

JUSTICE COMMITTEE

Tuesday 4 March 2008

Session 3

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JUSTICE COMMITTEE

6th Meeting 2008, Session 3

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

*Nigel Don (North East Scotland) (SNP)

*Paul Martin (Glasgow Springburn) (Lab)

*Stuart McMillan (West of Scotland) (SNP)

Margaret Smith (Edinburgh West) (LD)

*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Aileen Campbell (South of Scotland) (SNP)

Marlyn Glen (North East Scotland) (Lab)

John Lamont (Roxburgh and Berwickshire) (Con)

*Mike Pringle (Edinburgh South) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Kenny MacAskill (Cabinet Secretary for Justice)

THE FOLLOWING GAVE EVIDENCE:

Fergus Ewing (Minister for Community Safety)

CLERK TO THE COMMITTEE

Douglas Wands

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Euan Donald

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 4 March 2008

[THE CONVENER *opened the meeting at 11:46*]

Decision on Taking Business in Private

The Convener (Bill Aitken): Good morning, ladies and gentlemen. I open the formal part of the meeting and remind everyone to switch off their mobile phones. I have received apologies from Margaret Smith, who has asked her substitute, Mike Pringle, to attend in her place.

I do not require a declaration of interests from you, Mr Pringle, but will you confirm that you are substituting for Ms Smith?

Mike Pringle (Edinburgh South) (LD): I confirm that, convener.

The Convener: The first agenda item is on the taking of business in private. I ask members to agree that item 6, which is the committee's discussion of its approach to its community policing inquiry, should be taken in private. Is the committee agreed?

Members *indicated agreement.*

The Convener: Thank you.

Pensions Bill

11:47

The Convener: Item 2 is the Pensions Bill, which is United Kingdom legislation. I refer members to the legislative consent memorandum—LCM(S3)8.1—that has been lodged by the Cabinet Secretary for Justice, Kenny MacAskill, and to the note by the clerk, which is paper 1.

When the UK Parliament considers a bill whose provisions apply to Scotland for any purpose within the legislative competence of the Scottish Parliament, a Scottish minister must lodge a legislative consent motion to seek the Scottish Parliament's consent to the relevant provisions in the bill. Before such a motion is lodged, a minister must lodge an associated memorandum, which the relevant committee must consider and report upon. Agenda item 2 is consideration of one such memorandum.

I welcome, for his first appearance before the committee, as I recollect, Fergus Ewing, the Minister for Community Safety. He is accompanied by Ian Turner, who is head of the family law and administrative justice team at the Scottish Government, and Fiona Glen, who is a solicitor in the constitutional and civil law division of the Scottish Government.

I invite the minister to speak to the memorandum.

The Minister for Community Safety (Fergus Ewing): Good morning, convener and members. I am grateful for the opportunity to present to the committee the legislative consent memorandum on the Pensions Bill. Members have the memorandum and the list of amendments to the Pensions Bill and I do not intend to repeat their contents at length. The amendments were agreed to in committee at Westminster on 21 February, so they now form part of the bill. For the sake of clarity, however, I will still refer to them as amendments today.

As the committee knows, the majority of the bill relates to reserved matters. The devolved matters that are under consideration relate to orders that a Scottish court may make in relation to pension compensation on divorce or dissolution of a marriage or civil partnership, and to provisions that can be made in qualifying agreements.

The pension protection fund was set up to pay compensation to members of eligible defined benefit pension schemes when their employer becomes insolvent, a scheme rescue is unlikely and the pension scheme is left underfunded. The court can take account of pension compensation

in divorce actions but it cannot deal with it in the same manner as pensions because, in law, compensation is not a pension. The policy is straightforward: we want to ensure that couples in Scotland can agree a financial settlement and that courts can make orders to share such compensation on divorce or dissolution as would have been done if the pension scheme had not entered the pension protection fund.

Although we are not aware of any cases so far in Scotland in which people have lost out, the proposal is consistent with Scots family law as it will enable former spouses or civil partners to achieve a clean-break settlement more easily. The provisions will also ensure that the relevant Scots law keeps pace with changes to pensions legislation.

Although the policy is straightforward, the legal changes that are required are less so, largely because of the interaction between pensions law, which is reserved, and family law, which is devolved.

Amendment 6 extends the activation of pension compensation sharing orders to Scotland by inserting in clause 84—now clause 92—a reference to the Family Law (Scotland) Act 1985 and to provision in qualifying agreements. Qualifying agreements are important in this respect because they are used in Scotland, not in England and Wales. They currently allow couples to agree pension sharing on divorce or dissolution of a civil partnership without going to court. The amendments enable them to extend the agreement to include pension protection fund compensation sharing in the same way.

Together, amendments 17 to 19 insert a new schedule. The memorandum provides information on the bill's main elements.

Essentially, the bill now proposes a scheme to enable the courts to deal with pension compensation in the same way as pension sharing. It also allows the court to make orders and makes the appropriate changes to the references to qualifying agreements.

The Scottish ministers will have a new power to make appropriate regulations in relation to the verification or apportionment of benefits under PPF compensation. That is based on their current power to make provision in respect of the calculation and verification of benefits under a pension arrangement.

A number of consequential amendments that are essential to ensure that proposals on reserved matters work in a practical sense have also been made.

I ask members to note two other aspects that we are working on. I stress that they should neither

detract from the proposed legislative changes nor prevent the committee from supporting the motion.

The bill follows the principle that the costs of a divorce are to be met by the parties to the divorce. I have been informed that the costs associated with a pension compensation share from the PPF might be up to £3,000. That figure seems very high to me, and officials are clarifying the position with the Department for Work and Pensions.

The bill contains no proposals for allowing pension sharing in respect of payments under the financial assistance scheme, which, before the PPF's introduction, helped members who lost out on occupational pension schemes. As United Kingdom Government ministers had indicated that they were looking at the issue, I was mildly surprised to learn that the scheme was not covered in the bill and in the spirit of amicable co-operation I will press the UK Government to implement a financial assistance scheme sharing system as soon as it is practical.

I ask the committee to support Scotland's participation in the bill and to agree to the legislative consent motion. I am happy to provide further clarification of any points and to answer members' questions.

The Convener: Thank you, minister. Do members have any questions?

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): In light of the minister's final couple of comments, I wonder whether he can explain the course of action that he will take if his discussions do not go the way he wants them to.

Fergus Ewing: I should make it clear that no cases of which we are aware in Scotland are affected by this proposed legislation, which is, after all, highly technical and might well have very limited application—although if, for example, the stock market were to crash, the PPF would become very prominent on the political radar.

While preparing to appear before the committee, I became aware that applying for a pension compensation sharing order can cost as much as £3,000. That seems inordinately high for any couple, one member of whom might have a modest pension fund of, say, £50,000 to £80,000. I am concerned that if the company that held that fund was unable to pay out and the PPF were brought into play, £3,000 would be a very high price for a couple to pay for an order.

Having spent a couple of decades carrying out matrimonial work and advising clients who were going through a divorce or dissolution of a civil partnership of their rights with regard to making a claim for financial provision in respect of the value of an occupational pension, I know that such pensions can very often be the asset of greatest

value—and, indeed, of greater value than the family home. Although such matters are important, I do not expect them, in the current circumstances, to become excessively controversial.

As I do not want Cathie Craigie to say that I am unwilling to answer her question, I will say that I expect to have very cordial discussions with my Westminster counterpart that I very much hope will bear fruit. I do not wish to contemplate a situation in which the outcome of those discussions might be less than satisfactory.

Cathie Craigie: If the amendments that you want to be tabled are not accepted, will you still go ahead with the legislative consent motion, or will you advise Parliament that, at some point further down the line, the Scottish Government might introduce legislation itself?

Fergus Ewing: I am not seeking any amendments to the bill; I am simply asking the committee to agree to the memorandum to enable this corpus of law to form part of Scots law and, indeed, to give the Scottish ministers additional powers. I very much hope that the points that I will make to my Westminster counterpart will be taken on board, but we shall see what we shall see.

I certainly hope that the committee sees the need for this legislation to be in place in Scotland. Without it, couples contemplating divorce or the dissolution of a civil partnership would have no clear statutory means of resolving between themselves the division of compensation from the PPF. My main purpose—indeed, my sole purpose—in appearing before the committee is to seek members' agreement that my argument is robust and merits the approval of this memorandum. I undertake to keep the committee advised of our discussions with Westminster on the two points that I have highlighted.

The Convener: We are obliged for that, minister, but I think that we will deal with problems when and if they arise.

If there are no further comments, I ask members to note the memorandum. Are members agreed?

Members indicated agreement.

The Convener: Under rule 9B.3.5 of standing orders, the committee is required to report on the memorandum. It will be only a short report to confirm that the committee is content.

I thank the minister for his attendance. I suspend the meeting for a change in the ministerial team.

11:58

Meeting suspended.

12:00

On resuming—

Subordinate Legislation

Home Detention Curfew Licence (Amendment of Specified Days) (Scotland) Order 2008 (Draft)

The Convener: Our third item is consideration of the draft Home Detention Curfew Licence (Amendment of Specified Days) (Scotland) Order 2008. The order is subject to the affirmative procedure. We have with us Kenny MacAskill MSP, the Cabinet Secretary for Justice; Tom Fox, head of communications at the Scottish Prison Service; Sharon Grant, head of branch 2 in community justice services at the Scottish Government; Barry McCaffrey, senior principal legal officer in the criminal justice, police and fire division of the Scottish Government; and Andrew Ruxton, trainee solicitor in the criminal justice, police and fire division of the Scottish Government.

I refer members to the draft order and to the cover note, which is paper J/S3/08/6/2. I invite Mr MacAskill to speak to the draft order and to move motion S3M-1287.

The Cabinet Secretary for Justice (Kenny MacAskill): I thank the committee for inviting me to introduce the order. I wrote to the committee in November last year with my plans to seek the Parliament's approval to extend the existing home detention curfew scheme. It is one of a number of measures that are necessary to alleviate the continuing pressure on the prison population.

The Scottish Government has always supported bringing an end to the current, fairly arbitrary, regime for managing offenders' sentences through a system of early release dictated predominantly by the length of sentence imposed. We remain committed to delivering a better offender management strategy, but we cannot ignore the current pressures on Scottish prisons. We must take care to ensure that any change does not compound current problems and put intolerable pressures on prisons. The order would extend from four and a half months to six months the maximum period a short-term prisoner may be released on home detention curfew. It would affect only those prisoners who are serving two or more years in custody. The requirement that prisoners must serve at least a quarter of their sentence will also continue to apply.

By the end of January, we had commenced the provisions in the Management of Offenders etc (Scotland) Act 2005 that will provide HDC to long-term prisoners who have been granted parole. As a consequence, the committee has also been

asked to consider the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) Order 2008 (SSI 2008/36), which prescribes the conditions for HDC. The conditions in that order replicate the standard conditions recommended by the Parole Board for Scotland, with the addition of specific conditions relating to electronic monitoring. Those prisoners will be subject to social work supervision from the date of release on HDC, which will enable a seamless transition for the prisoner from HDC to parole. I am happy to answer any questions members may have on SSI 2008/36.

It may be of assistance to the committee if I say something about the general context of prison numbers. We have, yet again, reached an all-time high, culminating in a total population of 7,705 in custody, with 340 released on home detention curfew—as of today, a total of 8,045. That represents an increase in the total convicted population, with a slight decrease in prisoners on remand.

About 21 per cent—one in five—of prisoners are recalled to custody for breaching the terms of their HDC licence. The majority of recalls are for failing to comply with the curfew conditions or for damaging the electronic monitoring equipment. Records indicate that 26 prisoners have been recalled for allegedly committing a further offence. With one exception, they were minor offences. The exception involves an incident in the Strathclyde area on 1 January 2008, and the case is sub judice.

The majority of prisoners who fail to comply with their HDC licence are recalled to custody. That decision is taken by the SPS following the submission of a breach report from Serco or if it is informed by the police that an offender has been taken into custody. A small number—30 to date, or 4.3 per cent—have appealed to the Parole Board, acting as an appellate body, against the decision to recall, and approximately 60 per cent of appeals have found in their favour. That figure represents one in 40, or 2.5 per cent, of the total recalls. The proposed new measures, when fully operational, should result in about 50 more prisoners being released on HDC.

I reassure the committee that the law that excludes certain offenders from the scheme, such as sex offenders or those liable for deportation, will not change. The home detention curfew is intended to co-ordinate and manage prisoners more effectively. Its primary aim is to aid the reintegration of prisoners into the community, but it is also an important tool for the Scottish Prison Service at a time when it is managing real pressures. I cannot stress too much that it will be available as an option only for those prisoners who are assessed as low risk by the SPS, taking

account of the views of community social work. Public safety remains our priority and will not be compromised.

I move,

That the Justice Committee recommends that the draft Home Detention Curfew Licence (Amendment of Specified Days) (Scotland) Order 2008 be approved.

The Convener: Do members have any questions for the minister?

Paul Martin (Glasgow Springburn) (Lab): I would like the minister to elaborate on the pressures on the prison estate. What is the capacity at Barlinnie prison, for example, or at any other prison? If we did not agree to the motion, what further pressure would be put on those parts of the prison estate?

Kenny MacAskill: That is an appropriate question at this juncture. We face an almost daily increase in pressure. When the notes were first presented to me on Thursday last week, the number was 8,026. As I have just explained, it is now 8,045. The pressures are felt throughout the prison estate. Precise information is available through daily tracking. It appears that all our prisons are at capacity—some more than others. The prison service is doing an excellent job managing a difficult situation with difficult people.

The proposed new measures would free up in the region of 50 spaces, which is why we are making it clear that we are considering introducing other measures. We have a problem with prison capacity, which is why the Government is committed to three new prisons. As members may have seen reported, I have visited the first of them, Addiewell, which will come on track in January 2009 and provide approximately 700 badly needed places. Thereafter, as I have told the committee previously, we are considering Bishopbriggs to help alleviate pressures at Barlinnie in particular. There is a replacement prison for the Peterhead area, to replace Peterhead and Aberdeen. Additional spaces will be provided.

Some of the prison estate that we have inherited is rather old. That is a particular problem in the north-east: Peterhead and Aberdeen are ancient—if not Victorian—prisons. That requires to be addressed. I can provide information on the specifics. The number of prisoners is rising and we need to take measures to ensure that we have the capacity.

As has been seen in other jurisdictions, we cannot build our way out of a problem. We have to address it in the longer term—which is where the McLeish commission comes in—but we must also take immediate measures to alleviate the pressures that restrict the prison service's ability to do its job properly. That is why we are considering

the draft instrument and other measures that we might introduce in the coming weeks.

Paul Martin: You said that some prisons are under more pressure than others. We can take it as read from yesterday's publicity about Barlinnie that that prison is under pressure. Which parts of the prison estate are not under pressure? Perhaps they could deal with some of the capacity that is required.

Kenny MacAskill: My understanding is that all parts of the prison estate are under pressure. In fact, the overcrowding in Aberdeen is probably proportionately worse than it is in Barlinnie, although the latter has more prisoners. If there were slack in other areas, the prison service would seek to use it. The problem is that all prisons are under pressure. At one stage, Cornton Vale seemed to be under less pressure, but that is not the case now, as I have reported previously to the committee.

The short answer is that there is no slack elsewhere in the prison estate—it is under pressure on all fronts, although some areas are undoubtedly under greater pressure than others. It can depend on the nature of the prison estate; the problems can be compounded by, for example, safety regulations and regimes that depend on how and when the estate was constructed. Each prison has to be considered individually. There is no back-up space elsewhere that the SPS is failing to utilise.

Paul Martin: Will you write to us after the meeting to provide information on the capacity of each prison?

Kenny MacAskill: Absolutely.

Paul Martin: You are saying that you find yourself in the challenging position in which every prison in Scotland is at maximum capacity and that there is no extra space.

Kenny MacAskill: The tragedy is that not only are prisons at capacity, but some of them have, unfortunately, gone beyond it. We will provide you with full information on that. The problem applies across the estate—that is why we have committed to building three new prisons, but that alone will not solve it. Moreover, we face a more immediate problem, which we must tackle.

Cathie Craigie: I will continue with questions on the prison estate and the prison population. Are you considering the idea of a prisoner waiting list?

Kenny MacAskill: The idea has been floated, but it does not sit comfortably with me. I know that waiting lists are used in other jurisdictions, but justice must be seen to be swift. The difficulty with a waiting list is that that is not the case, which is why I hesitate to consider the proposal. However, we do not rule anything in or out.

Cathie Craigie: How would such a waiting list work? Where would we hold prisoners?

Kenny MacAskill: We have not given the idea any consideration, so I cannot say how it might work. I understand from other jurisdictions that once someone has been given a sentence of X length of time in prison, they wander away from the court and will be written to in due course, after which they will be expected to turn up to surrender themselves. My perspective is that justice should be seen to be swift. In this country, if someone is given a sentence, they normally go down below—at least, that is what happens in some of the older courts. In other courts, they are taken in a different direction. Waiting lists are not on the agenda as far as the Scottish Government is concerned.

The Convener: Surely a prisoner waiting list would be impractical. A significant number of the people who were put on the list would not turn up when they were asked to. Justice delayed is justice denied, is it not?

Kenny MacAskill: Absolutely. I have a great deal of sympathy with that view. People expect to see matters being dealt with in court. My understanding is that waiting lists have been partially successful in other countries when they have been used as a sword of Damocles over offenders' heads—in other words, when they have been used almost as a suspended sentence, whereby if someone shows that they have learned the error of their ways they might not have to serve their sentence. We are not considering—nor would we wish to consider—waiting lists or queues for prisons. I remain to be persuaded that their use is appropriate.

The Convener: The problem in Scotland is that the sword of Damocles is always hanging but does not seem to fall all that often.

Mike Pringle: I have two or three questions, the first of which I ask out of curiosity. You say that 340 prisoners are on home detention curfew and that one in five of such prisoners is recalled. Is it the case that many of the prisoners who are on HDC come from the open prison estate? What proportion of those prisoners come from the open prison estate and what proportion of them come from the closed prison estate? Do the one in five prisoners on HDC who are recalled come mostly from the closed prison estate?

Kenny MacAskill: It is the governor who decides whether to release someone on HDC. HDC applies to the entire prison estate; it is not a follow-on from the open prison estate. I understand that breaches of HDC occur randomly—there is no uniformity.

Mike Pringle: Do people who are serving sentences in open prisons get released on HDC? I understand that in the open prison estate there is,

in effect, a policy of hot bedding, whereby prisoners are in for only three weeks out of four.

Kenny MacAskill: The prisoners who are released on HDC tend to be prisoners who are serving short-term sentences in the closed prison estate. Prisoners in the open estate are a different matter. It is for the governors at prisons such as Barlinnie, Greenock and Saughton to decide whether to release prisoners on HDC.

Mike Pringle: My second question relates to the length of the curfew period. The Executive note on the draft order says:

"The curfew condition will require the prisoner released on HDC to remain at a place specified in the licence for a minimum of 9 hours per day."

Who decides which nine hours the curfew applies to? Ideally, that nine hours should cover the period from 7 o'clock in the evening until 4 o'clock in the morning, which is when most of the people concerned could cause mayhem. I am surprised that the curfew period is as short as nine hours. It does not seem terribly long. Who decides which nine hours are covered? I am sure that you agree that it would be advantageous to keep most of those people off the streets in the evening, when they are likely to get into trouble.

12:15

Kenny MacAskill: Absolutely. That is why the curfew is invariably 12 hours, from 7 at night until 7 in the morning. However, that is for the governor to decide on. There might be some good reason to specify a different period—we might be dealing with a night owl, for example, or someone might have a night shift to go to. I cannot think of an example of that from the past, but such a scenario could arise.

In the main, you are right that the purpose of HDC is to detain—at home and under supervision—prisoners who have been identified as being of low risk. That avoids the huge cost of keeping them in prison and it makes it possible for them to be reintegrated into society during daylight hours so that they can develop a more productive lifestyle and break the cycle of crime. It is possible that someone on HDC could have a job that finished after 7 pm—if they worked on a backshift, for example. The fact that it is for the governor to decide on the curfew means that there is flexibility but, in the main, it is from 7 until 7.

Mike Pringle: Under the heading "Financial Effects", the Executive note says:

"The extension of HDC provisions to long term prisoners and the extension of the maximum duration of HDC from 4½ months to 6 months will incur additional electronic monitoring costs of approximately £980,000".

Given that we have 340 prisoners on HDC at the moment, that sounds like a lot of money. How

many people is it likely to cover? In effect, we are talking about a one and a half month extension of HDC.

Kenny MacAskill: I will get that information for you, but nothing is as expensive as prison. Leaving aside the construction costs, to which the Government will commit £120 million per annum over the forthcoming years, the cost of keeping someone in prison is roughly £40,000 a year. The cost of home detention curfew is £6,000 a year. It seems to us that the proposed measure will give the Government an extra £34,000 a year to spend on good citizens, for a change, rather than on bad citizens. It is clear that there will be a cost to extending HDC but, overall, the costs of HDC are significantly less than the costs of prison.

So far, some 3,000 people have been released on HDC. There will be a minimum period for the use of HDC to be cost effective. For example, there would be no point in putting someone on it for a week. A fortnight is probably the minimum period for which the use of HDC would be useful, and there is a maximum period for which it can be used. HDC is not cost free, but the costs of imprisonment are significantly greater. The proposed provision will allow us to spend less on making people see the error of their ways. I hope that they will be able to start paying some taxes rather than have our taxes continue to pay for them.

Mike Pringle: I agree with everything that the cabinet secretary has said. It just struck me that £980,000 is a lot of money and that if it could be reduced substantially we would save even more money. Perhaps someone could let me know roughly how many people that sum will cover.

Kenny MacAskill: We undertake to provide more information in writing. That is a ballpark figure. The cost depends on the length of time for which people go on HDC. The shorter the period for which someone is tagged, the greater the set-up costs. However, HDC provides a significant saving on the cost of incarceration.

On another matter, I recommend to the committee the Pew Center report, which members may or may not have read. Even in the land of the free where one in 100 people are now incarcerated there is a growing realisation that it is not possible to build oneself out of the problem. States such as Texas and Kansas realise that although prisons need to be built, there should be greater focus and efforts should be made to spend in the community.

Nigel Don (North East Scotland) (SNP): The discussion so far has been on the practicalities of running a prison service. I understand that, but it seems that there is a good reason for HDC, which is—as you have mentioned—that it enables a prisoner to be better integrated into society.

I am sure that the press would be concerned about the reoffending rate of people subject to home detention curfew. However, as we know, the recidivism rate once people have been released from prison is deplorably high. If we have had 3,000 folk on the HDC scheme already—I think that that was your figure—is that enough to provide evidence for how well HDC enables people to reintegrate into society? Is there any evidence at all that the scheme works to ensure reintegration and to reduce recidivism?

Kenny MacAskill: The evidence and statistics are coming through as matters are monitored. We supported the previous Administration's introduction of the scheme, which is now working through. We will continue to monitor it and will be happy to advise the committee on it regularly. However, the statistics are that 79 per cent of those on HDCs do not breach the scheme conditions. Of the 21 per cent who do, the overwhelming majority commit minor infractions such as damaging the equipment, and a percentage of them successfully appeal. Fewer than 1 per cent have offended while on the scheme, but that is, tragically, 1 per cent too many. However, that contrasts favourably with the fact that almost 75 per cent of those released from prison reoffend.

The HDC scheme means that those who will be released in due course have a chance to reintegrate into society and that we can provide an element of scrutiny and safety. On giving bang for bucks, the scheme seems to me to touch all the bases. We can free up money that would otherwise be spent on people who continually drain resources and cost us money. We monitor them when we have assessed them as not being too dangerous. However, it cannot be ensured, in any jurisdiction or system, that there will be no risk; no such system exists, here or elsewhere. The only way to do that would be never to release any prisoner at any stage.

In the case of sex offenders, an application is not even considered, and those who are assessed as being violent and who are believed to be a risk are refused. More than 40 per cent of applications for HDC are not granted. We believe that we have a filtration scheme that has served us remarkably well.

Nigel Don: Can you ask your officials to consider how soon they could generate some real statistics from the HDC scheme? It might be an unintended consequence of the scheme that it proves simply to be a much better way of reintegrating people into the community than many social work programmes are.

Kenny MacAskill: I am happy to undertake to provide the numbers immediately after this, but there is no current evidence that HDC allows

prisoners to begin building relationships and getting back into the community in a restricted way. Other support beyond HDC seems to be required for that. The purpose of HDC is to monitor that offenders do not leave the place in which they are under curfew, although HDC clearly has other aspects. It is almost a no-brainer to say that if an offender is back in the community with the wife or the girlfriend, in touch with their granny and able to apply for a job and so on, then they are more likely to be reintegrated than if they have been incarcerated in an academy of crime in which they kept bad company with people who have convictions for other things.

We are more than happy to undertake to give you current information on HDC or any information that comes to light about a variety of other factors, some of which are probably tangential to the purpose of the HDC scheme, which is to ensure that we know where someone is and that they do not leave that place. The question of reintegration involves other factors and methods.

Cathie Craigie: Minister, it is a pity that you did not base the introduction of this Scottish statutory instrument on evidence of how the HDC scheme has worked and whether there are facts that can prove that HDC helps in rehabilitation and reintegration into the community. You have described HDC as a means of reducing the prison population, rather than emphasising what its positive contribution could be.

Who is informed that the offender is back in the community?

Kenny MacAskill: We were happy to support HDC, which was a Labour-Liberal Executive scheme, when we were in opposition. As I recall, the scheme was not introduced at the earliest juncture during the previous Administration, so information is limited. We have brought to the committee clear statistical evidence of the number of people on the scheme and the number who have breached their HDC licence, whether by committing an offence or through a technical breach. We have that information.

When you talk about the scheme's success, I think that you are alluding to ephemeral or tangential matters, which, it is arguable, are difficult to quantify without speaking to people who have reoffended or not reoffended. It is relatively early to be able to quantify such matters.

We have built on the situation that we inherited. Although we are here because there is a problem with the number of prisoners in the prison estate, we are committed to the HDC scheme. We backed the scheme when the previous Administration brought it in and we seek to extend it, because it has been quite successful. Some 79 per cent of HDC licences have not been breached and the vast majority of breaches were technical.

Offenders who are released on HDC licence are low risk and their release is not likely to trigger the victim notification scheme, although social work departments would be aware of the release. Last week, the Government made it clear that it would extend the victim notification scheme to victims of prisoners on a slightly lower tariff—as you will recall, the VNS currently applies to prisoners on a significantly higher tariff. The SSI that we are considering concerns low-tariff prisoners, whose release would not trigger the current VNS. Given that the VNS will apply to victims of prisoners who are serving 18-month sentences, it might kick in, in theory, but social work would be aware in any case. However, offenders who are currently eligible for the HDC scheme will not have been convicted of an offence that would trigger the VNS.

Cathie Craigie: We will have to agree to disagree. Any minister who asked the Parliament to extend the HDC scheme would be expected to have made a proper assessment and to be able to back up their argument with statistics and information based on interviews with the people involved.

You said that only prisoners who are assessed as being low risk will be included in the extended HDC scheme. How will the assessment be made?

Kenny MacAskill: The categories will be the same as the categories in the scheme that we inherited from the Liberal-Labour Administration. The process is carried out by the Scottish Prison Service, through governors, who make the decision. As I said, it appears that governors carry out significant sifting, given that 40 per cent of applicants are refused. A variety of criteria are used, based on the nature of the offence, the offender's circumstances and behaviour in prison, and information that is available from other sources. Of course, some offenders, such as sex offenders, are precluded from applying. Criteria that are personal to the individual are considered by the governor on behalf of the prison service.

Cathie Craigie: Is it worth taking a risk, given what happened in my constituency, Cumbernauld and Kilsyth, when a prisoner who had been assessed as low risk and allowed out of open prison committed an horrific sexual offence? Given that 600 or so people breached their HDC licence, how can we be sure that offenders are properly assessed?

12:30

Kenny MacAskill: First, I give an assurance that Mr Foye could not have applied to be on the scheme, either under the proposal that I have brought before the committee today or—Cathie Craigie will be glad to know—under the previous Administration's scheme. The nature of the

offence of which Mr Foye was convicted means that he would not have been allowed out on home detention curfew.

We are seeking not to change the criteria or the risk assessment procedure, but to extend the maximum period for which a prisoner can be held on home detention curfew from four and a half months to six months. At present, someone can be out on curfew from zero to four and a half months; we seek to change the maximum time period to six months. Cathie Craigie may know something that I do not know—something that suddenly makes someone much more dangerous—and say that the time period should not be extended from four and a half months to six months. My view is that assessments should be made before someone goes out on curfew. As I said, we cannot guarantee that nobody, but nobody, will abscond. The same can be said about any scheme. However, if someone who is on the scheme does not breach the curfew in four and a half months, there is a good likelihood that we can take the risk of allowing them to be on HDC for a further six to eight weeks without the likelihood of their absconding.

I also give a commitment that, in the assessment that the Scottish Prison Service and the relevant community justice social worker undertake, issues such as domestic violence are considered, along with victim information, the nature of the offence and the likely circumstances into which the prisoner will return on release. The prison governor and the SPS authorities will take those factors into account. That is as it should be, and that is how it will remain.

Cathie Craigie: At present, just over 3,000 people are out on home detention curfew orders. Obviously, given that you want to reduce the prison population, you want to see an increase in that number. At present, over 600 people breach their HDC licence—whatever the reason—and that number will surely rise. My concern is that more people who may be a danger to the communities that we represent will be out on the streets.

Kenny MacAskill: I give an absolute assurance that that will not happen. I seek not to increase the numbers, Mrs Craigie—the numbers will be the same—but to increase the period for which a prisoner can be on home detention curfew. The numbers are the numbers—they are those that were set under the scheme that the previous Labour-Liberal Democrat Administration introduced. We supported it at the time and we are now building on that work. My proposal is not to increase the number of prisoners who are eligible for home detention curfew. What I am saying is that, under the scheme, a prisoner could be out on HDC not for a maximum of four and a half months, but for a maximum of six months. The numbers of

such prisoners would not necessarily increase, but the period of time during which someone is out on HDC could increase. The criteria remain the same—they are the same now as they were before.

Cathie Craigie: I am sorry, convener, but I do not see the point in all this. What is the point of increasing the time period? The reason for doing that is based on no factual information—the committee has none before it for consideration. I assume that the cabinet secretary also has no such information.

Cabinet secretary, at the outset, you spoke about the pressure of the prison population on the prison estate—we can check the *Official Report* for what you said—but now you are saying something else. What is the point of extending HDC from four and a half months to six months if doing so does not take the pressure off the prison estate? If you take the pressure off the estate, surely we are talking about extra numbers.

Kenny MacAskill: Of course it would take the pressure off the estate. Otherwise, for a period of a month and a half, the prisoner would be in the prison estate. Self evidently—

Cathie Craigie: So, more people would be out on the streets—

Kenny MacAskill: What I am trying to explain is that the number of people who are eligible for HDC will remain the same because the criteria will remain the same. All that the Government is saying is that, if a prisoner has served four and a half months on HDC and they have not been a problem, surely they can be given an additional period on HDC. The order provides respite for the SPS and saves movement within the prison estate.

The Convener: Cabinet secretary, I think that you and Mrs Craigie may be talking slightly at cross purposes. The point that she makes is correct. You propose to extend the scheme by a further six weeks. By definition, although the same people may be involved at the moment, by the time that this works through the system, it is inevitable that more people will be out there. Is that not the case?

Kenny MacAskill: Yes, if we look at it that way. The churn increases, but the number of prisoners who are eligible for HDC remains the same because the criteria for being released on HDC remain the same. We propose to increase the period of time during which a prisoner can be out on HDC. The number of prisoners out on HDC could per se increase, but the number of individuals cannot increase.

Bill Butler (Glasgow Anniesland) (Lab): I just want to clarify that point, so that it is clear in my mind. I hope that this will be helpful. You said in

your introduction that the order would add 50-plus people on to HDC. It would take them out of the closed prison estate and on to the curfew scheme. Is that right?

Kenny MacAskill: Yes.

Bill Butler: I do not oppose HDC in principle—that would be ludicrous. My party, the Liberal Democrats and the SNP argued for it, while the Conservatives had reservations. We have a situation where there is real pressure on prisons. Prisoner numbers are up to an all-time high of 8,045. It is fair to say that there is a lack of capacity across the prison estate. I accept all that. I think that you said that we needed immediate measures to alleviate pressure. No one would gainsay that. You also said that the situation was a short-term, immediate problem with which we have to deal.

What would be the Government's view of the suggestion that we have a sunset clause, which would cover the year or 18 months until Addiewell prison comes on stream? There might be a couple of advantages to that. First, it would allow the temporary, highly pressured situation to be dealt with. Secondly, it would provide further evidence of how HDC is working. I refer to not only the issue of the 21 per cent who breach their licence, but the harder issues of whether HDCs are working as a way of reintegrating prisoners in the community, which are their *raison d'être*. Finally, when the matter came up for reconsideration, Parliament would be able to evaluate whether, as you claim, the time extension does nothing to endanger public safety, which we all agree is paramount. Given all the advantages of a sunset clause, would you be prepared to take the order off the table for now and come back to us next week with such a clause? I will ask the convener whether that is possible. I am sure that it would be. Any concerns that members have could be dealt with in that way. What is your view, cabinet secretary?

Kenny MacAskill: You asked whether I thought that there should be a sunset clause. The short answer is no. Last Thursday we had 8,026 prisoners and today we have 8,045, so we need to take action. To insert a sunset clause, I would require to withdraw the order. It would have to be redrafted and it would have to go back through the sausage machine that we have, via the Subordinate Legislation Committee and so on. However, I am prepared to give an undertaking to you and the rest of the committee that we will be happy to review the situation in January, when Addiewell prison opens and when there will be greater flexibility. At that point, we will be prepared to discuss the matter.

The point that you make is appropriate. The situation should be reviewed. Ms Craigie and Mr Don said that we should monitor the effectiveness

of HDC. Some things cannot be dealt with by the statistics alone; they require further investigation. I am more than happy to accept that the order would be granted on the understanding that there is an urgent need to deal with the current situation and that when Addiewell opens, the situation will be reviewed. I hope that the formal confirmation that I have given today covers that and that there is no requirement to delay matters, given the risk that the numbers could go up yet again tonight.

Bill Butler: I want to encourage you a little further along the way that I would like you to proceed, cabinet secretary. However, before I do so, I have another question. How long would it take for the sausage machine to insert a sunset clause—one, two, three or four weeks?

Kenny MacAskill: I think that it would take longer than that. There are various matters to be considered, including not just the drafting and the parliamentary timetable but the commencement order. We are not talking about something that could be done in a week or a fortnight.

Bill Butler: How long, then?

Kenny MacAskill: We are guessing, but we estimate that it would probably take a couple of months.

Bill Butler: That is not an inordinate length of time. I am almost content with the assurance that you gave, but I would be much more content if a sunset clause were inserted. It would then be up to the Parliament to consider the matter again in the future. The Government would not have to do anything. The fact that the Parliament would consider all the factors that I have already rehearsed, which I think are advantages, would probably clear up any apprehensions that people have about the order, which seeks to extend the specified time for an HDC licence.

It strikes me that when things need to be done quickly, they can be done quickly. I recall that, when the previous Labour-Liberal Executive had to do certain things, they were done in less than one or two months.

I appeal to you again, cabinet secretary. I would be much happier to support the order if you said that a sunset clause would be inserted. That would take a little extra time, but it would not take four, five or six months, or a year. It would take one month or maybe two months at the most. If that was expedited, we would all be content. How say you?

Kenny MacAskill: I do not think that we are in the situation that we were in with Mr Ruddle. Clearly, there are matters on which the Parliament can move expeditiously, but in this case it is likely that there would be several months' delay. The problem for the prison estate is critical.

If people want a sunset clause because they are so concerned, it would have been appropriate for such a clause to have been introduced at the outset, when HDC was introduced. It seems to me that your concern is ultimately about HDC per se. When we consider the matter in January 2009, I would be surprised if the problem with HDC—if there is one—was that people were offending in the period between four months and six months. It seems to me that the issue is likely to be whether HDC is working or not. What we should review is not simply the extension from four months to six months, which is what I seek today, but the concept of HDC, including whether it is fit for purpose, whether it can work better or whether it is not working at all.

I am more than happy to give an undertaking not only that I will review the SSI but that I will come back and discuss with you and with the Parliament whether HDC is working. What I am offering you is far superior to a sunset clause on one particular extension of HDC. I am offering an opportunity to review HDC per se to find out whether those of us who supported it—that is, the Liberal Democrats, Labour and the SNP—or those who had some scepticism about it have been proved right.

Bill Butler: I hear what you are saying, cabinet secretary, and it is tempting. I do not have a problem with HDC in principle—I would not have argued and voted for it if I did—but I voted for it to be used for the period of time that was specified in the bill, which was four and a half months. In all probability, what you say will turn out to be the case and there will be no problem.

12:45

As you said, however, there is a short-term pressure throughout the prison estate that we must take action in the short to medium term to deal with, while at the same time ensuring public safety, which is paramount. If that is the case—and we are not disputing that—I do not see a problem with inserting a sunset clause that ties in with the completion of Addiewell prison. Such a clause will meet the short to medium-term pressure and give the Parliament a chance to consider the issue. It is not about the principle of HDC, but about tackling a short to medium-term problem in the correct way. After all, we must ensure that there is a balance between public safety and pressure on the prison service.

You also said that it could take several months to insert a sunset clause. Perhaps, as a former English teacher, I can help you out; several months simply means a month or two. That is not too long—frankly, I think that the process could be quicker, but I am open to argument on that point. All the same, I do not mind if it takes a month or two to insert a sunset clause, because it at least

gives us some certainty, and the absolutely imperative issue is to give the public certainty. How say you now?

Kenny MacAskill: My short answer is that I do not accept your offer. First, the issue cannot be dealt with in the timescale that you appear to have suggested; for example, orders that have already been laid would have to be revoked. Weeks would turn into months and it would cause significant pressure. After all, we have heard what Mr McKinlay and others have said about Barlinnie prison, and it would be negligent of me to seek to delay things further. Along with ensuring the safety of our people, the paramount issue is ensuring safety in our prisons; in that respect, there is a particular problem that we need to tackle.

As for your eloquent argument for a sunset clause, I think that the important question is whether or not HDCs are working. That is why my offer to review HDCs is much, much better. Under your suggestion, if HDCs are not working, the maximum length of an HDC licence will suddenly be cut from six to four and a half months. My view is that, if HDCs are not working when I review the policy in January, we will be deficient and negligent if we do not seek to amend the policy substantially but simply drop the extra six to eight weeks.

As I have said, seeking to insert a sunset clause would delay matters, would not allow us to address the problems that have been raised by prison governors and the Prison Officers Association Scotland and would be detrimental to their good service in ensuring safety in our prisons. I believe that my offer to review HDCs in January when Addiewell is opened provides more comfort and, in allowing us to examine the gamut of HDC provisions and not simply considering whether a licence should last a maximum of four and a half months, would offer much more than would the insertion of a sunset clause.

Bill Butler: From the evidence that we have received, there is not too much doubt that, at a maximum of four and a half months, the HDC policy is working. However, we cannot guarantee that it will continue to work if it is extended to six months. My suggestion is simply that we consider inserting a sunset clause. That will allow us to agree this order introducing the six-month maximum; give us some time to see how that extension is working out; and let Parliament come back and look at the issue. I see no problem with that, and I am sorry that you cannot come that little bit further on the issue.

Kenny MacAskill: My undertaking goes further than what you have requested. You might be right: there might be problems with extending HDCs to six months. However, I would be gobsmailed if that were the case. The problem is more likely to be that HDCs are not delivering at all, rather than

that they are delivering for the first four and a half months and then, because of the vagaries of the moon or whatever else, causing danger to the public in the period from four and a half to six months. My offer is far better and gives far more comfort to the committee.

As I have said, we must remember the comments made by Mr McKinlay and others that we face a crisis in our prison estate. We cannot afford to play politics with this matter. I hope that Mr Butler accepts that my offer of a review is, in fact, superior to his own suggestion, as it gives him everything that he seeks—and more—and allows us to do whatever is necessary to let Mr McKinlay and others get on with their difficult job without the daily pressures that they are currently facing. I remind the member that the number of days matters: last Thursday, the prison population was 8,026; today, it is 8,045; tomorrow, the likelihood is that the figure will increase again.

John Wilson (Central Scotland) (SNP): I have been about to make this point for what seems a long time, but I note that some members around the table have been playing with the figures to criticise HDC. We have heard that 600 breaches out of a possible 3,000 means that HDC is breached in about 20 per cent of cases. The cabinet secretary will correct me if I am wrong, but I think I picked up from him that, in 60 per cent of those breaches, the HDC recall was successfully appealed. I understand that, where such appeals are successful, the prisoner continues on HDC. If we accept that a breach occurs in 21 per cent of cases and does not occur in 79 per cent of cases, in theory, the success rate of HDC should be calculated as roughly 91 per cent, given that 60 per cent of the 21 per cent of cases in which a breach occurs are successfully appealed. In effect, the success rate for the operation of HDC is around 90 per cent. However, it would be useful to get more specific details about those breaches and why those appeals were upheld by the process.

Kenny MacAskill: I think that your calculations are correct. Clearly, we will be happy to provide that information. I think that the figures show that prison governors view HDC very stringently, given that what may turn out to be fairly minor infractions result in the revocation of a prisoner's ability to be out on HDC. We will provide the full information that we have, but I think that your statistics are correct. I think that the figures simply confirm that prison governors do not enter into HDC lightly, given that 40 per cent were refused. Any breach is viewed by them most severely. However, in 60 per cent of cases, the prison governor's view was overturned by the Parole Board, which is the arbiter of final resort.

John Wilson: If I may make one final point, let me impress upon the cabinet secretary the view

that Cathie Craigie expressed earlier. When serious breaches occur, such as in the 1 per cent of cases that the cabinet secretary mentioned, the whole system is tainted. We need to ensure that those who decide on HDC are clear about the process and about which prisoners should be released under HDC. As much as possible, we need to prevent any serious breaches from occurring while people are on HDC.

Kenny MacAskill: You are quite correct that such matters need to be, and are, kept under constant review. That is why cases are assessed individually by individual governors.

Stuart McMillan (West of Scotland) (SNP): I have a question about longer-term prisoners who qualify for HDC. If the order is approved and the time for which prisoners can be on HDC is extended from four and a half months to six months, longer-term prisoners will obviously be out on HDC for longer periods. Given that such prisoners find it harder to integrate back into society, does the Government plan to do any work to consider whether longer-term prisoners could be out on HDC in conjunction with some other type of community service?

Kenny MacAskill: Longer-term prisoners are the subject of another SSI, which will apply only to those who are deemed eligible for parole. To some extent, the parole licence and the matters that go with that would kick in. Without wishing to be presumptuous about what may or may not be agreed in discussions hereafter, I point out that that order will allow those prisoners who have been assessed for parole to be allowed out on HDC when the bureaucracy and paperwork of the parole system kick in. Such prisoners who are not on short sentences will be subject to a parole licence and all the requirements that go with that.

Stuart McMillan: The Management of Offenders etc (Scotland) Act 2005 (Commencement No 4) Order 2008 (SSI 2008/21) extends the provision to longer-term prisoners who are serving a sentence of four years or more and makes them eligible for the HDC licence.

Kenny MacAskill: That is what I am saying—it applies only to long-term prisoners who have been granted parole, who can get the licence for only 12 weeks. They might have been granted parole, but the nature of the system means that once the Parole Board has made a decision, a whole array of matters have to go through the proverbial bureaucratic structures. If it was decided that such prisoners were fit for parole, the HDC would be available to them for a maximum of 12 weeks only while the bureaucracy and paperwork are resolved.

The Convener: If there are no further comments, I will draw the discussion to a conclusion.

The situation is fairly simple. The question of HDC has already been disposed of by the Parliament, and I made clear my views about that at the time. We have been totally consistent that it is not the purpose of the committee to revisit issues generally. However, I point out that if the order is approved, a four-year sentence would be reduced in certain cases to 18 months, which does not send out a deterrent message.

The situation is temporary. We should not rake over the coals as to why we are presently two prison facilities short, but until Addiewell comes on stream at the beginning of next year, we are, in fact, one prison facility short. What is the constructive solution to the difficulty that we face? Having listened with great care to the debate and the arguments that have been advanced, I am persuaded that the order is acceptable, but only with a sunset clause—I listened carefully to what Bill Butler said in that respect. I do not think that the order is acceptable without such a provision, which would mean that the situation would cease once Addiewell comes on stream in approximately 12 months.

We have had a lengthy debate. The question is, that motion S3M-1287 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Don, Nigel (North East Scotland) (SNP)
McMillan, Stuart (West of Scotland) (SNP)
Pringle, Mike (Edinburgh South) (LD)
Wilson, John (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)

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

It therefore falls to the casting vote to decide. I have gone for the status quo, which is to oppose the motion.

Motion disagreed to.

Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) Order 2008 (SSI 2008/36)

The Convener: The next item on the agenda is a motion to annul. I will speak briefly to the motion, whose effect, should it be agreed to, would enable the Executive to bring the matter to the Parliament, at which stage it might be possible that a concentration of minds could arrive at a solution to the problem that concerns four members of the committee—namely, that we are

being asked to sign off an order that has no time limit. We have had a fairly exhaustive debate on the principal issue.

I move,

That the Justice Committee recommends that nothing further be done under the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) Order 2008 (SSI 2008/36).

The Convener: Are we all agreed? *[Interruption.]* I apologise to the cabinet secretary—I should have given him the opportunity to reply.

Kenny MacAskill: I welcome the opportunity to respond to the motion.

The order commencing section 3AA(1)(b) of the Prisoners and Criminal Proceedings Scotland Act 1993 will come into force on 21 March 2008. The commencement of those provisions will give Scottish ministers the power to release on home detention curfew licence, with appropriate conditions, long-term prisoners before the date on which they would have served one half of their sentence and whose release, having served one half of their sentence, has been recommended by the Parole Board.

13:00

The legislative provisions giving Scottish ministers the power to release on home detention curfew licence short-term prisoners who are serving between three months and four years were introduced in July 2006. Since that date, more than 3,000 prisoners have been released early on home detention curfew, subject to standard licence conditions under the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) Order 2006 (SSI 2006/315).

In laying before the Parliament the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) Order 2008, I am doing two things. First, I am now providing that the standard conditions that Scottish ministers place in licences for long-term prisoners are subject to the same scrutiny by the Parliament to which the licence conditions for short-term prisoners were subject. Secondly, for short-term prisoners, I am revoking the standard conditions in the 2006 order and covering the standard conditions for both short-term and long-term prisoners in one order.

I assure the committee that prisoners serving long-term sentences cannot be released on HDC unless the Parole Board has recommended their release at the first parole qualifying date and they also subsequently meet the SPS assessment criteria for HDC. As is currently the case with short-term prisoners, certain categories of prisoner

will not, by virtue of section 3AA(5) of the 1993 act, be eligible for release on HDC. Those include sex offenders, prisoners awaiting deportation and those who are subject to an extended sentence or supervised release order. Because of the way in which the parole process operates and the notification of the Parole Board's decision, the likely maximum time that a prisoner will spend on HDC will be 10 weeks. However, we estimate that the average time will be six weeks.

Just as with release on parole, the licence conditions that are specified in part 2 of the schedule to the order provide for the period that is spent on HDC to be subject to local authority supervision. Those arrangements will continue to apply during the subsequent parole period. In addition, HDC licence conditions will take into account any conditions that the Parole Board has recommended for the parole period and can include any other conditions that ministers consider appropriate.

As I indicated earlier, any offender who is released on HDC will be electronically tagged and subject to a curfew condition requiring that the offender remain at a specified place for a minimum of nine hours a day. The Scottish ministers also have powers to revoke an HDC licence and recall the offender to prison in respect of any failure to comply with any licence conditions, standard or otherwise.

I ask the committee to reject the motion and to support the order.

The Convener: I invite brief contributions from members.

Cathie Craigie: I have a couple of points to make. It is almost impossible not to link this discussion a bit to the previous discussion. I have supported the home detention curfew scheme in the past. However, before being asked to vote for an extension—in whatever form—to the period for which people can go on the scheme or an extension of the categories of people who are eligible, I would have expected to have been given some analysis of how successful or otherwise the scheme has been since 2006. Without that information, I am unable to support the order and I will support the motion.

The Convener: I reiterate what will now happen. If the committee supports the motion, the Government will have to consider its next move in the matter. Revoking the order would require the Government to lay a revocation order, which would be made under the same powers and would be subject to the same parliamentary procedure as the order that it seeks to revoke.

As far as I am concerned, there has been a basic failure. While I recognise the difficulties that exist, those difficulties are purely short term. I will

not revisit the arguments over HDC, but there are clear public safety concerns, which is why I voted as I did in our first division. The ball now passes back to the Scottish Government to decide whether it wishes to pursue the matter through the parliamentary process by asking the Parliamentary Bureau to stage the appropriate debate. I suggest that that is probably the best way forward.

The question is, that motion S3M-1459 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)

AGAINST

Don, Nigel (North East Scotland) (SNP)
McMillan, Stuart (West of Scotland) (SNP)
Pringle, Mike (Edinburgh South) (LD)
Wilson, John (Central Scotland) (SNP)

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

My casting vote is for the motion.

Motion agreed to.

The Convener: I suspend the meeting briefly to allow the minister and his team to leave.

13:04

Meeting suspended.

13:05

On resuming—

Police Grant (Variation) (Scotland) Order 2008 (SSI 2008/20)

Justice of the Peace Courts (Sheriffdom of Lothian and Borders) etc Order 2008 (SSI 2008/31)

Discontinuance of Legalised Police Cells (Scotland) Revocation Rules 2008 (SSI 2008/35)

The Convener: We reconvene to consider three negative instruments. As members have no comments, is the committee content simply to note the instruments?

Members *indicated agreement.*

The Convener: Thank you. The committee will now move into private session.

13:06

Meeting continued in private until 13:07.

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