



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Criminal Justice Committee

**Wednesday 26 November 2025**

**Session 6**



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**CRIMINAL JUSTICE COMMITTEE**

**32<sup>nd</sup> Meeting 2025, Session 6**

**CONVENER**

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

**DEPUTY CONVENER**

\*Liam Kerr (North East Scotland) (Con)

**COMMITTEE MEMBERS**

\*Katy Clark (West Scotland) (Lab)  
\*Sharon Dowey (South Scotland) (Con)  
\*Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)  
\*Fulton MacGregor (Coatbridge and Chryston) (SNP)  
\*Rona Mackay (Strathkelvin and Bearsden) (SNP)  
\*Pauline McNeill (Glasgow) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Angela Constance (Cabinet Secretary for Justice and Home Affairs)  
David Doris (Scottish Government)  
Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)  
Hannah Hutchison (Scottish Government)  
Don McGillivray (Scottish Government)  
Ash Regan (Edinburgh Eastern) (Ind)  
Graham Robertson (Scottish Government)  
Maren Schroeder (Office of Ash Regan MSP)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

Committee Room 6



# Scottish Parliament

## Criminal Justice Committee

Wednesday 26 November 2025

*[The Convener opened the meeting at 09:04]*

### Prostitution (Offences and Support) (Scotland) Bill: Stage 1

**The Convener (Audrey Nicoll):** Good morning, and welcome to the 32nd meeting in 2025 of the Criminal Justice Committee. We have received no apologies. We expect to be joined later by Rachael Hamilton.

Under our first item of business, we will finish taking evidence on the Prostitution (Offences and Support) (Scotland) Bill. We have one panel of witnesses, and I intend to allow up to 90 minutes for the evidence session. I refer members to papers 1 and 2.

I welcome to the meeting Ash Regan, the member in charge of the bill, and, from her office, Maren Schroeder, who is a senior researcher, and Anna Macleod, who is a parliamentary assistant—a warm welcome to you all.

Before we start, I remind everyone to be as succinct as possible in your questions and responses. I invite Ash Regan to make a short opening statement; we will then move to questions.

**Ash Regan (Edinburgh Eastern) (Ind):** Thank you, convener. I want to put on record my thanks to the committee for the scrutiny that it has undertaken on the bill. I have listened very carefully to every witness and read every submission that has been made; no voice has been ignored.

I welcome the Minister for Victims and Community Safety's clear statement that the Scottish Government strongly supports the principle of legislating for the criminalisation of the purchase of sex. It is a significant moment for the Government, more than a decade on from the equally safe strategy, and for the public, whose views now firmly align with the principle at the heart of the bill.

I thank the Law Society of Scotland and the Crown Office and Procurator Fiscal Service for their constructive support and all the stakeholders with whom I have had engagement. I remain fully committed to working with the committee and other Parliament colleagues to amend the bill to address the concerns that have been raised during stage 1 scrutiny.

Committee scrutiny and consultation have revealed that there is substantial common ground, and even those who are opposed to criminalising buyers support the bill's three other pillars of decriminalising sellers, the right to support and pardoning previous solicitation offences.

Tackling prostitution is only complex until we acknowledge the silent presence in every discussion: the sex buyer. Prostitution is not empowerment; it is exploitation and violence, and exploitation must never be acceptable in law or society. In 1999, Sweden criminalised the purchase of sex, and it now has the lowest number of women involved in prostitution and the lowest number of men buying sex in Europe. Scotland now has an opportunity to learn from Sweden and the many nations that followed its lead in continuously adapting to counter an ever-shifting global sex industry.

The unbuyable bill reflects the lessons learned from operation begonia and brings forward a clear principle: challenge the root cause, which is the demand to buy sex. The Crown Office has been clear that tackling sex buyers is in the public interest; it is already known that many commit other offences, including rape and domestic abuse. The bill will align the law with justice, public expectation and current policing practice. Its aim is simple but profound: to place criminal consequences on exploiters while removing criminal barriers that continue to harm the victims, and to support those in prostitution to move on with their lives.

The bill cannot wait. Against the backdrop of a multibillion-pound global sex trade that never stops marketing and exploiting, prostitution is driven by demand, and it targets women and children in what is now the world's third-largest criminal marketplace after drugs and the arms trade.

Trafficking is a global scourge on humans. Last year, in Scotland, 78 per cent of those who were identified by the national referral mechanism as being trafficked with a sexual element were female; 36 of them were children. However, those figures are only the tip of the iceberg.

Vulnerable women and children in Scotland have waited long enough. As with rape law and domestic abuse law, criminalisation is the right decision, even though it is challenging. Criminalising sex buying is the right decision now, because doing nothing is in itself a decision—one that allows exploitation to continue unhindered.

The evidence points to one fundamental question: is prostitution a job like any other, or is it exploitation of the vulnerable? I think that we already know the answer, so now is the time to act. Sex buyers exploit vulnerability openly, in their

own words, on review websites where women and girls are rated like products. We know the severe physical and psychological harm that is caused, and we know that those who claim that they choose prostitution do not speak for the majority—those who have no choice and no agency.

Buyers rarely ask whether a woman is safe, coerced or trafficked, or if she is a child. They only ask whether she is available. That is why the unbuyable bill is so necessary and urgent. Until the law names sex buyers as the problem, the vulnerable will continue to pay the price.

**The Convener:** Thank you, Ms Regan. We will move straight to questions and I will begin with a couple of broad ones.

The first relates to last week's meeting, when we had the minister here. She clearly set out her support, and the Government's support, for the policy objective of the bill, but expressed concern about some aspects, such as the workability of the main offence, as outlined in section 1; the repeal of section 46 of the Civic Government (Scotland) Act 1982; and the proposal to quash past convictions.

In your opening statement, you acknowledge the work that lies ahead, so can you respond to those concerns? Have you had the opportunity to discuss them with the Government since last week's committee meeting? Will you have that opportunity in advance of the stage 1 debate?

**Ash Regan:** There is rather a lot in that question. I counted about four different things and will take them in turn, starting with the final point.

I have not spoken to the Government since last week, although I have had several meetings with the minister and her team while I have been developing the bill. The most recent of those meetings was some months ago. I attempted to get a meeting with the special adviser about two weeks ago, but that meeting did not take place. I imagine that the Government will watch this evidence session, and I think that it would be appropriate for me to meet the Government again soon after today's meeting.

As I had an opportunity to say last week, I want the bill to work. It is important that we put it into law for the reasons that I am sure we will speak about. I think that some of the issues that the Government has raised are reasonable—quashing is the obvious example.

The policy intent behind quashing past convictions is that many women and girls who are groomed into prostitution and end up with criminal convictions find it very difficult to move on with their lives. Over the years, I have spoken to a number of women who have found that to be a real barrier to moving on with their lives in the way

that they want to. They feel as if their convictions hang over them, and they have had to disclose them, for example for employment or housing purposes.

The committee will understand that there have been changes to the disclosure rules in Scotland, and that the situation is not as it used to be. The minister touched on that last week. Such a conviction will now remain on someone's record for only a year and, after that, will not be disclosable for level 1 or level 2 checks. However, the principle remains that someone can be criminalised for their own exploitation, so there is a symbolic element here.

The policy intent behind the quashing of past convictions and the repealing of offences is to send a message, and it is one that has been echoed elsewhere. I do not know whether committee members have had the opportunity to read the report from the Casey review, which came out a couple of months ago. That is the review that was ordered by the United Kingdom Government and by Prime Minister Starmer into grooming gangs. There were only 12 or 13 recommendations, one of which very clearly said that girls who had been groomed into prostitution should not be criminalised for their own exploitation. That is an important principle.

The original policy intent was to have automatic quashing, which I felt would send out the right message. It also seemed to be the simplest way to do it: it would be automatic and would apply across the board.

However, I have very much taken on board the evidence raised at stage 1. Maren Schroeder and I have had a number of meetings with the Law Society of Scotland and others to discuss the issue. I intend to lodge amendments at stage 2 to put into practice something that will fulfil the same policy intent but will do so in a more appropriate way, and that is to move to having an automatic pardon. That would have the effect of saying to people that they should not have been criminalised for their own abuse.

There would also be a voluntary disregard process, which has appeared in other pieces of legislation. I am sure members are aware of that process, which is familiar to our justice partners, such as the Scottish Courts and Tribunals Service, who already amend people's records.

The approach also respects the idea of being trauma-informed. We do not want to be sending letters out to people who may have had a conviction 40 years ago. That would not be good practice. I think that the new approach will achieve all the policy objectives that we set out to achieve, but does so in a way that respects the law. It certainly picks up on points made by the

Government, by Liam Kerr at a previous committee meeting and by the Law Society.

That deals with those two points. Do you want me to move on to enforcement?

09:15

**The Convener:** I am sure that what you have been outlining will come up in further questioning, so I will move to my second question, which relates specifically to section 1, on the purchase of a sexual act. In his evidence, Detective Superintendent Bertram emphasised the key point on

“understanding when the crime would be complete”,

noting that

“Whatever legislation comes in needs to be effective for policing.”—[*Official Report, Criminal Justice Committee*, 5 November 2025; c 3.]

Putting my former—police—hat on, I completely agree with that. I am looking at this from the perspective of whether section 1 sets out an offence that police officers can use effectively, and I have some concerns about that.

Will you talk us through how you envisage section 1 being complete, so to speak, when it comes to the range of scenarios that are covered by the section 1 offence? I suppose that I am asking what threshold of evidence police officers would be expected to obtain to prove that an offence was complete.

**Ash Regan:** I took note of the fact that Police Scotland raised that in its evidence a few weeks ago. Under the bill, the offence is complete at the point of agreement to pay; the sex act does not have to take place. Obviously, that is intentional. There is also the reasonable inference test.

I know that committee members are interested in the Irish experience, so I note that the bill is drafted very differently from the Irish legislation. The offence is designed to focus on the buyer's demand behaviour, so it does not require the act to have taken place before the police can intervene.

I was cognisant of evidence that came forward during scrutiny of the bill, and I requested a meeting with the Lord Advocate to discuss this very point, because I wanted to be clear about whether the drafting of the bill was appropriate. In the meeting with the Lord Advocate, she confirmed to me that there is nothing wrong with the drafting of section 1 of the bill and that, as far as she is concerned, the way in which it is drafted means that it is enforceable.

**The Convener:** Thank you for that.

I have a final question on the point that you made regarding the crime being complete at the point of payment, or evidence of payment or intended payment. That brings to mind the fact that payment can include a transfer between bank accounts or online payment, which are notoriously difficult transactions for police officers to investigate. My question is a practical one: how do you envisage that being enforceable?

**Ash Regan:** The Crown Office's position on that, which it put forward when it was in front of the committee, provided an interesting perspective. Emma Forbes said that this is a type of offending that is carried out behind closed doors, like other types of offending that we have criminalised. Such offences are slightly more challenging to prosecute, but, as she said,

“That does not mean that we should not do it and that the difficulties are insurmountable”.—[*Official Report, Criminal Justice Committee*, 5 November 2025; c 2.]

because they certainly are not. All such offences are difficult to prove, but no one is suggesting that those offences—for instance, similar crimes such as rape or domestic abuse—should be repealed.

Established evidential routes are already available. I had that conversation with the Lord Advocate, and I have had numerous meetings with Police Scotland and other members of COPFS, because I thought that that was a very important point that had to be explored. In the past few weeks, I have had at least two and possibly three such meetings exploring the issue further with them. We have discussed various scenarios and what type of evidence might be used.

For the committee's information, the evidence could be things such as digital communication, as the convener has mentioned, which could show the time, what act was requested and what price was agreed on. It could involve using payment traces and bank app data. In the meeting with the Lord Advocate, it was confirmed to me that that would not always require extensive digital forensics; it could just be screenshots—those would be sufficient. Surveillance could be used, where appropriate, as could various types of online intelligence. Obviously, third-party testimony would be a type of evidence that could well be used, as well as buyer admissions—the committee might be surprised to know that, sometimes, people admit that they have committed a crime when questioned by the police.

**Liam Kerr (North East Scotland) (Con):** Good morning. According to the policy memorandum, the aim of the bill is to reduce the number of people in prostitution and reduce the impact on those who are, or have been, in prostitution. The committee has heard differing views and has been presented with differing evidence, as to whether the provisions in the bill as it is currently drafted

will or will not achieve a reduction in prostitution. Do you maintain that the bill's provisions will achieve the ends as set out in the policy memorandum? If so, can you help the committee understand why we should prefer that line of evidence, and reject the alternative?

**Ash Regan:** Mr Kerr's question cuts to the heart of the issue on which the committee is deliberating. I want to be clear on this point: the committee has not been presented with any verifiable evidence that the Nordic model does not work. A lot of statistics have been thrown around, and small samples of qualitative interview data have been presented to the committee, but that is not verifiable, state-level, Government-level research information.

Governments and Parliaments need to make decisions on policy frameworks and legislative approaches based on the evidence. The evidence that is coming from countries that have implemented the model is that, even if the law is changed and not robustly enforced, it will still have some effect. We have seen that in Northern Ireland and in Ireland. Yes, it is not having the full effect that we might anticipate, but it is having some effect. In a moment, I will go on to discuss how we judge whether it is having a good effect.

I know that the committee is concerned that it seems to have been presented with almost completely contradictory pieces of evidence, so we are developing, in the office, a paper that goes through, in extreme detail, all the evidence that has been given to the committee. I am happy to share that with the committee if it would help with your deliberations.

Turning to how we would decide whether the Nordic model is working, I think that there are a number of key issues that we would look for. We would be looking at what happens to demand and to the market size of prostitution; at trafficking inflows; and at culture and attitudes to buying sex. We need to look at those key things. In order for evidence to be verifiable, we need baseline data, and we need to be able to observe trends. That is why I am suggesting that much of the evidence with which the committee has been presented that appears to undermine the Nordic model does not, in fact, undermine it, because that evidence does not address those key things.

We can look at Sweden. After the buyers were criminalised, the share of men paying for sex fell by almost half, and Sweden now has one of the smallest prostitution markets in Europe. That can be contrasted with what we would call commercialised systems, because there is a bit of debate about whether those systems are regulatory models or decriminalisation models. Those models exist in countries such as Germany and the Netherlands. They have some of the

biggest markets—they have the highest numbers of men who are buying sex and the largest numbers of women who are in prostitution—and the largest trafficking inflows.

I have to say to the committee—it is disturbing to tell you this—that Scotland, under those measures, sits much closer to countries such as Germany and the Netherlands than it does to a country such as Sweden. We might think that our laws on prostitution are perhaps somewhere in the middle of the models, but the data that I am seeing shows that Scotland is much closer to the latter model.

I can give you the rates of people in prostitution by legislative framework. The data has been adjusted for population size, so it is comparable. To give you a starting point, in Sweden, the rate of people in prostitution per 100,000 is between 6.6 and 15 people. We can compare that to Germany, where, per 100,000, it is between 185 and 493 people. I hope that the committee can see the difference there.

I can read out all the other figures, but I expect that the convener will not like it if I do. Just for context, and for the committee's information, the rate for Scotland, under our current legislative model, is between 108 and 144 per 100,000. When I saw those figures, I have to say that I was shocked. I think that there is definitely a problem in Scotland that we need to address.

**Liam Kerr:** The next question is similar. The committee has heard differing evidence as to whether criminalising purchasers might result in a higher risk for those who are selling sex. We have heard from both sides: on one side, we have heard, "No, it will not increase the risk," and on the other side, we have heard, "Yes, it will increase the risk." Do you think that there will be an increased risk to those selling sex? If not, why should the committee prefer that line of evidence as opposed to the alternative?

**Ash Regan:** It will not make women more unsafe. No evidence has been presented that suggests that the Nordic model makes women more unsafe. That was one of the key notes that I took from Professor Jo Phoenix's evidence. She has been a researcher and criminologist in this area for more than 30 years, and she said that there was no causal relationship, and no evidence had been presented for it, between the Nordic legislative model and making women more unsafe. I can state that categorically to the committee.

I turn to what we all agree on. People on my side of the argument who want to adopt the Nordic or equality model, and those who suggest that we should be pursuing another model, all agree on one fact: prostitution is inherently dangerous, violent, abusive and exploitative. The reason for

that is the behaviour of the buyers, or punters. That is what makes it unsafe. I put it to the committee that, if prostitution is unsafe, dangerous and violent—I will give the committee the murder rates by country in a minute, to illustrate my point—that means that the larger the prostitution market in the country, the more women are going to be dragged into that and harmed, and possibly murdered. The smaller the prostitution market, the smaller the number of women who are going to be harmed.

I will not say to you that you can ever make prostitution safe. You can never, ever make prostitution safe—it is violent and abusive. What you can do, by using the Nordic type of legislative approach, is shrink the market down as much as possible, and the better you enforce the legislation, the smaller your market will be, as we have seen in countries where they follow robust enforcement.

**Liam Kerr:** I have a small follow-up question, because you brought in enforcement at the end. The convener asked an important question, and you brought up Northern Ireland and Ireland earlier. The committee heard in evidence from the Crown Office that it

“is mindful of the challenges experienced by police and prosecutors”

in those two jurisdictions. Do you accept that enforcement could be problematic? Earlier, in response to the convener, you said that this bill has been drafted differently. Can you help me understand precisely in what way it has been drafted differently if enforcement in Scotland is going to be different from enforcement in those jurisdictions?

**Ash Regan:** The bill has been drafted differently—in fact, we spent quite a bit of time, in drafting it, looking at the drafting of various other pieces of legislation. In the original drafting, we had the offence drafted as it is drafted in the Northern Ireland legislation, and then we looked at the conviction rates. We also took note of the Irish review, which included a review of the way in which Ireland’s legislation had been drafted. Ireland has said that it now recognises that it has issues with the drafting of its legislation. When we drafted the bill, we took note of that and we drafted in a different way.

As I explained in a previous answer, we have included the reasonable inference test. I have sat down with the Lord Advocate, who is the head of prosecutions in Scotland. She read the description of the offence, and she said to me that there is nothing wrong with how the offence has been drafted, and that it is enforceable.

There have been issues with enforcement; I am sure that, if the committee had somebody here

from Northern Ireland, they would say that. I have not been to Northern Ireland for some time—I went over there in 2017 and I spoke to the Advocate Attorney General—it was John Larkin at that time. At that point, the law had been in force for only a very short period of time, and he admitted to me that they were having issues with enforcement. Ruth Breslin, when she spoke about the Irish experience, said the same thing: they recognise that they are having trouble with enforcement.

09:30

Other countries are not having trouble with enforcement. The latest statistics that I saw from France, which has not had the law in place for nearly as long as Sweden has, show that it has convicted 5,000 men. I know that France is a large country in comparison with Ireland and Scotland, so the context is different, but it shows us that enforcement of these offences is possible.

It can be an iterative approach. Ireland is looking at how it is enforcing the law and at ways to change it to make it better. Sweden has been on a very long journey, during which it has changed the way in which it enforces its legislation. I have been to Sweden and spoken to its prosecutors and its police forces, and to its anti-trafficking commissioner. I spent several days in Sweden looking at the situation with my own eyes. The police told me that, when they first started to enforce the law, they were using a surveillance approach. They would find the adverts online, go to the location and observe, and then, when the men were coming out, they would arrest them.

That is obviously a different context, but because of the way in which the culture has changed as a result of the law, there was an interesting public discussion. The public were saying, “Hang on a minute—if we think that this is violence against women and a crime is being committed here, why are the police waiting for the crime to be committed before they take action?” The police in Sweden have now changed how they police. They have moved from the surveillance model to what they would describe as a welfare model. That is very similar to the way in which Police Scotland police prostitution, and the convictions have gone up—

**The Convener:** I will have to cut you off, I am afraid, because a number of members want to come in. We have had only two members ask questions so far, and we have a lot to get through, so I have to ask for much shorter responses, Ms Regan.

Are you done, Mr Kerr?

**Liam Kerr:** I am done—thank you, convener.

**Katy Clark (West Scotland) (Lab):** As you say, Ash, there seems to be support for three pillars of your bill from what I will refer to as both sides of the argument. However, there seem to be quite conflicting views on the fourth pillar, which is the principle of criminalising the purchase of sex.

One of the arguments seems to be that criminalising purchasers might have the unintended consequence of placing people who continue to sell sex at greater risk. A specific issue that has been raised is that it would be difficult for checks to take place with potential clients, and the legislation is likely to lead to there being less time to carry out such checks. What is your response to that? Is there any validity in that argument?

**Ash Regan:** First, the reason why there is resistance to the idea of criminalising the buyer is that, as I have just explained, Scotland is a very profitable destination for pimps and traffickers. It is a top destination—that came out of a report from an all-party parliamentary group at Westminster; the committee can look it up. We are talking about millions of pounds being made from the commoditisation of girls and women. I gave you the national referral mechanism figures. Some of the people who are being exploited in the sex trade in Scotland are children. As a country, we need to consider whether we think that that is acceptable, or whether we want to change the law to address that. That is why there is resistance to criminalising the purchase of sex, but I do not think that that is a good enough reason not to do it.

As we have suggested—it came up when we discussed the bill with the Lord Advocate, and I think that it came out in the Crown Office evidence as well—this is root-cause offending. The type of men who are buying sex are quite often involved in other, similar crimes. Those men are involved in crime such as domestic abuse and other sexual crimes such as rape and sexual assault. It is appropriate, I think, that we consider criminalising this behaviour, because it sends a very strong message that, in Scotland, we do not want to tolerate this behaviour.

Screening is a myth. I come back to the figures again; I think that I mentioned them last time I was in front of the committee. There are the various proportions of women: the 2 per cent, the 38 per cent and the 60 per cent. The 2 per cent are probably the elite, at the very top of the market, and they are comfortable with the choices that they are making. I am not disputing that those women exist, and that they are in prostitution because they have made that choice. However, as legislators, we have to remember that they are not the majority, and their experience is not the same as that of the majority of people in prostitution. They might be able to screen, take a very small number of clients, make a lot of money and then

leave the industry after a few years—but, as legislators, we need to consider the reality for the majority of women who are in prostitution.

I have spoken to women who have worked on street, I have spoken to women who have worked in brothels in Edinburgh, and I have spoken to women who were trafficked from Africa. There are many more examples, but I will just mention those. This is what they would describe to you. If you work in a brothel in Edinburgh, you cannot refuse clients. If you refuse more than a certain number of clients, your pay will be docked—and you have to pay fees and so on. Somebody working in a brothel in Edinburgh said to me that people have the idea that working off street is safer. She said, “I think it is slightly safer than working on street, but when we’re screaming in another room, the manager will just shut the door”—so that people could not hear them screaming quite as loud. It was not like anybody rushed in to save them or anything.

The myth of screening has developed a life of its own. If you are trafficked, as we understand the majority of women in Scotland who are working in prostitution off street to be—that is what I am attempting to target with the bill—and you are being coerced and controlled by a pimp, you will not have the opportunity to screen your clients. You will not know who is about to come through that door next, you will not know what has been advertised that you are supposed to be doing, and you will not get most of the money for it either.

We have to remember that anonymity is one of the most prized things that sex buyers have. That is the reason why the proposed law is so effective. It is not because we are going to put lots of the buyers in prison; it is because of the deterrent effect. These men value their anonymity. They use burner phones, and they use user identification, which is how women will sometimes attempt to verify them—they will try to verify whether a particular user ID is in use. They use fake names.

The women’s identities are often online, because of the review sites with pictures and so on. However, these men are very much in the shadows. They value their anonymity. It is laughable to suggest that there is any kind of meaningful screening. Do not get me wrong: I think that the women who attempt to screen will do so, because they are trying to survive in a system that is stacked against them. However, there is no meaningful screening that goes on. Most women in prostitution do not have the ability to decline punters.

**Katy Clark:** If we take women working on the street, who I think you would agree are a more vulnerable group, some of the evidence seems to suggest, or some people are arguing, what you are proposing gives women in that situation less

time to negotiate and to check. That is presumably an argument that you have had put to you. What is your response to that? Why are we being told that?

**Ash Regan:** You are being told that because the pimp lobby does not want to criminalise demand. Pimps and traffickers are making a lot of money in Scotland, and they want to continue to make a lot of money in Scotland. In fact, they would like to make more money in Scotland. They would like to move to the model that exists in Germany and have the sex trade expand and expand.

I would suggest that we can see the harms that are going on here in Scotland. The issue is sometimes very much in the shadows, and it is something that the Parliament has been able to avoid for a very long time. I do not think that we should be avoiding it. I know that it is difficult to talk about the issue, and it is difficult to face what is going on here in Scotland, but I can tell you now that, not far from here, there will probably be three or four trafficked women in an apartment who have been brought here from another country—probably Nigeria, China or Albania. They are being held, they are being coerced and they will not have a choice over who they see or what they do.

**Katy Clark:** We have been told that, in France, the number of sex workers murdered seems to have been atypically high in the space of time immediately after the introduction of similar legislation. I am putting to you some of the things that are being said. Have you looked into that, and what is your response? Do you think that there is anything in that? You have mentioned France as one of the systems that you have looked at.

**Ash Regan:** I am sure that the convener will not want me to go into extreme detail on this. I will follow up with the committee on the evidence that we have on it—but, no, that is not substantiated by any evidence. In fact, that was investigated by the court.

We are coming back to the same argument, but, although prostitution is inherently violent, we have to be careful that we are not conflating the legislative model with the violence. The violence is ever present. There is no evidence that the proposed legislative model makes things more violent or more unsafe.

I did not talk to you about the murder rates, which I will try to come back to if I get an opportunity in response to the next question.

**Katy Clark:** That would be helpful, or perhaps you could share it with the committee later.

**The Convener:** Can I perhaps now bring in other members and, if there is time, come back to you?

**Katy Clark:** Yes, of course.

**The Convener:** I urge witnesses to give succinct responses, just to allow everybody to come in. I bring in Jamie Hepburn.

**Jamie Hepburn (Cumbernauld and Kilsyth) (SNP):** Thank you, convener. I will stick with the theme, because our primary concern is the safety of women and girls who are involved in the selling of sex.

Ash Regan, you have obviously set out the principle and the conceptual nature of the purchase of sex as an act of violence against women and girls. I am the father of a daughter, and I understand that point, but what we are doing here is assessing the bill that we have before us and its practical impact. We have heard from a number of witnesses—and you have said that you have listened to every voice—who have said that the provisions of the bill would make the experience for women involved less safe. You have said very clearly that you do not think that that is the case. At a high level, do you think that that perception is wrong?

**Ash Regan:** It is wrong, and it is not just me who says that. The committee had a criminologist—a professor with 30 years' experience—in here who told you that that is wrong and that there is no evidence to back up that claim.

**Jamie Hepburn:** We have also heard from other academics, and we had the experience of engaging with women who are involved in the selling of sex—a summary of that engagement has now been published.

**Ash Regan:** Which study was that?

**Jamie Hepburn:** I am not referring to a study. I am talking about our practical engagement with those involved in the selling of sex. At the very least, there is a perception that the bill would make the environment less safe. Do you think that that belief is held genuinely and sincerely?

**Ash Regan:** I cannot speak for what other people might believe to be true. I am a legislator; I have to go with the facts and the evidence, and the facts and the evidence say that that is not true.

**Jamie Hepburn:** Nonetheless, that perception exists, so what are you doing to try to ensure that that perception is minimised, to take care of those concerns as you take forward the bill?

**Ash Regan:** I hope that this evidence session will speak to that. I am doing as much engagement with the media as possible, where I continue to try to get the message out. The murder rate in various countries by legislative approach might be illustrative in this respect. In the UK, between 1990 and 2016, 180 women involved in

prostitution were murdered. The most widely referenced statistic on the risk of homicide that women in prostitution face concludes that they are 18 times more likely to be murdered than a woman of similar age and race who is not in prostitution—that was from a US study. Twelve of the 180 women in prostitution who were murdered in the UK since 1990 were murdered in Glasgow or the surrounding areas.

I remind the committee that Germany has a commercial model; there are no laws preventing prostitution and it has the largest prostitution market in the whole of Europe. From 2002 to 2017, 75 per cent of the 86 murders of prostituted women in Germany occurred indoors, and many of them were in legal brothels. I just want to put on the record the fact that, under these other models, women are dying—they are being murdered in legal brothels.

**Jamie Hepburn:** Those are obviously appalling figures.

**Ash Regan:** In Sweden, since the law was changed to the Nordic model or equality model, which is what I am suggesting for Scotland, there have been no murders of women in prostitution.

**Jamie Hepburn:** We have certainly been sent evidence from the Swedish jurisdiction that would suggest that there has been a substantial reduction. I am not arguing against that, although we did have evidence from the Police Service of Northern Ireland that suggested that what they have done in Northern Ireland has had a limited impact.

The figures that you have set out are appalling. Any rational person would understand that. However, you have made the point yourself, as did our very first panel of witnesses, that, even with the bill, we will never be able to make the selling of sex truly safe. The bill will not make it truly safe, but the question is, will it make it less safe? I have heard your perspective, which you have set out very clearly. You have talked about all the stakeholders that you have engaged with. When you have engaged with those who are opposed to your bill, and in whose perspective it would increase the likelihood of selling sex being less safe, what have they said?

**Ash Regan:** I had a meeting with representatives of National Ugly Mugs. They put that perspective to me, and I asked them to show me the evidence for it, but there is none.

09:45

**Jamie Hepburn:** So, even though there is a perceived concern, you have no concerns whatsoever that the approach makes it less safe?

**Ash Regan:** Because it does not make it less safe.

**Jamie Hepburn:** So, you have no concerns?

**Ash Regan:** No.

**Jamie Hepburn:** I have another quick question—

**The Convener:** Rona Mackay will then come in with a supplementary.

**Jamie Hepburn:** One part of the bill is on the nature of assistance and support for women who want to leave the selling of sex. You have said that there has been widespread support for that proposal, which I recognise, but there is not a lot of detail as to what that support would consist of. In your mind, what would it look like, how would it be provided, how would it be done on an even basis and what would the likely cost be? Moreover—and this is key, because we know that exiting from the sale of sex is not likely to be a linear process for everyone—should support also be available to those who are not immediately seeking to leave the sale of sex?

**Ash Regan:** I know that Mr Hepburn will understand that because this is primary legislation, it sets the duty on Scottish ministers. Then, it is up to them, as they are obviously the appropriate people to place duties on other parts of the public sector to set staffing levels, decide how that might work and then set out a delivery and implementation plan to the Parliament. I will lodge an amendment that would provide for the Government having to do so within three months of royal assent—I invite members to think about whether they might want to do the same. It would be an affirmative procedure, so it would give Parliament an opportunity to scrutinise those plans.

I can talk to you about what good practice would be in relation to how we support people in prostitution. The costs are all set out in the financial memorandum, and the evidence that the committee has taken has shown that front-line services and other jurisdictions coalesce around that figure, which is roughly around about £1 million a year for support services, which I believe is a moderate amount for what we are talking about.

If I get an opportunity, I would like to talk to the committee about the costs to society of prostitution, which are very stark. We are often being asked in Parliament to observe the Christie principles and to bring the idea of preventative spending as much as we can into the decisions that we make here. I believe that this is one of those areas in which we should do that—I can support that with evidence, which, if I do not get a chance to put on the record now, I will follow up on

in writing. I do not have the studies in front of me, but a number of them have looked specifically at that area. One of them—Maren Schroeder will correct me if I am wrong—was a Scottish piece of research that said that every pound that was invested in prostitution support services would deliver a saving of between just under £6 and £6.80. That shows that this is a spend-to-save model.

The Government has admitted in various reviews that there is a fragmented picture of support. If you are in Glasgow, you will be very well served because you have access to Routes Out, which is an excellent service that does extremely good work there. However, that is funded by Glasgow City Council.

The Government is putting a bit of money into addressing commercial sexual exploitation at the moment, but it is only resulting in, we think, somewhere between three and four posts across the whole of Scotland. As you can see, at the moment, very little support is available to those who are in prostitution.

I think that it was Diane Martin, when she came to the committee earlier this year, who talked about the need for linked-up casework, so that you can follow women over time, because you are right, Mr Hepburn, that what we know about working with women in prostitution is that it can take a very long time. Services might have to engage with women for a very long time before they are ready and able to leave prostitution. They might come into services, disappear for a while, and then come back.

I want to put on the record that there is no intention with any of this that anyone who is engaging with those services should have to say that they will exit—that should be a principle, and I intend to lodge an amendment to bring it into effect. No support services should be conditional in that way.

**The Convener:** Rona Mackay has a very brief supplementary question.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** I will be brief in picking up on an earlier point about safety, although I have further questions to come.

Regarding safety, you have mentioned Professor Jo Phoenix a couple of times and have spoken about her 30 years' experience. I put it to you that the landscape of sex work has changed dramatically in 30 years and that most of that work now happens online. Do you think that your bill addresses that change enough? Is there enough in the bill to reflect that change?

**Ash Regan:** That term "sex work" is a contested and disputed term, but it tends to encompass

other things. I would say that it would probably be understood as including things such as web cams, OnlyFans or porn and not only prostitution, which slightly changes the way that we might think about it. It can also include pimps and managers, who are also termed as sex workers, so we need to be very careful with the terminology that we use.

The internet has made it much easier to exploit women. It used to be the case that prostitution was, for the most part, on street, but there was a limit to the number of hours women could go on the street and the number of punters that they could see in that environment. The reason that sex trafficking is now so profitable is because of online advertising. Women can be advertised to punters all over the place and punters can easily find them and can make appointments to go and see women who are exploited in prostitution in indoor settings. That is much easier.

The internet has not changed the nature of prostitution, which is still violence against women.

**Rona Mackay:** I am sorry to interrupt, but I know that we are short of time and you have not actually answered my question. Does your bill address that?

**Ash Regan:** Of course it does, because the nature of prostitution as gendered violence has not changed at all. The fact that women are advertised online is a change because we used to have mostly on-street prostitution and we now have mostly indoor prostitution, but the nature of prostitution has remained the same.

**The Convener:** I would like us to move on.

**Pauline McNeill (Glasgow) (Lab):** I was also going to ask about that. One of the reasons that the minister gave for having reservations about the framing of the legislation was specifically about that. What do you think she meant? I thought that she was talking about proving the offence.

**Ash Regan:** Can you be more specific, Ms McNeill?

**Pauline McNeill:** I thought that you might have read the evidence given by Siobhian Brown last week.

**Ash Regan:** I have read that. Was it to do with safety?

**Pauline McNeill:** She did say that one reason why she has concerns is because the sale of sex has moved online. She said that specifically. You may want to have a look at that.

**Ash Regan:** Let me clear that up: the sale of sex is not online. We are talking about prostitution, which is separate to talking about porn or OnlyFans, because this is a targeted and narrowly defined bill that is only four and a half pages long

and covers only in-person sex acts. That is what the bill covers.

It is right to say that the advertising is online. The bill does not cover that because it is my understanding that regulating that would be a matter reserved to the UK Government, which I know is also looking at this issue. However, my bill is an attempt to make a difference to violence against women and girls in an area in which this Parliament has the power to make a big difference.

**Pauline McNeill:** I have some questions about evidence from the Nordic model. You have made specific reference to Sweden, where we know that the number of men paying for sex has halved. What can you tell the committee about what has happened to the illegal sale of sex in a country such as Sweden? I presume that some of that has gone underground.

**Ash Regan:** It is often indoors, if that is what you mean, so I imagine that it is similar to Scotland. I think the committee has raised the fact that, even in a country such as Sweden, where they changed the law a very long time ago and there is relatively robust enforcement, prostitution still exists. You are right about that.

However, I have heard from Sweden that, when you criminalise the buyer, you change the power balance. It gives women who are in prostitution a sense that they have slightly more power in relation to the sex buyer than they had before, because now they have the law—and, one would hope, the police—on their side. If they have a problem with a sex buyer, they can go to the police about it. That makes an important difference to the power balance.

**Pauline McNeill:** You said that you had had a discussion with the Lord Advocate about the offence itself. This is from memory, and you probably know it better than me, but my understanding of the evidence that we heard from the Crown Office was that it had difficulty with the offence in terms of evidencing the crime. I think that the Crown Office witness said that there were issues with the offence as framed and that they did not feel that there would be many prosecutions in relation to it—correct me if that is wrong. Will you talk us through that and through the framing of the offence? What evidence would need to be shown?

I have the wording of the provision framing the offence in front of me. It states:

“A person (‘A’) commits an offence if it can be reasonably inferred that A has obtained or intended to obtain for themselves the performance of a sexual act by another person”.

The Lord Advocate said that she is happy with how the provision is drafted, but I think that the

evidence suggested that there would be difficulty in proving the offence. That is my understanding of what was said.

**Ash Regan:** Yes, you are quite right. It was Dr Emma Forbes—I will paraphrase what she said, as I do not have it in front of me, but I looked at it again this morning. She said that there would be the same evidential challenges that there are in other offences, such as rape and domestic abuse—I am sure that the committee is well aware of what those challenges might be. However, that does not mean that we should not do this and change the law, nor does it mean that the difficulties are insurmountable. If the Crown Office thinks that there are evidential challenges in the same way that there are with other offences, that is its opinion. Obviously, no one is suggesting that we should repeal the offences of rape and domestic abuse. They are very important in Scotland, and we would not even think about repealing them.

I have had a conversation with the police about what evidence they might gather. The police think that there is a gap in the law. They would like to have the powers to arrest and charge sex buyers. A number of different pieces of evidence would be used—I listed some of them in answer to an earlier question—and I imagine that some of that evidence would be digital, such as screenshots and so on. The evidence shows that, if the police move to more of a welfare model, they are more likely to develop a relationship with women who are working in prostitution, in which the women will often voluntarily share evidence with the police, particularly from their mobile phones. That model is working very well in Sweden. Because of the way that we police in Scotland, we are quite close to that model anyway. I had a number of conversations with both police and prosecutors, in which we imagined that some version of that model would work in Scotland.

**Pauline McNeill:** Is that accepted by the Crown Office? I think that I am right about the Crown Office saying that it did not think that there would be many prosecutions. That is what Dr Forbes said, although I acknowledge that, as you say, there is sometimes still a point to legislating despite that. Do you think that that situation would change over time?

**Ash Regan:** If the bill is passed into law and the offence is created, we want the legislation to work. As I said in answer to an earlier question, we have seen from other jurisdictions—particularly Northern Ireland and Ireland—that such legislation has some effect even when not enforced. That is because a lot of people do not want to break the law. If you tell people that they must wear a seat belt or that they cannot smoke indoors, most

people will obey that and it will have an immediate effect, even without enforcement.

It is important that we have laws that are enforceable. That is why I have spent extra time checking the bill and the way that it has been drafted. We have not come on to this yet, but something came up in relation to the definition of the “sexual act”. I would be happy to speak to the committee about that.

It appears that enforcement is an iterative process and that is certainly what we saw in Sweden, which has changed the way that it polices this area. As a result, Sweden has more convictions. When Sweden was using the surveillance model, it was getting something like 200 proceedings a year. In 2024—the year for which we have the most recent data that we have—Sweden moved to what we would understand as more of a welfare model and it is now getting 500 proceedings a year.

10:00

I know that the committee understands that all contexts are different but justice partners have assured me that the proposed legislation is enforceable. If we in Scotland are taking it seriously and if we think that it is violence against women, we will need to enforce the legislation robustly. I imagine that we would go on an iterative journey, as we are doing with other types of offending. The Lord Advocate has obviously made some changes in respect of other types of sexual offences, so it might end up being something like that.

**Pauline McNeill:** I am familiar with the Nordic model. I hosted the Swedish prosecutor about 15 years ago, so I know what claims are being made about their model, particularly for human trafficking. It is accepted that some of those models have reduced human trafficking but did you have any discussions with the national agencies about whether the way that the law is framed is a barrier to prosecuting and investigating human trafficking in Scotland? We have the National Crime Agency, which has a decent record on identifying and investigating human trafficking. Are you saying that the way in which the law is framed is a barrier or are you just saying that the model will help to reduce it?

**Ash Regan:** I am not sure that I understand the question. Are you talking about the way in which our current laws are drafted or are you asking about the way in which the bill is drafted?

**Pauline McNeill:** Sweden claims to have reduced human trafficking through the Nordic model. Human trafficking is a crime in Scotland. The National Crime Agency is responsible for reducing it and, to my knowledge, it has a decent

record. I am therefore saying that surely we are already reducing human trafficking in Scotland through what we are doing. I am asking about the way that the law is currently framed.

It is just a thought, because that is one of the claims that is made about the Nordic model, and I am wondering about the role of the National Crime Agency. Is there a suggestion that there is a barrier to tackling human trafficking?

**Ash Regan:** I would say that the trafficking legislation that we have is good. In the conversations that I have had with the police, I have heard that it can be difficult to gather evidence in those cases, but they do it and we have seen some high-profile convictions because of that. I am sure that members will be familiar with the one in Dundee that happened not that long ago. The investigations are very painstaking and involved, and I am sure that it is a good thing to have trafficking legislation and to catch and convict traffickers.

What I am suggesting, however, is that we want our country to have a legislative framework that shrinks demand. The smaller the prostitution market is, the less profitable it is for traffickers. Countries that have lax prostitution laws, such as the Netherlands, Germany and New Zealand, have higher trafficking inflows. That is demonstrated in the evidence, and I can send that evidence to the committee. Countries that have adopted the equality model have lower inflows of trafficking.

Trafficking legislation is good if you want to convict your traffickers, but if we want less trafficking—and I suggest that the Parliament does want to see less sex trafficking of women and children—we will need to reduce the market for prostitution and to make it as difficult as possible for traffickers. What makes it difficult for traffickers is not so much that they fear arrest—they just see that as a possibility in any jurisdiction. They want to know how much money they can make and how fast they can make it. The more buyers that there are, the more money they can make.

**Pauline McNeill:** They would be less likely to come to Scotland.

**Ash Regan:** That is what the evidence shows.

**Sharon Dowe (South Scotland) (Con):** I want to go back to some of the previous questions that you have been asked. Regardless of the legislation in various countries, there is still a sex trade, and we have heard from sex workers who are concerned that criminalising the buyer will lead to more violence against them. They will not be able to do safety checks or identity verifications, and more of the work will take place at the buyer's location of choice. You have said that you had discussions with some of those groups. What

concerns were raised by those sex workers? You said earlier that there is no evidence that they have genuine concerns. What are your thoughts about their genuine concerns about the unintended consequences of the bill?

**Ash Regan:** We have extensively covered the claims about the bill making prostitution more unsafe, and we have covered screening. There is agreement on three parts of the bill—the majority of the bill. If you are involved in prostitution, the bill will be very beneficial, because you will be decriminalised, any convictions that you have will be removed from your record and you will be able to access support services—

**Sharon Dowey:** I am sorry to pause you there, but my question is specifically on their concerns. I know that you have given some of the other reasons, but some women have said that, for whatever reasons, they choose to be in sex work—

**Ash Regan:** Yes—I have acknowledged that.

**Sharon Dowey:** They have concerns about the bill. What was the conversation with them, and how are you going to address their concerns?

**Ash Regan:** The bill will shrink the prostitution market, but it does not make any judgment on whether any individual woman should want to stay in prostitution—that is obviously a decision for them and them alone to make. I am suggesting that we legislate based on the majority of women who are in prostitution.

In jurisdictions that have adopted the proposed model, the relationship between the women who are in prostitution and the police improves. I think that those women feel that they are able to engage with the police and report things that have happened to them. As the committee probably understands, there are an awful lot of unreported rapes and assaults against women who are involved in the sex trade. It will be very important for those women to feel that they are able to go to the police to report that. I genuinely hope that, if we change the law in this way, all the women who are involved in the sex trade in Scotland will feel that all parts of the proposed law are beneficial to them.

**Sharon Dowey:** In relation to indoor prostitution, the Crown Office has said that people involved in prostitution might be required to give evidence to prove the offence. What are your views on that?

**Ash Regan:** That is quite right—that has come through in the evidence, and it has been raised with me in my meetings with the Crown Office.

For obvious reasons that the committee will understand, women working in prostitution will often not be willing to go to court. Many of them

fear for their safety, they might have threats made against them and so on. Obviously, they might not want buyers to know that they have gone to court to get convictions. My view is that it would be good if we could get as many convictions as possible without relying on the women's evidence. I believe that that can be done, but I accept that there will be occasions when the women will need to give their testimony.

**Sharon Dowey:** That brings us back to the previous point about people who choose to be sex workers having concerns about safety. They will not choose to give evidence against a buyer.

**Ash Regan:** They might.

**Sharon Dowey:** How will the bill result in more prosecutions?

**Ash Regan:** Those women might well decide to give evidence. If a punter commits an assault against them, they might want to report that to the police, as I believe they should. They should feel able to do that, and they should feel that the police will support them in making a complaint.

I have already acknowledged in front of the committee that a small minority of those who are involved in prostitution have chosen to be involved—the research puts the figure at about 2 per cent. I am sure that they would tell you that that is their choice and that they feel that they can manage the risks against them. No one is saying that we do not acknowledge that that is the case; we do.

I am concerned with the majority of people in prostitution: the women and girls who have been trafficked here from other countries, who have no control over what is done to them and who will probably leave prostitution infected with a sexually transmitted disease. They will probably have, or might have, irreversible damage to their bodies, including damage to their eyesight. I can go into detail with the committee as to why that might be the case. They might be incontinent. They will be traumatised. Studies have shown that they have rates of complex post-traumatic stress disorder at about 70 per cent, which is higher than rates among combat veterans and victims of state torture.

I believe that, as a Parliament, we should concern ourselves with those women, and we should seek a legislative framework that will reduce the prostitution market, because that will reduce the harm to the women and children who are dragged into it.

**Sharon Dowey:** I turn to the financial memorandum. Police Scotland has stated that it will need additional funding if the bill becomes law. In a submission commenting on the bill's financial memorandum, it said:

“Capital costs are currently estimated to be around £112,500 and Capacity/Opportunity Costs are estimated to be around £524,200 over the first 3 years of implementation.”

It went on to describe those as a “conservative estimate”. Do you agree that the policing costs are likely to be higher than those set out in the financial memorandum?

**Ash Regan:** We set out in the financial memorandum the costs to the police, as we were obliged to do. The financial memorandum went to the Finance and Public Administration Committee and was passed back, with no further questions asked, because the committee was entirely happy with what is in it. Maren Schroeder can explain the difference between what we set out and what the police have subsequently raised with us.

**Maren Schroeder (Office of Ash Regan MSP):** The police did not dispute our estimated figures for operational costs, which are for enforcement actions and preparing files for court. Before the bill was published, they said that only after it was published could they do a scoping exercise on how much it might cost to prepare to implement the bill—those are the costs that you just mentioned. There are costs that would be split over three years and one-off costs that would not be repeated afterwards. They did not dispute the costs of enforcing the offence.

**Sharon Dowey:** The Scottish Government has stated that, to calculate the potential costs associated with the statutory right to support, there needs to be more clarity on what support would be provided. Do you accept that?

**Ash Regan:** It would be up to the Government to decide how it would design and implement that. I have suggested, based on engagement with stakeholders in Scotland, that the cost for support would be about £1 million a year. I suggest to the committee that it would be a case of spend to save: if you spend the money, you will save further money in justice, health, social work and so on over time. We have international examples, too. Ireland spends €1.9 million a year on its support services, which suggests that there are comparable international examples that converge on that amount of money.

It is important that we address the fact that very few support workers are working specifically on the challenges that prostituted women have and are able to work effectively with them. I suggest that it is very important that, in Scotland, we move away from the current fragmented approach to a consistent national picture of support.

The costs are set out in the financial memorandum, but the bill, as primary legislation, is not the appropriate place for the details of a delivery model to be set out. The right thing will be

for the Government to set that out in regulations, and the bill gives it the opportunity to do that.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** I thank the witnesses for their evidence so far. Quite a few of the issues that I was going to raise have already been covered, but I want to raise some of the concerns that we have heard from people who are currently involved in the sex trade. Sharon Dowey explored with you, and you brought up in your opening remarks, the issue about choice—people who choose to do it—and necessity. Does the bill take that into account? From the evidence that we have taken, we can almost distinguish between people who choose and make a decision to do it—who say that it is a good move for them—and those who are forced into it. If the bill were passed, what would be the implications for those who make that choice?

**Ash Regan:** We have a pyramid that we can share with the committee—Maren Schroeder or Anna Macleod will find it for me in a minute, and I can show it to you—which shows, basically, the distribution of those women.

I keep saying “women”, and I hope that the committee will forgive me for doing so. I acknowledge that there are men and boys who are involved in prostitution, but women and girls account for 96 per cent of the people who are exploited in prostitution, so I use “women” as shorthand.

10:15

As I said, we have a pyramid that I can share with the committee. It covers some of the figures that I have set out already. The 2 per cent at the top of the pyramid are the sexually exploited elite. I think that the people in that 2 per cent would say that they made a choice to go into prostitution, and it is their choice to do that. Next is the 38 per cent. We start to see the choices and agency of the people in that group reducing quite dramatically. They are forced into prostitution by things such as inequality, poverty, racism, sexism and lack of opportunities. Next is the 60 per cent—the majority, obviously. There is a high number in that group, and they are enslaved. They are there against their will; they have not made the choice to go into prostitution. Sex buyers quite often report on punters sites that they suspected that somebody was trafficked but that they did not do anything about it and carried on with the transaction anyway.

I want to ensure that the committee understands that, of the women who end up in prostitution in Scotland, about a third have come through our care system. We really need to do better for girls who have been in care. The committee will

understand the situation better now, due to the public focus on the grooming gangs scandal. That is an extremely common model for forcing girls into prostitution. Girls who are 13 or 14 years old and have been through the care system are groomed into prostitution by older men.

In this study, a quarter to one third of the women and girls were sexually abused as children, or entered prostitution under the age of 18, so we can assume that they did not make a choice to be there. Trauma, addiction and mental health problems are the norm. About 80 per cent of them reported mental health issues, and a half to four fifths had substance abuse problems. Homelessness and poverty are major drivers for entering prostitution, which is why I am suggesting that our support model would include advocacy to mainstream services, because that is a very good model for providing support. Fifty per cent of the women grew up in poverty.

The figure for trafficking is very significant. Unfortunately, I believe that our figures on trafficking are not accurate. As the committee will probably understand, because most of this takes place indoors, we do not have a good understanding of the true nature and scale of sex trafficking in Scotland. In this study, the figure for such victims was between 36 and 39 per cent, but I suggest that the numbers are much higher than that. I had a conversation with the UK's Independent Anti-Slavery Commissioner a couple of weeks ago, and she agreed with me—she thinks that those numbers are just the tip of the iceberg.

I suggest to the committee that these women and girls are worth more than a life in prostitution and what that will do to them. It is important that we change the law as a matter of urgency.

**Fulton MacGregor:** We also heard that people who are currently involved often feel that services—whether that be police, social work or health services—treat them pretty badly. They almost feel subhuman at times. From our evidence, there is a fear, as other members have expressed, that that situation would become worse if the bill was passed. What are your thoughts on that? Is there any evidence from other countries that would either back that up or disprove it?

**Ash Regan:** If we introduce the model that I am suggesting and we have joined-up trauma-informed advocacy into mainstream services, as well as specialist services for people who are in prostitution, I imagine that things will get much better. In their evidence to the committee, the Crown Office and the police said that support is an important part of the issue. If the police are using a policing model in which they do welfare checks, they need to be able to signpost women to

adequate support where they can feel that they are getting help.

You are quite right to mention that, quite often, women who are involved in prostitution have difficulty in engaging with mainstream services because of fears about what might happen to them in relation to accommodation and what might happen to their children if they disclose that they are in prostitution. Often, they do not want to make such a disclosure. That is why it is important that we spend more money on support services. A large part of that involves advocacy for women who are in prostitution so that they get the housing, financial support and so on to which they are entitled but which they might be afraid to access. We need to make sure that people get the support to which they are entitled. Often, for the reasons that Mr MacGregor set out, that does not happen.

**Fulton MacGregor:** You heard the minister say last week that the Government is generally supportive of the general aims of the bill and what you are trying to achieve, but that it feels that this is a big and complex issue, with various different moving parts. What do you think of the notion that your bill is perhaps not the right place to do this just now but that a bigger piece of work needs to be done in the next parliamentary session to marry up all the different strands? Do you have a thought on that?

**Ash Regan:** I do have a thought on that, because I used to be the minister in that portfolio and, when I was in Government, this very bill was on the slate to be a Government bill. It should be a Government bill. Because I am attempting to legislate against organised crime, pimps and traffickers, it might be more appropriate for the Government to take the issue forward rather than an individual member, but we are where we are.

I have been working on this issue for a very long time and I just cannot get the stories of what has happened to some of those women at the hands of sex buyers out of my mind. I do not think that, as a society, we should be looking away from that any longer.

I have been in the Parliament for almost 10 years now and we spend a lot of time talking about how we are very serious about combating violence against women. I do not believe that the individual members of the Parliament can look at themselves in the mirror and say that we are serious about combating violence against women if we do not address this issue. It is violence against women and we must combat it. Parliament should have done it earlier. The Parliament has been going for 25 years and this is exactly the type of legislation that it should be looking at and implementing. It is a very small change in the law, but it will have an extremely large impact.

**Rona Mackay:** My questions follow on from Fulton MacGregor's line of questioning. As we know, the bill is not a Government bill and the Government has said that significant amendments would need to be made to it. Do you have any indication of what those amendments might be? Can you outline those and anything on which you might be prepared to compromise?

**Ash Regan:** Absolutely. I am pleased with the stage 1 scrutiny, because it has brought to the surface issues that we had not thought about. This is the first time that I have introduced a bill by myself, without the support of a Government team behind me, and it is a very different experience. However much research we do and however much work we put into it, it is always good to have other people look over the bill and perhaps suggest ways of improving it.

A number of issues have come up and we have touched on most of them already. One improvement would be to remove automatic quashing from the bill, as it was one of the minister's concerns, and move to the more appropriate model to achieve the same policy intent, which is an automatic pardon and voluntary disregard. I put on the record today that I intend to lodge stage 2 amendments to do that.

The Law Society has also helpfully suggested that we might change the definition of a sex act because it thought that the definition was too widely drawn and, as the Crown Office has also pointed out, it might make it more difficult to get convictions if it is that widely drawn. I have taken that on board and I intend to lodge an amendment at stage 2 that will change the definition of a sex act. It will be explicit, but it will be the way that sex acts are described in other legislation, so it will be familiar to MSPs and our justice agencies. It will make the law clearer, more understandable and, I hope, more enforceable.

Those are the two main issues that I have thought of. I have also taken on board a couple of small issues about sentencing that have been raised and I intend to lodge amendments to clear those up, but they will be more technical amendments.

**Rona Mackay:** We have heard very polarised evidence. Should the committee have taken more evidence? Would you have liked more evidence from people with lived experience?

**Ash Regan:** My understanding is that the committee has taken evidence from people with lived experience, including a group of people who are in prostitution, and I think that there was also engagement with a group called Scotland for Decrim, which has given some further information.

I understand that the committee is finding it a little bit challenging to sift through conflicting

viewpoints on the main part of the bill, which is about criminalising the buyer, but the evidence that has been given to the committee is compelling. It comes down to the basic fact that if we believe that prostitution is violence against women, we have to legislate to show that we do not believe that it is right and we have to create a new offence and be able to arrest, charge and convict people who commit that type of violence against women and girls.

The bill fits into the continuum of the increase in violence against women and girls. In fact, crime figures that came out this week show that crimes in prostitution have gone up by 33 per cent. I know that the member understands that we are looking at a culture of escalating violence against women and girls and my contention is that the bill is very much rooted in that. It addresses some of the same people who are committing other types of offence against women and girls. It is a very good place to start sending a serious message to Scotland that we value our women and girls, that trafficking is not acceptable, that any form of violence against women is not acceptable, and that, under the Government's definition, prostitution is violence against women.

**Rona Mackay:** You are absolutely right that we all agree that violence against women and girls is never acceptable and we have to try to eradicate it.

My final questions just require brief answers from you. Do you think that, as it stands, the bill is enforceable? Does it do enough to reflect the differing nature of sex work?

**Ash Regan:** As I said earlier, the bill addresses in-person prostitution only, but it is a good place to start. I will probably not be here in the next parliamentary session, so if we pass the bill into law, which I hope we will, it will be up to the new parliamentarians to continue with the work and look at other ways of working against violence against women and girls in the area of commercial sexual exploitation. I am starting here because it is where we see the greatest amount of harm to women in prostitution and we have the powers to do something about it, which is also important.

I think that the proposed legislation is enforceable. That has been echoed back to me by our justice partners. However, I accept that, if we pass the bill into law, we as a country might have to go on an iterative journey on enforcement, as other countries have done.

**Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con):** Ash Regan, you must have been pleased that the minister supported the general principles of the bill on the criminalisation of purchasing sex. However, when I read the *Official Report* of last week's meeting, I saw that

the minister also went on to make significant excuses, let us call them, about why she would not go on with the bill, which were about time, and how the police would deal with the offence operationally. She brought up the introduction of operation begonia, the violence against women strategy and the equally safe strategy. She brought up the fact that the Government is tackling societal issues such as poverty and addiction.

As you have said, the minister had a bill ready on paper and you had it ready on paper when you were a minister, so why did the Government not really commit to making women safe and work with you on the bill within the timeframe that you have?

**Ash Regan:** The timing is very tight, but—as I have said before—the bill is so important that I hope the Parliament will come together on it. The committee is playing its part. I am doing my best, and I hope that the Government will help me with that. We are talking about women's lives. I want to get us to a position where we are like Sweden and where we do not see 12 women in prostitution murdered in Glasgow within a certain time period—where we do not see any more women in prostitution in Scotland being murdered—because we have changed the law.

I am therefore pleased that the Government has put on the record that it supports the principles of the bill and I am happy to work with the Government. As Ms Mackay said in her question, the Government has issues with the bill and I intend to lodge amendments to deal with the issues that have been raised. When the Government sees the amended bill, I hope that it will be able to offer its full support.

**The Convener:** We will have to bring the session to a close now. I thank Ms Regan and colleagues for a helpful evidence session.

We will have a short suspension until 10:35 to allow for a changeover of witnesses.

10:30

*Meeting suspended.*

10:35

*On resuming—*

## **Pre-budget Scrutiny 2026-27**

**The Convener:** Our next item of business is completion of our pre-budget scrutiny. We have one panel of witnesses today and I intend to allow up to 90 minutes for this item. I refer members to papers 3 and 4.

I welcome Angela Constance, Cabinet Secretary for Justice and Home Affairs; and Cat Dalrymple, director of justice, and Don McGillivray, director of safer communities, both from the Scottish Government. I invite the cabinet secretary to make a short opening statement.

**The Cabinet Secretary for Justice and Home Affairs (Angela Constance):** Thank you for the invitation to take part in the committee's pre-budget scrutiny process and for the opportunity to make a few brief opening remarks.

Before we look ahead to 2026-27, I will reflect on the justice budget position that was reached this year. We are investing almost £4.2 billion across the portfolio, which is an additional £194 million in comparison with last year. That recognises the fundamental importance of the justice system in supporting safe, thriving and inclusive communities and its role in supporting the First Minister's priorities. That investment is supporting vital front-line justice services, providing support for victims and witnesses and tackling the underlying drivers of offending.

In looking ahead to next year's budget, we recognise that the current fiscal and economic environment poses considerable challenges to Scotland's public finances and that those are forecast to continue into the future. We expect to hear more about that from the Chancellor of the Exchequer when she announces the United Kingdom budget later today.

I restate my commitment to securing the best possible budget settlement for the justice portfolio, where we have a good track record to build on. Crime, including violent crime, has fallen under this Government, with recorded crime down by 39 per cent since 2006-07, which means that there are now thousands fewer victims every year in Scotland than there were in 2006-07. However, I recognise that the demands on the justice system continue to increase and I know that the committee has heard some stark statistics while taking evidence in recent weeks.

Alongside that, the Scottish Fire and Rescue Service is experiencing a shift in demand due to climate-related incidents, wildfires and a number of emerging risks. The justice organisations are all considering how best to deal with those additional

operational demands in a challenging financial environment. I recognise the need to continue supporting that system to reform and innovate, putting it into a more sustainable position and making it more able to deal with new and increasing demands while continuing to deliver high-quality public services.

As I said, Scotland's justice system has a strong track record of reform and innovation, including reform of the police and fire services. I will continue to support our public services and will invest across the justice system in 2026-27 to prevent crime, reduce reoffending and create safer communities with fewer victims of crime. I will continue focusing on ensuring that victims and witnesses are at the heart of our justice system.

I will, of course, work on delivering the justice vision, the First Minister's priorities and the priorities that are set out in the programme for government, including supporting our front-line organisations to keep people safe. We will continue investing in the prison estate, progressing the next phase of HMP Glasgow and with HMP Highland on track for completion next year.

We will invest in community justice to continue to expand the use of community interventions, and we will continue to invest in third sector organisations to support and bolster social work services to work with other partners. We will support initiatives that target prevention—the key there is to reduce demand. As I said earlier, we will continue to support victims and witnesses of crime.

I will continue to work with our public bodies and my Cabinet colleagues to ensure that we maximise the benefits of our investment, while also supporting on-going reforms and transformation to deliver a more effective and efficient justice system.

I am happy to answer questions.

**The Convener:** I will ask my usual opening question to get us under way. According to the evidence that we have received so far in our budget scrutiny, across the main justice partners, a further almost £270 million in resource funding and an extra £134 million in capital are being requested as the bare minimum for 2026-27, in order to prevent some of the consequences that we have heard from different bodies, such as Police Scotland, the Scottish Prison Service and the Scottish Fire and Rescue Service. I am interested in your views on those requests for additional budget. How confident are you of securing that amount of extra budget for the forthcoming year across the justice sector?

**Angela Constance:** I appreciate that it is always difficult for me to give precise answers

when we are still waiting on the UK budget. The Scottish budget is to follow on 13 January. However, I can assure the committee that I will, at every twist and turn, advocate for the best possible deal for the justice portfolio. As I have intimated, the economic and financial situation remains exceptionally challenging. Unless things change today, we know from previous information from the UK Government that the resource budget overall for Government is set to increase by 0.5 per cent in real terms. However, once we strip out some demand-led obligations, that will equate to a real-terms cut.

Capital remains particularly challenging. The information that is currently available—as I said, it may all change—is that capital will be lowered in nominal terms in 2026-27 compared to 2025-26, which could amount to a 2.5 per cent real-terms cut. I cannot deny that we are in a challenging position. I very much hope that the overall numbers that are flowing to the Scottish Government as a whole are an improvement, but we will find out today. The Scottish Government's position is that we need to prioritise public services, because that is in the interests of the people we serve and our communities. It is also about supporting the future and continuing that innovation journey.

On more justice-related specifics, we will continue to work with all our partners to fully understand their needs, particularly around changing demands. One example would be the number of High Court solemn cases, which has increased and is set to continue to increase. Although overall recorded crime has fallen, we see a change in the nature of crime. One example of that is cyber-related incidents.

We want to scrutinise the information, as the committee has been doing, and there will be hard choices to make. I suspect that I will be unable to give everyone everything that they are asking for, and some of the challenges are not helped by employer national insurance contributions, to give one example.

10:45

Nonetheless, in past years, we have managed to provide increases in the resource and capital budgets. For example, for the Scottish Police Authority, the resource budget increased by 4 per cent and capital by 16 per cent; and, for the Scottish Courts and Tribunals Service, the resource budget increased by 10 per cent and capital by 11 per cent. There are other such examples across the piece, so we will always do our very best.

**The Convener:** That sets the tone for my next question, which relates to the impact of legislation.

The committee has scrutinised a range of legislation, including two quite significant bills: the Victims, Witnesses, and Justice Reform (Scotland) Bill and the Bail and Release from Custody (Scotland) Bill, which are both now acts. Do you have an update on the impact of those new pieces of legislation, from a budget perspective? Is the Government in a position to implement all the provisions in those acts, or will regard need to be given to costs, and will the roll-out be cost dependent?

**Angela Constance:** I can talk about the here and now in relation to what I have outlined to the committee previously about the phased implementation of the Victims, Witnesses, and Justice Reform (Scotland) Act 2025, which was a massive piece of legislation with structural and significant reforms. The implementation will start next year. I have previously shared with the committee our overall implementation plan. You will be aware that much of the Bail and Release from Custody (Scotland) 2023—parts 1 and 2—has already been implemented, and the focus next year will be the work that is required on throughcare standards, which requires public engagement. The plans for implementation have not changed. Implementation of legislation is an important feature of our budget planning, as it is for our partners. Whether there are any changes, positive or negative, will depend on the overall budget allocation to justice.

**Liam Kerr:** Good morning. The police told us that they need £33.7 million on top of the £104.9 million uplift. Part of the £33.7 million would go towards funding an additional 600 community officers. The committee heard about the role that those officers would play in prevention and proactive policing. There was also a suggestion that that would help to keep the prison population down. Given the need to reduce the prison population, which the cabinet secretary and I have discussed many times, as well as the significant challenges with things such as antisocial behaviour and retail crime, does the cabinet secretary acknowledge that, if the budget provides a lesser award than £33.7 million for community officers and others, the police's ability to do community policing will be compromised and the outcomes will be worse?

**Angela Constance:** My starting point is that, at a fundamental level, we value very much the contribution of community policing. Police Scotland currently balances the need for specialism and expertise in tackling particular forms of crime, whether that is sexual offences, cybercrime or emerging threats to communities and our country—I am thinking particularly about online harms. However, Police Scotland also has a role and often talks about a preventive policing model, and there is absolutely a value in having

community police officers, particularly in crime prevention.

I hope that you will forgive me for quoting an example from my constituency, where the Police Scotland local commander, in collaboration with a voluntary sector organisation called Aid & Abet and local authority partners, has implemented a very successful programme called supporting opportunities for life, which is targeted at young people in the 10-to-16 age group around offending behaviour and antisocial behaviour. The initial results of the programme are deeply encouraging. There are partnership models and initiatives that are very much focused on prevention, and I am sure that it is not only my constituency that is benefiting from those.

On additionality, I note that Police Scotland has made a significant ask for additional resource to cover pay, but we are pleased to have secured a very positive two-year pay deal. Some 87 per cent of Police Scotland's budget goes on pay, so great care must be taken with regard to the sustainability of the service and any suggestion of increasing the numbers. However, we are looking at Police Scotland's ask in great detail.

The chief constable has been very successful in moving police officers from mid-office roles to the front line. I can double-check the figure, but I recall that that has enabled the equivalent of 500 more officers to go to the front line. I cannot give a commitment here and now, because I do not know my allocation or what the overall Scottish Government's allocation is, but we are looking very seriously at Police Scotland's ask. I remind colleagues that the police budget has increased every year since 2016-17, and that has been in order to stabilise police officer numbers.

**Liam Kerr:** On the capital side of the police budget, at the start of the meeting, the cabinet secretary rightly talked about the good work that Police Scotland and the Scottish Fire and Rescue Service have done on modernisation and reform. The chief constable told us that Police Scotland is

"the only public sector organisation in Scotland, maybe with the exception of the Scottish Fire and Rescue Service, that has seen a reduction in resources since its inception."—[*Official Report, Criminal Justice Committee*, 5 November 2025; c 32.]

Police Scotland says that the capital budget needs to rise to £93.9 million, which it specifically says is for fleet, systems and policing equipment. If the budget does not meet the figure of £93.9 million, is the cabinet secretary comfortable that we would be asking our police to continue that good work without the capital to do it and that the good modernisation and efficiencies that the cabinet secretary rightly referenced might grind to a halt?

**Angela Constance:** Mr Kerr is quite correct to point to the fact that Police Scotland and the Scottish Fire and Rescue Service have been exemplars with regard to reform. The success of their reforms presents a challenge to other parts of the public sector. The reforms made very significant savings, but those are not savings that now sit in a bank account somewhere; they are savings in terms of resource that did not have to be spent.

The investment in Police Scotland since its reform in 2013 is in excess of £14.5 billion. I am not giving away any state secrets here but, for some time, capital budgets have been very challenged. We have had more than a decade of austerity. The anticipation, based on previous information from the UK Government, is that the overall capital budget for the Scottish Government will reduce in real terms by 2.5 per cent. That will have implications across the board. Nonetheless, the police capital budget for this financial year was increased to £70 million. Police Scotland should be commended for its estates master plan, which shows a clear road to reform and modernisation, as well as its maintenance aspirations. We know that, when resource is available, Police Scotland will always put that capital resource to good use, because it has clear plans, as set out in its estates master plan.

We have tried to help as much as possible with multiyear planning. For the first time in a long time, we have been able to progress indicative plans for three years' resource and four years' capital. When the Scottish Government budget is published, it is published alongside the Scottish spending review, the draft infrastructure delivery plan and the draft infrastructure strategy. All of that is about giving as much certainty as we can—we do not have all the cards, powers or control—and supporting coherence, not just across justice but across the public sector.

**Liam Kerr:** Staying on policing, I have a specific question about retail crime. Shoplifting is up 15 per cent in the past year, and it is 129 per cent higher than in 2021. The Scottish Government has provided funding for the retail crime task force, which many have welcomed and have said is an important intervention. Is the cabinet secretary making the case for continuing funding for the retail crime task force beyond March 2026? Can she give us any indication of the prospects of success?

**Angela Constance:** I am making a number of cases on a number of issues, not just with respect to policing but across the needs of the justice portfolio. I am heartened that we all seem to agree that the targeted resource for retail crime has been effective. There is some very encouraging data from the retail crime task force; Assistant Chief

Constable Mairs has been doing a great job leading that work, which has been valued and appreciated by retailers. I spoke earlier about the changing nature of crime. Crimes such as housebreaking have reduced dramatically over the years, but retail crime, including shoplifting, has continued to rise. My concern about shoplifting is that it can be associated with more organised elements of crime. It certainly has an impact on our economy and is of great concern to retailers, as well as front-line shop workers.

11:00

**Sharon Dowey:** I will follow on from Liam Kerr's line of questioning. Police Scotland has a clear budget ask for 2026-27. We are hearing reports of increasing wait times for 101 calls, a lack of response to 999 calls, a lack of road traffic officers, and of officers spending a full shift taking those in custody to various police stations due to some stations or custody suites being closed.

Do you believe that the figures that Police Scotland has asked for will be sufficient to meet the increasing pressure and complexity of work that the police are dealing with?

**Angela Constance:** Just as the committee scrutinises the Government and justice partners, I have a role in scrutinising all the asks, whether those are made by Police Scotland or by other justice partners.

As I said, the financial situation remains very challenging. Although I will be held to account for the choices made within the justice portfolio budget, I hope that Ms Dowey would concede that that is not all within my hands and is part of the overall Scottish Government budget cake. I have been deeply disappointed that the UK Government, as well as putting an onerous burden on the whole public sector, including policing, by taxing jobs via employer national insurance contributions, has not stumped up for the cost—to the tune of £24 million—of the VIP visits to Scotland over the summer.

I say that to add to the picture of the overall resource and capital allocations to the Scottish Government; not all of that is in my gift. I say candidly to the committee that there will be some hard choices. I deeply respect the professionalism of Police Scotland and of the chief constable in particular. They work exceptionally hard to innovate and to squeeze out any savings that they can make because, at the end of the day, we are all focusing on bolstering front-line policing as much as we can.

**Sharon Dowey:** Since its inception, Police Scotland has saved much more than was anticipated. I hope that some of that money might come back. Recent press stories have said that

the Scottish Government civil service bill has gone up substantially, so, when you are having conversations with your Cabinet colleagues, perhaps you could look at saving money there and allocating it to your portfolio. That would be much appreciated.

**Angela Constance:** It is fair to say, Ms Dowey, that the size and composition of the public sector workforce as a whole is under scrutiny. Work on that is being led by the Cabinet Secretary for Finance and Local Government and her junior minister, Mr McKee.

I reassure the committee that police officers, firefighters, justice social workers and prison officers are all absolutely crucial to public protection because of their front-line roles and I assure members that there is a different consideration for those positions.

**Sharon Dowey:** I have a final question. The committee heard from Police Scotland that every £25 million less in funding—than has been asked for—will result in the loss of 500 front-line officers. Do you see that as being a real issue for the police in 2026-27?

**Angela Constance:** My focus has been on stabilising the numbers of police officers. That has been a big focus of my portfolio budget negotiations in previous years. Police officer numbers have stabilised, and we continue to have more police officers per head of population than other parts of the UK. That is in the context of our nearest neighbours and comparable jurisdictions. I want to get the best possible deal for the police, for front-line officers and for justice as a whole.

**Sharon Dowey:** Comparing Scotland with the rest of the UK is quite hard, because Scotland has a lot of rural areas.

**Angela Constance:** I accept that up to a point. There are some large rural parts of England as well, and we also have some densely populated urban areas. We have a ratio of 30 full-time equivalent officers per 10,000 population; in England and Wales, the level is 24, which I think is a significant difference. I understand that our justice partners—and, indeed, politicians—will always argue for more, and I am very respectful of that.

**Jamie Hepburn:** Cabinet secretary, you mentioned the impact of the UK Government's increase to employer national insurance contributions. I have been told by Police Scotland that that has cost it £25 million this year, which is the equivalent of 500 officers. The Scottish Prison Service says that it has a bill of £5 million. We are still awaiting information from the Scottish Courts and Tribunals Service and from the Crown Office and Procurator Fiscal Service, but I can only imagine that the sums involved there are also

fairly substantial. Do you have any figure for the overall cost or impact of that increase for the justice portfolio?

**Angela Constance:** By way of action taken by the Scottish Government in relation to the autumn budget revision, as members may have seen, we provided funding of £23.9 million to the justice portfolio. The purpose of that was to fund 60 per cent of the additional employer national insurance contributions. For the Scottish Police Authority, that came to a little over £15 million; for the Scottish Fire and Rescue Service, it was £3.4 million; for the Scottish Prison Service, it was £3.3 million; for the Courts and Tribunals Service, it was £1.2 million; for the judiciary, it was £500,000; and for other, smaller justice and home affairs public bodies, it was £300,000. That came to a total of around £24 million.

That is 60 per cent of the additional cost, leaving a shortfall of £16 million, which our justice public bodies had to find within the resource that was already allocated to them. I am sure that Mr Hepburn is familiar with the overall cost of £700 million to public services in Scotland, as a result of what I would term a tax on jobs. There is still a shortfall to Scottish public services of £400 million, and there will be pain associated with that.

**Jamie Hepburn:** When you say shortfall, you mean the difference between—

**Angela Constance:** Not met.

**Jamie Hepburn:** You mean the difference between what it costs the public sector and what was provided by the UK Government.

**Angela Constance:** Yes.

**Jamie Hepburn:** Did you say that it was a £400 million difference?

**Angela Constance:** Yes—public services in Scotland still face a £400 million shortfall.

**Jamie Hepburn:** We can broadly apply that across the justice portfolio.

**Angela Constance:** Yes.

**Jamie Hepburn:** That will have a significant impact on what would otherwise be diverted to the front line.

**Angela Constance:** Yes. For the justice portfolio, it would be £16 million. Our mitigation—as far as we can go, at the 60 per cent threshold—will be baselined into budgets.

**Jamie Hepburn:** This is probably an imponderable point, but you can correct me if I am wrong. We will have the UK budget today, and I am wondering whether there has been any indication from the UK Government on this. I suspect that the answer is no, because this would

probably have been trailed, and the UK Government is not going to change its position on employer national insurance contributions. However, perhaps more fundamentally, it may change its position on the amount that it will provide to the Scottish Government to cover public services—those in the justice portfolio in this instance.

**Angela Constance:** I am not in a position to offer any foresight on the UK Government's budget. I just hope that the Chancellor of the Exchequer does not short-change Scotland or treat us as an afterthought.

The Government as a whole, and the Cabinet Secretary for Finance and Local Government and the First Minister in particular, have been clear that the priorities for the UK budget today should be about growing our economy and investing in public services. Obviously, employer national insurance contributions are a drag on that.

The other priority is the cost of living. We all know about the pain that energy bills cause for households, but the cost of living and the cost of energy also have an impact on public services.

**Jamie Hepburn:** Thank you. That is all from me just now.

**Katy Clark:** My question is about fire services. I hope that the cabinet secretary is making strong representations on that aspect of the budget. The Scottish Fire and Rescue Service has advised that its total capital requirement to 2030-31 is £354 million and that, if its annual budget were to remain at £47 million over that period, there would be a gap of £119 million. The cabinet secretary will be well aware of the poor condition of much of the fire service's estate and, indeed, the inadequate decontamination facilities that are available for many firefighters. Therefore, is it acceptable for there to be such a shortfall?

**Angela Constance:** It is not acceptable that capital has been squeezed and underfunded by the UK Government for many years—that has been the case for more than a decade now. I accept that there are particular challenges that are unique to the Scottish Fire and Rescue Service. I am well aware of the challenges with its estate and its fire stations and the work that it is doing on decontamination facilities. There has also been an issue with reinforced autoclaved aerated concrete in 14 of the fire stations.

We all want to see an improvement in those facilities, not least to provide dignity at work for the Scottish Fire and Rescue Service's employees and front-line firefighters. Last year, we increased the service's capital budget by 9 per cent. As I said, I want to do my best by all our justice partners. Certainly, the increase to capital for the fire service was not insignificant. Like the police

service, it has a good longer-term plan: it knows what it wants to do and what it will need to do. The bottom line is that the budget will depend on the allocations that come to the justice portfolio. I cannot be specific about how much the Scottish Fire and Rescue Service's capital budget will increase by.

**Katy Clark:** I would not expect the cabinet secretary to be specific about that today. We have already heard reference to the police and fire services getting a less good share of the cake in the past than other parts of the sector have done. I am sure that she will accept that in recent years the fire service has made considerable savings, which I hope will be taken into account.

I also want to ask about funding for alternatives to custody and for justice social work—the cabinet secretary will be familiar with those areas. Written submissions from local authorities, the Convention of Scottish Local Authorities and Social Work Scotland have highlighted the impact of the increased complexity of their case loads and the danger that they are having to do without any related increases in their funding.

The cabinet secretary will also be well aware of the restrictions on funding for local government, which has a key role in the delivery of alternatives to custody. I know that she agrees that we need to do something about the rising prison population. Will she say how we will allocate more funding to ensure that justice social work and alternatives to custody are properly funded so that we can provide them as realistic options?

**Angela Constance:** There are several strands to that question. I know that Ms Clark takes a significant interest in community justice and in justice social work. I always appreciate it when people are prepared to champion the work of justice social work staff as much as that of registered social workers. Here I should probably make a declaration, given that in my past life I was a social worker myself.

I accept that there are increasing case loads and complexity. That trend is mirrored in the size of the prison population, as well as in the work that is expected of justice social work staff. Ms Clark will be familiar with the fact that, over the past two years, I have increased justice social work funding by £25 million to £159 million. The useful thing to bear in mind is that none of that £159 million is spent on staff salaries, which come instead from the overall local government settlement. Therefore, the local government settlement has a bearing here and will be important for me, as justice secretary, to consider, just as it will be for other cabinet secretaries.

11:15

In the longer term there has been growth in the justice social work workforce. Since 2015, the number of staff there has increased by 18.6 per cent, which is more than double the overall increase in the general social work workforce. However, I am concerned that, over the past year, the number of justice social work staff has decreased a little, by around 3 to 3.5 per cent. One of the reasons why I was an advocate for establishing a national social work agency is that, after the police, social work—not only justice social work, but social work as a whole—is the next biggest public protection workforce in Scotland. In the whole of the social work profession there have been recruitment and retention challenges, particularly for newly qualified staff. The work of the national social work agency will be underpinned by a partnership agreement. Considerable work has been done on that, and there is now a memorandum of understanding with COSLA and our local government partners, who will, of course, be the employers in that respect.

Between the justice portfolio and the education portfolio, there have been endeavours to provide education packages, which offer support for social work students and more innovation around pathways into the profession. For example, starting in this academic year, there will be a graduate apprenticeship in social work. That is a great way to upskill staff in either general social work or justice social work to become registered social workers. A lot of effort is being made to bolster that. On the one hand, I want more resource to be put into justice social work, particularly around broadening the range of electronic monitoring. On the other hand, it is not just about the top line; any growth in investment needs to be matched by a growth in staff.

**Katy Clark:** We might have a time problem, but perhaps I could ask a follow-up question on alternatives to custody and the role of local government.

**The Convener:** Sure.

**Katy Clark:** What is available seems to vary across council areas. I fully understand the pressures that local government is under, but what is the cabinet secretary's view on the availability of alternatives to custody? We have heard from sheriffs that sometimes they simply do not have faith in such alternatives. We have evidence—for example, from responses to freedom of information requests—of community service not happening. The same is true of electronic monitoring, even when it has been ordered by the court. Presumably that is because of resource problems. What is the cabinet secretary's view on the resource implications of ensuring that robust

alternatives to custody are available throughout Scotland?

**Angela Constance:** The number of people and the resource are increasing. My expectation is that, when a court orders something, it will occur.

Ms Clark makes an important point about confidence in the availability of community disposals, and indeed that is why I have had a particular focus on community justice. However, part of the work of the sentencing and penal policy commission is to examine not only how custody operates but how community disposals are used. In short, much more work needs to be done.

**Katy Clark:** Perhaps we can look at that when we get the report.

**The Convener:** We move to questions from Rona Mackay.

**Rona Mackay:** Good morning. My question is about the rising prison population and the costs caused by that. Can you confirm that it still costs around £50,000 a year to have someone incarcerated?

**Angela Constance:** Yes. I believe that that figure comes from the Scottish Prison Service's annual report; it is around £52,000.

**Rona Mackay:** How does that compare with the cost of the community justice measures that we have just been discussing, such as home detention curfew?

**Angela Constance:** I cannot recall off the top of my head the average cost of a community payback order, but it is obviously significantly less. I can supply the exact figure in due course if it is available.

We know, from the evidence about what works, that the reconviction rate for people who have completed community payback orders is around 28 per cent, whereas the rate for those who have served sentences of less than a year is around 52 per cent. That is why it is important that we continue working on the availability of community sentencing options and do whatever we can, notwithstanding the effects of local decision making, to increase the availability of those options and to increase confidence in them.

**Rona Mackay:** That is a stark difference.

I will move to a different topic, which is the need to invest in cybersecurity. We know that cyber risks increasingly pose a threat throughout our society, and not just in the criminal justice sector. What work is the Government doing to support the public sector in that area, and what plans are there for further digitisation? The SCTS has been very firm about the need for modernisation. Do you view that as a priority?

**Angela Constance:** Malcolm Graham of the Scottish Courts and Tribunals Service always speaks powerfully on the need for investment in cyber resilience. We also know from Police Scotland's statistics on recorded crimes that there are now around 14,000 cybercrimes each year. That is around double the number from before the Covid pandemic: about 7,700 cybercrimes were recorded in 2019.

Our justice partners have taken various actions. The Scottish Fire and Rescue Service has had a number of internal audits and structural reviews, with a view to strengthening its cyber resilience. More broadly, earlier this year, Police Scotland set up a cyber and fraud unit, which promotes using a preventative policing model so that the service can be more agile and better co-ordinated.

Just a few weeks ago, I launched the update to our cyber resilience framework, which focuses on not only the public sector but the voluntary sector. The update document, which is entitled "The Strategic Framework for a Cyber Resilient Scotland 2025-2030", is available for anyone to consult and covers issues such as encouraging people in leadership to position cyber risk assessment and assurance as key priorities.

Resilience needs to be embedded into governance arrangements. That means supporting boards and leadership in their training, including: hammering home that being ready for an incident is imperative; that various tools exist and can be used; that efforts must be made to secure legacy systems; and that when new systems are introduced they must, by default, be secure in their design. Organisations should conduct practice runs for what to do in the event of attacks such as those we have seen happen in public services such as health boards and local authorities.

Another effort on the part of the Scottish Government has been to establish the Scottish cyber co-ordination centre, the aims of which are to improve incident response, recovery and intelligence sharing and to get a much better understanding of cybersecurity maturity, particularly in the public sector. The same applies to the voluntary sector.

**Rona Mackay:** The fact that awareness and preparedness are as important as investment is really interesting. Do you recognise that greater digitisation would make for a much more efficient justice system in the long run?

**Angela Constance:** I do. Colleagues will be familiar with the layering of some of the reforms that have already taken place, such as the fact that the summary case management system sits with the digital evidence sharing capability, the use of body-worn video cameras and the Scottish Courts and Tribunals Service's investment in the

update of the Office of the Public Guardian's systems. It is not cheap—far from it—but we are all making that journey.

**The Convener:** We move to questions from Pauline McNeill.

**Pauline McNeill:** Good morning, cabinet secretary. I confess that I have not previously heard such stark warnings as I have done in the evidence that we have recently heard from the various justice organisations. You will have heard the chief constable say that she will have to reduce police numbers; the Fire and Rescue Service say that it will have to reduce firefighter numbers; and the SCTS say that there will be further court delays if it does not get what it asked for. Alarming, the chief executive of the Scottish Prison Service, Teresa Medhurst, said that if she does not get what she has asked for, she

"will not have enough money to run the organisation".—[*Official Report, Criminal Justice Committee*, 19 November 2025; c 30.]

You must be concerned about the real crisis that will happen in the justice system if the Government falls short of the asks of those organisations.

**Angela Constance:** Ms McNeill is right that some of the evidence has been stark—I do not think that anybody would demur from that. I am certainly not in the business of reducing police officers and firefighter numbers or of closing prisons, for the obvious reason that we have an overpopulated prison estate as it stands.

I want to continue the progress that has been made with the investments that have happened thus far, particularly in reform and innovation. I take very seriously all the representations that have been made to me and to the committee. However, I must temper things with a certain reality. It is unlikely that we will be able to give everybody everything that they have asked for, but that does not mean that we will not be in a position to protect the front line, maintain our focus on supporting victims and continue with our journey of reform and innovation.

**Pauline McNeill:** Liam Kerr has already alluded to this, and we have heard it many times. You have said that the police budget has increased since 2016, but the police will also tell us—and it is recorded fact—that £1 billion was taken, or saved, if you like, from the creation of Police Scotland. Notwithstanding what you have told the committee about other ways to reform through digitisation and getting our police officers on the front line, there is not much more scope for savings. Do you acknowledge the figure that the chief constable has given us? She said that we have lost 900 police officers since the creation of Police Scotland. I wondered why that was.

11:30

**Angela Constance:** Ms McNeill has been around the Parliament longer than I have, and she will remember the journey of police and fire reform. Police officers, the Fire and Rescue Service and Police Scotland are right to point to the savings that that reform has made. There is certainly no duplication within either of those services, so I am very focused on maintaining the front-line numbers, as a minimum. I am not in the business of reducing crucial front-line staff, who are essential to protect the public.

The Scottish police service and the Scottish Fire and Rescue Service are rightly very proud of what they have achieved in their reform programmes, which have assisted with running more sustainable services, notwithstanding the fact that demand on those services is changing, and indeed the fact that the financial climate has changed since the reform in 2013. They rightly challenge other parts of the public sector to look at their reforms and emulate that reform journey.

**Pauline McNeill:** I do remember the centralisation of those services, and I did not think for a minute that we would be sitting here now realising that that has taken £1 billion out of the budget.

In view of all that, is it time to change the funding model? A number of organisations have raised the question of multiyear funding, and we have been told that it was possible, before centralisation, to carry forward funding. I do not know whether that indicates a flaw in the creation of the new organisations. Given the pressures, is it not now time to consider that?

**Angela Constance:** That is part of the rationale for introducing a Scottish spending review that plans resource for three years and capital for four years. We want to give as much certainty as possible to our partners in justice. That needs to be carefully balanced with the risk that spending plans are disrupted due to events that none of us can predict. I do not think that any of us predicted having to stump up £24 million for an international visit over the summer.

I have looked closely at this, particularly in relation to policing and in the conversations that I have had with the chief constable, and the Scottish Government's ability to borrow is extremely limited. That is not something that I agree with, and the Government has continued to—

**Pauline McNeill:** Yes, but the point of my question is that the previous services had flexibility. I understand your point about certainty, but those services had flexibility before the creation of the new organisations. I do not understand why you would not be interested in

building that flexibility back into the funding model, notwithstanding the fact that some of that is not in your control—although some of it is.

**Angela Constance:** On the here and now, the borrowing limits on the Scottish Government, set by the UK Government, are a real constraint. However, what is more specific to justice is the fact that, even were Police Scotland to borrow, that would have to be covered by the justice portfolio, so there is no additionality as a result of borrowing by Police Scotland or other justice partners. We are constrained by the lack of flexibility in our overall—

**Pauline McNeill:** What about carrying reserves forward? That was allowed before, was it not?

**Angela Constance:** I do not know. I will ask.

**Don McGillivray (Scottish Government):** When policing was a local government service, police forces could carry reserves, but the rule tends to be that national bodies cannot carry reserves forward.

**Pauline McNeill:** Looking back, was that an error?

**Don McGillivray:** No, it is simply an artefact of the change from being a local body to being a national body.

**Pauline McNeill:** So, it is a requirement.

**Don McGillivray:** Those are the broader rules for national bodies—

**Pauline McNeill:** Nobody can change that.

**Don McGillivray:** National bodies do not carry reserves.

**Pauline McNeill:** Who can change that—the UK Government or the Scottish Government? I would like an answer on that because your chiefs are saying that, if they do not get what they have asked for—we do not yet know the outcome—they are going to run out of money. Some of the organisations have said that. I would have thought that carrying reserves forward would be an obvious thing to consider—unless you do not have the power to allow that. I understand what you said about borrowing powers, but we had flexibility on reserves previously.

**Angela Constance:** The broader point about reserves is that the money still has to come from somewhere. My observation is that, when health and social care partnerships or local authorities have had substantial reserves, that has not gone down well among politicians or the public more widely, and the Scottish Government is not sitting on reserves.

**Pauline McNeill:** The point that Police Scotland is making is that it put £1 billion back into the

Government's funds, but that, since we created the single force, it is no longer able to carry money over. It gave the money back to you, so maybe it is time for it to keep some to create flexibility, keep officers on the front line and keep the budget healthy. That is the point that is being made; I do not want it to be lost.

**Angela Constance:** I understand the point, but there is not a savings account with money sitting in it. Of course, the figures for the savings that have been made over a number of years are accurate, and that speaks to the fact that one of the outcomes of the reforms is the financial sustainability of services as well as improved outcomes. It is important that we remember the improved outcomes and deliverables from Police Scotland and the Scottish Fire and Rescue Service, both of which are exemplars with regard to reform.

**Pauline McNeill:** In its submission, the Scottish Courts and Tribunals Service said that the renewal money—I think that was the phrase; I cannot find it—was not included in the baseline, and it was not sure why that was.

**Angela Constance:** It is the recovery money—the recover, renew and transform programme funds. I understand the arguments, and we are giving due consideration to the request for that budget to be baselined.

**Fulton MacGregor:** Good morning. I think that I have spoken to most committee members already, but I apologise again for having had to move and join the meeting remotely.

Katy Clark started to explore this matter in relation to the Scottish Fire and Rescue Service. You probably saw last week's evidence session, when the SFRS advised the committee that it had made a business case to expand the firefighter role, but that had not been funded by the Scottish Government. I think that there was an agreement that you were keen to look at that. Why was that decision made, and could it be reconsidered, given the persuasive case that the SFRS made for the expansion of the role?

**Angela Constance:** There is a very persuasive case to broaden the role of firefighters. I understand that there is great interest in that from the Fire Brigades Union and the Scottish Fire and Rescue Service. We have been exploring that for some time, and I am particularly interested in it, because it makes sense. The full cost of broadening the role of firefighters is £26 million per year, so it has just been the reality that, in an environment of sometimes difficult choices, we have been unable to resource that. However, I am keen to keep the option on the books and alive. I have asked my officials to explore with the Scottish Fire and Rescue Service whether we

could look at a phased approach, because it would be another step in our innovation and reform journey. We continue to look at that issue.

**The Convener:** On the fiscal flexibility point that Pauline McNeill was exploring, if the cabinet secretary could write with more detail on the current landscape, particularly in relation to reserves and fiscal flexibility options that stakeholders might or might not have, it would be helpful for the committee to understand more about that.

**Angela Constance:** Yes, of course. I hope that I intimated that to Ms McNeill, particularly in relation to reserves; we can set out in more detail the work that we are doing to provide certainty where we can. That is the *raison d'être* of three-year resource budgets and four-year capital budgets, notwithstanding that a lot can change in that time. It is a very interesting area, and we can put on record some of the limitations with regard to additionality. It is not just a case of whether Police Scotland is able to borrow, because the money still needs to be found, and there needs to be cover for that, at which point we get into where the additionality is for public services and investment.

**The Convener:** That is of real interest, given the challenges that we are trying to grapple with.

The next question is about what I feel has been a significant shift in the types of pressures and priorities that Police Scotland in particular is facing compared with in previous years in which we have undertaken budget scrutiny. For example, the chief constable spoke about having to take account of issues such as civil unrest and protests, as well as counter-terrorism work, which we know is a long-standing responsibility—although I think this is the first time that it has been specifically referenced in a budget submission—and major events, including presidential visits at relatively short notice. There is a really shifting picture of priorities that Police Scotland and other services are dealing with.

Will you set out how you plan to incorporate in your forthcoming budget consideration what feel like quite new and emerging priorities across the justice sector?

11:45

**Angela Constance:** In broad terms, I agree with that narrative. We live in a country where people have the right to protest. I, for one, will always protect people's right to peaceful protest. We are seeing more protests now. Every weekend, there are several protests and counter-protests, not just in all our major cities but in some of our towns and smaller conurbations. Police Scotland and I, as justice secretary, always have a heightened sensitivity and acuity when it comes to

broadier threats to communities and, indeed, to our country.

You mentioned the work on counter-terrorism. As I pointed out earlier, cyberoffending is increasing, coupled with online harm, whether that is people seeking to exploit the vulnerable or using online activity as a vehicle for other offending behaviour. Police Scotland's activity over the summer months around serious organised crime has been well documented and has resulted in around 60 individuals being in custody. Of course, there are also major events.

All of that points to a change that has been coming, particularly around online cyberharm. We live in an increasingly globalised world, and criminals and their activities do not just stop at the border. The co-operation between Police Scotland, the National Crime Agency and police forces across the UK is important, as is the work with our European partners. I have recently been engaged in that, for example with the European Union commissioner for justice. Despite Brexit, which has made our co-operation with European partners more complex, there is still a commitment, and a need that is mutually recognised. We are living in a more uncertain world, and events, wars and disputes across the world can play out domestically, too. There is a different environment; I am focused on that as part of our deliberations in and around the budget.

**The Convener:** It is interesting to hear your comments about collaboration with European partners. The committee has explored that issue and taken an interest in whether, with the impact of Brexit, justice co-operation within law enforcement remains as robust as it needs to be.

I come back to Pauline McNeill's line of questioning on prisons. We heard from the chief executive of the Scottish Prison Service that, with regard to HMP Highland and HMP Glasgow, the SPS will require an increased capital budget of £462 million in 2026-27. That is her overall capital budget, with the bulk going to the construction of HMP Highland and HMP Glasgow. Will the cabinet secretary confirm that the construction costs of HMP Glasgow, given the stage that it is currently at, will be met regardless of whether costs increase beyond the current capital budget that the Scottish Prison Service has asked for?

**Angela Constance:** A contract has been signed, which locks in the costs and provides a legal commitment to build the new HMP Glasgow and, of course, to pay for it. Overall, the cost is the best part of £1 billion. There is a profile of the capital cost—increased investment will be required in the forthcoming year in comparison with this year. There is a profile of spend, although that does not mean that it will not change from one year to another—that would not be unusual with

large-scale construction projects. However, we are financially and legally committed to the project. I am sure that I do not need to tell anybody on the committee that there is a necessity to replace HMP Barlinnie with HMP Glasgow.

**The Convener:** Thank you—that is a helpful clarification.

My final question relates to climate change. All committees have been exploring that in scrutinising efforts and arrangements to reduce carbon emissions across their portfolios. In the justice sector, the issue is highly relevant to prisons, policing and the Scottish Fire and Rescue Service.

Will you outline the work that the Government is undertaking to model and deliver the resource that is needed to allow justice stakeholders to deliver on climate targets for the rest of the decade? What sort of achievable targets does the Government want to set specifically for the justice sector in the first carbon budget, which will cover the 2026-30 period? That is in the context of achieving our stated aim of a 57 per cent reduction in emissions from 1990 levels. There is a wee bit in that question, and it might be something that you can outline in a written follow-up response.

**Angela Constance:** In broad terms, tackling the climate emergency is a priority for the Government as a whole, as has been set out and articulated by the First Minister. Justice is part of that priority in the same way as other portfolios. We will all be expected to make a contribution.

Following on from our discussion about HMP Glasgow, I should say that the new HMP Highland will have zero direct emissions, and no fossil fuels will be burned in the running of the new HMP Glasgow, because it will all be electric. Net zero ambitions are particularly important when it comes to building public facilities. That was certainly a feature when the new HMP Stirling was built. The Scottish Futures Trust also has net zero in its public buildings standards. Such endeavours are sometimes mocked and, at times, they may well add to the cost of building public buildings. However, there is an important expectation for the justice portfolio and elsewhere to consider sustainability in public services.

Our agencies are also expected to do that. Last year, the Scottish Courts and Tribunals Service published its "Sustainability Strategy 2024-2027". The Scottish Fire and Rescue Service has been working on plans to build a new community resilience hub in Skye, which will be carbon neutral. Police Scotland is held to account by the SPA, which has key environmental targets, notably in relation to reducing carbon emissions. The SPA also produces an annual report on sustainability.

There is a lot of information available, but I will be happy to follow up with further detail if the convener wishes me to do so.

**The Convener:** That would be most helpful.

As there are no more questions from members, we will draw the evidence session to a close. Thank you very much for attending, cabinet secretary and officials. We will suspend for a few minutes to allow for a changeover of Government officials.

11:56

*Meeting suspended.*

12:04

*On resuming—*

## **Subordinate Legislation**

### **Sexual Offences Act 2003 (Notification Requirements) (Scotland) Amendment Regulations 2025 [Draft]**

**The Convener:** Our next item of business is the consideration of two affirmative instruments: the Sexual Offences Act 2003 (Notification Requirements) (Scotland) Amendment Regulations 2025; and the Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026.

We are joined again by the Cabinet Secretary for Justice and Home Affairs, and I welcome to the meeting Suzanne Lyle from the family law unit, Graham Robertson from the public protection unit and Louise Miller from the legal directorate, all at the Scottish Government. I refer members to paper 5 of the meeting papers and thank those bodies that provided additional submissions to us in relation to this Scottish statutory instrument and the next one.

I intend to allow up to 20 minutes for our consideration of the SSIs. I invite the cabinet secretary to make opening remarks on the Sexual Offences Act 2003 (Notification Requirements) (Scotland) Amendment Regulations 2025.

**Angela Constance:** Thank you for the invitation to speak to these amendment regulations.

The Social Offences Act 2003 and the subsequent Sexual Offences Act 2003 (Notification Requirements) (Scotland) Regulations 2007 were introduced to make people safer and to manage and mitigate the risk that is presented by those who commit sexual offences. Those who are convicted of an offence that is included in schedule 3 to the 2003 act are subject to notification requirements. The process of notification involves meeting a prescribed set of requirements for the information that an offender must provide to the police during their notification period. That includes information such as their date of birth, national insurance number, address, passport and bank and credit card details. There are also wider risk assessment and risk management planning arrangements in place for that cohort, all of which are managed under MAPPA, the multi-agency public protection arrangements.

The proposed regulations will add a new notification requirement relating to gender recognition certificates. When an offender who is subject to notification requirements makes an

initial notification to the police, they will be required to provide information as to whether they are in the application process for a gender recognition certificate, or have obtained a full gender recognition certificate since the date of conviction.

The Scottish ministers committed to that measure during the passage of the Gender Recognition Reform (Scotland) Bill. Although the Government always recognised the considered risk of public protection harm in that area to be low, and the bill has not been commenced because it could not go to royal assent, we are implementing this change as we committed to, in recognition of the bill. The information will be made available routinely to Police Scotland, which can weigh its relevance to risk accordingly.

All the existing measures that might allow Police Scotland to act in relation to the GRC applications process remain unchanged. If an application were in progress, there would be nothing to stop the police from writing to the gender recognition panel, which could consider whether the fixed criteria in the act for granting or refusing an application were met. This measure is not a barrier to anyone who is seeking a gender recognition certificate; it is an additional notification requirement for those who have been convicted of a relevant offence.

In developing the regulations, I have met Scottish Trans to seek to allay any fears that the wider transgender community may have. My officials have met Police Scotland to discuss the operational elements of policing the requirement.

I am happy to answer any questions.

**The Convener:** Thank you, cabinet secretary. I invite questions from members.

**Liam Kerr:** I would like a brief clarification. Cabinet secretary, you talked about the fact that, under the notification requirements, a registered sex offender is already required to notify the police of a certain range of details—and you set out what they were. This SSI will add information on any application for a gender recognition certificate or on the issuing of a full GRC. This might be to do with the definition of the relevant start date—you talked about that being the date of conviction—but can you clarify: is the offender required to notify the police if they already have a GRC prior to the date of conviction?

**Angela Constance:** Given the technical aspects of the question, I will refer to my notes, if you do not mind. Where an application is in progress, the police could write to the gender recognition panel to detail their concerns and would require to have a clear reasoning for doing so. I am not sure that that answers your question—apologies. I am checking with my officials.

I think that Mr Kerr's question is in relation to whether a registered sex offender who is already in receipt of a gender recognition certificate prior to conviction is still required to notify the police.

**Liam Kerr:** Exactly.

**Angela Constance:** We are on the same page. The answer to that is no. Those who have committed an offence only need to notify the police of an outstanding gender recognition certificate application. Where it has not been finally determined at the relevant date, or is made after the date, or where a full GRC is obtained on or after the date, the relevant date is set out in the Sexual Offences Act 2003 and is normally the date of conviction.

**Liam Kerr:** I understand. Thank you.

**Rona Mackay:** I think that she did say this, but I ask the cabinet secretary to reaffirm that there is no conflation at all between the general trans community and those individuals who are on the sex offenders list, and that the instrument does not concern trans people generally.

**Angela Constance:** It is really important that we do not conflate the two. The trans community is a very small, minority community. As with all of us, the vast majority of those individuals will be law-abiding citizens. The notification requirement is with respect to people who have committed sexual offences and the range of information that they must provide.

As I said in my opening remarks, I had a meeting with Scottish Trans, which has come to the view that it is reasonable and appropriate for the police to be informed on whether a sex offender is applying for a GRC.

**Pauline McNeill:** I understand that the SSI is about all the other notification requirements in relation to sex offenders. That is what we are dealing with here. Any information about that offender is vital, so that we know where they are, because that is the purpose of the register. Your answer to Liam Kerr's question on people who already have a GRC certificate was helpful. That would be consistent with the 2003 act, which I know quite well—believe it or not, I scrutinised it at the time and actually remember it.

I have a similar question. Even if someone is not going through the process of applying for a GRC, there is the requirement to notify if there has been a change of passport. Would the same apply? It might not. My understanding is that the reason why it applies is that, under the 2003 act, you change your gender for all or most purposes, so there would not be a requirement prior to conviction. However, the notification that you have changed your passport name is not covered by the same legislation, if you see what I mean.

**Angela Constance:** I will start, and Graham Robertson can continue. I want to try to keep this as simple as possible. In relation to notification requirements, there is obviously the initial notification following an offence, and people are required to submit a range of information to the police. There are also requirements for people who change their information; Graham Robertson can add to that. We are also looking at further measures in the Crime and Policing Bill. The interactions between the different kinds of legislation are quite intricate, so I will pass you over to Graham Robertson, if you do not mind.

12:15

**Graham Robertson (Scottish Government):** The cabinet secretary has really answered the question. There is an initial notification when the information is provided, and then the person is obliged to let the police know if the information changes. For example, if their passport changed, they would have to notify the police.

**Pauline McNeill:** Let us say that someone changes their documentation prior to them being put on the sex offenders register. Do they have to give the police that information?

**Graham Robertson:** The regulations are framed from the point of conviction, which is when a number of other risk assessment processes kick in, such as social work background reports and various other things like that. Where there is information in any offending history that is relevant to risk—again, we are not saying that this is likely to be information that is highly relevant to risk—it can be captured in those background reports and be available to all the MAPPA partners for the risk assessment and risk management planning that follows.

**Pauline McNeill:** And that is about risk to victims and the public.

**Graham Robertson:** Whatever form risks take, if the fact of the gender recognition certificate is relevant to their management, it will be available so that they can be managed accordingly.

**Pauline McNeill:** I think that I understand what you are saying about having the relevant information so that the risk can be assessed and I can only presume that the risk is being assessed because someone has been put on the sex offenders register because they pose a risk to the public, so the information is relevant to the management of that. That is the only way it makes sense to me.

**Graham Robertson:** All sex offenders automatically have notification arrangements, irrespective of the risk level, by virtue of their conviction.

**Pauline McNeill:** So the risk is something else.

**Graham Robertson:** As a result of having notification arrangements in place, a person would be brought under MAPPA, and MAPPA processes will involve individualised assessment of the risk that is particular to that person.

**Pauline McNeill:** So, in answer to Liam Kerr's question, if someone has a GRC prior to them being on the sex offenders register, there is not a requirement to notify, but if it is not a GRC but just a change of documentation, it depends on the assessment that is done at the time.

**Graham Robertson:** The change to the regulations will cover the point from conviction before notification, so it might cover periods of time when people are in custody prior to release, for example. It is any change made prior to notification kicking in, if that makes sense.

**Sharon Dowey:** Cabinet secretary, you said earlier that an application will go to the gender recognition panel and it could be refused if the panel has grounds for concerns. What would those concerns be and why would the application be refused?

One of the concerns about somebody changing their details when they are a sex offender is that they could go missing when people are doing checks, which is an issue that some lobby groups have highlighted. Do the regulations address those concerns?

**Angela Constance:** The SSI adds a requirement for someone to notify the police if they apply for a gender recognition certificate when they have been convicted of a sexual offence that requires notification. There is a list of information that they would have to notify the police of. The SSI adds to the long list of information requirements that people have to adhere to a requirement for that person to notify the police if they apply for a GRC. The SSI is focused and specific, and I am not sure what other concerns you are referring to, Ms Dowey.

**Sharon Dowey:** It is about what happens if somebody is doing a check for a person who has changed from a he to a she, for example. Have any lobby groups said that it would be a concern for them if somebody is getting a GRC after they have been convicted of a sexual offence? I am just wondering what the grounds for refusing the application are. You said that such an application would go to a GR panel and it could be refused if there are grounds for concern.

**Angela Constance:** The SSI will not change the process for obtaining a GRC. The chair of the panel, like Scottish Trans, is supportive of the SSI. If, based on the wider risk assessment, the police had concerns about someone who had applied for

a GRC, they could write to the gender recognition panel, which is a UK tribunal. There are certain considerations that the panel has to assess in terms of legal requirements and issues that are germane to the individual.

**The Convener:** As there are no further questions, our next item of business is the consideration of a motion to approve the affirmative SSI on which we have just taken oral evidence.

*Motion moved,*

That the Criminal Justice Committee recommends that the Sexual Offences Act 2003 (Notification Requirements) (Scotland) Amendment Regulations 2025 [draft] be approved.—[Angela Constance]

*Motion agreed to.*

**The Convener:** Are members content to delegate responsibility to me and the clerks to approve a short factual report to the Parliament on the affirmative instrument?

**Members indicated agreement.**

**The Convener:** The report will be published shortly.

We will have a short suspension to allow for a change of officials.

12:22

*Meeting suspended.*

12:23

*On resuming—*

### **Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026 [Draft]**

**The Convener:** We turn to the second affirmative instrument. From the Scottish Government, I welcome to the meeting David Doris, who works on prison policy in the community justice division, and Hannah Hutchison, from the legal directorate. I refer members to paper 6.

Before the cabinet secretary gives her opening remarks, I refer members to the comments that were made by the Delegated Powers and Law Reform Committee at its meeting on Tuesday this week, when it considered the instrument. The DPLR Committee wanted to alert our committee to the fact that it has reported the instrument on the grounds of an “unusual or unexpected use” of the powers conferred by the parent statute. The DPLR Committee is concerned that the instrument makes provision for ministers to make further changes by regulations, and noted that it is

unusual for subordinate legislation to grant ministers powers to make further subordinate legislation. I ask the cabinet secretary to cover those points in her opening remarks.

If any member would like to see it, we have a copy of the DPLR Committee’s report, which has just been published. I invite the cabinet secretary to make some opening remarks on the instrument.

**Angela Constance:** In due course, I will take a moment to address the point that the DPLR Committee raised.

We propose to use existing legislative powers to amend legislation in order to align arrangements for the removal of foreign national offenders from prison with other release legislation in Scotland.

The Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026 is the first of two instruments relating to early removal of foreign national offenders. I announced our intention to introduce them during a statement on the prison population on 2 October.

On the DPLR Committee’s reflections, I agree that using consequential powers in an act to create a subordinate legislation-making power is “unusual”, and that, ordinarily, it would not be desirable. However, on this occasion, we have done so because it is one of the various measures that we are taking forward to help alleviate the prison population issue.

The purpose of the instrument that the committee is considering today is to facilitate the earlier removal from prison of prisoners who are liable for removal from the United Kingdom on immigration grounds or who have the settled intention of residing permanently outside of the United Kingdom once removed from prison.

The instrument will align the provisions that are being amended with other aspects of release legislation in Scotland, and it will help to enable the earlier removal of those prisoners, which, in turn, might help to mitigate the high prison population.

If approved by Parliament, the instrument will change the release point from which early removal arrangements work, in order to align it with the automatic early release point for short-term prisoners, as changed by the Prisoners (Early Release) (Scotland) Act 2025, which amended section 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. The period in which early removal is possible will be calculated from the applicable automatic release point for short-term prisoners, which was amended earlier this year, rather than the previous automatic early

release point, which was when 50 per cent of a sentence had been served.

If approved, the instrument will also add to the existing order-making power that is contained in the provisions to allow Scottish ministers to change, by order, the minimum period of sentence that must be served before a prisoner can be removed from prison for removal from the UK.

It is planned that, under that order-making power, a separate instrument will be laid in January. That instrument will propose an amendment to the number of days prior to the prisoner's automatic release point within which the prisoner can be removed. If the instrument is approved, it will also change the minimum period of sentence that has to be served before a prisoner can be removed from prison for removal from the United Kingdom.

The second order will align the release provisions with recent changes that were approved by this Parliament to home detention curfew, which is not available to prisoners who are liable for removal from the UK. The minimum amount of a sentence that will have to be served will be 15 per cent, rather than one quarter, and the number of days would change from 180 to 210. These changes would provide a greater and earlier timeframe for removal from prison for the purpose of removal from the country.

I hope that the committee is content to approve the instrument, which helps to provide greater cohesion with regard to sentence management arrangements as they apply to short-term prisoners. It might also help to mitigate the high prison population, albeit in a limited way.

**The Convener:** Thank you very much, cabinet secretary. It is regrettable that the updated information from the Delegated Powers and Law Reform Committee has been provided at relatively short notice. However, I am keen to invite questions from members, and I will bring in Katy Clark first.

12:30

**Katy Clark:** I am a member of the Delegated Powers and Law Reform Committee, and we discussed the issue at great length yesterday. We were looking at it from a technical rather than a policy point of view, so my questions will relate to the technicalities rather than to the policy. It was concerning that there were a number of grounds on which issues were raised about the way that the SSI has been drafted—those were not in any way to do with the policy intent.

Given that the issue was discussed only yesterday in the Delegated Powers and Law Reform Committee, I suspect that the cabinet

secretary may not have had the opportunity to read the report, because it has just been published. I do not know what discussions have been taking place behind the scenes, but it seems regrettable that the Scottish Government has drafted the statutory instrument in the way that it has done, if it was possible to obtain the same policy outcome in a different way.

The committee concluded that

“the creation by subordinate legislation of a new power to make subordinate legislation is unusual, and is generally undesirable because Parliament is unable to scrutinise and amend the proposal in the way it would if proposed in a bill.”

It also concluded that

“using an ancillary power to create a new power to make subordinate legislation is particularly unusual”.

It made that point in a number of ways at a number of points in the report in relation to different aspects of the drafting. Has the cabinet secretary had the opportunity to look at the issue properly, given the timescales?

This is not about the Scottish Government's policy intent—it is just about the drafting. If it was possible for the legislation to be drafted in a different way, that would seem to be preferable.

**Angela Constance:** I am grateful to Ms Clark. I note that she serves on the DPLR Committee, which is not a committee that I have ever had the pleasure of serving on.

I assure Ms Clark that I have had more than one discussion with my officials on what is, I admit, an unusual approach. I am not at all surprised by the DPLR Committee's commentary.

I will not reiterate the policy intentions, because members will understand where we are with the prison population and the necessity for further action—I think that we all agree on that. There is no one solution to managing our prison population—there are many solutions—and every initiative and effort counts in that regard. In a moment, I will hand over to Ms Hutchison to comment on the more technical points.

Taking this forward through primary legislation is, of course, technically possible, notwithstanding that we are running out of time in this parliamentary session. I would be concerned about the time that it would take to make similar provision and the delay that that would cause. For me, the approach to finding a route forward for the policy change with regard to foreign national offenders is a pragmatic one. Given that we have the power to make that change through an SSI, I have chosen to use it, as it represents, in my view, the most efficient and effective way to enable the early removal of foreign national offenders from our prisons as soon as possible.

I am confident that Parliament has nevertheless been given what I would consider a meaningful opportunity to scrutinise our proposals with both this SSI and the one to follow, given that they are subject to affirmative procedure. That comes with an opportunity for the committee to take evidence, prior to Parliament being given the opportunity to approve the instruments as part of the process.

I will ask Ms Hutchison if she has anything further to add, for Ms Clark's interest, on some of the aspects around drafting.

**Hannah Hutchison (Scottish Government):**

The drafting approach was taken to mirror what has been done for the HDC provisions, in connection with the changes under the 2019 act. If further changes were made to the HDC provisions to change the minimum period of sentence, the same could be done for the foreign national provisions, in line with that.

**Liam Kerr:** First, cabinet secretary, on the point that Katy Clark has just raised—and noting that we are all getting this information in real time—I want to be clear that the SSI before us creates a new power for ministers to change the minimum period of sentence served, but to do so using subordinate legislation, such that neither the power's creation nor its ultimate use would go through full parliamentary scrutiny. That is what is happening here—is that correct?

**Angela Constance:** Yes, in terms of process, but—and I say this with respect—the committee is here today to scrutinise the instrument. I accept that the process is unusual, but I have a prison population issue to address. However, what you have outlined as to the purpose of the SSI is correct.

**Liam Kerr:** I understand the point that the cabinet secretary is making, but the process feels uncomfortable, particularly in the context of this week, when we are addressing legislation that was fundamentally flawed when it was passed by the Parliament, even after full scrutiny. That is something that concerns me more widely, so I make that point.

On the SSI that is before us, we have received submissions—from the likes of Victim Support Scotland—which, as ever, have been very helpful. Based on that, I will put a couple of questions to you. Will prisoners in the cases concerned be included in the victim notification scheme? If so, what information will be available to the eligible victims?

**Angela Constance:** Yes, under the victim notification scheme, victims can be notified about the release of prisoners. It is my understanding that, as removal from the UK is a reserved matter, victims would not be notified of the actual removal from the country. However, Mr Kerr and others will

remember the amendments on the governance of the victim notification scheme in what is now the Victims, Witnesses, and Justice Reform (Scotland) Act 2025, which will better allow those responsible for the removal to work with the Scottish Government to help victims receive more meaningful information, to the extent that that is possible under devolved law.

There are currently limitations, and we will try to address the issue as far as we can, within our powers and under the legislation that we have recently passed, while seeking to engage the UK Government on it. I accept that being notified of partial information will be deeply unsatisfactory. If someone receives a notification that the perpetrator in their case has been released, that may well cause anxiety, and that anxiety would be unnecessary if the person knew that the perpetrator was subject to other procedures that meant that they were being removed from the country.

**The Convener:** I call Jamie Hepburn, to be followed by Pauline McNeill.

**Jamie Hepburn:** Going back to the issue that has been flagged up to us by the Delegated Powers and Law Reform Committee, I seek some clarification of what Hannah Hutchison has just said about the intended purpose of the regulations. They are fairly narrowly defined and, if I have understood them correctly, they seek to ensure a consistency of approach between UK and foreign nationals. Is that right? Have I understood that correctly?

**Hannah Hutchison:** Foreign nationals who are liable to removal from the country are not entitled to HDC. So, in that sense, yes, because foreign nationals who are liable to removal cannot get HDC.

**Jamie Hepburn:** That was helpful.

Clearly, this is a novel process, although it is not without precedent. I do not particularly like the terminology, but it is an example of the Henry VIII powers stuff that we have previously debated more widely. I, too, have not been a member of the Delegated Powers and Law Reform Committee, but I have had the pleasure of appearing before it, and have discussed many of these issues.

Notwithstanding the fact that this might be a novel way of creating a delegated powers-making process, can you clarify that any changes that might be sought would still have to come back to Parliament, and that, if they were more substantive, they would be subject to the affirmative procedure; otherwise, they would be subject to the negative procedure, under which the instrument in question could still be annulled? Will

Parliament be able to accept or reject any changes in the usual way?

**Angela Constance:** That is my understanding. It has happened before with other SSIs in which I have brought forward action in relation to the prison population. Parliament has exercised its right to send instruments to the chamber, to be debated and voted on.

You asked about home detention curfew. I appreciate that this is confusing, because we are talking about alignment with other legislation and other early release provisions, such as the short-term prisoner 40 programme and home detention curfew. This measure is essentially about the removal of foreign nationals; therefore, the alignment does not connect in a real-world way, because foreign nationals are not eligible for, say, home detention curfew. It is all about alignment in relation to calculating eligibility for early removal from our prison estate.

**Jamie Hepburn:** I understand and appreciate that, but the bottom line is that nothing is being done here that will create a new process whereby the Government can just put in place a rule without any recourse to Parliament. Parliament will still have the ultimate say.

**Angela Constance:** That is right.

**Pauline McNeill:** Good afternoon. I know that you have answered a lot of questions, but I have to be honest and say that I do not know whether I have understood all of this.

I think that I am right about this, but when you met and had a conversation with the Opposition parties about prison numbers, you mentioned a figure of about 600 foreign nationals, or thereabouts, in Scottish jails. I suppose that that is a significant number.

**Angela Constance:** Are you looking for an update?

**Pauline McNeill:** If you have one, yes.

**Angela Constance:** There is a significant number of foreign nationals in our prisons—the latest figure that I have is 723. However, not all of them will be eligible for the early removal scheme, given that it applies only to those serving less than four years. The figure for those in the short-term population who might be eligible—after all, there are various statutory exclusions—is around 119.

**Pauline McNeill:** Ah. Right.

**Angela Constance:** We have talked about this before, but when you get into different categories of prisoner, you are talking about a whole different process. Today is perhaps not the day to be going into extradition arrangements and country-to-country negotiations.

**Pauline McNeill:** Are those 119 prisoners eligible for early release now or not?

12:45

**Angela Constance:** That will depend on their offence. There are exclusions—

**Pauline McNeill:** Is it the same as—

**Angela Constance:** It is the automatic early release point that is relevant to the individual prisoner, which relates to their offence or existing statutory exclusions. If the automatic release point is 50 per cent or 40 per cent, we are not changing that—that legislation has been passed.

I will perhaps ask officials to put this into plain English, but if, for example, someone is due to be released at 40 per cent of their short-term sentence, we will be able to release them earlier, back to their own country. Is that right?

**David Doris (Scottish Government):** Yes.

**Angela Constance:** Is that in plain English enough?

**Pauline McNeill:** Yes.

Our papers say that inclusion is

“subject to the requirement that they are liable for removal”

with the

“intention of residing permanently outside the United Kingdom”.

Who establishes their stated intention?

**Angela Constance:** Some of that will be due to their legal status.

**Hannah Hutchison:** There are two categories: prisoners who are liable to removal on immigration grounds; and prisoners who are eligible to be released early because they have the settled intention of residing permanently outside the UK. The second category can include British prisoners, if they do not intend to come back to the country.

**Pauline McNeill:** How do you establish their stated intention? I presume that you have to do that.

**Hannah Hutchison:** We will need to write to the committee about that.

**Pauline McNeill:** That seems to me to be tied in. You are releasing them, but somebody has to check their stated intention to reside permanently outside the UK in order to establish that, do they not?

**Angela Constance:** There has to be an assessment process, in the same way that assessment processes underlie the vast majority of decisions in the justice system. I do not know

whether David Doris can add to that on an operational level.

**David Doris:** It is a joint piece of work between the Scottish Prison Service and Home Office immigration enforcement colleagues. There will be an exchange of information.

It is also important to point out that the scheme in Scotland, at the present time at least, is based on consent. Individuals have to agree that they want to be removed, after which the engagement would happen. There are two parts, almost: there is the agreement about early release from prison; and then there is the removal part, which goes through the UK process. It is covered through a guidance arrangement for prison governors that is in place but which would be refreshed and updated.

**Pauline McNeill:** Presumably, there would be transfer arrangements. Somebody could say, "I am not going to stay in the UK," and you would release them, but I presume that there is a process, in case they changed their mind.

**Angela Constance:** The power that we have is to transfer prisoners. This is stating the obvious, but I do not have the power to remove them from the UK.

**Pauline McNeill:** When they leave prison, is there a process to transfer them somewhere else?

**Angela Constance:** Yes. They are not liberated to make their own way to an airport or a UK immigration detention centre, or anything like that.

**Pauline McNeill:** These are short-term prisoners, I suppose, but I am thinking of the victims of the crimes that they have committed. I do not know what the range of crimes might be, but I suppose that they are medium to low-level crimes. For the sake of completeness, is it the case that they would go back to their home country and that that would be the end of the matter?

**Angela Constance:** There are automatic exclusions. Examples of such exclusions include: if the prisoner does not consent; if they are subject to notification requirements under part 2 of the Sexual Offences Act 2003—that is, if they are a registered sex offender; if they are subject to an extended sentence; or if they are subject to a supervised release order. Those exclusions are to ensure that, where the court has decided that there is an elevated risk and a short-term prisoner needs a supervised release order once they are out, such prisoners are subject to an extended sentence or have to be part of sex offender notification—

**Pauline McNeill:** You would have no control over that if they were—

**Angela Constance:** No. They are automatically excluded.

**Pauline McNeill:** Thank you.

**The Convener:** Katy Clark wants to come back in.

**Katy Clark:** I have a final question. The cabinet secretary said that she had the full opportunity to consider the Delegated Powers and Law Reform Committee's report. One point that was raised relates to the Scottish Government's policy intention behind the introduction of the new power, which is to enable the time periods for release on home detention curfew or for release for removal from the UK to be fully aligned. However, the DPLR Committee has raised the issue that that is not necessarily how the proposed new power has been drafted, because it is not limited to enabling that alignment. Has the cabinet secretary considered whether the drafting of the legislation is wider than the policy intent? Has she taken advice on that? That point was made in the DPLR Committee's report.

**Angela Constance:** As I said earlier, officials proactively came to me to discuss the content of the DPLR Committee's report. I have not looked in detail at the concerns to do with the drafting of the instrument, although officials have certainly raised all those issues with me.

I will ask Ms Hutchison and other officials to answer any questions on drafting. I am not a lawyer—I am all about the policy and the intent. I have a prison population that I need to address and, if you will forgive me, that is my priority, notwithstanding the importance of the issue.

**Katy Clark:** If concerns are being raised with the drafting and, indeed, with the legality of the SSI and whether there is a gap between the policy intent and the drafting, it is appropriate that the Scottish Government—

**Angela Constance:** I am not—

**Katy Clark:** Is that something—

**Angela Constance:** I am not conceding that point. The information and advice that I have had is that, although the DPLR Committee and members have raised concerns, I am not aware of any suggestion that we are acting outwith our legal competence or are engaging in any illegality.

**Katy Clark:** My first question earlier on, however, was to ask whether you had the opportunity to consider what the DPLR Committee report said. My understanding is that you feel that you have had that opportunity. I am now asking whether you have had the opportunity to consider the particular point that was made about the drafting being wider than the policy intent. I am

quite happy for an official to be brought in on that technicality, if that would be helpful.

**Angela Constance:** I take advice from officials on drafting. Ms Hutchison, do you have anything to add?

**Katy Clark:** Given the nature of the issue, it would be helpful to get on record the Scottish Government position.

**Hannah Hutchison:** We have mirrored the position that is in section 3AA to provide the same order-making power. Should that be exercised again, it would be possible to do the same here.

**Katy Clark:** When you refer to section 3AA, are you referring to the instrument or to the 1993 act?

**Hannah Hutchison:** I am referring to section 3AA of the 1993 act.

**Katy Clark:** I understand. Okay—that is fine. That did not go through a full scrutiny process, because it was a later amendment. You are satisfied that you are simply mirroring the previous legislation.

**David Doris:** I will make a small additional point. The cabinet secretary has made clear the policy intention for the second SSI, so we are making clear the scope of the planned change in relation to that. Although there is a mirroring component, the policy intention for what the change would be in practice has been spelt out in advance of the second SSI, which will be forthcoming.

**The Convener:** Before we move on to consider the motion, I am conscious of the fact that we find ourselves in a rather unusual position, in that we have had very short notice of the DPLR Committee's report in which it outlines its views on the technical aspects of the SSI.

I am content, on the basis of the information that was provided in the papers, and from the questions and answers today, that the policy content of the SSI is sound. However, before we proceed to considering the motion, it is appropriate that I ask whether members wish to continue to do that now. Are members content with what we have discussed and heard in the responses from the cabinet secretary? If not, we would have to defer consideration of the motion to a later date.

In any case, it would clearly be appropriate that we include our views on the DPLR Committee's consideration of the SSI in the report that we prepare following our consideration of the motion.

As I said, I am content to proceed to consider the motion, but I ask members to indicate whether they, too, are content. I ask members who are content to proceed to raise their hand. I see five members who are in favour of proceeding to

consider the motion; the other three are opposed to doing so.

**Pauline McNeill:** I am broadly content in my understanding of what the SSI is about, and I am happy with the cabinet secretary's answers to my questions. However, I confess that I feel as though there is too much happening in a short space of time to satisfy myself that I understand everything that is going on here. The home detention curfew issue, for example, is not explained properly in our papers—for me, anyway; I am struggling to get my head around that. Due to the Delegated Powers and Law Reform Committee's report, we as a committee need to be satisfied that we are not setting a precedent that we cannot justify.

I am in two minds about this, but other members are not so minded, so I am not too upset about that. I just feel really uncomfortable, as Liam Kerr did at the beginning of our consideration of the SSI, about getting to a point at which I am scrambling around saying, "Have I ticked all the boxes here?"

I am not trying to give us more work. What has been said does make sense, but I am left thinking that I would have liked to have understood the home detention curfew alignment issue before I arrived at the meeting, without having to spend the whole time thinking it through in my head. For the purposes of being cautious, I would have preferred to defer, but I accept that that is not the view of most members.

**The Convener:** Thank you. That is helpful, and it is on the record.

On the basis of members' views and the opportunity that we have to express our views on the DPLR Committee's report, I am content to continue and to move to consideration of the motion. However, we will very clearly set out the concerns of the committee with regard to the more technical aspects of the process.

Our next item of business is consideration of the motion to approve the affirmative SSI on which we have just taken oral evidence. I invite the cabinet secretary to move motion S6M-19681 and to make any brief additional comments that she wishes to make.

13:00

**Angela Constance:** In moving the motion, I want to put on record my appreciation of the committee's time and scrutiny of the policy and the issues that have been raised by the DPLR Committee. I have listened carefully. I know that members around this table have an understanding of the gravity of the situation that is faced in our prisons, and that they also understand that the Scottish Government is working hard to pursue as

many initiatives as possible so that we have a full range of action to alleviate the very stressful position in our prison service today.

*Motion moved,*

That the Criminal Justice Committee recommends that the Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026 [draft] be approved.—[*Angela Constance*]

*Motion agreed to.*

**The Convener:** Are members content to delegate responsibility to me and the clerks to approve a short factual report to the Parliament on this affirmative instrument?

**Members indicated agreement.**

**The Convener:** The report will be published shortly.

13:01

*Meeting continued in private until 13:05.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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

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