot of merit.

I move amendment 75.

Daniel Johnson (Edinburgh Southern) (Lab): I thank Liam Kerr for setting out his reasons for lodging amendment 75, and I have to say that I have lodged amendment 134 for entirely the same reasons, as set out in our stage 1 report and, more important, in the reports by Her Majesty's inspectorate of prisons for Scotland and HM inspectorate of constabulary for Scotland.

There is an issue with risk assessment. There have been a number of discussions about this, and I acknowledge the cabinet secretary's previous comments to the committee about not putting details of a risk assessment process on the face of the bill; indeed, I agree with him in that respect. However, as I told him in private, it is important that the bill makes it clear that such a risk assessment must take place, and my amendment seeks to make that happen but without being unduly burdensome, by setting out a specification for the risk assessment process and, at the same time, providing for flexibility and reflection in that respect.

My amendment and Liam Kerr's amendment are broadly complementary. However, I have two slight issues with amendment 75, which is why I will move amendment 134.

The first issue is about language. I am not entirely convinced that formally putting a "risk assessment tool" in the bill is appropriate, given the potential for anachronism and for potentially going into too much detail, although the amendment is not overly specific.

More importantly, on ensuring that risk assessment takes place, my reading of Liam Kerr's amendment is that, although it would require the Scottish ministers to develop a risk assessment tool, it would not require them to use it. My amendment would require the implementation of the risk assessment tool.

I will vote in support of both Liam Kerr's amendment and mine, because mine is necessary to ensure that a risk assessment is carried out. There will be a requirement to do some tidying up at stage 3, but there is nothing in either amendment that makes them conflict with each other—they are complementary.

By establishing trust in the risk assessment process and ensuring that there is scrutiny of it, the amendments are critical to the effectiveness of the bill with regard to its intent to restore public trust in HDC, which is a vital tool for rehabilitating prisoners.

John Finnie (Highlands and Islands) (Green): I will not support either amendment.

Like Daniel Johnson, I am concerned about some of the language that is being used. For instance, if I noted this correctly, there is already a process for risk assessment. It is important that a risk assessment takes place and that it is robust and tested. We know that almost everything in the Scottish prison system is subject to risk assessment, whether it is the movement of individual prisoners or prisoner activities. We also know that there was previously a process in place for assessing the use of HDC.

The committee was entirely right to halt its considerations pending the examination that took place. We have heard that there has been a significant change in the number of people who are granted HDC, and I think that we have introduced risk aversion to the system. I have every confidence in the Scottish Prison Service and criminal justice social workers.

I think that the amendments are well meaning, but legislation that is based on a particular incident—

Liam Kerr: Will the member give way?

John Finnie: I give way to Liam Kerr.

Liam Kerr: I hear what you are saying, but I am sure that you will accept that there appear to have been failures previously, which led to the situation that we were in. To my mind, that almost mandates us to set out the lessons learned and what should happen in the future.

I understand what you are saying about risk aversion being introduced into the system. If it is possible to swing from one approach to another, do you accept that that is not what our justice system should do? It would be far better to give a clear instruction—as my amendment 75 and Daniel Johnson's amendment 134 seek to do—on how risk assessment should be carried out.

John Finnie: An important part of risk assessment is to continually assess the manner in which we go about it—I readily accept that. However, unquestionably, we have heard that there has been a significant drop in the number of prisoners on HDC, which is not a sustainable position. We have also heard that the risk assessment process, although broadly the same, has been altered with regard to the seniority of the individuals who ultimately make the decisions.

Daniel Johnson: I agree entirely with John Finnie. That is almost exactly why I lodged amendment 134. At the moment, because of the circumstances, there is a degree of concern about undertaking the risk assessments. One of the outcomes of setting out the principles and practice that are proposed in amendments 75 and 134 would be that it would give confidence to the SPS and the people carrying out the risk assessments,

because they would know that they would have the backup of the risk assessment process as set out in amendments 75 and 134. The amendments' proposals would do exactly what John Finnie would want to happen in terms of building confidence and seeing HDC used effectively and properly in the prison service.

John Finnie: Again, I hear what the member says, but assessing a risk and putting in place mechanisms to ameliorate it does not mean that the risk is ultimately eliminated. We will never do that when dealing with humans and relying on a point of judgment. What would take place would not be a mechanical exercise but one that would involve human beings. I do not doubt the good intent of Liam Kerr and Daniel Johnson in lodging amendments 75 and 134, but I will not support them.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I echo what John Finnie has just said. Amendments 75 and 134 seem to come from a position of no risk assessment being in place. I am sure that that is not the intention and that Liam Kerr will reflect that in his summing up. However, to me, the amendments seem to come from the position of assuming that no risk assessment is in place and that we, as parliamentarians, need to put something in place. Given my experience of working in the criminal justice system, I can tell members around the table that that could not be further from the truth, as John Finnie said.

Of course, there are robust risk assessments in place. Are they perfect? No, I do not think that anybody would suggest that, and a recent example shows that that is not the case. However, we need to trust the relevant organisations, as John Finnie said, rather than include amendments 75 and 134 in the bill and leave the matter to Scottish Government officials and ministers. I will therefore not back amendments 75 and 134.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I, too, will not back those amendments. Liam Kerr referred to giving "a clear instruction", but I do not think that his amendment 75 would provide a clear instruction, as it is quite vague. For example, what is a "tool"? We do not know what it is or whether it is for use pre-release or post-release. The amendment is far too vague, although it is well intentioned, as Daniel Johnson said, and I can see the motivation behind it.

Again, Daniel Johnson's amendment 134 is quite vague and would require ministers to make an unspecified provision about risk assessment. It appears to refer to individual risk assessments rather than the overarching policy of risk assessment. Picking up on John Finnie's point about the turnaround, I do not think that it would be advantageous at this time to bring forward what amendments 75 and 134 propose.

The Convener: My view is that amendments 75 and 134 complement each other because they both seek to provide a robust assessment tool in which the public can have confidence. They require the development of such a tool in the light of the extension of HDC to individuals who would otherwise be behind bars. I note members' comments that there are existing risk assessments, but they have been found wanting in the past and I think that we need to be very conscious of that.

Given the concern that we all share about the culture of risk aversion that seems to have developed, it seems to me that including that robust assessment tool in the bill would address that culture of risk aversion and help people to have confidence that they can use HDC as the bill intends it to be used.

The Cabinet Secretary for Justice (Humza Yousaf): I thank Liam Kerr and Daniel Johnson for their amendments. I know that they come from a very sincere intent. Both members and you, convener, have been very consistent since stage 1, particularly after the HDC reviews, on the point around risk management, the need for robust tools and the request to have something in that regard on a statutory footing.

I am grateful that amendments 75 and 134 have been lodged. I know that what the members propose through the amendments has also been a consistent theme of conversation, discussion and debate among those from whom the committee has taken evidence. Risk assessment was discussed in some detail during stage 1, and I have previously written to the Justice Committee, setting out the activities that are currently under way in the area.

10:15

On amendment 75, there was discussion at stage 1 about the merits of placing risk assessment on the face of the bill. I am still very firmly of the view that to do so would present a risk, and I believe that the Risk Management Authority has written to the Justice Committee, expressing its concerns. My usual concerns about putting things in a bill very much extend to amendment 75 because of the potential inflexibility of what is suggested. There is a better place for such an approach. However, I fully recognise why Liam Kerr and Daniel Johnson want something that has statutory underpinning. I hope that I can propose a compromise position that satisfies members' desire for risk management being on a statutory footing but does not put such a measure in the bill. I will come to that shortly.

On the language that amendment 75 uses, the risk assessment tool is not defined in the amendment or elsewhere in the bill. The criminal justice system has a range of risk assessment tools that have been developed for use with particular groups of prisoners and in particular situations. It is not clear from the amendment what sort of risk assessment tool would be created—would it be intended to assist with the decision on releasing a prisoner or with managing risk once a prisoner was released?

A risk assessment by a governor for temporary release is very different from a risk assessment for HDC or parole. The creation of one risk assessment tool for all three distinct forms of early release would overlook the different nature of each form.

The Risk Management Authority and the Parole Board for Scotland sent the committee letters, which I will quote to emphasise the point. The fourth paragraph of the authority's letter says that its framework for risk assessment management and evaluation

"emphasises the distinction between risk assessment and 'tools', in that there are a range of instruments that may contribute to a risk assessment, but none that in itself produces a risk assessment. Such tools vary greatly in their design, purpose and applicability, and there is not one that fits all situations."

The fourth bullet point in the Parole Board's letter says:

"The adoption and promotion of one generic tool oversimplifies the complex process of risk assessment which should be informed as appropriate by specific relevant assessment tools but should also involve wider evidence and expertise".

That emphasises the point that I am making. Amendment 75 would duplicate existing risk assessment processes across all forms of early release, and there are existing statutory provisions that require risk assessment for the purposes of HDC, temporary release and parole. I can provide more detail in writing if that would help the committee.

The obligation in amendment 75 to develop a risk assessment tool would sit alone; no corresponding duty would be placed on any organisation to use or have regard to the tool. It would create a duty to consult certain bodies, and the implication might be that those bodies should have regard to the tool.

Daniel Johnson: If amendment 75 and my amendment 134 were agreed to, would my amendment create a duty to carry out the risk assessment?

Humza Yousaf: That could be the case, but I will come to why the drafting of amendment 134 might be a bit of a problem.

Amendment 75 does not say it specifically, but it could imply that the named bodies were to have regard to the risk assessment tool. However, one body that would have to be consulted is the Parole Board, which is completely independent of the Scottish ministers. Any implication that it was bound by a risk assessment that the Scottish ministers developed could call that independence into question, which could give rise to a challenge to the board's decisions on parole under article 6 of the European convention on human rights, which is on the right to a fair trial. The fifth bullet point of the board's letter says:

"Mandating a single tool could be seen as tying the hands of independent bodies and reducing the effectiveness of decision making".

I know from public and private conversations with committee members that they greatly value the board's independence, as is right.

There are significant drafting concerns about amendment 134—some have been referred to—that mean that it would be unworkable if it formed part of the bill. First, the obligation in subsection (1) refers to the risk assessment of an individual prisoner rather than the risk assessment process as it applies to prisoners in general. The obligation could therefore require the Scottish ministers to assess the risk posed by one prisoner rather than to create a general risk assessment process, which is not the intention behind the amendment. Furthermore, the obligation in subsection (1) must be complied with only once in the six months immediately after commencement, as the amendment inadvertently refers to an individual risk assessment rather than a risk assessment process. The Scottish Government could therefore comply with the obligation by conducting one individual risk assessment six months after commencement.

In addition, although the amendment appears to be designed to relate to HDC only, the drafting could result in the amendment applying to all forms of release from prison, whether the prisoner was released on licence or otherwise. It is not clear whether subsection (1) would oblige ministers to conduct a risk assessment for the purposes of assisting the decision to release a prisoner or to assist the management of risk once a prisoner was released.

The amendments, I know, seek to address risk, and I understand the desire to put some of that on a statutory footing. Amendment 130, in the name of the convener, might provide the opportunity to address the issue of risk more broadly and, therefore, satisfy members' concerns. Amendment 130, which is in the next group, seeks to make the guidance on HDC statutory. I accept the principle that HDC guidance should have a statutory footing and should be laid before Parliament. The HDC

guidance contains a number of different components, including the purpose of HDC, but it also sets out detail on eligibility and the consideration to be taken in assessing risk.

If Daniel Johnson and Liam Kerr are minded not to press their amendments in the light of those concerns, creating statutory HDC guidance that is to be laid before Parliament, as the convener suggests, and including some of the elements of what has been discussed by both members will, I hope, allay some of their concerns about risk. I therefore extend to them the offer that I will make to the convener when we discuss amendment 130 with the next group, which is to work with them on a stage 3 amendment that will ensure that the guidance that covers HDC will be on a statutory footing and will include the provision on risk.

I therefore request that Daniel Johnson and Liam Kerr not press their amendments. If the amendments are pressed, I urge the committee to reject them.

Liam Kerr: I am grateful to the committee and the cabinet secretary for their comments.

I will deal first with some of the comments that have been expressed by committee members. John Finnie makes an important and interesting argument, but I do not accept it. I take the point about risk aversion seeming to have been introduced, but surely the most effective way of ensuring appropriateness, fairness and consistency is to set out clearly how we assess risk and what the benchmark will be. John Finnie is quite right to say that we cannot eliminate risk, but we can surely reduce it, and the best way to do that is through some form of test such as the one that I propose.

Fulton MacGregor said that my starting point is that no risk assessment is in place, and he said that there are systems in place already. Of course, that is quite true. However, Mr MacGregor suggested that we should place our trust in the systems that already exist. With respect, that is what we were doing before, and we saw the tragic consequences that arose from that.

Daniel Johnson: I agree with much of what the member has just said, and, in terms of what Fulton MacGregor said, I accept that there was not nothing in place previously. However, paragraph 6.6 of the HMIPS report states:

"Whilst an assessment process clearly existed, it may not be regarded by some to meet the definition of 'robust'."

It then goes on to state explicitly the terms under which a risk assessment should be established in order to address the issue. Does the member agree that that is what our amendments seek to do?

Liam Kerr: I do agree with that, and I am grateful for the intervention. That is exactly the point that I am making.

Fulton MacGregor: Will the member take an intervention on that point?

Liam Kerr: Yes, of course.

Fulton MacGregor: I hear the points that Liam Kerr and Daniel Johnson are making. When I spoke to the amendments, I said that, of course, the risk assessment process is not perfect. As John Finnie said, we are dealing with human beings. Where we disagree is on where the power to make changes should lie. I heard what the cabinet secretary said, and I think that he has made a reasonable offer of compromise on the next grouping. I encourage the members to accept it. Nobody is saying that the system is perfect, but we disagree on how the changes can be made.

Liam Kerr: I will deal with amendment 130 in a moment. Does Mr MacGregor accept the argument, made by me and Daniel Johnson, that we should not be placing our trust in the previous systems and that there is merit in moving forward and doing something different? If so, I suggest that agreeing to the amendments might be a way of doing that.

Fulton MacGregor: I do not agree with the premise. The current system already has scope for relevant changes to be made as required. However, it does need further work, as the cabinet secretary outlined.

Liam Kerr: I am grateful for that intervention. I will move on to the cabinet secretary's points.

The cabinet secretary referred to amendment 75 and noted that it would be difficult to design something that would cover all situations. I understand that point if we come at it from that end. However, I point him to subsection (2) of the amendment, which states:

"The purpose of the risk assessment tool is to assess the risk of an offender being at liberty to the safety of the public at large."

That is a very different approach, which does not narrow the tool down to a particular disposal or consideration; it says that it will assess the risk to the public at large if a particular offender is at liberty. That is an all-encompassing purpose, therefore I can deal with that objection.

I am grateful to the cabinet secretary for his offer in relation to amendment 130. I see the merit in that, but I again refer him to the purpose that is set out in subsection (2) of amendment 75, which is about assessing the risk of an offender—whatever they have done and whatever situation that they are in—

"being at liberty to the safety of the public at large."

That is the correct purpose, and that is the right end of the telescope for us to look through. For that reason, there is absolute merit in amendment 75, and I intend to press it.

The Convener: The question is, that amendment 75 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 75 disagreed to.

Amendment 134 moved—[Daniel Johnson].

The Convener: The question is, that amendment 134 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 134 disagreed to.

The Convener: Amendment 130, in my name, is in a group on its own.

Amendment 130 addresses the monitoring and evaluation of home detention curfews and licence conditions. I lodged it in response to findings from HMIPS in October 2018, which noted that where an individual's release on HDC was made subject to additional conditions—not just electronic monitoring conditions—there appeared to be no monitoring of compliance.

The Justice Committee concluded that it did not consider that situation to be acceptable and agreed with HMIPS that additional conditions need to be accompanied by monitoring arrangements that are agreed to in advance and clearly annotated on the licence. If that is not possible, the committee recommended that serious consideration be given to not granting release on HDC. In particular, the committee noted recommendation 9 of the HMICS report, which calls on the Scottish Government to develop statutory guidance on those issues. The committee then called on the Scottish Government to consider making provision in the bill

"requiring the Government to consult on, publish and maintain guidance setting out the roles and responsibilities of relevant agencies with regard to risk assessment and monitoring of conditions relating to the use of electronic tagging and monitoring."

10:30

Amendment 130 provides that

"Ministers must monitor compliance with—

(a) the curfew condition, and

(b) any additional condition imposed ... as part of the licence".

It also states:

"Where a condition ... has not been complied with, the Scottish Ministers may revoke the licence and return the person to prison."

More specifically, it provides that

"after ... this section comes into force, the Scottish Ministers must publish and lay before the Parliament guidance on monitoring compliance with the conditions".

It further provides that Scottish ministers must review the guidance and consult relevant bodies when doing the review.

I move amendment 130.

Daniel Johnson: I thank the convener for lodging the amendment. I believe that it is one of the most important amendments, because it goes to the heart of what went wrong in the tragic case of Craig McClelland. It directly addresses one of the most important points that were made in the reports by HMIPS and HMICS. If conditions are applied to people who are released on HDC, it is vital that those conditions—and any issues that are flagged in risk assessments—are monitored. That monitoring was not taking place, which is why the amendment is so critical and why I will support it.

I will touch briefly on the points that the cabinet secretary made in the debate on the previous group. I agree that amendment 130 goes some way towards addressing those points, but I do not believe that the monitoring of conditions is a substitute for addressing risk management. Nonetheless, given that the amendments on risk assessment were not agreed to, amendment 130

is absolutely vital to the bill; without it, the bill will be seriously deficient.

Rona Mackay: I understand the motivation behind the amendment, and I agree with Daniel Johnson. My reservation is that the amendment almost replicates existing legislation. Monitoring is already possible under existing legislation and the bill already gives ministers responsibility for monitoring arrangements. It would be helpful if something could be worked out in relation to the wording to accentuate and strengthen the point. However, if we agree to the amendment, we would just be replicating existing legislation.

Humza Yousaf: I have huge amounts of sympathy for large parts of amendment 130. The duty to monitor compliance with HDC conditions and the power to revoke an HDC licence if those conditions are breached are already provided for in existing legislation. However, there is some merit in the creation of statutory HDC guidance.

In October 2018, HMICS and HMIPS made recommendations in their reports on HDC in relation to the need for "an extensive review" of HDC guidance. That work has started, but it will not be concluded until we are able to take account of the changes that will be made through the bill, such as the changes to the recall powers.

We should bear in mind that placing HDC guidance on a statutory footing would not materially change the obligations that are placed on Scottish ministers or on the organisations that are tasked with delivering the HDC regime. The nature of guidance is that it is not binding, even if a duty is placed on certain persons to have regard to it. However, the statutory guidance that is prepared by Scottish ministers would require to be aimed at the criminal justice organisations that are involved in delivering HDC. As drafted, amendment 130 does not place any duty on the criminal justice organisations that are involved in delivering HDC to have regard to the guidance.

The amendment would require Scottish ministers to produce guidance that covers the monitoring of compliance with HDC licence conditions, which are just one element of the HDC scheme.

Scottish ministers already provide guidance for a range of roles and functions that are performed by different justice partners in the administration of HDC that covers more than just monitoring, and it might be possible that that guidance could form the basis of the statutory guidance that the convener is seeking.

If the convener is content not to press her amendment 130, I am happy to work with her—and, as I have said in previous discussions, with Liam Kerr and Daniel Johnson—to develop for stage 3 an amendment that would require Scottish ministers to produce statutory guidance on the administration of HDC more generally. That might address concerns that members have expressed about other aspects of HDC, such as pre-release or, indeed, post-release risk assessment.

The Convener: Amendment 130 is really important, given that, in the past, compliance with licence conditions was just not being monitored. It does not get any more serious than that, and the amendment reflects the seriousness with which the committee has taken the issue and, notwithstanding Rona Mackay's comments, the recommendations that we have made.

On that basis, I am minded to press the amendment. However, whether it is agreed to or not, if it contains any deficiencies, I will gratefully take up the cabinet secretary's offer to work with him on it for stage 3.

The question is, that amendment 130 be agreed to. Are we all 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 130 disagreed to.

The Convener: Amendment 133, in my name, is in a group on its own.

Amendment 133 seeks to amend the Criminal Procedure (Scotland) Act 1995 by imposing particular conditions on restriction of liberty orders by seeking to clarify and give a better understanding of the precise location or area covered by exclusion zone conditions. Exclusion zones place restrictions on an abuser's ability to access specific locations where their victim might be found, and the amendment gives examples of such locations, including the offender's home, their child's school or their partner's or ex-partner's workplace. The amendment also provides for other "named locations or areas" to be specified. The amendment is particularly applicable to perpetrators of domestic abuse, as it seeks to prevent such offenders from causing further distress to their victims by excluding them from various locations and places where they could confront or harass their victims.

I move amendment 133.

Rona Mackay: Again, convener, I understand why you have lodged the amendment, which might relate to concerns expressed by Scottish Women's Aid about the use of global positioning system technology. However, as drafted, amendment 130 does not actually say that. At the moment, the court can designate a specified place from which an offender is excluded, but the amendment might actually have the effect of restricting the places from which the court can exclude an offender. I know that that is definitely not the intention behind the amendment, but the drafting is just a bit problematic.

I completely understand and have utter sympathy with the concerns raised by Scottish Women's Aid, and, as I have said, I know that addressing them is the intention behind the amendment. However, I just do not think that the amendment is clear enough or sets things out well enough, and it might have unintended consequences.

Fulton MacGregor: I feel the same. I do not mean to be disrespectful by any means, convener, but although I get the sentiment behind the amendment, I do not understand the intended effect. Whether it is rejected or agreed to, as we move towards stage 3, I would like to hear exactly what Women's Aid thinks about it and how the organisation's intention can be met.

I wonder about unintended consequences. For example, the amendment is based on concerns around domestic abuse that have been raised by Women's Aid. The criminal justice system works day in and day out to manage the issues with restriction of liberty orders that already exist in relation to coercive control, for example.

I am really unsure about amendment 133 and I am interested to hear what the cabinet secretary has to say about it, particularly if it is to come back at stage 3.

The Convener: I will make a point before I bring in the cabinet secretary because it might be helpful to him.

Exclusion zones can be very wide. A zone could be Glasgow-wide, for example. Amendment 133 tries to give examples. It does not, as Rona Mackay said, state that a place must be an exclusion zone; it concentrates on places where an exclusion zone might be targeted and seeks to bring some clarity and conciseness to the situation, which can only help victims.

Fulton MacGregor: That is exactly my point, convener. I do not know whether the argument that you are making is necessarily in the best interests of the victims of these offences. I am not saying that it is not in their best interests, but at this stage, I would need a lot more information before I could vote for amendment 133.

Humza Yousaf: I was interested to hear about the intent behind the amendment, convener. You continue to take a consistent approach to defending the rights of victims—particularly victims of domestic abuse—so I completely understand the intent behind some of what you are trying to achieve. I am just not convinced that amendment 133 is necessary or that ministers require an additional ability to prescribe specified places. I will try to reassure you that the courts already have the necessary powers and that therefore there is no need for you to press the amendment.

Courts are already able to restrict people on a restriction of liberty order from being in or going to a broad range of types of specified place; they already do so under the current radio frequency service. People can currently be restricted from a partner's house. It does not have to be a wide geographic location when it comes to electronic monitoring; it can be a specific place. Under the current service, courts have used electronic monitoring to make local supermarkets a specified place to deter persistent shoplifters, for example.

Section 245A(2) of the Criminal Procedure (Scotland) Act 1995 says:

"A restriction of liberty order may restrict the offender's movements to such extent as the court thinks fit and, without prejudice to the generality of the foregoing, may include provision—

(a) requiring the offender to be in such place as may be specified for such period or periods in each day or week as may be specified;

(b) requiring the offender not to be in such place or places, or such class or classes of place or places, at such time or during such periods, as may be specified".

Those are already broad powers.

The GPS monitoring capabilities, when introduced, will simply change the ways in which specified places are monitored. We do not see any need to change how specified places are defined. Indeed, there is a significant risk that, in seeking to prescribe the places that can be specified in a restriction of liberty order, amendment 133 might be seen as limiting the power of the court to specify only those places that are prescribed.

We are unsure why the ability to prescribe the places that may be specified in a restriction of liberty order, if that were to be beneficial, would not extend to other forms of electronic monitoring such as monitoring of licence conditions or of sexual offences prevention orders. Overall, the bill has largely sought to leave untouched the underlying orders that can be electronically monitored, as to do otherwise risks opening up a number of unintended consequences that we have not had the opportunity to consider as part of the

evidence taken on the bill to date. On that basis, I cannot see a clear benefit from the amendment, although I completely respect, sympathise with and understand the intent behind it.

My officials have had conversations with a number of organisations that represent women, particularly victims of domestic abuse, and although they have raised concerns about the bill, I understand that they have a detailed understanding of what can be done under current legislation with restrictions through electronic monitoring.

I urge Margaret Mitchell not to press amendment 133; if the amendment is pressed, I urge the committee to reject it. If the amendment is rejected, I am more than happy to work with Margaret Mitchell—and any other members or stakeholders—before stage 3 to give her confidence that we have in place the necessary powers to protect vulnerable individuals, particularly victims of domestic abuse.

10:45

The Convener: This is an area in which all members work together for the greater good. Amendment 133 would provide flexibility—a specific place could either be prescribed or not. I note that the cabinet secretary said that the amendment might be unduly restrictive on offenders but, currently, exclusion zones can be citywide, which is not the most effective use of the provision in protecting the victim or treating the offender in a proportionate way.

I am minded to press amendment 133. My attitude to sexual offences is that we do as much as possible and take a belt-and-braces approach, which amendment 133 provides for. There will be an opportunity before stage 3 for relevant organisations to come forward if they have any doubts or reservations about the amendment. No one has come forward with such doubts since I lodged it, although that is not to say that that will not happen before stage 3.

If the amendment falls, I will very willingly take up the cabinet secretary's kind offer to work with me to see whether something else could be put in at stage 3. However, as it stands, I think that it is a good amendment that would increase protection for all victims, particularly victims of sexual offences. I press amendment 133.

The question is, that amendment 133 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 133 disagreed to.

Section 48 agreed to.

Section 49—Commencement

Amendment 72 not moved.

The Convener: Amendment 76, in the name of Liam Kerr, is grouped with amendments 76A and 80.

Liam Kerr: My view is that monitoring and responding swiftly and visibly to breaches are essential to public safety, and I am sure that the committee accepts that proposition. However, monitoring and swift and visible responses require sufficient resources to be in place, so amendment 76 would require the Scottish ministers to prove that resources are in place before the bill comes into force.

When considering various amendments at stage 2—for example, amendments 78 and 131—we have talked, rightly, about the need for resources. Many aspects of the bill will be resource intensive, so we must get it right. The implication of voting down amendment 76 is that we do not think that we should ensure that resources are in place before passing the bill. That would be somewhat irresponsible and it is not a course that I commend to the committee.

I will support amendment 76A, in the name of Daniel Johnson, as it provides extra clarity to amendment 76, for which I am grateful.

Amendment 80 would set a threshold for community payback order completion rates. What the Scottish Government is proposing in the bill will result in the considerable expansion of the use of community sentences and, in particular, community payback orders. That comes at a time when—the cabinet secretary will clarify my statistics if I am not spot on, but I think that I am—three in 10 community payback orders are not completed. Given that context, amendment 80 requires a modest improvement to the completion rate for community payback orders in the criminal justice social work statistics.

Fulton MacGregor: In his preparation for today's proceedings, did the member give any thought to, or do any research on, some of the reasons why community payback orders are not completed, or is he interested simply in the statistic of three in 10?

Liam Kerr: Of course I have done research on why CPOs are not being completed. However, the bald fact is that the completion rate for CPOs stands at 69.7 per cent, which is a rate that has remained virtually unchanged for around three years. What I am suggesting through amendment 80 is that if we do not have a basic improvement in that completion rate—if we do not have a threshold and hold ourselves to a higher standard—we can have no confidence that community payback orders are a robust alternative to prison sentences and, perhaps more important, neither will the Scottish public.

Daniel Johnson: I have a great deal of sympathy with what the member says about ensuring that non-custodial sentences and community payback orders are effective and seeking improvements in that regard. However, does setting a hard threshold not run the risk of creating aversion from such sentences, which would run counter to the intent behind setting the threshold? What is the rationale for choosing a threshold of 80 per cent?

Liam Kerr: I do not accept that setting a hard threshold would prevent our holding ourselves to a high standard. If such a threshold caused aversion to using CPOs, then that should be the right thing to do, because CPOs are clearly not working. Three in 10 are never completed and, unless we hold ourselves to a higher standard—

John Finnie: Will the member take an intervention?

Liam Kerr: Yes.

John Finnie: I am not minded to support amendment 80, as I am sure you would predict. However, can you share the extent to which the information that you gleaned explains why there is that level of non-completion? What did you learn are the important factors in that?

Liam Kerr: For a start, I go back to the point about resourcing that I made for amendment 76. Although I hesitated to say that they are underresourced, Mr Finnie is well aware that an awful lot of the agencies that are in place to help people and assist them in completing various programmes have suggested that their funding models and the amount of funding that they get preclude there being a higher completion rate in the programmes. All that information is out there and perfectly available.

Returning to Daniel Johnson's point about why I propose a threshold of 80 per cent, I say that it would set a higher standard but would be only a modest increase, as it would be only about 10 per cent higher than the current completion rate of 69.7 per cent. I suggest that we need to give the public confidence that the increased use of community payback orders is the right thing to do. As part of the evidence that the committee has heard, Victim Support Scotland told us that communities have no faith in community sentencing. My view is that amendment 80 could help to address that situation, because the data would show that community sentences are robust and genuine alternatives.

Anticipating where the cabinet secretary will go on this matter, I accept that the rehabilitation of criminals is vital, but it must never override public safety or real justice for victims of crime. Community sentences therefore have to be robust, intensive and strictly monitored. If we do not push for the improvement of completion rates, we send out the message that it is acceptable for three in 10 offenders on community payback orders to go unpunished, unrehabilitated and undeterred.

I accept that a threshold of 80 per cent puts pressure on the system to deliver—that picks up on Daniel Johnson's point. It also puts pressure on us to be confident that it is right to put more people into that system and that the system can cope. However, I am sure that that is an appropriate principle and I am sure that the committee will vote for that.

I move amendment 76.

Daniel Johnson: Amendment 76 is welcome because much of what is contained in the bill is reliant on resourcing. We have discovered from the evidence that we have taken and from the tragic events that have occurred that interagency working is particularly important. I concluded that the police and local authorities have a pivotal role in ensuring the ability to monitor conditions and carry out the regimes, so the resourcing of those bodies is hugely important, and that is why I felt that it was important to specify them in amendment 76. It is all well and good to put obligations and duties on bodies, but it would be dangerous not to provide them with the resources to carry out those duties.

I have a brief point to make on amendment 80. Legislation should avoid being anachronistic. I think that Mr Kerr is not being ambitious enough. I would hope to get to a point where 80 per cent is an absurdly pessimistic threshold for the completion of community payback orders. I say that partly in jest, but partly because it is potentially unhelpful to set an arbitrary threshold that we should be seeking to move well past.

I agree with the sentiment that we must look to measures to improve the effectiveness and success of the orders, but I do not believe that amendment 80 does that.

Liam McArthur (Orkney Islands) (LD): I entirely agree with Liam Kerr that the issue of resources will be intrinsic to the success of the measures that the bill introduces. However, I depart from him entirely in the suggestion that voting against amendment 76 would somehow send a signal that the committee does not subscribe to that view.

We will all have debates at various stages about whether different aspects of the criminal justice system are properly resourced. However, I cannot see the benefit of amendment 76, albeit with the clarification from Daniel Johnson. We will have robust discussions on the resourcing of different elements of the criminal justice system, which is right and proper. However, as a result, we will all take a different view on whether the community measures are appropriately resourced. Agreeing to amendment 76 would put us at serious risk of leaving ourselves in suspended animation and being unable to implement any measures at all.

Liam Kerr: I understand the point that the member makes. How does he propose to ensure that there are sufficient resources in place and that someone is making an assessment of that, using whatever threshold we decide?

Liam McArthur: We will use the powers that we have as parliamentarians to hold the Government to account. There is a financial memorandum attached to the bill, which should give effect to the bill's provisions, and we have an opportunity at every budget cycle to hold the Government's feet to the fire. If areas of the criminal justice system are not appropriately resourced, it is up to us to take the Government to task, based on the evidence that is available.

I suspect that we will see patchy, inconsistent application of community-based measures across the country. That will be the result of a variety of factors, some of which may be to do with resources and some of which may be to do with the attitudes of individual sheriffs and judges. We will continue to have that debate, but it would not be aided by the committee passing amendment 76.

11:00

On amendment 80, I agree entirely with Daniel Johnson. It locks us into a self-defeating exercise, and as for the notion that three in 10 of those on CPOs are, as Mr Kerr continues to say, unpunished, unrehabilitated and undeterred, I think that, on the basis of the evidence that he has presented to the committee to substantiate his claims, it is hard to fathom and hard to justify. Putting that kind of rigidity into the bill runs counter to what we know to be the case, which is that, very often, a period in prison is self-defeating as far as rehabilitation and reducing reoffending are concerned.

I cannot understand the logic behind amendment 80, and I will certainly be voting against it.

Fulton MacGregor: On amendments 76 and 76A, Liam McArthur has already highlighted the points that I wanted to make, and I will not be supporting them.

I want to concentrate my remarks on amendment 80. I am sorry, but I have to tell my colleague Liam Kerr that I honestly just cannot fathom it. It shows not only a complete disregard for the criminal justice system, particularly the social work aspect of it, but perhaps even a lack of understanding of it. First, he wants to play a numbers game. Some people might argue that 70 per cent is a pretty good success rate, given what some individuals who find themselves in these situations are having to deal with.

Mr Kerr did not answer the questions that John Finnie and I asked about the reasons for not completing these orders, so I will give him some. People are having to deal with very complex mental health difficulties, very complex drug and alcohol difficulties or very complex issues of poverty, such as having to go to food banks or being in the throes of austerity. All those things need to be taken into account, and it does not help in the slightest simply to throw out figures.

On the issue of moving from 70 to 80 per cent—

Liam Kerr: Will the member give way?

Fulton MacGregor: I will make a wee bit of progress, and then let Liam Kerr in. I should point out that he will also have the chance to sum up.

On moving from 70 to 80 per cent, why, as Daniel Johnson has asked, is Liam Kerr not going for 100 per cent? Then, at least, his argument would be consistent.

Liam Kerr: Of course I understand the reasons that the member has highlighted, but my point is that statistics show that 69.7 per cent of orders are completed. I do not understand why we do not have the ambition, coupled with proper resources, to say that the situation could and should be better before we start pumping more people into the system.

Fulton MacGregor: That is where Liam Kerr is showing a lack of understanding of the system. If we are to give people the opportunity to be rehabilitated in the community, which I think that everyone around the table is supportive of and on

which a lot of work is being done in our communities and through the Scottish Government, we have to understand that the patterns of offending are complex and are linked with some of the issues that I have already highlighted.

I strongly encourage Liam Kerr not to move amendment 80, because I think that he has got the whole mood totally wrong. Even just talking like this sends us down a dangerous road for community justice. I know Liam personally, so I know that that is not his intention, but I have to say that it represents the start of a slippery slope down to the removal of community justice as a key feature of what the Government is doing. I cannot fathom why he has gone down this road, and I will definitely—100 per cent—not be supporting it.

The Convener: I remind members that our stage 1 report said:

"in relation to financial matters, the Committee emphasises that an increased use of electronic monitoring will only be successful if adequate budgets are put in place for criminal"

justice

"social work and the wider services that support people subject to such monitoring. These include help with housing, employment"

and so on.

"A failure to make available sufficient resources will hinder the effective use of electronic monitoring, failing the individuals involved and potentially increasing risks to the wider society. Additional resources may also be required to keep any use of electronic monitoring compliant with ... data protection rules."

It seems to me that this amendment is about that resourcing. Key to the legislation's success is ensuring that adequate resources are put in place for things such as community payback orders; indeed, that was made clear to us even before we began our scrutiny of the bill.

In an ideal world, we would want 100 per cent compliance but, as Fulton MacGregor said, there are reasons why we do not get that. It could be unintended consequences. It could be because people have drug addictions or live chaotic lifestyles. However, in seeking to give a community payback order, I would expect all the circumstances of the individuals who are being considered to be known and provided for. We are not setting them up to fail, although I am afraid that that is what is happening at the moment, and resources are very much a reason for that failure.

These amendments are key to ensuring that people are not set up to fail and that the legislation will work as it is intended to work. As Daniel Johnson said, to do that, we need the co-operation of intergovernmental agencies and organisations, and voluntary organisations, all of which must be adequately resourced.

Humza Yousaf: I thank members for their explanations of their amendments. It will be no surprise to them, however, that I do not support the amendments and will ask for them not to be pressed. That was a really good discussion to listen to—in particular, the points that were made by Liam McArthur and Fulton MacGregor.

I will go into some of the substance of the amendments, but before I do that, perhaps I can talk about amendment 76 making commencement regulations subject to affirmative procedure. That is not the correct approach. Commencement regulations are typically not subject to procedure for good reasons of principle and practice. Parliament considers, scrutinises and debates the provisions of the bill during its passage through Parliament. It would not be useful to have that debate again using subordinate legislation procedure. Commencement regulations are a mechanism for giving effect to legislation that Parliament has already passed. Commencement regulations do not contain policy changes but are tools to deliver the policy that is contained in a bill.

To constrain the Scottish ministers' powers to commence parts of legislation that Parliament has already approved strikes at the core of any act. It is extremely rare in statute to have placed on ministers a requirement for commencement. The placing of any condition on commencement would mean that there was a risk of putting in jeopardy potentially all parts of the bill, including on issues such as parole and spent convictions that seem to be unrelated to the policy that is being linked to amendment 76 on commencement.

To seek to tie commencement to community payback order completion rates is an approach that I find unusual. I understand the desire of Liam Kerr and other members to see greater rates of completion. I am also committed to that, but I thought that Fulton MacGregor's intervention was particularly well made, and articulated very well how anybody who has spoken to people who deliver community payback orders will know that they often deal with people who have chaotic lifestyles. People who have had chaotic lifestyles, who have gone through a CPO and have managed to transform their lives and be rehabilitated—I have spoken to many of them—will tell you that their journey was not linear. It can often be one step forward and two steps back, and can have peaks and troughs.

I will come back to the point about resources, but to believe that simply throwing money at the problem will see increased completion does not, I am afraid, take account of the evidence or the lived experience of people who have gone through CPOs.

The Convener: It is not about "throwing money" at it. What I am talking about would go beyond that to provide support and personnel for when it looks as though people are failing, in order to get on top of that at the first available opportunity. It is about making the necessary arrangements to adjust the terms of a community payback order to ensure that the person can comply. Such provision is not available at the moment, and that is often because criminal justice social work and others who do monitoring do not have the resources to do it.

Humza Yousaf: I respectfully disagree on a couple of points. It is important for me to say that we have ring fenced the budget for criminal justice social work. Also, in advance of passing the presumption against sentences shorter than 12 months, we have increased the budget for local authorities to address that issue.

However, even if we were to double the money that went into the hands of those who deliver community payback orders, there would still be some people who would not complete them because of their chaotic lifestyles, as was articulated well by Fulton MacGregor. I do not devalue the desire for improvement in completion rates for community payback orders, but amendment 80 is not the way to achieve that.

The Convener: Just recently, the Government announced additional funding for prison mentoring. Was that an example of

"throwing money at the problem"

or of addressing the issue and making sure that legislation is working to encourage rehabilitation?

Humza Yousaf: I am not suggesting that there is not an issue around resources. Understandably, people will always want more resource, so resource is a part of the issue. I am simply making the point that, even if we were to double or quadruple the budget, there would still be people who do not complete their CPOs because of their chaotic lifestyles—as was articulated well by Fulton MacGregor—and because rehabilitation is not always a linear journey. That is not a reason to dismiss the entire system. I respect that Liam Kerr and the convener are not doing that, but amendment 80 is the wrong approach to take. Placing a condition on commencement in relation to CPO completion rates is not the correct approach, in general.

In respect of the framing of amendment 80, there are some issues that would make it unworkable in practice. It would prevent commencement until the Statistics Board, which has functions and powers under the Statistics and Registration Service Act 2007, produced and published statistics on CPO completion rates. Crucially, the board is not required to produce statistics on CPO completion rates, and the 2007 act does not enable us to compel the board to produce such statistics, which could mean that we would be prevented from commencing, even if the Scottish Government's own statistics showed the requisite levels of CPO completion rates.

Amendment 80 would also make commencement contingent on the Scottish Government placing before Parliament a report setting out why we consider that sufficient resources are in place for the other provisions. Parliament has already considered and approved the financial resolution for the bill, and we have discussed the uncertainty that always exists when justice services have to interact with sentencing, which is necessarily dependent on the behaviour of those who pass sentences.

In the financial memorandum, we set out illustrative costs that would apply and would depend on how electronic monitoring is used by courts. We have set out the budget increases that we have made in this area, including for social work services and the electronic monitoring budget line. We have also made it clear that development of the service will be done through piloting new technologies. At the point of setting up pilots, we can consider the specific funding that might be required to enhance and roll out services further.

There is an important principle, which Liam McArthur touched on, about not seeking to separate out budget allocations in that way. It is the responsibility of the Scottish Government to allocate its budget across all policy and legislative commitments, and the annual budget process allows detailed scrutiny of decision making, in that respect. Seeking to separate out and consider budgetary provision act by act would be a departure—but not a welcome one—from that established practice.

Amendment 76A seeks to assess the impact of provisions prior to commencement. That, too, seems to put at risk commencement of some elements of the bill that have hitherto enjoyed positive support from members. The bill process is how Parliament assesses anticipated impacts. Requiring the Scottish ministers to assess actual impacts as a condition of commencement seems to be an almost impossible condition to fulfil and would prevent any part of the bill from being commenced.

I urge members not to press the amendments in the group and I ask the committee to vote against them if the amendments are pressed.

Liam Kerr: I am grateful to committee members and the cabinet secretary for their comments, which have provided much food for thought. Having said that, I will address a couple of important points.

First, the cabinet secretary referred to Liam McArthur's point about the annual budgeting process. I understand the point, but I do not accept that the process necessarily works. If it did, there would not be departments and services saying that they simply do not have enough funding—and saying it consistently, every year. I accept the point, but I am not convinced that it is a reason not to accept amendment 76.

11:15

Liam McArthur: I was not arguing that we do not have a responsibility to monitor the situation and hold the Government to account—probably through the annual budget cycle. As I did at stage 1, Liam Kerr voted in favour of the bill, along with the financial memorandum, which expresses the estimated costs. As the cabinet secretary said, there is an element of estimation that can be borne out only once legislation meets reality. At that point, it will be incumbent on the Justice Committee, in particular, to hold the Government to account and ensure that the necessary resources are in place. However, it seems to me that an amendment that would front load the process is the wrong way to do that. That would also be a departure from the vote at stage 1, in which Parliament accepted the financial memorandum.

Liam Kerr: I am grateful to Liam McArthur for those comments. I will muse on them as I speak to amendment 80.

A more substantive point was made by Fulton MacGregor, who suggested that amendment 80 would be

"a slippery road down to the removal of community justice"

I fundamentally reject that point. He said it as though that would be my personal preference, so I will respond on that basis. I absolutely support community justice. My point is absolutely simple: we must resource community justice properly, otherwise we are, as the convener said, setting it up to fail. Whatever "resource" is taken to mean—whether it is financial or relates to provision—we will set up community justice to fail if we do not properly resource it.

I lodged amendment 80 because I believe that we can do better. If we support community justice properly and improve the outcomes before we introduce further electronic monitoring, we can hold ourselves to a higher standard. I am fully in support of community alternatives, but we must fund them properly to ensure that they are the right interventions for the challenges—which was raised by Fulton MacGregor and John Finnie—and so that we deal with the chaotic lifestyles that the cabinet secretary referred to in order to ensure that the outcomes are increasingly delivered.

Fulton MacGregor asked why I did not set the completion level at 100 per cent. The cabinet secretary answered that point correctly and succinctly: some people will not complete CPOs and there will be some people who cannot complete them. He was absolutely right to say that.

Fulton MacGregor: I want to make it clear that when I spoke earlier, I said that I did not think that Mr Kerr personally wants to dilute community justice in Scotland. However, I make the point again that that is where everything starts—at the level of policy, ideology and changes. I predict that even talk at a committee such as ours could start to dilute the importance of community justice and lead to more punitive approaches. That is my view on the direction of amendment 80.

Of course criminal justice social work must be fully funded. Criminal justice social work has been funded even in a climate of diminished Government funding capacity. Most people in the criminal justice sector believe that there has been a reasonable settlement.

Humza Yousaf: The point that Fulton MacGregor made about ring fencing of the budget for Community Justice Scotland is correct and there is additional money for the electronic monitoring line in the budget. Does Liam Kerr have in mind a figure that would satisfy him that the partners who deliver our community sentences have sufficient resource?

Liam Kerr: No, I do not have a figure in mind, because that exercise would require the resources of the Scottish Government to assess the landscape, the requirements of the sector and what needs to be put in place. For the Government to say, "This is what we need. These are the specific resources—cash, discipline, personnel—to deliver the service and the extra 10 per cent uplift" is what my amendments cry out for.

I hear what Fulton MacGregor said. He concluded, and is concerned that, the possible consequence of the amendments in the group would be that they would

"dilute ... community justice and lead to more punitive approaches."

I argue that the effect would be the exact opposite of that. I think that we agree that the right approach to take is exactly contrary to that position.

I have listened carefully to the debate on my two amendments. I will speak first to amendment 80, about which the cabinet secretary made the practical point—if I heard him right—that it would, if agreed to, prevent crucial sections of the act being commenced by virtue of the unlikely, but possible, event that the Statistics Board did not

produce statistics that it is not mandated to produce. I am persuaded that that challenge is reasonable, so for that reason it would not be competent for me to press the amendment.

The Convener: We will come to that when we deal with your amendments. Daniel Johnson will wind up on amendment—

Liam Kerr: I have not dealt with amendment 76, which concerns resources. Again, I have listened to the debate closely and listened carefully to what Liam McArthur said. He made a reasonable and good point, on which I would like to have more time to muse. At this stage, I think it best that I do not, if I am so permitted, press that amendment.

The Convener: Daniel Johnson will wind up on amendment 76A.

Daniel Johnson: I press amendment 76A.

The Convener: The question is that amendment 76A 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 76A disagreed to.

Amendment 76, by agreement, withdrawn.

Amendment 80 not moved.

Section 49 agreed to.

Long Title

Amendments 68 to 70 not moved.

Amendment 127 moved—[Humza Yousaf].

The Convener: The question is, that amendment 127 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Mitchell, Margaret (Central Scotland) (Con)

Against

Finnie, John (Highlands and Islands) (Green)

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

Amendment 127 agreed to.

Long title agreed to.

The Convener: That ends stage 2 of the Management of Offenders (Scotland) Bill. The bill will now be reprinted as amended at stage 2.

Parliament has not yet determined when stage 3 will be held; members will be informed of that in due course, along with the deadline for lodging stage 3 amendments. In the meantime, stage 3 amendments can be lodged with the clerks in the legislation team.

I thank the cabinet secretary and his officials for attending.

11:25

Meeting suspended.

11:29

On resuming—

Justice Sub-Committee on Policing (Report Back)

The Convener: Item 3 is feedback from the meeting on 4 April of the Justice Sub-Committee on Policing. Following the verbal report, there will be an opportunity for members to make brief comments or ask questions. I refer members to paper 1, which is a note by the clerk, and invite John Finnie to provide that feedback.

John Finnie: Thank you, convener. The committee has a feedback note on the most recent meeting of the sub-committee, which was a private meeting on Thursday 4 April.

The sub-committee considered and agreed a report on Police Scotland's proposal to introduce use of cyberkiosks throughout Scotland. That report was published on Monday 8 April and a copy was provided to members of the Justice Committee, for information.

The sub-committee also agreed its work programme up to the summer recess. It agreed to invite Police Scotland and the Scottish Police Authority to give evidence on the cyberkiosks report at its next meeting on Thursday 9 May, and to invite the Cabinet Secretary for Justice to give evidence in early June.

Finally, the sub-committee agreed to begin its pre-budget scrutiny of the Scottish Government's 2020-21 draft budget by taking evidence in late May on the policing capital budget.

The Convener: Thank you. Do members have any questions? The report is an important piece of work. The sub-committee has excelled itself in scrutinising the matter and potentially avoiding all sorts of problems.

Liam McArthur: I agree. At the outset, it was not entirely clear where we were going to end up, but the sub-committee has demonstrated its value in recent months.

The recent headlines about some of the questions that are being raised about use of similar technology south of the border perhaps give the sub-committee an opportunity to share with our counterparts in the House of Commons work that we have been doing. It would, I am sure, be of interest to colleagues there.

The Convener: That is an excellent idea. As convener of the sub-committee, does John Finnie want to add anything to that?

John Finnie: No. It is an excellent proposal. Many such issues are dealt with United Kingdom wide, so referring the work to the House of Commons would be helpful.

The Convener: That concludes the public part of today's meeting. The committee will undertake a fact-finding visit to Kilmarnock prison next week, so our next meeting is on Tuesday 14 May.

11:32

Meeting continued in private until 12:01.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

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

The Scottish Parliament
Pàrlamaid na h-Alba