OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 17 May 2023

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

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CRIMINAL JUSTICE COMMITTEE
15th Meeting 2023, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

*Katy Clark (West Scotland) (Lab)
*Jamie Greene (West Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Rona Mackay (Strathkelvin and Bearsden) (SNP)
*Pauline McNeill (Glasgow) (Lab)
*Collette Stevenson (East Kilbride) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Angela Constance (Cabinet Secretary for Justice and Home Affairs))
Douglas Lumsden (North East Scotland) (Con)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 17 May 2023

[The Convener opened the meeting at 09:30]

Bail and Release from Custody (Scotland) Bill: Stage 2

The Convener (Audrey Nicoll): A very good morning, and welcome to the Criminal Justice Committee's 15th meeting in 2023. There are no apologies.

Agenda item 1 is further consideration of the Bail and Release from Custody (Scotland) Bill at stage 2. I ask members to refer to their copy of the bill, the marshalled list of amendments and the groupings of amendments.

I welcome Angela Constance, the Cabinet Secretary for Justice and Home Affairs, and her officials. I remind members that the officials are here to assist the cabinet secretary but are not permitted to participate in the stage 2 debate, so members should not direct any questions to them.

After section 5

The Convener: We will now consider the amendments. The first group is on consideration of compliance with bail conditions. Amendment 6, in the name of Katy Clark, is the only amendment in the group.

Katy Clark (West Scotland) (Lab): Amendment 6 follows on neatly from our discussion last week about amendment 67, which Collette Stevenson lodged. [*Interruption*.] I apologise—I need to clear my throat.

Amendment 6 would add on a provision to allow a court to take into account compliance with bail conditions, including electronic monitoring and curfew arrangements. It would enable the court to take into account compliance with such conditions when sentencing, so that the sentence was either reduced or increased. I believe that courts already do that; the amendment would simplify codify a practice that already takes place, when the court takes into account all the circumstances in considering the appropriate sentence in the situation.

I was sympathetic to Collette Stevenson's amendment 67, to remove section 5, which concerns consideration of the time that has been spent under electronic monitoring. I am very aware that electronic monitoring is imposed only when an accused poses a real risk. Electronic monitoring is used to avoid remand; it has never been considered to be a punishment or a sentence.

Amendment 6 takes a better approach than amendment 67 proposed, because it would give the court more discretion. In reality, the court already takes account of such issues—for example, if an accused person had not complied with curfew arrangements, had attempted to approach the complainer or had not complied with electronic monitoring requirements, the court would take that into account when considering what the appropriate sentence for the individual was. When an individual has complied with requirements from the court, the court often bears that in mind when considering sentencing. Amendment 6 would give the court more discretion to take into account all the circumstances.

I move amendment 6.

Jamie Greene (West Scotland) (Con): We would be happy to support amendment 6.

The Cabinet Secretary for Justice and Home Affairs (Angela Constance): Amendment 6, in the name of Katy Clark, would add proposed new section 203B to the Criminal Procedure (Scotland) Act 1995 to enable the court, when passing sentence on a person who was convicted of an offence, to take account of the person's compliance with any bail conditions that had been imposed on them while awaiting trial or sentence, including compliance with any electronic monitoring and curfew conditions that had been imposed. I understand the intention behind the amendment, but I hope that I can explain why it is not necessary.

In determining the appropriate sentence to impose on an offender, the court can already take account of all the relevant facts and circumstances of the case, as Ms Clark has acknowledged. In any specific case, the court can ask the prosecutor, the defence or criminal justice social worker how well the accused has abided by the conditions of any bail order to inform the sentencing decision. Specific provision is not required to enable the court to do that.

If the proposed new express power is intended to allow the court to consider both compliance and non-compliance with bail, it is important to remember that breach of a bail condition is in itself a criminal offence that carries a maximum sentence of 12 months' imprisonment.

Where an offender has been convicted of and sentenced for breaching their bail conditions—or, indeed, any offence—the prosecutor may at point of conviction, and prior to sentencing, place before the court a schedule of the offender's previous convictions for the purpose of enabling the court to determine an appropriate sentence. That is in

accordance with existing powers under the Criminal Procedure (Scotland) Act 1995.

As such, no specific provision is required to enable the court to take account of the offender's compliance or otherwise with bail conditions, including those relating to curfew or electronic monitoring, when deciding on an appropriate sentence for the offender.

Ms Clark said in her introductory remarks that there might be, in her view, some benefit to codifying arrangements. My concern is that her amendment has no practical effect and would insert provisions in the wrong part of the 1995 act. I therefore ask her not to press amendment 6, but, if she does, I ask members to vote against it.

Katy Clark: I do not intend to press the amendment, but I am interested in exploring the issues further as the bill progresses. I want to get a better understanding of why the cabinet secretary and the Scottish Government believe that section 5 is necessary, particularly given everything that the cabinet secretary has said this morning, and whether the court already has the ability to take into account time spent on electronic monitoring. I will not press the amendment today, but we need to scrutinise the issue further, and the sentiments that I have expressed today will guide our position on the issue. It is fair to say that the committee was not completely clear on where section 5 has come from. If the cabinet secretary could give more information on that as the bill progresses, that would be appreciated.

Amendment 6, by agreement, withdrawn.

Amendment 8 moved—[Angela Constance]—and agreed to.

Section 6—Prisoners not to be released on certain days of the week

The Convener: The next group of amendments is on release on certain days of the week. Amendment 68, in the name of Russell Findlay, is grouped with amendments 69 and 71.

Russell Findlay (West Scotland) (Con): My three amendments in this group—68, 69 and 71—relate to the days on which prisoners can be released, although amendment 71, which I will come to last, serves a slightly different purpose to amendments 68 and 69.

The practice of limiting release days already exists by virtue of the Prisoners and Criminal Proceedings (Scotland) Act 1993, which prevents release on Saturdays, Sundays and bank holidays. The bill seeks further limits, and it does so by amending the 1993 act. The bill would also prevent release on Fridays and on the days before public holidays.

However, what is perhaps not obvious from the bill is that Thursdays will, in effect, also become non-release days, although there will be exceptions to that. If a prisoner's release date happens to fall on a Friday, they will instead be released on a Thursday. However, if a prisoner's release date is a Thursday, they will not be released on that day.

I do not recall hearing any evidence about ending Thursday release, although the committee did hear concerns about ending Friday release. The Scottish Police Federation, His Majesty's Inspectorate of Prisons for Scotland and the Wise Group would all rather see improved support services. Whatever your views about ending Friday release, it seems slightly unambitious, albeit understandable. Less ambitious still, and harder to understand, would be to end Thursday release. We are almost just accepting a part-time support service.

Witnesses told us that the key is to have proper support in place in relation to medication, housing and benefits, and not necessarily to reduce the number of release days. I suspect that ending Thursday release would require the Scottish Prison Service to make significant changes to how it works. It would put potential burdens on support services, whether that is criminal justice social work or people at the Wise Group. Narrowing release dates would in effect put additional pressure on a struggling system. Even if the motives behind it are well meaning, it would surely increase the likelihood of prisoners not being supported and would therefore increase the risk of their reoffending. If so, that might ultimately lead to a risk to public safety, which is why amendment 68, in particular, is so important. I will be interested to hear the cabinet secretary's response to that.

Amendment 69 is consequential to amendment 68 so needs no further explanation.

Finally, amendment 71 should be considered separately from amendments 68 and 69, even if they are not successful. Essentially, amendment 71 is about scrutiny and transparency. It would require the Government to publish a review of the impact of proposed new limits to prisoner release days, whatever they might end up being. Given the far-reaching nature of what the bill seeks to do and the misgivings that we have heard in evidence, some of which I have touched on, I cannot see why the Government would oppose amendment 71.

Pauline McNeill (Glasgow) (Lab): Would the effect of amendments 68 and 69 be to revert to the original law?

Russell Findlay: No. The effect would be to simply negate the Thursday release element. We

have not sought to amend the Friday release part of the bill.

Pauline McNeill: In other words, the effect would be to isolate the Friday. The committee report spoke to the Friday being the problem. That is the effect of your amendments.

Russell Findlay: Yes. It has not been immediately obvious that the Thursdays come into play. All of the focus has been on the Friday element, which we have had evidence on. This is to point out that, almost by the back door, Thursday would also become a non-release day, albeit with the conditions that I mentioned.

To conclude, I would be keen to get support for amendment 71, too.

I move amendment 68.

Jamie Greene: I support the amendments. The additional point that I want to make before the cabinet secretary responds is that we looked at the issue quite constructively at stage 1. There is clearly an identifiable issue, historically, of prisoners being released on a Friday without access to good and proper public services. I suspect that that is the reason why we stopped releasing people on Saturdays, Sundays and bank holidays. Many of the public services that people rely on upon release were reduced on those days.

Our concern, which perhaps underlines the amendments, is that the solution to that problem is not to condense the number of days on which someone can be released. That is a technical solution to the problem, but it does not solve the problem. The problem is that we should be improving access to services upon release and not simply releasing the same number of people but to a much shorter timescale. The concern that we have heard about that is that it will put huge pressure on the very public services that we are trying to ensure are delivered to prisoners on release, including services provided by social work departments and local authorities. The capacity of such public services is already quite overstretched. If they can provide services only from Monday to Wednesday, instead of having five days to staff those services, it either means reduced access to services or some people not getting the attention that they need upon release.

I think that we all understand the Government's intention, but do we really need to put it in primary legislation? Could the Government have been a little more ambitious and made this a short-term measure, with a view to improving services so that we can use Mondays to Fridays in the way that they are used by the wider public? We understand the Government's intention, but the bill seems like a blanket approach to the problem—and not necessarily one that will fix it, either.

If the Government is not minded to accept the amendments, one solution might be to make the provision temporary and, if the Government is so inclined, to commit in the bill to monitoring outcomes and taking action as a result. After all, what we do not want to see a couple of years down the line is Wednesday or Thursday being seen as the new Friday and people still being failed. That is clearly not an outcome that anybody wants, and I ask the Government to reflect on that, too.

09:45

Angela Constance: I am clear, as I know that others have been, that ending scheduled liberations on a Friday or the day before a public holiday is the right thing to do. It will enable more people to access on release the support that they need and that will keep them and others safe.

The policy intent behind section 6 is to increase access to those services, including housing, mental health and addiction support, and contact with justice social work. It is common sense, and the proposal itself came from a recommendation from, among others, the Scottish Drug Deaths Taskforce. However, I make it clear to members that this is not an either/or situation; we absolutely have to improve out-of-hours access, particularly to addiction services and family support. At the risk of sounding like a broken record, I think that we really need to bring all the solutions to the table, but this is one practical solution that we can put in place now.

That said, it is clear that, if Fridays and the day before public holidays are added to the existing list of excepted days, more releases will take place on a Thursday. Given that, as the member has said, we do not currently release people on public holidays or the weekend, there is already compression and pressure on Fridays that could then be displaced to Thursdays. That would increase the pressure on both community-based services and the Prison Service on that particular day of the week and would risk undermining the intent behind this provision.

To try to mitigate that impact, then, section 6 also provides that individuals whose release date would ordinarily fall on a Thursday will have their release moved to the nearest preceding suitable date. In practice, that will largely mean their being released the day before—in this case, the Wednesday—although I appreciate that there will be exceptions to that. I also note that section 6 does not seek to move any other dates.

This approach was not decided on some whim; it was—and is—intended to support the underlying principle of section 6, which is to enable people to access the services that they need on release from prison in order to keep our communities safe. Given that, taken together, amendments 68 and

69 would remove that provision, I cannot, for the reasons that I have outlined, support them, and I ask Russell Findlay not to press amendment 68 and not to move amendment 69.

Amendment 71 would require the Scottish ministers to report annually on the distribution of prison releases across the days of the week. Of course, the Government acknowledges that monitoring is important, but the amendment would also require the Scottish ministers to report on whether services were still being provided by the bodies listed in section 34A(2) of the Community Justice (Scotland) Act 2016 to deliver

"the effective release of prisoners on Thursdays."

A number of non-Scottish Government amendments to part 2 of the bill call for various reports and reviews, and I agree that it will be important to review the impact of the provisions. I am therefore minded to lodge at stage 3 an amendment that will encompass the various asks for reviews in the different sections of part 2 to provide a more coherent picture. I therefore ask Mr Findlay not to move amendment 71.

The Convener: I call Russell Findlay to wind up and to press or withdraw amendment 68.

Russell Findlay: As the cabinet secretary says, the policy intent is to increase support for those leaving custody. However, given the lack of evidence that we have heard about the specific issue of Thursday becoming mostly a non-release day, with the exceptions that we have touched on, it seems quite a big step. We are effectively going to have—

Angela Constance: Will the member give way?

Russell Findlay: Yes.

Angela Constance: Thank you for giving way. I want to make it clear that Thursday would still be a release day for people who would have been released on a Friday, or if there is displacement from the weekend. We are going from five release days to four release days in the week, just for clarity.

Russell Findlay: Yes, but we do not know anything about the number of people who are released on Friday, do we? We have not heard any evidence as to the proportion who are typically released on a Friday and who would now be released on a Thursday. Do you have those numbers to hand?

Angela Constance: I accept the point that we need to monitor all of this going forward, but bodies such as the drug deaths task force made recommendations, which were accepted by the Government, and it looked at a range of evidence on the impact on communities. I think that we are all agreed on the impact of release on a Friday. However, in a very practical sense, we need to avoid the displacement from a Friday to a Thursday, so that we are not just moving one set of problems to another day of the week. It is a way of spreading the load over four days.

Russell Findlay: I understand the reasoning, and I understand that the drug deaths task force backed the suggestion of ending Friday release, but we still lack knowledge about the possible ramifications of this. On that basis, I press amendment 68.

The Convener: The question is, that amendment 68 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Russell (West Scotland) (Con)
Greene, Jamie (West Scotland) (Con)

Against

Clark, Katy (West Scotland) (Lab)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McNeill, Pauline (Glasgow) (Lab)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)
Stevenson, Collette (East Kilbride) (SNP)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 68 disagreed to.

Amendment 69 not moved.

Section 6 agreed to.

After section 6

The Convener: The next group is on release of short-term prisoners. Amendment 70, in the name of Russell Findlay, is the only amendment in the group.

Russell Findlay: Amendment 70 seeks to change the way that short-term prisoners are released in Scotland. Currently, every single prisoner who is sentenced to less than four years is automatically released halfway through their prison sentence, with no questions asked. Regardless of how badly they might have behaved or the severity of their offence, they are guaranteed not to serve their full sentence—they will serve half of it at best.

In 2015, the First Minister at the time, Nicola Sturgeon, committed to abolishing automatic early release, stating:

"Our objective remains to end the policy of automatic early release completely as soon as we are able to."—[*Official Report*, 2 April 2015; c 19.]

We are eight years on and that has still not happened, with the law having been changed only in relation to long-term offenders.

Previously, long-term offenders—those serving a sentence of four years or more—were automatically released after serving two thirds of their sentence. However, a long-term prisoner can now be released only if they have served half their sentence and, crucially, have been directed for release by the Parole Board for Scotland.

My amendment would replicate the terminology that is used for releasing long-term offenders for short-term offenders—those sentenced to less than four years. Specifically, it states that short-term offenders may be released from prison only once the Parole Board directs their release and after they have served at least half their sentence.

I could cite a number of cases in which people who have been automatically released have gone on to commit serious crimes, including murder. It is not unreasonable to surmise that some of those people would have been deemed unsafe for automatic early release and, therefore, members of the public might well have been protected. It is ultimately about public safety. I hope that the committee and the cabinet secretary agree.

I move amendment 70.

Jamie Greene: I want to add two further points. It is clear that if a judge deems that someone merits a two-year sentence—in other words, two years in custody—they will direct that they receive a four-year sentence, in the knowledge that automatic release will allow them to leave custody after two years. The same would be true in relation to someone whom a judge thinks merits a three-year sentence—they would give them a six-year sentence, knowing that, as the law stands, they would be out after three years anyway.

Consideration needs to be given to the practicality of the law as it is at the moment. It is unclear why there is not parity between short-term and long-term sentences. We would have found it very helpful to get an analysis of the data on reoffending relative to sentencing, which is a subject that I have always been intrigued by. I presume that there is some form of parabola or gradient—we have certainly heard about this anecdotally—around the ability to rehabilitate someone in custody.

Regardless of what your views on such sentences are, the Government has declared that very short sentences are in some ways useless and do not provide the best outcome from a rehabilitation point of view. There is academic evidence that shows that time is needed in order to rehabilitate people, and very short sentences have just as poor outcomes.

It would have been helpful to understand why the cut-off has been set in the way that it has and why the promise that was previously made to analyse and change that, if required, has not come to pass. I hope that that has nothing to do with the size of the prison population, because emptying prisons through automatic early release is not the way to address that issue. There are serious questions to be asked about how much rehabilitation can take place in a very short period—14 months, say—in custody.

In my view, the approach should be evidence and data led. Unfortunately, the committee has struggled to get data on the issue. If the statistics show us that there is a cohort of people who are released after between 12 and 24 or 36 months in custody who have a higher reoffending rate than prisoners who cross over the line of 50 per cent automatic early release, surely the Government needs to be mindful of that. Once again, though, we have struggled to get any meaningful data on that.

Given that the bill is all about changes to bail and release, it provides the Government with a good opportunity to justify the status quo, or at least to make a commitment to change it, as it has done hitherto.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I am not inclined to support amendment 70. Jamie Greene and Russell Findlay are asking the Government to bring forward legislation that is based on evidence—I feel that the bill is based on evidence—but they present us with amendments, such as amendment 70, on which we have not taken any evidence. Such a change would be really significant and it could result in a massive increase in the prison population. It would also have massive resource implications for the Parole Board and for how the system would work in practice—it would be necessary to go back to the drawing board.

Jamie Greene: I am not sure that we should be reticent about making changes such as the one that is proposed in amendment 70 based on the question of how well resourced the Parole Board is. The Parole Board will need to be resourced to the level to which it needs to be resourced in order to meet the legislation that we put in place.

If the issue is about public safety or the suitability of a prisoner to be released and the likelihood of their reoffending after release, that should be the primary consideration, not the effect that the proposal might have on how much work the Parole Board has to do.

Fulton MacGregor: I thank Jamie Greene for that intervention. I did not say what he has suggested; I said that the Parole Board was one aspect to consider.

The change that amendment 70 proposes would be an absolutely massive and sweeping change and we have not taken evidence on it or had a chance to consider its implications. Given that we are talking about a policy that has been in place in Scotland and, I believe, across the whole of the United Kingdom for a significant time, a lot more work and a lot more scrutiny would have to be done before we could consider making such a change.

I will not support amendment 70.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I echo what my colleague Fulton MacGregor said. I do not think that Mr Greene responded to his question about the fact that we did not hear any arguments in support of such a change during our evidence taking. I will not support amendment 70 for that and other reasons.

10:00

Pauline McNeill: Jamie Greene and Russell Findlay have raised some pertinent questions about the sentencing of short-term prisoners. My understanding is that short-term prisoners are those serving four years or less. I am still not too clear about what Russell Findlay's amendment would do, so it would be useful to hear about that when he sums up. However, my reading of it is that it would require that short-term prisoners could be released on licence only if recommended by the Parole Board. Would that change the current arrangements so that every short-term prisoner would need to be released on licence, meaning that, if they offended, they would go straight back to prison? That is what it means to be on licence, is it not?

Russell Findlay: That is my understanding. We should bear in mind that short-term prisoners are in prison for up to four years, so they include people who are serving sentences for some pretty significant crimes such as crimes involving violence and sexual violence. If, following release by virtue of a Parole Board process, they reoffend, they would be required to serve the rest of their sentence.

Pauline McNeill: I am trying to understand that. Do you regard that as quite a big change to the system?

Russell Findlay: Yes. I was going to refer to that in summing up, so it might be better if I address that then.

Pauline McNeill: Yes. I thought that I would raise these matters now to give you a chance to address them in summing up.

I have a similar concern in that sentencing policy is a massive area, and I want to be sure what we would be setting up for if we were to vote for the amendment. The automatic release of short-term prisoners halfway through their sentence is an on-going topical issue. I welcome the fact that it has been brought to the committee, but, as we did not take any evidence on it, we need to be clear—I take Jamie Greene's point and I will let him intervene in a moment—that, if we agree to the proposal because we think that it is right in principle, it will be for the system to resource it properly.

Jamie Greene: There is a massive difference between automatic release and eligibility for release, and I feel that these decisions lie best with the Parole Board. The premise of the amendment is that people could still be released after serving 50 per cent of their sentence. That is not up for argument, whatever your views are on the policy—

Pauline McNeill: However, it would go through the Parole Board.

Jamie Greene: —but it would be subject to the extra level of test that the Parole Board was comfortable with it. I appreciate that there would be implications for the Parole Board and it may be unhappy with those, to an extent, but it would add another level of scrutiny to the process.

Automatic release means that the person just walks out the door halfway through their sentence. Given the data that we have on reoffending by those prisoners, the amendment would add an extra level of check and balance to that release. Prisoners would still be eligible for release halfway through their sentence, if suitable.

Pauline McNeill: I am trying to understand the amendment. It would mean that every single case would go to the Parole Board for the final decision and the person would be released on licence in every case. I will give way if you want to address your point about the parity of short-term and long-term prisoners, which is not something that I had considered before you raised it. Perhaps that could be addressed in the summing up, although it was Jamie Greene who made that point.

Jamie Greene: As it is not my amendment, I will let Russell Findlay speak to it.

Pauline McNeill: I do not know whether it is Russell Findlay's position that there should be no difference between the release of short-term and long-term prisoners. I am not offering an opinion; I just want to know what the rationale is for saying that there should be no difference between short-term and long-term prisoners.

Angela Constance: As we have heard, amendment 70 would end automatic early release for short-term prisoners. That would be a significant change to the justice system with associated substantial costs. A change of that

level would require careful and detailed consultation and consideration. As much as debate and discussion are very important and welcome, a decision of that magnitude should not be made on the basis of a very short debate at committee during stage 2 of a bill that does not otherwise deal with when short-term prisoners should be released. Moreover, although the matter was raised during the consultation to inform the bill, there was no settled view on it.

Scotland is not alone in having a system of automatic early release; such a system also operates in England and Wales and other jurisdictions in one form or another. Of course, that does not mean that we should not debate and scrutinise our system.

Mr Findlay's amendment raises important wider issues to do with who and what prison is for. I am most certainly not dismissing the points that he and other members have raised—I recognise that there are very strong views on automatic early release in that it is automatic and not earned or assessed—but, as other members have acknowledged, sentencing is a massive issue and it should always be considered in the round. It might also be helpful if members were aware—as I am sure that they are—that most sex offenders on short-term sentences are released on conditions.

The matters that Mr Findlay has raised should, of course, be discussed, but in more detail and with context. I do not feel that we are able to do that in the time that we have today. Essentially, ending automatic early release would have significant consequences for the justice system and the prison system in particular. Moreover—I am sure that I am just stating the obvious to members—it would have a significant financial impact. Decisions on these issues are not to be taken lightly. They are deep issues that require proper discussion and consultation.

Currently, the short-term prison population is close to 2,100 prisoners. Ending automatic early release could substantially increase the proportion of the sentences that those individuals serve, which would lead to higher prison populations. By way of illustration, I note that, if short-term prisoners served on average five sixths rather than one half of their sentence, the population would be expected to rise by almost 1,400. Given that the estimated annual cost of a prison place is circa £42,000, this unfunded amendment could lead to additional annual costs of around £59 million. Significant capital costs could also be associated with expanding the prison estate to address that increase in population.

I stress that Mr Findlay has raised important points that merit further discussion, but I do not think that we should decide on such a fundamental shift in justice policy and practice without full consideration of all the consequences. There would be risks in doing so. A particular risk that I point out is that, although amendment 70 would result in short-term prisoners being released on licence, it makes no provision for how that would work in practice. It also makes no provision for what would happen if a released short-term prisoner were to breach a condition of their licence. Finally, there is no mechanism for Scottish ministers to take any action to address that; for all other prisoners released on licence, their licences can be revoked and they can be recalled to prison. Those are just some examples to show why these matters should not be decided on here today.

For all those reasons, I ask Russell Findlay not to press amendment 70.

Russell Findlay: Quite a lot of points have been raised on the amendment, and I will try to cover them all. First, I note that the cabinet secretary acknowledges that evidence was taken on the matter at the consultation stage. Indeed, there was a significant amount of evidence in support of ending automatic early release. However, the issue did not make it into the final bill.

Fulton MacGregor made the fair point that we have not heard a great deal of evidence on the issue, and, as the cabinet secretary said, there could be consequences—not least financial ones, but others, too—for the Scottish Prison Service and others. However, Jamie Greene was correct to say that the Parole Board is a demand-led service. The Government made the commitment eight years ago, so if, by virtue of my raising the issue here, the matter is put back on the agenda and gives us food for thought, lodging amendment 70 was probably worth while.

On Pauline McNeill's point about parity, it is slightly academic, but there would be, in effect, the same system for long-term and short-term prisoners; the system would not differentiate between them. There are short-term prisoners who are extremely dangerous, who know that they will automatically get out halfway through their sentence—whether that is after six months, a year or whatever—and who go on to commit serious crimes. Amendment 70 would provide a mechanism for identifying those individuals and preventing that from happening.

With all that said, I am minded not to press amendment 70, for all the reasons that have been given. However, it might be worth revisiting the issue in some way at stage 3.

Amendment 70, by agreement, withdrawn.

Amendment 71 moved—[Russell Findlay].

The Convener: The question is, that amendment 71 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Russell (West Scotland) (Con)
Greene, Jamie (West Scotland) (Con)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)
Stevenson, Collette (East Kilbride) (SNP)

Abstentions

Clark, Katy (West Scotland) (Lab)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 2.

Amendment 71 disagreed to.

Section 7—Release on licence of long-term prisoners

The Convener: The next group is on the release on licence of long-term prisoners. Amendment 9, in the name of the cabinet secretary, is grouped with amendments 72 to 74, 10 and 75 to 89.

I draw members' attention to the procedural information relating to the group, as set out in the groupings document. If amendment 73 is agreed to, I cannot call amendments 74, 10 and 75 due to a pre-emption; if amendment 74 is agreed to, I cannot call amendment 10 due to a pre-emption; and if amendment 79 is agreed to, I cannot call amendment 80 due to a pre-emption.

Angela Constance: Section 7 introduces a new temporary release licence for long-term prisoners. The bill does not name the licence, but the term "reintegration licence" is used in the supporting documentation, so I will use that term.

The reintegration licence is intended to operate in two circumstances. The first is in advance of the Parole Board's consideration of a prisoner at the parole qualifying date or at a subsequent review if they are not released on the PQD. In that circumstance, the Scottish ministers would make the decision to release on the basis of risk assessment and consultation with the Parole Board.

The second circumstance is that release can be directed by the Parole Board when it has recommended that a prisoner be released on parole on the PQD. The board can direct that the prisoner be released on a reintegration licence in advance of that date.

The intention of the provision is to provide the opportunity to support the reintegration of certain long-term prisoners. For example, it will help them to link to community services and to build a relationship with their supervising officer.

In the circumstance in which Scottish ministers release an individual in advance of the Parole Board's consideration of the case, release on the licence provides the opportunity for structured testing in the community. That will provide further evidence to the Parole Board to inform its decision making.

10:15

Jamie Greene: It is quite a short amendment and we are trying to get our heads around what it would do and why. Is the scenario that you are explaining that, prior to the Parole Board considering someone's release, Scottish ministers could direct their release and that would be the end of the matter? In which circumstance would Scottish ministers want to release someone earlier than the Parole Board would decide to? It is not clear cut; the case has not been made.

Angela Constance: I think that I have been clear about the Parole Board's responsibilities in relation to the second scenario in which a reintegration licence could be considered. The first scenario that I outlined is when Scottish ministers, through the Scottish Prison Service, in consultation with the Parole Board, would consider the release of certain prisoners. Certain prisoners are excluded, and not on the basis of offence types. Prisoners who are on an extended sentence are excluded, so it is not for life-sentence prisoners or prisoners who are convicted under prevention of terrorism charges. The supporting documentation to the bill highlights that it covers a small number of prisoners—circa 75 to 200. In essence, it is temporary release by the Scottish Prison Service.

The approach that I outlined prior to Mr Greene's intervention was supported by the chair of the Parole Board, John Watt, when he provided evidence to the committee at stage 1.

I note that Katy Clark's amendments in the group seek to remove the Scottish ministers' ability to release an individual on reintegration licence before their case has been heard by the Parole Board, and I am sure that Ms Clark will outline her reasons for that.

I would like to make a few points in response to Ms Clark's amendments. First, the intention of the licence, as I have said, is to better support the reintegration of long-term prisoners and, critically, to provide structured testing. Prisoners released on the licence will be subject to conditions including curfew, which can be electronically monitored, and, importantly, supervision by justice social work. I appreciate that it is a new licence

and that, understandably, there are questions about how it will operate in practice.

As members will be aware, the provision will not operate in isolation. Section 7(12) requires the Scottish ministers to prepare a statutory operating protocol to underpin the use of the licence. That operating protocol must detail the risk assessment process that will inform release on the licence and the factors to be taken into account when undertaking the risk assessments. It will also cover matters such as how prisoners will be monitored when released on reintegration licence.

In developing that protocol, the Scottish ministers must consult with a range of stakeholders with specific expertise in the area, including the Risk Management Authority and, as I mentioned earlier, the independent Parole Board.

I hope that that provides suitable reassurance to Ms Clark and that she recognises the importance of having the opportunity to test prisoners before their release, subject to risk assessments, as I have described.

Amendment 73 would remove the legal considerations that Scottish ministers and the Parole Board must have regard to when releasing a prisoner on a reintegration licence. I am not clear what the purpose of the amendment is. I note that Ms Clark's view appears to be that the Scottish ministers should not be making those decisions, but amendment 73 would remove those legal considerations in cases in which the Parole Board directs release on a reintegration licence.

I do not support the view that the Scottish ministers should not be able to release prisoners on the reintegration licence, within the parameters that are described in the bill. I recognise that that will need to be done on the basis of clear risk assessment that takes account of all relevant factors, and the bill provides for that. I therefore ask Ms Clark not to move her amendments in this group.

I turn to Mr Greene's amendments. Amendment 75 seeks to add the protection of the

"victim or victims of the prisoner, or class of persons, to whom the prisoner may pose a risk",

if released on the reintegration licence, to the existing list of considerations that the Scottish ministers and the Parole Board must have regard to before releasing a prisoner on the licence. The bill currently lists those considerations as

"protecting the public at large,"

reducing reoffending and supporting the reintegration of the prisoner. Victim safety would be included in the definition of protecting the public at large, but I appreciate that it would be helpful to put that beyond doubt.

Therefore, I commit to lodging a stage 3 amendment that will address the issue of victim safety being one of the legal considerations that the Scottish ministers and the Parole Board must have regard to when deciding to release on reintegration licence. The Parole Board will, of course, already have taken account of victim safety concerns when deciding to recommend release on parole licence. I therefore ask Jamie Greene not to move amendment 75, and I am more than happy to engage with him further on those matters.

Amendment 80, which was also lodged by Jamie Greene, seeks to add individuals who are subject to the sexual offences notification requirements to the list of statutory exclusions from release by the Scottish ministers on the reintegration licence. The list of existing statutory exclusions in the bill does not include offence-focused exclusions, and that was deliberate.

That decision was based on feedback that we received during the consultation and from stakeholders that decisions about release should be based on risk assessment and not on offence type alone. Mark McSherry, the chief executive of the Risk Management Authority, made a similar point when he provided evidence to the committee during stage 1. He said:

"My point is that we need to understand the pattern, nature, seriousness and likelihood of such behaviours, so that we develop a proportionate response that adequately protects victims and addresses the specific risk that is identified. When we use broad offence categories—sexual offending is one example—that sometimes does not allow us to understand the risk that specific individuals might pose within that broad spectrum. Therefore, our view is that that level of"

risk assessment

understanding is required."—[*Official Report*, *Criminal Justice Committee*, 25 January 2023; c 22-23.]

As I have highlighted, the provision has been designed with risk assessment at its core. The risks posed by all individuals being considered for release on the licence will be carefully assessed as part of that risk assessment process, regardless of the offence they have been convicted of. Statutory exclusions on the basis of offence type alone would cut across that.

It might be of interest to Mr Greene that, as I said earlier, people who are given an extended sentence are excluded from eligibility to be considered for release on the reintegration licence. If you look at the figures over the piece, you see that the majority of people who are given an extended sentence are sex offenders.

For the reasons outlined above, I ask Mr Greene not to move amendment 80.

My amendments 9 and 10 are both technical amendments. Amendment 9 repeals section 3AA(7) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, which relates to the Parole Board's decision making in relation to long-term prisoners on home detention curfew. Section 7 of the bill removes long-term prisoners from home detention curfew, so that subsection is no longer required.

Amendment 10 corrects a minor drafting error in which the wrong subsection number was used.

I move amendment 9.

Katy Clark: I will speak to amendment 72 and the consequential amendments in my name, which seek to remove subsections (1) and (2) of proposed section 3AB, relating to further powers to release long-term prisoners.

Although the committee has considered some evidence on those provisions, I think that it is fair to say that other aspects of the bill have received greater scrutiny. We want to have a far better understanding of what the implications of the provisions would be if they were passed.

Victims organisations, particularly Victim Support Scotland, and other organisations have expressed numerous concerns about the implications of those provisions. It is unclear why the Scottish Government feels that they are necessary, and I listened carefully to the cabinet secretary and the explanation as to why the Scottish Government has included the proposals.

I look forward to having sight of the Government's amendment on the safety of victims, because many of the concerns that are being expressed relate to victims. Amendment 75, in the name of Jamie Greene, reflects some of the concerns, which it attempts to address.

My amendments would remove the provisions that would, in essence, permit the Scottish ministers to release long-term prisoners at a point 180 days before the prisoner's parole qualifying date, provided that the Parole Board had not recommended that the prisoner be released on licence.

My amendments are not only probing amendments; I have lodged them on the basis that the Government's amendments overreach.

I will listen carefully to what the cabinet secretary has to say in response to my comments. I am interested in hearing what engagement there has been with Victim Support Scotland and other organisations that are expressing detailed concerns about the implications of the legislation and what attempts have been made to ensure that the genuine concerns that are being raised are addressed. This might be an issue that we come back to at a later stage.

Jamie Greene: Amendment 9, in the name of the cabinet secretary, is the first amendment in the group. As I said in a previous intervention, we are unsure as to the technical outcome of repealing section 3AA(7) of the 1993 act. I have listened carefully to the cabinet secretary's points. Either I do not fully understand the scenario or I am not convinced by it—I am not sure which at the moment.

My understanding—this is a by-product of how we legislate—is that we refer to the Scottish ministers making decisions. However, the cabinet secretary talked a lot about the SPS, as opposed to the Scottish ministers, making decisions. There is a big difference.

There is a lot of discussion about section 7 and the powers that ministers might or might not have in relation to interventions. We need to be quite clear with people that a decision that is made by a minister might be made for very different reasons from one that is made by the SPS. In addition, we do not know who in the SPS would make such a decision. Is there a committee in the SPS that would decide on such a matter? Would it be up to individual prison governors, who are employed by the SPS? If the latter is the case, you could argue that the amendment gives governors more autonomy in what happens to their prison cohort, acknowledging their understanding of the prisoners who are in their institution. You could argue that that sounds like an eminently sensible thing to do. Equally, however, some prisons are not operated by the SPS but might fall under its wider remit. There are questions to answer in relation to that, too.

There is a big difference between giving ministers the power to override, overrule or pre-empt decisions that are made by independent bodies such as the Parole Board and other decisions that governors might want to make. I am not convinced that the case has been made that the Government needs that power.

If we end up in a scenario in which a Government minister directs the release of someone but there is unhappiness with that decision in the prison or the SPS, or the Parole Board has reservations about it, it is unclear whether the release would go ahead or whether there is the ability to stop or appeal that decision. That is not covered, because the amendment has a blanket approach to that scenario. I do not think that the committee went into that fully, which is unfortunate, because there might be some merit in what the cabinet secretary is trying to say on why the power might be helpful in some scenarios.

10:30

Although 75 to 200 prisoners does not sound like a lot, it would be a lot if they went out and committed further offences or if they were people who the Parole Board said might not be suitable for release but ministers wanted to do it anyway. I am unsure as to why ministers would ever want to do that. Again, if we had had some evidence on this and we had talked about it at stage 1, we might have been more convinced. For that reason, I am inclined not to support amendment 9.

My amendments fall into two groups: amendments 75 and 80 seek to strengthen the consideration of victims throughout the process; amendment 89 is more of a blanket amendment.

I welcome the cabinet secretary's comments. I will not go into great detail selling amendment 75 to the committee, but it is an amendment that Victim Support Scotland, Scottish Women's Aid and the advocacy, support, safety, information and services together—ASSIST—project strongly support. Members will note the paper that they sent to us yesterday, listing the amendments that they do not support, support or strongly support, and I am pleased that they strongly support amendment 75.

It is often the case that members draft amendments in a certain way and then the Government is happy to look at those draft amendments. I very much welcome that, and I would be happy to work with the cabinet secretary to look at whether the existing statutory protections could go beyond

"protecting the public at large",

as the bill is drafted, and be strengthened to include victims.

We might, however, have some disagreement on amendment 80, which is another short amendment that is strongly supported by Victim Support Scotland, Scottish Women's Aid and the ASSIST project—I think for good reason. I understand the argument made about that is about listing offences, but this section, ultimately, is about ministers releasing people. In fact, it says at line 15 exactly what section 7 does:

> "The Scottish Ministers may release on licence ... a long-term prisoner whose release ... has not been recommended by the Parole Board."

That is the wider issue. We cannot forget that the section is about conferring an additional power that currently does not exist. Members might have a wider view on whether or not the Government should have this power, but if the Government must have this power—and that is clearly the direction of travel—all that we can do is add in some safeguards. Amendment 80 would do exactly that by introducing a prohibition against the release of someone who, for example, is on the sex offenders register, but specifically where the Parole Board has not directed the release of that prisoner.

The cabinet secretary spoke about risk assessment. I believe that the Parole Board goes through that process robustly. Not everyone always agrees with the outcome of that, and there is then a process for that, but surely the best place for risk assessment is in the independent, arm's-length situation of the Parole Board.

It is hard to see how there can be true risk assessment if the Parole Board is not involved, specifically for cases in which someone has been convicted of a specific sex offence, when there may be greater risk to a victim on the release of the individual, and I do not believe that the Government should hold the power to release that individual. Therefore, I would like to reintroduce the existing prohibition that is being removed by the bill. I believe that that is why the amendment is supported by victims' organisations.

I will leave my comments at that—thank you.

The Convener: As no other members wish to speak, I call the cabinet secretary to wind up.

Angela Constance: Risk assessment is at the core of these provisions, for all offence types. There are risks if we start including or excluding certain offences. Given that this provision is for long-term prisoners, thorough risk assessment procedures should be applied to all prisoners who are being considered—and, of course, they are only being considered—for release on the temporary reintegration licence. There is no automatic entitlement to that.

In the provisions, there is a clear commitment that the Parole Board and the Risk Management Authority will be consulted in relation to prisoners for whom the Scottish ministers are considering release. I appreciate that the language of legislation can be confusing, particularly in terms of who and what "the Scottish ministers" are. In some scenarios, the phrase means the Scottish ministers; in other scenarios, including in this case, it means the Scottish Prison Service. That is because of its nature as an executive agency.

Pauline McNeill: I confess that some of this is technical, and you will appreciate that it is difficult to follow all the dots and commas and work out which prisoners are excluded and who has the powers. However, I do not know whether you have addressed why you want to introduce the measure. What is the philosophy behind it? I read the purpose and effect note, which is quite thorough. However, I still want to know what the philosophy is. Is it because you think that it is time to change the way that we do things in releasing prisoners? Is it time to give certain prisoners the

opportunity? Is there another reason? I am still struggling a little with the question of why.

Angela Constance: The provisions are clear about who is excluded—I covered that in answer to Mr Greene. I am sure that the committee will have heard evidence on the issue from the Parole Board. Very often, when people come up for consideration for parole for the first time, there is just not enough evidence because they have not been tested enough—hence the logic behind testing some prisoners on a temporary release licence.

I will end my comments by stressing the importance of the statutory operating procedure. I give an assurance that I will pay particularly close attention to that. I am more than happy to have discussions with members to ensure that they are fully sighted on our thinking on the statutory operating procedure, because the scope of that is absolutely crucial. We will also have close engagement with victim support organisations on the statutory operating procedure.

The Convener: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)
Stevenson, Collette (East Kilbride) (SNP)

Against

Findlay, Russell (West Scotland) (Con)
Greene, Jamie (West Scotland) (Con)

Abstentions

Clark, Katy (West Scotland) (Lab)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 4, Against 2, Abstentions 2.

Amendment 9 agreed to.

Amendments 72 to 74 not moved.

Amendment 10 moved—[Angela Constance]—and agreed to.

Amendments 75 to 79 not moved.

Amendment 80 moved—[Jamie Greene].

The Convener: The question is, that amendment 80 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Clark, Katy (West Scotland) (Lab)
Findlay, Russell (West Scotland) (Con)
Greene, Jamie (West Scotland) (Con)
McNeill, Pauline (Glasgow) (Lab)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)
Stevenson, Collette (East Kilbride) (SNP)

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

There is an equality of votes. As convener, I will use my casting vote and vote against the amendment.

Amendment 80 disagreed to.

Amendment 81 to 89 not moved.

Section 7, as amended, agreed to.

After section 7

The Convener: The next group is on the review of recommendations and directions by the Parole Board. Amendment 11, in the name of the cabinet secretary, is grouped with amendment 11A.

Angela Constance: Amendment 11 provides the Parole Board for Scotland with the power to reconsider its decision to release an individual on parole licence in certain circumstances. That directly responds to the points raised by the chair of the Parole Board, John Watt, when he gave evidence to the committee at stage 1. I am also aware that the committee called on the Scottish Government to find a solution to the issue in its stage 1 report.

Mr Watt expressed his concern that the Parole Board would not have the ability to review its decision to recommend the release on parole of a prisoner in the circumstance in which the board had directed that that individual be released on the new temporary release licence until their parole qualifying date and the temporary licence be subsequently revoked. In that scenario, the Parole Board would not have the power to review its original decision, and the individual would move to parole licence at their PQD.

Amendment 11 directly responds to that scenario and provides the Parole Board with the power to review its original decision to release on parole licence. The amendment goes further: it provides the Parole Board with the power to review its decision in relation to the release of prisoners under part 1 of the 1993 act generally. That power is applicable when new information is provided to the board between its decision to recommend release and the point of release and when that information is considered to have a significant bearing on the individual's suitability for release.

10:45

In essence, amendment 11 gives the Parole Board the power to place a pause on the release of an individual in those circumstances, until it can consider the new information and decide whether to review the decision to release. As part of that review, the board could uphold the original decision to release, could uphold it but amend the licence conditions or could reverse the decision.

It is our view that amendment 11 provides an important additional safeguard. As it is intended to enable an independent review by the Parole Board, we have not set out any procedure for those reviews in the amendment. We will further consider whether any change to the Parole Board's rules might be needed to support that as part of implementation in due course.

Katy Clark's amendment 11A seeks to amend amendment 11 by removing references to the recall of long-term prisoners released by the Scottish ministers under proposed new section 3AB(1) of the 1993 act—that is, release of a long-term prisoner by the Scottish ministers under the temporary release power provided by section 7 of the bill.

As Katy Clark did not move her amendments to remove the Scottish ministers' ability to release long-term prisoners on the temporary release licence provided by section 7, I urge her also not to move amendment 11A, which would remove an important safeguard and would result in an inconsistent approach to the review of recommendations by the Parole Board to release prisoners.

I move amendment 11.

The Convener: I call Katy Clark to move amendment 11A and speak to both amendments in the group.

Katy Clark: Amendment 11A was lodged as a consequential amendment to an amendment that was discussed in the previous group. However, given the cabinet secretary's amendment 11, I intend to withdraw amendment 11A.

I move amendment 11A.

The Convener: As no other members wish to come in, I call the cabinet secretary to wind up.

Angela Constance: I have nothing further to add.

The Convener: Katy Clark, please confirm that you wish to withdraw amendment 11A.

Katy Clark: That is correct.

Amendment 11A, by agreement, withdrawn.

Amendment 11 agreed to.

Section 8—Power to release early

The Convener: Amendment 90, in the name of Rona Mackay, is grouped with amendments 12, 13, 91 to 94 and 38.

I draw members' attention to the procedural information relating to the group that is set out in the groupings paper. If amendment 93 is agreed to, I cannot call amendment 94, due to a pre-emption.

Rona Mackay: The amendments that I am proposing seek to bring the emergency release provision in the bill into line with changes that were made to the comparable provision in the Coronavirus (Recovery and Reform) (Scotland) Bill at stage 3. The Coronavirus (Recovery and Reform) (Scotland) Act 2022 provides the power to release from prison early groups of prisoners who fall within a particular category specified in regulations. That must, of course, be done in response to the effect that the coronavirus is having, or is likely to have, on a prison or on prisons in general.

The power contained in the Bail and Release from Custody (Scotland) Bill is a wider and permanent power that will be used in response to the effect that an emergency situation is having on a prison or on prisons in general. It is clear that, by its nature, that power would rarely, if ever, be used, but I believe that it is an important safety net to have.

Given that the amendments that were made to the Coronavirus (Recovery and Reform) (Scotland) Bill at stage 3 were agreed to after the Bail and Release from Custody (Scotland) Bill was introduced, it is appropriate that those amendments be replicated here.

Amendment 90 seeks to limit the application of the early release powers to ensure that prisoners cannot be released any earlier than six months prior to their scheduled release date. Amendment 92 seeks to exclude people convicted under the Domestic Abuse (Protection) (Scotland) Act 2021 from the early release provision. I think that that is absolutely crucial. Finally, amendments 91 and 94 are technical amendments resulting from amendments 92 and 90.

All of those amendments reflect amendments to the comparable power in the 2022 act, and I believe that they are necessary to ensure the safety of victims and give them some piece of mind in the unlikely event that they would be needed.

I move amendment 90.

Angela Constance: I will begin by setting out why I think that section 8 is important.

Ensuring the security and good order of our prisons as well as the health and safety of prisoners and prison staff is absolutely critical, and it is a responsibility that I take extremely seriously. The emergency prisoner release power in the bill is intended to support that essential principle by providing a means of releasing groups of prisoners if the impact that an emergency situation is having, or is likely to have, puts the security of prisons or the safety or welfare of prisoners or prison staff at risk. That is not a power that I would ever hope to use, and that is not the reason for including it in the bill. It is in the bill because, as the pandemic showed us, we, as a Government and as a Parliament, have to be able to respond to the unpredictable. We must ensure, as far as we can, that the mechanisms are in place for us to respond immediately to emergencies when lives might be at risk. This is one of those mechanisms.

Unlike the United Kingdom Government, which has had such a power since the early 1980s, the Scottish ministers currently have no legal power to instruct early release in order to protect the security of prisons and the safety and welfare of prisoners and staff, other than specifically in response to Covid. As a result, without the provisions in section 8, we would be required to introduce emergency legislation if we needed to respond to an emergency situation in our prisons in order to protect lives—for example, in the event of a major fire in a prison.

Katy Clark: Can the cabinet secretary give some examples of situations in which she would envisage such legislation being necessary?

Angela Constance: Clearly, it would be used in extremis—that is, in an emergency that had an immediate impact on, and threatened the safety and wellbeing of, staff and prisoners. I suppose that one example would be a major fire that had a major impact on a prison, resulting in its being unsafe.

We have to acknowledge that passing even emergency legislation would take time, and it would be time that we could not afford. The decision to include the power in the bill was not one that we took lightly, and we have included a number of safeguards that, I would highlight, do not exist in other jurisdictions. For example, there are statutory exclusions that prevent certain prisoners from being eligible for release under the emergency power, including those who are serving sentences for sexual offences or who have been convicted under the domestic abuse acts.

Furthermore, amendments 12 and 13, in my name, would extend the existing governor veto. Those amendments would enable the prison governor to veto the release of an individual under the emergency release power if they considered that the individual would pose an immediate risk of harm to

"an identified group of people",

as well as to an identified individual, as provided for under the bill's current drafting. That is in direct response to concerns raised by victim support organisations.

I have heard a number of times now that the provision is not necessary, as the powers already exist, but that is not correct. It is true that there is a comparable power under the 2022 act, but that is to be used only in relation to the impact of the coronavirus. Moreover, it is temporary, ending in 2025 at the latest. The release power under section 8 of the bill is designed to be used in an emergency situation that places at significant risk the security and good order of a prison or the health, safety and welfare of prisoners or prison staff.

I now turn to the rest of the amendments in the group. Amendments 90 to 92 and 94, in the name of Rona Mackay, would bring the early release provision in the bill in line with the comparable provision in the Coronavirus (Recovery and Reform) (Scotland) Act 2022 following changes made at stage 3 of the bill process, which responded to amendments lodged by Jamie Greene and Russell Findlay at stage 2 of that process. I agree that amendments 90 to 92 and 94 would strengthen the provision; therefore, the Scottish Government supports them.

Amendment 93, in the name of Jamie Greene, would remove the ability of the Scottish ministers to use the made affirmative procedure for the emergency release regulations. That would significantly impair the Government's ability to take immediate, necessary and proportionate action to ensure the safety and security of prisons. For that reason, I cannot support it.

The Delegated Powers and Law Reform Committee rightly scrutinised the use of the made affirmative procedure in the bill, and the Scottish Government provided it with further detail to inform that scrutiny. I note that the DPLRC's response to this committee on the delegated powers memorandum to the bill stated:

"The majority of the Committee is content with the explanation provided by the Scottish Government and accepts the power in principle. The majority of the Committee is also content that the exercise of the power will be subject to the affirmative procedure but may be subject to the made affirmative in specified circumstances and by reason of urgency."

Therefore, I ask Mr Greene not to move amendment 93.

Amendment 38, in the name of Katy Clark, would entirely remove the Scottish ministers' ability to direct the release of groups of prisoners

in response to an emergency situation. That power is currently available to other jurisdictions in the UK, and it has been for some time. For the reasons that I have set out, I cannot support the amendment, which would remove the Scottish ministers' ability to release groups of prisoners in response to the impact that the coronavirus has, or is likely to have, on the security and good order of prisons and the health and safety of prisoners and prison staff. Therefore, I ask Katy Clark not to move it.

Jamie Greene: I will describe what my amendment 93 would do. If members look at page 11 of the bill, they will see, about halfway down, proposed new section 3D of the 1993 act, which is about parliamentary scrutiny of regulations made under proposed new section 3C. It says:

"Regulations under section 3C are subject to the affirmative procedure, unless"

the following applies, and there is a list of situations in which that scrutiny would be removed.

My amendment takes a simplistic approach, perhaps, but it would remove the rest of section 3D down to the end and just before the beginning of proposed new section 3E on the following page. The reason for that is simple. It would remove the Scottish ministers' ability to release prisoners under section 3 of the 1993 act without some form of parliamentary scrutiny or, indeed, a vote.

Affirmative regulations are often debated at committee, which could be an appropriate place. Indeed, over the years, this committee has given a number of Scottish statutory instruments full scrutiny and debate. Sometimes, we have even pushed an SSI back or brought it to a vote when there was disagreement. Therefore, the affirmative procedure is a suitable means of scrutinising such decisions.

I will come on to amendment 38 in a second. It clearly goes a step further. However, my amendment 93 would remove the problematic part of proposed new section 3D.

The bill states that the Scottish ministers can release prisoners under the made affirmative procedure if they

"are of the opinion that, by reason of urgency, it is necessary to make the regulations without their being subject to the affirmative procedure."

In her comments, the cabinet secretary said that that would impair their ability to make immediate decisions.

11:00

I will make two points in response. The first is that it is entirely possible for Parliament to make laws in an emergency situation when it is necessary to do so. The sort of emergency situation in this case remains unknown, because the cabinet secretary was unable to tell the committee what situations would be suitable for use of the power. During the passage of the coronavirus legislation, we, as a Parliament, even when not sitting in person, were able to pass quite sweeping laws in very short timescales. In fact, the Government makes use of emergency protocol to pass law when it suits it. Therefore, I cannot understand the rationale behind ministers arguing that their ability to make decisions would somehow be impaired.

There is the fundamental point that Parliament should be able to scrutinise such decisions, because we do not know the volume of prisoners who could be released or the reasons that could be given. At the very least, as a courtesy to the committee or to the Parliament itself, the Government should be forthcoming with its plans to do that, even at short notice, to give Parliament some say in the matter, so that it can be properly debated. It is a very sweeping power.

Rona Mackay: Will the member take an intervention?

Jamie Greene: I will in a second.

Amendment 38 goes a step further. I am not necessarily saying that the Government should not have the power; all I would be doing through my amendment is providing that regulations under section 3 be subject to the affirmative procedure—full stop. There would be no exceptions to that.

Rona Mackay: I am struggling a wee bit with your explanation about why you object to that approach. The very nature of an emergency means that there is not time for scrutiny, and regulations need to be made incredibly quickly. I cannot see the reason for objecting to that—an emergency is an emergency. As I said, having that facility available is just a safety net. I cannot see that there is any hidden meaning behind it—what it is for is clear cut.

Jamie Greene: The problem is that it is not clear cut. The pandemic was an emergency, which is why we passed emergency legislation. It is interesting that the cabinet secretary said that it is not a power that she would ever want to use. The problem that I have, irrespective of your views, is that previous cabinet secretaries have used the power to release prisoners for emergency reasons. When that power was used, we saw the consequences. That is what I will come on to next.

Under the coronavirus legislation, the Government—not this cabinet secretary, but this Government—did use that power to release prisoners. The Scottish Government released 348 prisoners in early May 2020 under what was then

emergency legislation. Of the 348 prisoners who were released under that emergency legislation—we all understood what an emergency was in that scenario—142 went on to reoffend within six months of release. That is perhaps why victims organisations have such an issue with it.

What is worse is that none of the victims involved in any of those cases was informed of the emergency release. The use of that power was debatable in that scenario, and the effect that it had on the wider community was debatable. Therefore, it is all very well saying that it is just a catch-all emergency power that we hope we will never have to use, but the Government has used it and might use it again.

I believe that the power was perfectly suitable under the Coronavirus (Recovery and Reform) (Scotland) Act 2022, which I understand is limited to run until 2025, but, if the Government wants that power for longer, it can come back to Parliament and ask for that or make it permanent if it wishes. This bill is not the place to put in such a power, but, if the Government insists on having it, the very least that it can do is be forthcoming to Parliament and make sure that there is some form of scrutiny. At the moment, there is none; it simply does not exist.

For the protection of future Parliaments—whether I am in them or not is irrelevant—if there is to be such a sweeping power, knowing the effect on the community and on victims of releasing hundreds or potentially more prisoners, the very least that the Government can do is ensure that there is some scrutiny, debate and, ideally, a vote. In this case, that would be done through the affirmative procedure, as the Government already details. That is why my amendment 93 would remove the rest of proposed new section 3D of the 1993 act. I also support Katy Clark's amendment 38, which I note from the groupings document Collette Stevenson supports, too.

Katy Clark: I lodged amendment 38 after working with Victim Support Scotland and other victims organisations, which are concerned about the implications of section 8. I have looked in detail at that section's wording, and it is fair to say that the concerns are about its being widely drafted; about the fact that some detail will be in regulations, so we do not know what further detail the Government will provide; and about the lack of certainty over the definition of an emergency.

I am sympathetic to the approach that Jamie Greene has outlined in amendment 93. The power in section 8 will be permanent, so, over time, it could be used in a number of situations, including scenarios that we do not currently envisage. The provision therefore needs to be tightly defined. I am sympathetic to what the cabinet secretary has said about the extreme circumstances in which it might be necessary to take such action, but, if Parliament is to pass the bill, those circumstances must be tightly defined.

Jamie Greene: I appreciate that the circumstances are in some ways abstract. We understand that powers are needed for pandemics and other health emergencies; such provisions are common to other legislatures. More extreme unplanned situations that have arisen in other countries include a prison fire, when people needed to be released quickly. That led to huge amounts of absconding, because people never came back after they left the prison gates. It would help if the Government were a bit clearer about what scenarios might constitute an emergency that such a power might be suitable for.

Katy Clark: That contribution is helpful. When I asked the cabinet secretary to give examples, she gave what was perhaps the first example that I had thought of and that Jamie Greene has just mentioned: a prison fire. If HMP Barlinnie or another large prison establishment burned down, what would be the emergency response? I would be far more sympathetic to the Government's approach if the bill had a defined list, which could be based on emergencies that have presented internationally when it has been necessary to take immediate action.

It is fair to say that most situations that could be considered to be an emergency could probably wait for Parliament to meet to consider the issues and whether emergency legislation was needed. However, that might not be realistic in situations such as a fire, if the number of people who were involved could not be catered for in the rest of the Scottish prison estate or by asking the English prison estate to assist.

There might well be scenarios in which the law would need to be addressed. My concerns are that section 8 is drafted widely, that the power is permanent and that the bill fails to define the limited circumstances of a genuine emergency in which it might be necessary for the Government and the Scottish Prison Service to take action and it would not be possible for the Parliament to be involved.

As I said, I am sympathetic to the approach that amendment 93 outlines. I am interested in whether the Government can look again at the drafting to address the concerns that are being raised.

Pauline McNeill: This is an important group and discussion. Like Katy Clark, I would be sympathetic to any Government having permanent powers if it thought that that was justified, given that we cannot know all the emergency circumstances that we might ever face. I would not

want to think of an emergency situation arising in which the Government's powers were inadequate.

Like Katy Clark and Jamie Greene, however, I am interested in drilling down into the regulatory framework, the extent of those powers and the language in the bill. One provision refers to an "emergency", but that is not defined, whereas proposed section 3D uses the term "urgency". I would like clarity on whether that would amount to the same thing in the ordinary meaning of the words.

Jamie Greene: There is some definition of what would constitute an "emergency situation" on page 10 of the bill. For example, it refers to a

"situation which has resulted in any prison (or part of a prison) ... being unusable".

Half of Greenock prison is unusable—does that mean that ministers could release prisoners on the basis that there was a water leak or damp? What if, for example, the Health and Safety Executive deemed a prison to be unsuitable and breaching international human rights legislation? Would that constitute a reason for release?

The answer is, "No, probably not," and the answer from ministers in that scenario would probably be that it would not, but the provision as currently drafted says that they could do so. That is the problem.

Pauline McNeill: I appreciate that intervention from Jamie Greene, which speaks to his own amendment in so far as it seeks to allow Parliament to properly scrutinise the use of any powers or adjustments.

I have three further points. Am I right in saying that there is a provision that gives prison governors additional powers for release? I would like clarification on that. Why is that necessary? Is the rationale the same?

Jamie Greene's further point about the early release of prisoners during Covid speaks to the need to give thought—as I am asking the cabinet secretary to do—to whether, in any of the situations in which there is provision for early release for emergency reasons, there are conditions attached to that. There must surely be conditions to protect and notify victims, but I am not sure whether those are contained in the bill.

It also speaks to the fact that, as with a lot of other provisions, we have not really scrutinised large elements of this one. I feel that, at stage 2, I am having to draw conclusions on big issues around what powers to give the Government on sentencing and early release. I have concerns about that now.

Finally, I turn to Rona Mackay's amendment 90. I am sympathetic to it but I am not sure—I do not know whether Rona Mackay will want to intervene here—about the requirement for a person to be released not

"more than 180 days earlier than the Scottish Ministers would otherwise be required"

to release them.

If someone is serving a year's sentence, would the 180-day rule still apply? Would it apply regardless of what sentence someone was serving? It would seem disproportionate to apply the 180-day rule if someone was serving a sentence of two years. Perhaps I have misunderstood it. I want to be clear, before we come to the vote, as to what that would actually mean. I support the notion behind it, which is to give victims safety and certainty. These are all important issues of principle.

Angela Constance: I will make a few points by way of intervention. I was forgetting that it is not me who will sum up for this group, so I have been sitting here taking notes.

To pick up your earlier point, in essence, the provision is about risk to life. If we had time to reconvene the Parliament, contact the committee and get on Microsoft Teams, the decision would not be one for this power.

It is imperative that we have this debate and discussion now, during peacetime—if I can use that word—as opposed to scrambling around and trying to pull together emergency actions that might or might not be underpinned by emergency powers.

11:15

As I have outlined, section 8 states that an "emergency situation" is one that places at significant risk

"the security and good order of a prison"

or

"the health, safety, and welfare of prisoners"

and staff. In essence, this is about life and limb.

On Ms McNeill's point about regulations, we could narrow things in relation to who could be released. We will continue to engage with members and victim support organisations on that point. I hope that that is helpful.

Pauline McNeill: It is helpful. The Government might therefore want to consider ensuring that it is clear in the bill that risk to life is the basis for such decisions. You could understand why ministers would want the power if there was risk to life, but I do not think that the bill contains those terms.

Jamie Greene: I am struggling with this. I do not want to get into a tripartite debate, but if it is an emergency power that is based on risk to life, why

are there exemptions? For example, there are exemptions relating to people who have been convicted of terrorist offences, those who are subject to an extradition order and those who are serving a sentence under section 210A of the Criminal Procedure (Scotland) Act 1995. Are we saying that some prisoners would be released but that others would not be released in a life-threatening situation? I know that the cabinet secretary cannot intervene on an intervention, but that does not make sense.

Pauline McNeill: I am happy to give way to the cabinet secretary.

Angela Constance: Thank you. In relation to the operation of prisons, I appreciate that this is difficult, because we are trying to future proof without knowing what specific disasters could come down the track. However, if a prison did not have the space or capacity to safely look after all the prisoners, and if that was of significance in that there would be a risk to the health, safety and life of staff and prisoners in the event of a fire, resulting in the absolute necessity to release some prisoners, surely we would want to release prisoners who presented a lesser risk? That is part of our work to—

Jamie Greene: All the terrorists and sex offenders would burn to death, but everyone else would get out. It is such an odd scenario, and the explanation does not make sense. The emergency power is to be used in a life-threatening situation, and I think that we probably agree that it is sensible for the Government to have that power—

Angela Constance: With respect, I point out that we have to be careful not to go from the sublime to the ridiculous. I appreciate that, when providing for future-proofing powers, it is difficult to come up with precise scenarios, but our prison estate includes more than one prison, and we are talking about the operational decisions that the Scottish Prison Service would make in an emergency. If, say, a small prison such as HMP Greenock was out of use, prisoners could, of course, be moved elsewhere. However, in extremis, decisions might need to be made to release some prisoners.

I will make a final point to Ms McNeill by giving the English comparison, although I am not for one minute saying that we should not be debating what I am asking for in a Scottish context. However, by way of giving some contrast, I note that the power in England is very broad, with the secretary of state able to make decisions about the safe use of prison places, whereas the power in Scotland has been built around emergency scenarios. In relation to the limits, it would be eminently sensible to set out in the regulations who could be released in the first instance.

Pauline McNeill: That is helpful.

Everyone seems to be content that the Government should have emergency powers. However, I make a plea for clarity and for it to be easy to read the provisions and know what the power is about. It is about risk to life and, ordinarily, there will be regulations—it is about future proofing.

I do not know what the cabinet secretary's position is on amendment 90, but, as I said, I am sympathetic to it. My only concern is that I do not know whether it is proportionate to say that, in every case, the period should be 180 days. It is important that we get section 8 right, so I make a plea that the Government give consideration to that if amendment 90 is agreed to.

On a point that Jamie Greene made, in the scenarios that we are talking about, I do not see why the bill cannot include a requirement to notify victims. That would be in line with a principle that we all believe in, but it seems to be missing from the bill.

The Convener: I call Rona Mackay to wind up, and to press or withdraw amendment 90.

Rona Mackay: The discussion has been useful. We are now getting into the finer detail. I do not think that the committee is necessarily opposed to the principle of the measures in section 8, unless I have misunderstood. I am sure that the detail could be explored at a later stage, but I am happy to press amendment 90.

Angela Constance: I just want to pick up on some of the points that have been presented to Ms Mackay. First, to respond to a point that Pauline McNeill raised, further detail can be set out in the explanatory notes. Secondly, in terms of Ms Mackay's amendments, it is with respect to people who have 180 days or less left to serve.

Rona Mackay: Thank you for that clarification. I have nothing else to add, convener.

Amendment 90 agreed to.

Amendments 12 and 13 moved—[Angela Constance]—and agreed to.

Amendments 91 and 92 moved—[Rona Mackay]—and agreed to.

Amendment 93 moved—[Jamie Greene].

The Convener: I remind members that, if amendment 93 is agreed to, I cannot call amendment 94, as it will be pre-empted.

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

Members: No.

The Convener: There will be a division.

For

Clark, Katy (West Scotland) (Lab)
Findlay, Russell (West Scotland) (Con)
Greene, Jamie (West Scotland) (Con)
McNeill, Pauline (Glasgow) (Lab)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)
Stevenson, Collette (East Kilbride) (SNP)

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

As there is an equality of votes, as convener, I will use my casting vote. I vote against the amendment.

Amendment 93 disagreed to.

Amendment 94 moved—[Rona Mackay]—and agreed to.

Amendment 38 not moved.

Section 8, as amended, agreed to.

The Convener: It is now 25 past 11, so we deserve a short break. I suspend the meeting for around 10 minutes. I ask members to be back and ready to go at 11.35.

11:25

Meeting suspended.

11:35

On resuming—

Section 9—Duty to engage in release planning

The Convener: The next group of amendments relates to release planning. Amendment 95, in the name of Russell Findlay, is grouped with amendments 39, 96 to 98, 40, 99 and 41.

Russell Findlay: Section 9 relates to the planning for a prisoner's release. I have four amendments in the group—95, 96, 97 and 98—which seek to ensure that victims' voices are heard, their rights are respected and their wellbeing is paramount. I am sure that we can all agree with those aims.

The bill as drafted defines a release plan as a plan to prepare a prisoner for release and to facilitate their reintegration into the community. The bill requires local authorities, health boards, Police Scotland, Skills Development Scotland and integration joint boards to engage in that process.

However, we say that victims should also have an input. Amendment 95 would therefore require victim support services to contribute to the process. I was pleased to receive an email last night in which victims' rights groups expressed their strong support of amendment 95 and other amendments in this group. For the record, those groups are Victim Support Scotland, Scottish Women's Aid and ASSIST. I hope that the cabinet secretary agrees with them, and I am keen to hear her response.

Amendment 98, which is consequential to amendment 95, defines victim support services as they are currently defined in statute.

Amendment 39 from Katy Clark is similar in effect to my amendment 95. It would require the bodies that are involved in developing a release plan to consider the role that victims organisations have in the release plans. Although it is not exactly the same as my amendment, it would have a similar effect, so I will support it if it is pressed.

I turn to amendments 96 and 97. Release plans in section 9 of the bill apply to relevant individuals. By "relevant individual", the bill means a prisoner, whether they have been sentenced or are on remand. I want not only victim support services to be consulted in the development of release plans, as per amendment 95, but there to be a release plan for victims, which is what amendment 97 would achieve. That would ensure that their interests were at the heart of release plan considerations. A release plan will not solve every issue, but it will make it clear what a victim can expect when an offender is released.

Amendment 96 is a consequential amendment to ensure that release plans can be properly applied to victims without needing measures that would apply only to offenders.

Katy Clark's amendment 40 states that, within one year of section 9 coming into force, ministers would be required to publish guidance and standards that are applicable to release plans and that a public consultation should also be carried out. My colleague Jamie Greene will speak to his amendment 99, which is similar to Katy Clark's amendment. However, he has been more generous to the Government, allowing it three years rather than one year in which to take those steps.

Amendment 41, in the name of Katy Clark, would require the Scottish Government to review release planning for women. Specifically, the review must consider caring responsibilities, health issues and offending history. That reporting requirement would allow for more information to be made public on release plans so that we can observe how they will work in practice, and I am therefore happy to support that, too.

I move amendment 95.

Katy Clark: As Russell Findlay said, my amendment 39 is similar to amendment 95, in his name. Amendment 39 was informed, again, by conversations with Victim Support Scotland and other victims organisations. They confirm what I think that we all already know, which is that victims are not routinely consulted or involved in initiatives that are intended to address offending.

Proposed new section 34A(2) of the Community Justice (Scotland) Act 2016 sets out a list of "persons" who must

"comply with a request by the Scottish Ministers to engage in the development, management and delivery of a release plan"

for a prisoner. Amendment 39 stipulates that the persons and organisations that are listed must have regard to victims and victims organisations and must explicitly ensure that they are involved and consulted at all stages of the development, management and delivery of a release plan.

My amendment 40 would require the Scottish Government to report within one year on how the release planning process is working and to carry out a consultation on the published guidance. I note that Jamie Greene's alternative position is to allow a longer period of time for the Government to report. I am flexible with regard to the period of time that it is believed will be required.

Section 9 imposes a duty on the persons listed to engage in the development, management and delivery of a release plan if they are requested to do so by the minister. Amendment 40 is an attempt to ensure that the process that is set out is as effective and manageable as possible for the organisations involved, and that it leads to the right outcomes.

My amendment 41 follows on from the debate on women in custody that we had at last week's meeting. It would require ministers to carry out a review of release planning for women in custody. A key motivation for the amendment is our knowledge of the experiences and profile of women in custody, as well as the lack of data in this area.

As we know, Scotland has one of the largest female prison populations in Europe, almost 40 per cent of whom have not been convicted. Many of those women are very vulnerable, a high proportion are mothers and carers, and many have suffered brain injuries as a result of repeated domestic abuse. Refocusing the use of remand in relation to women is a wider debate, but amendment 41 seeks to ensure that some of those special circumstances, and the profile of women offenders, are factored in at the release planning stage.

Jamie Greene: I have only one amendment in the group—amendment 99. For the record, I support all the amendments in the group.

It is notable that the group consists of three sets of amendments from three members of the committee, all of which seek to do what many organisations have asked us to do, which is to give the third sector a greater role and to ensure that there is greater consideration of victims throughout release planning, in the absence of any Government amendments to do so. I hope that, even if the Government is not willing to accept overtly any of the amendments in the group, it will at least commit to take some of them away. We will hear more about that shortly.

Section 9, "Duty to engage in release planning", lists the persons who have a statutory duty to engage on release planning: the local authority; the health board; Police Scotland; Skills Development Scotland; and the integration joint board. To be fair to the Government, section 9 goes on to say that, in complying with that duty, those persons

"must have regard to the role which third sector bodies are able to play in the development ... of the release plan"

and "may commission services" from them.

It is widely understood that the third sector could include some of the organisations that we have referred to this morning. However, the problem is that they can be involved only if they are commissioned by any of the parties that are named in new section 34A(2) of the 2016 act—the named persons who have the statutory duty. Therefore, there is scope in that section for the Government to provide for a more direct relationship between the Scottish Prison Service and the third sector instead of third sector bodies having to go through an intermediary—in this case, the local authority, the health board, SDS or the IJB. If my interpretation of that is wrong, I am happy to be corrected. It feels as though there is a missing element there, which is why so many of us have ideas about how to amend the section.

My amendment 99, on the reporting requirement, is similar to Katy Clark's amendment 40, which I support. I suspect that the Government will say that it is looking at the wider reporting requirements that have been added into various sections of the bill. As I understand it, we heard earlier a commitment to making, in part 2 of the bill, greater provision with regard to reporting requirements.

11:45

I think that amendment 99 would be a sensible addition. In fact, I was trying to be fair to the Government; I actually thought that a year was quite a tight timeframe for producing such a report,

so I kindly changed it to three years, which is why there is a separate amendment of a very similar nature. I would be content with either timeframe, and I note that, in the correspondence that we received from Victim Support Scotland yesterday, it said that it preferred one year but would be equally content with three.

I also want to put on record another interesting point that the organisation made. Although, as drafted, the persons who must comply in the development of release plans

"must have regard to the role which third sector bodies are able to play",

Victim Support Scotland proposes that new section 34A of the 2016 act be amended to explicitly provide for victims of crime and victim support organisations to be involved and consulted in the development, management and delivery of the release plan. Some of the amendments in this group address that, and VSS understands why and, as a result, strongly supports them. I therefore hope that we get some positive responses from the Government on this group of amendments.

Angela Constance: This group of amendments focuses on a critical area of the bill: planning for release from custody.

Section 9 is intended to require earlier engagement in a prisoner's release planning by the universal services that they will need on release to reduce their risk of reoffending. That is underpinned by a commitment to victim safety. Although I support the intention behind some of the amendments in the group, and I am willing to work with members to see what can be done and brought forward at stage 3, I cannot support the specific amendments as drafted for the reasons that I am about to lay out.

First, amendments 40 and 99 seek to require Scottish ministers to "publish guidance and standards" on release planning in Scotland. I assume that that would be in support of the implementation of section 9, but the amendments are not specific in that respect.

The amendments also require Scottish ministers to carry out public consultation on such guidance and standards. I agree that it will be important for a consistent approach to be taken to the implementation of section 9 across the prison estate and with all the named bodies, so I am minded to consider lodging an amendment at stage 3 to include a requirement for Scottish ministers to develop guidance in support of that. I also expect such guidance to include detail on how best to consider victim safety. However, I am not persuaded that separate standards would be needed, as there would be a risk of duplication with the proposed standards for throughcare that are provided for in section 10.

I am also not convinced of the need for public consultation on what would be operational guidance for practitioners. I agree that we will need to consult relevant stakeholders in developing the guidance, and we will consider how to reflect that in a stage 3 amendment. I therefore ask members not to move amendments 40 and 99.

Amendment 39, in the name of Katy Clark, seeks to place a duty on the public bodies that are named in proposed new section 34A(2) of the 2016 act, as inserted by section 9, to have regard to the role that victims of crime and VSOs can play in the development, management and delivery of a prisoner's release plan. That plan will prepare a person for release from custody, whether from remand or sentence, and will facilitate their reintegration and their access to universal services.

I understand that the views of victims, and the organisations that support them, are crucial in informing release decisions. Victim safety is a critical consideration in release planning. Victims have the right to receive certain information about the release of the prisoner in their case—indeed, the bill extends that to victim support organisations—and to make representations on licence conditions. As the committee is aware, that is provided for through the victim notification scheme, which has just been subject to an independent review.

That said, I am not clear what appropriate role victims and VSOs could play in relation to the development, management and delivery of a prisoner's release plan. That could place significant pressure on a victim and, in fact, be retraumatising. I would also have concerns about what role a victim or a VSO could play in developing a release plan for a prisoner on remand, because the prisoner has not been convicted of an offence.

Jamie Greene: The wider point, though, is that what is notably absent is any duty to consult a victim about the release of an offender. As you rightly said, the VNS is really the only mechanism. I know that the VNS is subject to review, but we feel that we have an opportunity—via future amendments if not the ones in this group—to put something about victims' consent in the bill. It is not a blanket proposal—every victim will deal with it differently.

This is all about release planning, and clearly our intention is to ensure the on-going safety of the victim after the offender's release. We have widely debated that issue, but there are also advantages to the offender in knowing the

parameters around the conditions for their release. It might even ensure that the offender does not inadvertently breach licence conditions, which we have heard is sometimes the case; indeed, we saw examples of that in the hearings that we attended. There is a significant advantage to offenders, as well as victims, in the victim being involved in the process. At the moment, it is a bit woolly around the victim's involvement. I hope that the Government can find a mechanism to ensure that there is a duty to consult.

Angela Constance: It is important, when we are considering the involvement of the victim and the recognition of their need for information and security, that we look at the issue as an end-to-end journey. I appreciate that my remarks might seem quite narrow, but they are specifically in relation to the bill. We need to look across the piece. Of course, victims have a right to make representations to, for example, the Parole Board.

Again, at the risk of my comments sounding quite narrow, I am speaking to specific amendments on a specific part of the bill. The Community Justice (Scotland) Act 2016 is focused on offenders, not victims. Whether we are talking about victims or those being released from prison, any amendments on victims might not fit with that act in terms of achieving support and improved outcomes.

We have to be really clear about the detail. I am more than willing, in the time between now and stage 3, to delve even deeper into the detail. I am conscious that this is a large piece of legislation that is amending several existing pieces of legislation. However, as Mr Greene says, it is important—whether for victims or the accused—that we get all the detail right.

There are also limits on the information that can be shared about individual prisoners, and therefore it is not clear what role a victim or a VSO could reasonably play in the management and delivery of a prisoner's release plan.

I am concerned about the potential consequences of Ms Clark's amendment 39 and how it would interact with the existing processes under the victim notification scheme. For that reason, I cannot support amendment 39 and ask Ms Clark not to move it.

On amendment 95, I think that Mr Findlay and I probably have a completely different view about what the amendment would achieve. The amendment seeks to include victim support organisations in the list of public bodies in proposed new section 34A(2) in the 2016 act that have a duty to comply with a request from the Scottish ministers to engage in the development, management and delivery of a prisoner's release plan. As with amendment 39, I am not clear what role VSOs could appropriately have in the development, management and delivery of a prisoner's release plan. In the light of that, I cannot support amendment 95 and ask Mr Findlay not to press it.

The proposed definition for victim support services in amendment 98, which is intended to bring in organisations that provide support services, does not work, as there is no corresponding definition in proposed new section 16ZA of the Criminal Justice (Scotland) Act 2003, to which Mr Findlay's amendment cross-refers. Further, on the basis that amendment 98 is dependent on amendment 95, which I have urged Mr Findlay not to press, I do not think that it would be necessary to pass amendment 98, so I ask Mr Findlay not to move it.

The specific intention of amendments 96 and 97 is not entirely clear from the text alone. It would appear that, taken together, the intention of amendment 97 is to include victims in the definition of a "relevant individual" for whom release planning can take place, alongside individuals on remand or serving custodial sentences.

As I discussed previously, the intention of section 9 is to require earlier engagement in a prisoner's release planning by the universal services that they will need on release to reduce their risk of reoffending. Victim safety will be a key part of that planning. Prisoner release planning is not the same as victim safety planning and I fear that amendments 96 and 97 risk conflating the two. I therefore cannot support them, and I ask Mr Findlay not to move them.

Amendment 41, which was lodged by Katy Clark, would require Scottish ministers to carry out a review of release planning for women within two years of the section coming into force, and to publish a report on its findings. The Scottish Government and the Scottish Prison Service recognise the specific needs of women in custody. That is why we are taking a different approach to the women's estate and why the strategy for women in custody is so important.

As I said in response to Russell Findlay's amendment 71 in an earlier group, I am minded to lodge a stage 3 amendment that will encompass all the various asks for reviews of different sections of part 2 to provide a more coherent picture. That could include a focus on release planning for women. In the light of that, I ask Ms Clark not to move amendment 41.

The Convener: I call Russell Findlay to wind up and to say whether he wishes to press or withdraw amendment 95.

Russell Findlay: I note the cabinet secretary's acknowledgement that the views of victim support

organisations and, indeed, of victims are crucial—except when they are not.

The issue appears to be that the cabinet secretary cannot see what role victim support organisations "would play". That phrase was stated on more than one occasion. However, victim support organisations see my amendments as valid and they see—

Angela Constance: Will Mr Findlay outline what role victim support organisations should play in the delivery of a prisoner's plan?

Russell Findlay: They would be representative of victims. They would be able to—

Angela Constance: It is about delivery.

Russell Findlay: Okay. I was going to come on to your point about the statutory requirement for them to be involved. However, I make the more general and broader point that they see a role for themselves in planning for release and the general consultation around that.

Katy Clark: The cabinet secretary has asked about delivery. Perhaps an example of how victim support organisations might be involved in the delivery of such services would be to do with housing allocation and whether it is appropriate for someone who has been convicted of a violent offence to be, say, relocated in the same part of a town as the complainer. Might that be an example of something in which victim support organisations could appropriately get involved?

Russell Findlay: Potentially, yes.

Angela Constance: Does Mr Findlay agree that there is a clear distinction between planning for someone's release—there must be victim support input into the plans that are made—and the management of offenders and the delivery of services to manage offenders? No one wants to silence victims, and they have to be involved in the end-to-end justice journey, but we need to be clear that we are not expecting victims or victim support organisations to be involved in the management of offenders or the delivery of those management plans, because those things clearly rest with other agencies.

12:00

Russell Findlay: I understand that distinction, cabinet secretary. You have explained it in your response, which is why I am minded, at this stage, not to move my amendment. You have already expressed a willingness to work with members to find a way forward on that.

Jamie Greene: For the benefit of the cabinet secretary's understanding, the rationale for the amendment was that victim support organisations themselves had written to the committee to say that they would like to be involved in the delivery, not just in the planning. That is in black and white.

If we want to know what they think their role is, perhaps we and the Government should ask them, and then they would not have to write to us the night before stage 2 consideration. I strongly advise that either the committee or the Government speak to the three organisations in question ahead of stage 3. If they feel that there is no role in delivery but there is a role in planning, we can find a way around that.

Of course, there are other ways of amending the bill as it is. The proposed new section 34A on "Duty to engage in release planning" is a duty to engage, not a duty to deliver. That whole paragraph, which refers to statutory "persons" and their role

"in the development, management and delivery of the release plan",

could easily be split into two sections. There could be a group of people who are statutory named persons involved in development, and another group who are involved in delivery. As you rightly pointed out, cabinet secretary, there is a difference.

There will be solutions to that issue that will not place undue statutory duties on organisations that do not want or need them, but which, equally, will reflect the views of those organisations. I am sure that my colleague and I will work on such amendments with the Government, as it is willing to do so.

Russell Findlay: I absolutely agree with what Jamie Greene said.

There are a couple of other small points to make. The victim notification scheme was mentioned—we know that it is not working and that the review has been pretty harsh in its assessment, but I do not think that the bill offers as a substitute—certainly not given the way in which the scheme is not working just now—a robust mechanism to ensure that victims' voices are properly heard. I look forward to bringing my amendment back in a better and more competent shape.

I am also slightly mindful of a more general approach that I am hearing more about, whereby there is almost a justification not to inform victims because to do so can cause them further distress. I think that that view is at odds with reality—it is not in itself a reason not to keep people informed, and I have not heard victim support organisations talking about that as an issue.

To recap, I look forward to having a rethink and, I hope, working together to find a way to bring my amendment back in better shape.

The Convener: I ask you to confirm whether you wish to press or withdraw amendment 95.

Russell Findlay: I seek to withdraw it.

Amendment 95, by agreement, withdrawn.

Amendments 39, 96 to 98, 40 and 99 not moved.

Section 9 agreed to.

After section 9

Amendment 41 not moved.

The Convener: We move to amendments on post-custody outreach. Amendment 100, in the name of Douglas Lumsden, is grouped with amendment 101.

Douglas Lumsden (North East Scotland) (Con): Before moving my amendment 100, I will set out some context around it.

I have been an MSP for just over two years. One of the first people to contact me after I was elected was a brave and determined woman called Sandra Geddes. Sandra told me the story of her brother, Alan Geddes. Alan stayed less than a mile away from my house, in an area called Ruthrieston, in Aberdeen. In December 2019, Alan was murdered by a man called Stuart Quinn. Dad-of-one Alan was stabbed 40 times by Quinn. Good samaritan Alan Geddes was murdered after offering a recently released Quinn a place to stay in his home. Quinn had been released from prison just hours before, without any proper support package and with no accommodation in place. That was because his sentence was backdated after he was held on remand, so he was released from custody with little preparation.

The Mental Welfare Commission for Scotland conducted an investigation into the circumstances leading up to the killing, with a particular focus on the care and treatment that the killer received prior to his sudden release from jail in 2019. The bill provides an opportunity for the Scottish Government to act on the recommendations outlined in the report of that investigation. That is why I am proposing my amendments 100 and 101.

Amendment 100 would establish a post-custody outreach service for offenders who have been released from jail, as recommended by the Mental Welfare Commission for Scotland. In setting up the service, Scottish ministers would be required to consult with Community Justice Scotland, each local authority and each health board. That would enable a holistic approach to be taken across the whole system in which both the justice and the health perspectives are considered before establishing the service.

Amendment 100 goes on to commit Scottish ministers to provide a point of contact for every person released from custody who has at some point spent time detained in hospital. That was the case with Alan's murderer. Clearly, a person who has been detained in hospital at some point requires additional support compared with other offenders, given the mental health problems that that person has encountered. It is therefore vital that someone is in place to proactively reach out to them.

My amendment would require that an offender who falls into that category be contacted by their point of contact in the post-custody outreach service immediately on their release from prison, so that they have someone to go to straight away. I hope that that will ensure that there is always somebody for a recently released prisoner to reach out to if they are experiencing trouble. The amendment provides for the service to last for a year after the prisoner has been released.

Amendment 100 would also allow Scottish ministers the opportunity, through regulations, to set out what else the post-custody outreach service should provide. I hope that, through consultation with other stakeholders, a comprehensive service can be developed that prevents a situation such as Alan Geddes's murder from ever happening again.

Amendment 101 is consequential to amendment 100, as it would introduce the post-custody outreach service.

Sandra says that she wakes up every morning thinking about what her brother went through, and I would never want any other family to experience that. We can try to make sure that it never does. I am happy to work with the Scottish Government if it thinks that the amendment needs further work. I hope that it will be supportive of the principle.

I move amendment 100.

Fulton MacGregor: I welcome Douglas Lumsden to the committee and thank him for the way in which he put forward his constituent's case. It was very powerful.

I am quite sympathetic to where Mr Lumsden wants to go with this in a general sense, but I would not be inclined to vote for amendment 100 at this stage, because there are quite a number of questions that I—and, I think, the committee as a whole and the Government—would have about it. Would it apply if a person had been detained under mental health legislation? How long ago would that detention have had to take place? What supports would the amendment put in place for people?

Similar to an amendment that I spoke to earlier, I see the principle behind it, about which Mr Lumsden spoke very passionately—no one can

deny that, and I would not seek to do so—but I have questions about the effect of the amendment in practice.

Douglas Lumsden: I listened to the cabinet secretary last week and she said:

"if not this, what? If not now, when?"—[*Official Report*, 9 May 2023; c 68.]

I have the same questions. I think that this is an ideal opportunity to put such support in place. We have the recommendations from the Mental Welfare Commission for Scotland. If we do not put something in place now, when will that happen? If we do not put something in place now, that report could be another one that just gathers dust.

Fulton MacGregor: I acknowledge the report and its recommendations. My point is that what you are proposing would be a big change and would require a big piece of work, so I am not sure whether the bill is the right place for it. I am interested in hearing the cabinet secretary's response, but there are quite a lot of questions here. Even if we think that something should be done in principle—there is obviously a very emotive background story, which Mr Lumsden outlined—it would need to be done right. We would not want to create a situation that made things worse. Where would the person have to have been detained, under what legislation and with what mental health conditions? If all that is not ironed out properly, it could be worse for people in the long run.

I just wanted to put those concerns on record, although, as I said, I note the principle behind Mr Lumsden's plea to the committee.

Angela Constance: First, convener, I put on record my sympathy for the Geddes family. I support the underlying intention of the amendment, which appears to be to ensure that people leaving custody are able to access support for mental health problems, should they need it.

I recognise that amendment 100 stems from a recent Mental Welfare Commission for Scotland report into the case that Mr Lumsden has raised concerns about, consistently and compassionately, for some considerable time.

The Scottish Government is carefully considering that report and the recommendations in it, and we will respond formally in the coming weeks. The Government must provide a response in full. That will be led by health ministers, but I can assure Mr Lumsden that I have a particular interest in that report. I do not want to pre-empt the content of the Government's response, so I will not go into detail on the various recommendations, but it will highlight the particular difficulties that can arise when an individual has been released directly from remand by the court, especially in circumstances where that outcome was not anticipated. I recognise that issue and I know that the committee has considered it during its scrutiny of the bill.

We consulted on the provision for support for people released directly from court when drafting the bill. However, it was not clear that a legislative solution was the best approach. That is not to say that nothing can be done. I intend to work with stakeholders to identify policy and operational solutions before stage 3. I am doing so at the request of the convener, in her capacity as an individual MSP.

As we have discussed, the bill aims to foster a more effective, multi-agency approach to release planning. It will strengthen the role and responsibility for a range of public services to engage in pre-release planning. It will require Scottish ministers to establish statutory standards for throughcare for the first time. That covers both remand and sentenced prisoners.

However, the amendment, for understandable reasons, goes beyond the prison release process, and it would have a significant and lasting impact on mental health approaches as well as having resource implications.

Although it would not be appropriate to try to implement such a change in the context of this legislation, given that there has been no prior consideration or discussion of the issue, the matter is nonetheless significant and requires further consideration. However, we have to do that in all appropriate forums. I appreciate the member's very close interest in the issue, and it might therefore be helpful to discuss the details of the Mental Welfare Commission for Scotland's report separately with him.

12:15

Douglas Lumsden: If the issue in question does not form part of this bill and if these amendments are not to be accepted, what will be the Government's approach? Will there be additional legislation, or will there just be guidance? What is your thinking on that, cabinet secretary?

Angela Constance: The question of whether legislation is needed is a legitimate one, but, as I have said, I am happy to discuss the issue further with Mr Lumsden. Indeed, if he is willing to have a discussion with me in the context of this bill, I think that it will be useful to include in that discussion the health ministers, who will have the responsibility of responding, in the not-too-distant future, to all the Mental Welfare Commission for Scotland's recommendations. There is an absolute need to discuss how we better support people direct from court. My fundamental question,

though, is whether all the solution lies in this legislation.

Coming back to the matters before the committee, I have some concerns about the unintended consequences of amendment 100, which I would like to explain. The amendment seeks to place a duty on Scottish ministers to establish a post-custody outreach service for individuals released from custody, either from remand or sentence, who have previously been "detained in hospital". I want to detail some of my concerns about the amendment, but, before I do so, I want to say that that does not mean that such an outreach service would have no merit.

From the drafting of the amendment, I am assuming that the reference to "detained in hospital" means "detained under mental health legislation", but the amendment does not specify that. Moreover, under the amendment, that detention could have taken place at any time; indeed, it could have happened years or even decades before the individual's release from prison, and it could have been for a reason completely separate to the reason for their being in prison—for example, for suicidal ideation or concerns about self-harm.

The amendment also requires that the proposed outreach service provide a "point of contact" for these individuals on release and then "regular contact" for a year following liberation. However, it does not specify what that contact should entail and whether the service would provide mental health support, wider social support or supervision, making it very difficult to determine the service's purpose and potential impact. That is why I think that the amendment raises a much broader issue than that covered in this legislation, although I understand why Mr Lumsden is pursuing this course of action.

I should also say that it is not clear whether such contact would be compulsory or voluntary. That is an important point of detail, because, as I am sure Mr Lumsden will be aware, compulsory treatment is allowed only in very strict circumstances, and it is not clear how the service proposed in the amendment would fit into the wider mental health landscape.

I very much recognise the importance of holistic and well-planned support for people leaving prison; indeed, it is one of the bill's underlying purposes and why the Government already funds local authorities and third sector organisations to deliver throughcare. In addition to my specific concerns about the scope of the amendment, I am not clear how such a service would fit into the existing landscape of support for prison leavers, particularly where it would overlap with existing services.

For that reason, I cannot support amendment 100 or the associated technical amendment 101, and I ask Mr Lumsden not to press amendment 100 or move amendment 101.

Although I resist those amendments, I am not for one moment rejecting the issues that Mr Lumsden has raised, which is why I will be happy to meet him, along with other ministers, in addition to the engagement with stakeholders to which I committed in my interactions with the convener, to see how we can move the situation forward in ways that will have a direct impact on practice and on the front line.

The Convener: Thank you, cabinet secretary—I note your comments.

I invite Douglas Lumsden to wind up, if he wishes to make any further comments, and say whether he wishes to press or withdraw amendment 100.

Douglas Lumsden: I will be quite brief, convener. I welcome the opportunity to engage with the cabinet secretary, and I hope that the invitation will be extended to Sandra Geddes, Alan's sister. I know that she would welcome that—she has always said that her brother was failed, but she accepts that the attacker, Stuart Quinn, was also failed. He was let out one night with nowhere to go—he got chatting to somebody randomly at a bar, who tried to get him some accommodation but could not get anything and then offered him a place to stay for that night, with the tragic consequences that came from that. I welcome the engagement. I still intend to press my amendment, however.

Russell Findlay: The point was that Alan Geddes died because the state failed that particular prisoner. The Mental Welfare Commission for Scotland's report is absolutely damning, and Sandra Geddes deserves great credit for campaigning so effectively, having lost her brother in such horrific circumstances, and for working alongside Douglas Lumsden to get to this point. It is very welcome that the Scottish Government is showing a willingness to find some form of way forward, so I thank the member for that.

Douglas Lumsden: Thank you—it is all down to Sandra. As I said in my initial comments, she is a brave and determined woman, which is why I am here, speaking to this amendment today. As I said, she always points out that Stuart Quinn was also failed by the state.

I want to press on with the matter, and I welcome the engagement. If we can change the amendment to bring it back at a later stage, I would be happy with that, but I will press the amendment today.

The Convener: The question is, that amendment 100 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Clark, Katy (West Scotland) (Lab)
Findlay, Russell (West Scotland) (Con)
Greene, Jamie (West Scotland) (Con)
McNeill, Pauline (Glasgow) (Lab)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)
Stevenson, Collette (East Kilbride) (SNP)

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

There is an equality of votes for and against, so I use my casting vote as convener to vote against the amendment.

Amendment 100 disagreed to.

Section 10—Throughcare support

Amendment 101 not moved.

The Convener: The next group is on throughcare. Amendment 42, in the name of Katy Clark, is grouped with amendments 14 to 18, 43, 19, 20, 3 and 44.

Katy Clark: Amendment 42 is a probing amendment. The proposed new section 34B sets out that

"Scottish Ministers must ... publish standards applicable to throughcare ... in Scotland"

and that

"In preparing, reviewing, and revising the standards",

various bodies should be consulted. My amendment stipulates that the consultation should be "public".

Establishing new statutory minimum standards for throughcare support is a key change that affects individuals' successful integration into the community and offers assistance around accommodation, healthcare, education, employability and other services. Input from wider communities can only be useful, therefore, and I look forward to hearing from the cabinet secretary what the Government's thinking is on my proposal.

Amendment 43 is another amendment that has been informed by discussions with Victim Support Scotland. The argument is that the support that is provided must be safely and appropriately designed and must address the needs of victims, but section 10 makes no specific reference to engagement with victims of crime or their support organisations. Amendment 43 is similar to many of the amendments that we have discussed in previous groups in that it would ensure that the input of victims organisations is explicitly required.

Amendment 3 relates to resource issues, which we have debated on a number of occasions. In debating previous amendments on reporting, it has been recognised that, without greater funding and resource, there is a fear that many of the organisations that will have obligations put on them by the bill will simply not be able to deliver those obligations adequately because of a lack of resource. Amendment 3 is designed to highlight the fact that organisations will be overburdened with responsibilities unless adequate funding and resource are provided. Amendment 3 would support greater parliamentary scrutiny of the issue by ensuring that the bodies that are required to comply with the throughcare support standards have the capacity to do so. It would enable the Parliament to actively scrutinise whether resources are provided to ensure that the legislation is meaningful.

Amendment 44 relates to the provision of access to education, training and work opportunities to prisoners on remand. There is currently no statutory basis for enabling that to happen, although I understand that some prison establishments attempt to provide such opportunities to remand prisoners even though they are not legally required to do so.

As we have discussed previously on many occasions, we have a high number of untried prisoners in the prison system, who are often held in prison for extended periods. The period for which individuals are held on remand has grown considerably for a number of reasons, including the extension of time limits and legislation that the Parliament has passed, and the situation has been exacerbated by the pandemic.

A range of types of accused people are held on remand. Although many will be on remand for non-violent offences, a significant number will face charges of a significant nature. Amendment 44 would enable untried prisoners to have greater access to services that are available to convicted prisoners. It is tied to section 10, on throughcare support, and it would ensure that such obligations are guaranteed and could be met immediately, as soon as a period in custody starts.

Operational considerations and other considerations would need to be taken into account. Certain types of training and opportunities might be more appropriate for someone who might be in prison for less than a week, whereas, if it is known that an individual will be on remand for an extended period of time, a range of other opportunities and training might be more appropriate. Amendment 44 seeks to open

up that debate. If there are specific problems with the wording, I would be happy to discuss that with the Scottish Government.

The principle is that some of the services and access to education, training and work opportunities that are available to convicted prisoners should be available to remand prisoners and that that would significantly improve the quality of the time that those individuals spend in custody. We should remember that those people have not been convicted of anything. Such a measure might also be of significant benefit to the SPS. As I said, I understand that, on occasion, such opportunities are offered to prisoners on remand, although I am not convinced that there is a statutory basis for that.

I move amendment 42.

12:30

Angela Constance: Section 10 requires the Scottish ministers to establish throughcare standards for remand and sentenced prisoners. I welcome the committee's support for those provisions.

I recognise that, in order for the standards to be as effective as possible, they need to be informed by a range of views. That is why section 10 includes a list of bodies that the Scottish ministers must consult when preparing, reviewing and revising the standards. The amendments that I have lodged seek to extend that list.

Amendment 14 adds the Risk Management Authority in recognition of the valuable insight that it will have in ensuring that the standards sufficiently manage risk and are informed by best practice. Amendment 15 adds the Care Inspectorate, reflecting its role in the scrutiny and assurance of community justice and justice social work.

Amendment 17 requires there to be consultation with groups that focus on providing support to children, young people and families who are impacted by imprisonment, which will allow the voice of children and families to shape the standards and their specific needs to be considered. Amendment 16 is a technical amendment to allow the list to be expanded.

Amendments 18 to 20 expand the list of statutory consultees to include victim support organisations, allowing the standards to be reflective of victims' needs and ensuring that they continue to centre on victim safety. I have lodged the amendments in direct response to calls made to the committee, including by victim support organisations.

Amendments 18 and 19 define victim support organisations in line with section 11 of the bill, and amendment 20 allows the Scottish ministers to amend part of the definition, subject to the affirmative procedure, again in line with section 11. I ask the committee to support those Government amendments.

I turn to Katy Clark's amendments. Amendment 43 would require the Scottish ministers to consult victims of crime and victim support organisations on the preparation, review and revision of the standards. I agree that consultation with VSOs on the standards is critical, which is why I lodged amendments 18 to 20.

However, I cannot support Katy Clark's amendment 43, for a couple of reasons. First, the definition of victim support organisations that is provided in the amendment is not consistent with the definition that is used elsewhere in the bill. The Government's definition of victim support services goes further and encompasses organisations that provide services that are intended to benefit the health and wellbeing of victims and those that provide support for safety planning and making representations regarding prisoner release. My amendments provide the ability for ministers to amend the definition of victim support services, but amendment 43 does not do that.

Secondly, amendment 43 would require the Scottish ministers to directly consult victims on the development of the standards. I agree that it is critical that the standards are informed by the experiences of victims of crime, but it is also important that victims are consulted in a trauma-informed and supported way. My view is that that is best done via victim support organisations.

For those reasons, I cannot support amendment 43. However, I argue that my amendments 18 to 20 will achieve the same aim. I ask Katy Clark not to move amendment 43.

It appears that amendment 42 is intended to require the Scottish ministers to carry out a public consultation on the throughcare standards. I support the principle of the amendment, but, as drafted, I do not believe that it will deliver its intended purpose.

Proposed new section 34B(4) of the 2016 act already contains a duty to carry out a public consultation when preparing, reviewing and revising the standards. The throughcare standards will undergo extensive consultation, and during that period the Scottish ministers must consult a wide range of people, bodies and organisations.

In addition, the Scottish ministers may consult anyone else they consider appropriate, so Ms Clark's amendment would have little or no effect on the current requirement in the bill to consult when the standards are prepared, reviewed and revised under section 34B(4) of the 2016 act.

However, I recognise that there is wider public interest in this area and that the Government should be open to hearing the views of communities that are impacted by throughcare. Therefore, I commit to lodging an amendment at stage 3 that would require the Scottish ministers to undertake a formal public consultation on the draft standards following the consultation and development with the listed partners. I ask Ms Clark not to press amendment 42.

Amendment 44 would require ministers to take steps to ensure that individuals who are remanded in custody can receive throughcare support and access to activities and opportunities from the start of their period in custody. I agree that it is important that remand prisoners have access to support on release. That is why both the pre-release planning duty and the throughcare standards that are provided for in the bill also cover remand prisoners.

However, I am not clear what practical effect amendment 44 would have. Remand prisoners can already access throughcare support from their local authority on a voluntary basis under the Criminal Justice (Scotland) Act 2003. The third sector throughcare services already offer support to women and young people released from remand. I recognise that that does not include men released from remand. That is something that we are considering. That would have resource implications, but it would not require legislation.

If the intention behind amendment 44 is to go further by mandating that every remand prisoner engage in throughcare support, there would be legal issues with that. It is fundamental that engagement with throughcare support is voluntary. Unless someone has been sentenced and that sentence includes supervision requirements, they cannot be forced to engage with any form of follow-on support after they are released from custody.

Prison rules do not exclude remand prisoners from work or purposeful activity, and the Prison Service will, where possible, offer access to work and educational opportunities to those on remand. Therefore, I would argue that amendment 44 would not add to current practice, so I ask Ms Clark not to move it.

Katy Clark: What is the cabinet secretary's view on the current access to education, training and cultural experiences for those on remand compared with that for those who have been convicted? What is her understanding of how the Scottish prison system operates?

Angela Constance: I understand that there is no bar on remand prisoners participating in purposeful, helpful activity. As Ms Clark outlined in her remarks, depending on the anticipated period of someone's custodial sentence, they might not be able to take part in longer-term interventions, or priority might be given to longer-term or sentenced prisoners.

Amendment 3, which was also lodged by Ms Clark, would place a duty on the Scottish ministers to publish a report on the impact of the throughcare standards on partners, including in relation to resource implications and whether "adequate resources" were available to support implementation.

I am clear that resourcing is a critical consideration in the delivery of successful throughcare. That is why we fund local authorities and third sector organisations to deliver throughcare services. There is a risk that amendment 3, as drafted, would place further administrative burdens on partners to provide evidence of whether their resources were "adequate". That is likely, understandably, to look very different across all local areas.

Furthermore, it should be noted that amendment 3 would require the Scottish ministers to publish the report within one year of the section being commenced. I draw members' attention to the fact that the bill as drafted requires the standards to be developed within one year of commencement, so we could end up with partners being required to provide information on the impact of standards that had only just been published.

As I said in response to Russell Findlay's amendment 71 in an earlier group, I am minded to lodge amendments at stage 3 that will encompass all the various asks for reviews into different sections of part 2 in order to provide a more coherent picture. That could include a review of the impact of throughcare standards. For that reason, I ask Ms Clark not to move amendment 3.

The Convener: As no other member wishes to speak, I call Katy Clark to wind up and to press or withdraw amendment 42.

Katy Clark: It is not my intention to push any of my amendments to a vote at this stage. However, they raise important issues in relation to the involvement of victims, which we have already discussed, and of victims organisations and the resource challenges that the justice system faces, which are unlikely to be impacted by anything in the legislation that is being proposed by the Scottish Government.

On amendment 44, as I understand it, the evidence that the committee has received indicates that the type of activities that are available to people who are on remand is greatly restricted compared with those available to convicted prisoners. It might be that the Scottish Prison Service's practice is changing over time. It

would be useful to get more information about that before the next stage of the bill.

As I said, I do not plan to press any of my amendments at this stage.

Amendment 42, by agreement, withdrawn.

Amendments 14 to 18 moved—[Angela Constance]—and agreed to.

Amendment 43 not moved.

Amendments 19 and 20 moved—[Angela Constance]—and agreed to.

Amendments 3 and 44 not moved.

Section 10, as amended, agreed to.

The Convener: Before we move on to the next group, I note that we have only two more groups to discuss. I do not want to curtail debate, but I gently ask members to be succinct where they can be. We should be able to finish stage 2 today.

Section 11—Provision of information to victim support organisations

The Convener: Amendment 45, in the name of Katy Clark, is grouped with amendments 102, 21 to 23, 46, 47, 103, 24 to 27, 48, 104 and 105. I draw members' attention to the procedural information relating to the group that is set out in the groupings document. If amendment 45 is agreed to, I cannot call amendments 102 and 21, due to a pre-emption. If amendment 47 is agreed to, I cannot call amendments 103 and 24, due to a pre-emption. If amendment 48 is agreed to, I cannot call amendments 104 and 105, due to a pre-emption.

Katy Clark: Amendment 45 is a technical amendment that was agreed with Victim Support Scotland. Section 11 suggests that a victim support organisation that is acting as a supporter can, of its own volition and without the victim's specific consent, ask for information under that section. Amendment 45 would require specific consent.

12:45

Victims organisations do not believe that it is appropriate that the bill should proceed as drafted, as they believe that it would undermine victims' agency, override victims' autonomy and consent and undermine their trust in professionals if they were aware that information could be provided without specific consent, and that it would make victims less willing to engage in the future.

Amendment 45 would ensure that a victim support organisation can obtain the relevant information only if given express permission to do so by the victim or, in certain circumstances, on the victim's behalf or on behalf of the organisation.

Amendment 46, which is a consequential amendment, was also agreed with Victim Support Scotland. It refers to the section allowing victim support organisations to obtain information around the victim's right to make representations when a prisoner is being considered for release on licence. The view is that the wording of the section as drafted is problematic and raises similar issues to those raised in relation to amendment 45. The suggestion is that one way of dealing with that would be to remove that wording from the bill.

Amendment 48, again, was discussed and agreed with Victim Support Scotland. It stipulates that there must be victims' consent to each stage—for example, victims' consent in relation to information-sharing provisions. It replicates the Victims and Witnesses (Scotland) Act 2014 regarding the information-sharing provisions. The approach that is outlined is the approach that is being asked for by organisations that work with and represent victims. For that reason, I lodged amendment 48 to hear the cabinet secretary's thinking on the issue and the Scottish Government's response to the representations that have been made to members of the committee and, I suspect, to the Scottish Government.

I move amendment 45.

Russell Findlay: The amendments relate to the sharing of information about victims with third party organisations. If I understand Katy Clark's amendments 45, 47 and 48 correctly, they would remove the ability of a supporter of a victim to be given the information in certain circumstances.

I agree with Katy Clark, but I believe that there is perhaps a different way of achieving that goal, through my amendments 102 to 104, which would ensure that information is still available to those who want it but, crucially, when there is the consent and support of victims. It leaves open what could be a useful channel of communication.

I note that the victim support organisations have made representations to committee members and are quite critical of some of the cabinet secretary's amendments in this group. Those organisations oppose six of those amendments and they are asking for one of them not to be moved and, if one were to proceed, for it to be subject to substantial revision.

I think that my amendments would be a better solution than the one that is proposed in Katy Clark's amendments, but I am happy to hear more, because there might be something that is not obvious to me.

Angela Constance: Before I address the amendments lodged by Katy Clark and Russell Findlay, I will speak to the amendments in my name.

Section 11 allows victims to nominate a victim support organisation to receive information regarding the release of a prisoner in their case. That is intended to enable a more trauma-informed approach to the information sharing and to allow victims to be better supported in release planning.

During stage 1, concerns were raised that the bill as drafted would have the unintended consequence of allowing a victim support organisation to request information on behalf of a victim when that victim had not given consent. We have lodged amendments 21, 24 and 105 to address that concern, so that VSOs will be required to secure a victim's consent before requesting any information about a prisoner on behalf of a victim that they are supporting. Amendments 21 and 24 will require consent for information in relation to prisoners with sentences of 18 months or more, and amendment 105 is an equivalent amendment in relation to victims of prisoners whose sentences are under 18 months.

Amendments 22, 23 and 25 to 27 will extend section 11 to victims when the perpetrator is a patient in the forensic mental health system. When a perpetrator is subject to a compulsion order and a restriction order, amendment 23 will enable victims to nominate a VSO to receive the information that the victim is entitled to and will give VSOs the right to ask for that information. The Scottish ministers will provide the information if they are satisfied that the victim has consented to the VSO making the request.

Amendment 25 will give a VSO that is nominated by a victim the right to be told about certain decisions. As with amendment 23, VSOs will be able to request the information when they have consent to do so.

Amendments 22, 26 and 27 are technical amendments to the 2003 act in consequence of amendments 23 and 25.

Russell Findlay: How does the cabinet secretary respond to the concerns that victim support organisations have expressed about her amendments?

Angela Constance: I hope that Mr Findlay will be reassured by the fact that my officials and I have engaged with, and will continue to engage extensively with, victim support organisations. We are at stage 2. I have laid out why the amendments that I lodged are necessary and I am about to give a view on the amendments that other members lodged.

I turn to amendments 45 to 48, which Katy Clark lodged. Like Government amendments 21, 24 and 105, amendments 45 to 47 are intended to require victim consent before a VSO can request information on a victim's behalf. Amendment 48 is intended to do the same thing when a person has received a sentence of under 18 months.

However, rather than amending the bill to ensure that consent is sought, Katy Clark's amendments would remove the relevant subsections that allow VSOs to seek information proactively. I appreciate the intention behind the amendments, but they would remove provision for VSOs to originate a request for information, and retaining that ability to request information is important.

While a VSO works with a victim, the victim may realise that they want the VSO to be provided with information to help them to plan for release. If the victim did not register with the VNS at an early stage, it could be retraumatising or disincentivising for them to be required to return to the SPS to make a request. Allowing VSOs to make requests and receive the information on a victim's behalf can help to remove such issues.

Scottish Government amendments 21, 24 and 105 achieve the intended result of ensuring that victim consent is secured before information is requested, while still allowing the VSO to proactively request information, if that is necessary. For that reason, I ask Katy Clark to withdraw amendment 45 and not to move amendments 46 to 48.

Amendments 102 to 104, lodged by Russell Findlay, aim to achieve the same results as those lodged by Katy Clark and me on securing victim consent. Mr Findlay's amendments would still allow victim support organisations to proactively request information, but they would have to satisfy the Scottish ministers that consent had been secured and that they would use the information to support the victim.

The bill as introduced included the latter safeguard because the bill did not require consent, but we consider that having both safeguards could lead to confusion and delay in providing information to VSOs.

A victim is not required to satisfy the SPS of the ways in which they intend to use the information that they are entitled to, and we do not think that VSOs should be required to satisfy an additional requirement when a request stems from the victim and is made with the victim's consent. My amendments will avoid that potential confusion and will better meet the Government's policy intent. I therefore ask Russell Findlay not to move amendments 102 to 104.

Jamie Greene: When the Government lodged its amendments in this group, we were minded to support them, because they seemed to improve the legislation and provide further clarification. However, it cannot go unnoticed that amendments 21 and 23 to 27 are opposed by the organisations

that work with victims day in and day out. That is notable.

I suggest that the Government should do something unusual by not moving the amendments if there are problems with them and instead taking them back to the drawing board. We have been asked throughout the two weeks of the stage 2 process not to move amendments that are, on the face of it, trying to do the right thing but might be problematic. This is an opportunity for the Government to do exactly the same.

Although an explanation has been given quite late in the day, it is of notable concern that those to whom this section of the bill will apply have problems with the amendments as drafted. One approach would be to agree to the amendments and to fix this at stage 3, but it seems to me that it would be better for the Government to revisit the issue after further consultation.

Angela Constance: I certainly hope that what I have put on record today will be of some comfort. I assure Mr Greene and the victim support organisations that dialogue will absolutely continue between now and stage 3. There is a commitment to work inclusively with everyone to get all the detail right, and I hope that what I have put on record today will take us at least a bit further forward.

Jamie Greene: I do not doubt that, and I do not doubt the cabinet secretary's commitment to consultation and engagement ahead of stage 3, but we have to decide whether to vote for the amendments here and now. It would be easier if we did not have to do that, given that the position of those organisations is clearly contrary to that of Government. It would be better if the committee were not put in that position. Nonetheless, we will support the amendments because of the promise, which is now on record, that the Government will look at them again ahead of stage 3.

The Convener: As no other members wish to speak, I ask Katy Clark to wind up and say whether she wishes to press or withdraw amendment 45.

Katy Clark: I do not intend to press amendment 45—I wish to withdraw it. In brief, I hope that the Government will look at the issues before the next stage of the bill. As Russell Findlay and Jamie Greene have said, victims organisations are highly critical of the provisions in section 11. My amendments 46 and 48 are a perhaps more extreme response to that than the approach that is suggested in Russell Findlay's amendments, but they very much express the view of the victims organisations that I have met during discussion of the bill. I do not plan to push the amendments to a vote on this occasion, but I hope that we will come back to the subject at a later stage.

Amendment 45, by agreement, withdrawn.

Amendment 102 moved—[Russell Findlay].

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

Members: No.

The Convener: There will be a division.

For

Clark, Katy (West Scotland) (Lab)
Findlay, Russell (West Scotland) (Con)
Greene, Jamie (West Scotland) (Con)
McNeill, Pauline (Glasgow) (Lab)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)
Stevenson, Collette (East Kilbride) (SNP)

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

As there is an equality of votes, as convener, I will use my casting vote, and I vote against the amendment.

Amendment 102 disagreed to.

13:00

Amendments 21 to 23 moved—[Angela Constance]—and agreed to.

Amendments 46, 47 and 103 not moved.

Amendments 24 to 27 moved—[Angela Constance]—and agreed to.

Amendments 48 and 104 not moved.

Amendment 105 moved—[Angela Constance]—and agreed to.

Section 11, as amended, agreed to.

After section 11

The Convener: The final group of amendments is on review of the impact of the act. Amendment 4, in the name of Katy Clark, is grouped with amendment 5.

Katy Clark: Amendments 4 and 5 have been lodged following meetings with my constituent Linda McDonald, who, since her own personal experience, has campaigned to ensure that dangerous prisoners are not released without sufficient monitoring.

For context, amendment 4 relates to the multi-agency public protection arrangements—better known as MAPPA—that were established by the Management of Offenders etc (Scotland) Act

2005. The 2005 act imposes a duty on responsible authorities in a local authority area jointly to establish arrangements for assessing and managing the risks that are posed by certain categories of offenders—for example, sex offenders who are subject to notification requirements under the Sexual Offences Act 2003.

A few months ago, Linda McDonald contacted me, in my capacity as a member of the committee, to discuss her petition to drive change in the parole system to prevent dangerous prisoners from being released without sufficient monitoring.

Returning to the draft legislation that we are discussing, amendment 4 aims to ensure that level 3 MAPPA prisoners are monitored in the same way as other sex offenders, with regular check-ins with police and justice social workers. It would require ministers to review and report on the impact of part 2 of the bill on MAPPA. The report would, in particular, include consideration of whether changes were required to national guidance on how MAPPA offenders are monitored after release from custody and on ensuring a consistent approach across Scotland.

Amendment 5 would ensure greater scrutiny and analysis of the extent to which the operation of the bill will impact on resources. It would ensure that the reforms that are proposed are implementable.

I move amendment 4.

Jamie Greene: I indicate to Katy Clark that the Conservatives will support both amendments in the group if she presses them to a vote.

Angela Constance: I understand why Ms Clark has lodged the amendments in this group, given her constituent's experience.

Amendment 4 would require the Scottish ministers to review the impact of part 2 of the bill on the operation of multi-agency public protection arrangements within a year of royal assent and to publish a report on that review. I regret that, for a number of reasons, I cannot support it.

First, the timescales in the amendment are unrealistic. We will carefully consider with partners the implementation process for each section, if the Parliament passes the bill, which might mean that not all sections of the bill will have been enacted within a year of royal assent. Therefore, any review within that timescale may be limited, because it might have little or nothing by way of a period of operation to consider.

It is also relevant that the 2005 act already requires each MAPPA area to carry out an annual review of the arrangements for that area and to publish a report. The Scottish ministers can notify the MAPPA partners of information that they wish them to include in the report. The Scottish Government produces its own annual overview report of the arrangements. Those reports can comment on relevant public protection matters and could provide a mechanism for reviewing the relevant impacts of the bill if necessary.

The scope of amendment 4 is broad and covers all of part 2 of the bill. However, it is not clear that all sections of part 2 will directly impact on the operation of MAPPA or the management of individuals who are subject to MAPPA in the community. Such a review mechanism may, therefore, require areas that are unlikely to be relevant to the operation of MAPPA to be assessed.

MAPPA, as members might be aware, is not an entity in itself but a partnership made up of local authorities and regional health boards, as well as Police Scotland and the SPS. They come together in regional groupings. Amendment 4 would require the review to consider changes to national guidance that ensures

"a consistent approach across Scotland."

Although consistency might be desirable in some areas of operation, MAPPA regions can, at present, determine how they operate at local level. The national guidance is already regularly revised to take account of new legislation as well as changes in policy and effective practice. That revision is also informed by the annual reviews. The latest national guidance was published in March last year.

Therefore, the reporting requirement that amendment 4 proposes is not workable or necessary and I ask Ms Clark not to press the amendment.

I note that amendment 5 links to amendments 1 and 3, which were also lodged by Katy Clark and have already been discussed in previous groups. It would place a requirement on the Scottish ministers to report on the operation of the whole act, with a particular focus on the two elements that it mentions, within a year of royal assent. That timescale may be unworkable, given that different sections of the act may come into force at different times.

It is also not clear what

"the operation of this Act"

would cover in practice. As the member is aware, the bill mainly amends other legislation, so it is not clear that amendment 5 would result in a meaningful report.

I agree that the resourcing requirements of the bill require careful and on-going consideration with partners. That will continue into the bill implementation process and future budget discussions. I am not clear that amendment 5 would add to that process. However, as I have

said, I am minded to lodge a stage 3 amendment that will encompass the various asks for reviews into different sections of the bill to provide a more coherent picture. In the light of that, I ask Ms Clark not to move amendment 5.

The Convener: I call Katy Clark to wind up and confirm whether she wishes to press or withdraw amendment 4.

Katy Clark: I will seek to withdraw amendment 4. However, I intend to come back to the issue at stage 3 and will look carefully at what the cabinet secretary said about the drafting of the amendment. Indeed, I would be happy to work with others to ensure that the wording is as acceptable as possible to as many members as possible who are willing to support it.

On amendment 5, I look forward to seeing what the cabinet secretary comes back with and, depending on that, I might bring the matter back at stage 3.

Amendment 4, by agreement, withdrawn.

Before section 12

Amendment 5 not moved.

Sections 12 to 15 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the cabinet secretary and her officials for attending and I close the meeting.

Meeting closed at 13:11.

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