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Tuesday 25 June 2019

CONTENTS

	Col.
TIME FOR REFLECTION	1
TOPICAL QUESTION TIME	3
Income Tax	3
Specialist Mental Health Support (Children and Young People).....	6
Dental Treatment (Waiting Times).....	8
EDUCATION REFORMS	10
<i>Statement—[John Swinney].</i>	
The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney).....	10
BUSINESS MOTION	22
<i>Motion moved—[Graeme Dey]—and agreed to.</i>	
MANAGEMENT OF OFFENDERS (SCOTLAND) BILL: STAGE 3	23
MANAGEMENT OF OFFENDERS (SCOTLAND) BILL	112
<i>Motion moved—[Humza Yousaf].</i>	
The Cabinet Secretary for Justice (Humza Yousaf).....	112
Liam Kerr (North East Scotland) (Con).....	115
Mary Fee (West Scotland) (Lab)	117
John Finnie (Highlands and Islands) (Green).....	120
Liam McArthur (Orkney Islands) (LD).....	121
Rona Mackay (Strathkelvin and Bearsden) (SNP)	123
Maurice Corry (West Scotland) (Con)	125
James Kelly (Glasgow) (Lab)	127
Jenny Gilruth (Mid Fife and Glenrothes) (SNP).....	128
Daniel Johnson (Edinburgh Southern) (Lab).....	131
Margaret Mitchell (Central Scotland) (Con).....	133
Humza Yousaf	135
SCOTTISH PARLIAMENTARY CORPORATE BODY	138
DECISION TIME	140
AIRCRAFT NOISE (HEALTH)	142
<i>Motion debated—[Gil Paterson].</i>	
Gil Paterson (Clydebank and Milngavie) (SNP)	142
Jeremy Balfour (Lothian) (Con)	145
Rona Mackay (Strathkelvin and Bearsden) (SNP)	147
Neil Findlay (Lothian) (Lab)	148
Mark Ruskell (Mid Scotland and Fife) (Green)	150
Angus MacDonald (Falkirk East) (SNP)	152
The Minister for Energy, Connectivity and the Islands (Paul Wheelhouse)	154

Scottish Parliament

Tuesday 25 June 2019

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

Time for Reflection

The Presiding Officer (Ken Macintosh): Good afternoon. Our first item of business this afternoon is time for reflection, for which our leader is the Reverend Lorna Souter, minister for Cockpen and Carrington parish church with Lasswade and Rosewell parish church.

The Rev Lorna Souter (Cockpen and Carrington Parish Church, and Lasswade and Rosewell Parish Church): Presiding Officer and members of the Scottish Parliament, thank you for the opportunity to address you this afternoon.

We seem to have been living through frustratingly uncertain times for a long time now. Always in life, there is a question of how we cope with uncertainty. In his book “Canoeing the Mountains”, the American writer Tod Bolsinger uses the example of the American explorers Meriwether Lewis and William Clark, who in 1804 embarked on their search for the north-west passage.

After spending 15 months paddling and carrying canoes up the Mississippi-Missouri river to its source, Lewis and Clark were full of expectation that they were about to realise the dream of centuries of pioneers. They believed that all they and their party had to do was to walk up the little hill in front of them and look down a gentle slope—which would take them a half day to cross with their canoes on their backs—and they would see the Columbia river, which would swiftly whisk them to the Pacific Ocean and the climax of their quest. However, in the next moments, what they actually found was something entirely different. They found the Rocky mountains, stretching out for miles and miles as far as the eye could see, one set of peaks upon another.

What was next for them? They were going to have to go off the map into uncharted territory. All was uncertain. They might have felt like giving up and turning back, but they did not. Instead, with courage, resilience, openness and versatility, they kept going. The true adventure had just begun.

In the church, too, we face uncertain times at present, having to head into uncharted territory as we explore new ways of being and doing church today. It can seem daunting and, in the Lord’s leading, we need courage and versatility to press on.

In our wider uncertain times, I dare say that there are moments when you want to put head in hands and wonder, “What next?” However, I pray you will each know the courage, resilience, openness and versatility that you, too, will need to pursue paths of potential ahead. Before then, may you each, importantly, be able to make space for true rest in the recess, to recharge your batteries and be refreshed for your task ahead. Thank you.

Topical Question Time

14:03

Income Tax

1. Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): To ask the Scottish Government what its forecast is for income tax growth in the coming years. (S5T-01728)

The Cabinet Secretary for Finance, Economy and Fair Work (Derek Mackay): The Scottish Government does not produce its own income tax forecasts. The independent Scottish Fiscal Commission publishes its official forecasts of Scottish income tax receipts twice per year, and has done so since December 2017. The SFC forecasts annual income tax receipts of £11.5 billion in 2018-19, growing to £14.6 billion in 2024-25, which is an increase of £3.1 billion.

Rachael Hamilton: Scotland collects its own income tax, which means that it is more dependent on its own economic performance. The Institute for Public Policy Research suggests that if the tax projections are correct, the Scottish economy could lose £1.8 billion over the next five years through income tax growth that is weaker than in the rest of the United Kingdom. Despite £360 million of income tax rises in 2019-20, increased income tax growth in the rest of the UK means that the Scottish Government's budget will be £5 million worse off than it would have been under the previous system.

Without hiding behind a Brexit bush, can the cabinet secretary tell the chamber how the Scottish Government will fill the tank of an economy that is running on empty?

Derek Mackay: The member raises a number of issues. Scotland's economy is performing well: it has record low unemployment, record high employment and a strong performance on productivity, exports and a number of other economic indicators.

There might be cyclical or distributional issues when it comes to income tax growth. I have explored thoroughly with the Finance and Constitution Committee the fact that there might well be deepening inequality in the rest of the UK, where more higher-rate taxpayers' increases are going further, and that might well have a negative net impact on Scotland's income tax rates because of the arrangements in the fiscal framework. However, our economy is growing strongly. If we want to support that on-going economic growth, we need to avert Brexit, because it would have a damaging impact on the whole of the UK, not just Scotland. We want to have a sustainable growth agenda.

I point out that the benefit of having a devolved income tax system is that we can make decisions for ourselves. For example, we have decided to have a more progressive income tax system, in which 55 per cent of Scottish taxpayers pay less than they would have done if they lived south of the border. Those 55 per cent of taxpayers are at the lower end of the income distribution rather than the top end, whereas it is those at the top end to whom the Conservatives seem to want to pander.

Rachael Hamilton: The Scottish Fiscal Commission and the Fraser of Allander institute have noted that Scotland's net tax position is worse because of the downward revisions to Scottish earnings growth, despite the fact that Scottish taxpayers are paying £500 million more in income tax compared with their counterparts in the rest of the UK. Does that mean that the cabinet secretary will have no choice but to increase taxes further, leading to hard-working Scots having less money in their pockets, and to less growth and less revenue, which will ultimately lead Scotland further into a black hole?

Derek Mackay: No, it does not mean that at all. The reality of the income tax reconciliation is that it is down to forecast error at the hands of the Scottish Fiscal Commission and the Office for Budget Responsibility. That issue will be addressed. At the moment, we are talking about forecasts of forecasts. Once we have outturn data, we will know exactly what the position is. At that point, we will be able to more deeply understand the issue—which might be distributional—of the potential growth in higher-rate taxpayers in the rest of the UK compared with Scotland.

The factual position is that income tax is going up year on year. We will collect more in income tax, but we face issues such as the block grant adjustment and UK rates potentially going up more. Those are among the issues that have been addressed by the SFC.

The truth is that the Scottish economy is doing well. The economic indicators are strong. Income tax will be going up. We want to further stimulate growth, but the SFC and the Fraser of Allander institute say that our economic success story is threatened by Brexit, which can still be averted.

Rachael Hamilton's question was partly about the position of taxpayers. Scotland has a more progressive tax system. The structure is fairer, as are the decisions that we have taken. If, for example, there is a Boris Johnson premiership, it is perfectly clear that the funding will go towards tax cuts for the richest 10 per cent in society. That is unfair and will continue austerity. The Scottish Government will not be making such a choice, because it is not the choice of the Scottish people.

The Presiding Officer (Ken Macintosh): Three members wish to ask a supplementary, so I hope that they will all be quite succinct.

James Kelly (Glasgow) (Lab): One of the points that the IPPR makes is that promoting wage growth would boost tax revenue—an increase of 1 per cent in wages would add £750 million to tax revenues. That is particularly relevant when there are 470,000 people in Scotland not being paid the living wage. Is it not now time for the Scottish Government to change procurement legislation to make it mandatory for anybody who works under a public contract to be paid at least the living wage?

Derek Mackay: We are working within the law to ensure that as many people as possible are paid the living wage. I get advice on what is legal and what is not, and we are doing everything that we can within the law to support the living wage. It is good news that more people are paid the living wage in Scotland than in any other part of the United Kingdom, but of course everyone should be paid at least that.

We have a focus on the living wage and the fair work agenda. Tackling inequality is really important—it is one of the issues that drives the reports that we are hearing about. Inequality is getting deeper in Scotland than elsewhere in the United Kingdom, which is having an impact. Those at the top are being paid disproportionately more, while we are trying to bring those at the bottom of the structure up.

I absolutely agree with James Kelly about the minimum level. It would be better if we had devolution, control and power over employment law and setting the minimum wage in Scotland. However, in the absence of that authority and those powers, we will do everything that we can as a Government to encourage payment of the living wage by those from whom we procure services, as well as more widely.

Tom Arthur (Renfrewshire South) (SNP): Central to the operation of the fiscal framework is the relative economic performance of Scotland and the rest of the UK. Productivity is a key driver of wage growth and income tax receipts. Will the cabinet secretary outline how Scottish productivity growth compares with that of the rest of the UK?

Derek Mackay: The latest statistics show that, in 2018, Scotland's productivity grew by 3.8 per cent, compared with 0.5 per cent in the UK as a whole. Further, since 2007, productivity in Scotland has grown by 10.8 per cent compared with 2.7 per cent in the UK as a whole.

Patrick Harvie (Glasgow) (Green): All Governments face some degree of uncertainty from fiscal forecasting, because there will always be a risk of forecasting errors. The Scottish position now is that we have forecasts from the

Scottish Fiscal Commission and the Office for Budget Responsibility; we have two separate sets of fiscal forecasts by separate bodies with separate methodologies. Is it not increasingly clear that the absurdly complex fiscal framework has left Scotland with compounded economic uncertainty in exchange for half measures on fiscal autonomy?

Derek Mackay: That is a good description of the complexity of the system. There is an easy remedy for the complexity of devolution: Scottish independence.

Specialist Mental Health Support (Children and Young People)

2. Mary Fee (West Scotland) (Lab): To ask the Scottish Government what its response is to reports that children and young people who attempt to take their own lives have to wait weeks for specialist mental health support. (S5T-01733)

The Minister for Mental Health (Clare Haughey): The Scottish Government is committed to ensuring that children and young people get access to the mental health support that they need, and recognises the distress that is caused to children, young people and their families by any delay in accessing mental health support.

Children and young people are a particular focus in the suicide prevention action plan that was published in August 2018. I have established a national suicide prevention leadership group, which is chaired by the former deputy chief constable, Rose Fitzpatrick. The membership of the group is broad, and includes representation from the health and social care, justice and third sectors; local authorities and the Convention of Scottish Local Authorities; and clinical professionals, young people—importantly—and people whose lives have been affected by suicide. The Scottish Government is working with the NSPLG to ensure that all the actions of the suicide prevention action plan consider the needs of children and young people.

Mary Fee: In June 2018, the Government tried to sneak out an audit report on rejected referrals to child and adolescent mental health services, which found a belief among patients that unless the situation was serious enough, the individual would not be seen. Nine months ago, Audit Scotland published a report on CAMHS, which found that young people were not getting appropriate care until they reached crisis point. This weekend, it was reported that a teenager who had already tried to take her own life had to wait a further four weeks to be seen. Given the urgency and seriousness of the situation, does that sound like adequate progress to the minister?

Clare Haughey: Long waits for CAMHS treatment and support are unacceptable, which is why we set out in the 2018 programme for government a £250 million package of measures to support positive mental health and prevent mental ill health.

We also formed the children and young people's mental health task force, and its delivery plan was published at the end of December. Next month, it will publish its recommendations on how mental health services can be improved for children and young people and their families.

Mary Fee: It does not sound to me—or, I am sure, to many people who are listening—as though much progress is being made. One in four children and young people is still having to wait more than four months to be seen for their first appointment. Last month, during the statement on the NHS Tayside interim report, the minister refuted a suggestion from Miles Briggs that the issue of services not taking suicidal patients seriously was “widespread” across the country. Given the reports over the weekend, does the minister stand by that statement and is she, after a full year in the job, really so unaware of the issues on the ground?

Clare Haughey: At the end of March, 26,740 children and young people were under the care of CAMHS services across Scotland. That is a testament to the amount of work that the CAMHS staff do in supporting children and young people at a time when they are feeling particularly vulnerable. However, there is much more for us to do. That is why I am looking forward to the recommendations from the children and young people's mental health task force and to working with the Convention of Scottish Local Authorities to set out how we will address those recommendations. I am sure that Mary Fee will be interested to hear the response to that when we make a statement in September about the progress of the mental health strategy.

Annie Wells (Glasgow) (Con): Figures released in May show that the Scottish Government is falling woefully short of getting anywhere near its target number of mental health workers. Despite a promise in the mental health strategy to recruit 800 additional workers by 2021-22, as of April this year, only 186 whole-time equivalents had been recruited. Can the minister guarantee today that the Government will meet that target?

Clare Haughey: We are reporting quarterly on the additional workers under action 15 of the mental health strategy. The most recent figures were published in May and further figures will be published in August. We are certainly keeping close track of those. We are working hard with our colleagues in health boards and integration joint

boards to ensure that we get the workers in those key target areas as quickly and appropriately as we can.

Dental Treatment (Waiting Times)

3. Alex Cole-Hamilton (Edinburgh Western) (LD): To ask the Scottish Government how it will reduce the reported long waits for in-patient and day-case dental treatment. (S5T-01738)

The Minister for Public Health, Sport and Wellbeing (Joe FitzPatrick): Our £850 million waiting times improvement plan will substantially and sustainably improve waiting times, including those for in-patient and day-case dental treatment.

Alex Cole-Hamilton: Across Scotland, dental consultant vacancies are going unfilled and patients are left waiting. The British Dental Association described the figures acquired by the Scottish Parliament information centre and Scottish Liberal Democrats as “eye-watering” and it said that patients can effectively expect to wait much longer. The BDA said that those long waits are being driven by a failure on prevention and a failure to invest in the workforce. The most recent Information Services Division figures show a “noticeable drop” in national health service dental staff, down 14.7 per cent in the past five years alone. Can the minister explain why?

Joe FitzPatrick: Two points were made about the BDA. One was on workforce, which I will come to shortly, and the other was on prevention. Prevention is an area where we are having substantial success across Scotland. The childsmile programme is making a real difference. It helps to make sure that children know how to brush their teeth properly and provides fluoride varnish applications. We will be announcing the next stage of that under the community challenge fund of the oral health improvement plan, and we will be announcing which projects will be taken forward that are aimed at reducing further the oral health inequalities among children.

On the other area, a challenge that we no longer have is people being unable to access an NHS dentist—very few people cannot access one. When this Government took over in 2007, huge numbers of people were unable to access an NHS dentist, and we have managed to turn that around. Sometimes, it is important to acknowledge progress where it has been made, so we should thank our dental colleagues for rising to the challenge and making sure that people can, in the first place, access NHS dental practices.

Last week, I had a chat with the BDA, and one of the challenging areas is the shortage of anaesthetic consultants, which leads to a number of the waiting times figures. Even there, since 2006, we have increased the numbers of

anaesthetic consultants by 41.7 per cent—moving from 549 up to 778.

I am in no way suggesting that everything is rosy. I accept that some of the waits and more challenging cases are unacceptable, particularly when we are talking about children, who are often in pain. We need to continue to do better around that. We are making a difference, and the waiting times improvement plan is designed to make it even better.

Alex Cole-Hamilton: I have a constituent who requires both in-patient and day-case support, but she is not getting any treatment. In 1995, Angela Mulhern fell victim to William John Duff. He performed a series of unnecessary and incompetent dental surgical procedures, which have caused tens of thousands of pounds' worth of damage to her teeth and jawbone and left her in constant pain. Ms Mulhern underwent the treatment as an NHS patient yet the Scottish NHS has not even offered to carry out the necessary remedial work. Will the minister agree to meet Ms Mulhern and me?

Joe FitzPatrick: I have no awareness of that case. If, in the first instance, Mr Cole-Hamilton writes to me about it, we can discuss how we should take that forward.

The Presiding Officer: Four members wish to ask supplementary questions but we have little time this afternoon. I will be harsh and not take any of those questions. I encourage the members to submit written questions. I apologise to Monica Lennon, Miles Briggs, James Dornan and Neil Findlay.

Education Reforms

The Deputy Presiding Officer (Christine Grahame): The next item of business is a statement by John Swinney that provides an update on Scotland's education reforms. The Deputy First Minister will take questions at the end of his statement, so there should be no interventions or interruptions.

14:22

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): Presiding Officer, the relentless focus of this Government is to deliver an education system in Scotland that raises attainment for all, closes the attainment gap and enables all children and young people to fulfil their potential.

During my statement to Parliament on 26 June last year, I set out our landmark agreement with Scotland's local councils, which provided a clear and shared agenda for the empowerment of schools, instead of introducing legislation. At that time, I undertook to return to Parliament with my assessment of whether sufficient progress on our shared ambition had been made to satisfy me that the non-legislative route was the right one. Therefore, I am grateful for this opportunity to provide Parliament with an update on the progress around school empowerment and our related programme of education reform. My statement this afternoon is accompanied by a publication that provides additional detail on work in this area.

International evidence demonstrates that successful education systems are those in which decisions about the education of our children are made as close to them as possible. That is why we are committed to empowering schools to empower headteachers, teachers, parents, pupils and the wider school community to make the key decisions that affect the educational outcomes for children and young people. With our partners in local government, professional associations and other stakeholders, we are taking steps to

"put teachers, parents and communities in the driving seat".

Together, we are building a school and teacher-led education system.

A crucial element of this Government's agenda has been recognition of the importance of excellent school leadership and, in turn, the empowering of headteachers to more effectively lead our schools. Published in February, the headteachers charter aims to ensure that schools have wide-ranging decision-making powers over what matters—learning, teaching and the curriculum, their resources, staffing and budgets—and that they make those decisions by involving their whole school community. That delivers on the

policy intention that was originally part of the draft Education (Scotland) Bill. The charter supports a culture of empowerment that enables all professionals to contribute to the agenda of improvement.

The charter, in combination with linked school leaders guidance, is now being used by schools and—crucially—has been co-produced. I am grateful for the shared work that led to the production of the charter, and I am particularly pleased at the pace with which it has been delivered. I am also pleased to be able to report that, today, we have published updated devolved school management guidelines. The new guidance, too, has been developed in partnership with local government, to improve on existing advice and—crucially—to reflect the expectations and opportunities of an empowered school system, including the headteachers charter.

The Scottish attainment challenge and pupil equity funding have empowered schools by allowing them to design solutions and take decisions that are specific to their school community. It is important that we now capitalise on that and deliver broader budgetary decision making to our schools.

I have committed to providing high-quality support for school leaders, many of whom are beginning to operate in an increasingly empowered environment. With that in mind, I am pleased that, last month, Education Scotland expanded the support that it provides for headteachers and will now provide a range of professional learning opportunities that are specifically focused on school empowerment. That, in combination with our investment in the Columba 1400 headteacher leadership academies, with the Hunter Foundation, will provide school leaders with the skills and confidence to flourish and deliver improved outcomes for the communities that they serve.

We are deepening the support that is available to schools, through regional improvement collaboratives. Through enhanced engagement and support across local government, which is supported by additional Scottish Government funding of around £5 million this school year and focused support from Education Scotland, the regional improvement collaboratives have significantly enhanced their capacity to support collaborative working across the system and deliver region-wide approaches to improving outcomes for our children and young people. That is evidenced by the delivery of the September 2018 regional improvement plans, increased engagement with and support of the teachers networks across each region, and focused regional interventions on attainment, curriculum

development, leadership development and quality improvement.

An interim review of the establishment of the regional improvement collaboratives, which was published in February, recognised the significant early progress that has been made in establishing local governance, leadership and buy-in across each regional improvement collaborative area. We will commission a further review later this year, again in partnership with local government, to assess development and impact.

We are committed to ensuring that pupils and parents are provided with the opportunity to influence decisions that relate to their school. That is more important than ever in an increasingly empowered school system. In July 2018, we developed a comprehensive plan, in conjunction with local government, to improve parental involvement and engagement: “Learning together”: Scotland’s national action plan on parental involvement, parental engagement, family learning and learning at home 2018-2021”. The plan demonstrates our long-term commitment to putting parents at the heart of their children’s learning and reflects the importance that we place on parental engagement in a range of Scottish Government education policies and initiatives.

Learners in our schools rightly expect their voices to be heard and valued. The headteachers charter places a central expectation on headteachers—and, through that, to the wider empowered system—to support and encourage children and young people to participate in decisions about their own learning and the life of the learning community. In April 2018, in advance of the school empowerment reforms, Education Scotland published practical guidance to schools. We will continue to promote that guidance and support to schools, so that they can better support learner participation.

It is important that the work to take forward the joint agreement is placed in the context of wider education reforms. In particular, I was pleased to note last month’s publication of the report of the independent panel on career pathways for teachers. It is an exciting report, which will generate new and ambitious career pathways for teachers and increase the attractiveness of the profession. I expect the Scottish negotiating committee for teachers to put in place the conditions for new pathways by August 2021.

It is also important that we recognise and support a wider range of practitioners who work with our children and young people. We decided against the creation of a broader education workforce council, but we are working with local authorities to enhance the support that is offered to a wide range of education practitioners, including college lecturers, instrumental music

instructors, school librarians and home-school link workers.

It is vital that we understand the impact of our endeavours in empowering Scottish schools. We need to know where change is having a positive effect and where greater focus might be required. The early evidence that is available provides me with cautious optimism that the types of empowered practice that I expect to see are now becoming more common.

Education Scotland has previously published thematic inspections on readiness for empowerment and on curriculum leadership, and it has today published the findings of a further inspection on parent and pupil participation. While making it clear that we are only part of the way through this journey, the reports indicate that local authorities are taking positive steps to embrace the principles of empowerment as set out in the joint agreement and that the education system is committed to collaboration and co-production.

The readiness for empowerment review, which was published in December 2018, noted that

“almost all local authorities are committed to developing an empowered education system with the aim of improving outcomes for learners, reducing inequalities and closing the attainment gap.”

It is important that we all take responsibility for the change process, and I am pleased that three local authorities are trialling a self-evaluation framework. I am also pleased that an overarching evaluation strategy is being developed that will bring together all available evidence on empowerment in our schools, which will help us to monitor progress.

Equally important is the assurance that I have received jointly from Her Majesty's chief inspector of education, as chair of the joint agreement steering group, that partners remain firmly engaged in and committed to the work. That has highlighted to me and to the Convention of Scottish Local Authorities that real progress has been made and that the practice of empowerment and school-based decision making is becoming increasingly evident in our schools.

The chief inspector has stressed to me the importance and the value of the collaborative approach that we are taking with local government and other partners in the delivery of the reforms. She believes that progress has been made sooner than would have been the case through legislation and reassures me of the continued commitment of all partners to work together in supporting the delivery of an empowered system that improves outcomes for children and young people. That includes a clear objective of promoting and building on the work that has been done to date, developing further guidance and engaging with the

wider system—with schools, teachers and others who are involved in children's learning.

Although I am heartened by those positive messages, I am under no illusion that we remain at a relatively early stage in our efforts to change the culture of school education in Scotland. The joint agreement and the recently agreed teachers' pay deal provide us with the stability that is required for real and long-term system change to take place, but we must maintain our collective focus and ensure that meaningful improvements are delivered.

When I last addressed members on the issue, in June 2018, I made it clear that, if sufficient progress had not been made in the forthcoming 12 months, I would return to Parliament and introduce an education bill. This afternoon, I have set out my view that progress is being made in a genuinely collaborative spirit and that a culture that is based around empowerment is starting to take root in our schools. It is clear to me that we would not have come so far in such a short period if we had relied on introducing an education bill. I am also assured that the Government's long-term vision of a school-led education system is shared by our partners in local government. The chief inspector has further endorsed and recommended to me the continuation of our partnership approach.

Given all of that, I am able to confirm that the Scottish Government will not introduce an education bill as a means of driving school empowerment. Instead, we will continue to work in partnership with local government, teacher representatives and the wider education sector, and we will collectively ensure that schools are supported to take the key decisions that are relevant to them. I am optimistic that our collaborative approach, through which we share a view of empowerment and collectively take responsibility for change, will result in improved outcomes for Scotland's children and young people.

Achieving excellence and equity for all of our children and young people is the core purpose of this Government, and these reforms are central to that work. Given the importance of this agenda, I would be pleased to return to Parliament in a year's time once again to provide an update on this vital work.

The Deputy Presiding Officer: The cabinet secretary will now take questions on his statement. As usual, we have about 20 minutes.

Liz Smith (Mid Scotland and Fife) (Con): I thank the cabinet secretary for prior sight of his statement.

On the programme for government, the First Minister told us in 2017 that

"A new Education Bill will deliver the biggest and the most radical change to how our schools are run".—[*Official Report*, 5 September 2017, c 13.]

Exactly a year ago, however, the cabinet secretary decided to scrap the bill, and defended the U-turn by telling us that without legislation faster progress would be made in improving school standards. Now he is telling us that he has "cautious optimism" that standards are improving and that the improvement has been possible because of the absence of an education bill.

You could not make it up—there are no hard facts whatsoever to prove his contention. Indeed, it will not have escaped the cabinet secretary's notice that the Education and Skills Committee recently reported that

"The lack of baseline data means no meaningful conclusions on upward or downward trends can be reached, at a time of reform within Scottish education."

What evidence has the cabinet secretary found, that nobody else has found, that proves that standards are improving across the board? Does he really believe that the evidence supports his view when he says that

"we would not have come so far"

if an education bill had been introduced? Does he believe that, when a local authority takes a blanket decision to move all its schools to a six-column subject choice structure for pupils in S4, headteachers enjoy the greater autonomy that was promised by the Scottish Government?

John Swinney: That question covered quite a lot of topics, Presiding Officer, so you will forgive me as I try to address them.

In my statement to Parliament, I have recorded that I believe that faster progress has been delivered because of the collaborative route, as opposed to a legislative route, that we have taken. I cite the following evidence. First, if we had been involved in a legislative process we would not have been able to focus partners on delivery of some of the specific components of an education bill.

The headteachers charter is now available. It has been delivered and implemented in Scottish education. If we had waited for a bill, the headteachers charter would have been available only once we had enacted the provision. That is the first piece of evidence.

The second piece of evidence is the information that has been provided to me by the chief inspector of education on the assessment that she and Education Scotland have been doing through thematic inspection of how the approach that we are setting out has been applied by all partners, and through her chairing of the steering group,

which is implementing the agenda. I cite that as evidence that faster progress is being delivered.

Liz Smith moved on to talk about baseline data on performance in the education system. I know that there are issues to be rehearsed in terms of the information that we publish routinely as part of the national improvement framework, in which we set out, year on year, the progress that has been made by young people in our education system, with greater detail than was ever the case in the past. Information is published on primary 1, primary 4, primary 7, and S3 levels: no such comprehensive detail was published in the past.

The data that we are all familiar with demonstrates that attainment is improving in our education system, and that the attainment gap has been closing. That data has previously been well rehearsed in Parliament.

Finally, I will move on to subject choice. Curriculum control will, under the headteachers charter, which is a relatively recent publication, be vested in individual schools. We are encouraging collaboration among schools in our education system. For some schools, collaborating with each other over the availability of subject choice, so that a broader subject choice can be made available than would be the case if everything was contained in an individual school, is required. There will be a role for local authorities in that collaboration. I know, as is authenticated in the information that I have had from Her Majesty's Inspectorate of Education, that local authorities are genuinely committed to that process. We should welcome that as evidence of the creation of an empowered education system.

The Deputy Presiding Officer: I understand that there were a lot of questions, so that was a long answer. I also appreciate that front-bench members should get the chance to ask their questions. However, after them, we will have to have crisp questions and answers, because 12 members want to ask questions, and Tavish Scott is already in a tizzy.

Iain Gray (East Lothian) (Lab): Thank you, Presiding Officer. I also thank the cabinet secretary for early sight of his statement.

We have known for a year what the statement would say. Everyone knows that the education bill was dropped because no one would have supported it, and everyone knew that Mr Swinney would be back in Parliament claiming great progress, so that he could finally put his flagship legislation out of its misery.

However, the reforms still do not address the real issues in our schools—squeezed budgets, teacher shortages, a narrowing curriculum, a lack of rigorous data on literacy and numeracy, standardised tests that parents do not want and

which teachers do not rate, an explosion in multilevel teaching, and a crisis in support for pupils who have additional support needs.

Having spent a year developing and delivering an empowered schools diagram, will the cabinet secretary now turn his attention to those real problems that are faced daily by real teachers, pupils and parents in real schools?

John Swinney: I spend all my time focused on the real issues that face Scottish education, which is why I follow the international evidence that says that a successful education system is one in which decisions are taken as close as possible to young people. That is the culture and approach that we are trying to create through the empowered schools reforms.

I will offer a few observations on the various points that Mr Gray raised. Local authority budgets for education have risen four years in a row, with the most recent available data showing a substantial increase in real terms. Teacher numbers are at their highest since 2010, and we have the largest number of primary teachers since 1980.

I know that the Education and Skills Committee has been looking at subject choice: I think that there is a much broader choice available to young people in Scottish education than there was when I was at school.

On Scottish national standardised assessments, we commissioned an independent review to examine the issues. That review has reported and has demonstrated the value of standardised assessments.

Mr Gray knows that I am actively working to strengthen and improve the support that is available to meet the needs of young people with additional support needs. I will continue to focus on that in the period ahead.

I hope that that reassures Mr Gray that the Government and local authority partners are doing everything that is humanly possible to address all the key issues that concern him.

The Deputy Presiding Officer: There are 13 questioners and 10 minutes. You are being told.

Alison Johnstone (Lothian) (Green): The intention behind devolving powers to schools is to empower headteachers as education leaders, but it is not clear what accountability mechanisms are in place to ensure effective oversight and scrutiny of headteachers, who now have enhanced powers over budgets and staffing. When power was with the local authority, we had democratically elected councillors to scrutinise. What mechanisms are in place, through the headteachers charter and the devolved school management guidelines, to ensure effective oversight?

John Swinney: Headteachers are senior employees of local authorities and will remain so under the reforms, which means that there is a direct line of accountability in relation to employment issues.

However, headteachers have much broader accountability—to pupils, to parents, to communities and to staff in terms of how schools fulfil the needs of young people. An empowered school must have a conversation with its community to ensure that the needs of all learners are being met.

Tavish Scott (Shetland Islands) (LD): Is not the reality for parents and teachers unspent pupil equity fund money, unfilled headteacher vacancies and more bureaucracy in classrooms through yet more guidance? If the education secretary wants to work with teachers, as he has said to Parliament today, why does he not listen to primary 1 teachers and drop national testing of four-year-old and five-year-old boys and girls?

John Swinney: I listened to the independent review that I commissioned on that question, which found that there was significant value in primary 1 standardised assessments in terms of their contributing to informing the judgment of teachers. I trust teachers' judgment, but I also listen to teachers who make the plea for moderation in the education system so that they can understand the levels and standards that they are trying to achieve for young people. Standardised assessments help to inform that judgment.

Clare Adamson (Motherwell and Wishaw) (SNP): The cabinet secretary has previously said—I quote—that

“the best decisions about children’s education are taken by people who know them best—their teachers, headteachers and parents, as well as young people”

Can the cabinet secretary outline how his decision to fast-track implementation of his reforms has helped to achieve those “best decisions”?

John Swinney: The quotation that Clare Adamson read out reflects my reading of the international evidence, which argues for more and more decisions to be taken in the classroom by individual empowered classroom teachers. At the heart of the reform agenda, and at the heart of the pay and workload deal that we have arrived at with professional associations and local authority partners, is the creation of a sense of teacher autonomy and agency, such that teachers can confidently make judgments about the educational journey of young people. The agenda that I have set out today supports and enhances that.

Jeremy Balfour (Lothian) (Con): In his statement this time last year, the Deputy First Minister spoke of consensus building being at the

heart of his approach following the shelving of the education bill. Given that we were open to working in consensus to pass the bill and given the many defeats on education that the Government has faced in this Parliament in the past year, does the Deputy First Minister now see that reforms should be implemented in the right way, which is through the democratic process of this Parliament?

John Swinney: The reform is being managed through the democratic process of this Parliament, and it is being managed in collaboration with our local authority partners, who have statutory responsibility for the delivery of education. Parliament often encourages me to work collaboratively with other people. That is precisely what I have done on this agenda, and we have made faster progress as a consequence.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): The cabinet secretary will be aware of the reduction in subject-specific principal teacher roles coupled with a movement to faculty heads in recent years, particularly in our secondaries. Will he provide more detail on what alternative routes for promotion might be available for teachers so that we can make sure that we keep talent in our classrooms?

John Swinney: I encourage members to look at the report that has been produced by the working group on career pathways, led by Moyra Boland of the University of Glasgow. It is a very refreshing read that covers the creation of new pathways in subject specialism, pedagogical specialism and disciplines within the education system, such as additional support needs. The review undertook work on my behalf to create alternative routes to administrative leadership within the education system, so that we could entrench outstanding classroom practice within our classrooms and celebrate it, and that is what the review has generated.

Mary Fee (West Scotland) (Lab): Provision of services for those with additional support needs is fragmented across local authorities and, similarly, we know that local authorities use a variety of models for provision of the home link service. What steps will the cabinet secretary take to ensure that home link staff are fully resourced and supported?

John Swinney: Home link staff play a valuable role in our education system. I see increasing numbers of schools opting to use pupil equity funding to establish much greater proficiency and effectiveness in home school link workers, and as a consequence of those efforts, pupil attendance, participation and attainment are improving.

The Government works actively with our local authority partners on the resourcing of all aspects of the education system. As I indicated, we see

strong and effective practice emerging out of pupil equity funding, which is strengthening the areas of activity in which Mary Fee is interested.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Will the cabinet secretary expand on how his reforms will help to raise standards and close the poverty-related attainment gap?

John Swinney: One of the very clear outcomes of the implementation of the Scottish attainment challenge and pupil equity funding has been an ever-sharper focus within the education system on the young people who face barriers to fulfilling their potential as a consequence of their background and poverty. That focus has always been in our education system, but PEF and the Scottish attainment challenge have intensified it. As a consequence, we are now seeing real improvements in the performance of young people and the closing of the attainment gap. Data will be published to demonstrate the pattern that that takes in the years to come.

Jamie Halcro Johnston (Highlands and Islands) (Con): The Scottish Government statistics for 2017-18 show that the gap between the most and least affluent people going to university has increased in the last year, and the official statistics from last year's exam results show that the attainment gap between school pupils from the poorest and richest areas has also increased. Can the cabinet secretary say whether he thinks that the back-door reforms have been successful in that regard?

John Swinney: On the measures that we have published, the attainment gap is clearly closing and has closed over time. On the point about access to university education, the proportion of young people who are going to university from the most deprived areas in Scotland is at a record high. I do not understand the data that Mr Halcro Johnston is marshalling to undermine the outstanding achievements and performance that are a consequence of our focus on widening access in higher education.

Tom Arthur (Renfrewshire South) (SNP): How has the Scottish Government ensured that the voices of parents and pupils have been heard throughout the reform process, and will continue to be heard, given the benefit that that collaborative approach is having on schools in my constituency, such as St Anthony's in Johnstone?

John Swinney: The National Parent Forum of Scotland is a key partner in all our reform activity. We listen closely to the content of its thinking on all aspects of the education reform journey, and we will continue to do so as we strengthen parent and pupil voices in education.

Daniel Johnson (Edinburgh Southern) (Lab): The one hard figure in the statement is the £5

million for regional improvement collaboratives. Can the cabinet secretary confirm that that will be recurring funding? How many net new roles has that created within the education system, and can he elaborate and give a specific example of the interventions that the regional collaboratives have been implementing over the last year?

The Deputy Presiding Officer: That is more than one question.

John Swinney: I cannot give Mr Johnson the head count number on new roles created through the funding for regional improvement collaboratives, but I will happily write to him about that. Concrete examples of what the collaboratives are doing include running improvements in literacy and numeracy programmes with tried and tested evidence-based practice to inform and strengthen professional development; delivering moderation support across regional boundaries to make sure that teachers across the broad general education phase have a better understanding of standards; and putting in place exchanges of learning on the measures that close the attainment gap fastest in areas of deprivation, to ensure that the learning can be shared across the board. Our regional improvement collaboratives are taking forward a real collaborative spirit and sharing good educational practice across the system.

Gordon MacDonald (Edinburgh Pentlands) (SNP): I welcome the Scottish Government's on-going commitment to empowering teachers and its securing of a landmark deal on teachers' pay, but can the cabinet secretary expand on the support that will be provided to help to reduce teachers' unnecessary workload?

The Deputy Presiding Officer: A short expansion, cabinet secretary.

John Swinney: The whole concept of teacher agency is about empowering our teachers to have the professional confidence to make judgements about all aspects of the curriculum and, crucially, their workload. I have just come from a meeting of the Scottish education council, at which all players in Scottish education committed to further joint work on reducing unnecessary teacher bureaucracy, to enable teachers to focus on the things that we all want them to focus on: the learning and teaching of young people in Scotland.

The Deputy Presiding Officer: That concludes the questions. I apologise to James Dornan and Neil Findlay, who were additional questioners; I did not quite manage to reach you.

Business Motion

14:53

The Presiding Officer (Ken Macintosh): The next item of business is consideration of business motion S5M-17902, in the name of Graeme Dey, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Management of Offenders (Scotland) Bill.

Motion moved,

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

Groups 1 to 3: 55 minutes

Groups 4 to 6: 1 hour 30 minutes

Groups 7 to 10: 2 hours 10 minutes

Groups 11 to 14: 3 hours 10 minutes—[*Graeme Dey.*]

Motion agreed to.

Management of Offenders (Scotland) Bill: Stage 3

14:54

The Presiding Officer (Ken Macintosh): The next item is consideration of the stage 3 proceedings on the Management of Offenders (Scotland) Bill. In dealing with the amendments, members should have the bill as amended at stage 2, the marshalled list and the groupings of amendments.

I remind members that the division bell will sound, and that proceedings will be suspended, for five minutes for the first division of the afternoon. After that, there will be a 30-second vote. Thereafter, there will be a one-minute period for voting after the first division following a debate. Members who wish to speak in a debate should press their request-to-speak buttons as soon as I call the group, or as soon as possible after that.

Section 1—Requirement when disposing of case

The Presiding Officer: Group 1 is on part 1 terminology. Before I call the cabinet secretary, I point out that, throughout the group, there are amendments that, if agreed to, would pre-empt other amendments in the group. In the interests of time, I do not propose to mention the pre-emptions on each occasion that they occur—I refer members to the groupings for pre-emption information. Amendment 4, in the name of the Cabinet Secretary for Justice, Humza Yousaf, is grouped with the amendments as shown.

The Cabinet Secretary for Justice (Humza Yousaf): At stage 2, I supported Daniel Johnson's amendments, which removed the term "offender" from part 1 of the bill. The Government listened to the concerns that were expressed and supported the changes so that nobody would feel stigmatised by the language of the legislation. At stage 2, when I signalled that I supported the principle behind Daniel Johnson's amendments, I indicated that the Government would need time to reflect on the technical impact on the drafting of the bill, and that it might need to revisit the terminology for readability and workability.

As things stand, the label "relevant person" does not work, because it is undefined. As we reflected on how to address that problem in a way that would be consistent with the Justice Committee's view at stage 2, we realised that there is, in fact, no need at all for the bill to apply labels to people who are subject to electronic monitoring. We need not call them "relevant persons"; they are simply persons who happen to be subject to a monitoring requirement. The amendments in my name

therefore get rid of the labels altogether, with only a few exceptions where the label "monitored person" is used to distinguish the person who is subject to a monitoring requirement from the person who is designated to carry out the monitoring.

Amendment 145 is a clarificatory amendment to put beyond doubt that references to disposals in part 1 are not confined to the final disposals in a case.

I invite members to support the amendments in my name in the group, and to reject the amendments from Liam Kerr, which would reinstate the word "offender" in direct contradiction of the decision of the Justice Committee at stage 2. To be clear, using the label "offender" does nothing to improve the bill's technical precision and has no other legal effect.

I move amendment 4.

Liam Kerr (North East Scotland) (Con): All my amendments in the group seek to reverse Daniel Johnson's terminology amendments at stage 2. Parliament cannot fail to have been aware of the considerable public outcry when those amendments were agreed to at stage 2. It is important that the full chamber has an opportunity to reflect on the committee's decision.

This is the Management of Offenders (Scotland) Bill. Its purpose is to deal with people who have offended—that is, committed a crime. Laws mean something and they should be clear. If we are referring to offenders, we should call them "offenders". Parliament will be interested to know that the key argument that was presented in committee is that labelling people as offenders after they have served their time does not help rehabilitation. I understand that point. However, most of these provisions deal with criminals before they have completed their sentence. The bill talks about how we manage those who are in the system, not so much those who have completed their sentence.

Liam McArthur (Orkney Islands) (LD): Will the member take an intervention?

Liam Kerr: As I presume that Mr McArthur will speak later, I will not—I want to move on.

Finally, there is no doubt that many victims of crime already feel that more is being done to support offenders than to support those who have suffered. We cannot, and should not, airbrush from history the fact that a crime—an offence—has been committed. For those reasons, I ask Parliament to recognise that an offender is an offender, and to vote in favour of my amendments.

I move amendment 4A.

Daniel Johnson (Edinburgh Southern) (Lab):

Given that my amendments at stage 2 created this, I feel something of a responsibility to speak up for myself. However, I will be very brief; indeed, I will try to limit myself to a self-imposed 60-second rule throughout the stage 3 amendment debate.

Members: Hear, hear!

Daniel Johnson: As the cabinet secretary said, labels do not help. Good legislation should have well-defined terminology and should not need to refer to people by anything other than the term “people”. For that reason, we should support the Government’s amendments and reject the Conservative ones.

The Presiding Officer: Thank you very much. That was a very popular comment from Mr Johnson.

Liam McArthur: I was not intending to observe the 60-second rule. I was not even intending to speak until Liam Kerr’s invitation to do so.

The point that was made by the cabinet secretary and Daniel Johnson about stigmatisation is fair and valid. It reinforces what we heard in evidence sessions throughout our consideration of the bill.

The other important fact is that extending these provisions to people prior to any ruling from the court would be impossible were it not for the redefinition that the cabinet secretary has proposed. We will certainly support his amendments.

15:00

John Finnie (Highlands and Islands) (Green):

I endorse the comments of the cabinet secretary and those of my colleagues Daniel Johnson and Liam McArthur. The term “airbrush” is pejorative, and it was meant as a pejorative term. I most certainly will not support Liam Kerr’s position.

Humza Yousaf: I have nothing much to add other than to thank colleagues for their contributions.

I will say to Liam Kerr something that I have said since taking on this role a year ago—we should always be driven by the data and by the experts who are in front of us. I know that he has a lot of respect for organisations such as the Wise Group and the many other groups that work with those who have committed crimes in the past. Those groups tell us that language is important. This change in the legislation will not make it illegal or criminalise anybody for using the word “offender”; they can use that word in their daily discourse if they wish to do so. However, as legislators, we have a responsibility to listen to experts and to

change the law accordingly. I am delighted to have the support of—it seems—the majority of parliamentarians to do that.

Liam Kerr: Like the cabinet secretary, I do not have a great deal to add other than to say that I accept the point that language is important—that is why we must call it as it is. For that reason, I will press amendment 4A.

The Presiding Officer: The question is, that amendment 4A be agreed. Are we agreed?

Members: No.

The Presiding Officer: There will be a division. As this is the first division of the afternoon, we will suspend for five minutes while I summon members to the chamber.

15:02

Meeting suspended.

15:07

On resuming—

The Presiding Officer: We move to the division on amendment 4A.

For

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Golden, Maurice (West Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Mason, Tom (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)

Campbell, Aileen (Clydesdale) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Macdonald, Lewis (North East Scotland) (Lab)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, Tavish (Shetland Islands) (LD)
 Smith, Elaine (Central Scotland) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)

Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 26, Against 84, Abstentions 0.

Amendment 4A disagreed to.

Amendment 4B moved—[Liam Kerr].

The Presiding Officer: The question is, that amendment 4B be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Mason, Tom (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)

Dugdale, Kezia (Lothian) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Macdonald, Lewis (North East Scotland) (Lab)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, Tavish (Shetland Islands) (LD)
 Smith, Elaine (Central Scotland) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 27, Against 85, Abstentions 0.

Amendment 4B disagreed to.

The Presiding Officer: Amendment 4 pre-empted amendments 5 and 6. I ask the cabinet secretary to say whether he wishes to press or withdraw amendment 4.

Humza Yousaf: I press amendment 4.

The Presiding Officer: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)

MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Macdonald, Lewis (North East Scotland) (Lab)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, Tavish (Shetland Islands) (LD)
 Smith, Elaine (Central Scotland) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Mason, Tom (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

The Presiding Officer: The result of the division is: For 85, Against 27, Abstentions 0.

Amendment 4 agreed to.

The Presiding Officer: Before I move on to amendment 7, I point out that there are a huge number of amendments that pre-empt other amendments. At this point, I ask Mr Kerr to say whether he wishes to move amendments 8, 10, 12 and 14.

Liam Kerr: With your permission, Presiding Officer, I will speak in response to that, rather than just say yes or no.

Those amendments in my name seek to make the same changes as amendments 4A and 4B sought to make. I maintain that that is the right thing to do for certainty and semantics, but it is clear to me that only the Scottish Conservatives are with me on that. There are extremely important debates to have this afternoon so, to ensure that there is time for that and given that my comments on amendments 4A and 4B are on the record, I will not move my further amendments in the group or any similar ones.

The Presiding Officer: Thank you, Mr Kerr. I highlight that any other member is entitled to move any of the amendments at the point at which they are reached. To ensure that that can happen, I would normally call each amendment in turn but, in these exceptional circumstances in which we have a large number of amendments that are all directed at the same issue, I propose to try to speed up the process slightly. The amendments about this particular subject appear in five blocks, and I will take the same approach for each block of amendments.

Does any other member wish to move any of the amendments 8, 10, 12 or 14?

Members: No.

The Presiding Officer: As no one wishes to move any of those amendments and they all do the same thing, I now invite the cabinet secretary to move amendments 7, 9, 11 and 13 en bloc.

Amendments 7, 9, 11 and 13 moved—[Humza Yousaf]—and agreed to.

The Presiding Officer: Group 2 is on availability of information to social work when court disposing of a case. Amendment 144, in the name of Liam Kerr, is the only amendment in the group.

Liam Kerr: I have resubmitted this amendment to allow Parliament to consider its position. The principle founds upon the fact that, during stage 1 evidence, a Social Work Scotland witness told us:

“On the information and evidence that criminal justice social work receives to inform our risk and needs assessment ... what is sorely lacking is the summaries of evidence that are narrated in court.”

He went on:

"Without it, we are entirely reliant on the offender's version of events."—[*Official Report, Justice Committee*, 8 May 2018; c 8.]

We know that summaries of court evidence are critical to an objective and accurate risk assessment and that without them, social workers will have less information than they should have about how decisions may affect victims. My concern is that victims and the public are unnecessarily put at risk because the right information is not being shared.

I lodged an identical amendment at stage 2, when members had several concerns. John Finnie asked what status a summary would have. The answer is that it would have only the weight that the social workers preparing their risk and needs assessment attributed to it. The definitive document remains the risk and needs assessment that is prepared by criminal justice social work.

John Finnie: The member will perhaps come on to explain the analysis that he has done of the impact that the amendment might have on the court service and on the already pressed criminal justice social work service.

15:15

Liam Kerr: That is a reasonable point, and I am grateful for it. At stage 2, several members raised the concern that the court system would not have the resources to prepare a summary. I understand that point, but surely if something is the right thing to do, it is up to the Government to assess what resources the courts would need, especially for such a crucial bit of communication between the courts and criminal justice social work.

The cabinet secretary said in committee that there is no mechanism across all court business for routinely collecting and transmitting such evidence. Surely that is the problem, and that is what my amendment seeks to address. If agreed to, it would be up to the court to decide what form the summary took, and I am sure that it could create a format that would work best for it.

My amendment seeks to ensure that social workers have as much evidence as practical in front of them before making crucial risk assessments, which will inform judges' decisions about whether an offender is safe to be on our streets.

I believe that I have answered the challenges, and I seek Parliament's approval of the amendment.

I move amendment 144.

Daniel Johnson: I support the amendment. The committee heard one recurring theme throughout its evidence taking and, indeed, in relation to other issues that it has dealt with in the past year or so:

the lack of information and data, especially from, but also to, the courts. I think that the amendment makes good provision for ensuring that that would be improved, and it merits support.

Humza Yousaf: An amendment in exactly the same form as amendment 144 was defeated at stage 2, so I am surprised that it has been lodged at stage 3.

As Liam Kerr has explained, the amendment seeks to place a new obligation on the Scottish Courts and Tribunals Service to make a summary of evidence provided in a case available to local authorities exercising their social work function. When we discussed the issue previously at committee, John Finnie asked Liam Kerr about the practicalities of that, who would produce the summary and what its status would be. We did not get answers to those questions then, and I am not convinced we have got them from Mr Kerr's remarks today.

Fulton MacGregor pressed Liam Kerr—quite forensically, I thought—about whether he had had any discussions with Social Work Scotland, social workers or, indeed, the relevant agencies about the amendment. The answer that Liam Kerr gave was a categorical no. I am interested in whether he has now had discussions with Social Work Scotland or, indeed, the relevant agencies. I am happy to give way, if he wants to say that he has.

If we are seeking to improve the process of risk assessment, it is crucial that we are led by the considerations of the Risk Management Authority about what information is most relevant to risk. Accordingly, we need to be cautious as parliamentarians that we do not seek to pre-empt those considerations and predetermine the information that is to be considered as having a bearing on risk.

Amendment 144 would extend across all forms of court-imposed electronic monitoring. A social work report is prepared for the court when considering the imposition of a restriction of liberty order—an RLO—so social work would be aware of the background to the cases anyway. Therefore, there would seem to be limited merit in requiring the court to provide to the local authority information that it is already likely to have or to be aware of. In addition, social work involvement in monitoring an individual serving a community sentence varies depending on the community sentence imposed. For example, there is no requirement for a supervising officer to be appointed by the local authority for an individual sentenced to an RLO. The provision of a summary of the evidence in those circumstances would clearly be a pointless exercise.

In practical terms, I also note that it is not clear how the court would be able to identify which local

authority is the relevant authority at the time of sentencing.

I draw Liam Kerr's attention to amendment 126, in my name, which would create a duty to co-operate between, among others, the Scottish ministers and the Scottish Courts and Tribunals Service. That duty to co-operate would include the sharing of information. That would address Liam Kerr's concerns about the sharing of information, but would—rightly—retain the flexibility for the Scottish Courts and Tribunals Service to determine what information it can usefully and practically provide.

Amendment 144 presents the same challenges as its predecessor did when it was discussed at stage 2. I ask Liam Kerr not to press amendment 144. If it is pressed, I urge members to reject it.

Liam Kerr: I thank those members who have spoken, and I am grateful to Daniel Johnson for his support. Is the amendment in the exact form as my amendment at stage 2? Yes, it is, because it was right at stage 2 and it is still right at stage 3.

The cabinet secretary said that he did not get the answers, but I am not the Government. I am not in a position to answer those questions, but I can put forward the principle. The cabinet secretary said that we would discuss the issue before stage 3. That has not happened, so I am not sure how the cabinet secretary could have helped me.

The point about—

Humza Yousaf: Will Liam Kerr give way?

Liam Kerr: I will not, if that is all right with the cabinet secretary—it is not a major point.

I quoted what Social Work Scotland said when this was discussed at stage 2, and that is what the Justice Committee heard:

“what is sorely lacking are the summaries of evidence that are narrated in court.”

Important information may be missing because of that, particularly in relation to victims.

I also draw the cabinet secretary's attention to recommendation 182 of the Justice Committee's stage 1 report, in which the committee called on the Scottish Government to explore with the SCTS how to

“routinely supply criminal justice social workers with summaries of evidence”.

The cabinet secretary says that there is “limited merit” in that, but the Justice Committee was clear on the merit. That is why the Parliament must take this forward.

The cabinet secretary alluded to amendment 126. For the avoidance of doubt, that is a good amendment and we will be voting for it. However,

that does not negate why we should vote for amendment 144, which I will press.

The Presiding Officer: The question is, that amendment 144, in the name of Liam Kerr, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)

Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, Tavish (Shetland Islands) (LD)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 44, Against 69, Abstentions 0.

Amendment 144 disagreed to.

Amendment 15 moved—[Humza Yousaf]—and agreed to.

Section 2—Particular rules regarding disposals

The Presiding Officer: I ask Liam Kerr to say whether he intends to move amendments 17, 20, 22, 24, 25, 27, 29, 31, 33, 36, 38, 40, 42, 44, 46, 48, 50, 51, 54, 56, 57 and 59?

Liam Kerr: No.

Amendment 17 not moved.

The Presiding Officer: I invite the cabinet secretary to move amendments 18, 19, 21, 23, 26, 28, 30, 32, 34, 145, 37, 39, 41, 43, 45, 47, 49, 52, 53, 55, 58 and 60.

Amendments 18, 19, 21 and 23 moved—[Humza Yousaf]—and agreed to.

Section 4—More about the list of disposals

Amendment 25 not moved.

Amendment 26 moved—[Humza Yousaf]—and agreed to.

Amendment 27 not moved.

Amendment 28 moved—[Humza Yousaf]—and agreed to.

Amendment 29 not moved.

Amendment 30 moved—[Humza Yousaf]—and agreed to.

Amendment 31 not moved.

Amendment 32 moved—[Humza Yousaf]—and agreed to.

Amendment 33 not moved.

Amendment 34 moved—[Humza Yousaf]—and agreed to.

Amendment 145 moved—[Humza Yousaf]—and agreed to.

Section 5—Requirement with licence conditions

Amendments 35, 37, 39, 41, 43, 45, 47 and 49 moved—[Humza Yousaf]—and agreed to.

Section 6—Particular rules regarding conditions

Amendment 51 not moved.

Amendments 52, 53 and 55 moved—[Humza Yousaf]—and agreed to.

Section 7—List of the relevant conditions

Amendment 57 not moved.

Amendments 58 and 60 moved—[Humza Yousaf]—and agreed to.

Section 7A—Duty to share information before releasing a prisoner on licence

The Presiding Officer: Group 3 is on public authorities' duties to co-operate and prepare in relation to a prisoner's release. Amendment 61, in the name of the cabinet secretary, is grouped with amendments 126, 2 and 128.

Humza Yousaf: Although we supported the principle behind the original amendment on information sharing that was lodged by Daniel Johnson at stage 2, we opposed the amendment at stage 2 on the grounds that it was unnecessary and that it created challenges. Nevertheless, the amendment was agreed to and inserted section 7A. The concerns that we raised about the amendment remain valid. Amendment 61 would remove section 7A, and amendment 126 proposes an alternative approach to information sharing.

Section 7A places an obligation on the Scottish ministers to

"request information relevant to the monitoring of that prisoner"

from specified bodies—the Scottish Courts and Tribunals Service, Police Scotland and the relevant local authority—and the specified bodies must provide the information that is requested within 28 days of the request. I will set out the practical issues with such an approach.

The duty to request information arises before the prisoner is released on home detention curfew, but the duty has the caveat that it need be complied with only "where reasonably practicable". The Scottish ministers will therefore be able to release a prisoner on HDC without complying with the duty if they can show that it was not reasonably practicable to do so.

The Scottish ministers will be obliged to request information prior to releasing a prisoner on HDC but will be under no obligation to wait for the information to be provided before they release the prisoner.

There is no description of what

"information relevant to the monitoring"

means. The Scottish ministers will therefore have a wide power to request any information that is linked to the monitoring of prisoners on HDC.

Furthermore, there will be no ability on the part of a specified body to refuse a request, in part or in whole, and section 7A provides no definition of "relevant local authority" or any explanation of how the Scottish ministers are to determine which local authority is relevant to the prisoner.

As we noted at stage 2, information is already shared between the Scottish Courts and Tribunals Service, Police Scotland, local authorities and the

Scottish Prison Service, and the information is used by the SPS in determining applications for HDC. Therefore, our starting position was that the amendment was unnecessary.

Section 7A might also disrupt the current arrangements. A requirement to request information in every case could place an unnecessary burden on the SPS, which might already have the necessary information or might not require further information. The timing of the request could interrupt the determination of HDC, given that the timeframe that is set out in section 7A allows 28 days for the information to be provided if a request is made. That could slow down the determination and shorten the period that is available for HDC.

However, we are sympathetic to the intention behind section 7A. Amendment 126 will replace section 7A with provisions for a related but alternative approach, which amends section 1 of the Management of Offenders etc (Scotland) Act 2005. That section places a duty on the Scottish ministers and local authorities

"to co-operate with one another in carrying out their respective functions"

in relation to two groups of individuals. The first group is people who are supervised by, advised by or guided by a local authority as part of a service that is provided under

"sections 27(1) or (1A) or 27ZA of the Social Work (Scotland) Act 1968."

That includes people who are released from prison on licence and people who are supervised under a community sentence. The second group is people who are detained in custody.

The duty to co-operate expressly includes the sharing of information. Amendment 126 will retain the intention behind section 7A while avoiding the difficulties with that section, which I have described.

On amendment 2, in the name of Daniel Johnson, access to suitable accommodation is important in supporting individuals who leave prison to reintegrate successfully and, therefore, in reducing the risk of reoffending. However, amendment 2 does not offer a proportionate or effective means of achieving that aim. It risks losing the current flexibility, which allows support to be tailored to the needs of the individual.

The Scottish Government supports a range of interventions that support prison leavers to reintegrate into the community. Those include measures to support prison leavers to access accommodation on liberation, such as the sustainable housing on release for everyone—SHORE—standards, which set out good practice on how the SPS and local government housing

authorities can ensure that the housing needs of individuals in prison are met.

It is important to note that local authorities have statutory duties to address the needs of individuals who present as homeless and to provide information, support and services to individuals who are at risk of homelessness. Therefore, I am not persuaded that there is a need to legislate to require the Scottish ministers to take separate action to achieve the same aim. The duplication of existing duties and activities would be inefficient and disruptive, and it would create confusion about the responsibility for housing individuals who leave prison.

Instead, we should focus on making the existing processes as effective as possible. The Scottish Government will look at wider legislation and statutory guidance to ensure that everyone who faces homelessness is able to exercise their right and gain access to appropriate support. That work cannot take place in the context of the justice system alone, and the bill is not the right place to make such substantial changes to housing provision. Therefore, I ask Mr Johnson not to move amendment 2. If he does, I ask the Parliament to reject it.

15:30

On amendment 128, I welcome Daniel Johnson's effort to encourage us to think about how the justice system could operate differently. His amendment seeks to add a new element to HDC by requiring that

"Scottish Ministers take steps to ensure that a person subject to a curfew condition is provided with meaningful activity whilst subject to the curfew condition."

I am not convinced that legislation is required to support people on home detention curfew, which provides an opportunity to support effective reintegration by enabling part of a prisoner's sentence to be served in the community, subject to licence conditions and electronic monitoring. That option can currently be provided alongside other services to support individuals who are leaving short-term sentences, including pre-release planning, voluntary social work throughcare, the SPS's throughcare support service and third sector offender mentoring services.

Although Daniel Johnson's amendment is well intentioned, I believe that it could create significant restrictions on how the HDC system operates. The definition of "meaningful activity" is to be prescribed by Scottish ministers via subordinate legislation

"but must include ... work or volunteering opportunities".

However, not every individual on HDC would be able—or, indeed, willing—to engage with those work or volunteering opportunities. It is not clear whether those individuals would be restricted from accessing HDC because no meaningful activity could be provided for them.

Ministers do not control the employment market and could not ensure that work was available for everyone on HDC, so the Scottish ministers could never comply with that duty. In any event, if ministers prescribe work or volunteering opportunities for people, that could cut across other work or family commitments that they may have. Such a system would not provide the flexibility that is needed to take account of the specific circumstances of the individual.

I agree that, ultimately, we can do more to ensure that people who are released from prison are able to connect with public services and are given opportunities. However, I disagree with an approach that seeks to set a broad and mandatory set of activities instead of allowing actions to be determined voluntarily. For those reasons, I propose to resist amendment 128.

I move amendment 61.

Daniel Johnson: I rise to speak to amendments 2 and 128. Before I do that, I will address the cabinet secretary's comments on amendments 61 and 126.

I saw with some regret that the Government had lodged amendment 61, because I believe that a clear recommendation from Her Majesty's inspectorate of constabulary in Scotland and Her Majesty's inspectorate of prisons for Scotland was the need to improve information sharing between agencies. That was found by those bodies to be one of the critical issues around the tragic death of Craig McClelland. I recognise that amendment 126 would insert an alternative, but I do not believe that it would be as robust as a legal requirement to share information. That would be much more robust. However, if amendment 61 is agreed to, members should support amendment 126.

With regard to amendments 2 and 128, the justice system has a duty to protect the public, and it should aim for what I believe is the best way to do that: promoting reform and preventing reoffending. All too often, as the system stands, we simply return people to the circumstances in which they found themselves, which led to their offending in the first place. Amendments 2 and 128 seek to change that, and the amendments that I lodged at stage 2 regarding access to a general practitioner, an address and other measures also sought to rectify that situation.

I understand that it may be difficult and costly, but those things are vital because they are not

happening. There may be standards in place, but I do not believe that a legal duty currently exists. The SHORE—sustainable housing on release for everyone—standards do not have a statutory footing. Wales has legislated for such a duty, and I simply ask the question: if it is good enough for Wales, why is it not good enough for Scotland?

As for meaningful activity, I fundamentally believe that the best way to prevent reoffending is by finding people meaningful work. That may be difficult, and I know that the Scottish Government does not control the employment market, but, if people are being released from prison, albeit on HDC, something must surely be found for them to do if we are to ensure that they do not reoffend. For those reasons, I will move amendments 2 and 128.

Graham Simpson (Central Scotland) (Con): I speak in my capacity as convener of the Delegated Powers and Law Reform Committee, so I will not make any comment on the policy implications of section 7A or the cabinet secretary's amendment 61, which seeks to remove it from the bill.

At its meeting this morning, the DPLR Committee scrutinised the recently lodged supplementary delegated powers memorandum. Unfortunately, the lodging of the supplementary DPM breached the timeframe that is required by standing orders, which meant that this morning's meeting was our only chance to consider it. The committee was disappointed about the lack of time that it had to scrutinise effectively the changes that stem from stage 2, as a result of which we were clearly limited in what we were able to recommend to Parliament. The committee acknowledges that the past few months have been a busy legislative period for all of us, and we appreciate that oversights happen, but that should not have happened.

However, our report has now been published. In it, we make a number of recommendations on the supplementary delegated powers, one of which relates to section 7A. The committee agreed that I should highlight those concerns now, given that members will not have had a chance to read the report.

The committee noted that the delegated power in section 7A

"is particularly wide in its scope"

and that, in that respect, it contrasts with powers in other sections of the bill. The committee also observed that the obligation to request information that is relevant to monitoring a prisoner

"is potentially very wide ranging"

and that

"There will be data protection implications involved in sharing such information about the prisoner."

Therefore, the committee considers that affirmative, rather than negative, procedure would have been more appropriate for a power of such a nature. That might, of course, be a moot point if section 7A is removed from the bill.

I commend the DPLR Committee's report to Parliament.

John Finnie: I am content with the provisions of section 7A, which was inserted in the bill at stage 2, so we will not support the cabinet secretary's amendment 61, which seeks to remove section 7A.

Sadly, I will not support my colleague Daniel Johnson's amendment 128, even though it is entirely well meaning. I think that there are a number of challenges connected with it. In any case, the provision of "meaningful activity" should be part of a robust discharge plan, for want of a better term. As the cabinet secretary outlined, there are practical issues around that.

However, we will support Daniel Johnson's amendment 2. The cabinet secretary talked about statutory duties and good practice—indeed, he promised us wider legislation and statutory guidance—but he will know that everything that we have heard is about the accommodation challenge that people face when they are discharged. That remains an issue, which amendment 2 would go some way towards addressing. It would provide focus; perhaps that is the focus that the cabinet secretary is saying will come with the wider legislation or the statutory guidance that is—if I heard him correctly—intended.

The system is not working, at the moment. We need more robust provision of accommodation. Therefore, we will support Daniel Johnson's amendment 2.

Liam Kerr: I wish to speak in support of Daniel Johnson's amendments 2 and 128. It seems to me that one of the points of the bill is to help with rehabilitation. I listened to Daniel Johnson's and John Finnie's comments, and I think that the proposed measures would have merit. Thus, we will support amendments 2 and 128.

Liam McArthur: I share Daniel Johnson's curiosity about why the Government is seeking to remove section 7A, not least because—as I recall—its insertion was supported unanimously by the committee at stage 2. I would have thought that, if the Government was so concerned about what the committee unanimously agreed to at stage 2, there would have been some engagement between stage 2 and stage 3.

Like John Finnie, I think that, in relation to amendments 2 and 128, Daniel Johnson made

some very valid points about the key role that gainful activity and housing play in the process of rehabilitation and reintegration. The concern that I have—which I had at stage 2—is that the proposal is framed such that the implication is that, where such provision is not in place, the individual will remain in prison, which cannot be in their best interests. Therefore, although we accept the principle that underlies amendments 2 and 128, we will, regretfully, not be able to support them.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I lend my support to the cabinet secretary's amendments 61 and 126.

However, I will speak briefly against Daniel Johnson's amendments 2 and 128. As Liam McArthur does, I think that there are positive intentions behind them, but the bill is the wrong place for them. A lot of work has already been done on the subject, as we heard in evidence to the Justice Committee. There is good work on housing and employment, and as Daniel Johnson discussed at stage 2, around health. Those issues are best left to local service providers that do the job every day, rather than to MSPs and politicians. We need to move away from centralising such matters.

John Finnie: Will the member take an intervention?

Fulton MacGregor: I was just finishing my speech, but I will take the intervention.

John Finnie: I am grateful to the member for taking an intervention on that point.

If someone comes from location A, was arrested in location B and plans to relocate to location C, who would be their local housing service provider? The statutory obligation rests with the local authority; which local authority would it be?

Fulton MacGregor: In that hypothetical situation, my understanding is that the obligation would rest with the local authority that the person came from, unless, while they were in custody, arrangements were made for them to move elsewhere. That makes exactly my point: such arrangements are made every day and services are in place to do that.

As I said earlier, the intentions behind amendments 2 and 128 are positive. I have spoken to Daniel Johnson in committee about them and I know that they are based on a positive intention. However, I do not think that the bill is the right place for them: I do not think that we should be centralising in that fashion. I will not support amendments 2 and 128.

Humza Yousaf: I have heard what committee members have had to say. I, too, say that the bill is the wrong place for amendments 2 and 128. I understand why Daniel Johnson has lodged them,

but I hope that amendment 61 is an improvement on what was passed at the committee.

I say to Graham Simpson, who was speaking on behalf of the Delegated Powers and Law Reform Committee, that I am pleased that the committee welcomes the fact that the bill was amended at stage 2 to apply the affirmative procedure to regulations that will be made under section 9(1), in accordance with the committee's recommendation. I am also pleased to note that the committee reports that it is content with the delegated powers provision, as set out in relation to excluded sentences and approved devices.

Of course, Graham Simpson is right to record the lack of time that the committee had. I apologise to the committee for the inadvertent breach of standing orders and for constraining the time that it had to consider the supplementary delegated powers memorandum. It was delayed as a result of an administrative oversight. I am happy to put on the record my apologies to the committee for that lack of time.

I press amendment 61.

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

Members: No.

The Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Harper, Emma (South Scotland) (SNP)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Greer, Ross (West Scotland) (Green)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harvie, Patrick (Glasgow) (Green)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McArthur, Liam (Orkney Islands) (LD)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Rennie, Willie (North East Fife) (LD)

Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland Islands) (LD)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)
 Wightman, Andy (Lothian) (Green)

The Presiding Officer: The result of the division is: For 58, Against 55, Abstentions 0.

Amendment 61 agreed to.

Section 8—Approved devices to be prescribed

The Presiding Officer: Does Liam Kerr intend to move amendments 62, 64, 67, 69, 70A, 71, 72A, 73, 76, 77A, 78, 80, 82, 83A, 84, 86, 88, 90, 91A, 93, 95, 97, 99, 101 and 103?

Liam Kerr: No.

Amendment 62 not moved.

15:45

The Presiding Officer: I ask the cabinet secretary to move amendments 63, 65, 66, 68, 70, 72, 74, 75, 77, 79, 81, 83, 85, 87, 89, 91, 92, 94, 96, 98, 100 and 102.

Amendment 63 moved—[Humza Yousaf]—and agreed to.

Amendment 64 not moved.

Amendments 65 and 66 moved—[Humza Yousaf]—and agreed to.

Section 9—Use of devices and information

Amendment 67 not moved.

Amendment 68 moved—[Humza Yousaf]—and agreed to.

Amendment 69 not moved.

Amendment 70 moved—[Humza Yousaf].

Amendment 70A not moved.

Amendment 70 agreed to.

Amendment 71 not moved.

Amendment 72 moved—[Humza Yousaf].

Amendment 72A not moved.

Amendment 72 agreed to.

Section 10—Arrangements for monitoring system

Amendment 73 not moved.

Amendment 74 moved—[Humza Yousaf]—and agreed to.

Section 11—Designation of person to do monitoring

Amendment 75 moved—[Humza Yousaf]—and agreed to.

Amendment 77 moved—[Humza Yousaf].

Amendment 77A not moved.

Amendment 77 agreed to.

Amendments 79 and 81 moved—[Humza Yousaf]—and agreed to.

Amendment 83 moved—[Humza Yousaf].

Amendment 83A not moved.

Amendment 83 agreed to.

Amendments 85, 87 and 89 moved—[Humza Yousaf]—and agreed to.

Amendment 91 moved—[Humza Yousaf].

Amendment 91A not moved.

Amendment 91 agreed to.

Section 12—Standard obligations put on offenders

Amendments 92, 94, 96, 98, 100 and 102 moved—[Humza Yousaf]—and agreed to.

The Presiding Officer: Group 4 is on persons subject to part 1 monitoring: consequences of breach or deemed breach of disposal or condition. Amendment 104, in the name of the cabinet secretary, is grouped with amendments 105, 146 and 130.

Humza Yousaf: Amendment 104 will remove the power of arrest in section 12(3A), which was voted on at stage 2. That provision enables a constable to arrest an individual if they have reasonable grounds to suspect that that individual has contravened the requirement to wear and refrain from damaging the electronic tag. The implication is that that arrest may be effected without a warrant.

The police already have powers to arrest an individual who is suspected of having committed an offence, but a breach of the electronic monitoring requirements by an individual who is serving a community sentence or subject to licence conditions is not an offence in itself. The power of arrest would not therefore apply when an individual cut off their tag. The unlawfully at large offence that we created at stage 2 would, of course, enable the police to arrest an individual if they had cut off their tag and failed to return to custody following recall. People who are unlawfully at large can be arrested without a warrant.

It is not clear from the powers of arrest in section 12(3A) what a constable is to do with an individual who is suspected of having breached an electronic monitoring requirement. An individual on licence is liable to be returned to prison only if the licence is revoked. Therefore, a constable who arrests an individual only on suspicion that they may have breached their licence could not return that individual to prison. An individual who is serving a community sentence is liable to be brought before the court only if the breach procedures for that community sentence have been invoked. A constable who arrests an individual only on suspicion that they have breached their community sentence could not return that individual to prison or take them to court. There are existing powers for the police, the Scottish ministers and the courts to deal with an individual if they have breached the terms of the licence or community sentence. People on licence can be recalled to prison and people who are serving a community sentence can be fined or sentenced afresh—even to imprisonment, of course.

A further point to note is that Mr Kerr's amendment 105 also uses the word "offender". At stage 2, the Justice Committee took great pains to ensure that that word was omitted from the bill, as we have confirmed in relation to previous amendments this afternoon.

It is clear that the power of arrest in section 12(3A) is unnecessary and that the creation of a specific statutory power of arrest is a departure from the use of a general power of arrest if an offence has been committed, as agreed by the Parliament in 2016. Police Scotland has also expressed its concerns to us about the limitations on how that power could be used. The creation of a power to arrest an individual without a warrant in the absence of a criminal offence being suspected or committed and without a duty on the individual to return to prison would be confusing and could even potentially represent a breach of article 5 of the European convention on human rights.

Amendments 105 and 130 would create the offence of cutting off a tag. My first reason for urging members to reject amendment 105 is because a near-identical form of the amendment was rejected at stage 2, and my arguments against that amendment continue to apply. Indeed, the only change to the earlier amendment is the provision of a limited form of statutory defence.

Secondly, the new unlawfully at large offence ensures that those who cut off their tag and abscond will be committing an offence. Making one specific part of the same course of behaviour a further offence is therefore not necessary.

Thirdly, the proposed offence of cutting off a tag carries a maximum sentence of 12 months'

imprisonment. There would be a presumption against imprisonment for the new offence. Under the proposal, the individual may therefore be more likely to receive a fine.

Fourthly, there are already sanctions for those who cut off an electronic tag or otherwise breach the conditions of a licence or community sentence. The individual can be recalled to prison or, indeed, returned to court, to face further punishment for the breach.

Fifthly, the creation of an offence of cutting off a tag could result in an individual who is serving a community sentence being fined for breaching the community sentence and for cutting off their tag. That would mean two separate financial punishments being imposed on an individual for the same course of conduct. In contrast, the unlawfully at large offence would not apply to community sentences, thereby avoiding the risk of double punishment.

The defence that amendment 105 provides would not protect an individual whose tag is damaged accidentally or removed forcefully by a third party. A defence of reasonable excuse would be required to ensure that an individual was not convicted of an offence for conduct over which they had no control. The proposed offence would elevate the electronic monitoring requirement above all other conditions in the licence or community sentence, even if those other conditions were more important in protecting the public. For example, an individual who stayed in the house and cut off the tag would be committing an offence, whereas an individual who breached a condition not to go near a primary school would not.

Amendment 130, in the name of Daniel Johnson, is similar in nature to amendment 105, so the same arguments apply. Although the defence that is proposed in amendment 130 is framed differently, it attracts the same criticism as the defence for which amendment 105 provides. An individual who accidentally damaged their tag, or whose tag was forcefully removed against their will, would not be afforded a defence under that amendment.

An additional difficulty with amendment 130 is that there is no specific punishment for the offence. While amendment 105 specifies the maximum punishment on summary conviction for the cutting off of a tag, there is no punishment specified at all in amendment 130. It is not clear whether the offence that would be created by amendment 105 could be tried only summarily or in solemn proceedings as well. I urge members to vote to reject those two amendments.

Margaret Mitchell's amendment 146 is broadly similar to the amendment that she lodged at stage

2, which was rejected. The reasons for rejecting the amendment remain the same. The only change to the wording is the addition of qualifying language that states that, when there is a suspected breach, the designated person

"must notify such bodies mentioned in subsection (3) as they consider appropriate."

The amendment would place an obligation on the designated person—currently, G4S—to report every suspected breach of a community sentence or licence condition to the police, as there are currently no other bodies specified in subsection (3).

The breach would also require to be reported whether or not the designated person considered that it should be addressed by the police. The duty to report a suspected breach would apply irrespective of whether the individual required to be recalled to prison under the terms of their licence or whether any enforcement action was to be taken. For example, an individual who is five minutes late for their home detention curfew would require to be reported to the police, even though the police would not act on that information unless the individual had been recalled, which in most instances one would suspect would not be the case.

The drafting of amendment 146 means that the provision would apply where the individual was suspected of having breached a section 3 disposal or a section 7 licence condition. There is no reference to an electronic monitoring requirement, so it would capture any breach of a disposal or licence listed in sections 3 or 7, even where no electronic monitoring requirement was imposed.

Finally, the obligation to inform is also confusing, as it specifies two different timescales for compliance. The first is "Immediately" after the suspicion arises and the second is

"or as soon as is reasonably practicable".

For all those reasons, I ask members to reject amendment 146.

I move amendment 104.

Liam Kerr: Parliament will be well sighted on amendment 105 and the reasons for it, and it is imperative, in my view, that Parliament has its say. Members will be aware that, under the bill as amended at stage 2, offenders who were out on a tag could cut off their tag and would not be considered to have committed a criminal offence. I find that extraordinary. There should be an immediate power of arrest, and amendment 105 would provide that.

The reality of the increase in the use of tagging means that someone would be in prison but for the tag that they are wearing. We must surely,

therefore, treat the removal of a tag as seriously as if the person had breached the prison wall.

Parliament will be reassured to note that Scottish Women's Aid made clear to the committee in its stage 1 evidence that a criminal offence in such circumstances is needed if there is to be a credible deterrent. Victim Support Scotland, Community Justice Scotland and Positive Prisons? Positive Futures called for robust responses to breaches of monitoring conditions.

Again, the committee rightly raised objections at stage 2 and, no doubt, Parliament would wish to hear them answered. Fulton MacGregor was uncomfortable that such an offence seemed to be punitive. I can only respond that of course it is punitive, because the offender has done something that is akin to breaching the prison wall.

The cabinet secretary was concerned that someone might need to remove a tag for medical reasons and would then be further criminalised as a result. I was not convinced that that would happen, and I remain unconvinced. I do not foresee some sort of strict liability around the provision, but I see the need for reassurance, which is why I have added the defence of removing the tag for medical reasons.

If the legislation is going to increase the number of offenders on tags, the appropriate protections must be in place. That means making it a criminal offence to tamper with or damage a tag, and I seek Parliament's support for amendment 105.

For similar reasons, we will support Daniel Johnson's amendment 130 if he chooses to move it, and we will oppose amendment 104, which seeks to remove what was a sensible amendment at stage 2 that aimed to ensure that the police have powers of arrest when an offender has cut off their tag. The stage 2 amendment was lodged in response to evidence that the committee heard from the police that there are legal grey areas around their powers to apprehend, and the provision is now in black and white in the bill.

Margaret Mitchell (Central Scotland) (Con): Police officers do not monitor or control the conditions that are attached to electronic monitoring. When a breach of those conditions occurs, such as when the offender enters an excluded area or tampers with or removes their tag, the police officers' response is reactive. That has raised concerns at Scottish Women's Aid, Victim Support Scotland and Community Justice Scotland that the response time to react to a breach is too long.

Amendment 146 therefore seeks to ensure that, when there is a suspected breach of a disposal or conditions, the relevant bodies are contacted

immediately, or as soon as possible. The relevant bodies are listed as:

"(a) the Police Service of Scotland"

and

"(b) such other body as the Scottish Ministers may by regulations specify."

As the cabinet secretary said, amendment 146 is similar to one that I lodged at stage 2, but it has been revised to take account of the concerns that the cabinet secretary raised at stage 2 about minor breaches being escalated to the police. The amendment now provides for discretion and a proportionate response to any breach by stipulating:

"Immediately or as soon as is reasonably practicable after a suspected breach mentioned in subsection (1) has occurred, a person designated under section 11(1) must notify such bodies mentioned in subsection (3) as they consider appropriate."

In other words, the amendment allows the designated person to use their judgment about whether they consider that the breach is one that must be responded to immediately by, for example, Police Scotland. As domestic abuse would possibly be covered by conditions, a breach could result in a victim being put in immediate danger, so I hope that the cabinet secretary will support amendment 146. Crucially, it removes the potential for minor breaches—as a result of a technical error, for example—to be escalated to the police, but it provides added protection for victims of domestic abuse.

Amendment 146 also gives clarity to the procedure to be followed, which is why the Law Society of Scotland supports it.

Daniel Johnson: I believe that it is important that we make cutting off a tag an offence for the following reasons. First, when we look at the circumstances of Craig McClelland's death, it is clear that a significant number of people were unlawfully at large who had realised that they could cut off their tags and that that, in and of itself, did not constitute an offence and that they had a good chance of escaping detection. That needs to be corrected.

16:00

More important, if we decide that someone has committed an offence that requires us to deprive them of their liberty, and they tamper with the means by which we are restricting or removing their liberty, that is extremely serious, so I believe that doing so should be an offence. If we cannot monitor their whereabouts or whether they are abiding by the restriction of liberty, that must be considered an offence and should be treated as such.

It is not about elevating the electronic monitoring requirement above other conditions; it is about recognising that the tag is the primary measure that we will be using to deprive people of their liberty in such circumstances.

Humza Yousaf: On the tragic case that Daniel Johnson mentioned, I know that the thoughts of everybody in the chamber will be with the McClelland family. Does Daniel Johnson recognise that we are introducing an offence of being unlawfully at large, which, in that case, would have meant that James Wright would have been arrested? Therefore, I am not sure that the case is a justification for making cutting off a tag an offence.

Daniel Johnson: The cabinet secretary is right; I welcome the new offence. It is an important step forward and it would correct many of the issues. However, as Liam Kerr put it, when someone goes over the prison wall, we do not wait for them to rob a bank before we arrest them. We arrest them once they have gone over the wall. If someone cuts off their tag, we should not wait—their doing so should, in itself, be a ground for arresting that person.

Fulton MacGregor: I want to speak briefly, because Liam Kerr mentioned me in his remarks. For the record, I did not say that the offence would be regarded as punitive; I said that it could be regarded as overly punitive, because the individual circumstances would not be taken into account. There was a wee bit of a play on words there, which I think the *Official Report* will show.

Of course the breach of an electronic monitor needs to be taken seriously and dealt with robustly—nobody in the chamber would disagree. However, we need to get the balance and the measure right—that is why the provisions of the bill are the right way to deal with the issue, and we should not play simple politics with it.

The Presiding Officer: I call the cabinet secretary to wind up on this group.

Humza Yousaf: I have no further comments.

The Presiding Officer: The question is, that amendment 104 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)

Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, Tavish (Shetland Islands) (LD)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)

Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McDonald, Mark (Aberdeen Donside) (Ind)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

The Presiding Officer: The result of the division is: For 68, Against 45, Abstentions 0.

Amendment 104 agreed to.

Amendment 105 moved—[Liam Kerr].

The Presiding Officer: The question is, that amendment 105 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)

Golden, Maurice (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McDonald, Mark (Aberdeen Donside) (Ind)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)

Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, Tavish (Shetland Islands) (LD)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 45, Against 68, Abstentions 0.

Amendment 105 disagreed to.

Amendment 106 moved—[Humza Yousaf].

Amendment 106A not moved.

Amendment 106 agreed to.

Section 13—Deemed breach of disposal or conditions

Amendments 107 and 109 moved—[Humza Yousaf]—and agreed to.

After section 13

Amendment 146 moved—[Margaret Mitchell].

The Presiding Officer: The question is, that amendment 146 be agreed to. Are we agreed?

Members: No.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)

Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)

MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, Tavish (Shetland Islands) (LD)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 44, Against 69, Abstentions 0.

Amendment 146 disagreed to.

Section 14—Documentary evidence at breach hearings.

The Presiding Officer: Does Liam Kerr intend to move amendments 111A, 112, 113A, 114, 115A, 116, 118 and 120?

Liam Kerr: No.

The Presiding Officer: Thank you. I invite the cabinet secretary to move amendments 111, 113, 115, 117 and 119.

Amendment 111 moved—[Humza Yousaf].

Amendment 111A not moved.

Amendment 111 agreed to.

Amendment 113 moved—[Humza Yousaf].

Amendment 113A not moved.

Amendment 113 agreed to.

Amendment 115 moved—[Humza Yousaf].

Amendment 115A not moved.

Amendment 115 agreed to.

Section 16—Additional and consequential provisions

Amendments 117 and 119 moved—[Humza Yousaf]—and agreed to.

After section 16

The Presiding Officer: Group 5 is on the enforcement of fines and so on. Amendment 121, in the name of Lewis Macdonald, is the only amendment in the group.

Lewis Macdonald (North East Scotland) (Lab): The purpose of my amendment is to address an anomaly in the law that was first raised with me by my constituent Michelle Gavin almost three years ago.

An intruder broke Michelle Gavin's fence while trying to avoid a police officer. Rather than take him to court, the procurator fiscal offered the intruder a fiscal fine—a compensation order requiring him to pay the householder £400 to fix her fence.

When I raised that case during stage 2 consideration in April, the money paid to my constituent amounted to £7.50. Thanks to the spotlight of parliamentary scrutiny, that has now risen to £15. That means that £385 remains outstanding three years after the damage took place. By any standard, the law has failed that victim, just as it has many thousands of others. That is why change is required.

Michelle Gavin has received only a fraction of the compensation owed to her, in part because the perpetrator is under no legal obligation to provide information on his income, savings or benefits, or any other relevant information that would help to ensure that he paid the fiscal fine. It is far harder for the courts to enforce such an order. That is why my amendment proposes to make completing a declaration of income form, which is relevant in this case, mandatory.

When I moved a similar amendment at stage 2, members suggested that it should make provision for reasonable excuse and specify a time limit for completing the form. I have addressed those points in the revised amendment.

Perhaps more importantly, the cabinet secretary said at stage 2 that he would rather not rely on declaration of income forms since the necessary information could be obtained direct from United Kingdom Government departments. I am very open to that approach. The Digital Economy Act 2017 contains provisions to allow the courts to obtain information about benefits and earnings directly from Department for Work and Pensions and HM Revenue and Customs databases, but that requires the Scottish ministers to introduce the necessary regulations to allow the Scottish

Courts and Tribunals Service to put the appropriate arrangements in place.

I return to the issue in order to discover from the cabinet secretary whether such regulations have been drafted and, if so, when he expects them to be laid. I also ask whether those regulations will ensure that data sharing will apply to fines that have not yet been paid, as well as to new cases decided after the regulations are approved.

Michelle Gavin has already waited far too long. My purpose is to ensure that her case can be revisited by the Scottish Courts and Tribunals Service, using new powers to obtain information so that she can get the money to which she is entitled, whether those powers come from this amendment or from Government regulations on sharing data. I look forward to the cabinet secretary's contribution.

I move amendment 121.

Humza Yousaf: As at stage 2, when an almost identical amendment was voted down, I welcome Lewis Macdonald's interest in improving fines enforcement. The commitment of all parties to that important work is welcome, and I appreciate the fact that he is acting on behalf of a constituent in his region.

Fines collection rates in Scotland are high, and I welcome the continuing efforts that the Scottish Courts and Tribunals Service puts into enforcement. Recent statistics show that 90 per cent of the value of sheriff court and justice of the peace court fines imposed during the three-year period between 2015-16 and 2017-18 had either been paid or was on track to be paid. I accept that the remainder is a hard nut to crack, and I appreciate that that is exactly what amendment 121 is aimed at addressing. However, amendment 121 is not the best way of going about that. Despite some changes that Mr Macdonald has made to the amendment since stage 2, it remains somewhat flawed. Among other issues, failure to obey a court order is a contempt of court, and the penalties for contempt of court are set out in the Contempt of Court Act 1981. It depends on the court, but in all cases the penalties exceed the £1,000 set by amendment 121 and include the possibility of imprisonment. The offence that Mr Macdonald seeks to create does not even match the existing deterrent. There is no justification for creating a new criminal offence for conduct that can be already be dealt with by a court.

There are other technicalities that I can go into if necessary. More fundamentally, though, from a policy point of view, I am concerned, as I mentioned at stage 2, about the circularity of creating a new offence attaching a penalty of a fine in precisely those cases where the individuals concerned had already demonstrated their failure

to engage with fine enforcement officers. I note that the offence appears to be little used in England and Wales, which suggests that there is little point in creating one up here.

There is a better way of dealing with this. Lewis Macdonald asked for an update from the Government about regulations. He is right—we want the Scottish Courts and Tribunals Service to obtain relevant information about a person's income directly from the Department for Work and Pensions and HM Revenue and Customs. I can confirm to Lewis Macdonald that before the end of the year we will put draft regulations before the Parliament to enable that to happen. What that means is that instead of asking the defaulting individual for information about income and benefits, the fine enforcement officers would be able to obtain that information directly from the DWP and HMRC. That would be a far more effective way of dealing with people who have already proved themselves reluctant to engage with the court service. It does not create a circular offence.

In summary, despite some of the changes to amendment 121 since stage 2—

Lewis Macdonald: I welcome the cabinet secretary's commitment on timescale. Can he confirm that the regulations, when agreed to, will permit the Scottish Courts and Tribunals Service to pursue defaulters for fines that have previously been imposed but have not yet been paid?

Humza Yousaf: I do not know whether we have the ability to be retrospective. If the member will forgive me, I cannot say that until we draft the regulations and have come to a determination following our own legal advice and after speaking to the DWP and HMRC.

I recognise that it is an important matter, particularly because Mr Macdonald's constituent has been waiting for three years for the fine to be paid. When we return from recess and when we are drafting those regulations, perhaps I can meet Mr Macdonald to assure him that we will do everything possible to help people such as his constituent and many others who may well be in that situation to have those fines paid. I will endeavour to involve him in some of the conversations around the drafting of the regulations.

For all the reasons that I have outlined, I hope that Mr Macdonald will not press amendment 121 but, if he does so, I ask members to reject it.

16:15

Lewis Macdonald: I welcome the commitment that the cabinet secretary has made in relation to timing and his offer of a meeting to ensure that the

changes that go through Parliament will assist in the case of Michelle Gavin and the many other cases that are no doubt outstanding. I look forward to that discussion with him soon after the summer recess. On that basis, I seek to withdraw amendment 121.

Amendment 121, by agreement, withdrawn.

Section 44—Continued independence of action

The Presiding Officer: Group 6 is a group of minor and technical amendments. Amendment 122, in the name of the cabinet secretary, is grouped with amendments 123, 131, 132 to 137 and 143.

Humza Yousaf: The amendments in this group are all minor or technical amendments to tidy up the bill. I do not think that there is anything controversial among them, so I will not keep members back by saying too much about them.

Amendments 122, 123, 133 and 136 ensure that the Prisoners and Criminal Proceedings (Scotland) Act 1993 is referred to consistently throughout the bill with the label “the 1993 Act”. Amendments 131 and 132 adjust some language in section 43C that was added at stage 2 so that it is consistent with the language that is normally used in provisions of this type. Amendment 143 corrects a typo where the word “Act” appears once too often.

The other amendments in the group move sections around to improve the accessibility of the legislation. Everything that is about the Parole Board for Scotland as an institution will sit in part 3 and all the substantive provisions about prisoners will sit in a new part after part 3.

I move amendment 122.

Amendment 122 agreed to.

The Presiding Officer: Group 7 is on the independence of the Parole Board for Scotland. Amendment 1, in the name of Daniel Johnson, is the only amendment in the group.

Daniel Johnson: I am mindful of two key points. The first is the correspondence that I have had from the cabinet secretary, for which I thank him. The second is my understanding that the Government intends to introduce legislation on the Parole Board. I will bear that in mind in what I say. I do not intend to speak for long.

The Parole Board does particularly important work in determining whether individuals continue to pose risk to public safety and whether they should be released from prison. It is therefore critical that the board’s work is carried out independently. That work is not always easy and it requires fine and balanced judgments, and therefore its independence is important. The

independence of the judiciary, which is set out in statute and which we all have a duty to uphold, should be mirrored for the Parole Board. However, I recognise that there may well be technical issues with the amendment, and I will listen to what the cabinet secretary has to say on it.

I move amendment 1.

Humza Yousaf: I thank Daniel Johnson for his amendment and for the constructive conversation that we have had at the various stages of the bill. As Daniel Johnson rightly did, I put on record the fact that the Parole Board’s members do an incredibly difficult job, and they do it very well. It is a remarkably difficult job and one that has to be—and rightly is—free from political interference and indeed governmental interference. We should all unite in defending the independence of the Parole Board, and I am sure that we all do.

I sympathise with the purpose of amendment 1, but I consider that section 44 goes far enough in restating the independence of the Parole Board. As briefly as possible, I will touch on my concerns about amendment 1. The area that causes me the most concern relates to the Scottish ministers’ power to recall a person to custody for breach of their licence conditions. My view is that any such action to revoke a licence by the Scottish ministers would run contrary to the proposed amendment. It effectively involves the Scottish ministers revoking the person’s licence, as set by the Parole Board, and could be seen by some as interfering with the board’s independence.

I am sure that members will agree, where protection of the public demands it, it is appropriate that the Scottish ministers can make a decision to revoke a licence without having to wait until the next time that the Parole Board will convene to consider the case. I am happy to expand on that or my other concerns. The reason why I am highlighting them is that I believe that the amendment may have unintended and potentially damaging consequences to the overall parole system.

I consider section 44 to be sufficient to restate the independence of the Parole Board. I therefore ask Daniel Johnson not to press amendment 1, and if he is otherwise minded, I urge other members to reject it.

The Presiding Officer: I invite Daniel Johnson to wind up and to press or withdraw amendment 1.

Daniel Johnson: I heard what the cabinet secretary has to say and understand his reservations. If the Government brings forward legislation in the coming months and years, we need to consider the role of the Parole Board very carefully, in terms of its independence and the fact that, while in many respects it is a tribunal like other courts, it is not identical. Its important role

needs careful consideration. However, with the comments that the cabinet secretary has just made in mind, I will not press the amendment.

Amendment 1, by agreement, withdrawn.

Section 36—Mandatory categories of member

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

Before section 39A

The Presiding Officer: Amendment 124, in the name of the cabinet secretary, is grouped with amendment 127.

Humza Yousaf: Amendment 124 seeks to make a change to section 3AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 in order to provide greater flexibility in the structure of HDC and to clarify its impact on the Parole Board's assessment for parole.

The direct impact of the change will be minimal in terms of eligibility for HDC. However, in the context of a historically high prison population, the change is required so that ministers will have sufficient powers to configure HDC differently in the future, should they ever need to do so. I believe that it is a prudent step to take now, when there is an available legislative vehicle.

The amendment proposes a change in how the minimum length of time that is to be spent in custody before a person becomes eligible for HDC will be framed in legislation. Currently a prisoner can be eligible only after serving one quarter of their sentence or four weeks—whichever is greater. Subsection (2) will change that so that a prisoner will have to serve only one quarter of their sentence to be eligible for HDC. The Scottish ministers currently have the power, via subordinate legislation, to modify the requirement that a prisoner must serve a minimum of four weeks but not the requirement that a prisoner must serve an absolute minimum of one quarter of their sentence. Subsection (3) will enable the Scottish ministers to modify, via subordinate legislation, the minimum amount of time that must be served for HDC eligibility, should they ever need to do so.

If it were ever necessary to change the requirement that a minimum of 25 per cent of a sentence must be served before someone becomes eligible for HDC, any such proposal would come back to the Parliament for approval under subordinate legislation—which, importantly, would be subject to the affirmative procedure—instead of requiring future primary legislation. That pragmatic change will ensure consistency with the already broad range of powers that ministers have

to modify the HDC regime via subordinate legislation.

The Scottish ministers have the power to modify the following aspects of the HDC regime via subordinate legislation: the minimum sentence that a short-term prisoner must be serving to be eligible for HDC, which is currently three months; the number of weeks that must be served before a short-term prisoner can be eligible for HDC; the number of days leading up to the halfway stage of a prisoner's sentence during which HDC can be granted; and the statutory exclusions from HDC.

However, although the Scottish ministers have a power to modify the minimum number of weeks that must be served before a prisoner is eligible, which is currently four weeks, there is no power to modify the requirement that one quarter of the sentence must be served. The requirement that a prisoner must have served a requisite amount of a sentence before being eligible for HDC remains a barrier to flexibility in how the system can be configured.

Under the powers that are proposed, the Scottish ministers will be able to change the minimum time that must be served before a prisoner can be eligible for HDC, either by reference to a specific period of a prisoner's sentence or by a specified period of time. The two-pronged approach of requiring either four weeks or a quarter of the sentence to be served will be replaced with the simple requirement that one quarter of a sentence be served. Ministers will retain the power to modify that requirement. I stress that we are not proposing to change the requirement that a prisoner must serve 25 per cent of their sentence. However, amendment 124 provides the flexibility for ministers—present or future—to work with the Parliament to act quickly if that is required.

I would have preferred to have had the opportunity to debate the change at committee stage—or, indeed, to have taken forward the approach through new legislation—but the prison population has continued to change over recent weeks, with numbers creeping steadily upwards. I must therefore act now and ask the Parliament to consider this option as a pragmatic future proofing of the available policy responses. We are, of course, exploring other measures in relation to operational capacity in the existing prison estate, and we are looking across the operation of the entire justice system in seeking to address the rising prison population. The change to HDC is relatively minor in nature, but the fact that it needs to be considered should give us all pause to reflect that we have the highest prison population per capita in western Europe—which is not a statistic to be proud of.

There has been positive collaboration on many parts of the bill to date, including through the support for electronic monitoring as an alternative to prison. I hope that the collaboration across parties will extend into future parliamentary sessions, because it is important that we continue to seek alternatives to incarceration across all our legislative and policy choices.

The final change that amendment 124 will make is to clarify that the legislation that underpins HDC does not require the Parole Board for Scotland to make a decision on parole by a specific date to enable a long-term prisoner to access HDC. Long-term prisoners are eligible for HDC only if they have been pre-approved for parole by the board at the halfway stage of their sentence. Amendment 124 clarifies that the window during which a long-term prisoner can be granted HDC is restricted by the timing of the board's decision to recommend release on parole: the decision on parole will take precedence and will not be expedited to enable a long-term prisoner to spend a longer period on HDC.

Amendment 127 was lodged in response to an amendment that Margaret Mitchell lodged at stage 2, which proposed that statutory HDC guidance should be produced and laid before the Parliament. As I said at stage 2, I am sympathetic to the intent behind that amendment, and I am grateful to the convener, Daniel Johnson and Liam Kerr for working with us on an approach that I hope satisfies them and provides what they were looking for.

Amendment 127 sidesteps two areas of concern with the amendment that was considered at stage 2. It avoids including material that duplicates other provisions in the bill and it does not create a circular obligation on the Scottish ministers to have regard to their own guidance. We propose that ministers should be obliged to publish a statutory HDC operating protocol, which will include the following heads of information:

“(a) the process of risk assessment that is carried out before a prisoner is released on licence under section 3AA”—

of the Prisoners and Criminal Proceedings (Scotland) Act 1993—

“(b) the factors taken into account in carrying out such risk assessments,

(c) the procedures for monitoring a prisoner while released on licence under section 3AA,

(d) the process for investigating a suspected failure to comply with a condition included in a licence under section 3AA,”

and

“(e) the process by which a licence under section 3AA is revoked and a prisoner recalled to prison as a result”.

We included in amendment 127 a requirement for the police, the SCTS, local authorities, the Parole Board and the Risk Management Authority to be consulted in the preparation of the protocol. In addition, the protocol will require to be laid in the Parliament within six months of royal assent and will thereafter be kept under review.

The inclusion in the bill of the heads of information on risk assessment and factors to be taken into account in carrying out a risk assessment will, we hope, satisfy members and provide what they were looking for in relation to risk.

The heads of information that are set out in amendment 127 will ensure the publication of information about the entire HDC process, including the risk assessment prior to the granting of HDC, the monitoring of risk in the community and the revocation of HDC.

The requirement to lay the protocol before the Parliament will give the Parliament an opportunity to scrutinise the risk assessment procedures that are used for the purposes of HDC.

I urge members to support amendments 124 and 127, and I move amendment 124.

16:30

Margaret Mitchell: I am grateful to the cabinet secretary for meeting me to discuss the need for stronger risk assessment before electronic monitoring is considered. As he says, at stage 2, I tried to push for robust risk assessment procedures and for details of the risk assessment tool to be shared with the Parliament before the bill was passed. I am pleased that our discussions have at least led the cabinet secretary to lodge a stage 3 amendment that will ensure that the details of how risk will be assessed will be consulted on and that a report will be produced for the Parliament within six months of royal assent if the bill is passed today. On that basis, I am happy to support amendment 127.

Daniel Johnson: I express my support for amendment 127. It is a positive step forward. My only regret about it is that it does not contain a legal obligation for the guidance to be followed, which would make a substantive difference. I will cover that when we come to risk assessment, later in the debate.

I will express the three reasons for my concern about amendment 124. The first is the rationale. Although I completely agree with the cabinet secretary that we must make a concerted effort to reduce our prison population and that we must seek alternatives to incarceration, I worry that the proposed measure, in making that intention explicit and in having solely that aim, potentially

risks the very intent that the cabinet secretary sets out. We will reduce the prison population by reducing offending, not simply by re-categorising people.

Secondly, I worry about the power that the cabinet secretary is giving to ministers in allowing them to alter the minimum threshold for HDC. I worry about whether that is appropriate, because I believe that we should be avoiding short prison sentences. On removing the threshold of four weeks, I wonder what the point of sending someone to prison for less than four weeks is. That is counterintuitive.

Fundamentally—and finally—Parliament has not been able to scrutinise the proposals, which is a matter of huge regret.

For those reasons, I do not believe that amendment 124 can be supported. It perhaps could have been supported if its provisions had been introduced earlier, but I do not believe that they can be supported when the amendment has been lodged at this late stage.

John Finnie: The Scottish Greens will support both of the amendments in the group. They are a useful contribution to what has been a very detailed debate on the whole issue, particularly around the question of risk assessment. I wonder whether the cabinet secretary, in his summing up, can comment on the likely impact on the numbers. It was depressing to see the most recent figures for people being granted home detention, which showed a significant drop in their number—due, no doubt, to the risk aversion that was built into the system. I ask the cabinet secretary to comment on that. Nevertheless, he has our support for both of the amendments in the group.

Humza Yousaf: I thank members for their contributions. I will focus on some of the questions that have been asked of me in relation to amendment 124. I reassure Daniel Johnson that the measures will be subject to the affirmative procedure. Therefore, Parliament will be able to scrutinise and debate any changes. Let me put on record again—as I did in my opening remarks—that we are not proposing any change to the minimum time period; the aim is simply to allow ministers more flexibility.

On HDC, my belief is that, as John Finnie said, the pendulum has perhaps swung too far in the other direction in that the number of people who are coming out of prison on HDC is very low. A number of members have written to me, expressing their concerns on that very point. As John Finnie suggested, it is not a question of re-categorising people; it is about examining the HDC regime as a whole and seeing where sensible changes can be made, always with the protection of the public foremost in our minds.

On the question of scrutiny, our amendments were lodged by the deadline, as they were meant to be, and this is a good point at which to scrutinise them. Of course, if they could have been introduced earlier, I would have preferred that—members will forgive me for the fact that they were not.

To address John Finnie's point, we are not proposing any changes to the eligibility criteria, so there will not be a change in the numbers. However, as he is aware, the two inspectorates—HMICS and HMIPS—conducted a follow-up inspection of the review of HDC, and there is a lot in that review that would help to negate and mitigate some of the risk aversion that he, rightly, talks about.

Therefore, with the protection of the public foremost in mind, it is possible to look at the HDC regime and ensure that it is being used in a proportionate and balanced manner to give people the opportunity to reintegrate into their communities and, we hope, to reduce reoffending. I thank Margaret Mitchell for her helpful comments throughout the debate, including the comments that she made a moment ago.

The Presiding Officer: The question is, that amendment 124 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)

Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, Tavish (Shetland Islands) (LD)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)

Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

The Presiding Officer: The result of the division is: For 69, Against 44, Abstentions 0.

Amendment 124 agreed to.

After section 42

The Presiding Officer: Group 9 is on Parole Board for Scotland decision making: provision of assistance and information. Amendment 3, in the name of Gordon Lindhurst, is grouped with amendment 125.

Gordon Lindhurst (Lothian) (Con): Briefly, the purpose of amendment 3 is set out within the amendment. It is to do with Parole Board hearings and it seeks

“to ensure that a prisoner whose case the Board is considering”

is able to understand

“the ... matters being discussed at the hearing”.

In technical terms, the amendment would simply bring the provisions for people who appear in front of the Parole Board into line with the provisions for people who are detained under the Mental Health (Care and Treatment) (Scotland) Act 2003, by having the provisions of that act made available to them. The point is to provide appropriate support for vulnerable prisoners at Parole Board hearings.

I will conclude with the words of the cabinet secretary in his letter to me of 10 June. He said:

“It is clear that your suggestion has merit”.

My delight at those words is equalled only by my disappointment that it is his intention, I understand, not to support my amendment 3. However, I intend to move and press it.

I move amendment 3

Humza Yousaf: I never aim to disappoint, but in this case I probably will. If it were agreed to, amendment 3 would result in a small part of the Parole Board procedure being provided for in primary legislation, while the remainder would be provided for in secondary legislation in the Parole Board (Scotland) Rules 2001.

Gordon Lindhurst has made a strong argument for the principle of what he is suggesting: I think that we would all unite around the principle of vulnerable prisoners being given support such as he suggests. However, my issue is largely with where that support would lie in legislation and the unintended consequences and problems that that might incur. Although we disagree about amendment 3, I thank Gordon Lindhurst, who has been very constructive in his approach. We have tried as best we can to reassure each other mutually. I know that he comes at the issue on the basis of the experience gained from his professional background.

Rather than being able to be made through secondary legislation, any further changes to the provisions that are set out in amendment 3 would require an act of the Scottish Parliament. In this instance, I remain of the view that it is entirely appropriate that matters of procedure for the Parole Board be provided for in secondary legislation. That gives us the flexibility to change aspects of Parole Board procedure more quickly, should the need to do so be identified. For that reason, I consider that matters relating to procedure are for the Parole Board rules, rather than the bill.

In addition—I know that Gordon Lindhurst and other members will be aware of this—the consultation on transforming parole in Scotland, which closed on 27 March, included proposals to provide additional support to prisoners who are in the parole process. We are currently considering the responses to the consultation.

As I stated in my letter to Gordon Lindhurst when he lodged a similar amendment at stage 2, I consider that his proposals should be progressed as part of the response to that consultation. I have already given him an assurance that that will happen, but I put it on record again. We are planning a revision of the Parole Board rules at a later stage, once all potential changes to the rules have been identified. If Gordon Lindhurst's amendment 3 is not agreed to, and he wants to discuss the proposal with me in advance of that process, I would be more than happy to have such a discussion.

Notwithstanding my views on the appropriateness of such matters being dealt with in primary legislation, I have considerable concerns about aspects of amendment 3 relating to the clarity of some of the terms that are used and the scope of the provision. I can expand on those matters if members would like me to do so. For those reasons, I urge Gordon Lindhurst not to press amendment 3 and I ask members to reject it, if he does.

My amendment 125 seeks to amend section 40A of the bill, which was inserted at stage 2 by an

amendment in the name of Mary Fee. Section 40A would make it mandatory that, before making a recommendation to release a prisoner under section 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993, the Parole Board take into account the impact of its decision on the prisoner's family and the ability of the prisoner to reintegrate with their family. I say at the outset that I am sympathetic to the intention of that provision. It is only fair to put on record the tremendous amount of work that Mary Fee has done in relation to the families of people who are in prison. It is also worth putting on record the great work that is done in that context by organisations including Families Outside, which has informed many parliamentarians about the impact of imprisonment on family members.

However, I have various issues with the provisions of section 40A. There is a lack of qualification and specification in respect of who would be considered to be a "family member". In addition, the requirement that it provides for would be mandatory, regardless of its relevance in individual cases. For example, when the prisoner has no intention of contacting the family, the requirement would not be appropriate. I also believe that it could be difficult for the Parole Board to satisfy the requirement in all cases—I am thinking of the need to obtain the views of the family to enable them to consider the impact that the prisoner's release might have on them.

I have lodged amendment 125 to adjust the powers to make the Parole Board rules of procedure include specific reference to consideration of the "likely impact" of any recommendations of the Parole Board on prisoners' families. I believe that that is a more flexible approach that will include in the 1993 act reference to the impact on a prisoner's family of a recommendation to release, but will allow for detailed provision to be made in the Parole Board rules, where I consider such provision would be better placed, as I said of Gordon Lindhurst's amendment 3.

Therefore, I urge members to support amendment 125.

Liam McArthur: I advise the cabinet secretary that he might come to regret the claim that he never aims to disappoint, but I assure him that we will support amendment 125. We recognise that this is an area in which Mary Fee has done a huge amount of work and made great strides, not just when she was a member of the Justice Committee but during her time in Parliament.

I thank Gordon Lindhurst for bringing amendment 3 back at stage 3. He set out the case well to the committee at stage 2. I am grateful to him for sharing the correspondence that he and the cabinet secretary have had in the interim.

16:45

Although I accept the cabinet secretary's point about not wanting to build in too much rigidity to the work of the Parole Board for Scotland, it is difficult to see the general principles that are set out in amendment 3 altering over time. The point was well made that the wording reflects what is already in the Mental Health (Care and Treatment) (Scotland) Act 2003. For that reason, we will support amendment 3.

The Presiding Officer: I invite Gordon Lindhurst to wind up or to add any comments, and to press or seek to withdraw amendment 3.

Gordon Lindhurst: I have nothing further to add.

I press amendment 3.

The Presiding Officer: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McArthur, Liam (Orkney Islands) (LD)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Rennie, Willie (North East Fife) (LD)
 Rumbles, Mike (North East Scotland) (LD)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland Islands) (LD)
 Simpson, Graham (Central Scotland) (Con)

Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
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 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)

Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 49, Against 64, Abstentions 0.

Amendment 3 disagreed to.

Section 40A—Parole Board decisions: consideration of impact on prisoner's family

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

After Section 43A

Amendments 126 and 127 moved—[Humza Yousaf]—and agreed to.

Amendment 2 moved—[Daniel Johnson].

The Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Greer, Ross (West Scotland) (Green)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harvie, Patrick (Glasgow) (Green)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)

Ruskell, Mark (Mid Scotland and Fife) (Green)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)
 Wightman, Andy (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Harper, Emma (South Scotland) (SNP)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, Tavish (Shetland Islands) (LD)
 Somerville, Shirley-Anne (Dunfermline) (SNP)

Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 50, Against 63, Abstentions 0.

Amendment 2 disagreed to.

Amendment 128 moved—[Daniel Johnson].

The Presiding Officer: The question is, that amendment 128 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, Tavish (Shetland Islands) (LD)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)

Wightman, Andy (Lothian) (Green)
Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 44, Against 68, Abstentions 0.

Amendment 128 disagreed to.

The Presiding Officer: Group 10 is on Parole Board for Scotland recommendations: publication of test. Amendment 129, in the name of Daniel Johnson, is the only amendment in the group.

Daniel Johnson: As we have already heard this afternoon, the Parole Board plays an important role in our justice system, but it can be finely balanced, and the Parole Board's processes are not always obvious to those outside the criminal justice system. I believe that one of the most important things that we must pursue in the justice system is transparency, which is what amendment 129 seeks to do by setting out a statutory requirement for the Parole Board to specify the test or tests that it will apply when making its decisions.

The current position is that some tests are specified, but they vary and the legislation is silent in other areas. That leads to an inconsistent and confusing situation for all who are involved. The Parole Board raised the issue in its written evidence to the committee and I believe that the adoption of a test will enhance transparency in the justice system. I thank the cabinet secretary for the dialogue that we have had in this regard—it has been incredibly useful.

I point out to members that, although the amendment sets out the requirement for a test, it leaves it to the Parole Board to devise and publish the test. I believe that that approach provides for the flexibility that will be required in order to take the provisions forward.

I move amendment 129.

Liam McArthur: I understand the intent behind Daniel Johnson's amendment, but I cannot help but observe that, in the space of two groupings of amendments, he has gone from standing up for the independence of the Parole Board to moving an amendment that cuts across some of that independence. Therefore, we will not be supporting amendment 129.

Humza Yousaf: I simply say that I welcome amendment 129. At stage 2, Daniel Johnson lodged a similar amendment and I indicated support of it in principle, subject to the removal of provisions that related to the publication of a summary of Parole Board recommendations, which I believed would be better suited to the Parole Board rules. I am therefore pleased that Daniel Johnson has agreed to remove the requirement to publish a summary of

recommendations and I am happy to support his amendment.

Daniel Johnson: On Liam McArthur's point, the critical point is that the amendment will not impose the test on the Parole Board; it simply requests that the Parole Board publish the test. The test will be for the Parole Board to devise, which I believe will leave the independence of the Parole Board intact.

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

Members: No.

The Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Arthur, Tom (Renfrewshire South) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Balfour, Jeremy (Lothian) (Con)
Ballantyne, Michelle (South Scotland) (Con)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Bowman, Bill (North East Scotland) (Con)
Briggs, Miles (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burnett, Alexander (Aberdeenshire West) (Con)
Campbell, Aileen (Clydesdale) (SNP)
Carson, Finlay (Galloway and West Dumfries) (Con)
Chapman, Peter (North East Scotland) (Con)
Constance, Angela (Almond Valley) (SNP)
Corry, Maurice (West Scotland) (Con)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Edinburgh Central) (Con)
Denham, Ash (Edinburgh Eastern) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Ewing, Annabelle (Cowdenbeath) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
FitzPatrick, Joe (Dundee City West) (SNP)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Golden, Maurice (West Scotland) (Con)
Gougeon, Mairi (Angus North and Mearns) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Greene, Jamie (West Scotland) (Con)
Greer, Ross (West Scotland) (Green)
Halcro Johnston, Jamie (Highlands and Islands) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lochhead, Richard (Moray) (SNP)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Macdonald, Lewis (North East Scotland) (Lab)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Mason, Tom (North East Scotland) (Con)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Tomkins, Adam (Glasgow) (Con)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wells, Annie (Glasgow) (Con)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Whittle, Brian (South Scotland) (Con)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Cole-Hamilton, Alex (Edinburgh Western) (LD)
 McArthur, Liam (Orkney Islands) (LD)
 Rennie, Willie (North East Fife) (LD)
 Rumbles, Mike (North East Scotland) (LD)
 Scott, Tavish (Shetland Islands) (LD)

The Presiding Officer: The result of the division is: For 107, Against 5, Abstentions 0.

Amendment 129 agreed to.

Section 43B—Offence of remaining unlawfully at large

Amendment 130 moved—[Daniel Johnson].

The Presiding Officer: The question is, that amendment 130 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McDonald, Mark (Aberdeen Donside) (Ind)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)

Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, Tavish (Shetland Islands) (LD)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 45, Against 67, Abstentions 0.

Amendment 130 disagreed to.

Section 43C—Arrest where unlawfully at large

Amendments 131 to 133 moved—[Humza Yousaf]—and agreed to.

Section 43D—Amendment of oversight provisions

Amendment 134 moved—[Humza Yousaf]—and agreed to.

Section 46—Repeal of statutory provisions

Amendment 135 moved—[Humza Yousaf]—and agreed to.

Section 47—Meaning of the 1993 Act

Amendments 136 and 137 moved—[Humza Yousaf]—and agreed to.

After section 47

The Presiding Officer: Group 11 is on assessment of risk posed by offenders. Amendment 138, in the name of Liam Kerr, is grouped with amendment 139.

Liam Kerr: Amendment 138 deals with an issue that has concerned me right from the start. The Justice Committee's stage 1 report recognised at recommendation 182 that:

"Robust risk assessment procedures are critical to the effective use of HDCs and other forms of electronic monitoring. The Committee agrees ... that decisions on electronic monitoring are informed by proper and appropriate assessments."

I have listened throughout to the representations on the issue, and I acknowledge the cabinet secretary's willingness to discuss it. However, I still come back to the same principle: surely, before we do anything to increase the number of people who are on electronic monitoring, we must have a robust and trusted assessment tool.

Amendment 138 simply requires the Scottish Government to develop that tool. It also requires the courts to have regard to the tool when disposing of cases, and requires ministers to publish a report on the operation of the risk assessment tool.

At stage 2, it was said that there have been some improvements to HDC assessments, but I come back to the point that we cannot be too restricted in our focus on home detention curfew. We must apply rigorous risk assessment across all early releases from prison. Furthermore, the cabinet secretary said that it was not clear what the tool would look like, but that is for the Scottish Government to determine, as amendment 138 clearly sets out. Flexibility for different forms of release on licence is not precluded.

For those reasons, the bill requires the safety and reassurance that would be provided by a risk assessment tool, and I commend the amendment to members. For similar reasons, and for the avoidance of doubt, we will vote for amendment 139, in the name of Daniel Johnson.

I move amendment 138.

Daniel Johnson: As Liam Kerr has pointed out, the assessment of risk is absolutely critical to the bill, following the events that have informed its passage. I will quote, not for the first time, from the HM inspectorate of prisons for Scotland report:

“Whilst an assessment process clearly existed, it may not be regarded by some to meet the definition of ‘robust’.”

That is a clear call for a robust system of risk assessment to be put in place and for that to be required by law.

I recognise that amendment 127 puts in place guidance on that, and that goes a long way towards meeting those requirements. However, as I said previously, there is no legal requirement to apply that guidance, which weakens it. Although there might be recourse to judicial review, as members will know, you need particularly deep pockets to take such a course of action.

The bill would have been stronger if there was a legal requirement to apply the guidance and for risk assessments to be carried out for people who are being put on HDC, and that should have been stipulated in black letters on the face of the bill. It is a matter of regret that the Government is opposing that this afternoon.

17:00

Humza Yousaf: Risk assessment was discussed in some detail at stage 2 and I lodged amendment 127 at stage 3 to address some of the concerns. At stage 2, the Risk Management Authority wrote to the Justice Committee to express its concern about what was being proposed by Liam Kerr in relation to the development of a risk assessment tool.

I know that the Risk Management Authority and the Parole Board have written again to the Justice Committee to express their concern about the return of similar amendments—amendments 138 and 139—at stage 3. The Scottish Government’s approach of setting out the detail of risk assessment in an operational protocol, which must be laid before Parliament, as I said, provides further reassurance about risk assessment arrangements, without presenting some of the practical problems that amendments 138 and 139 would cause.

Amendment 138 is identical to Mr Kerr’s amendment on risk assessment that was rejected at stage 2. Accordingly, all the arguments that

were presented against the amendment at stage 2 continue to apply. Namely, there is no definition of “risk assessment tool”, so it is difficult to determine what the Scottish ministers would need to do to comply with the obligation. It is not clear what sort of risk assessment tool would require to be created. Would it be one to assist the decision to release a prisoner or one to assist the management of risk once the prisoner is released?

The creation of one risk assessment tool for all forms of early release on licence—temporary release, HDC and parole—would overlook the very different natures of those various forms of early release. The duty to create a risk assessment tool would apply to all forms of release from prison, including automatic early release and release at the end of a prisoner’s sentence. The Scottish ministers would be obliged to create a risk assessment process to assess the risk that was posed by a prisoner whom they were duty bound to release and who would be released unconditionally.

Amendment 138 would also duplicate existing risk assessment processes across all forms of early release on licence. There are existing statutory provisions that require risk assessments for the purposes of HDC, temporary release and parole. There is a duty to consult certain bodies, and it might be implied that those bodies are to have regard to the risk assessment tool. One of the bodies that must be consulted is the Parole Board, which is completely independent of the Scottish ministers. Any implication that the Parole Board is bound by a risk assessment that is developed by the Scottish ministers could call into question that independence. That could give rise to a potential challenge to the Parole Board’s decisions on parole under article 6 of the ECHR, which covers the right to a fair trial. Indeed, the Parole Board expressed concerns about such an amendment and wrote to the Justice Committee about the matter at stage 2 and ahead of stage 3, so it is disappointing that those concerns seem to have been ignored.

Amendment 138, as drafted, would mean that courts would have to take account of the tool when imposing a community sentence that is listed in section 3(2). In imposing a community sentence, the court is not assessing risk for the purposes of release from prison, so such a risk assessment tool would have very limited relevance. Courts are experienced in making assessments of risk, and we must guard against creating legislation that risks impinging on judicial independence.

I also note that amendment 138 seeks to reintroduce into the bill the word “offender”, which the committee sought to exclude at stage 2 and which Parliament has sought to exclude at stage 3.

Amendment 139 would duplicate the existing statutory requirement to conduct a risk assessment for the purposes of releasing a prisoner on HDC. In addition, and more pressingly, there is a significant drafting concern that would make amendment 139 unworkable as a risk assessment provision if it were to form part of the bill. The wording of the proposed new section makes it clear that it would apply when a person was subject to a curfew condition. That means that the section would apply only after a decision to release was taken and would preclude any of the provisions being applicable to pre-release risk assessment. Accordingly, the duties relating to risk assessment in proposed subsections (2) and (3) would be impossible to comply with, as those duties would apply only to prisoners who had already been granted HDC.

Amendments 138 and 139 seek to address risk, but primary legislation already requires that risk assessment be carried out prior to releasing an individual on HDC, temporary release or parole. Amendment 127, in my name, would place an obligation on the Scottish Government to prepare and publish an operating protocol on HDC that would set out the procedures behind the HDC regime, including the process for risk assessment, as I have said. I believe that that approach is more robust than what is proposed in amendments 138 and 139, and it would meet the intention behind those amendments of ensuring greater transparency in the risk assessment process.

Accordingly, I urge members to reject amendments 138 and 139, which are unnecessary and, in places, unworkable and should not form part of the bill.

The Presiding Officer: I call Liam Kerr to wind up on this group of amendments.

Liam Kerr: I have nothing particular to add, other than to say to the cabinet secretary that it is abundantly clear from the drafting of the amendments what would be involved. I said specifically that other forms would not be precluded. I agree that it is regrettable that the cabinet secretary does not support the development of a robust risk assessment tool. I press amendment 138.

The Presiding Officer: The question is, that amendment 138 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Balfour, Jeremy (Lothian) (Con)
Ballantyne, Michelle (South Scotland) (Con)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)

Bowman, Bill (North East Scotland) (Con)
Briggs, Miles (Lothian) (Con)
Burnett, Alexander (Aberdeenshire West) (Con)
Carson, Finlay (Galloway and West Dumfries) (Con)
Chapman, Peter (North East Scotland) (Con)
Corry, Maurice (West Scotland) (Con)
Davidson, Ruth (Edinburgh Central) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Golden, Maurice (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Greene, Jamie (West Scotland) (Con)
Halcro Johnston, Jamie (Highlands and Islands) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kelly, James (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
Lamont, Johann (Glasgow) (Lab)
Lennon, Monica (Central Scotland) (Lab)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Mason, Tom (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)
Sarwar, Anas (Glasgow) (Lab)
Scott, John (Ayr) (Con)
Simpson, Graham (Central Scotland) (Con)
Smith, Elaine (Central Scotland) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Smyth, Colin (South Scotland) (Lab)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Tomkins, Adam (Glasgow) (Con)
Wells, Annie (Glasgow) (Con)
Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Arthur, Tom (Renfrewshire South) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Cole-Hamilton, Alex (Edinburgh Western) (LD)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Denham, Ash (Edinburgh Eastern) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Green)
FitzPatrick, Joe (Dundee City West) (SNP)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Gougeon, Mairi (Angus North and Mearns) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Greer, Ross (West Scotland) (Green)
Harper, Emma (South Scotland) (SNP)

Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 44, Against 68, Abstentions 0.

Amendment 138 disagreed to.

Amendment 139 not moved.

The Presiding Officer: We move to group 12, which is on mandatory fatal accident inquiry where person subject to a curfew condition commits murder. Amendment 140, in the name of Neil Bibby, is grouped with amendments 140A and 141.

Neil Bibby (West Scotland) (Lab): Members on all sides of the chamber will be well aware of the tragic case of Craig McClelland. His murder should never have happened, and it should never have been allowed to happen. As the committee noted in its stage 1 report, the justice secretary asked both HMIPS and HMICS to conduct reviews of the HDC regime. However, those reviews were described simply as process reviews by the Government, and they were not specifically tasked with looking at what went wrong in the McClelland case and why.

Recommendations were made, some of which are being acted on today, which is welcome. The reviews also established that there had been significant failings leading up to the murder. However, there has not been a specific inquiry into why it was allowed to happen and whether it could have been prevented. I believe that a full independent inquiry is required to investigate the system failures that led to Craig McClelland's death, to help the McClelland family to find the answers that have been eluding them, to hold the state and the authorities to account, to do so under the independent leadership and direction of a sheriff, and to allow the sheriff to make recommendations on what has to change if this kind of tragedy is to be prevented in the future.

An inquiry is not just in the interests of a family that is searching for answers; it is clearly and demonstrably in the public interest too. If an independent inquiry is not granted willingly by the Government, or by the Lord Advocate using his discretionary powers, the law must change to make it mandatory. Section 2 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 should be amended to include cases in which a murder is committed by a prisoner on HDC. If a fatal accident inquiry is commonplace for deaths on the prison estate, why, as a principle, is it not automatic in cases in which a prisoner commits a murder in the community?

The amendment differs from the amendment that I brought before the committee at stage 2. The cabinet secretary was concerned then that the drafting had been too broad and that I had not specified which deaths would be captured by the provisions. The redrafted amendment clarifies that they would apply only to cases in which a murder is committed by someone subject to a curfew condition.

There was also some debate at stage 2 over whether it was right that the Parliament, so soon after the passage of the 2016 act, should review whether FAIs are mandated automatically. It is my judgment that the circumstances of the McClelland case are so important that timing becomes a secondary consideration. When someone on a tag commits a murder, the system has failed, and there absolutely must be an inquiry. It is not a technical or legalistic question—in fact, there should be no question about it at all. If Parliament believes that tag murders should be subject to the FAI regime as a matter of principle, it can vote to change the law today and make it happen.

More than 5,000 people have signed a petition calling for an inquiry to take place, not just in this case but in any other tag murder. The power to change the law and do right by the McClelland family is in our hands. I urge members on all sides of the chamber to back my amendment, do the

right thing and do what it takes to ensure that the lessons of this tragedy are fully learned.

I move amendment 140.

Liam Kerr: I am pleased to support this cross-party effort to ensure not only that Craig McClelland's family will get the answers that they have been denied, but that other such tragedies and failures of the justice system will be comprehensively investigated in the future. My amendment 140A expands the scope of Neil Bibby's amendment to cover all prisoners who are released from prison on licence. I see no reason why there should not be a robust inquiry into every death that is caused by someone who is released early from prison, because the authorities that are responsible for the release have to be answerable in those cases.

I move amendment 140A.

John Finnie: This debate is fundamentally about whether the discretion that is afforded to the Lord Advocate to act in the public interest is sufficient to address the concerns that have been discussed or whether it should be in the bill that there should always be an inquiry. The obligation is to act in the public interest and it is unquestionable that the public interest would be served by having an inquiry in this instance. However, I do not support inquiries being mandatory.

As a second issue, I wonder whether the amendment is limited by having the word "murder" in it. If a death resulted in someone having a finding of culpable homicide, the provision would appear not to apply.

The discretion should remain with the Lord Advocate and I hope that he will exercise discretion to hold an inquiry in this instance.

Liam McArthur: I commend Neil Bibby for lodging his amendment 140 and heeding some of the issues that were raised at stage 2. He is absolutely right to point out that in this case it is the McClelland family who are left waiting for answers, but for the public more generally, the absence of answers on what went wrong and how we go about putting that right heightens the level of risk. Although I accept John Finnie's concerns around the issue of the Lord Advocate's discretion, the concern is that the fatal accident inquiry system is encountering far too many delays, and that needs to be addressed. For that reason, we will be supporting amendment 140.

Johann Lamont (Glasgow) (Lab): This debate around curfew measures and so on has been part of parliamentary debate since the very first days of the Parliament. It is essential, if we are going to move to this system and give it more support, that people feel confident that it will be monitored

properly and that there will be consequences to a breach.

If someone kills another person in prison, there would automatically be a fatal accident inquiry. For somebody whose liberty has been restricted on a home detention curfew, logic tells me that there should be a fatal accident inquiry then, too. It is essential to have confidence in a system that does not treat those examples differently but recognises that the same thing has happened. John Finnie spoke about an inquiry not being mandatory, but it is mandatory if the death happens in prison or a care setting—we have to explain why it would not be mandatory in those circumstances.

I believe that it is our duty not just to support individuals who come to us in tragic circumstances, but to understand why it has happened and look at the process, system or law that is not doing the right thing. Amendment 140 simply ensures that the experience of people like the family in this circumstance are treated the same as they would have been if the death had happened in prison itself. I would be very pleased if there was cross-party support for recognising a gap in a process and giving confidence to the system by addressing it with amendment 140.

17:15

Humza Yousaf: I once again put on record my sympathy and that of the Government for the McClelland family. A number of members from across the chamber have met the family and come to me and the Lord Advocate to speak about changes in the law and improvements related to circumstances around this case that they may want to see. I thank members for the constructive way in which they have had those conversations, where there has been agreement and where there has not been agreement on the way forward. I do not doubt the sincerity of everybody involved in trying to get a better system around HDC after the tragic murder of Craig McClelland.

Amendment 140 is similar to one that Neil Bibby lodged at stage 2. As I say, I remain sympathetic to its aims, but the Scottish Government must resist it for the reasons that I outlined at stage 2. The categories of mandatory FAIs were considered and legislated for in the context of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016, which Parliament passed with unanimous support.

Johann Lamont: I understand the argument about timing, but the McClelland case challenges what the 2016 act offered, and so we need to address the issue. The amendment is straightforward—it is about expanding the categories. An FAI is already mandatory if a person murders someone in prison but not if the

person is outside prison, with the same conditions as they had in prison. That issue has emerged since the 2016 act was passed, and surely we have a responsibility to respond to that, using the bill as a means to do so.

Humza Yousaf: It is worth giving some of the context to the changes that were made in 2016. That happened after a careful review by Lord Cullen and lengthy consultation and parliamentary consideration.

On Johann Lamont's point about bettering the system of HDC after a tragedy, we should of course not be closed minded to changes after a terrible tragedy such as the one that the McClelland family have suffered. That is why we now have in place a more robust and better HDC process, which came on the back of the independent inspectorate's review.

The end result of our considerations in 2016 was a scheme that specified a mandatory FAI in the narrow circumstances of death in custody and death in the course of a person's employment. We have to take great care before we make any changes to that approach, which, as I said, followed lengthy consultation and consideration.

I do not favour the addition of further categories of mandatory FAI, as that would fetter the Lord Advocate's discretion and might, for example, result in a requirement to hold an FAI even if the circumstances are straightforward, albeit tragic, and the bereaved families do not want one. Where the circumstances justify it, the Crown will undertake a death investigation and may, in addition to any criminal proceedings, investigate any other matters that bear on the circumstances of the death. Indeed, the Crown can instruct a discretionary FAI. In the tragic case of Craig McClelland, the Crown has the ability to instruct an FAI, and that matter currently sits with the independent Lord Advocate for consideration. The Crown will always engage with the families of the victims in that regard, in the context of the criminal proceedings and under the family liaison charter in relation to any wider death investigation.

Accordingly, there are mechanisms whereby, where it is appropriate, an investigation will be undertaken in such cases. 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 that, on that ground, an FAI is not justified. There is no equivalent qualification in the proposed amendment, which relates to situations in which related criminal proceedings are certain to happen. I know that amendment 140 has been lodged by Neil Bibby following the tragic case of Craig McClelland. As I said, the Lord Advocate is considering the specific

circumstances of that case and of course it is for him to make that determination.

There are some points on drafting. First, the requirement for a murder conviction might produce odd results if an FAI was required in that circumstance but not where there is a culpable homicide conviction, as John Finnie mentioned. Secondly, it would be strange for an FAI to be mandatory in the case of a murder committed by an individual on HDC but not in the case of a murder committed by an individual on parole or temporary release. Thirdly, it is most unusual to make retrospective provision in any legislation and 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 is justified.

For the reasons that I have provided, I ask Neil Bibby not to press amendment 140. If he does so, I urge Parliament to reject it.

Amendment 140A in the name of Liam Kerr would make a minor change to amendment 140 to refer to those released on licence under section 3AA of the 1993 act rather than those subject to a curfew condition under section 12AA of that act. Those two groups are the same, as those released on HDC licence under section 3AA will be subject to a curfew condition under section 12AA. In any event, as I urge the Parliament to reject the underlying amendment 140, I also urge Parliament to reject amendment 140A.

Amendment 141, in the name of Neil Bibby, would add amendment 140 to the list of provisions in section 49 of the bill that are to be commenced once the bill receives royal assent. Again, as I urge the Parliament to reject the underlying amendment 140, I also urge Parliament to reject amendment 141.

Neil Bibby: We have heard a number of different arguments in the chamber, but I have not heard a principled argument against making a fatal accident inquiry automatic in cases such as this one, and members should be in no doubt that it is a matter of principle. The precedent that the Parliament can legislate to mandate a fatal accident inquiry has already been set. The question for members in the chamber today is whether we believe in principle that inquiries into tag murders should be required. I believe that they should, and I believe that any change in the law should be backdated to include the McClelland case.

I also believe that a full independent inquiry is essential if we are to restore public confidence in HDCs and the justice system. As Johann Lamont said, if, after everything that they have been through, the family of Craig McClelland still do not have confidence in the HDC system, how can any

of us who are passing the legislation today? What happened to Craig McClelland should never have happened. It was a tragic failure of the system that should have kept him and his community safe.

Across the chamber, there are MSPs who believe that a fatal accident inquiry is needed and I welcome what John Finnie said about that in his contribution. There are more than 5,000 people in our communities who agree that the inquiry should have started by now. To the members who are saying that amendment 140 is not needed, or that the Lord Advocate has discretionary powers, I say that this tragedy is a case study in why they are wrong. The amendment is necessary because there has not been a public inquiry. The amendment is necessary because the Lord Advocate has yet to instruct a fatal accident inquiry and there is nothing in the statute that compels him to do so.

I will support amendment 140A in the name of Liam Kerr because I can accept the argument for extending the scope of my amendment, but I cannot accept that my amendment is unnecessary.

Throughout stage 2 and stage 3, we have heard the Government and members set out positions that search for arguments, rather than make arguments to justify their positions. Disgrace is an overused word in political debate, but I have no hesitation in saying that it would be a disgrace if the amendment was to be defeated today.

However, defeat of the amendment would not mark the end of the fight for a fatal accident inquiry. I say to all those who have expressed sympathy with the family, to all those who have been shocked and moved by what has happened, to all those who are appalled at the indifference with which the McClellands have been treated, and to the Lord Advocate, too, that, come what may, the case for an inquiry into the McClelland case is impossible to ignore and it is unthinkable that it should be refused.

The Presiding Officer: I call Liam Kerr to wind up and to press or withdraw amendment 140A.

Liam Kerr: I wish only to add that I associate myself and my colleagues with Neil Bibby's comments and I press amendment 140A in my name.

The Presiding Officer: The question is, that amendment 140A be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Balfour, Jeremy (Lothian) (Con)

Ballantyne, Michelle (South Scotland) (Con)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Bowman, Bill (North East Scotland) (Con)
Briggs, Miles (Lothian) (Con)
Burnett, Alexander (Aberdeenshire West) (Con)
Carson, Finlay (Galloway and West Dumfries) (Con)
Chapman, Peter (North East Scotland) (Con)
Cole-Hamilton, Alex (Edinburgh Western) (LD)
Corry, Maurice (West Scotland) (Con)
Davidson, Ruth (Edinburgh Central) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Golden, Maurice (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Greene, Jamie (West Scotland) (Con)
Halcro Johnston, Jamie (Highlands and Islands) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kelly, James (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
Lamont, Johann (Glasgow) (Lab)
Lennon, Monica (Central Scotland) (Lab)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Mason, Tom (North East Scotland) (Con)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (Ind)
Mitchell, Margaret (Central Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)
Rennie, Willie (North East Fife) (LD)
Rumbles, Mike (North East Scotland) (LD)
Sarwar, Anas (Glasgow) (Lab)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Graham (Central Scotland) (Con)
Smith, Elaine (Central Scotland) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Smyth, Colin (South Scotland) (Lab)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Tomkins, Adam (Glasgow) (Con)
Wells, Annie (Glasgow) (Con)
Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Arthur, Tom (Renfrewshire South) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Denham, Ash (Edinburgh Eastern) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Green)
FitzPatrick, Joe (Dundee City West) (SNP)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Freeman, Jeane (Carrick, Cumnock and Doon Valley)

(SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 50, Against 63, Abstentions 0.

Amendment 140A disagreed to.

The Presiding Officer: The question is, that amendment 140 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Corry, Maurice (West Scotland) (Con)

Davidson, Ruth (Edinburgh Central) (Con)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Rennie, Willie (North East Fife) (LD)
 Rumbles, Mike (North East Scotland) (LD)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland Islands) (LD)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)

Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 50, Against 62, Abstentions 0.

Amendment 140 disagreed to.

The Presiding Officer: Group 13 is on restriction of liberty orders. Amendment 147, in the name of Margaret Mitchell, is the only amendment in the group.

Margaret Mitchell: Amendment 147 is similar to my previous amendment at stage 2. It seeks to amend the Criminal Procedure (Scotland) Act 1995 and to impose particular restrictions on the liberty of offenders. In particular, it is intended to focus on domestic abuse cases in order to prevent offenders from causing further distress.

At stage 2, the cabinet secretary expressed concern because examples including a partner's house and a child's school were explicitly mentioned in the amendment and therefore would be in the bill. In response, I have removed the four examples, thereby leaving it to Scottish ministers to specify places that must be excluded. As such, amendment 147 would provide an extra safeguard to domestic abuse victims when perpetrators are released with an electronic tag.

I move amendment 147.

Fulton MacGregor: As the convener of the Justice Committee has said, a similar amendment was debated at stage 2. I am still not clear what

practical difference amendment 147 would make. Courts can already designate specified places in a restriction of liberty order, and do so regularly. I acknowledge that the convener of the Justice Committee is attempting to work alongside Women's Aid, but I am not sure that the amendment will deliver on the key concerns because it is limited to only one form of monitoring. The recent Domestic Abuse (Scotland) Act 2018 takes a much more holistic approach to tackling the scourge of domestic abuse, and I do not think that the amendment goes anywhere near to achieving that.

Humza Yousaf: Some of the challenges with amendment 147 remain as they were when an amendment in largely similar terms was lodged and rejected at stage 2.

I do not believe that there is a requirement for the additional ability for ministers to prescribe a "specified place". Courts are already able to restrict people who are on RLOs from or to a broad range of types of specified places under the current radio frequency system. People can currently be restricted, for example, from a partner's house, and under the current service, courts have also used electronic monitoring to make a local supermarket a "specified place" in order to deter a persistent shoplifter.

Under section 245A of the Criminal Procedure (Scotland) Act 1995,

"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 just change the ways in which those specified places are monitored. We do not see any need to change how specified places are defined. Indeed, there is a significant risk that, if ministers were to further prescribe in legislation the places that can be specified in an RLO, that might limit the power of the court to specify only the places that are prescribed.

We are unsure why the ability to prescribe the places that may be specified in an RLO, if it 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.

17:30

Overall, the bill has largely sought to leave untouched the underlying orders that can be monitored electronically, because 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 that has been taken on the bill to date. On the basis that I cannot see a clear benefit from an amendment of this nature, I urge Margaret Mitchell not to press amendment 147. If it is pressed, I urge members to reject it.

Margaret Mitchell: I will respond to Fulton MacGregor and to the cabinet secretary's point about courts most certainly having the power to list specific places from which a perpetrator could be excluded. In reality, and in practical terms, procurators fiscal are often under such pressure that they are handed case notes as they go into court, so they might not be in possession of the full facts, including areas that should be specified as exclusion zones. My amendment 147 would allow that to be rectified by giving ministers the power to fill in the gaps.

I press amendment 147.

The Presiding Officer: The question is, that amendment 147 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Mason, Tom (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)

Arthur, Tom (Renfrewshire South) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Macdonald, Lewis (North East Scotland) (Lab)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)

Sarwar, Anas (Glasgow) (Lab)
 Scott, Tavish (Shetland Islands) (LD)
 Smith, Elaine (Central Scotland) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 27, Against 87, Abstentions 0.

Amendment 147 disagreed to.

Section 49—Commencement

Amendment 141 not moved.

The Presiding Officer: We turn to group 14, which is on commencement provisions. Amendment 142, in the name of Liam Kerr, is the only amendment in the group.

Liam Kerr: One of the consequences of the bill should be considerable expansion in use of community sentences—the context being that nearly one in three of those is not completed. In relation to the draft Presumption Against Short Periods of Imprisonment (Scotland) Order 2019, the Justice Committee heard that there are already a number of challenges in the community sentencing system. I cannot see that it would be wise to increase significantly the numbers going into that system without having ensured, first, that such challenges have been addressed and, secondly, that the stated goals of promoting rehabilitation and preventing reconviction are achievable.

To that end, it seems to me to be sensible to put increased resources into the community system and to deliver a modest improvement to the completion rate, then to start from a position of strength and confidence when pushing more criminals into that system.

At stage 2, some members of the Justice Committee raised points about the complex reasons for community orders not being completed and the fact that the lifestyles of people who are on such orders are often chaotic. I do not dispute those factors, but I think that they make my point for me. Before pushing more offenders into the community sentencing system, we surely need to reassure ourselves that services will be there to support them in serving such sentences. If that support is not there—or might not be there—

those offenders should not be in the community. That is a key point.

Victim Support Scotland told the Justice Committee that

“communities have no faith in community sentencing.”

I will take its word for that. The basic improvement that amendment 142 calls for would help to give confidence to the public and victims that community orders are a robust alternative to prison sentences. We must set ourselves a high bar in order to ensure that community orders are as much of a deterrent as prison sentences, that they keep the public and victims safe, and that they are seen to achieve the punishment that is one of the tenets of the sentencing system. To that end, I have lodged a modest amendment that might help to achieve that.

I move amendment 142.

Daniel Johnson: I rise to speak briefly against amendment 142, which is simply a wrecking amendment. I also think that it is based on a false premise. Nothing in the bill necessitates expansion of community orders or increased use of tags; it simply allows new technology to be applied. I agree with one thing that Liam Kerr said: there should be a considerable increase in investment in community sentences. That is required because we do not spend enough to make them successful. However, the amendment would result in considerable delays to introduction of the new, useful and valuable technology for tagging, which I do not think is acceptable.

Liam McArthur: I entirely agree with Daniel Johnson that amendment 142 seems to be a wrecking amendment. All the evidence shows that community-based sentences have a better track record in rehabilitation than incarceration does—in particular, short prison sentences. By Liam Kerr's own logic, the current lack of resources in the Prison Service to support people as they emerge back into the community would suggest that we should not send them to prison in the first place. Therefore, I will oppose the amendment, as I did at stage 2, because I think that it stands the evidence on its head.

Humza Yousaf: I thank Daniel Johnson and Liam McArthur for their contributions. I, too, urge members to reject amendment 142. It is similar to amendments that Liam Kerr lodged at stage 2 that were rejected by the Justice Committee.

On the effects of amendment 142, it would seem to be perverse to tie commencement of the bill to community payback order completion rates. The provisions of the bill will allow electronically monitored restricted movement requirements to be imposed as part of a CPO as a first disposal in a case. We know that when similar requirements

have been imposed through restriction of liberty orders, completion rates have exceeded 80 per cent. Mr Kerr's amendment would insist that completion rates increase first, and that only then would the tools that the bill offers to improve completion rates become available. That is like saying that you can have the Allen keys only after you have finished assembling the flat-pack furniture.

Amendment 142 is all the more bizarre because it links CPO completion rates to commencement not only of the parts of the bill that are about CPOs, but everything in it. Why should the coming into force of the rules about disclosure of convictions, the power to arrest prisoners who are unlawfully at large, or the provision about appointments to the Parole Board depend on CPO completion rates? That does not make any sense.

Liam Kerr talks about ensuring that CPOs are "a deterrent". Unfortunately, people who are given short prison sentences—which we are looking to introduce a presumption against, which his party rejected—are reconvicted nearly twice as often as those who are given community alternatives. By Liam Kerr's logic, short custodial sentences are in no way a deterrent, so where would people who have committed a crime end up? For all those reasons, and for the reasons that were given by Daniel Johnson and Liam McArthur, I urge members to reject amendment 142.

Liam Kerr: Amendment 142 is not a wrecking amendment. I am a bit disappointed by the lack of ambition that has been shown by the members who spoke. I still cannot accept that it is not sensible to ensure that the system is working before increasing the pressure on it. In that regard, I remain on the side of Victim Support Scotland, even if no one else does.

For that reason, I press amendment 142.

The Presiding Officer: The question is, that amendment 142 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Golden, Maurice (West Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Kerr, Liam (North East Scotland) (Con)

Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Mason, Tom (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
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 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Macdonald, Lewis (North East Scotland) (Lab)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)

Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Smith, Elaine (Central Scotland) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Abstentions

Fraser, Murdo (Mid Scotland and Fife) (Con)

The Presiding Officer: The result of the division is: For 26, Against 86, Abstentions 1.

Amendment 142 disagreed to.

Schedule 1—Court orders and electronic monitoring

Amendment 143 moved—[Humza Yousaf]—and agreed to.

The Presiding Officer: That ends consideration of amendments. As members will be aware, I am required under standing orders to decide at this stage whether any provision in the bill relates to a protected subject matter—that is, whether the bill modifies the electoral franchise or system for Scottish parliamentary elections. In my opinion, the bill does not, therefore it does not require a supermajority at stage 3.

17:41

Meeting suspended.

17:51

On resuming—

Management of Offenders (Scotland) Bill

The Deputy Presiding Officer (Linda Fabiani): The next item of business is a debate on motion S5M-17893, in the name of Humza Yousaf, on stage 3 of the Management of Offenders (Scotland) Bill. I ask those who wish to speak in the debate to press their request-to-speak buttons.

The Cabinet Secretary for Justice (Humza Yousaf): Thank you, Presiding Officer. After seeing you banging the gavel just now, I am reminded never to get on your wrong side.

I am very pleased to be opening the stage 3 debate on the Management of Offenders (Scotland) Bill. First, I thank the members and clerks of the Justice Committee for their thoughtful and diligent consideration of the bill at stages 1 and 2. We have not agreed on everything—nor should we in such matters—but the conversation has been both sincere and constructive.

As members will know, additional evidence was taken on the bill in the light of the tragic murder of Craig McClelland, which was referenced by members during the consideration of stage 3 amendments, and I again extend my sympathies to his family. In June 2018, we were asked by Craig's family to respond to the circumstances of his death and we were also asked by members of the Parliament how we would respond. I know that, for example, Ruth Davidson asked us to consider the creation of a further offence. We have listened and we have responded.

We accepted that an additional punitive element was needed for home detention curfew and that a new offence was appropriate. We created the offence that Her Majesty's inspectorate of constabulary in Scotland recommended that we consider. The bill creates the new offence of remaining unlawfully at large and it improves the available powers of recall from home detention curfew. Those legislative measures sit alongside a significant number of operational improvements that have been made to HDC.

In May this year, the follow-up reports from Her Majesty's inspectorate of prisons for Scotland and HMICS showed positive progress against their recommendations. I record my thanks to colleagues in Police Scotland and the Scottish Prison Service, and their respective inspectorates, for the work that they have undertaken to date to strengthen the HDC regime. I know that that is unlikely to provide much, if any, comfort to Craig's family for the loss that they have suffered, but the

improvements in the HDC regime were the right steps for us to take.

With the bill, we have sought to make important and progressive reforms that are designed to deliver on the Scottish Government's commitment to reduce reoffending and ensure that Scotland's justice system retains its focus on prevention and, importantly, rehabilitation, while maintaining public safety and enhancing support for victims. I think that we have got the balance absolutely right.

Part 1 of the bill provides for the expansion of electronic monitoring as part of our continued development of community-based alternatives to prison. The electronic monitoring provisions provide an overarching set of principles for the imposition of electronic monitoring. The bill provides clarity as to when and how electronic monitoring can be imposed, either by the courts in relation to criminal proceedings or by the Scottish ministers in relation to release on licence from detention or imprisonment. The bill also creates a standard set of obligations, which clearly describe what is required of an individual who is subject to monitoring.

The bill empowers ministers to make regulations to specify the types of devices that can be used for the purpose of monitoring. The introduction of new technologies, such as GPS technology, presents opportunities to improve the effectiveness of electronic monitoring, for example through the use of exclusion zones, which could offer victims additional reassurance.

Electronic monitoring using the radio frequency technology that we have available today has proved itself to be an effective tool for the justice system. We look forward to working with our partners in the justice system to develop services around the new technological uses that the bill enables. We will use electronic monitoring in a proportionate way to target further reductions in reoffending, providing structure to monitoring so as to keep people safe and secure and helping people to move on with their lives away from the justice system.

Part 2 of the bill is about reforming the system of disclosure of past convictions when someone seeks to enter general employment, for example by working in a shop or an office, or when they apply for home insurance. Members will be aware of the recently introduced Disclosure (Scotland) Bill, which seeks to reform the higher-level disclosure that is used to protect vulnerable groups. The Management of Offenders (Scotland) Bill does not directly change higher-level disclosure in any way.

Currently, disclosure periods are too long. That has created an imbalance between the need for general protection for the public and allowing

people to move on with their lives. Part 2 seeks to rebalance that. The evidence is clear. A system that requires too much disclosure can have a negative impact on people's lives. I was struck when members described how they had interacted with, for example, the Wise Group, which is an excellent organisation, noting that people who had committed crimes and had been in prison often talked about how they wanted to move their lives on. However, the stigma around disclosure and the practical impact of disclosure meant that there was at least a perception—if not the reality—that their CVs or job applications were put straight in the shredder once their disclosure information was received. The bill will reduce the periods of disclosure for the majority of sentences, it will bring more people within the scope of the protections under the Rehabilitation of Offenders Act 1974 and it will increase the clarity and accessibility of the terminology that is used in the legislation.

Part 2 of the bill will bring the most fundamental reforms of the Rehabilitation of Offenders Act 1974 in Scotland since it was introduced and will lead to the most progressive reforms of that legislation in the United Kingdom. I am pleased that part 2 received general support from the Justice Committee throughout stages 1 and 2.

Legislation is of course important but, clearly, so too is cultural change. That is why we have made a commitment to help to bring about a cultural change in this area. We will work with employers to help change their perceptions of people with convictions. People with convictions have much potential.

Part 2 will be an aid to tackling inequality. It will help prevent those who are already marginalised in our society from becoming more marginalised due to a lack of employment opportunities, which may result in their remaining involved with the criminal justice system. All the evidence and research in this area has shown that stigma can have an impact on employment, and that a lack of employment can have an impact on whether people continue to reoffend. As I often say in such debates, this is not about hard or soft justice but about smart justice. We believe that the proposed reforms will help to reduce reoffending.

Part 3 of the bill deals with matters relating to the Parole Board for Scotland and its activities. The provisions make some minor technical amendments to existing legislation; they make some changes to the appointment and reappointment arrangements for the Parole Board; they reinforce the continued independence of the Parole Board; and, importantly, they provide for the administrative and accountability arrangements of the Parole Board to be set out in secondary legislation.

Those are initial reforms and improvements. As I said in previous debates, the consultation on parole has closed, and we will analyse the results and take forward further changes.

The bill makes a number of important changes to improve the criminal justice system in Scotland. It positions us well as a country that is looking to the future, not just in how we embrace technological developments but, most important, in how we configure a justice system that is progressive and based on evidence of what is effective in reducing reoffending while—crucially—keeping people safe.

I move,

That the Parliament agrees that the Management of Offenders (Scotland) Bill be passed.

18:00

Liam Kerr (North East Scotland) (Con): I am pleased to have this opportunity to speak for the Scottish Conservatives on the Management of Offenders (Scotland) Bill.

The bill has, rightly, commanded a lot of time, both in committee and in the chamber, but it could be argued that it has not commanded enough time. I fear that there is a considerable chance that it will put the public at increased risk and deny justice to victims of crime. It is because of those implications that I reiterate the concern that I expressed at stage 1, which is that we have dealt with three considerable issues as one.

John Finnie (Highlands and Islands) (Green): Does the member think that it is entirely responsible to say that the bill will put the public at increased risk?

Liam Kerr: It is entirely responsible to say what is the truth of the matter, which is that I think that the bill could put the public at increased risk, because of amendments having been disagreed to today. I will go on to talk about that.

We have rolled three issues into one.

Part 3 makes small reforms to the Parole Board for Scotland, the detail of which the cabinet secretary covered, but it has not had the attention, the coverage or the scrutiny that part 1 has had. It does not deal with the Michelle's law campaign, explicit victim and family welfare assessments, more use of exclusion zones, allowing victims and families to attend and speak at hearings, et cetera. I am concerned that we have missed an opportunity to take a step back, review the whole Parole Board and its operation and introduce a bill that relates directly to that area.

I make the same point about part 2. Again, the cabinet secretary outlined to Parliament the principles in that regard. We know that getting a

job is one of the best routes out of offending behaviour, and we know that it is difficult to strike the appropriate balance between the rights of society and employers to know about prior convictions and the ability of people with convictions to move on. We support the reforms, but they really should have commanded stand-alone scrutiny.

Part 1 is the most substantive section. It will see an increase in the number of criminals on tags in the community. In the stage 1 debate, I said clearly that at stages 2 and 3 we would have to see improvements to risk assessments and the response to breaches. However, we have not seen such improvements.

Of course, we are happy to support improvements to the technology of electronic monitoring. However, I remain concerned that the bill will extend its scope to ever more serious criminals, at the expense of public safety.

Daniel Johnson (Edinburgh Southern) (Lab): Will the member take an intervention?

Liam Kerr: If it is very brief, please.

Daniel Johnson: Will the member substantiate his point? I do not understand why this bill will, of itself, increase the number of people who are out on tag. Other provisions that the Government introduces might have that effect, but this bill simply changes the technology, does it not?

Liam Kerr: No, I do not think that the bill simply changes the technology. The implication of what is proposed is that more people will be out on tag. I stand by that assertion.

Whatever the cabinet secretary's assurances, the key public safety test has not been met. The cabinet secretary rightly reminded us of the reasons why the original bill was postponed and further evidence was taken. He talked about the shocking, unprovoked and devastating murder of Craig McClelland. Although there has been limited improvement to home detention curfew—and I am glad that the cabinet secretary acknowledged the pressure that came from Ruth Davidson to make that improvement—the reality is that that tragedy could have happened if the perpetrator had been on any type of early release.

Amendments in my name tried to address that issue. Throughout the process, I have tried to mandate a risk assessment tool. The Justice Committee demanded that, after all. Surely, before we do anything that increases the numbers on electronic monitoring, we need to have a robust and trusted assessment tool. However, Scottish National Party members voted down my proposed approach, and the record will show that the cabinet secretary said that it is not needed. I leave it to others to make the case otherwise.

I also argued that cutting off a tag should automatically constitute a criminal offence. I find it incomprehensible that the bill allows some offenders to cut off their tags and face no criminal sanction. The offence of remaining unlawfully at large is not good enough. It will not apply to people on community sentences who cut off their tags, and it will result in delays as the authorities establish whether an offender is unlawfully at large.

The SNP removed the power of arrest on suspicion, which I put into the bill, and decreased the minimum period that someone spends in jail before early release.

The SNP also decided that it was not appropriate to demand better completion rates on community orders, which, again, I struggle to understand. I acknowledge that there are reasons why completion rates are what they are, but before we put more people into that system, we should surely try to improve the rates to avoid the risk that the system becomes overloaded, which has consequences for the offender and for the safety of the public.

The record will show that I did what I could. I shall take no pleasure in being proved correct in the future.

On that note, I return to a point that I have made throughout the bill process. No matter to whom or which agency I posed the question, "What is most important in considering release on a tag—public protection, punishment or rehabilitation?", no one would clearly say that public protection is paramount.

The ethos of the bill is something other than public protection. I think that it is about keeping people out of an expensive prison system and calling criminals "relevant persons" to avoid offending them. It is less about reconviction rates and more about saving money. In the ethos of the bill, those considerations figure more prominently than considerations of public safety and justice to victims.

I fear that the bill was proposed by the cabinet secretary's predecessor in an atmosphere of complacency and with a view to extending tagging to inappropriate cases, and I fear that, with the bill, the Government has failed to learn the lessons of tragic cases such as that of Craig McClelland.

For those reasons and because of my fears for the consequences, the Scottish Conservatives cannot vote in favour of the bill today.

18:06

Mary Fee (West Scotland) (Lab): In opening for Scottish Labour, I thank the clerks and the members of the Justice Committee for their

thorough scrutiny of the Management of Offenders (Scotland) Bill. The bill will strengthen the safety and security of communities around Scotland and will assist in keeping people out of prison.

During the stage 1 debate, when discussing electronic monitoring, I referred to the view of Families Outside, which said:

"Without structured supports in place,"

electronic monitoring

"becomes a purely punitive measure".

Although I welcome the reforms to electronic monitoring, not a single penny of additional funding is being made available to address the underlying causes of criminal behaviour and, without that, we are setting people up to fail on release from prison.

For the reforms to be truly successful, they must be backed by substantial budgets for community justice, social work and wider services that tackle poverty and health inequalities and promote education.

I see that the cabinet secretary is desperate to speak.

Humza Yousaf: I hope that Mary Fee recognises that the criminal justice social work budget, which is to the tune of £100 million, has been ring fenced and that additional funding has been provided for community alternatives. I do not take away from her point that we should always continue to see whether we can increase that provision, but does she recognise that the criminal justice social work provision has been ring fenced and that there was an increase in the budget for community alternatives at the latest spending review?

Mary Fee: I recognise the points that the cabinet secretary made. However, if we are to be truly successful in rehabilitating individuals and keeping them out of prison, we need to fully resource and support not just them but their families. It is crucial that budgets are put in place to do that.

Individuals who are released on home detention curfew are often among the most vulnerable people in society and it is our duty to provide support. Doing so protects people with convictions and also supports victims and the wider community. Our current justice system frequently sets people up to fail. We must provide the support and services that people need on release from prison. That includes access to a general practitioner, housing support and a correspondence address.

The third sector has played a vital part in supporting people through the criminal justice system. The sector needs guarantees of funding

to ensure that support remains in place to assist people away from a life of crime and of inequality. However, sadly, those guarantees are limited.

Electronic monitoring can support the rehabilitation and reintegration of people with convictions back into their community. However, to ensure that, those on release through electronic monitoring and home detention curfew must know what conditions are being placed on them.

I welcome the expansion of electronic monitoring, but the risk assessment processes relating to it must be strengthened and the multi-agency approach, as recommended by HMICS, must be put in place.

Many people in the chamber today have spoken about the tragic death of Craig McClelland, which serves as a reminder that public protection must be paramount. Craig's family are also campaigning for authorities to learn further lessons from that tragedy, and we support their call that every murder that is committed by someone on a home detention curfew must lead to a fatal accident inquiry. I am grateful for the comments that colleagues made about Neil Bibby's amendment 140 today, although I am—as the family will be—sad that the amendment was not agreed to.

I also welcome the new offence that was created at stage 2 in relation to those who breach their licence conditions. The new offence of being unlawfully at large must be robust, with the right support and powers being made available to police and prison services to prevent further deaths like that of Craig McClelland.

Before I finish, I want to discuss the provisions in the bill relating to disclosure of spent convictions. There can be no guarantees that people who have served a prison sentence will not face any stigma. However, we must act to ensure that any stigma does not prevent someone from living a full and meaningful life, working to provide for themselves and their families. We know that disclosure is complex and is, rightly, required to protect vulnerable groups. We support the reforms to disclosure that will encourage people with convictions to feel welcome in society and the workplace. The Scottish Government must raise awareness among the public, and, in particular, employers and businesses, to prevent stigma from limiting the opportunities to work for people with spent convictions.

I will finish by repeating the words of Families Outside, which stated:

“Without structured supports in place,”

electronic monitoring

“becomes a purely punitive measure”.

For the measures in the bill to be successful, we must provide the appropriate level of care and aftercare for people with convictions. That will benefit society as a whole.

I will be happy to vote in favour of this piece of legislation tonight.

18:12

John Finnie (Highlands and Islands) (Green):

This is good legislation, and it is all the better for having been scrutinised in detail. I am, therefore, a bit surprised and disappointed to hear my colleague Liam Kerr suggest that the scrutiny was anything other than thorough. I do not recall any aspect that we did not look into, and, indeed, we deferred consideration in order to take additional evidence.

The case for reform was strongly made. There were consultations in 2013 and 2017. It is progressive legislation. We should not apologise for it or for where it sits in the criminal justice landscape, in relation to other provisions that have been talked about, including disclosure and the presumption against short sentences. Scotland has a shameful number of people in its prisons, and we need to empty some of those prisons and close them. We need to ensure that public safety is paramount, and electronic monitoring can play a part in that.

The consultations showed that the previous regime was viewed as being of a high standard, albeit that there were regional variations. When we talk about the use of technology, what we want is a uniform system that applies across our country, with all its challenges, so that everyone has access to all the programmes. Of course, punishment is a factor, but there is also a role for electronic monitoring to play in supporting rehabilitative purposes.

The Scottish Parliament information centre briefing mentions that the working group report says:

“EM is a versatile form of control which can be imposed either as punishment or to support rehabilitative purposes. The use of EM as a standalone punishment should remain a legitimate sentencing option. However, in its various forms EM should now become integrated with measures with a proven track record of preventing and reducing further offending which assist individuals to desist from crime.”

There are a lot of opportunities ahead, particularly with regard to organisations working together. I am talking about not only the statutory organisations but the many honourable groups in the third sector, which play a vital role.

Restriction of liberty orders, drug treatment and testing orders, community payback orders and

sexual offence prevention orders all have a role to play in the system.

The suggestion of transdermal monitoring is interesting. I am sure that we want to future proof our legislation with regard to technology that might come on board.

At the end of the day, I hope that we never lose sight of the fact that it is actually humans that we are talking about—humans with housing needs and medical needs. Their humanity must come into the system, rather than the system being totally automated. We must take account of the individual and their circumstances.

The role that electronic monitoring can play pre-trial and in lieu of remand cannot be underestimated. For instance, it can play a role pre-release in allowing prisoners to go out to seek housing or to see a GP. In all that, the pivotal role of criminal justice social work is absolutely paramount.

Some of the licence conditions relating to location and alcohol and drugs are commendable. The concerns of Scottish Women's Aid have been addressed in part by the way in which the legislation has been brought forward. We have heard repeatedly about the need for co-ordination of the public services—the police, the prison, the courts and social work—which is important. I have to say, in the brief time that I have left, that the role of a private company is out of step with that. I and the Scottish Greens would like to have seen services taken in house.

Where next? There are new technologies, and the direction of travel is more progressive. We must reduce the number of people in prison, by diversion from prosecution and many other methods. The legislation is very positive, and the Scottish Greens will be voting for it at decision time.

18:16

Liam McArthur (Orkney Islands) (LD): I thank those who gave evidence to the committee, our clerks, SPICe and others. I also thank my Justice Committee colleagues for the collaborative work that they did in scrutinising the bill. It was therefore all the more disappointing to hear Liam Kerr's earlier remarks, which amounted to dog-whistle scaremongering. The inconvenient truth is that all the evidence suggests that short-term prison sentences are more disruptive and actually make communities less safe, so we will be supporting the legislation this evening.

Mary Fee made the entirely valid point that the way in which the bill is implemented will be crucial. In particular, as we heard time and again, the use of electronic monitoring for those who would have

been released in any case would not be acceptable in terms of up-tariffing. The implementation needs to be properly resourced.

Similarly, resourcing will be key for electronic monitoring as an alternative to custody and holding people on remand. Electronic monitoring in itself is insufficient to address issues of public confidence. Without other supports around the individual concerned, it simply risks setting them up to fail. As Families Outside observed,

"Without structured supports in place, EM becomes a purely punitive measure that fails to address the reasons for the offending or to reduce the likelihood of breach due to pressures of unstable housing, substance misuse, poverty, chaotic environments, and damaging relationships",

which Mary Fee also suggested. It must be about improving individuals' chances of rehabilitation and reintegration in their communities while offering assurances to those communities. In many respects, that will be the measure of whether the legislation is successful, as we hope that it will be. It hinges, of course, on assessments and judgment of risk. As I said in the stage 1 debate,

"For those assessments to be robust, information and expertise have to be appropriately gathered and shared."—*[Official Report, 7 February 2019; c 75.]*

Criminal justice social workers must have access to the information that they need in compiling their reports. Seeking views from everyone who may be affected, including family members, will be important in assessing an individual's suitability for electronic monitoring.

Where electronic monitoring does not work, despite best efforts and best judgments, we must be prepared to act. I therefore welcome the decision to create a separate offence of remaining unlawfully at large. That is given added weight by the findings of the two inspectorate reports last autumn, and it is a sensible move towards giving the public reassurance while taking steps to make our criminal justice system more progressive.

Of course, that does little to address the loss and anguish that is felt by the family of Craig McClelland, who was so brutally and senselessly murdered in 2017. Despite those two inspectorate reports, the family is still waiting for answers as to what happened and how others can be spared the agony that they continue to suffer. With an appeal pending, that agony deepens. I was therefore disappointed that we did not agree to the amendments by Neil Bibby and Liam Kerr that would have made a fatal accident inquiry automatic in such circumstances.

As I have said before, the current delays in FAls are unacceptable. The impact of delay on families who have lost loved ones is unimaginable, but it

also prevents lessons from being learned and, where necessary, laws from being changed, which cannot be right.

The changes to the rules governing the disclosure of convictions to bring them more in line with the rules south of the border make sense. We now need employers to drop the simplistic and generally irrelevant tick-box approach to asking potential employees about convictions. We know that people can and do stop offending and that employment is often a key factor in that desistance. Therefore, in the interests of public safety, reducing the barriers to employment makes sense.

Passing legislation is inevitably the easy part. Making the changes a success will take effort, collaboration and resources. Although Scottish Liberal Democrats will support the bill at decision time, we will continue to hold Government to account to ensure that ministers will the means as well as the ends.

The Deputy Presiding Officer: We move to the open debate, with speeches of four minutes, please. I have a little time in hand for interventions if members wish to take them.

18:20

Rona Mackay (Strathkelvin and Bearsden) (SNP): As deputy convener of the Justice Committee, I thank the clerks for their hard work in helping us to get the bill to this stage—as always, they have done an excellent job. I also thank all the expert witnesses, who gave evidence with clarity and professionalism.

The bill is important and, as we have heard, it is complex in parts. It will pave the way for our work to assist a culture change in penal reform in Scotland. It is essential that we get it right, and I believe that the amendments that have been made have been beneficial to achieving that.

The three main parts of the bill are on the expansion and streamlining of the uses of electronic monitoring; a review of the Rehabilitation of Offenders Act 1974 to change the rules relating to disclosure of convictions; and a review and clarification of the role of the Parole Board for Scotland. The bill brings about a number of reforms that I believe are badly needed to ensure that Scotland's justice system retains its focus on prevention and rehabilitation while enhancing support for victims.

We know that the key feature of electronic monitoring is risk assessment, which is why we believe that the measure should be used only after a comprehensive assessment is made that takes everything into account with regard to public

safety. That is why amendment 127 was so important.

On compliance, we should not forget that, as the Law Society of Scotland briefing reminds us, many of those who are subject to electronic monitoring will be among the most vulnerable in society and will have chaotic lifestyles that prevent compliance with the provisions of such monitoring. It is therefore essential that the full remit of electronic monitoring is understood by those for whom it is an option and that the consequences of non-compliance are made clear to them. In addition, the public must have confidence that their safety will not be compromised by that disposal and all efforts should be made to highlight the reasoning for the measure, which is based on reducing reoffending and securing rehabilitation.

The committee highlighted the requirement for adequate budgets to be put in place for criminal justice social workers and services to support people who may be subject to such monitoring. Funding of such services, many of which are provided by excellent third sector agencies, is crucial to the success of any extended role for electronic monitoring and the Scottish Government's commitment to the rehabilitation of offenders. I appreciate the cabinet secretary's comments and the reassurance that he provided to Mary Fee.

Of course, it is vital to keep people out of prison wherever possible. We know the damage that imprisonment does to women, families and in particular children. Nancy Loucks of Families Outside has said:

"Electronic monitoring offers a valuable tool for reducing the use of imprisonment. Prison fractures families, whereas with the right support in place, electronic monitoring can keep families together, thereby maintaining social supports and reducing the risk of further offending."

We know that short sentences do not work, which is why the Government's presumption against short sentences is crucial and an important part of the reform jigsaw.

The Scottish Government has taken steps to bolster the law by creating a new offence of being unlawfully at large, which gives police more powers to apprehend prisoners who are escaping justice.

Liam Kerr: Does the member acknowledge that the offence of being unlawfully at large is actually quite restricted, as it applies only to certain categories?

Rona Mackay: It certainly applies to the most serious categories, which is what we are trying to address. I am not sure what that intervention was meant to achieve.

The parole reforms aim to simplify and modernise the process. The bill expressly states that the Parole Board will continue to act as “an independent tribunal” using professional expertise to ensure the safety of the public.

The Scottish Government is committed to ensuring that Scotland’s justice system retains its focus on prevention and rehabilitation while enhancing support for victims. I believe that the bill puts those priorities in place and provides a road map to a fairer and safer justice system for the people of Scotland.

18:24

Maurice Corry (West Scotland) (Con): I, too, thank the clerks to the committee for their hard work, and the witnesses for the evidence that they gave to the committee.

People in Scotland need to have the utmost confidence in their justice system. Our sentencing must be both credible and reliable. However, replacing more prison sentences with community sentences will not lead to the outcome that we all want, especially for victims of crime. Without adequate risk assessments or the possibility of a swift response to breaches of electronic monitoring, public confidence is dangerously taken for granted.

The Management of Offenders (Scotland) Bill seeks to promote an expansion to community sentencing as well as reforms to parole and the disclosure of convictions. Those reforms may be positive steps forward in the right direction; however, it is the expansion of electronic monitoring for community sentences that stops the bill being truly effective.

Of course, we have to strike the right balance between securing community safety and honouring offenders’ right to be rehabilitated. However, we are surely all agreed that, where serious crime is concerned, the safety of our communities is paramount—justice calls for that. Does it really serve our local areas to expand community sentencing? If we expand it, we widen the risk of reoffending. Offenders justly deserve a punishment that fits their crime.

Humza Yousaf: I do not say this lightly, but I find Maurice Corry’s contribution derisory, frankly. Will he not accept that all the research points to the fact that community alternatives are much more effective in reducing reoffending? If that is the case, does that not mean fewer victims of crime? What Maurice Corry is saying is completely counterproductive for victims.

Maurice Corry: At the moment, one in three community sentences is never completed.

Humza Yousaf: How many go back to prison?

Maurice Corry: Obviously, some do—I do not have the exact figures.

The Deputy Presiding Officer: Excuse me. This is not a private conversation. Mr Corry, are you willing to take another intervention?

Maurice Corry: Yes.

Humza Yousaf: Does Maurice Corry not understand that, because more people go back to prison after a short prison sentence than end up failing to complete a community payback order, by his logic, short prison sentences should be abolished? He should vote for that later.

Maurice Corry: No. I do not agree with the cabinet secretary, because there are two different types of prisoner: those who are very difficult to rehabilitate and those who have been to prison once and then see the light. On my visits to several prisons in Scotland, I have seen that people are trying to get rehabilitated—even in prison—but we must be careful that we do not have a one-size-fits-all approach. That is the point that I am making. The bill proposes an increase in the use of fines and community sentences that do not go far enough towards ensuring public safety.

I will not deny that the bill makes some worthy proposals. For instance, part 2, which focuses on the disclosure of convictions, is certainly a step in the right direction. It aims to reduce the period in which people, after serving their time, must disclose convictions. Currently, when someone applies for new work or further education, convictions must be disclosed according to the timetable that is set by the Rehabilitation of Offenders Act 1974. Of course, having to disclose spent convictions for a long period afterwards can negatively hamper people’s opportunities to move on from past offences. The change will allow reformed offenders to move forward, and it will encourage them to reintegrate into and contribute to society. I do not question that part of the bill.

However, I do question the bill’s purpose of ensuring that more community sentences are handed out that may, ultimately, fail to be impactful. For example, we know that a third of community sentences are not completed. Indeed, the completion rate of community payback orders has remained virtually unchanged for the past three years. With that in mind, I am not convinced that the bill will enable a just outcome.

Of course, it is right to explore alternatives to prison. A blanket prison punishment for every person and every crime would not be right, but the alternatives are effective only when they are appropriate and allow proper justice for victims. Perhaps it would be more worth while to focus on improving electronic monitoring and making it as effective as it can be. For instance, police officers should be given powers to respond more quickly

to breaches of electronic monitoring. Moreover, if risk assessments were permitted to include greater victim information for criminal justice social workers, that would allow more insightful and appropriate decisions to be made on a firm basis. In that regard, I refer to the comment that I made to the cabinet secretary in relation to different types of prisoners.

For me, the main concern is the bill's lack of a uniform response to the removal of an electronic tag. Indeed, an offender can cut off or tamper with an electronic tag and the bill fails to make it an automatic criminal offence for them to do so. Such an action can have catastrophic results, as we saw in the case of the murder of Craig McClelland by James Wright. Although such cases have rightly informed amendments to the bill, that example also confronts us with the risk involved in encouraging the expansion of community sentencing.

I recognise that the breaching of sexual offence or sexual harm prevention orders is, rightly, seen as an offence. However, a breach of other types of orders, including drug treatment and testing orders, restriction of liberty orders and community payback orders, will still not amount to an offence. Surely, every community order and licence condition should stipulate that removing a tag is an immediate criminal offence. As my colleague Liam Kerr pointed out, Victim Support Scotland has highlighted that, to keep victims safe, we must respond strongly and clearly to any breaches of electronic monitoring. That is the only way for it to be truly effective for our communities and for victims.

The Deputy Presiding Officer: Can you draw to a close, please, Mr Corry?

Maurice Corry: As I have said in the chamber before, the bill seeks to reform offenders but, in doing so, it overlooks the needs of victims. Victims deserve a fair and just outcome that places community safety at the very forefront of daily life.

18:31

James Kelly (Glasgow) (Lab): As someone who is not member of the Justice Committee, I pay tribute to the committee for its due consideration of the bill. I am well aware of how much work went into it, and we can tell, from how members of the committee are speaking today, how seriously they took that job.

There are two main strands to the bill that is before us today: the consideration of public safety in relation to people being released with tags, and the associated electronic monitoring and—importantly—rehabilitation. It is important that the public feel confident about their safety and that they can have confidence in part 1, which

discusses the extension of electronic monitoring. There have been some big steps forward in technology in recent years, particularly in relation to GPS. That progress allows those who have been released under electronic tagging conditions to be properly monitored to ensure that their tag remains in place and minimises the chances of their breaching those conditions. It is also important that there is proper multi-agency work to back that up. Some budget issues need to be addressed in relation to that. Third sector organisations need proper budget support, as does the funding of electronic monitoring.

It is disappointing that the amendments in the name of Neil Bibby, which related to the tragic case of Craig McClelland, were not agreed to. I pay tribute to Neil Bibby for his work on those amendments not only today but throughout the bill process. If someone commits a murder in the prison system or the care system, there is a fatal accident inquiry; it therefore seems logical that, if someone who is on an electronic tag commits a murder, there should also be a fatal accident inquiry. It would have been better to place that on the face of the bill.

As Mary Fee and John Finnie have said, rehabilitation is key to reducing reoffending and reducing the pressure on prisons. Sadly, when they leave prison, too many prisoners are released out on to the street without adequate support. Groups such as the Wise Group carry out a lot of really important work in that area, and we should be doing more to support such work.

As other members have said, for people to successfully go back out into the community, they need a bit of stability in their lives. They need support with housing—they should not to be put in a situation in which they might be homeless. To deal with health issues, they need access to a GP, and they need support to get into employment. Those three factors would give important stability, which would help them not to reoffend and return to prison.

As we go forward, it is important that there is a sufficient level of expertise in the Parole Board for Scotland. The measures in the bill partly address that, but there will be other issues to consider.

At the stage 3 vote, Scottish Labour will support the bill. However, in order to meet its objectives successfully, it is important that we follow it through by funding multi-agency work and supporting key activity around stability for prisoners to reduce reoffending.

18:35

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): I thank the Justice Committee clerks, our

witnesses and my fellow MSPs for all their work to get us to stage 3 today.

The bill is, of course, part of the bigger jigsaw of Scotland's justice reforms. Section 4 of the policy memorandum makes it clear that

"The Management of Offenders (Scotland) Bill brings forward a number of reforms designed to deliver on the Scottish Government's commitment to continue to transform the way in which Scotland deals with offenders".

For any Government, there is a careful balancing act between protecting victims and ensuring that the justice system focuses on rehabilitation and prevention.

As we have heard, one of the key measures in the bill is the introduction of GPS technology to improve the use of electronic monitoring. Section 6 of the policy memorandum states:

"The expansion of electronic monitoring supports the broader community justice policies of preventing and reducing reoffending by increasing the options available to manage and monitor offenders in the community, and to further protect public safety."

As Scottish Women's Aid told the committee:

"Electronic monitoring and particularly use of GPS technologies may help to ensure that perpetrators of domestic abuse serving sentences in the community, released on bail, or on Home Detention Curfew, adhere to the terms and restrictions imposed, thereby improving protection of women, children and young people who have experienced domestic abuse."

Nonetheless, Scottish Women's Aid was keen to highlight that GPS does not detect all forms of domestic abuse—as legislated for by this Parliament last year—including manipulation via text messages and social media communication. Therefore, electronic monitoring is not for all offenders, and the "National Strategy for Community Justice" makes it clear that

"Alternatives to prison will not be appropriate for some people."

Liam Kerr: Jenny Gilruth is making important points. Does she also agree with Scottish Women's Aid that, in order to make sure that the scenarios that she has outlined can be prevented, we need much harder sanctions if someone cuts off their tag?

Jenny Gilruth: I thank Liam Kerr for that intervention. Throughout today's consideration of amendments, we have heard similar points from him, but I am not convinced by them. Scottish Women's Aid also made points about the fear that women victims might feel if, for example, the offender was out with a tag and they were able to see the offender moving around. That could increase their anxiety. There are a number of issues that the committee took into consideration throughout the deliberations, and we are now at

stage 3, so I will move on and make progress. Nevertheless, I take Liam Kerr's point.

Part 2 introduces a fundamental reform of the Rehabilitation of Offenders Act 1974. Its focus is on ensuring that there is a balance between people's right not to disclose previous offending behaviour and the need for general public protection. In its written submission, Nacro told the Justice Committee:

"Criminal record disclosure is one of the main barriers that people with criminal records face when trying to secure employment. Our experience indicates that this is largely due to employer perceptions and misunderstandings, often based on false assumptions around perceived risk to an organisation's security and harm prevention, as well as a belief that people with criminal records lack personal attributes such as honesty and reliability."

As John Finnie alluded, expanding the use of electronic monitoring—where appropriate—should also be considered in relation to Scotland's imprisonment rate. As Dr Sarah Armstrong from the Scottish centre for crime and justice research told the Justice Committee a couple of weeks ago, when it comes to how many people we lock up, if Scotland were a US state, we would be on a par with Texas or Louisiana. Dr Armstrong described the "paradox" in the fact that Scotland, as

"a country that is so committed to social welfare investment makes huge use of such an incredibly expensive resource as prison."—[*Official Report, Justice Committee*, 4 June 2019; col 24.]

Liam Kerr spoke about costs, and I want to talk about costs, too. Dr Hannah Graham has pointed out that the average cost per prisoner place is £35,325 per year. In contrast, the average cost per community payback order is £1,771 a year, and electronic monitoring—or tagging, as it is known—costs just £965 per year. That is a fraction of the cost of keeping a prisoner in a country that, shamefully, has one of the highest prison rates in western Europe.

Nevertheless, investing in alternatives to prisons should not just be about cost, as Liam Kerr implied. We must measure the impact of the dispensations that sheriffs have at their disposal. Indeed, as Mr Kerr's colleague David Gauke, the UK justice secretary, said recently, we need to move to a more imaginative approach to crime and punishment, with a focus on rehabilitation in the community. We must therefore have a range of different and robust alternatives to incarceration that allow the justice system to interrupt the cycle of criminality without consistently relying on prison as a fallback option.

I notice that I am well over my time, so I will conclude there.

The Deputy Presiding Officer: We have a little bit of time in hand, so I can allow you up to six minutes, Mr Johnson.

18:40

Daniel Johnson (Edinburgh Southern) (Lab):
Why, thank you, Presiding Officer.

This has been something of a marathon. I acknowledge the bill team, which is sitting at the back of the chamber; it has been through quite a long process, but that has been necessary, given the circumstances.

I will begin my concluding remarks by talking about the key benefits of the bill. James Kelly set those out quite well. New technology brings with it new possibilities of doing things more effectively and providing new possibilities around monitoring individuals. The fact that we cannot use GPS for electronic tagging speaks to the need for this bill.

The committee took evidence from Karyn McCluskey and others about the possibilities of electronic tags that can monitor levels of alcohol or other substances in the bloodstream, and it is clear that they would have benefits over the old-fashioned radio tags that are currently used. They would provide for more effective community payback orders and more effective monitoring of those who we choose to release from prison.

The provisions around disclosure are important. We need to ensure that we make it easier rather than harder for people to reintegrate into society.

The modest changes to the Parole Board are welcome because they are not overly prescriptive about those who go through it. I truly welcome the addition of the test that has been included at stage 3. It is important that our justice system is transparent. If people do not understand how our justice system works, how can we expect them to trust it? By publishing explicitly a set of tests, we can ensure that we have the level of transparency we need about parole. After all, we are entrusting the Parole Board with incredibly difficult and important decisions.

Ultimately, as we decide how to vote on the bill this evening, we need to consider the circumstances around Craig McClelland's murder. They were tragic and they showed deficiencies in the regime as it stood at the time. I conceded at stage 1 that there were deficiencies in the evidence that the committee took. I am not sure that we asked the right questions about what happens when people breach. Were the powers sufficient as they stood? Those questions were asked subsequent to that event, and they were the right questions. Indeed, I believe that the implementation of a new offence will help to put in place the robust measures that are required so that we can apprehend someone when they breach.

The guidance on risk improves matters. The risk assessment was simply not robust enough, as the

prisons inspector said. The future risk management work promised by the cabinet secretary and the Risk Management Authority will enhance that.

That is not to say that the bill is without shortcomings. I regret that we did not pass the amendments on fatal accident inquiries. It is right that we investigate the failures that have occurred when there is a death in custody, and Neil Bibby's point was that essentially the same principle should apply to a slightly different context. When a death occurs when someone is released on tag, we need to ask the same questions, and they can really only be asked in a fatal accident inquiry.

There is also work to be done around inter-agency working. The most major deficiencies in the Craig McClelland case arose in information being passed between the SPS and the police. We need to do an awful lot more work to ensure that that cannot happen again. It is astonishing that some issues that were raised were the result of simple things such as the police not communicating what email addresses they were using. We need to bottom out why that happened.

We should have made cutting off a tag an offence. The tag is the means by which we monitor people for good reason. The act of tampering with or removing the means of being monitored is serious and should automatically allow the police to apprehend someone.

I caution my Conservative colleagues across the chamber. I agree with what Liam McArthur said about Liam Kerr's remarks. There is not just a degree of but a substantial amount of dog-whistle politics going on.

The bill will not widen the scope of community justice provisions; it will not create new sentences or disposals. Arguments that the Conservatives made might well apply to the presumption against short sentences—although I disagree with them—but the place for that debate is when the presumption is considered and not in relation to the bill. By making those arguments in relation to the bill, the Conservatives deliberately misconstrued and misrepresented the bill. That is dangerously irresponsible.

The arguments against the presumption fly in the face of evidence and of what the Conservatives' colleagues in the UK Parliament and the UK Government are saying. I make one simple suggestion to my Conservative colleagues—that they take a walk with Rory.

The bill is something of a missed opportunity. The provisions are useful, but the bill more properly should have looked at what happens after we release prisoners. How do we ensure that their reintroduction to society is more successful? What

do they need for that to succeed? Mary Fee was right in her opening remarks.

I recognise that my stage 2 and stage 3 amendments on GPs, on proof of identity and address and on housing might not have been as well developed as they needed to be, but we must examine such issues in future legislation. The bill has missed the opportunity of looking more holistically at how we ensure that, after people are released from prison, they are successful—judged by the fact that they do not reoffend, that they have meaningful and gainful employment and that they are not released into homelessness.

I say to the cabinet secretary that we need more debates. It is incumbent on the Government to make time for debates to discuss the big issues about the purpose of the justice system and of prison and about how we ensure that people succeed when they are released from prison. In closing the debate for Labour, I make that plea to the cabinet secretary.

18:47

Margaret Mitchell (Central Scotland) (Con): I thank all the witnesses who gave evidence and I thank the Justice Committee clerks and members for all their hard work on the bill.

I, too, consider the bill to be an opportunity lost, but for different reasons from those that Daniel Johnson gave. The bill's long title refers to offenders, which meant that the use of electronic monitoring could not be expanded to include interim disposals, such as bail, which are used before a person has been convicted of an offence. Tragically, that means that remand prisoners—the group of individuals in the criminal justice system who most need and should benefit from the expansion of electronic monitoring—cannot be included in the measures.

If the bill extended electronic monitoring to remand prisoners, it would have cross-party support and would be passed unanimously this evening. The cabinet secretary might not be prepared to acknowledge this, but—sadly—the stage 2 amendments that he tried to lodge and which were ruled inadmissible because the bill is about post-conviction monitoring confirmed the position.

The bill is in three main parts. Part 2 reduces the length of time for which people must disclose convictions after serving sentences. It also extends the range of sentences that can become spent. That part had the entire Justice Committee's support.

Part 3 makes reforms to the Parole Board for Scotland and seeks to remove the requirement for the Parole Board to include a High Court judge

and a psychiatrist. There was considerable debate about that provision. In particular, it seems bizarre in the extreme that after the committee had concluded its stage 1 report, the Scottish Government launched a wide-ranging consultation on parole.

However, it is part 1, which covers electronic monitoring and expands and streamlines its use, that contains by far the most worrying and contentious provisions in this area, in relation to which the committee is divided. In particular, the provisions will make it possible to replace some jail sentences. According to the former Cabinet Secretary for Justice, electronic monitoring could be used for individuals who are being considered for a short-term prison sentence. That could, and probably will, include those convicted of domestic abuse. Various stage 3 amendments have, therefore, sought to address breach of electronic monitoring obligations. In terms of response times to breaches, Victim Support Scotland said:

"It takes too long for someone to be found in breach".

At stage 2 and again at stage 3, I lodged amendments that called for an immediate or an as-soon-as-possible response by Police Scotland. My amendments sought to ensure that there is an effective response, crucially, when deemed necessary. It is disappointing that the amendments were not agreed to.

Robust risk assessments are crucial. Home detention curfews allow prisoners to spend up to a quarter of their sentence in the community wearing an electronic tag. The curfew condition requires criminals to remain at a particular place for a set period each day. However, James Wright was able to breach his home detention curfew conditions and stab to death father-of-three Craig McClelland despite being unlawfully at large for almost six months.

The Scottish Conservatives, Labour and the Liberal Democrats have all called for an independent inquiry into Craig McClelland's death, and Neil Bibby did so effectively today, with regard to his amendment 140. Without that provision, nobody can be totally confident that the solutions that are proposed will be adequate. It is, therefore, regrettable that the Scottish Government has refused a full independent inquiry.

Finally, the Wise Group has stressed that unless the extension of electronic monitoring is sufficiently resourced, offenders are being set up to fail. In response, the Justice Committee called on the Scottish Government to provide adequate budgets and said that electronic monitoring should be used only after a comprehensive assessment of risk, particularly for those individuals who would otherwise have been incarcerated.

As neither of those conditions has been adequately fulfilled, the Scottish Conservatives will be voting against the bill this evening.

18:53

Humza Yousaf: I thank members across the chamber—most of them, at least—for their contributions to the debate, and I extend my thanks to everyone who has been part of scrutinising and shaping the bill during its passage through Parliament. I also thank the Scottish Government bill team and their colleagues in the Scottish Government for all their work in drafting the bill. They are an excellent team who have worked with a couple of cabinet secretaries to get this bill into the good shape that it is in today. I also pay tribute to my predecessor, Michael Matheson, for all the hard work that he did on the bill at its introduction.

I was not planning to spend much time on the contributions of the Conservatives, but I cannot let their, frankly, naked opportunism go. I find it incredible that such often intelligent people could make such asinine and derisory remarks during the debate.

Liam McArthur called it dog-whistle politics and grandstanding politics, and he was right, but I have to say that the Opposition is as predictable as it is—to be frank—tiresome, because we know that it is just playing to its gallery. We know the pattern. I would bet my mortgage on it that there will be a press release from Liam Kerr and the Conservatives tonight or tomorrow littered with the phrase “soft justice”. That will be picked up by his friends at the *Daily Mail* and the *Daily Express*. He will play to his gallery, but not successfully, because the majority of Scots feel safe.

I say to the Conservatives, and particularly to Liam Kerr, that I have a great amount of time for him but he is quickly losing credibility on the issue. The research and the data demonstrate clearly that progressive justice reforms such as the ones that we are discussing today and the ones that we will vote on tomorrow are going to reduce reoffending. That means fewer crimes and fewer victims.

Whenever progressive reforms are brought to the chamber, Liam Kerr and the Conservatives fail time and time again. They present a false picture that there is a binary choice to be made, of victims versus those who have committed crimes. That is simply not the case. It is very possible to be on the side of victims—as we are, and as every member of this Parliament is—and also to want to improve the rehabilitation chances of those who have committed crimes. It is not a binary choice.

Liam Kerr: Is it the cabinet secretary's position that having a proper risk assessment tool and

sanctions for cutting off a tag are merely dog-whistle politics and a binary choice?

Humza Yousaf: The member has used several policy positions and several hooks to do what he was always going to do when the bill was introduced and vote against it. He was always going to vote against the bill because it simply does not play to the gallery that he wishes to play to.

It does not just diminish the Conservatives to present that false choice of victims versus the rehabilitation of those who commit crimes. It is, frankly, an insult to all of Liam Kerr's colleagues across the Parliament who believe that if we improve the chances of rehabilitation of offenders, we reduce reoffending and, as a result, have fewer victims of crime.

Let us consider some of the points that were made. Maurice Corry said that he could not support the bill because of the rates of community payback order completion, and he talked about imprisonment as an alternative. The fact is that the reconviction rates for those on short sentences are nearly twice as high as the rates for those who are given a CPO. That is an argument for further community alternatives and not a reason to back more punitive short prison sentences.

I am disappointed but not surprised by the dog-whistle politics—as Liam McArthur called it—of the Conservatives. I make a plea to them, as Daniel Johnson did, that they should “take a walk with Rory”, as he described it. They should speak to their colleagues in the UK Government such as David Gauke, whom I have a lot of time for, and the many others who have looked towards Scotland and said that there is much that they can learn from our policies on the rehabilitation of those who commit crimes.

I turn to some of the other contributions that were made by members across the chamber. I thank Mary Fee for what was a very thoughtful speech. I want to reassure her on the questions that she asked the Government about further spend on community alternatives. We have stepped up to that challenge in the spending review. If I can throw back a challenge, I say to her that, come the next spending review, it would be helpful if Labour came to the Cabinet Secretary for Finance, Economy and Fair Work with proposals and said, “This is where we want some of that money to be spent.” Let us enter a productive dialogue in that regard.

We also heard excellent speeches from John Finnie, Rona Mackay and Jenny Gilruth. I give Daniel Johnson a special mention. I see that he has gone all al fresco since he left the front bench—his tie is off and he looks more relaxed. Regardless of whether he is on the front bench or

the back benches, he made a very considered speech. It was an excellent speech, actually, and one that I think the Conservatives and others outside the Parliament would do well to listen to. I take his point about the Government reflecting on the potential need to bring forward further debates on other issues that affect prisoners, such as support for housing and GP services and other throughcare support.

Once again, I am very proud to be moving the motion on the bill at stage 3. It is part of a wider package of progressive justice reforms that this Government has introduced. At the heart of those reforms is our absolute belief that people are capable of change. We believe that people who have committed crimes can transform their lives, be productive members of society, contribute back to society and change their lives for the better. We will vote tomorrow on the presumption against short sentences of 12 months—the Presumption Against Short Periods of Imprisonment (Scotland) Order 2019—which, with today's bill, is part of a suite of measures that we will introduce. They say that we are absolutely on the side of victims and will continue to improve their justice journey, throughout the criminal justice system, but hand in hand with that goes the belief that people can change and that rehabilitation is paramount. With that, I am delighted to commend the bill to the Parliament.

Scottish Parliamentary Corporate Body

19:00

The Presiding Officer (Ken Macintosh): The next item of business is the election of a member for appointment to the Scottish Parliamentary Corporate Body. I have received one valid nomination. The question is, that Rhoda Grant be elected for appointment to the Scottish Parliamentary Corporate Body. Members should cast their votes now.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Campbell, Aileen (Clydesdale) (SNP)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Corry, Maurice (West Scotland) (Con)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Davidson, Ruth (Edinburgh Central) (Con)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Golden, Maurice (West Scotland) (Con)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Greer, Ross (West Scotland) (Green)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harper, Emma (South Scotland) (SNP)

Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lochhead, Richard (Moray) (SNP)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Mason, Tom (North East Scotland) (Con)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland Islands) (LD)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Tomkins, Adam (Glasgow) (Con)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wells, Annie (Glasgow) (Con)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Whittle, Brian (South Scotland) (Con)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Presiding Officer: The result of the division is: For 108, Against 0, Abstentions 0.

Rhoda Grant is duly elected for appointment to the SPCB. I congratulate Ms Grant on her appointment. *[Applause.]*

Decision Time

19:02

The Presiding Officer (Ken Macintosh): There is one question to be put as a result of today's business. The question is, that motion S5M-17893, in the name of Humza Yousaf, on the Management of Offenders (Scotland) Bill, be agreed to. As the motion is on passing a bill, there will be a division.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)

Mason, John (Glasgow Shettleston) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, Tavish (Shetland Islands) (LD)
 Smith, Elaine (Central Scotland) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Mason, Tom (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

The Presiding Officer: The result of the division is: For 82, Against 26, Abstentions 0.

The Management of Offenders (Scotland) Bill is therefore passed. *[Applause.]*

Motion agreed to,

That the Parliament agrees that the Management of Offenders (Scotland) Bill be passed.

Aircraft Noise (Health)

The Presiding Officer (Ken Macintosh): Our final item of business today is a members' business debate on motion S5M-15408, in the name of Gil Paterson, on health issues raised by aircraft noise.

Motion debated,

That the Parliament notes the recent World Health Organization report, Environmental Noise Guidelines for the European Region, which looks at the effect of aircraft noise on people who live under flightpaths in the vicinity of airports; understands that the paper indicates that noise above 45dBA during the day and 40dBA at night damages people's health, and notes the view that consideration should be given to what it sees as this important report, including the action that could make a difference to people in the Clydebank and Milngavie area and across Scotland who live under flight paths.

19:05

Gil Paterson (Clydebank and Milngavie) (SNP): I put on record my thanks to Tam Brady, Joe Henry, Reuben McLean, Pat Hoey and Adam Garnick. Those folk have been beside me for the past 12 years, helping me on aircraft noise issues. Some of them had expected to be in the public gallery tonight but, unfortunately, because of holidays and a few unforeseen things, they could not be here.

In 2007 and 2009, I conducted two extensive surveys into the effects of noise on individuals who live under the flight path of Glasgow airport. Not surprisingly, I had a high return. Many of the comments concerned ill health, and the respondents were convinced that their condition was down to aircraft noise. Since then, much research has been carried out by my office, most of which confirms my constituents' fears that noise from aircraft is indeed detrimental to people's health.

One of my research projects, which was conducted in 2014, was a comprehensive undertaking that resulted in a 32-page report. It covered the causes of the problem, how widespread its effects were, what damage was being done, what compensation was available elsewhere, who was responsible for action and, most important, what could be done to alleviate the impact.

I presented the report to Glasgow airport, seeking dialogue, with a view to seeing whether there were any elements in the report that we could constructively work on. I am pleased to say that representatives of the airport agreed to meet me.

One of the major on-going complaints was about people being kept awake at night by flights

in the wee small hours—there are no restrictions to flights at Glasgow airport through the night. My ask of the airport, which I put to Amanda McMillan, the then chief executive of AGS Airports, was for the airport to carry out a pilot scheme to insulate houses to protect people against the noise, which would allow them to get a night's sleep. The airport's representatives said that they would consider that, but thought that it would not be possible to retrofit a house at a reasonable cost in a way that would make the proposition viable.

I took up the challenge and, after much further research, this time into the process, I retrofitted a house in Clydebank in an attempt to prove that the work could be done economically. In September 2016, I commissioned Sonoflo, a specialist condition monitoring company owned by Reuben McLean, to professionally monitor the noise outcomes, and Mr McLean produced a night-time aircraft survey for me.

The monitoring went through four distinct phases over a week. First, a sound test inside the house was carried out with no added insulation, and a noise level of 63 decibels was measured. Then, the loft was insulated, with a noise level of 50 decibels measured in a further test. After that, triple glazing was fitted, with a further test measuring a noise level of 45 decibels. The measurement taken on the outside of the house showed a level of 84 decibels. Although the house was already equipped with double glazing, a major difference was achieved by installing the triple glazing. An increase of 3 decibels doubles the sound value, so a decrease of 3 decibels halves it.

When I presented the findings to representatives of Glasgow airport, they accepted the findings and the quality of the work that had been carried out by that professional. After a few meetings, to the credit of those at the airport, they came good on their promise, saying that they would prepare the details of a pilot scheme.

In the intervening period, the United Kingdom Government issued a directive to the effect that airports with noise levels of 63 decibels and above would be required to put in place a sound-reduction scheme for all affected houses. Some 500 to 800 houses in Clydebank will be eligible for the scheme, which overtakes the voluntary scheme and will deliver way above my expectations.

It should be noted that, just this week, the UK Government's consultation, "Aviation 2050—the future of UK aviation", closed. It contains a proposal to reduce levels of aircraft noise before compensation is payable by a further 3 decibels, to 60 decibels.

Neil Findlay (Lothian) (Lab): The member said that there will no longer be a voluntary scheme.

For clarity, is the new scheme a compulsory scheme? My understanding is that there are no compulsory schemes.

Gil Paterson: It absolutely is the case that the voluntary scheme has been replaced by a mandatory scheme. As long as the inside-house measurement is more than 63 decibels, spread over 16 hours, a household will qualify. I am grateful for that, although I would have accepted a lower level.

Neil Findlay: Can the member explain how the scheme works? I take it that the householder has to apply to the scheme. Must the person make a contribution, or is 100 per cent of the cost covered? I am interested in what the member is saying, because this is all new to me.

Gil Paterson: I cannot say, unfortunately, because the scheme is currently being developed and I do not know its full extent—that is why I am not sure whether it will apply to 500 houses, 800 houses or something in between. I am not entirely sure how the scheme will be applied; if I find out, I will keep the member posted. This is a bit of an anorak issue for people who do not have to put up with aircraft noise, so I am glad that Neil Findlay is interested and I will do my best to keep him informed.

I have been engaged with the Scottish Government, West Dunbartonshire Council and East Dunbartonshire Council, although, of course, the Scottish Government and local authorities have little or no power over aviation. I encouraged West Dunbartonshire Council, whenever it is involved in fuel poverty projects that involve installing double glazing and loft and wall insulation in properties under the flight path that are affected by noise, to consider using—for a small additional outlay—materials that protect against heat loss and sound penetration. The materials that I used in my experiment were excellent in both capacities.

Members might ask why the Scottish Government and local authorities, which have no responsibility for the issue, should spend a penny on a matter that is reserved. I point to the warnings that the World Health Organization has given for many years about the hazards of aircraft noise. In its most recent warning, in October 2018, the WHO referred to problems relating to, among other things, "cardiovascular disease" and "cognitive impairment", impacts on

"quality of life, well-being and mental health"

and "metabolic outcomes". Therefore, if the Scottish Government and local authorities take preventative action to upgrade the vital and welcome fuel poverty scheme for houses under the flight path, untold future expenditure will be

saved and people, particularly children, will be protected and enabled to flourish.

I am pleased that my constructive talks with the Scottish Government—in particular, the Minister for Local Government, Housing and Planning, Kevin Stewart, who is in the chamber—and with West Dunbartonshire Council are bearing fruit. A proposal will go before the council in August to approve a second pilot scheme, in which 12 houses will be retrofitted for heat-loss and sound protection.

According to the World Health Organization, there is damage to people's health if noise levels are higher than 45 decibels. Therefore, housing regulations for new-build homes in the zone—incidentally, the zone is identified in a publicly available document—must require builders to install materials that protect up to the level of 45 decibels. The cost of installing such materials on a virgin housing site is considerably less than having to rip out materials and reinstall new ones later.

Right now, in the 60-decibel zone in Clydebank, houses are being built that are not being fitted with dual heat-sound protection products. Such protection will be required in a few short years, but I am glad to say that West Dunbartonshire Council has engaged with and is alert to the matter, so there is every chance that those houses will be fully protected to the appropriate level.

Although this is a health portfolio debate, it could easily have been an education debate, because of the damage to attainment that is caused by aircraft noise. However, in all cases, the remedy relies on protecting buildings. My message from the debate is simple: we either stop night-time flights or insulate buildings and homes to safeguard people. Those are the solutions.

19:16

Jeremy Balfour (Lothian) (Con): I thank Gil Paterson for bringing the debate to the chamber and for the information that he has shared, which has been enlightening.

Airports are a fantastic feature of any city, and bring a huge swathe of benefits to citizens locally and nationally. They facilitate travel for millions of people to hundreds of destinations, and improve the economy through tourism and exports.

Edinburgh airport, for example, has a hugely positive impact on the Scottish economy. According to a recent study, the airport contributes nearly £1 billion to the Scottish economy every year and supports 23,000 jobs nationwide. Its impact is wide ranging and must not be underestimated, as it provides a foundation for many Scottish industries—tourism, in particular, which for Edinburgh especially, but also for the

whole of Scotland, is a vital industry, with more than 14,000 business focused on catering to the millions of visitors who come to our country each year. Visitors are attracted by our magnificent environment and culture—not forgetting golf, whisky and, of course, Edinburgh castle.

Undoubtedly, it is important to be mindful that, despite their incredible benefits, airports have an effect on their surrounding environments. Noise is the concern at hand, and that issue is raised, on occasion, by communities along airport flight paths. Although the noise problem cannot be completely removed, airports wish to manage the impact on local communities. I am delighted about what the UK Government is doing to move from a voluntary system to a statutory formation.

Edinburgh airport has a noise action plan in place for the period from 2018 to 2023. That was created in order to engage with local communities on the noise issue. The aim of the plan is to consult the communities on how they are affected by living under flight paths or near the airport. The consultations will provide information that will help the airport to understand the specific issues that affect people and, ultimately, how best it can work with them to improve its impact.

Neil Findlay: Is Mr Balfour aware that the expansion of Edinburgh airport's flight paths has been rejected twice by the Civil Aviation Authority, because the airport has not provided the correct information to the communities that would be impacted by noise and other factors?

Jeremy Balfour: I am aware of that and have been involved in the process. As Mr Findlay will be aware, there is a challenge in that aeroplanes previously took off in one direction, but the airport has been suggesting that they might now fly over other parts of West Lothian. That will have an effect on local communities. The airport still needs to come up with a system that allows aeroplanes to land and take off efficiently, but which also protects communities, especially those that were not previously affected by noise. On Neil Findlay's point, I understand that Edinburgh airport has now set up an independent noise management board that is made up of community councils and other airport stakeholders. I hope that it will engage with communities across the Lothians.

Ultimately, it is not possible to eliminate all the noise that is generated by airports. There must be some give and take, especially given factors such as the varying levels of people's experience of noise and how much economic growth is generated by the airport. However, it is clear that airports across Scotland are taking the matter seriously—I was pleased to hear Gil Paterson's examples from Glasgow. I hope that my local airport in Edinburgh will follow that line and take

the issue seriously, and that it will support local communities as best it can.

19:21

Rona Mackay (Strathkelvin and Bearsden) (SNP): I am grateful to my friend and colleague Gil Paterson for bringing this important debate to the chamber, and I pay tribute to him for his long-standing work on the issue. He has been working on it for more than a decade and has been relentless in his pursuit of justice for people who live under the Glasgow airport flight path, and it is great to hear that success is finally round the corner.

Gil Paterson has outlined the more technical issues in the debate and noted the fact that the Scottish Government has no powers in relation to aircraft regulation because that is reserved to the UK Government.

The Scottish Government also has very limited powers in relation to health and safety: I will concentrate on that. Gil Paterson articulated many of the negative health aspects. Everyone now accepts that excessive aircraft noise, especially at night, has a negative impact on health. It can contribute to heart disease, strokes, high blood pressure and mental health issues as a result of sleep being constantly disturbed by night flights. We all know how bad we feel after we have had, for whatever reason, a disturbed night's sleep. If members think about enduring that every night, they will begin to see the magnitude of the problem.

In addition, one of the most depressing and unfair impacts of noise is how it can affect children's cognitive development. The constant interruptions from overhead noise during school hours and during the night can adversely affect children's educational attainment.

Aircraft noise does not affect every household in Scotland. My constituency of Strathkelvin and Bearsden, which is next door to Gil Paterson's constituency of Clydebank and Milngavie, is under the flight path to and from Glasgow airport, but there is no doubt that, due to Clydebank's proximity to the airport, Gil's constituency is most adversely affected. However, to put that into context, the World Health Organization guidelines recommend that noise at over 40 A-weighted decibels is enough to affect sleep adversely, and noise has frequently been recorded at over 50 dBAs and 60 dBAs in parts of Bearsden.

Last year, when the Civil Aviation Authority instructed Glasgow airport to alter flight paths, many of my constituents contacted me because they were worried about the increase in noise pollution. Many had children who were sitting important exams, or were university students who

were concerned about the impact that the noise would have on their concentration and sleep. When the airport organised a consultation day in Bearsden to illustrate the changes that were being planned, more than 400 people—to the organisers' astonishment—turned up over the course of the day, which is far more than turned up to the Heathrow consultation.

This is an issue that we must address, so I am really pleased to hear of the progress that has been made for the sake of people whose lives have, for many years, been blighted by excessive noise and night-time flights. Gil Paterson outlined how solutions can be achieved, and described the progress that has been made despite our limited powers, so I hope that matters will progress quickly for the sake of people who live under flight paths. We are talking about the health and wellbeing of future generations; it is our responsibility to act now so that the problem is dealt with before they, too, suffer the ill effects of excessive aircraft noise.

19:24

Neil Findlay (Lothian) (Lab): I congratulate Gil Paterson on bringing the debate to the chamber. A few years back, I brought to the chamber a debate on the expansion of Edinburgh airport flight paths. At that time, I hosted a couple of public meetings in West Lothian, which were attended by huge number of people who were very concerned about the impacts of flight expansion on them and their communities.

We know that airports are unhealthy environments because of noise, stress, waste, fumes, overcrowding and all the rest of it. They have a major impact on the environment and are significant contributors to pollution and global warming. However, they are also, of course, important to our economy and society. They provide many jobs, and most of us use air transport from time to time.

We have to look at how to address those conflicting features of air travel. I recently read research from the World Health Organization that shows how some cities have joined what is called the healthy cities movement. Those cities are trying to bring airports and local communities together to create far more healthy places. The two can coexist in a much healthier way by reducing waste, offsetting and reducing emissions, providing sustainable travel to and from airports, and mitigating noise. That is the approach that we must take in the future. However, that has not been reflected in my dealings with Edinburgh airport over the past couple of years, or in how senior airport management have conducted themselves during the process.

Gil Paterson: I understand what Neil Findlay says about airports—I have the same thoughts. However, there is a very political dimension. I did not bring the debate to Parliament to talk about the environment; I was talking about people whose health is affected. In comparison to the number of people who use Edinburgh and Glasgow airports and other airports, we are talking about a very small number of people being affected, so it is feasible and possible to take care of them. I believe that the only way that that can be done is through a political act. The UK Government is doing something, but, for me, it is doing it too slowly. The UK Government should look at the World Health Organization research and work to that, rather than using salami-slice noise reductions, as it is doing.

Neil Findlay: I do not disagree with Mr Paterson on that. I will come on to those issues, in a minute.

The reality is that airports are noisy places. Planes are big noisy machines that impact negatively on people in the community. Members have spoken about the extensive body of research on the impacts of high levels of noise. The more that people are exposed to such levels, the higher the risk of adverse health impacts, including heart disease. We know that noise impacts on children's learning capacity, causes sleep disturbance, has psychological impacts and contributes to obesity and low birth weight. There is a significant body of research on those and all the other issues. The increased air pollution from aircraft and the road vehicles that service airports compounds the impact on nearby communities.

There are things that can be done to reduce ground noise and noise in the air. Quieter engines are being developed, for example. Electric planes are not science fiction, and might be here sooner rather than later. Restrictions on night flights, which have been mentioned, and more sensitive scheduling of flights are the correct way forward.

Some countries have statutory schemes for the sort of project that Mr Paterson spoke about. I hope that it will become a statutory scheme here. At the moment, provision is patchy and it is up to the airport to decide what happens. In other countries, statutory schemes are paid for by taxes and levies on travel, but that is not the case here. However, I hope that we are moving towards that, because a number of properties in my region would benefit greatly from it.

Some countries have property removal initiatives, through which properties are bought and people are compensated. That has been done in the Netherlands to good effect. To help to deal with ground noise, bunds and noise walls have been constructed. My experience of dealing with the expansion of flight paths at Edinburgh was not

good, and nor was it good for the affected communities.

Airports have to be up front and honest about what they are doing, and they have to build relationships with communities. Edinburgh airport should have done that prior to submitting the application to extend flight paths, but it did not, which was a huge missed opportunity.

Edinburgh airport also needs to end its professional arrogance. A professor of aviation joined the campaign group that I worked with, so the baffling science and engineering that the airport would throw at us was easily addressed because we had the good fortune to have that professor. However, not all community groups have that luxury.

Edinburgh airport also needs to respect its neighbours and to provide genuine live information on flights and their noise. As I said earlier, Edinburgh airport's proposal for expansion has twice been rejected by the CAA because of the poor information that was provided to communities. The airport cannot continue to do that. If we are to have a credible way forward for communities to co-exist with airports, airports must provide genuine information and work collectively with the communities that will be impacted.

19:30

Mark Ruskell (Mid Scotland and Fife) (Green): I join other members in thanking Gil Paterson for his work on this issue over many years.

A number of members have already talked about the numerous studies that have been conducted that show that higher levels of aircraft noise can impact on high blood pressure, heart disease, heart attacks, strokes and even dementia. There are also educational impacts on children, in the classroom or at home, because the noise impacts on their reading, comprehension and memory skills. I believe that at least 20 studies have looked into that.

Across the United Kingdom, as Mr Paterson said, the numbers affected are relatively small, but there are still 60,000 people who are exposed every night to noise from night-time aircraft that exceeds the World Health Organization limits. It is therefore clear that noise from airports is causing a major public health crisis for the communities affected. It is our responsibility in this Parliament to tackle that problem.

My constituents in Fife live under the shadow of existing and potential future flight paths out of Edinburgh airport. From 2016 until October last year, the airport undertook an airspace change programme that ultimately sought to double the

number of planes taking off from the airport at peak times by having a departure every minute. It also proposed eight new arrivals paths, meaning that nearly every community within a 15-mile radius of the airport, with the exception of central Edinburgh, would have a flight path overhead.

I was inundated, as Mr Findlay and many other members were, with people's concerns. For me in Fife, they stretched from Charleston in the west through to Dunfermline, Inverkeithing and Kinghorn in the east. Throughout the multiple consultations that took place, community concerns about noise were repeatedly downplayed and ignored by Edinburgh airport. Residents felt that the information on noise mapping that was provided was deliberately made difficult to understand and that it did not take into account the clear noise impacts inside people's homes.

Concerns were also raised by members of the airport's noise advisory board as to the accuracy of the information that was provided. It was clear to many of us that the airport largely saw concern about noise just as an issue to be swept under the carpet.

Neil Findlay: I think that what galled the community most was that the airport was not operating at capacity and there was no need for the expansion of flight paths. My opinion all along has been that the airport is being fattened up for sale, because the business model that the owners operate involves keeping assets for a short time before flogging them on for huge profits. When the owners were challenged about that, they did not deny it.

Mark Ruskell: That issue was raised at many of our community meetings in Fife; it is clear that Edinburgh airport gains money not only from flights but from selling duty-free products and from its commercial operations.

The CAA rejected the proposed new flight paths last October. It criticised the airport for increasing the proposed flight path numbers mid-consultation, and then failing to engage properly with communities on the impacts. The rejection by the CAA was a major win for communities, but Edinburgh airport has already begun the work to submit a fresh proposal for new flight paths. That is why now, more than ever, we need to get a handle on tackling the noise issue.

Recent changes to regulations at UK level mean that we can finally take action here in Scotland on noise pollution from our airports. New regulations give Scottish ministers the power to introduce noise-related operating restrictions in all airports with more than 50,000 civil aircraft movements per year.

Earlier this year, I welcomed the opportunity to meet Transport Scotland officials, along with

representatives from Dalgety Bay and Hillend, Kinghorn and North Queensferry community councils, and I look forward to the further guidance that is due to be published imminently on the subject. I hope that it reflects their concerns and I would welcome an update from the minister, if he is able to provide one this evening.

My colleague Andy Wightman and I have spoken in the chamber before about the opportunity for ministers to have more control over the operating conditions through the formal designation of Edinburgh airport and the use of powers under the Civil Aviation Act 2012. That would allow us to address the issue of night flights from the airport; such flights are already restricted at Heathrow, Gatwick and London Stansted.

Last month in the chamber, cabinet secretary Michael Matheson committed to review the vast permitted development rights that are granted to airports, which can further contribute to expansion and related noise. I noticed that Kevin Stewart was here earlier and I hope that he will go back and think about the forthcoming review of permitted development rights and how we can get more control over the airports. At the moment, they seem to have vast unlimited permitted development rights in the curtilage of the airport, which can facilitate expansion and lead to noise issues.

If we are all in agreement about the health impacts that are caused by noise from aviation, there appear to be multiple ways in which we could address those in Scotland. It is about not just insulating properties, but going further and looking at measured restrictions. I look forward to working with colleagues from across the chamber to tackle this growing public health crisis.

19:36

Angus MacDonald (Falkirk East) (SNP): I thank my colleague Gil Paterson for bringing this important issue, which can clearly have an impact on people's quality of life, before us for debate today. Aircraft noise is not a new issue; it has been a constant source of frustration for communities for a considerable period and, in certain circumstances, there is no way to escape it.

As members will be aware, in 2015 Edinburgh airport embarked on an airspace trial that saw aircraft use a newly designed flight path from take-off, which sought to reduce the amount of fuel that aircraft were burning while waiting on the runway, reduce the time between aircraft departures and provide a better service for passengers and airlines that were flying from the airport. The trial resulted in the unintended consequence of significant proportions of east-central Scotland

being overflowed by jet and turboprop aircraft, when previously they had not been. Areas in my constituency, including Mannerston Holdings and the village of Blackness, were particularly affected, as were swathes of the constituencies of my colleagues Angela Constance and Fiona Hyslop—Almond Valley and Linlithgow respectively. Of course, I acknowledge the work that Neil Findlay has done on the issue in West Lothian.

The vast majority of complaints arose from the level of noise that was emitted by the aircraft. Given that one of the trial's aims was to reduce the time between take-offs, there were also complaints about the number of jets that were using the new flight path, which were causing untold stress and anxiety to residents in those areas.

High-powered passenger jet aircraft were breaking what was once tranquillity and turning a peaceful life into a noisy nightmare in the process. As we have heard, Edinburgh airport operates a not insignificant number of night flights, which are defined as flights between the hours of 11 pm and 6 am. As recently as 2018, the airport has faced calls to curb the number of flights during that period. Figures from one chosen week in July 2014 showed that there were 138 take-offs and landings between 11 pm and 6 am at the airport; four years later, night flights had increased by 38 per cent to 191 in the same week that was studied. There were 191 times per week when someone could have had their sleep disturbed by the intrusion of aircraft noise.

Any sustained intrusion in our lives during the day or while we are asleep can result in detrimental impacts on our health. Exposure to regular aircraft noise plays a large part in such intrusion for people who live near airports or under flight paths. Gil Paterson and other members have referred to the recent WHO report on environmental noise guidelines, which makes strong recommendations for achieving aircraft noise levels that are below 45 decibels during the day and below 40 decibels through the night. Any noise above those levels would have an adverse impact on the health of exposed populations.

I turn to the findings of Edinburgh airport's trial airspace change. The average noise levels that were recorded in places across the flight path area were consistently above the 40 to 45 decibel threshold; in some cases, they were considerably above it. In 2012, Virgin Atlantic pledged to reduce the noise energy output of its fleet by 6 decibels per aircraft movement by 2020. That is in line with advancements in aircraft engine technology and is very welcome, but reducing noise by 6 decibels from an original level of above 70 decibels leaves a level that is still well above those that are recommended in the WHO report.

The Civil Aviation Authority, the European Union and the International Civil Aviation Organization should be working to ensure that policies are in place to continue innovation and mitigation wherever it is appropriate and possible to limit the impacts of noise on our communities. In particular, in future in the UK it will be for the CAA to ensure that its procedures and guidelines are fit for purpose for airspace change and that changes in use of existing flight paths are appropriate and take the impacts on communities into consideration as a priority.

Although the revisions that were proposed by Edinburgh airport's trial airspace change were ultimately rejected, the communities that were subjected to it, and to subsequent changes in the use of other flight paths, are a long way from healing properly.

The WHO report should be taken very seriously if we are to ensure that communities are given every chance to live in the relatively peaceful way that they rightly deserve. However, it is incumbent upon all the parties who are involved to be at the table to ensure that progress in the area is made for everyone, in the spirit of collaboration and collective responsibility that we all have towards our citizens and our communities.

19:41

The Minister for Energy, Connectivity and the Islands (Paul Wheelhouse): I welcome the opportunity to respond to the debate, on behalf of the cabinet secretary, for the Scottish Government. I recognise the strong feeling about aircraft noise that exists among residents and communities that are affected by it, which we have heard about, and among members across the chamber. I recognise, too, the long-standing interest that Gil Paterson has in the issue. I sincerely congratulate him on securing time for the debate, which will be important to his constituents and those of other members.

Until Kevin Stewart, who I was sitting next to, pointed it out to me, I had not appreciated that Mr Paterson had done a pilot project, which, if Mr Stewart is correct, was carried out at Mr Paterson's own expense. That is definitely going above and beyond the call of duty for members, but it adds further strength to the commitment that Mr Paterson has shown in trying to resolve the issue for his constituents.

I start by referring to the WHO report. The assessment of noise and noise annoyance is a complex process and, as we have heard, different noise sources affect people in different ways. The issue of the extent of health effects that are associated with noise is an on-going area of research, and the WHO report makes an important

contribution to our knowledge on the issue. As Rona Mackay, Angus MacDonald, Gil Paterson and others have said, the thresholds that the WHO report has established—45 decibels by day and 40 decibels at night—are very informative. However, it is worth mentioning that, in addition to aircraft noise, the report covers a number of other issues that are associated with road traffic, rail, wind turbines and leisure noise.

Although we might consider the impact of different noise sources in isolation, we must remember that their interaction is also important. At any given point, individuals and wider communities are likely to be exposed to noise from multiple sources simultaneously. Any efforts to mitigate the impact of noise should take that context into account.

As Jeremy Balfour alluded to, part of the reason for our debating the issue is the on-going success of Scotland's airports. As a number of members have referenced, last week, Edinburgh airport announced its busiest May on record, and in 2017 Glasgow airport had its busiest ever year. Of course, the Scottish Government takes that into account in its targets on and actions to address climate change, the impact of which I know that members are concerned about managing.

Scotland now has direct air services to many parts of the world that we did not have before—including those to the middle east, a range of destinations in North America and numerous cities across Europe—on which we rely for doing business or taking our families on holiday. Edinburgh airport's newly launched service to Boston, which the Scottish Government assisted it in securing, further enhances Scotland's route network and eliminates unnecessary connecting flights to hub airports. However, that does not diminish the concern that I know that members have about noise. As I have said, although I recognise the need to place downward pressure on the environmental impacts of aircraft activities, we should not lose sight of the fact that the continuing success of Scotland's airports brings with it significant economic benefits to an airport's local area, its wider region and Scotland as a whole.

However, I have been listening closely to the debate and I very much respect the views of members across the chamber who are concerned about emissions. I hope that we can all agree that, with the success that comes from growing airport activity, airports have a wider responsibility to consider the communities around them—in particular, those directly impacted by their activities. Gil Paterson, Rona Mackay, Neil Findlay, Jeremy Balfour and Mark Ruskell all said that they expect airports to act responsibly and to take into account their impact on the community.

It is important to remember that there is already a regime in place to mitigate the impact of noise from airports, with every major airport required to have measures in place to do that. The Environmental Noise (Scotland) Regulations 2006 require major airports to produce a strategic noise map and a noise action plan setting out how they plan to mitigate the impact of noise from the airport. There is a requirement under the regulations for an airport to use all reasonable endeavours to take the actions set out in its action plan.

It is important to stress that the action plans are required to be updated at least every five years. Glasgow airport updated its plan last year to cover the period 2018 to 2023. As I understand it, Glasgow airport's plan was produced on the basis of extensive feedback gathered during a 13-week public consultation between January and April 2018. That represented an opportunity for the public to have their say on what the airport is doing to mitigate noise specifically.

Given the concerns of Mr Paterson and others, it is worth highlighting that Glasgow airport is taking further measures under its noise action plan to mitigate noise for residents. Those measures include developing a noise insulation policy to mitigate noise for residents who are most affected by aircraft noise—clearly, the move by the UK Government will aid those efforts—and incentivising the use of quieter aircraft through differential landing charges. Mr Findlay is, however, right to indicate that, in future, electric planes may well play a role in helping to reduce aircraft noise. Indeed, they are already being trialled in Norway so, as he said, they are not perhaps as far away from being used commercially as people may think.

The measures also include encouraging aircraft to adopt continuous descent operations, which involve aircraft maintaining a steady state of approach, which in turn reduces noise; and developing an airspace change proposal, which will allow aircraft to fly more accurately along departure routes, minimising the number of people affected by aircraft noise.

It should be noted that the regulations do not just cover airports; they also cover major roads and railways as well as major urban areas. That recognises the need to address—as previously stated—the fact that noise comes from multiple sources. However, colleagues are right that the airports should take action where they can do so.

The exchanges between Mr Findlay and Mr Balfour touched on the point, which Mr Ruskell made, too, that they are conscious that changes in flight paths can mean that although some communities become less impacted by aircraft noise, others see aircraft noise increase.

Although, as a number of colleagues have said, airspace change is a reserved matter that is the responsibility of UK ministers and the UK Parliament, and the Scottish Government has no direct, formal role in the process, we have emphasised previously the need for airports to properly consult local communities on their proposals. Mr Findlay made clear that he is very concerned about making sure that that happens and that those consultations are genuine. Indeed, I make the point again today that we expect that to happen.

At present, large parts of our airspace are crowded and inefficient. That is clearly bad for passengers, but it is also bad for the environment and for the wider economy. It is perhaps obvious, but I should restate it, that using our airspace more efficiently can lessen the need for things such as aircraft stacking, thereby making journeys quicker and using less fuel—meaning a cut in emissions and, I hope, less noise over the communities closest to airports.

It is important that the necessary changes are made to the use of our airspace to accommodate future growth in a sustainable way. It is also essential, however, that airports consult local communities effectively and take account of the responses to that consultation before deciding which options to pursue as part of an airspace change process.

Finally, the mitigation of the impact of noise from an airport must be balanced against the benefits that an airport brings in terms of economic growth, employment and so forth. The 2006 regulations impose requirements on airport operators to take action in relation to noise. I was greatly heartened to hear about the impact of individual measures that can be taken and my colleague Kevin Stewart was keen to emphasise that he will be looking at protection against noise in his review of building standards.

Neil Findlay: Does the minister believe that there is a contradiction in the view that we can have sustainability and exponential growth in aviation?

Paul Wheelhouse: I do not agree with the way that Mr Findlay put it, but I certainly recognise that we have to get the balance right. If we are growing air traffic in Scotland, we have a responsibility to communities that are affected and a responsibility to ensure that we manage the greenhouse gas emissions from air traffic.

With technology improving, we see more efficient and quieter engines and indeed entirely new propulsion systems with electric planes, so it is not necessarily a given that air travel has to be bad for the environment. We can try to design out those vulnerabilities in future. However, I take Mr

Findlay's point. It is a tension in policy, and that is why we reflect the impact of emissions in our statutory annual greenhouse gas emission targets.

Mr Stewart is keen to emphasise that we will be looking at the issue that Mr Paterson raised about how we can make the most of energy efficiency investments to try to tackle noise impacts on residents in the review of building standards. Before Mr Stewart had to leave, he asked me to make that point to members in the chamber.

We obviously have work to do in respect of the matter, but we believe that the requirements of the regulations are sufficient for now, augmented by the steps that the UK Government has taken, and that they meet their intended purpose. There are no plans for arrangements to be changed at this time, but I have taken extensive notes of the points that members have made and I will ensure that my colleague Mr Matheson is aware of the strength of feeling across the chamber—I will report that back.

Mark Ruskell: Will the minister take an intervention?

Paul Wheelhouse: I will.

The Deputy Presiding Officer: It will have to be brief, but I am happy to allow the intervention as there have been only a few speakers.

Mark Ruskell: Will the Scottish Government consider taking back control of Edinburgh airport and designating it as an airport that is under the control of Scottish ministers? Would that not be the most strategic thing to do, given that the Scottish Government has a balanced interest in aviation?

Paul Wheelhouse: I hope that the member will forgive me but, as I am not the lead minister on that topic, I will relay that point to Mr Matheson and ask him to correspond with Mr Ruskell. I have noted the point. It is not within my side of the portfolio, but I will certainly relay it to Mr Matheson and make sure that he is aware of it.

With that, I will conclude, Presiding Officer. Thank you for your patience.

The Deputy Presiding Officer: Not at all. It has been an interesting debate. Thank you.

Meeting closed at 19:52.

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