



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Wednesday 30 June 2010

Session 3

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Wednesday 30 June 2010

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Scottish Parliament

Wednesday 30 June 2010

[The Presiding Officer *opened the meeting at 09:15*]

Time for Reflection

The Presiding Officer (Alex Fergusson):

Good morning. The first item of business this morning is time for reflection. Our time for reflection leader is the Rev Dr Angus Kerr, clerk of the presbytery of Glasgow, Church of Scotland.

The Rev Dr Angus Kerr (Clerk of the Presbytery of Glasgow, Church of Scotland):

Presiding Officer, ladies and gentlemen, thank you for inviting me to the Parliament. I bring you the greetings and good wishes of the moderator of the presbytery of Glasgow and the members of that court.

The two boys had been good friends but a movement of the earth now kept them apart and a huge void divided the two communities that once had been one. All depended on where you were when the movement happened.

The two lads had been good friends and now could only wave to each other across the great void. Then someone had a plan. They put stepping stones into the water to fill the void and soon the two boys were able to meet in the middle, shake hands and even go into each other's areas. The two became one again and community was created.

The church and the government—is there a great void between them? Sometimes, perhaps, we stay on our own side of the void. Yet stepping stones are there to be used, and getting close to one another and working for a common purpose are what it is all about.

In the presbytery of Glasgow, we have found that city, church and denominations are stepping closer. Voids are being overcome. We are finding ways of working together and, oddly enough, we are sometimes finding common ground.

In government, there are issues of housing, unemployment, care for the elderly and oppressed and social injustice. You as our elected members have to deal with all those concerns. Strangely enough, the church has the same concerns. However, the void of church and state sometimes keeps us apart.

But do not forget those stepping stones that you representing government and I representing church can utilise.

We can meet again; we can share common concerns; we can meet in the middle or even cross into one another's areas; or we can just stand back. What you and I have in common is a love for this nation, a concern for our communities and a burning desire to see to the needs of our people. That is what community is all about.

The stones are there to be used. Someone—our forefathers and forerunners in government and church—had the insight and the initiative to put them there, and we stand on their shoulders now.

And what about meeting? Like those two boys, you and I share a desire for the common good and have similar concerns. What did the two boys do about it? They met and shook hands. However, that was only the beginning of the re-establishing of their relationship and of their playing together, their working together, their growing up together and their talking and planning together.

One of the greatest preachers was a man of the Methodist Church, Charles Wesley, who one day said to a group of social activists he had gathered together:

"Is your heart as my heart? Then give me your hand!"

Ladies and gentlemen, I ask you exactly the same question this morning. Good morning.

Business Motions

Strategy Phase Report—[Bruce Crawford.]

09:19

The Presiding Officer (Alex Fergusson): The next item of business is consideration of business motion S3M-6671, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a revised time for decision time today.

The Minister for Parliamentary Business (Bruce Crawford): In moving the motion, I should explain to members that the purpose of moving decision time to half past 5 is to allow for a statement on the gathering.

I move,

That the Parliament agrees under Rule 11.2.4 of Standing Orders that Decision Time on Wednesday 30 June 2010 shall begin at 5.30 pm.

Motion agreed to.

The Presiding Officer: The next item of business is consideration of business motion S3M-6672, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out revisions to the business programme for this week.

Motion moved,

That the Parliament agrees—

(a) the following revision to the programme of business for Wednesday 30 June 2010—

delete

followed by Business Motion

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business – S3M-6377 Aileen Campbell: Perspectives of Children and Young People with a Parent in Prison

and insert

followed by Ministerial Statement: The Gathering

followed by Business Motion

followed by Parliamentary Bureau Motions

5.30 pm Decision Time

followed by Members' Business – S3M-6377 Aileen Campbell: Perspectives of Children and Young People with a Parent in Prison

and (b) the following revision to the programme of business for Thursday 1 July 2010—

delete

2.55 pm Finance Committee Debate: Budget Strategy Phase Report

and insert

2.55 pm Continuation of Stage 3 Proceedings: Crofting Reform (Scotland) Bill

followed by Finance Committee Debate: Budget

Motion agreed to.

The Presiding Officer: The next item of business is consideration of business motion S3M-6673, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Criminal Justice and Licensing (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during Stage 3 of the Criminal Justice and Licensing (Scotland) Bill—

(a) debate on the groups of amendments specified below in relation to the morning and afternoon shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limits indicated;

(b) each time limit specified in relation to the morning shall be calculated from the beginning of proceedings in the morning and each time limit specified in relation to the afternoon shall be calculated from the beginning of proceedings in the afternoon; and

(c) all time limits shall exclude any period when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in each of the morning and the afternoon being called) or otherwise not in progress:

Morning

Groups 1 to 6: 45 minutes

Groups 7 and 8: 1 hour 35 minutes

Group 9: 2 hours 20 minutes

Groups 10 to 12: 3 hours 10 minutes

Groups 13 to 16: 3 hours 40 minutes

Afternoon

Groups 17 to 19: 10 minutes

Groups 20 to 23: 40 minutes

Groups 24 to 27: 1 hour 10 minutes

Groups 28 to 32: 1 hour 30 minutes.

followed by Stage 3 Proceedings: Criminal Justice and Licensing (Scotland) Bill—[Bruce Crawford.]

Motion agreed to.

Criminal Justice and Licensing (Scotland) Bill: Stage 3

09:21

The Presiding Officer (Alex Fergusson): The next item of business is stage 3 proceedings on the Criminal Justice and Licensing (Scotland) Bill. In dealing with amendments, members should have the bill as amended at stage 2, which is SP bill 24A, the marshalled list, which is SP bill 24A-ML, the correction slip to the marshalled list, and the groupings, which I, as Presiding Officer, have agreed.

The division bell will sound and proceedings will be suspended for five minutes for the first division this morning. The voting period for the first division will be 30 seconds. Thereafter, the voting period will be one minute for the first division after a debate and 30 seconds for all other divisions.

Bill Kidd (Glasgow) (SNP): On a point of order, Presiding Officer. In light of the statement by the Lord Chancellor that was reported in *The Daily Telegraph* today, have you been made aware whether there will be a forthcoming statement from Westminster on his ideas on prisons and sentencing? [*Interruption.*]

The Presiding Officer: Order. Mr Kidd, that is—

Bill Kidd: We had no idea that the respect agenda extended to the Scottish Government's proposals on short sentences.

The Presiding Officer: That is not a point of order for me, Mr Kidd.

Section 12—Business plan

The Presiding Officer: Group 1 is on the Scottish sentencing council. Amendment 8, in the name of Robert Brown, is grouped with amendments 171 and 172.

Robert Brown (Glasgow) (LD): It is good to begin with a bit of light amusement in what I think will be a long day.

It is my privilege to speak to the first amendment that we must consider during stage 3 proceedings on the bill. [*Interruption.*]

The Presiding Officer: Order. There is far too much noise in the chamber.

Robert Brown: I am grateful to the Government for accepting that the Scottish sentencing council should be an advisory body that prepares sentencing guidelines for the approval of the High Court. Amendment 8 is really a carry-over amendment that provides that the Lord Justice General should be consulted on the sentencing

council's business plan. As the court has to approve the eventual outcome of the work, it seems only sensible that the head of the judiciary should have the opportunity to provide input into the work plan as of right. That may well happen in practice, but the bill should say so.

I turn to Stewart Maxwell's amendments 171 and 172. I am fairly relaxed about the judicial and legal balance on an advisory sentencing council, but it seems to me that the original idea that the Justice Committee approved—of having both a justice of the peace and a stipendiary magistrate on the council—was sound. Therefore, I am inclined to reject amendment 171.

I am also fairly relaxed about amendment 172, which would take away the Lord Justice General's block on the appointment of lay members of the council and reduce that to a right to be consulted. It may be a legitimate policy matter for the Government to determine the type of lay members who are needed. I am inclined to support amendment 172, but I will listen to the arguments on it.

I move amendment 8.

The Presiding Officer: I commend Robert Brown's brevity and suggest that other members are similarly brief, as we have a lot to get through today.

Stewart Maxwell (West of Scotland) (SNP): During stage 2 consideration of the bill's provisions on the Scottish sentencing council, the Justice Committee was clear that there were concerns about the influence of sentencing guidelines on judicial discretion and about how the sentencing council would function alongside the High Court. In its stage 1 report, the Justice Committee suggested that there were a number of options to address those concerns, including recasting the council as an advisory body or creating a judicial majority in its membership.

In light of that, and in line with the Justice Committee's recommendations, the Government lodged amendments at stage 2 that recast the council as an advisory body that would prepare sentencing guidelines for endorsement by the High Court. The committee agreed to those amendments.

However, the cumulative result of several other amendments relating to the make-up of the council was that the balance of the membership was altered, to stand at six judicial members and six non-judicial members. Given the changes that have been made to the status of the council and the role that the High Court will play in the final sign-off of draft guidelines, I believe that the council should have a membership with a small non-judicial majority.

It is central to the creation of the sentencing council that its work helps to deliver greater transparency and public confidence in our criminal justice system. The current format of a council with no lay-member majority that drafts guidelines for judicial approval does not represent a sufficient improvement on the status quo. I raised that issue in the Justice Committee.

Amendment 171 would provide that, after the Lord Justice Clerk, a High Court judge and a sheriff, one council member must be a justice of the peace or a stipendiary magistrate. The provisions are drafted to allow for the fifth and final judicial member to be drawn from the ranks of justices of the peace or stipendiary magistrates, should the Lord Justice General prefer, but they retain flexibility to allow that place to be filled by a sheriff, a sheriff principal or a High Court judge. I hope that that answers Robert Brown's point—that flexibility will remain. The council's judicial membership will reflect the breadth of judicial expertise and the non-judicial majority on the council will help to encourage greater clarity and openness in its sentencing.

Amendment 172 relates to the appointment of lay members of the council. Amendments at stage 2 created a requirement for the Scottish ministers to seek the approval of the Lord Justice General on the appointment of lay members of the council. However, the Lord Justice General is required only to consult the Scottish ministers on the appointment of the legal members of the council. I am not clear why there should be an imbalance in the procedures for the appointment of the members. The effect of amendment 172 would be that the Scottish ministers would have to consult the Lord Justice General on the appointment of lay members, rather than to seek the Lord Justice General's approval of those lay members. I ask for support for that amendment, which would merely provide that the same approach that applies to the appointment of legal members would apply to the appointment of lay members.

Richard Baker (North East Scotland) (Lab): The Labour Party recognises the concerns that have existed for some time over consistency in sentencing. We hope that consistency will be aided by the establishment of a sentencing council, although the key issue today will be about Parliament setting an appropriate framework for sentencing. There are important issues about the independence of the courts.

If the sentencing council is to be effective, it is absolutely crucial that it has the confidence of the judiciary. It is essential to have balanced representation on the council if it is to improve public confidence in our system. That is why Stewart Maxwell's amendment 171 is not necessary. I am aware that, in the Justice

Committee, Mr Maxwell raised concerns about a possible imbalance on the council because of the existence of a judicial majority, but I do not see why that should weaken the council, particularly as the cabinet secretary has stated the clear intention that the council should act through consensus. The council will include lay membership and representatives of victims of crime, which is important. The judicial membership of the council is likely to benefit the council and help it work with the courts.

On the same basis, I do not consider amendment 172, on the appointment of lay members, to be necessary either.

Given that the Lord Justice General is responsible for matters such as appointment of the judicial members of the council, it seems logical that he should be consulted on the business plan. We therefore support Robert Brown's amendment 8.

Bill Aitken (Glasgow) (Con): Robert Brown's amendment 8 has validity. There might well be an argument that the amendment should be supported, given that the Judiciary and Courts (Scotland) Act 2008 makes the Lord Justice General responsible for the running of the courts.

Mr Maxwell's amendments 171 and 172 are simply not acceptable. The Justice Committee took the view that there should be a judicial majority on the council. Stewart Maxwell's amendments would change that. I adopt the arguments of Mr Baker. I have little doubt that the thinking behind the amendments is that the sentencing council would be packed with a liberal majority of the good and the great from Edinburgh, acting at the behest of the cabinet secretary. As such, we cannot support them.

The Cabinet Secretary for Justice (Kenny MacAskill): Amendment 8 would require the Lord Justice General to be consulted on the sentencing council's business plan. Nothing in the current provisions would prevent the Lord Justice General from being consulted on that but, for the sake of clarity, I note that we recognise the principle that lies behind Robert Brown's amendment and are happy to support it. We believe that Scotland must have the appropriate framework in place to ensure fairness and justice in sentencing.

We are grateful to the Justice Committee for the time that it took to examine the matter in detail and we feel that the amendments that were made at stage 2 to the sentencing council provisions addressed the concerns that had been raised about judicial independence and the role of the council in existing criminal justice structures. The sentencing council will operate as an advisory body, with its guidelines being approved by the High Court.

09:30

In balancing the membership of the council, it is key that we ensure that it commands legitimacy in the eyes of both sentencers and the public. However, with the High Court's role in giving the final approval to draft guidelines, we believe that it is even more important that the concerns of the wider criminal justice community and the public are represented at the drafting stage. We believe that it is key that the non-judicial members of the council have a sufficient voice at the drafting stage, in light of which we support Stewart Maxwell's amendment 171.

Amendment 172 would ensure that the process for the appointment of the lay members of the council is the same as the process for the appointment of the legal members. We are not clear why there should be unequal requirements for the appointment of different members. All the members of the council will have equal status. It will not be a case of setting the legal and lay members against one another.

We envisage a collaborative approach to the drafting of guidelines and would like all the council members to be appointed on the same basis to assist in that process. We therefore support amendment 172.

The Presiding Officer: I call Robert Brown to wind up and indicate whether he will press or withdraw amendment 8.

Robert Brown: I will press amendment 8, which I think has support. I have only one comment to make in winding up, which is on Stewart Maxwell's amendment 171. People are becoming a bit obsessed about majorities and minorities. There will be a substantial judicial presence and a substantial lay presence on the council, which is to be an advisory body. Therefore, where the majority lies does not matter too much. The most important thing is to have the wide range of judicial experience for which the current provisions provide. I ask members to reject amendment 171.

Amendment 8 agreed to.

Section 14—Community payback orders

The Presiding Officer: We come to group 2. Amendment 9, in the name of Robert Brown, is grouped with amendments 10 and 11.

Robert Brown: Amendments 9 to 11 relate to community payback orders. Amendment 9 seeks to insert a definition of the purpose of community payback orders into the bill. I am rather surprised that that has not been done already, because I believe that it would give greater clarity to one of the more important reforms in the bill. I have changed the wording of the amendment that I lodged at stage 2 to accommodate what, on

reflection, I thought was a valid objection from the minister, which related to the fact that the convicted person's addressing their offending behaviour was seen as part of the process of payback to the community for his or her misdeeds. The wording of amendment 9 reflects that more adequately. I hope that it appeals to the minister and to the Parliament. I do not think that the purpose of the provision is academic. On the contrary, I think that what I am suggesting would give definition to the purpose and a clearer instruction to the court as to the policy intention, which in turn would help the court decide on the right balance of measures in an order.

Amendment 10 is intended to empower Scottish ministers to specify standards with which CPOs must comply. The powers are helpful and necessary. The whole area is bedevilled by the fact that provision, speed of commencement and completion of orders and, above all, their effectiveness, tend to be fairly patchy across the country. At present, those given community orders have a reoffending rate of about 42 per cent within two years. That is certainly better than the reoffending rate for people coming out of prison of 74 per cent, but it is still not very good. If the reoffending rate, which I accept is only one measure of success, could be knocked down to, say, 30 per cent, there would be a significant hit on the revolving door syndrome and a considerable saving to the public purse, and many more people would cease to be a nuisance to the public. The Scottish Government has a part to play in supporting and requiring best practice in this area. These specific powers would be helpful to it.

Amendment 11 relates to a requirement on the Scottish Government to make an annual report to the Parliament on the success of community payback orders based on reports prepared by local authorities. In response to the minister's comments, I have made amendment 11 less onerous than the one that I lodged at stage 2, but I believe that the requirement is still appropriate. It should be seen as an opportunity for local authorities to show the public the substantial public works done by offenders to pay back to communities for their crimes. The public must have confidence in our country's penal regime, particularly if we move—as I believe that we should—to slash the number of short-term prison sentences. Information about what is happening locally and how it compares with the position elsewhere in the country is a central requirement of democratic support for CPOs. A duty would be imposed on councils, but it is a vital duty that should work with the grain of what they are doing anyway, and it should not impose a significant cost. Councils, the Government and the public need to know if CPOs are not working as well as they should.

I know that ministers are still opposed to amendments 9 and 11, which I will press. They collect quite a bit of information already through social work and audit figures. Ministers will say that they already set standards, that they will tighten these things up in association with social work provision and that they will focus specifically on the causes of crime. If the minister says such helpful things, I will be prepared not to move amendment 10.

I move amendment 9.

James Kelly (Glasgow Rutherglen) (Lab): I reiterate our support for community payback orders, which in some instances will be more appropriate than prison sentences. It is important that the public have confidence in the orders, so they must be transparent—the public must see clear start and finish times. It is also important that the orders are funded correctly.

I support Robert Brown's amendments 9 to 11. It is correct to set out the purpose of community payback orders, as amendment 9 does, and the standards, as amendment 10 does. That is essential to ensure consistency throughout the country.

On amendment 11, an annual report to the Parliament is crucial. As Robert Brown said, that would help local authorities. It would also be important for forecasting the financial requirements of community payback orders. As I suggested, that will be essential if the orders are to succeed and if the public's support for them is to be maintained.

Bill Aitken: We will return repeatedly to public confidence in today's proceedings. Robert Brown's amendment 11 has merit. The consensus in the Parliament is that, sometimes, we do not revisit legislation to assess its effectiveness. What Robert Brown suggests is some way short of doing that, but there is merit in going down that line.

Amendments 9 and 10 are similar to amendments that Robert Brown lodged at stage 2. I am not persuaded of a great necessity for them—my view on that has not changed.

Kenny MacAskill: Amendment 9 would define the purpose of a community payback order as to pay back to the community that was affected by the offending behaviour and to support the offender in addressing the underlying causes of his or her offending. We understand and support the intention behind the amendment, but we continue to have reservations about it.

In our response to the Justice Committee's stage 1 report, we made it clear that the name "community payback order" is based on the wider definition of payback that is assumed in the

Scottish Prisons Commission's report. Every requirement that a court can impose in a community payback order is designed to pay back to the community through unpaid work or by addressing offending behaviour and its causes. Therefore, every community payback order—whatever requirements it contains—will meet the purposes that Robert Brown's amendment describes. The extra text that would be inserted by the amendment is not needed to achieve that.

We are concerned about the drafting of amendment 9, which requires that the offender

"pay back to the community adversely affected by the conduct of the offender".

That implies—perhaps unintentionally—that every community payback order must provide payback to the community in which the offence was committed and could give rise to several problems. An offender might commit an offence in an area other than that in which he or she lives. If they had to travel a considerable distance to comply with the requirement, the time to complete the order could well overrun and difficulties could arise with social workers' responsibilities to supervise offenders. Requests for transfers to another local authority area, which are allowed for in other community sentences, might become more difficult if the court had to take account of a need for the offender to pay back to the community that had been adversely affected. For all those reasons, we resist amendment 9.

Amendment 10 proposes new section 227VB of the Criminal Procedure (Scotland) Act 1995, which would provide for the Scottish ministers to specify in a statutory instrument standards of compliance for community payback orders. Ministers already specify standards for the operation of community sentences. Work is well under way to revise the national outcomes and standards for criminal justice social work, which will be published later this year.

I know that Robert Brown is interested in the standards, so I will say that they are being revised in consultation with the Association of Directors of Social Work and will include comprehensive guidance on community payback orders, including guidance on the immediacy and frequency of a social worker's contact with an offender and on the level and intensity of supervision. The standards will underline the fact that, for example, unpaid work placements should begin within seven days of sentencing. They will also make it clear that the interventions of criminal justice social work services, through all the requirements of a community payback order, should be designed to support effectively the individual's efforts to desist from offending. In addition to those non-statutory standards, powers are already in the bill to make rules in connection with the undertaking of unpaid

work. Those are contained in new section 227O(2A) of the 1995 act.

Unfortunately, the requirements that amendment 10 proposes are so broad, ill-defined and unclear about who they bind as to be unworkable. For example, under paragraph 2(a) in the amendment, who is responsible for ensuring prompt delivery of community payback orders?

The Presiding Officer: I must hurry you, minister.

Kenny MacAskill: Under paragraph 2(b), it is not clear how matters would be set out. Further, there are no principles or purposes.

Amendment 11 imposes reporting requirements. We already have matters on which local authorities and Government report. Our position is that the amendment is unnecessary. Indeed, these matters can already be brought back to the chamber and the Parliament.

I invite Robert Brown to withdraw amendment 9.

Robert Brown: I am grateful to the minister for his response, particularly on amendment 10. I largely accept what he says about what is happening in that regard and in terms of the purpose and intent of the Government. I welcome the good work that is being done to improve the standards of CPOs. However, I reiterate the point: my aim—and, I hope, that of the chamber—is to make a big success of community payback orders. We need to spread good practice that is based on what works and to jam the revolving door of repeat offending. I am particularly keen on work that is focused on addressing the causes of crime.

Given the minister's assurances, I am prepared not to move amendment 10. I will, however, press amendment 9 and will move amendment 11. My only point on amendment 9 is on the community aspect, which the minister slightly overstated. The amendment is at a generalised intention level; the detail is in the rest of the bill. The purpose of CPOs is central, but perhaps more important is the need for local authorities to make an annual report to their communities and for the Scottish Government to make such a report to Parliament. Those reports will be absolutely essential if we are to boost understanding of the orders and ensure their effectiveness. In addition, they would give the Parliament the materials to allow it to keep a close eye on progress. I press amendment 9.

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

Members: No.

The Presiding Officer: There will be a division. As it is the first division, proceedings will be suspended for five minutes.

09:42

Meeting suspended.

09:47

On resuming—

The Presiding Officer: We will proceed with the division.

For

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross)

(LD)

Tolson, Jim (Dunfermline West) (LD)

Whitefield, Karen (Airdrie and Shotts) (Lab)

Whitton, David (Strathkelvin and Bearsden) (Lab)

Against

Adam, Brian (Aberdeen North) (SNP)

Aitken, Bill (Glasgow) (Con)

Allan, Alasdair (Western Isles) (SNP)

Brocklebank, Ted (Mid Scotland and Fife) (Con)

Brown, Gavin (Lothians) (Con)

Brown, Keith (Ochil) (SNP)

Brownlee, Derek (South of Scotland) (Con)

Campbell, Aileen (South of Scotland) (SNP)

Carlaw, Jackson (West of Scotland) (Con)

Coffey, Willie (Kilmarnock and Loudoun) (SNP)

Constance, Angela (Livingston) (SNP)

Crawford, Bruce (Stirling) (SNP)

Cunningham, Roseanna (Perth) (SNP)

Don, Nigel (North East Scotland) (SNP)

Doris, Bob (Glasgow) (SNP)

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

Fabiani, Linda (Central Scotland) (SNP)

FitzPatrick, Joe (Dundee West) (SNP)

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

Gibson, Kenneth (Cunninghame North) (SNP)

Gibson, Rob (Highlands and Islands) (SNP)

Goldie, Annabel (West of Scotland) (Con)

Grahame, Christine (South of Scotland) (SNP)

Harvie, Christopher (Mid Scotland and Fife) (SNP)

Hepburn, Jamie (Central Scotland) (SNP)

Hyslop, Fiona (Lothians) (SNP)

Ingram, Adam (South of Scotland) (SNP)

Johnstone, Alex (North East Scotland) (Con)

Kidd, Bill (Glasgow) (SNP)

Lamont, John (Roxburgh and Berwickshire) (Con)

Lochhead, Richard (Moray) (SNP)

MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)

MacDonald, Margo (Lothians) (Ind)

Marwick, Tricia (Central Fife) (SNP)

Mather, Jim (Argyll and Bute) (SNP)

Matheson, Michael (Falkirk West) (SNP)

Maxwell, Stewart (West of Scotland) (SNP)

McGrigor, Jamie (Highlands and Islands) (Con)

McKee, Ian (Lothians) (SNP)

McKelvie, Christina (Central Scotland) (SNP)

McLaughlin, Anne (Glasgow) (SNP)

McLetchie, David (Edinburgh Pentlands) (Con)

McMillan, Stuart (West of Scotland) (SNP)

Milne, Nanette (North East Scotland) (Con)

Mitchell, Margaret (Central Scotland) (Con)

Morgan, Alasdair (South of Scotland) (SNP)

Neil, Alex (Central Scotland) (SNP)

Paterson, Gil (West of Scotland) (SNP)

Robison, Shona (Dundee East) (SNP)

Russell, Michael (South of Scotland) (SNP)

Salmond, Alex (Gordon) (SNP)

Scanlon, Mary (Highlands and Islands) (Con)

Scott, John (Ayr) (Con)

Smith, Elizabeth (Mid Scotland and Fife) (Con)

Somerville, Shirley-Anne (Lothians) (SNP)

Stevenson, Stewart (Banff and Buchan) (SNP)

Sturgeon, Nicola (Glasgow Govan) (SNP)

Swinney, John (North Tayside) (SNP)

Thompson, Dave (Highlands and Islands) (SNP)

Watt, Maureen (North East Scotland) (SNP)

Welsh, Andrew (Angus) (SNP)

White, Sandra (Glasgow) (SNP)

Wilson, Bill (West of Scotland) (SNP)

Wilson, John (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 62, Against 64, Abstentions 0.

Amendment 9 disagreed to.

The Presiding Officer: Group 3 is on community payback orders—offences punishable by a fine. Amendment 33, in the name of the cabinet secretary, is grouped with amendments 34 and 35.

Kenny MacAskill: Amendments 33 to 35 clarify the court's powers in respect of making a CPO under proposed new section 227A(4) of the Criminal Procedure (Scotland) Act 1995, by providing that the court may make such an order only where the offender has been convicted of an offence that is punishable by a fine, or by a fine and imprisonment, and where the court has decided not to impose a custodial sentence or a CPO under proposed new section 227A(1). They also provide that the court may impose a CPO under the section instead of, or as well as, imposing a fine, and they clarify that the court may impose one or more of the listed requirements in such an order.

It is clear from the wording of proposed new section 227A(1), when it is read in context, that a CPO is meant to be a genuine alternative to prison. For the purposes of our separate amendment to create a presumption against short sentences, the court must take into account proposed new section 227A(1) as an alternative to imposing a short prison sentence. In effect that means that, where the court decides that a short prison sentence is the only option, it must first rule out a CPO as being inappropriate in the case.

I move amendment 33.

Amendment 33 agreed to.

Amendments 34 and 35 moved—[Kenny MacAskill]—and agreed to.

The Presiding Officer: We move on to group 4. Amendment 36, in the name of the cabinet secretary, is grouped with amendments 37 to 44, 47 to 53, 58 to 60 and 173 to 185.

Kenny MacAskill: The majority of the amendments in the group are minor or technical in nature and seek to provide consistency of language or greater clarity of meaning. They will not change the meaning of the provisions to which they relate.

The group also includes a number of consequential amendments. Some will simply repeal references to "probation", as a consequence of the introduction of the CPO. The majority, however, will amend provisions in the Criminal Procedure (Scotland) Act 1995 that relate to appeals, and provide explicitly for an appeal against a sentence imposed for breaching a CPO.

I move amendment 36.

Amendment 36 agreed to.

Amendments 37 to 44 moved—[Kenny MacAskill]—and agreed to.

The Presiding Officer: We move on to group 5. Amendment 45, in the name of the cabinet secretary, is grouped with amendments 46 and 55 to 57.

Kenny MacAskill: In some sections of the bill that relate to CPOs, the provisions as drafted would limit the powers of the court in comparison with the provisions in the 1995 act that they are intended to replace. That is not the policy intention, so amendments 46 and 57 seek to rectify the position. The other amendments in the group are technical or will remove provisions that are to be replaced.

I move amendment 45.

Amendment 45 agreed to.

Amendments 46 to 50 moved—[Kenny MacAskill]—and agreed to.

Amendment 10 not moved.

Amendments 51 to 53 moved—[Kenny MacAskill]—and agreed to.

The Presiding Officer: We move on to group 6. Amendment 54, in the name of the cabinet secretary, is the only amendment in the group.

Kenny MacAskill: Amendment 54 provides for the court, following a request to move to another local authority area, to amend a CPO by removing or amending any specific requirement that cannot be supervised in the new local authority area, which might otherwise have prevented the order from being transferred.

I move amendment 54.

James Kelly: I oppose amendment 54. First, an offender should comply with the CPO in the local authority area that is designated in the order. Secondly, amendment 54 will provide for a power to change or revoke an order, which might give an offender an incentive to move to a different local authority area to seek to get the order changed or revoked.

Bill Aitken: I cannot understand Mr Kelly's argument. It seems to me that Mr Kelly's blocking of amendment 54 could prevent a person from moving for a positive reason. For example, a CPO might be imposed in Glasgow, but the offender might move to Manchester for work reasons. Amendment 54 is justified and will plug a potential hole in the bill.

Kenny MacAskill: I understand where Mr Kelly is coming from, but I agree with Bill Aitken. Mr

Kelly's approach would work against people who were seeking to improve themselves. People must do the time for the offence that they have committed. However, if they move to get away from bad company, for example, it would be perverse to force them to go back to the area from which they had moved to try to break the cycle of reoffending.

What matters is that offenders do the hours of work that they are required to do because of the damage that they have done. It is their right and entitlement to move for whatever reason. However, they will have to do the time whether they do it in the community in which they first resided or one to which they move.

The Presiding Officer: The question is, that amendment 54 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Finnie, Ross (West of Scotland) (LD)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hume, Jim (South of Scotland) (LD)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McArthur, Liam (Orkney) (LD)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)

McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMillan, Stuart (West of Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 O'Donnell, Hugh (Central Scotland) (LD)
 Paterson, Gil (West of Scotland) (SNP)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Tolson, Jim (Dunfermline West) (LD)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Against

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)

McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Stewart, David (Highlands and Islands) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

The Presiding Officer: The result of the division is: For 81, Against 46, Abstentions 0.

Amendment 54 agreed to.

Amendments 55 to 60 moved—[Kenny MacAskill]—and agreed to.

Amendment 11 moved—[Robert Brown].

The Presiding Officer: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)

Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

Against

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)

McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 78, Against 48, Abstentions 0.

Amendment 11 agreed to.

After section 16

The Presiding Officer: We come to group 7. Amendment 61, in the name of the cabinet secretary, is grouped with amendments 61A, 187, 12 and 62.

Kenny MacAskill: Amendment 61 will impose on courts a presumption against imposing custodial sentences of three months or less unless they consider that it is the only appropriate way of dealing with the offender.

The presumption against short custodial sentences has, of course, already been the subject of much debate; indeed we saw only yesterday support for the approach from none other than the Secretary of State for Justice south of the border, Ken Clarke. He is not alone because, last summer, in "Do Better Do Less: The report of the Commission on English Prisons Today", the commission's president, Cherie Booth QC, said:

"Scotland has taken a courageous lead in the UK by taking serious steps to address its prison crisis"

and that

"more widespread use of effective community sentences would both allow us to reduce the use of prison and allow for reinvestment of resources into local communities to cut offending."

On Robert Brown's amendment 61A, the Government shares his concern that the community payback order should be adequately funded, that its operation should be effective and properly monitored and that the long-term benefits arising from the new approach should be clearly demonstrated. We have already provided £9 million of extra resource to local authorities to improve the performance of the community service system and to prepare for the community payback

order. I acknowledge the representations of Liberal Democrat MSPs to me on that issue.

10:00

Robert Brown will understand that at this stage in the budget cycle I cannot offer additional commitments on funding. I am, however, willing to commit the Government to ensuring that, as soon as possible after the bill is given royal assent, a community payback order working group, led by the Scottish Government and involving key justice stakeholders, will be established. The group will play a full part in the Scottish Government's reducing reoffending programme. It will monitor preparation for the community payback order before it is brought into force and will, once it is in force, ensure that the kind of information that was mentioned by Robert Brown is regularly gathered and analysed. Those data and the group's conclusions will be provided to ministers and to Parliament to help to inform future decisions, including decisions relating to funding for community sentences. I note in particular Robert Brown's concern that the impact of the community payback order in reducing reoffending should be captured in the group's work. I confirm that that will be the case.

Further, I would be happy to update the Justice Committee on the Scottish Government's preparation for the community payback order, including the progress of the working group, prior to any court's being able to make a community payback order and prior to implementation of the presumption against short sentences, should Parliament agree to that. I hope that reassures Robert Brown that the issues that he has identified will continue to be a focus of work as the community payback order is introduced and I hope, on that basis, that he feels able not to press his amendments.

Amendment 187, in the name of Patrick Harvie, seeks to replicate the Scottish Government's original proposal to create a presumption against short sentences of six months or less. Although I am pleased that he supports the principle of the presumption that we brought forward when the bill was introduced in March 2009, we have been over this ground many times already. In the spirit of co-operation and of allowing Parliament to move on with a clear mandate, I call on Patrick Harvie not to move amendment 187, but instead to join us in taking a first step in the right direction by supporting the presumption against sentences of three months or less. We believe that the operation of the presumption will be effective and that evidence will be forthcoming to demonstrate that.

The Government's amendment 61 creates a power for ministers to amend the period to which

the presumption applies by secondary legislation—subject, of course, to the will of Parliament. That is the pragmatic way to move the matter forward and I call on Patrick Harvie to support it. If, however, he wishes to press amendment 187 to a vote, we will abstain.

Amendment 12 seeks to introduce a further reporting requirement, but its plan for a report five years from now and its broad remit means that it is not very useful to Parliament. I am sure that Parliament will want to hear regularly and in detail from ministers about the impact of the measures. Instead of waiting five years, we should be engaging now with all the stakeholders on getting and publishing regular performance information; indeed, we are the first Scottish Government to conduct an audit of performance information in the operation of community sentences. After stage 2, I offered to write to the Justice Committee setting out how we are doing that. I wrote to the convener in such terms on 3 June, and offered to meet members of the committee to discuss that work if that would be helpful. Amendment 12 is bureaucratic and will be unhelpful to Parliament. We resist it.

Amendment 62 seeks to ensure that the position of children who are detained following a conviction on indictment has the same safeguards as already exist for young offenders. By that, I mean that courts should be required to give their reasons for considering that a period of detention is the only appropriate disposal, and the court will be required to enter its reason for that decision in the record of proceedings.

We all share the desire to break the current situation on reoffending in Scotland, which damages many of our communities. The evidence is there: three quarters of people who are given short prison sentences will reoffend within two years, whereas three fifths of those who are given tough community payback orders do not reoffend. This is about making our communities safer. In a time of tight budgets, it is about ending the free-bed-and-board culture. I commend the views of Cherie Blair and Ken Clarke.

I move amendment 61.

Robert Brown: Short-term sentences do not work in the vast majority of cases. Throughout the passage of the bill, we—and other members who have positive contributions to make—have been trying to bring into place practical and effective arrangements to deal with the matter. I welcome the cabinet secretary's conversion to the Liberal Democrat view, which we have expressed from the beginning, that at least initially the target should be short-term sentences of under three months, not six months. I have already commented on the importance of ensuring that

CPOs are as effective as possible and that they have the confidence of the public.

The proposed power to amend the minimum period of imprisonment and, in the future, to substitute a period of, say, six months, is an approach with which the Liberal Democrats can agree. The proposal would enable matters to move forward when the time is right and with the agreement of Parliament, but without the need for fresh legislation. Amendment 61A, in my name, is intended to set down a clear marker of the things that need to be in place before such a reform could be activated. I am grateful to the minister for his positive and constructive approach to my amendment. We are all aware of the huge pressure on public funding at present, so I am also grateful for the minister's response to my earlier representations to the effect that specific funding will be required to bring about an improvement in the effectiveness of the existing orders, which have had a demonstrable effect.

My aim throughout has been to produce a practical outcome that will work and that will maintain public confidence. The arrangements need to be able to deal with an increase in the number of orders and to respond to issues such as drug and alcohol addiction problems, literacy issues and mental health problems. The bill will have failed in its purpose if that does not happen.

In general terms, the motivation behind amendment 12 is to ensure that a report on the success of the reforms be laid before Parliament no later than five years after the act comes into force. We need to keep an eye on the issue without micromanaging the situation or drawing premature conclusions.

Ultimately, there are only two sides to this debate. On the one side are the doomsayers who see the end of the world as we know it if the proposed reforms pass. They seem to be incapable of acknowledging all the evidence that shows that prison rarely works to rehabilitate offenders. They see no significance in the fact that 91 per cent of detainees in HM Young Offenders Institution Polmont have been detained previously. They also disregard all the research evidence that points to illiteracy, drug and alcohol addiction, mental health problems and parental disaster areas as being the key risk factors that result in people ending up in jail. The Labour Party and the Conservative party members from whom we have heard today have been entirely negative in their responses to those issues.

On the other side are those of us who believe that there can be a system that is capable of reducing the human degradation and waste that results from short-term sentences. We believe that ending the revolving-door syndrome of repeat offending will better protect the public. The deal

that we have in amendments 61 and 61A, following the bill's consideration by the Justice Committee, is one that will stand and which is intellectually supportable. The proposed reforms will make a big difference to many people in Scotland, not least to the victims of crime. I have great pleasure in supporting the proposals.

I move amendment 61A.

Patrick Harvie (Glasgow) (Green): When I learned that the Government had reached an agreement with the Liberal Democrats on a compromise position and had lodged amendments to that effect, I was not dismayed. We were able to consider the issue in the stage 1 debate, but I feel that it is important that the whole Parliament should at stage 3—I did not have the opportunity to be involved in the Justice Committee's in-depth consideration of all the options at stage 2—have the opportunity to debate and vote on the original proposal.

Ultimately, the question is about what prison is for or, at least, about what it is good for. There are those who will argue that prison is a punishment and that that is an end in itself. They will argue that prison provides a kind of satisfaction by ensuring that wrongdoers suffer because of the wrong that they have done. That position is taken regardless of the consequences, regardless of whether prison makes offenders more or less likely to reoffend and regardless, even, of whether prison provides an effective deterrent. Prison is good at one thing: providing walls for confinement. That is all that it is good at. [*Interruption.*]

If members will allow me, let me say that even many of those who work very hard to try to provide rehabilitation services—to tackle the education, literacy, mental health and addiction issues that Robert Brown mentioned—will admit privately that they are fighting a losing battle inside the prison walls because of the capacity and resource constraints that they face. Prison is not the best place to do that work.

A sentence of three, four or five months—the time that is actually spent in prison is probably even less than that—is not an adequate time in which to do anything substantial with some offenders.

If a person poses a genuine threat to society, putting them in prison for three or four months provides no real protection. It wastes the opportunity of confinement, the one thing that prison is good at. It abandons the opportunity to do more substantial things to prevent more victims from being created in the future, and to give someone the opportunity to turn their life around. That opportunity is best given outside prison for low-level offenders. When someone poses a genuine threat, prison is necessary, but I do not

see how anyone can argue that short-term confinement of six months or less gives genuine protection to communities.

The Presiding Officer: A large number of members wish to speak. They will be able to do so if they stick to the times that I give them.

Richard Baker: We believe that the sentencing system in this country must focus on what best serves justice and public safety. The proposed presumption would not achieve those aims. It would apply not only to minor offences, as some members have sought to suggest, but to 38 per cent of convictions for assault and to almost one quarter of convictions for carrying a knife. Today, we seek to ensure that more of those who offend with knives go to jail, but the SNP and the Liberals want fewer of them to do so.

Of those who receive custodial sentences for domestic abuse, 68 per cent receive sentences of three months or less. In its evidence, Scottish Women's Aid highlighted that the presumption could have a negative impact on people who are experiencing domestic abuse, and that organisation has written to us today to ask us to demonstrate our support for women, children and young people who are experiencing domestic abuse by maintaining the present position for our courts. That window of opportunity, which might be a month or two, can be crucial in such situations.

Of course, this time last week, the Scottish Government's policy was exactly the same as Patrick Harvie's, and he has had the integrity to bring that up. Today, we have a presumption for sentences of three months or less, with a provision to vary by statutory instrument. The Scottish Government had to revise the proposal the day before the close of lodging of amendments, which highlights its fundamental weakness, which is that it is unworkable, unfunded, and will put an intolerable burden on our community sentencing system. The Government has been forced to move to three months because that argument is overwhelming.

Even in endorsing the presumption for three months, the Liberal Democrats have lodged an amendment that suggests that it should not be brought into force until a report is compiled on the expected increase in community sentences and the cost implications, and the views of an appropriate committee have been taken into account. Surely all that should have been done before the Government sought to change the law in this way? The Liberal Democrats are seeking to close the door after the horse has bolted. It gives the lie to what we all know: the proposal has not been properly funded, it will create 7,000 more community sentences in a system that already too often cannot cope. Unfortunately one third of

community sentences are already being breached at the moment.

Far from investment in organisations that have the expertise to ensure that community sentences are properly resourced being increased, budgets right across the country are being cut. The cabinet secretary has talked about budgets and finance, but his officials explained to the Finance Committee that the proposal will not produce savings in the prison estate because the infrastructure will need to be maintained.

The argument has been made again today that those who go to jail are more likely to reoffend. The unfortunate reality, which none of us likes, is that by the time an offender receives a custodial sentence, they will normally have received numerous different disposals for other offences. They are, by definition, repeat offenders by the time they get to jail. Of course, we need to do more to drive down reoffending, whether it be by custodial or community sentencing. We should also look to have more robust community sentences.

That is why the Parliament offered the opportunity for a pilot community court in Glasgow that would deliver fast and effective community justice. It was supported by everyone in the chamber, apart from the SNP, which now wants 7,000 more community sentences. Where is the logic or consistency in that? Today the SNP tells us that it wants thousands more sentences to be given, not through the provision of community courts but through this legislative presumption.

The proposal is not credible—it has unravelled before our eyes in the past week. Worse than that, it is not a responsible proposal. We are deeply concerned about its impact on our justice system and community safety, so we will oppose it.

John Lamont (Roxburgh and Berwickshire) (Con): Our prisons should serve four functions in society: they should protect the public, deter potential offenders, punish criminals and rehabilitate those who are inside. The most important of the four functions is the protection of the public from those who decide to commit crimes, closely followed by the need to rehabilitate criminals to ensure that we are addressing the underlying causes of their criminal behaviour and stopping the cycle of reoffending.

10:15

Short-term custodial sentences will always be a necessary part of our summary justice system. If an individual is a persistent offender or continuously breaches their community sentencing orders, the judiciary may feel that a short prison sentence is the best disposal to fit the circumstances. The possibility of a short prison

sentence needs to remain an option that is available to the courts in dealing with some offenders.

The role of the Government should be not to restrict the courts' ability to send people to prison, but to support the courts in their sentencing disposals and to ensure that adequate provisions exist to allow the disposals to be carried out. The courts must be allowed to retain their independence and they should be left in charge of sentencing. If the courts want to use short-term sentencing, Parliament should not prevent them from doing so.

It is perhaps true that short-term prison sentences do not achieve much by way of rehabilitation, but surely that means that we need to reconsider how we can use prison time more effectively to deal with rehabilitation, even if just for a few months. Just because there has been little success in rehabilitating some offenders during short sentences, there is no reason to abolish short-term prison sentences altogether.

Robert Brown: What does John Lamont make of the fact that a significant number of longer-term prisons are not getting rehabilitation because of a clog-up of short-term prisoners?

John Lamont: The need to understand the problems in our prisons and why rehabilitation is not happening is a problem that we all share and an issue that we all acknowledge across the Parliament, but abolishing short-term sentences is not the answer. It will simply make the situation worse. We need to make prisons better able to rehabilitate and to understand the underlying concerns of reoffending.

The Minister for Community Safety (Fergus Ewing): Will John Lamont give way?

John Lamont: The power of Scotland's courts to choose the length of prison sentences that are served by criminals should be maintained free from interference. That is the only way to protect our communities, and it should be the first step in the process of rehabilitation. For those reasons, we cannot support the amendments to create a presumption against short-term sentences, which will do nothing but extend the arm of the Scottish National Party's soft-touch Scotland.

Fergus Ewing: I am interested—

The Presiding Officer: I think that the member has finished rather taken an intervention.

I call Stewart Maxwell.

Stewart Maxwell: I rise to support amendments 61 and 62 and to speak against amendments 61A and 12, basically because those two amendments are unnecessary and overly bureaucratic. The

cabinet secretary dealt adequately with amendment 187.

Presiding Officer,

"just banging up more and more people for longer without actively seeking to change them is what you would expect of Victorian England ... It is virtually impossible to do anything productive with offenders on short sentences."

That is a quotation from the Lord Chancellor, Ken Clarke. I am sorry that his party colleagues in the Scottish Parliament cannot understand that. At least Ken Clarke can.

John Lamont: Will the member give way?

Stewart Maxwell: I am sorry, but I do not have time.

Short sentences are ineffective. It is expensive to hold prisoners, the work involved in processing short-term prisoners is heavy in relation to the length of their sentences, and the time could be better spent on rehabilitation of long-term prisoners. The community can benefit from work that is carried out by someone who is on a work programme rather than in prison, and the offender may benefit from the experience of work and the skills that can be acquired.

It appears to be the policy of the Labour and Tory parties that, if they want to knock down a wall, they bang their heads against it for 100 years and, if that does not work, they keep on banging their heads against it. That is just ridiculous.

Let us listen to the evidence and the research. I have heard cries of, "Where's the evidence? Where's the research?" There are stacks of it. Professor Alec Spencer of the Scottish Consortium on Crime and Criminal Justice stated that

"the use of short-term and very short-term sentences is complete eye-wash. It has no effect at all on reducing crime."—[*Official Report, Justice Committee*, 19 May 2009; c 1891.]

Let us listen to those who actually represent victims—because it is not the Labour Party that represents victims. I want to listen to David McKenna, the chief executive of Victim Support Scotland, who stated:

"Sending people to prison for short periods of time does nothing to help victims of crime and often results in more victims in the future. The time is right to end this revolving door."

David Strang, the chief constable of Lothian and Borders Police, said that

"The evidence is that sending people to prison for a short time does little to reduce offending in the long-term. In fact there is an argument that it is likely to lead to increased offending".

There is evidence that is piled higher than any wall that Labour members want to bang their

heads against, but the fact is that they do not want to see that. The Parliament should support the amendments in the cabinet secretary's name.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): There is a real problem with this debate, because the division between the parties is nothing like as great as people imagine. However, the solution that is offered in the Government's proposal is wrong.

In 2001, when I was the Deputy Minister for Justice, there were 6,000 more admissions to prisons for short-term sentences. However, through the provision of robust alternatives such as drug treatment and testing orders and the time-out centre for women, we were able to reduce that number considerably. Robust alternatives will be used by the judiciary and the Labour Party will support that. What we will not support is a presumption that people such as me can be assaulted by drug dealers who will not then go to jail—that is wrong. When people who are involved in domestic violence are not removed from the situation to allow the family to readjust, in many cases that presumption is, frankly, wrong.

The main increase in our prison population is not in short-term prisoners; the big problem in our prisons is having to cope with prisoners on remand, whose number has increased by more than 6,000. There are now 24,000 admissions for remand as opposed to 18,000—and dropping—for short-term sentences. There is no proposal in the bill to tackle the fact that we are not dealing with remand. The Equal Opportunities Committee addressed that in its report and referred to Cath Smith of Glasgow City Council, who said that if we could bail just one woman, whether to the 218 centre or on bail supervision, instead of remanding her to Cornton Vale, it would be a huge achievement.

The Government's proposal is the wrong proposal and it addresses the situation in the wrong way at the wrong time. Let us have robust community sentences that the judiciary will use, not this facile proposal.

Bill Aitken: As a young man from a poor area of Glasgow, I had many friends in low places and got to know the criminal mindset. [*Laughter.*]

The Presiding Officer: Order.

Bill Aitken: That impression was confirmed when I sat on the bench and has been reinforced by discussions with criminal lawyers in Glasgow. For a troublesome and small minority, prison is the only thing that will work. A situation has been created in Scotland in which many offenders do not pay their fines—indeed, on the evidence of the Sheriffs Association, the payment of fines now takes place on a more or less voluntary basis—therefore fines are not the answer.

The breach rate of social work orders in respect of compulsory work is disturbingly high, and social workers admit that, were they to be thorough in the application of such orders, as many as 75 per cent of the orders could technically be breached. Yet what is the cabinet secretary seeking to do? To remove the only possible alternative that is likely to impact on those offenders. If the new community payback orders are to work—we all profoundly want them to work—the removal of the possibility of a short-term custodial sentence for default or the removal of the ability to impress on offenders that any further offending will inevitably result in custody sends out a stupid message.

Fergus Ewing: Bill Aitken began by talking about friends in his earlier life. I want to ask him about one of his current friends, Kenneth Clarke. I ask Bill Aitken to respond on behalf of the Scottish Conservatives: was Ken Clarke right or wrong?

Bill Aitken: As a staunch upholder of devolution over the years, Mr Ewing will appreciate the fact that different approaches are required north and south of the border. If his proposals are agreed to today, for many people in Scotland that will send out the message to carry on thieving, disturbing the peace, shoplifting, subjecting people to fear and alarm and perpetuating the miscellany of petty crime that makes life a misery for so many people.

The Government's proposals would profoundly damage Scotland's society. I urge members to recognise that the Justice Committee got it right and that the existing provisions in the bill should be those that are agreed to today.

Angela Constance (Livingston) (SNP): I am pleased to have the opportunity to speak in favour of amendment 61. Given the fact that the Labour Party voted with the Tories to amend the original Government proposal and remove the presumption against sentences of six months or less from the bill at stage 2, it is entirely proper that Parliament now gets the opportunity to debate the principle of having a presumption against short-term sentences, albeit sentences of three months or less. If the Parliament is passionate about reducing crime and making communities safer, we must cast a cool eye over the evidence and decide dispassionately what works in punishing and changing offenders. All the evidence shows that short prison sentences do not work for low-level offenders. They are counterproductive and costly. We can no longer afford to have a misplaced confidence in prison.

I am surprised that members of the Labour Party think that it is entirely appropriate for those convicted of domestic violence to receive sentences of three months or less. If they were really concerned about the sentences that are given to wife beaters, they should not have voted

for proposals to water down the sentencing council.

It is interesting that other European countries have walked away from imposing short sentences, other than in extraordinary circumstances. The prison population in Germany is 89 per 100,000, yet in Scotland it is 150 per 100,000. Is there something intrinsically more criminogenic about the Scots? I think not. I remind the chamber that the McLeish commission stated that political factors have more of an influence on high rates of imprisonment than the rates of crime do.

On short sentences, it is time for politicians to show leadership and courage instead of resorting to populist and primitive Old Testament views of justice. Goodness me, even Ken Clarke has seen the light. On 14 June, he told *The Guardian*:

"It's not to be soft on sentencing, it's to be sensible on sentencing"

and reminded us that it costs more to send a boy to prison than to Eton.

In its evidence to the Justice Committee, Victim Support Scotland said that what victims of crime want most is for offending to stop and for no one else to experience what they have experienced. That requires politicians to take their eyes off political expediency and tabloid headlines and have the courage to implement measures that will work in the long term.

Johann Lamont (Glasgow Pollok) (Lab): Stewart Maxwell said that we should not have a straw-man argument or debate positions that are not being put, and should instead reflect seriously on what people are saying in the chamber today. I am therefore surprised that Robert Brown chose to describe those who oppose the proposal as "doomsayers". I do not think that we should call Scottish Women's Aid doomsayers. I think that we should reflect on the fact that, over the years, women's organisations have managed to persuade the legal establishment that the way that things are done does not work in the interests of victims.

The Scottish Government's position is that short-term sentences do not work and that we should use community sentences instead. The logic of that position is that, if community sentences are put in place, short-term sentences will wither on the vine. However, what is being proposed is that the presumption against short-term sentences will be put in place, leaving victims—not the people in this Parliament—to face the risk that that approach will not work.

In the short time that I have, I will not appeal to the minister, as his complacency and arrogance are evident to us all. However, I will appeal to his back benchers, who listen to women's

organisations, to listen to what Women's Aid has said. It believes that the criminal behaviour of perpetrators of domestic abuse does not fall into the category of people with chaotic lifestyles, for whom prison is a revolving door, that a presumption against the use of prison

"will only serve to increase the risks to safety for women, children and young people experiencing domestic abuse"

and will undermine the work that is done within the criminal justice system to address the issues of domestic abuse, and that

"It would be disastrous if the proposals were to foster an attitude amongst abusers that their behaviour was no longer being taken seriously in terms of sentencing".

I know that there are people on the Scottish National Party back benches who are concerned about the issues of women, children and victims of domestic abuse. Do not allow this debate to be characterised as an academic theoretical debate between people who hold different views on prison sentencing. Listen to people on the ground who say that the Government's proposal will put people at risk. If the Government wants to prove that short sentences do not work, it should put money into community payback and let short sentences wither on the vine; it should not do it in the way that is proposed, which is short-term political expediency dressed up as a strategy. Listen to the women's organisations and oppose this proposal. The SNP listens to women's organisations on some issues; it should listen to them on this one, too.

10:30

Dave Thompson (Highlands and Islands) (SNP): It is not only Cherie Blair and Ken Clarke who support a presumption against short sentences. We also have the Right Rev John Christie, the Moderator of the General Assembly of the Church of Scotland. I can do no better than quote the letter that he sent us yesterday:

"All the available evidence affirms that short periods of imprisonment do not work. They damage family relationships leaving 16,500 children separated from a parent; they separate offenders from their communities and they damage employment prospects."

He went on to state:

"During a short period of imprisonment there is no time to provide rehabilitation to an offender. People receive short sentences for offences such as theft of a vehicle or breach of the peace; if a presumption against short sentences were to be introduced the change would not affect most violent offenders. Indeed, a reduction in the prison population leaves prisons free to focus on the rehabilitation of serious offenders."

Like Bill Aitken, I had an acquaintance in my younger days who was sentenced to 30 days for fighting. He was given intensive physical education and he came out after the 30 days fitter and stronger and desperate for a fight. That is not

what we should be looking to do with short prison sentences. We need to give people proper rehabilitation and take them away from their criminal offending.

James Kelly: I oppose the Government's amendment 61, which is backed by the grand alliance of the SNP and their little Liberal helpers. *[Interruption.]*

The Presiding Officer: Order.

James Kelly: There is no doubt that the proposal represents a threat to communities. We should listen to the wise words of Scottish Women's Aid, because 68 per cent of domestic abuse sentences are of three months or less. Angela Constance would do well to pay heed to those words.

On finance, Stewart Maxwell should read the *Official Report* of the Finance Committee's discussions on the bill. Scottish Prison Service officials made it absolutely clear that releasing prisoners into the community would not save any money. We have two facts to consider—no money will be saved by releasing people into the community and vast investment in community sentences will be needed to make the policy work. We heard from the minister that no money is being set aside in the budget for the proposals. To create 7,000 community sentences would require £22 million. There is a black hole in the SNP's funding for the policy.

The Presiding Officer: I must hurry you.

James Kelly: It is clear that the Liberal Democrats have been conned on the issue. They have known all along that there is no funding, but the minister has bought them off with a working group.

The proposal will not serve communities well. The SNP has buried its head in the sand in relation to finance. The proposal is destined to fail and I urge the Parliament to vote against it.

The Presiding Officer: I can give Nigel Don one minute. I am afraid that is all.

Nigel Don (North East Scotland) (SNP): Thank you, Presiding Officer. I will therefore be brief.

First, I remind the Parliament that amendment 61 creates a presumption against short prison sentences. Every time that a member has risen to say that the option of short prison sentences will be taken away, he has been talking nonsense.

Secondly, Dr Richard Simpson suggested that there should be an amendment on remand. I ask him why he did not lodge such an amendment.

Thirdly, I refer to Professor Fergus McNeill's evidence to the Justice Committee, which is quoted in paragraph 175 of its report. He said:

"three things help people to stop offending: getting older and becoming more mature; developing social ties that mean something to them; and changing their view of what they are about as a person. Short periods in prison do not help with any of those three things."—*[Official Report, Justice Committee, 19 May 2009; c 1893.]*

Kenny MacAskill: First, I thank Patrick Harvie for his eloquent and sensible contribution. I say to him that all the evidence shows that we have the right direction of travel. We are trying to achieve results on a matter of great discussion and debate in our communities. We have to take practical, pragmatic steps, and that is why we reserve the right to come back, subject to the will of the Parliament, to seek to extend matters if we can show the doomsayers that Scotland has not collapsed and that we are beginning to deal with the issue.

I turn now to the particular issue of domestic violence that Johann Lamont raised. Do we have a problem in Scotland with domestic violence? Yes, we do. Can it be solved by prison sentences alone? No, I do not think so. Do those who commit serious and violent offences deserve to go to prison? Absolutely. Is that where they will go? Definitely. However, with regard to domestic violence, in Scotland we have a real problem with a culture of violence and machismo. Frankly, the rhetoric from the Labour-Tory coalition seems to be that we are going to sort it out by getting ramped up, tooled up and tore in. Nothing is going to change the culture of violence in Scotland less than taking that kind of attitude.

Why is there a presumption against short sentences? *[Interruption.]*

The Presiding Officer: Order.

Kenny MacAskill: Nigel Don has already answered that question, but I will tell the chamber again. One only has to meet the likes of Sheriff Raeburn, who sits on the domestic violence court in Glasgow. She has said that there are instances in which it is appropriate for someone who has breached a probation order that she has placed on them to be given a short, sharp shock and to be put away to give the family some respite. I accept that argument.

There will be domestic violence cases in which the presumption is overturned and rebutted, because the sheriff will tell the accused, "Your behaviour's out of order. The wife and the bairns are entitled to some peace and quiet, and you are going to prison." Whether that sentence is two weeks or three months, that sheriff will have the full support of this Government and this chamber. The presumption against short sentences does not

overrule such an approach. Instead, it ensures that we tackle the root causes of minor offences—alcohol, low-level mental health problems and drugs—instead of allowing this machismo culture to go on.

In concluding, I make it quite clear that this direction of travel is supported not just by the liberal coalition that members have referred to but by my friend Henry McLeish, who is a former Labour First Minister, and the current United Kingdom Secretary of State for Justice, Ken Clarke, who, given his attitude to the national health service as a member of Margaret Thatcher's Government, cannot be viewed as a liberal. That coalition of McLeish and Clarke shows that people are recognising that, to make our communities safer, we need to break the cycle of offending, tackle the root causes of that offending—which, as I have said, are alcohol, drugs and low-level mental health problems—and do what works. What works can be seen in the statistics: three quarters of those who are given short prison sentences reoffend within two years. Those people go back into their communities to continue the cycle of offending and to keep going into and out of prison with, as Robert Brown and other members have pointed out, the Prison Service unable to do anything other than contain them. It is quite right to contain some of those who perpetrate domestic violence, but those who have other problems need to have them addressed in the community.

Nevertheless, it is quite clear what works: tough community sentences allied to measures to deal with underlying alcohol and drugs issues and mental health problems. With such an approach, three fifths of offenders do not reoffend, as opposed to the three quarters of offenders who reoffend when given short prison sentences. That is why this is our direction of travel. This bill is about making our communities safer and, as their wise counsel shows, Ken Clarke, Cherie Blair and Henry McLeish support our approach.

I press amendment 61.

The Presiding Officer: I understand that Robert Brown does not wish to wind up, but I must ask him whether he wishes to press or withdraw amendment 61A.

Robert Brown: In light of the cabinet secretary's comments—which, to be frank, I think members on the Labour benches should have listened to carefully instead of giggling through—I seek to withdraw amendment 61A.

Amendment 61A, by agreement, withdrawn.

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

Members: No.

The Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Brown, Robert (Glasgow) (LD)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Finnie, Ross (West of Scotland) (LD)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hume, Jim (South of Scotland) (LD)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McArthur, Liam (Orkney) (LD)
 McInnes, Alison (North East Scotland) (LD)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 O'Donnell, Hugh (Central Scotland) (LD)
 Paterson, Gil (West of Scotland) (SNP)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Tolson, Jim (Dunfermline West) (LD)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Against

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

The Presiding Officer: The result of the division is: For 65, Against 62, Abstentions 0.

Amendment 61 agreed to.

Amendment 187 not moved.

Amendment 12 moved—[Robert Brown].

The Presiding Officer: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Carlaw, Jackson (West of Scotland) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West of Scotland) (Con)
 Hume, Jim (South of Scotland) (LD)
 Johnstone, Alex (North East Scotland) (Con)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 McArthur, Liam (Orkney) (LD)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 O'Donnell, Hugh (Central Scotland) (LD)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)

Against

Adam, Brian (Aberdeen North) (SNP)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Allan, Alasdair (Western Isles) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Keith (Ochil) (SNP)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Campbell, Aileen (South of Scotland) (SNP)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 FitzPatrick, Joe (Dundee West) (SNP)
 Foulkes, George (Lothians) (Lab)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)

Godman, Trish (West Renfrewshire) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grahame, Christine (South of Scotland) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McMillan, Stuart (West of Scotland) (SNP)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (South of Scotland) (SNP)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Paterson, Gil (West of Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 31, Against 96, Abstentions 0.

Amendment 12 disagreed to.

After section 20

Amendment 62 moved—[Kenny MacAskill].

The Presiding Officer: The question is, that amendment 62 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Finnie, Ross (West of Scotland) (LD)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hume, Jim (South of Scotland) (LD)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McArthur, Liam (Orkney) (LD)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMillan, Stuart (West of Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 O'Donnell, Hugh (Central Scotland) (LD)
 Paterson, Gil (West of Scotland) (SNP)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Russell, Michael (South of Scotland) (SNP)

Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Tolson, Jim (Dunfermline West) (LD)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Abstentions

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Stewart, David (Highlands and Islands) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

The Presiding Officer: The result of the division is: For 81, Against 0, Abstentions 46.

Amendment 62 agreed to.

After section 23

The Deputy Presiding Officer (Trish Godman): We move to group 8. Amendment 2, in the name of the cabinet secretary, is the only amendment in the group.

Kenny MacAskill: Amendment 2 seeks to reinsert in the bill a section that provides that at the point of sentencing an offender, a court must not consider it a mitigating factor that the offender was voluntarily intoxicated at the time the offence was committed. The provision forms part of our comprehensive framework for action to rebalance Scotland's relationship with alcohol.

There remains a very strong link between alcohol misuse and offending, particularly violent offending. My predecessor, Cathy Jamieson, quite correctly referred to a booze and blade culture. The key issue is the astonishingly high level of offending associated with alcohol.

In spite of the understanding of the courts that the excuse of too much bevvvy should not mitigate the sentence, there is evidence that, time and again, voluntary intoxication is being put before them as a mitigating factor. In her evidence to the committee, the Lord Advocate said:

"Day in, day out, notwithstanding the understanding that it does not mitigate, solicitors continue to put it before the courts in mitigation that their client would not have carried out the crime if sober. That is particularly prevalent as an excuse or as a form of mitigation in domestic abuse cases."—[*Official Report, Justice Committee*, 9 June 2009; c 2060.]

The provision does not prevent the courts from considering other mitigating factors when sentencing an offender. Whether in cases of domestic violence or antisocial behaviour, we do not want to hear the litany of excuses that are rolled out in Scottish courts day in, day out. We do not want to hear that it was the drink that done it—it was not.

10:45

Robert Brown: Does the cabinet secretary accept that what solicitors say to the court does not matter so much and that the key point is what the courts do in response?

Kenny MacAskill: It is both. The issue is changing the culture that exists in Scotland that somebody is actually quite a nice fellow, but it was the drink that did it. I have no doubt that such people have redeeming qualities but, at the end of the day, it was not the alcohol that did it; it was the individual. We must stop tolerating that excuse

and we must make it clear to those who defend offenders that that excuse will not be tolerated. We must also make that clear to the judiciary, as they have to be part of the process.

We fully accept that being drunk is not a defence in Scottish law. However, having practised for 20 years in the courts in Scotland—Robert Brown has practised here also—and having listened to the Lord Advocate, who knows more than anyone about what goes on in the courts of Scotland, I know that a litany of excuse is put forward daily that it was the drink that done it. No it was not. Let us make it clear and drive home the point that we will not tolerate violence, domestic or otherwise, or antisocial behaviour because someone simply went out and got bevvied.

I move amendment 2.

Richard Baker: When the issue was discussed at stage 2, Robert Brown and the convener of the Justice Committee made the valid point that the judiciary do not consider voluntary intoxication to be a mitigating factor when deciding on appropriate sentences. We supported Robert Brown's amendment to delete the section that contained the provision, because it should be superfluous. We remain unconvinced that amendment 2 is necessary and we think that puddings are being a bit over egged. However, we are mindful of the Lord Advocate's statement that

"Day in, day out, notwithstanding the understanding that it does not mitigate, solicitors continue to put it before the courts in mitigation that their client would not have carried out the crime if sober. That is particularly prevalent as an excuse or as a form of mitigation in domestic abuse cases."—[*Official Report, Justice Committee*, 9 June 2009; c 2060.]

We accept that it does not necessarily follow that such pleas for mitigation are successful, but we feel that the arguments for and against the provision are finely balanced.

I do not believe, as some have argued, that agreeing to amendment 2 would mean that courts would not be aware when alcohol had played a part in an offence. I acknowledge that all members want effective action to tackle alcohol-related crime and to send a clear message that such crime will not be tolerated. I hope that amendments to come will send out a clear message on violence, too.

Although we believe that amendment 2 is probably unnecessary, it is at worst superfluous and we will abstain in the vote on it.

Bill Aitken: Presiding Officer, picture if you will Edinburgh sheriff court in 1990. A young if not exactly fresh-faced defence agent sits as the depute fiscal narrates the circumstances of a case. The sheriff looks up and calls Mr MacAskill.

Mr MacAskill stands up and says, "My lord, this is a serious matter. My client broke the glass in the public house and put it in the complainer's face, as a result of which he received 24 stitches. However, my client was drunk at the time." Mr MacAskill would have received very short shrift from that court, as he well knows. The reality is that courts will not consider drink as a mitigation in any offence. Let us talk about the realities. Amendment 2 is absolutely and totally unnecessary. There is no justification for putting the provision in the bill—it is merely part of a crusade that Kenny MacAskill is carrying out with regard to drink and its consequences. The provision was thrown out by the Justice Committee and the amendment has absolutely no merit.

Robert Brown: With respect, the minister should have left the issue alone after the committee deleted the then section 24 at stage 2. The committee took the view that the courts and legal practitioners are perfectly well aware that alcohol is not a mitigating factor and do not require statutory direction to tell them so. It is true that solicitors frequently tell the court that their client was under the influence of alcohol when an offence was committed. If a solicitor has a client with a list of previous convictions as long as their arm, they might well be struggling for anything much to say in mitigation. However, the issue is not what solicitors tell the court, but what notice the court takes of the submission.

I do not accept Richard Baker's suggestion that the provision is incidental and that the arguments are nicely balanced. Although the fact that an offence was committed under the influence of alcohol does not sound in mitigation, that is not to say that it is always irrelevant. There are cases in which alcohol has been taken under the pressure of personal events such as bereavement and where that is said to be a one-off. There are cases in which intervention to help to tackle a problem of alcoholism is highly relevant to sentencing. The courts are well aware of those issues and of when they are relevant and, more commonly, not relevant.

I am against putting into statute provisions that are likely to have all sorts of unintended consequences. Amendment 2 singles out alcohol but ignores the parallel issue of drugs, which is unsatisfactory. What about situations of drinks being spiked? The common law is flexible enough to take account of such things on their merits. It is doubtful whether what the Government is proposing would be; rather, it will create unhelpful ambiguity. It is not clear what the amendment is intended to do. The Government has provided little if any evidence of a problem in the working of the common law. The amendment should be rejected wholesale.

Stewart Maxwell: I support amendment 2 in the name of the cabinet secretary. When the Justice Committee debated this issue at stage 2, the same lines of argument were used by Mr Aitken and Mr Brown. I did not think that their arguments washed then and I do not think that they wash now. The fact is that statements about voluntary intoxication are used in our courts every single day and every single newspaper reports them every single day. It is not necessarily the case, as Robert Brown suggested, that sheriffs or judges will just ignore such statements. They might well do, but why do lawyers continually use them, day in, day out? If statements about voluntary intoxication have no relevance, no influence and no part to play in the process, why do lawyers continue to use them day in, day out? They believe that such statements have influence and are relevant, which is why we hear them in our courts every day.

We have to change the drinking culture and the drinking and violence culture, because the two are combined. Part of that must mean sending out a strong message that alcohol is no excuse for people's behaviour. Whether someone is involved in a pub fight or is a wife beater in the home, that is unacceptable and drink has no place as an excuse for it in the court. I want to see an end to statements about voluntary intoxication.

Robert Brown said that the amendment could cause problems in a scenario of someone's drink having been spiked. I do not understand the logic of that, because the plea in mitigation would be not that the person was under the influence of alcohol but that their drink had been spiked. Such a plea would be absolutely acceptable and it would be absolutely correct for the lawyer to make it.

Let us not mix messages and try to create a smokescreen. Let us deal with the issue and send out a strong message.

Kenny MacAskill: I concur with Stewart Maxwell's comments. Voluntary intoxication is continually rolled out as an excuse. I have not practised in the Scottish courts for more than 11 years, but it was prevalent as an excuse then and I have heard from the Lord Advocate that it continues to be used on a daily basis. Is it accepted within the law? No, but as Richard Baker accepted and Stewart Maxwell said, there are times when the law must try to trigger a cultural change. We must put on record the point that it is entirely unacceptable to use alcohol abuse as an excuse whether for low-level domestic violence or for more serious offences. Sadly, that excuse is rolled out by lawyers and accepted by individuals, even if in most cases it is rejected officially by the judiciary.

I say to the Liberal Democrats and the Tories that the genesis of this matter was not simply the comments made by the Lord Advocate; the first person to challenge me on the issue was Chief Superintendent John Carnochan of the violence reduction unit, who recognised—as my predecessor Cathy Jamieson recognised, to her credit—the clear link between booze and blade in Scotland. If we are going to reduce violence in Scotland, whether in the home, the street or our communities, we need to tackle the problem of alcohol. Therefore, we need to drive home the message that alcohol abuse will not be viewed as an excuse. That is why John Carnochan raised the issue and why the Lord Advocate supports amendment 2. If the head of the violence reduction unit and the chief prosecutor and law officer are saying that we have a problem and that there is an issue that needs to be tackled, we should trust their judgment and back them.

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

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)

Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Against

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Carlaw, Jackson (West of Scotland) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West of Scotland) (Con)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hume, Jim (South of Scotland) (LD)
 Johnstone, Alex (North East Scotland) (Con)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 McArthur, Liam (Orkney) (LD)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 O'Donnell, Hugh (Central Scotland) (LD)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)

Abstentions

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)

Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Stewart, David (Highlands and Islands) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

The Deputy Presiding Officer: The result of the division is: For 47, Against 33, Abstentions 45.

Amendment 2 agreed to.

Section 24B—Minimum sentence for having in a public place an article with a blade or point

The Deputy Presiding Officer: We move to group 9. Amendment 3, in the cabinet secretary's name, is the only amendment in the group.

Kenny MacAskill: Amendment 3 will remove section 24B, which was inserted at stage 2 to provide for mandatory minimum sentences for knife possession offences.

We are doing more than ever before to tackle knife crime. Tougher sentences and tough police action are taking weapons off our streets. That goes hand in hand with groundbreaking initiatives to educate young people about the dangers of knives. The results of that work are demonstrated in statistics that show that recorded crime last year was at its lowest level in nearly 30 years and that violent crime was at its lowest level since 1986. Our courts are handing down tougher sentences for carrying a knife—the average custodial sentence for knife carriers increased from 116 days in 2003-04 to 217 days in 2007-08.

Mandatory minimum custodial sentences for knife carriers—a one-size-fits-all approach—are not the solution. We are not the only ones who say so. Strathclyde Police's chief constable, Stephen House, has said that mandatory minimum sentences are not the answer. I have referred to John Carnochan, the head of the national violence reduction unit. I do not think that he would mind my describing him as a hard-bitten Glasgow detective. In his evidence to the Justice Committee, he said:

"Jail doesn't work, we need early intervention, restricting access to alcohol and knives."

We should listen to those who are at the front line of the fight against knife crime.

John Muir and Chief Constable David Strang gave evidence to the Justice Committee on 23 March. Despite their divergent views, a clear message about the importance of education and prevention emerged from that session. We need to pursue a twin approach of education and enforcement and we need to give our courts the discretion to consider the circumstances of each case that comes before them. We need to give our judges sufficient discretion to sentence individuals, not offences. It would be more appropriate for the Scottish sentencing council to consider the appropriate disposals for people who are found carrying knives or other offensive weapons in public and to produce guidelines on that.

We should remember that, under the current law, a sentence of four years can be imposed simply for possessing a knife. When the police have, by the grace of God, intercepted somebody who was out to create mayhem, why would we wish to restrict a sheriff's ability to impose a four-year sentence and instead impose a mandatory six-month sentence? The Government will support fully any sheriff who feels that giving the maximum sentence is necessary.

Richard Baker: It is clear that Mr MacAskill has not understood our previous amendment. He misrepresents our policy.

Members: Oh.

The Deputy Presiding Officer: Order.

Richard Baker: Section 24B imposes a mandatory minimum sentence. The courts would still be able to set sentences of four years, but they would have to give sentences of a minimum of six months. Under the Government's proposals, more of these guys will walk free.

Kenny MacAskill: We must consider the facts. More people are being stopped and searched—almost 250,000 in Strathclyde alone. Fewer people are carrying knives. Of those who are caught with knives, more are going to prison and for longer.

Yes, we accept that we in Scotland have a problem with knife carrying. The solution is tough laws and visible enforcement but also education and allowing those in the front line—whether they are police officers or the judiciary—to use their discretion. Let us remember that progress is being made—the number of knife offences has reduced. That is against the background of the lowest recorded homicide rates in Glasgow in 10 years and in Edinburgh in 20 years and the lowest recorded crime rate in Scotland in 30 years.

There is a journey to travel, but we are taking action against the booze and the blade. Mandatory

sentences would create injustice. Let us leave it to our judiciary to impose the appropriate sentence for the appropriate individual and the appropriate crime.

I move amendment 3.

11:00

Richard Baker: It is a bit rich hearing the Cabinet Secretary for Justice talk of leaving it to the judiciary given the law under the amendment that we have just agreed to.

The reason why this Parliament needs to take new measures to tackle knife crime could not be more clear. Scotland suffers from rates of violent crime that are higher than anywhere else in the United Kingdom and probably Europe. Thirty per cent of crime in Scotland is violent whereas in England and Wales the figure is 20 per cent. For us, knife crime remains at persistently high levels.

Robert Brown: Will the member give way?

Richard Baker: I cannot take an intervention. No one took my interventions—[*Interruption.*—]—apart from the cabinet secretary, but that is the only thing that I will give him in the debate.

There were 3,422 convictions for knife carrying in 2007-08 and more—3,529—last year. We have sought to do more in the Parliament to tackle knife crime. In the last session, we passed new laws, opposed bail for knife criminals, conducted knife amnesties, and doubled the maximum sentence for carrying a knife—it is still available to the judiciary. However, we cannot escape the fact that, despite all those actions, the chronic problem persists. It is our duty to respond and to take further action. That is why we proposed a minimum mandatory sentence of six months for possession of a knife except in exceptional circumstances. We are pleased that the Justice Committee backed our amendment at stage 2. Therefore, it is particularly disappointing that the cabinet secretary should seek to remove the provision at stage 3. I am stunned by his lack of basic understanding of it.

We do not dispute that the provision represents a significant change in the law, but it is a necessary and practical one. The provision that we suggest is in line with that already in place for firearms offences. We already have a mandatory minimum sentence of five years for the possession of an illegal firearm, but there is no such provision for knife carrying despite the fact that knives account for far more murders in this country than guns do. Last year, 58 per cent of homicides in Scotland were committed with a knife, the highest percentage ever recorded. That is why we need to challenge more effectively the knife culture in this country. Every time that someone goes out

carrying a knife—every time that they engage in that culture—they dramatically increase the chance that someone will be killed or injured. In future, we need to ensure that they leave the knife at home. For us, that means that someone who gets caught carrying a blade needs to expect not to get a fine but to go to jail.

Some have questioned the cost, saying that the provision will cost some £20 million. We do not believe that; we believe that it will act as a deterrent. Last year, 2,000 people were admitted to hospital with knife injuries. Knife crime costs our national health service in Scotland £500 million—half a billion pounds—and that is before we even look at the costs to the police and courts. However, we have to look beyond the statistics; we need to look at the people behind these cases. The human cost of these crimes cannot be counted. We can all point to comments from chief constables—I could refer to those from the Association of Scottish Police Superintendents—but what we really need to do is to listen to the victims of knife crime and their families. *[Applause.]*

The Deputy Presiding Officer: I am sorry, but it is not appropriate for those in the public gallery to applaud.

Richard Baker: I take that on board, Presiding Officer, but they are here today to bear witness to the devastating impact that knife crime has had on their lives.

I have met victims of knife crimes across the country, from Glasgow to Greenock and Cowdenbeath to Aberdeen. Also, 30,000 Scots have now backed the petition for minimum mandatory sentences for knife crime. They should not be ignored. Let us remember that the campaign was started not by a political party but by the father of a victim of knife crime. John Muir has given powerful testimony to the Parliament on the impact on knife crime. The loss of his son Damian in a random and senseless knife attack has been devastating for John and his family. He was not beaten by that; he is campaigning so that other families do not have to go through what his family had to face. He has worked with other families who have also been devastated by knife violence and his is one of a number of successful initiatives to tackle knife crime, including by way of educating young people.

We all know that there is no single solution, but John Muir, Kelly McGee and members of other affected families have argued consistently that to achieve the kind of culture change that we need—to get those who carry knives to leave the blade at home—we need to make this change. They want that not out of a sense of retribution, but because they do not want others to go through what they have had to endure. That is by far the most

powerful case that has been put to the Parliament. The families are here today; I pay tribute to them and their campaigns. We should support them today and do all that we can to spare further innocent people the scourge of knife crime. I ask Parliament to listen to them and to reject the cabinet secretary's amendment. Unless we do that, we will have failed them and failed to take the action on knives that this country needs.

Sandra White (Glasgow) (SNP): I say to people in the public gallery and others who have been affected by knife crime that I sincerely sympathise with them and offer them my condolences. However, I rise to support the amendment in the cabinet secretary's name. It is wrong to politicise this very sensitive issue.

As a Glasgow MSP, I know only too well the knife culture that is associated with areas of Glasgow. It is shameful and shocking that the majority of knife crimes are committed in Glasgow. As all members have said, the problem must be tackled and stopped, but mandatory sentencing is not the answer. There is no evidence that mandatory sentencing will reduce reoffending. It does not matter what the Opposition Labour Party says, there is no evidence to support that claim. We must consider alternatives and ask why people carry knives. We must look at education, work with young people and support initiatives such as no knives, better lives, working with local communities. Surely spending £500,000 on initiatives such as no knives, better lives is much better than automatic jail sentences that will achieve nothing for the victims of knife crime or for the perpetrators.

The cabinet secretary and others have quoted at length John Carnochan, from Strathclyde Police's violence reduction unit. I have a great deal of respect for John Carnochan, who is at the coalface. He says:

"What we should be looking at is not mandatory sentencing, but mandatory rehabilitation."

That is what it is all about.

We have a great deal of respect and sympathy for the victims of any knife crime, but we cannot have a knee-jerk reaction. Steve House, the chief constable of Strathclyde, states:

"We have to deal with the possession and use of knives sensitively and intelligently, rather than in a dramatic, headline-grabbing way that sounds like the obvious answer."—*[Official Report, Justice Committee, 26 May 2009; c 1911.]*

We should listen to the victims and their families, but we should also listen to the experts. Mandatory jail sentences for carrying a knife will not work. People will go in, come back out and learn nothing. We must look at initiatives such as

no knives, better lives and work with communities, groups and victims.

Robert Brown: No one doubts that knife crime is a serious menace in our society or that the possession of a knife or other weapon by individuals in a public place is to be prevented. The question is, what is the best way of tackling the issue? Labour and the Conservatives believe that automatically locking people up for possession of a knife in all but exceptional cases is how to reduce the problem. If that were the case, there would be some evidence to the effect that prison acts as a deterrent. Richard Baker slid over that issue in his speech. In reality, there is no such evidence. Researchers, prison governors, police chiefs and people such as Detective Chief Superintendent John Carnochan, of the violence reduction unit, are against the policy.

The evidence of the figures is stark. They show that even the experience, let alone the threat, of prison does not provide a deterrent. Out of a sample of 180 prisoners who on 7 March this year were serving prison sentences for carrying a bladed or pointed instrument, 163—90 per cent—had received previous custodial sentences during the past 10 years. All of those offenders had received prior custodial sentences for the same crime. There is some significance in the fact that 2,802 of the 4,892 possession cases last year were in the Strathclyde area. The problem is variable across Scotland.

The single thing that deters people from criminal behaviour is the likelihood of being caught. The stop and searches that Strathclyde Police has carried out have been effective, as the diminishing returns show. Fewer and fewer people who are searched at crime hotspots or elsewhere are found to be carrying weapons. For example, in March a report from Strathclyde Police's Glasgow central and west division, which covers the city centre, showed a 21.6 per cent drop in crimes of violence and a 75 per cent reduction in murders. Cases that involved offensive weapons fell by 28.4 per cent and incidents that involved knives fell by 20.2 per cent. The force reported that it was searching more people and recovering fewer weapons. Those are significant results, which are worthy of closer examination.

If the Parliament were to enact a mandatory prison sentence for carrying a knife, what would be the result? The most immediate result would be the need to build a new Barlinnie prison or three new Shotts prisons, to accommodate the 1,345 people who were caught with knives last year but who did not go to jail—those are John Carnochan's words, not mine. We would spend £31,000 per annum per head on those prisoners, so that they could learn new tricks from hardened criminals in jail.

Our prisons are already overflowing. Polmont young offenders institution, in particular, cannot accommodate any more prisoners. Where would Richard Baker or the Conservatives get the capital funding to build the new prisons or the revenue funding to pay the prison officers who would staff them? Sending 1,345 people to prison for six months, as Labour proposes, would cost almost £21 million. Labour cannot be serious about the matter.

The Government's amendment 3, which would remove from the bill the provisions on mandatory sentences for knife crime, must be agreed to. This is a serious Parliament, which is in the business of representing the people by taking up serious issues of concern, such as the challenge of knife crime, and supporting effective action to tackle them. It would be a dereliction of our duty were we to adopt hugely expensive policies, which even the politicians who support them know will not work, when there is a wealth of evidence to tell us what works to reduce offending.

People have experienced grievous and incomprehensible losses and are entitled to have the Parliament provide a criminal justice system that is as effective as possible. That is what amendment 3 is about and that is what the Government is about. It is what we seek to do through this debate.

Duncan McNeil (Greenock and Inverclyde) (Lab): I speak for those of us in this Parliament and in the gallery who understand the need to address knife crime. We propose a mandatory sentence not as an alternative to a long-term strategy, but as an essential part of an approach that will address Scotland's knife culture.

I say to Sandra White that the tough approach that we propose does not exclude the early prevention work that the cabinet secretary outlined, which has been piloted in my community with some success. However, I think, as other people do, that it is never acceptable to carry and use a knife to intimidate, wound or kill. Carrying a knife is a serious offence and the message should be clear: carry a knife and go to jail.

I welcome the campaigners who are in the gallery, including Margo Hagen, mother of Darren; Lexi Lyall, mother of William; Kelly McGee, sister of Paul; Georgette Neil, wife of Malcolm; and, of course, John Muir, father of Damian. John Muir has campaigned, doggedly, effectively and with dignity against the evils of Scotland's knife culture, making his case for a mandatory sentence for knife crime. In the spirit of President Obama, when he was asked whether we can achieve political change from the ground up, he replied, "Yes, we can." Through his petition, he has ensured that the Parliament has had one of its most important debates. The petition led to a knife-crime summit,

and John Muir's arguments won the support of the Justice Committee during the passage of the bill. With the support of members of all parties, we hope to defeat the Government's amendment 3.

11:15

This is a significant test for our democracy and for the Parliament, the very purpose of which was to bring forward Scottish solutions to Scottish problems. The Parliament claims to be closer to the Scottish people and to understand their lives. It should be open and accessible. More important, it should be accountable to the people whom it serves. It would be a mistake for the Scottish National Party Government and its supporters in the Liberal Democrats to regard John Muir simply as a bereaved father speaking out only for his family's loss. He also speaks for his neighbours in Inverclyde, the west of Scotland and the more than 30,000 people throughout Scotland who supported the petition for action on knife crime. He has given voice to communities throughout Scotland that demand action.

John Muir has won the popular argument against the Government, which has so far refused to listen and which, by its actions, would put more knife criminals on our streets. It is a complacent Government, with complacent MSPs who have lost the argument with a long-suffering public, who fear that the perceived rights of a criminal minority are more important than those of the innocent majority.

We have an opportunity to change that perception, to listen and to act on the public's concerns. The success of today's proceedings will be measured not in the quality of the debate or how many column inches it generates: we will be judged by whether we effect change that responds to the innocent majority. That will be the democratic test. I hope that we will not let that majority down and that people power will defeat party power. I hope that, by defeating the amendment in the cabinet secretary's name, we will make a difference and answer the people's call.

Bill Aitken: I realise that there is genuine concern throughout the Parliament about the effects of knife crime, but the existing situation cannot be allowed to continue. We cannot have so many young men, not only in our cities, going out for a night with a knife in their pocket. We cannot tolerate so many ending up in an accident and emergency facility with scarred faces, or on a mortuary slab. That situation is far too prevalent and we must do something about it.

There has been, arguably, judicial recognition of the extent of the problem, but that is not enough. The cabinet secretary said that we had to listen to

people in the front line of the argument. How much closer to the front line can we get than people such as John Muir and Kelly McGee? They have seen at first hand in the most poignant of circumstances the impact of knife crime. We cannot have a continued litany of bereaved families telling of the pain and anguish that they have suffered. We must do something about it.

When the matter was debated at the Justice Committee, I did not think that Richard Baker's amendment went far enough. Our preferred option was for a sentence of two years in respect of such offences in order that the message could get home. We have to save lives from being wasted.

It is simply not good enough that we sit idly on the sidelines while the slaughter—I use that term advisedly—continues. That is, in effect, what the Government wishes us to do on the matter, but it is high time that the Parliament and the Government spoke up for the victims of crime, not for the potential perpetrators. If the word got out that, if you carry a knife, you go to jail, people would simply not carry knives. We would not have the spurious defence that the knife was being carried for protection. That is the route to anarchy and we can tolerate it no longer.

The Justice Committee got it right. The Government, as it often does on justice matters, has got it completely wrong. It is completely at odds with public opinion and refuses to recognise the realities of the situation. For once—just for once in his tenure of office—Mr MacAskill should listen to the public and protect it.

Paul Martin (Glasgow Springburn) (Lab): What has struck me in the contributions from Labour members so far is that they speak on behalf of the victims of crime and not on behalf of those who commit the crimes. We make no apologies for that. When Sandra White talks about headline grabbing, I hope that she is not referring to people such as John Muir. I am sure that John would rather be at home with his son Damian than be here in the Parliament.

The focus of the amendments from Kenny MacAskill's supporters, with their carefully scripted speeches, has been on the great success of community sentences in their local areas. I am not convinced that many of those who have been subject to such sentences in the past have complied with or feared them. If the sentences are so successful, why were 2,000 people injured and more than 50 people killed last year as a result of knife crime? Labour is clear that doing nothing is not an option. It is time for Parliament, and the members opposite, to stand up for the victims of crime, some of whom are here in Parliament today.

Stewart Maxwell: I very much agree with Robert Brown's opening comments. In all seriousness, though, those members who claim that others are ignoring the suffering of bereaved families belittle only themselves and should show caution before making such false accusations. I want to talk about the evidence rather than the arguments, opinions and emotions on both sides of the debate. There are deeply held views on both sides. However, the evidence from around the world is crystal clear.

Professor Michael Tonry, a specialist in criminal law and public policy at the University of Minnesota, researched the unintended effects of mandatory penalties. He said:

"One claim often made for mandatory minimum sentence laws is that their enactment and enforcement deter would-be offenders and thereby reduce crime rates."

That is the Labour argument. That claim, if true, makes a powerful case. Unfortunately, the accumulated evidence shows that it is not true. If mandatory sentences worked, I and every other member would support them. However, they do not.

Richard Baker: We have mandatory sentences for firearms offences, and firearms offences are falling.

Stewart Maxwell: We are talking about laws that we are trying to introduce today—[*Laughter.*] Let us be serious about this. Let us devolve firearms legislation to this Parliament, then let us debate it and see how Opposition members react.

Returning to the issue of evidence, in Western Australia, mandatory sentencing laws were introduced following an increase in car thefts by juveniles. That produced police chases in which 16 related traffic deaths occurred in 18 months. Research showed that the law's enactment had had no effect on the rates of automobile theft, and the law was repealed.

In South Africa, mandatory minimum sentences were introduced mainly for drugs offences. Research by the Viljoen commission showed that the law resulted in unfair sentences and substantially increased the prison population without any observable effect on crime rates.

The same is true in the United States of America. For example, in Massachusetts, studies concluded that mandatory minimum sentences had no deterrent effect on the use of firearms in violent crimes or a small short-term effect that quickly disappeared. Studies throughout the United States show that mandatory sentencing laws do not work. In Detroit, Michigan, the mandatory sentencing law did not have a preventive effect on crime. In Jacksonville, Florida, and elsewhere the same research showed the same outcome. The law does not work. If it

worked, we should support it, but the evidence shows that it does not.

This is Scottish Labour's flagship policy on crime. It is utterly discredited. It is rejected by criminal justice professionals, by victims' representatives and by Scottish Labour's colleagues in England and Wales. It is based on a mixture of fantasy, hypocrisy and deceit.

Margaret Curran (Glasgow Baillieston) (Lab): To Stewart Maxwell, I say that I will be driven by the experience in Glasgow and Scotland rather than by research from the United States.

I am moved to speak in the debate because of the experience of my constituents—such as Sam, who is in the public gallery today—who have lost their loved ones in a knife-crime incident and now have a tragedy that lasts forever.

Members of this Parliament, especially those of us who have been here since the beginning, need to be honest—indeed, I am struck and saddened by the SNP's complacency on this—that we have already tried many approaches. I was not persuaded of the need for mandatory sentencing earlier in my parliamentary career, but I am persuaded now because previous approaches have failed to make the breakthrough in tackling knife crime.

We know that far too many in Scotland carry a knife with impunity. Too many who carry a knife are not frightened of arrest or of facing court, because they know that they will probably not go to jail. Far too many crimes—their victims are in the public gallery today—are perpetrated by people who are already out on bail for previous knife-crime offences. Despite all our best efforts, the time has come to be radical. It is time that this Scottish Parliament was radical.

The statistics tell us that, if knives are carried, they get used. We need to break the myth that somehow knives protect people. We know that knives endanger those who carry them and that they endanger others. Mandatory sentencing is a big step—I acknowledge that—but it is a big step because we have a big problem.

Margo MacDonald (Lothians) (Ind): Will the member give way?

Margaret Curran: I would love to, but I do not have time.

If we agree to the proposal in the bill today, a message will run round Scotland that we no longer accept the carrying of knives. That message of "No ducking, no diving, if you carry a knife, you will face the consequences" will be understood on our streets.

Scotland needs that wake-up call. I am sad to say that the Scottish Government needs that as

much as the criminal and hooligans do. It is time for tough love. It is what we need to save lives, and it will work.

The Deputy Presiding Officer: A considerable number of members wish to speak, so members may speak for only a tight two minutes each.

Patrick Harvie: Like, I suspect, all members in the chamber, I feel nothing but respect for the campaigners who are present in the public gallery watching the debate and for the politicians who have joined—*[Interruption.]* I ask members to listen. I also have respect for the politicians who have joined that campaign and for their intentions and motives. That respect is not properly shown if we allow the debate to descend into political parties barking at one another about who cares or does not care. Everybody cares about the issue.

I agree with several of the comments that have been made by Richard Baker, Margaret Curran and even my good friend Bill Aitken. Far too many knives are being carried. Far too many people do not fear the consequences of carrying a knife. Every time that a knife is carried in public hugely increases the risk not only to other members of the public, but to the person carrying the knife. I also agree that the Parliament has a responsibility to act and to take the issue, and our duty, seriously.

Where I disagree with the specific proposal that the Labour Party is backing today is that it fails to differentiate between different circumstances. The issue comes back to the points that I made about short sentences earlier in today's proceedings.

The Deputy Presiding Officer: You have 30 seconds left.

Patrick Harvie: Just as there are some things that prison is good for—no member here disagrees that it is necessary to confine those who pose a serious danger—there are some things that legislation is good for and some things that it is not good for. Discriminating between a frightened wee boy who knows that he has made a mistake and a genuine thug who poses a threat is something that legislation cannot do. The courts need to do that. There is a genuine risk that, if we impose mandatory sentences, we will create a culture change among some frightened wee boys. A few months in Barlinnie will change their culture for the worse, not for the better.

The Deputy Presiding Officer: I remind members that they have a very tight two minutes.

James Kelly: This is one of the most important debates that the Parliament has had during the parliamentary session. Barely a weekend goes by in which there are not knife incidents throughout Scotland. In Glasgow at the weekend, two men were stabbed outside the Renfrew ferry. Knife

crime continues to be a problem and is involved in 58 per cent of homicides.

Some have argued that mandatory sentences do not work. That is a complacent argument. They have cited people on the front line to back up their argument, but let me quote the argument that was made by Kelly McGee, a knife-crime campaigner who unfortunately lost her brother. She said:

"If people break the law, they should be made to face the consequences. I believe that mandatory minimum custodial sentences for knife carriers will make people think twice about carrying a blade in public. If criminals are not afraid of the consequences, they will not think twice about their actions."

Margo MacDonald: Will the member give way?

11:30

James Kelly: I am sorry, but I have only two minutes.

Robert Brown said that the Parliament must be a serious one, and I agree. The question is, what will we do today? Politics is about making a difference, and this change will make a difference. This is not the time for whimpering responses; it is a time for leadership, a time to stand up and be counted, and a time for the Parliament to send out the strong message that knife crime is unacceptable and we will root it out in our communities. Members should support the bill as amended at stage 2 and give hope to those families who have suffered as a result of knife crime.

Dave Thompson: There is no evidence that mandatory sentencing reduces reoffending, but the Scottish Government is taking action that is having an effect on knife crime. The Scottish Government is showing leadership.

For example, the Scottish Government is working with the national violence reduction unit, with direct and record Government investment of £1.4 million over the past two years. The Scottish Government has invested £80,000 in a new initiative—medics against violence—which was launched on 18 November. The Scottish Government is providing £1.6 million over two years to the community initiative to reduce violence, with a further £3.4 million in funding being provided in services and in kind by partners to tackle the long-standing problem of gang violence in one of Glasgow's hardest-hit areas. The Scottish Government has introduced tougher prosecution guidelines, with the result that more than 600 knife carriers have been prosecuted on indictment rather than summary complaint, and 78 per cent of those prosecutions have resulted in imprisonment. The average sentence of imprisonment that is passed for knife-crime

prosecutions on indictment is more than 11 months.

The key to tackling knife crime is catching as many knife carriers as possible, giving judges greater flexibility with longer sentences, and investing in things that divert and occupy young people. The SNP has taken action on all three.

Margo MacDonald: Will the member give way?

Dave Thompson: Yes.

The Deputy Presiding Officer: You will need to be very brief, because Mr Thomson has only two minutes.

Margo MacDonald: Does the member agree that we saw the last of the razor culture in Glasgow without mandatory sentencing, but with judges doing their job?

The Deputy Presiding Officer: Mr Thomson, you have exactly 20 seconds.

Dave Thompson: Yes, we should let the judges do their job; we should trust them and the sheriffs, because they know the details of every individual case.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): The carrying and use of knives is often more dangerous in Scotland than guns are and, in most cases, the perpetrator's age is the same as that of the victim—under 19. The reoffending rate is far too high, and mandatory sentences will have no impact on that. Cathy Jamieson argued that case eloquently when I was on the Justice 2 Committee, and Margaret Curran also held that view at the time. Have we explored all the options?

At that time, I proposed a maximum seven-year combined sentence of custody and community service. A maximum of four years would be served in custody, and a minimum of three years would be community service. That would get us to the roots of why young people carry knives in Scotland, particularly in our cities. The Labour members of the committee at that time voted down that proposal. At that meeting, Jackie Baillie said that the argument that was used was simplistic and that the proposal would mean that people would carry guns instead of knives. The Labour Party's argument was that, if we make the law the same for those who carry knives as it is for those who carry guns, people will carry guns rather than knives. That was the wrong argument then, and it is the wrong argument now.

Mr Kelly asked for leadership in the debate. Leadership is about using judgment that is based on evidence; it is about getting to the root cause, not just taking an option that we know will not have a long-term success rate. That should be the focus of the debate.

Karen Gillon (Clydesdale) (Lab): We have mandatory sentences for carrying firearms because they are deadly weapons. So are knives.

Fifteen years ago, on Christmas day, my friend John was killed in Jedburgh by a single knife wound. He was an innocent victim in the wrong place at the wrong time, killed by a single stab wound that had devastating consequences for him, his family and the community. Fifteen years on, day in and day out, people are still killed and injured on our streets by a knife or other pointed implement.

Hundreds of thousands of innocent families have suffered. People who have been slashed have lost their employment chances because they have a slash down their face and nobody will give them a job, even though they were the innocent victim. Families have lost loved ones. Only four weeks ago, on Lanark High Street at 2 o'clock in the afternoon, a man was slashed from ear to ear. The community had to deal with that.

The cabinet secretary presents a false choice: if we have a mandatory sentence, we cannot do education, rehabilitation and stop and search. What a lot of nonsense. Sandra White says that there is no evidence that a mandatory sentence will stop people carrying knives. Well, there is plenty of evidence that the current system does not stop young people carrying knives on our streets. We have reached a situation in which, for far too many young people, particularly young men, a knife is as much a designer accessory as a hat, a belt or a baseball cap. We are letting them all down.

Patrick Harvie talked about a scared wee boy—that wee boy is as likely to be the victim as the aggressor. Today, we can do something brave: we can vote against the cabinet secretary's amendment and do something for young people in Scotland.

Nigel Don: I point out to Karen Gillon that the evidence is that the number of knives being carried is reducing. The number of knives being found is certainly reducing, and the police are looking very hard for them.

Richard Baker said:

"we need to ensure that they leave the knife at home."

I absolutely agree with him. I suggest that there is no dispute throughout the chamber, nor within the public gallery, that the knife should be left at home. The issue is how we ensure that.

I return to the point that has been made many times in the debate. Whether I like it or not—and I do not like it—the evidence is that mandatory sentences do not work.

Richard Baker: Will Nigel Don give way?

Nigel Don: Forgive me for a moment, Richard.

We merely have to look back over the centuries in which we had capital punishment to realise that it did not prevent people from doing a lot of things. Mandatory sentences simply do not work, and we know that. That is why we have to ensure that we listen to the evidence and do things that are appropriate.

I want also, improbably, to quote Bill Aitken. He said:

"We have to save lives from being wasted."

I agree with him. One of the best ways of wasting lives is to send young men, who are simply doing something that they perceive, incorrectly, is appropriate in their culture, to prison—the university of crime. Those are the points that are being forgotten about or ignored, and they are the other side of the argument.

If I believed that mandatory sentences would stop people carrying knives, I would vote for mandatory sentences, Government whip notwithstanding; I think that most of my colleagues would do so, too. However, the evidence is that mandatory sentences are not the right way to go and on that basis—because I care about the long-term future of Scotland—I cannot support the bill as it stands.

Kenny MacAskill: Let us be clear: there is a problem in Scotland with knife crime. We recognise that. Far too many families are bereaved, and we pay tribute to those who, despite their loss, have campaigned to try to make things better. In particular, we pay tribute to John Muir and others who have sought to make changes, which are working in Greenock and Inverclyde, where problems are still far too prevalent but progress is being made.

We have to take action, but it is a question of what we do and what works. As I said earlier, more people are being stopped and searched, fewer are carrying knives and those who do face tougher and longer sentences. That is appropriate. Equally, we must ensure that we do not have any knee-jerk reactions that would impact in other ways. If we spend money on prisons by locking everybody up, we cannot pour money into the no knives, better lives campaign, diversionary initiatives and education. Those things cost money, but what has been shown in Greenock and Inverclyde is that matters are working and progress is being made.

Margaret Curran made various points, but I refer to John Carnochan, who is on the front line and who asked, "If we give somebody two years in jail the first time they're caught carrying a knife, what do we do the second, third and fourth time? Do we operate a three-strikes-and-you're-out system?"

That is why we have to listen to guys such as John Carnochan and do what is right. We have a problem in Scotland; let us ensure that we tackle it.

Let us listen to those on the front line. Patrick Harvie was mocked and sneered at by some on the Labour benches, but there are frightened wee laddies who carry knives. They have to face the consequences of their actions, but I can tell members this: putting them in prison would not improve them or change the situation. Indeed, it would probably make matters worse.

Let me quote Sheriff John Herald, who sits at Greenock sheriff court. He said:

"I have spent many years going on about possession of knives in this town, the damage they can do and what people found with these items can expect to happen when they appear in this court."

Sheriff Herald is no shrinking violet. He continued:

"There have been four cases today involving possession of knives and four cases where I haven't sent anyone to prison. No doubt that will attract some criticism ... But there are times where campaigners wanting mandatory sentences for people found in possession of knives do not understand that all cases must be looked at and considered on their own merits."

Sheriff Herald would have my full support in giving somebody four years simply for possessing a knife. He has a track record in making it clear that there is a problem in Inverclyde and in taking action and imposing severe sentences when necessary. However, he also recognises—as does Patrick Harvie—the case of the frightened wee laddie.

Labour members should also think about the situation of the soldier who has served in Iraq, who has come home from Helmand and who is self-medicating—he has problems with alcohol. He picks up a knife at a party or in the house but does not use it. Would they give him six months in prison at Her Majesty's pleasure? Or would they allow Sheriff Herald and others to remember the service that that soldier has given to Queen and country? Six-month mandatory sentences bring manifest injustices not simply for frightened wee laddies, but for those who suffer from post-traumatic stress disorder.

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

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
Allan, Alasdair (Western Isles) (SNP)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Campbell, Aileen (South of Scotland) (SNP)

Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Finnie, Ross (West of Scotland) (LD)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hume, Jim (South of Scotland) (LD)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McArthur, Liam (Orkney) (LD)
 McInnes, Alison (North East Scotland) (LD)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 O'Donnell, Hugh (Central Scotland) (LD)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Tolson, Jim (Dunfermline West) (LD)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Against

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)

Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

The Deputy Presiding Officer: The result of the division is: For 63, Against 61, Abstentions 0.

Amendment 3 agreed to.

Section 26—Offences aggravated by connection with serious organised crime

The Deputy Presiding Officer: We come to group 10, on offences aggravated by connection with serious organised crime. Amendment 13, in the name of Robert Brown, is the only amendment in the group.

Robert Brown: Sections 25 to 28 introduce a number of new offences in the area of serious and organised crime, which build on the common-law crime of conspiracy. The whole chamber will support effective measures to get at the Mr Bigs

behind criminal gangs—the people with layers of underlings between them and the direct commission of a crime. At stage 2, the committee endeavoured to test the Government's proposals in this difficult area. We had specific concerns about whether the crimes that the bill will create were sufficiently defined to target the people whom we are after. Despite the targeting of serious and organised crimes, that remains an important aspect of legislation.

Amendment 13 addresses the need for corroboration of the aggravation of connection with serious and organised crime. In common law, an aggravation does not require to be corroborated provided that the main corpus of the crime is proved by corroborated evidence. The same is true for statutory aggravations such as racial and sectarian offences. That is entirely reasonable. I do, however, have some concerns in this instance. A minor breach of the peace or a theft charge attracting, in the normal way, a monetary penalty would, if aggravated by connection with serious and organised crime, carry a potential prison sentence of five or 10 years. Section 25, "Involvement in serious organised crime", provides for a potential sentence of 10 years in jail. I am not sure that that does not change the nature of the crime entirely and, therefore, propose that it might require corroboration. I would like to hear the minister's justification for the bill as it stands.

11:45

An example has been suggested to me of a case in which someone is charged with living off immoral earnings, but in which there is one credible strand of evidence that the girls involved had been trafficked. I find that example compelling, given the lack of prosecutions and convictions for trafficking. Of course, everyone knows that Al Capone was jailed for tax evasion rather than for gangster crimes but, at the other extreme, we could end up with a situation in which a minor offender is locked up for years on the basis of thin evidence of links to something bigger. The amendment makes a serious point, but I am ready to listen to what the minister has to say.

I move amendment 13.

James Kelly: I oppose Robert Brown's amendment 13. There is agreement across the chamber that we must tackle serious and organised crime through the bill, to support police officers and public services that award procurement contracts and want to ensure that they do not tie in to serious and organised crime. The amendment would weaken the bill. I support the bill's provisions on taking evidence from a single source. We cannot be complacent in the fight against serious and organised crime, and in this case the bill is adequate.

Bill Aitken: With respect to James Kelly, I do not think that that is the issue. Robert Brown makes a good point with amendment 13. He and I do not agree on many justice issues, but we share qualms about breaching fundamental principles of Scots law, of which corroboration is one.

I am aware that, in recent times, we have departed from that principle radically in respect of racial or homophobic aggravations to assaults and breaches of the peace, for example. There have been good cases for doing so, but I have never been quite comfortable about it.

James Kelly's arguments do not have a great deal of validity. The failure to agree amendment 13 would impact, to some extent, on the principles of justice, but it would not impact on the issue with which he and I are concerned, which is that the serious and organised crime provisions should be effective, as the corroboration in that respect would be the crime itself, and it would be fairly easy to come up with the additional corroboration that would be needed to ensure that the prosecution would succeed. I know that that is a fine point, but I think that Robert Brown is correct, and we will support his amendment.

Kenny MacAskill: Although we understand the reason for amendment 13, we do not think it appropriate or necessary. The Solicitor General has already spoken to Robert Brown on the issue but I will try to further clarify matters.

We should be clear that the normal rules of corroboration still apply to the underlying offence that would incur a statutory aggravation. The current provision requires a single source of evidence to establish the aggravation. That is in line with the common law on aggravation and with previous statutory aggravations, such as the Offences (Aggravation by Prejudice) (Scotland) Act 2009.

If amendment 13 were accepted, it would require corroboration for the aggravation to apply. However, if the fiscal had more than one source of evidence establishing an accused's involvement in serious or organised crime, he would likely be seeking a conviction on one of the substantive offences in sections 25, 27 and 28. Therefore, the amendment would make the statutory aggravation meaningless and devoid of any practical use.

Robert Brown is, correctly, concerned that an offender might receive a sentence where the aggravation could be more severe than the original sentence. All that this section does is require the sentencing sheriff or judge to record the aggravation and to take it into account in determining the appropriate sentence, and to indicate whether and how the sentence is different to the one that would have been imposed if the offence were not aggravated. That is a matter for

the court to determine after hearing all the facts and circumstances of the case, but the starting point in determining the sentence will be the index offence and the appropriate sentence for that offence.

I invite Robert Brown to withdraw amendment 13. The issues are technical and complicated. As I said, the Solicitor General has spoken to Robert Brown already—and doubtless did better than I have just done—but I hope that I have supplied additional clarification.

Robert Brown: We have had an interesting and worthwhile debate on this important matter. We need to go back to where the Justice Committee began, which is the fact that a number of new offences are proposed to deal with the significant problem of the Mr Bigs in crime. I remind the Parliament that the new offences—the cabinet secretary touched on them—are involvement in serious organised crime, directing serious organised crime and failure to report serious organised crime. In all those cases, the boat is pushed out considerably beyond the current definition of conspiracy, under which the matter is dealt with at present.

The Justice Committee's starting point was its concern that the proposed offences are not as well defined as they might be. We bowed to the Government's view on that, because it has a galaxy of legal officers behind it to provide support on technical matters, but it seems to me that the point that I made in my opening speech is still valid. Ultimately, the new offences exacerbate relatively minor crimes and make them into things that carry serious penal consequences on what might appear to be thin evidence. To be frank, if we cannot get the guy under involvement in, directing or failure to report serious organised crime, the evidence must be pretty thin. In those circumstances, although I find the area difficult, I will press my amendment.

The Deputy Presiding Officer (Alasdair Morgan): The question is, that amendment 13 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Carlaw, Jackson (West of Scotland) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West of Scotland) (Con)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)

Hume, Jim (South of Scotland) (LD)
 Johnstone, Alex (North East Scotland) (Con)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 MacDonald, Margo (Lothians) (Ind)
 McArthur, Liam (Orkney) (LD)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 O'Donnell, Hugh (Central Scotland) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)

Against

Adam, Brian (Aberdeen North) (SNP)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Allan, Alasdair (Western Isles) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Keith (Ochil) (SNP)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Campbell, Aileen (South of Scotland) (SNP)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 FitzPatrick, Joe (Dundee West) (SNP)
 Foulkes, George (Lothians) (Lab)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grahame, Christine (South of Scotland) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Henry, Hugh (Paisley South) (Lab)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)

Macintosh, Ken (Eastwood) (Lab)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McMillan, Stuart (West of Scotland) (SNP)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Paterson, Gil (West of Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Abstentions

Martin, Paul (Glasgow Springburn) (Lab)

The Deputy Presiding Officer: The result of the division is: For 32, Against 88, Abstentions 1.

Amendment 13 disagreed to.

After section 31A

The Deputy Presiding Officer: Group 11 is on threatening or abusive behaviour and stalking. Amendment 63, in the name of the cabinet secretary, is grouped with amendments 188, 64 to 67, 14, 68 to 78 and 189.

Kenny MacAskill: Amendment 63 creates an offence of threatening or abusive behaviour. It is intended to address the uncertainty about the scope of the common-law offence of breach of the peace that arose as a result of the appeal court's decision in *Harris v Her Majesty's Advocate*. In that case, the court ruled that a public element to the offending behaviour is required for the offence of breach of the peace to be committed. Although the judgment does not affect the majority of breach of the peace cases, which take place in public, we are concerned that it will make it more

difficult for the criminal law to intervene, where that is appropriate, in domestic abuse cases that involve threatening or abusive behaviour but in which there is no evidence of physical violence that would enable a charge of assault to be libelled, as such cases often lack an obvious public element.

The incoming president of the Association of Scottish Police Superintendents expressed concern at its annual conference in May that the decision has also made it much more difficult to prosecute people who are abusive towards police officers, especially when the abusive behaviour takes place in private.

Amendment 63 provides a statutory offence that is intended to ensure that conduct that could have been prosecuted as breach of the peace prior to the decision can continue to be prosecuted. It provides that it shall be a criminal offence for a person to behave in a threatening or abusive manner that is likely to cause fear or alarm to a reasonable person where the accused either intends to cause fear or alarm or is reckless as to whether their behaviour will cause fear or alarm. Unlike in the common-law offence of breach of the peace, it does not matter whether the conduct takes place in private or in public.

In lodging amendment 63, we have taken account of the Justice Committee's concern that the stage 2 amendment on the matter was too widely drawn and risked interfering with a person's right to freedom of expression. The offence in amendment 63 is more narrowly defined in that it applies only to behaviour that would cause a reasonable person to feel fear or alarm and does not refer to distress.

Margo MacDonald: Would soliciting be an example of that?

Kenny MacAskill: No, I do not think that that would be a specific example. I am talking about people who, for example, shout abuse at policemen when no other members of the public are present or shout abuse in their home as a form of domestic violence. As I say, amendment 63 seeks to deal with situations in which the public are not present and, in that respect, soliciting is a separate issue.

Instead of applying only to any behaviour which "would ... cause a reasonable person ... fear or alarm"

the offence will require that the accused's behaviour is "threatening or abusive" to ensure that we focus on the accused's behaviour as well as the effect that it is likely to have on a reasonable person. We have also included a defence that would allow an accused person to show that their behaviour was, in all the circumstances, reasonable.

Amendment 63 also seeks to provide the police and prosecution with the power to act in respect of criminal conduct that had previously been prosecuted as a breach of the peace and which lacks the requisite public element without unreasonably restricting a person's right to freedom of expression. The common-law offence of breach of the peace is not affected by this amendment and remains available as a charge in suitable cases. Indeed, the president of the Association of Scottish Police Superintendents has expressed the association's support for this amendment, which he says is

"necessary to protect police officers from threatening and abusive behaviour in line with our duty to protect the communities that we serve across Scotland."

Amendments 64 to 78 are intended to ensure that the new statutory criminal offence of stalking, the result of amendments lodged at stage 2 by Rhoda Grant and agreed by the Justice Committee, operates as robustly and effectively as possible. My officials discussed the amendments with Rhoda Grant before lodging them and they have been shared with Action Scotland Against Stalking's Ann Moulds, who has led the campaign for legislation to tackle stalking and who has confirmed that she is content with them.

Following concerns expressed by the Crown Office about the requirement in the new offence to prove that a victim suffered "psychological harm" as a result of stalking activity, amendment 64 seeks to amend the new offence to provide that A stalks B where A's course of conduct causes B to suffer "fear or alarm". The Crown Office considered that the original provision could prove to be a significant barrier to prosecution, especially if the courts determined that it was necessary to provide evidence that the victim suffered a mental illness as a result of this activity. By contrast, the courts are familiar with the test of "fear or alarm" because a similar one is used to determine whether conduct constitutes breach of the peace. It is conduct that causes "fear or alarm" that is the essential harm that we are seeking to criminalise. Amendments 65, 66 and 76 make changes that are consequential on amendment 64.

Amendments 67 and 68 are technical amendments. Amendment 67 seeks to amend section 31B(5) to refer to a "course of conduct" rather than a "course of action" and amendment 68 seeks to provide that the list of activities constituting "conduct" for the purpose of this offence is exhaustive rather than illustrative. That is appropriate because of the catch-all provision in section 31B(6)(i).

Amendments 69 through 75 seek to make minor amendments to the list of examples of conduct in section 31B(6). Amendments 69 and 70 seek to amend section 31B(6)(b) to include attempts to

contact a person—for example, by leaving voice-mail messages on a person's phone or sending e-mails that may or may not be read—and to remove references to the means by which such contact may be made to ensure that future technological developments do not result in the provision becoming outdated.

Amendment 71 seeks to amend section 31B(6)(d) so that it refers to "monitoring" rather than "tracing" a person's use of the internet, e-mail or other electronic communication. We consider that reference to be clearer.

Amendment 72 is intended to simplify the drafting of section 31B(6)(e) while ensuring that it continues to apply to all premises and places, whether public or private. It is important to remember that the list of activities set out in section 31B(6) may in themselves be entirely innocent. The offence is committed only if these activities are undertaken with the intention of, or with recklessness as to the possibility of, causing fear or alarm and actually have that effect.

Amendments 73 and 74 seek to amend section 31B(6)(g) to ensure that it applies to the giving of "anything"—not only "offensive material"—to B or any other person. Again the offence will be committed only if there is an intention to cause fear or alarm, or recklessness as to the possibility of causing fear or alarm, and that is achieved. We are aware of stalking cases in which material that is not objectively offensive but which, in context, may cause a victim of stalking fear or alarm is given or left so as to be brought to the victim's attention.

Amendment 75 seeks to amend section 31B(6)(h), replacing

"keeping B or any other person under surveillance"

with

"watching or spying on B or any other person",

as the original drafting could appear to be an example of a course of conduct while the other examples in section 31B(6) refer to individual acts.

Amendment 77 is intended to increase the maximum penalty on summary conviction from six to 12 months to reflect the greater sentencing powers of summary courts.

Amendment 78 provides that the offence of threatening or abusive behaviour is an implied alternative to the offence of stalking. That means that, in circumstances in which someone is charged with stalking but the court is not satisfied that the accused committed the stalking offence but is satisfied that the accused committed the offence of threatening or abusive behaviour, it may convict of that offence.

12:00

We assume that amendment 14 seeks to ensure that the stalking offence does not inadvertently criminalise otherwise lawful public protest or industrial action. We share Robert Brown's concern that we should be careful to ensure that we do not inadvertently criminalise legitimate, lawful public protest or industrial action. The right to peaceful protest is a cornerstone of our democracy. However, the difficulty with amendment 14 is that it creates an ambiguity. It is unclear whether it is the individual's course of conduct, the public protest or the industrial action that must be reasonable. If, as we think Robert Brown intends, it is the course of conduct that must be reasonable, we do not consider the amendment to be necessary. The offence already contains safeguards that ensure that it could not be used to prosecute people engaged in lawful public protest or industrial action. However, it is possible to interpret the amendment as creating a defence, even if the accused's course of conduct is not reasonable, provided that the public protest or industrial action is reasonable. That cannot be right, because it would mean that those intent on unacceptable behaviour could use legitimate public protest or industrial action as a cover for such behaviour. Legitimate public protest and industrial action should be peaceful and about making a point; they should not be about causing fear or alarm to those who may have different views or who simply happen to be in the place where the protest or industrial action is taking place. Where such fear or alarm is caused, that would in any case almost certainly constitute a breach of the peace under common law and so would not be otherwise lawful under the terms of the amendment. Furthermore, the stalking offence already contains a defence that the accused's conduct was reasonable in the circumstances. That would be a matter for the courts to determine.

I hope that I have reassured Robert Brown that the safeguards that are contained in the stalking offence are sufficient to ensure that it could not be used to prosecute people involved in lawful public protest or industrial action. As I said, we think that amendment 14 creates an ambiguity.

I turn to amendment 188.

The Deputy Presiding Officer: You should be as brief as possible, minister, please.

Kenny MacAskill: I understand that amendment 188 seeks to deal with one of the most serious consequences of the Harris v Her Majesty's Advocate judgment, but I do not think that it is necessary if the Government's amendment 63 is agreed to. There is also a difficulty in retaining reference to behaviour that is likely to cause distress, which was the reason for removing it from the Government's provision.

Amendment 188 is too narrow; what the Government has drafted is better.

Finally, the provision allows only for prosecution on summary complaint with a maximum sentence of 12 months' imprisonment, but we may wish to proceed further.

I move amendment 63.

The Deputy Presiding Officer: I let the minister speak at length, as it is often important to get such things on the record, but I would be glad if other members could be as brief as possible.

John Lamont: I speak in favour of my amendment 188, which was drafted in opposition to the Scottish Government's amendment 63.

At stage 2, the Scottish Government lodged amendment 378 with the intention of creating a new statutory offence. My colleague Bill Aitken and a number of members of all parties expressed concern about the wide-ranging nature of that amendment, which could, arguably, have impinged on freedom of speech. The Government withdrew its amendment at stage 2 and said that it would return with a revised formulation at stage 3.

The Scottish Conservatives recognise the issue that has arisen from the appeal court ruling in the Harris v HMA case—that some public element must be present for a breach of the peace to occur—and the need to resolve that issue. At committee, the cabinet secretary discussed the concern that the decision in the Harris case had made it more difficult to prosecute criminal behaviour that had arisen from domestic disputes and in other circumstances in which there is not necessarily a public element.

It was hoped that the Scottish Government's amendment at stage 3 would have been narrower in its drafting than what we are faced with. I would not suggest that my amendment 188 is perfect; it does not take account of domestic abuse in civil partnerships or abuse towards an ex-partner or a partner who does not reside with the victim, which it should. However, its imperfections aside, its aim was to limit the offence to a person in a defined relationship and to allow more scope for the police and prosecutors to deal with domestic abuse incidents. The scope of the offence that is created in amendment 63 applies far beyond domestic relationships or protecting the police from abuse. It can apply to one-off comments by anyone anywhere in Scotland, and carries a penalty of up to five years in prison. I believe that, in its current form, the offence created in amendment 63 could inadvertently interfere with civil liberties and free speech, as amendment 378 could have.

I lodged amendment 188 to encourage further debate on how best to tackle the consequences of the ruling in the Harris case. I agree with the

Government's intention and that action needs to be taken to allow the police and fiscals to charge and prosecute behaviour that would previously have been dealt with under breach of the peace.

My amendment, which was originally drafted by Labour's former Advocate General for Scotland, Lord Davidson, goes some way to demonstrating how the scope of such provisions could and should be narrowed. It is important that we act on the issue as quickly as possible, but that is not an excuse for badly drafted or wide-ranging provisions with unintended consequences. We must ensure that the issue is addressed without threatening freedom of speech. I hope that the Scottish Government will seek to withdraw amendment 63 and will go back to the drawing board and introduce a narrower provision that deals with the specific issues that have been highlighted.

Robert Brown: As has been said, this group of amendments deals with the consequences of the introduction of the separate offence of stalking, which was approved at stage 2, and the issues surrounding the definition of breach of the peace, following the decision in the Harris case, which indicated that such an offence could normally not be committed in private. That raised issues about the ability to prosecute domestic abuse in some situations and to charge people with offensive behaviour towards the police inside a police station.

I do not think that there is any difference over the policy intent. Everyone wants to sort out the breach of the peace problem, but there are three possibilities on offer. I suggest that we can dismiss John Lamont's amendment 188 fairly readily, although I do not dismiss the arguments that he gave in support of it, which were mainly valid. As he said, the amendment is reasonable in its own terms, but it is fairly clearly too narrow, in that it deals only with domestic abuse and does not cover civil partnerships. The central concern is that we do not want to criminalise actions that are expressions of opinion, even if they might distress other people. That is a fair point.

The second option is Government amendment 63, which is a somewhat reduced version of an attempt to establish what was more or less a statutory version of breach of the peace at stage 2, but which was withdrawn. The version in amendment 63 is open to the same objections as the earlier amendment was. It is a major change in the law that has not been consulted on. It could have all sorts of unintended consequences. I am not even sure that it gets rid of the need for a public element to the crime and, if it does, it probably places breach of the peace in a private place on a par with breach of the peace in public, which goes significantly beyond reversing the

Harris judgment. In short, amendment 63 is cumbersome, does not add anything in clarity and loses a lot of the flexibility of a very useful common-law offence. Furthermore, it does not replace breach of the peace, but sits alongside it in uneasy symbiosis.

My amendment 189 offers a more satisfactory way forward, which is to modify only to the extent necessary the definition of the common-law breach of the peace crime. It brings in the Harris definition of behaviour that leads to a

"mischief to the public peace".

It says that the fact that something happened in private does not by itself stop it being a crime, but it leaves open the existing flexibility of definition and keeps in the likely consequence of fear and alarm. I think that my amendment does the trick and I hope that ministers and the Parliament will be attracted to it. However, like John Lamont, I believe that, if members are not satisfied with the amendments that are on offer, it would be better to go back to the drawing board and consider the issue again.

The stalking provisions were, rightly, a big success for Ann Moulds and her campaigners at stage 2. I support the Government amendments that will tighten up the provisions on stalking, but I am concerned that the new stalking offence might accidentally penalise people in situations in which they should not be penalised, particularly in the realm of public protest or industrial dispute. I gave the example of a picket at someone's workplace, which would normally be regarded as legal, but which could cause fear and alarm in other people. Similar concerns could be expressed about a protest march or demonstration. The response was that that would be covered by the defence of reasonableness in section 31B(5)(c). The minister went on to say that the defence that I had proposed was too wide. It would certainly knock out stalking, but there are other offences of assault, breach of the peace, intimidating behaviour and so on.

The defence in section 31B(5)(c) might be okay, but it seemed to me that the interrelation of the right of public protest, which is more a tolerance to do what is not forbidden, with the new stalking crime could in practice narrow what is allowed by way of demonstration or protest. That is the basis of my amendment 14. It is helpful and, at worst, does no harm. I hope that members will consider very carefully the situation and the important implications that come from it.

The Deputy Presiding Officer: I can give the remaining speakers in the group a maximum of one and a half minutes.

James Kelly: I will run through the issues briefly. I support the Government amendments

that have been lodged in response to the amendment on stalking that Rhoda Grant lodged at stage 2. I pay tribute to her work on the issue and to the work of Ann Moulds and the anti-stalking campaigners.

I am minded to support Government amendment 63. As others have said, the provision has been tightened up and fine tuned since a similar amendment was debated at stage 2.

We have had concerns raised with us by churches that the amendment would inhibit their ability to take their religious teachings on to the street. I would be interested to hear the minister address those concerns in summing up.

We do not support amendment 188, in the name of John Lamont, which we believe is too restrictive as it relates only to those who are married or are in cohabiting relationships and does not deal with potential violence against children, elderly people or civil partners.

We do not support amendments 14 and 18, in the name of Robert Brown, which we believe are unnecessary as what they propose is covered by other amendments or existing law.

Nigel Don: Amendment 63 replaces stage 2 amendment 378, which we were not very happy about when it came to the Justice Committee. I point out to James Kelly and others who are concerned about freedom of speech that, if amendment 63 is agreed to, the bill will say that, to commit the offence, a person has to behave in a threatening and abusive manner, has to cause fear and alarm and has to intend to do so or be reckless as to whether they are doing so. The offence under the suggested provision is very much narrower than the one that was suggested at stage 2. It is very much narrower than the offence of breach of the peace, which would cover all that and a lot more. This response to the decision in the Harris case has created a very narrow offence. I do not think that we need have any worries about those who wish to preach anything at all. If the preaching of any gospel is threatening and abusive and likely to cause fear and alarm, I suggest that it should not be so preached.

One of the other issues that emerged is that the original amendment 378 did not have a title, which caused us some problems. When we were considering serious and organised crime—

The Deputy Presiding Officer: Wind up please.

Nigel Don: I am sorry. I will stop.

The Deputy Presiding Officer: I am obliged.

Patrick Harvie: Of the major amendments in this group, the Government's amendment seems

the most preferable, for reasons that I do not have time to go into.

I welcome amendment 14. The minister's concerns about it are probably not legitimate. If behaviour that is unreasonable is part of a public protest, it seems to me that the public protest is unreasonable. Reasonable behaviour being part of the public protest should mean that the protest itself is reasonable.

The amendments to which I object—or which I at least question—are the two that look on the surface to be very minor amendments to section 31B, on the offence of stalking. I had concerns when that section was introduced that it perhaps went too far and could cover behaviour that should not be considered criminal. Those concerns were addressed and allayed to some extent earlier on. However, amendments 70 and 71, which will add “any means” of communication and change “tracing” internet activity to “monitoring” internet activity cause me concern. I am thinking in particular of the recent internet campaign against Carter-Ruck and Trafigura. Carter-Ruck—a legal firm vile enough, I am sure, to use any legal option to try to oppose internet activism—would no doubt be able to argue that monitoring internet activity was for the most part what people were doing. To add “any means” of communication to the section will leave open the possibility that honestly non-intrusive and passive internet activity—normal use of the internet—could be covered. I am sure that that is not what is intended, but I think that we run that risk if we agree to amendments 70 and 71.

Rhoda Grant (Highlands and Islands) (Lab): I support Government amendment 32, as opposed to amendment 188, in the name of John Lamont. He said in his opening comments that there were problems with it in that it covered only people who were married or cohabiting in a heterosexual relationship. We all know that people who are fleeing an abusive relationship are in most danger. Amendment 188 would not help such people. It would not help same-sex couples, elderly people who are being abused in their own home and children who are being abused. I urge the Parliament not to support amendment 188, although I recognise that it was intended to be helpful.

I thank the Government for its amendments to section 31B, on stalking, and for the work that it did with me and Ann Moulds to ensure that we were happy.

I do not support amendment 14, because it is not required. The defences in section 31B include showing that behaviour was lawful and reasonable. Any industrial action or public protest would fall into those categories.

Patrick Harvie expressed concerns about the insertion of the words “any means” and “monitoring”. The crime of stalking must involve a course of conduct, not one incident. Stalking is insidious and involves behaviour that could be legal on its own.

12:15

Patrick Harvie *rose—*

Rhoda Grant: Do I have time to take an intervention?

The Deputy Presiding Officer *indicated disagreement.*

Rhoda Grant: I am sorry.

The reference to a course of conduct means that, if somebody watches someone else’s activity but does no other activity to form the crime of stalking, the problem will not arise. I hope that I have convinced Patrick Harvie to back amendments 70 and 71.

Kenny MacAskill: I echo James Kelly in paying tribute to Rhoda Grant, whom we thank for raising the issue. Like him, I pay tribute to Ann Moulds.

We seek to address two matters, one of which is stalking, which is entirely unacceptable. We need to ensure that statutory provision to tackle that is in place. As I said, we thank Rhoda Grant and Ann Moulds for raising the issue and for their co-operation thereafter.

The second issue is ensuring that breach of the peace covers incidents that occur in a non-public place, such as officers being abused because of their service, which they should not have to endure, or cases of domestic violence when no witnesses are about.

I assure James Kelly that we recognise the fears that individuals and the Justice Committee were correct to express. Amendment 63, which is an amended version of a stage 2 amendment, restricts the offence to “Threatening or abusive behaviour”. Removing the reference to distress will ensure that we do not inadvertently criminalise conduct that should not be criminal and which we do not intend to catch, while providing prosecutors and the police with a power that is wide enough to deal with the other matters. We are aware of and have taken on board the concerns of some in the Christian community and we have changed what was proposed in the stage 2 amendment, which we did not move.

I assure James Kelly and the whole Parliament that we have taken the appropriate action to deal with stalking and with breach of the peace offences in domestic violence situations or against police officers. We continue to guarantee that

those who have Christian views can express their views without coming before the courts.

The Deputy Presiding Officer: The question is, that amendment 63 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Allan, Alasdair (Western Isles) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Keith (Ochil) (SNP)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Campbell, Aileen (South of Scotland) (SNP)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 FitzPatrick, Joe (Dundee West) (SNP)
 Foulkes, George (Lothians) (Lab)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grahame, Christine (South of Scotland) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)

McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McMillan, Stuart (West of Scotland) (SNP)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Paterson, Gil (West of Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Against

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Carlaw, Jackson (West of Scotland) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West of Scotland) (Con)
 Hume, Jim (South of Scotland) (LD)
 Johnstone, Alex (North East Scotland) (Con)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 McArthur, Liam (Orkney) (LD)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 O'Donnell, Hugh (Central Scotland) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)

The Deputy Presiding Officer: The result of the division is: For 92, Against 29, Abstentions 0.

Amendment 63 agreed to.

Amendment 188 not moved.

Section 31B—Offence of stalking

Amendments 64 to 67 moved—[Kenny MacAskill]—and agreed to.

Amendment 14 moved—[Robert Brown].

The Deputy Presiding Officer: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Brown, Robert (Glasgow) (LD)
 Finnie, Ross (West of Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hume, Jim (South of Scotland) (LD)
 MacDonald, Margo (Lothians) (Ind)
 McArthur, Liam (Orkney) (LD)
 McInnes, Alison (North East Scotland) (LD)
 O'Donnell, Hugh (Central Scotland) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)

Against

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Allan, Alasdair (Western Isles) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 FitzPatrick, Joe (Dundee West) (SNP)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)

Grahame, Christine (South of Scotland) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Henry, Hugh (Paisley South) (Lab)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McMillan, Stuart (West of Scotland) (SNP)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Paterson, Gil (West of Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 16, Against 105, Abstentions 0.

Amendment 14 disagreed to.

Amendments 68 to 78 moved—[Kenny MacAskill].

The Deputy Presiding Officer: Does any member object to a single question being put on amendments 68 to 78?

Patrick Harvie: I object.

The Deputy Presiding Officer: Are there particular amendments that you wish to be taken separately?

Patrick Harvie: Amendments 70 and 71.

The Deputy Presiding Officer: We will go through the amendments.

Amendments 68 and 69 agreed to.

The Deputy Presiding Officer: The question is, that amendment 70 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Allan, Alasdair (Western Isles) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 FitzPatrick, Joe (Dundee West) (SNP)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Glen, Marilyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grahame, Christine (South of Scotland) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)

Henry, Hugh (Paisley South) (Lab)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hume, Jim (South of Scotland) (LD)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McMillan, Stuart (West of Scotland) (SNP)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Paterson, Gil (West of Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Tolson, Jim (Dunfermline West) (LD)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)

White, Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Against

Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 MacDonald, Margo (Lothians) (Ind)

The Deputy Presiding Officer: The result of the division is: For 117, Against 3, Abstentions 0.

Amendment 70 agreed to.

The Deputy Presiding Officer: The question is, that amendment 71 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Allan, Alasdair (Western Isles) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 FitzPatrick, Joe (Dundee West) (SNP)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grahame, Christine (South of Scotland) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Henry, Hugh (Paisley South) (Lab)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hume, Jim (South of Scotland) (LD)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley)

(Lab)

Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McMillan, Stuart (West of Scotland) (SNP)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Paterson, Gil (West of Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Tolson, Jim (Dunfermline West) (LD)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Against

Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 MacDonald, Margo (Lothians) (Ind)

The Deputy Presiding Officer: The result of the division is: For 117, Against 3, Abstentions 0.

Amendment 71 agreed to.

Amendments 72 to 78 agreed to.

After section 34C

The Deputy Presiding Officer: Amendment 6, in the name of Marlyn Glen, is grouped with amendments 79 and 7.

Marlyn Glen (North East Scotland) (Lab): I acknowledge and pay tribute to the work that Trish Godman has done on the issues that are addressed in the amendments in the group, which seek to introduce new sections into the Sexual Offences (Scotland) Act 2009 under which it would be illegal both to engage in and to advertise paid-for sexual activity. The penalty for so doing would be

"A fine not exceeding level 3 on the standard scale".

Margo MacDonald: Will the member give way?

Marlyn Glen: I would like to get started.

Basically, the first new section would make it an offence to buy sex using any form of payment, including payment in kind and presents.

The amendments are an attempt to recognise and deal with the exploitation, violence and abuse that are a reality for the majority of individuals—female and male—who sell sex. The amendments focus on the buyer of sex, acknowledge the harm of prostitution, challenge its acceptance and recognise the analysis of prostitution as being on the spectrum of violence against women. This Government accepts that analysis, as did the previous Government.

Margo MacDonald: Will the member now give way?

Marlyn Glen: I would like to move on.

Margo MacDonald: Will you define "sexual activity"?

The Deputy Presiding Officer: Order.

Marlyn Glen: Thank you, Presiding Officer.

For too long, interventions have focused solely on the women who are engaged in prostitution—in the main, it is women—and not on demand. It is high time that we started to work together to control the demand for paid-for sex and take further the provisions that we introduced in the previous session to tackle so-called kerb crawling. The legislation in that regard provides a deterrent

that works. Members know that from examples in our constituencies where it has been used to excellent effect. We now need a further deterrent to curb the demand for buying sex. In particular, work must be done before the commencement of construction work for the Commonwealth games.

The amendments are not directed at women working in prostitution, but the dangers of commercial sexual exploitation cannot be ignored. Routes out of prostitution must continue to be recognised and supported.

At stage 2, concern was expressed about driving prostitution indoors and underground, but organisations such as the trafficking awareness-raising alliance have no difficulty finding and supporting women now, whatever their circumstances. I am confident that TARA and other, similar organisations will adapt and continue their services in new circumstances.

The bill is extremely wide ranging. I thank the members of and clerks to the Justice Committee for the work that they have put into it. However, I suggest that agreeing to amendments 6 and 7 would make a massive difference to the lives of many women, mainly young people, who could be helped to make different choices in their lives. If we take a lead, we can challenge the acceptance of and address the demand for paid-for sex.

I move amendment 6.

Richard Baker: At stage 2, we made clear our position that the best way of improving the law to deal with prostitution in Scotland is through the amendments that were originally lodged by Trish Godman and have been lodged for stage 3 consideration by Marlyn Glen. There is a persuasive argument that it is neither effective nor equitable to punish in law only those who sell sex, who are often vulnerable victims of abuse or self-abusers, when the behaviour of those who purchase sexual activity is not dealt with in the same way.

We already know that women are being trafficked into Scotland for the purpose of sexual exploitation. John Watson of Amnesty International highlighted the challenge that we face when he pointed out that

“there have been no prosecutions for trafficking offences in Scotland, although there have been well over 100 in England and Wales.”—[*Official Report, Equal Opportunities Committee*, 15 June 2010; c 1865.]

I refer to the issue of trafficking because fears have been expressed across the chamber that there may be an increase in the number of women who are trafficked to Scotland for the purposes of prostitution as we approach the 2014 Commonwealth games. Parliament must set in place the right legislative framework to help us to deal best with the problem.

Although our preference is to change the law through the amendments in the name of Marlyn Glen, that proposal was rejected in committee and, I fear, will be rejected again today. I have lodged amendment 79 because not to include that proposal in the bill would be to leave Scotland with weaker laws to tackle prostitution than the rest of the UK. That would only provide encouragement to those who, right now, may be looking to the 2014 Commonwealth games as an opportunity to profit from the misery of trafficked women.

Nigel Don lodged the same amendment at stage 2 but withdrew it because it introduces strict liability. That is necessary, or it will be far too difficult to secure a conviction under the proposal. The previous UK Government concluded that the measure was compatible with European law, and it has been enacted in England and Wales. It will be an effective way of ensuring that those who pay for sex are forced to consider the circumstances of the prostitute who will provide the sexual services, while protecting those who have not chosen to be involved in prostitution. Making those who would purchase sex consider that there may be consequences for them will reduce demand for the purchase of sex and, hopefully, reduce trafficking, too.

We must challenge those who purchase sex to recognise the consequences and impact of their actions for the victims of prostitution and trafficking and, if they are convicted, for themselves. We cannot do that without changing the law. If Parliament does not do that today, it will not properly help those who find themselves in the appalling misery of being sexually exploited so that others can profit. There has been much talk about taking action on the issue—it is time to act by changing the law. We must not leave ourselves in a situation where our laws on this important and destructive area of crime are weaker than those in the rest of the UK. That is why I seek support for amendment 79, which I will move if the other amendments do not succeed.

The Deputy Presiding Officer: I am exercising my power under standing order 9.8.4A(c) to extend debate beyond the next time limit, to prevent the debate from being unduly constrained. However, members will need to constrain themselves to one and a half minutes.

Bill Aitken: There are difficulties with what is proposed. When the Justice Committee considered the matter, we called a number of witnesses, in a constructive attempt to get evidence on it. Frankly, that evidence was mixed. There is a unanimity of view in the chamber that no person should be forced into prostitution. The law is already in force to ensure that, where violence is involved, that is dealt with. The same is true of people trafficking. That is as it should be,

because people trafficking is a very serious matter. However, there is no great evidence that it is a serious issue in Scotland.

Richard Baker: Will the member give way?

Bill Aitken: I am sorry, I do not have time.

The evidence that the police gave to the Justice Committee was that the approach that has been proposed would have a negative impact, in that it would inhibit the police's ability to investigate crime and bring to book those responsible.

I suspect that the members who lodged amendments 6, 7 and 79 at stage 3 are mindful of the recent appalling crimes in Bradford and other assaults on women who work as prostitutes. We are all very unhappy in that respect. However, we need to examine the matter much more deeply and in a more mature way. We all want to do what we can to eliminate prostitution, but we must acknowledge the realities and difficulties that are involved. There is not too much merit in the amendments.

12:30

Robert Brown: This is a valid debate. Many good points have been made, most of which I have some sympathy with. However, I remain opposed to amendments 6, 7 and 79, partly for the reasons that the convener of the Justice Committee has just given.

I will not repeat the argument that we made at stage 2, which was, in essence, that the approach that is proposed in amendment 6 represents a major change in an area that attracts widely differing views—and views tend to differ in different parts of Scotland. It seems unlikely that the oldest profession would be got rid of by an amendment to a Scottish Parliament bill that has not been fully consulted on or considered. There would be considerable scope for unintended consequences of a difficult nature.

I have more sympathy with amendment 79, in Richard Baker's name, which focuses on trafficking and coercion. I have spoken out on such matters in the past, and I do not accept Bill Aitken's point that there is no evidence that trafficking is an issue. We need only to consider the number of people whom TARA supports to appreciate the nature of the problem. The problem is not that trafficking does not happen in Scotland but that there have been no prosecutions for trafficking in Scotland.

However, the approach in amendment 79 is not likely to offer a way forward. It is an objectionable principle for a person to suffer the rigours of the law for factual aspects that he does not know about or which it was not reasonable for him to know about, which is the express objective of

amendment 79, as Richard Baker conceded. It might be possible to penalise a person who had paid for sex with a person whom he knew had been trafficked, or who was reckless as to whether the person had been trafficked, but that is not the approach in amendment 79.

Elaine Smith (Coatbridge and Chryston) (Lab): I am grateful for the opportunity to speak in support of amendments 6 and 7, in Marlyn Glen's name.

Prostitution is predominantly male violence against women and children. The Government in Scotland has accepted that. Prostitution is not a career choice and it is not a profession, and women do not aspire to such a lifestyle. People who are involved in prostitution are generally vulnerable and get involved in it due to reasons such as previous abuse, poverty, substance misuse or trafficking.

The cloak of secrecy should be lifted from the men who buy sex. The social harm of their behaviour must be recognised and acknowledged. Prostitution is not a career choice or a simple business transaction; it is violence, it is exploitation and it is abuse. Women go to prison for it, but if anyone should go to prison it should be the pimps and the purchasers, not their victims.

Criminalising buyers would undoubtedly reduce demand for prostitution. I urge members to support amendments 6 and 7. We have an opportunity to make a real difference.

Stewart Maxwell: I very much support the intention behind the amendments in the group, although I cannot support the amendments themselves.

As we discussed at stage 2, there are problems with the approach that is proposed. I agree with Marlyn Glen's comments and I pay tribute to the people who work to support and help women out of prostitution. However, I agree with much of what Bill Aitken said, particularly about the evidence that the committee heard at stage 2. I also agree with much of what Robert Brown said.

I remain concerned about how "sexual activity" is defined. I will not go back over the debate that we had on the matter, in some detail, at stage 2. There are other basic questions and problems to do with the approach that is proposed in amendment 6. The activity goes on behind closed doors, so how does someone know what occurred and whether payment was involved, particularly if payment was in kind? Where will they get evidence for a prosecution? Who will be the witnesses? I suggest that none of the people involved will want to complain to the police or make a statement about what has or has not occurred. In other words, we would put the police

in an impossible position, because the provisions would be unenforceable.

Many of the issues that I have raised could be dealt with, but they are not dealt with by amendments 6, 7 and 79. My main objection to the amendments is that the subject is too serious and complex to be dealt with by stage 3 amendments. If the matter is to be addressed properly, detailed study and research will be required before recommendations can be made and we can decide how to move forward. I urge the Parliament to reject the amendments.

Margo MacDonald: I feel a Danny Alexander moment coming on: I can scarcely add to what Stewart Maxwell said on the amendments in this group.

I appreciate the intensity and belief that lie behind much of the opposition to what I have campaigned for. However, we must define our terms. What are sexual activities? President Clinton's idea of what amounted to sex was different from Monica Lewinsky's. I am not being facetious: we have not attempted to say whether "sexual activity" means full intercourse or applies to people who want to engage in rather deviant behaviour but not sex. Are they allowed to pay for that or not, and what does "payment" amount to? Is it a nice night out at the casino and a visit to the races, getting the rent paid or gifts of jewellery? That is real life and real prostitution.

We do not have evidence of trafficking in Scotland because the police here are much better informed about what goes on in what we now must regretfully call the sex industry. Therefore, I urge all the members who want the Parliament to improve the legislation on coercion and violence against women to reject all the amendments in the group and to tackle the issue holistically at a proper and later date.

Johann Lamont: We do not need to call prostitution the sex industry. It is not a job or a lifestyle choice.

If the amendments in the group are not the way forward, it is incumbent on the Government to propose something else. We will not necessarily eradicate prostitution, but we have to address who the victims are. Marlyn Glen's amendments 6 and 7 focus our attention on that—they do not accept that we have to live with prostitution or that there is something inevitable about it.

There are no exchanges of jewellery for prostitutes on the streets of Glasgow. We need to give them help and support rather than implying that it is another job choice when clearly it is not.

Kenny MacAskill: Nobody disputes that human trafficking is a heinous offence or that prostitution is a deeply complex matter in which people are

abused and women are frequently the victims. Johann Lamont is correct that we have to take action. That is what we are doing, but we must ensure that we do not legislate in haste and repent at leisure in relation to this complex matter.

The committee has already taken evidence from a variety of sources. Indeed, the police and others have been wary about what we should do. What are we doing? First of all, significant action was taken in the previous parliamentary session to deal with on-street prostitution. There was to be further investigation into off-street prostitution and that, to some extent, is what we now seek to do because, after all, human trafficking tends to be off street by nature.

We introduced the Sexual Offences (Scotland) Act 2009, which brought in measures to ensure that we tightened up the legislation, so action has been taken. In the bill, action is being taken to increase the penalties for those who brothel keep because the levels of brothel keeping that were being dealt with were entirely unacceptable.

We must also recognise that the Equality and Human Rights Commission is undertaking an inquiry into human trafficking, which is chaired by Baroness Helena Kennedy. She has undertaken to include in that inquiry an investigation into off-street prostitution.

The Government has taken action. Let us see what Helena Kennedy concludes. The issue is deeply complex but I assure Johann Lamont and others that, if Helena Kennedy highlights matters that require legislation, we will not hesitate to take the necessary action.

Let us listen to what Helena Kennedy and others come back with and take appropriate action then.

Marlyn Glen: I am conscious of time, so I will sum up the debate by repeating that we should not miss this opportunity. Major change is required to stop commercial sexual exploitation. Prostitution cannot be regarded as a career choice, as has been said, nor as just another industry with workers.

In reply to Stewart Maxwell, I say that, sadly, similar arguments to his used to be made against the introduction of legislation against domestic abuse.

I ask members to take a lead and to challenge the acceptance of, as well as to address the demand for, paid-for sex. I ask them to vote for amendment 6.

The Deputy Presiding Officer: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Stewart, David (Highlands and Islands) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

Against

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Finnie, Ross (West of Scotland) (LD)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)

Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hume, Jim (South of Scotland) (LD)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McArthur, Liam (Orkney) (LD)
 McGregor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMillan, Stuart (West of Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Neil, Alex (Central Scotland) (SNP)
 O'Donnell, Hugh (Central Scotland) (LD)
 Paterson, Gil (West of Scotland) (SNP)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Tolson, Jim (Dunfermline West) (LD)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 44, Against 78, Abstentions 0.

Amendment 6 disagreed to.

Amendment 79 moved—[Richard Baker].

The Deputy Presiding Officer: The question is, that amendment 79 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Stewart, David (Highlands and Islands) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

Against

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Finnie, Ross (West of Scotland) (LD)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Annabel (West of Scotland) (Con)

Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hume, Jim (South of Scotland) (LD)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McArthur, Liam (Orkney) (LD)
 McGregor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMillan, Stuart (West of Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Neil, Alex (Central Scotland) (SNP)
 O'Donnell, Hugh (Central Scotland) (LD)
 Paterson, Gil (West of Scotland) (SNP)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Tolson, Jim (Dunfermline West) (LD)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 44, Against 78, Abstentions 0.

Amendment 79 disagreed to.

After section 37A

Amendment 189 not moved.

Section 38—Prosecution of children

The Deputy Presiding Officer: We come to group 13, on the age of criminal prosecution. Amendment 190, in the name of Robert Brown, is the only amendment in the group.

Robert Brown: The age of criminal responsibility has been a difficult and, to an extent, controversial subject. I am disappointed that the Government has not fully grasped that and raised the age of criminal responsibility; instead, it has raised just the age at which prosecutions can take place. It may be that it intends to deal with the subject properly in the context of the Children's Hearings (Scotland) Bill. However, as the matter stands, Scotland is still left open to criticism under the United Nations Convention on the Rights of the Child; the bill also leaves issues about DNA retention and children's criminal records unsatisfactorily messy.

My amendment is designed to take matters a stage further and to give ministers power by affirmative instrument—obviously, with the consent of Parliament—to raise further in due course the age at which children can be prosecuted. There is a significant issue only at the age of 15, when the number of offenders that are prosecuted goes up substantially. Below that, there are few prosecutions of 12, 13 or 14-year-olds. Providing that the powers of the children's panels are adequate to protect the public, my view is that it is objectionable to put underage children through an adult court process. There is also another oddity, which is that the divide for the Sexual Offences (Scotland) Act 2009 is the age of 13, not 12. The Justice Committee adverted to that point earlier on. Interestingly, the Criminal Procedure (Scotland) Act 1995 even provides that no child under 14

"shall be permitted to be present in court during any proceedings against any other person",

except as a witness; obviously, a different view is taken about people who are charged.

At eight, Scotland had the lowest age of criminal responsibility in Europe, modified only by the fact that most offenders of that age go to hearings. Eight remains the age of criminal responsibility, but even the age of 12 for prosecution is pretty low. I hope that amendment 190 will give us scope to reconsider the matter in a reasoned atmosphere when the time is right.

I move amendment 190.

Richard Baker: There has been extensive debate during the bill process about whether the Scottish Government's proposal to change the age of prosecution to 12 is the correct one, or whether the age of criminal responsibility itself should be changed. For our part, the crucial issue is to ensure that it should no longer be possible for children under 12 to be prosecuted in adult courts. I believe that the recent case in England in which two children who were accused of attempted rape were tried in an adult court highlighted the concern that that is not the appropriate forum for dealing

with such matters, particularly as we have a successful children's hearings system with access to the same disposals as the courts have for children who are convicted of such offences. It is therefore difficult to see what could be gained by having such offences dealt with in adult courts.

12:45

There has been wider debate around changing the age of criminal responsibility. I believe that further debate on the issue is likely to focus on that point rather than on changing the age of criminal prosecution, as is suggested in Robert Brown's amendment 190. I also believe that his proposal to change the age of criminal prosecution, rather than the age of criminal responsibility, would require other changes to the children's hearings system and would need more extensive parliamentary consideration.

Therefore, I cannot see what could be gained by dealing with the matter by changing the age of criminal prosecution by statutory instrument rather than through that fuller debate. As Robert Brown said, we need to reconsider the whole issue, for which the full parliamentary procedure for primary legislation will be required.

The Deputy Presiding Officer: You must wind up, please.

Richard Baker: I believe that Parliament will return to these issues in the future. I concede that many of the age levels might be arbitrary, but I am not persuaded by the case that has been made by Robert Brown in amendment 190. There are likely to be further opportunities for fuller debate, to which we look forward.

Bill Aitken: Amendment 190 deals with a sensitive matter that has already attracted a considerable amount of debate. There can be no doubt that Scotland has to some extent been out on a limb, although I comment in passing that I am a bit fed up of being lectured on such matters by people from other jurisdictions that have scant regard for human rights more widely.

That said, the bill as it stands recognises that we need to do something while retaining a level of protection for wider society. In extreme situations, youngsters can do terrible things. Although the Bulger case and the recent case in Doncaster that involved two young boys are highly exceptional, we cannot permit a society in which other children—who are often the victims in such cases—have no protection.

The children's hearings system in Scotland is far from perfect, but it provides a valuable facility for dealing with youngsters that is missing from many of the other jurisdictions where people have been making criticisms. It is worthy of note that children

under the age of 12 have been prosecuted in only a handful of cases in the past 10 years. Against the background of that fact, I am content that the bill as it stands does what is necessary and that Robert Brown's amendment 190 should be rejected.

The Deputy Presiding Officer: I ask the cabinet secretary to respond briefly to the debate.

Kenny MacAskill: We appreciate the spirit and intention behind what Robert Brown's amendment 190 seeks to achieve. However, as Richard Baker said, this sensitive matter has already been discussed and debated quite extensively by the committee during stage 2. It appears to us that we should leave matters as they are. On this side of the chamber, members of my party are prepared to consider moving on from where we are at some future stage. However, given the sensitivity of the issue, it should be dealt with not through subordinate legislation but through the full majesty of primary legislation, which is more appropriate.

On that basis, while recognising the spirit of what he is trying to achieve, and following the full discussion that we have had today, I ask Robert Brown to withdraw amendment 190.

The Deputy Presiding Officer: In winding up the debate, Robert Brown should say whether he will press or withdraw amendment 190.

Robert Brown: I will press amendment 190.

It is worth making the point that the issue is not about the disposal of such cases but about the procedure that underage children undergo. Frankly, I think that there is no division of principle—at least I hope not—among members about how younger children should be dealt with. However, we have been very—dare I say it—pusillanimous in the approach that we have taken, notwithstanding the views of many children's groups and others who support my proposal.

I appreciate that amendment 190 will be defeated today, but I hope that the issue will come back in some more satisfactory form in the future, because I think that there is a case to be made.

The Deputy Presiding Officer: The question is, that amendment 190 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Brown, Robert (Glasgow) (LD)
 Finnie, Ross (West of Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hume, Jim (South of Scotland) (LD)
 McArthur, Liam (Orkney) (LD)

McInnes, Alison (North East Scotland) (LD)
 O'Donnell, Hugh (Central Scotland) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)

Against

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Allan, Alasdair (Western Isles) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 FitzPatrick, Joe (Dundee West) (SNP)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grahame, Christine (South of Scotland) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Henry, Hugh (Paisley South) (Lab)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Ken (Eastwood) (Lab)

Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McMillan, Stuart (West of Scotland) (SNP)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Paterson, Gil (West of Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 15, Against 108, Abstentions 0.

Amendment 190 disagreed to.

After section 40

The Deputy Presiding Officer: Group 14 is on victims' representations at Parole Board hearings. Amendment 4, in the name of Margaret Curran, is the only amendment in the group.

Margaret Curran: I lodged a similar amendment at stage 2, but decided to bring the issue back at stage 3. At stage 2, the proposal was agreed in principle, and the minister indicated that he would introduce the proposal. Nothing has happened yet, although I appreciate that the minister will drive the proposal forward. However, this is an opportunity for the Parliament's voice to

be heard in support of ministerial action. Surely it is right for Parliament to express a view on such an important proposal.

As I said, the principle was agreed at stage 2, and I welcomed the Government's support, which helped to overcome the arguments that were made. Some of those arguments misunderstood the proposal while others were of a largely practical nature and could be addressed in guidance on implementing the proposal.

Amendment 4 is clear, specific and straightforward. Section 16 of the Criminal Justice (Scotland) Act 2003 allows individuals to submit in writing to the Parole Board their views on decisions that the board might take. Amendment 4 goes a small step further by guaranteeing the victim's right to make oral representation. We need to understand that, for a variety of reasons, many individuals find it difficult to make written representations. Written reports, particularly in the circumstances that are under consideration, might not fully capture the victim's experience or fully explain what they want the Parole Board to take into account. Further, the amendment will assure us that the Parole Board will not make its decision without fully comprehending the victim's experience and the impact of its decision.

To be clear, amendment 4 will not change the objectives or operations of the Parole Board. In fact, what is proposed already happens in England and Wales quite straightforwardly.

Amendment 4 represents a small but important step forward for the rights of victims, and I hope that Parliament will take the opportunity to show its support today. The Parole Board hears from many people, including criminologists and social workers, so surely it should hear from victims as well. That is what amendment 4 is about.

I move amendment 4.

Bill Aitken: I have already indicated some sympathy for the proposal, but I have serious concerns about its workability. The majority of those who appear before the Parole Board will have spent many years in custody for crimes that they committed in the distant past. Over that time, many of the victims of those crimes will have moved elsewhere and there will be practical difficulties in tracing them. The same will apply when the families of murder victims have moved elsewhere in the country or, in the case of elderly parents, have died of natural causes.

There are also all sorts of difficulties around the Parole Board atmosphere becoming a little bit charged, because inevitably it deals with emotive matters. Margaret Curran's intentions are undoubtedly good, but amendment 4 contains practical difficulties that have not really been addressed.

Nigel Don: I support Bill Aitken, although I am absolutely with the principle of amendment 4 and the idea that some people have something to say to the Parole Board but would struggle to write it. However, Parole Board proceedings could rapidly turn into a court-type situation, where people would need to be represented and there would be the opportunity for cross-examination. Amendment 4 would create a problem rather than a solution.

Fergus Ewing: Margaret Curran's amendment 4 is similar to her stage 2 amendment on the topic, and we acknowledge the changes that she made to meet some of the concerns. The amendment takes us a bit further. Unfortunately, she has failed to lodge a workable amendment. We are particularly concerned that, as drafted, amendment 4 could mean some victims emerging fearful or traumatised by having to relive the crime at Parole Board hearings, where they would be in close proximity to the offender. That is clearly not what Margaret Curran wants.

Margaret Curran is right that we indicated that we accepted in principle the right of victims to make oral representations to the Parole Board in serious cases, which is why I undertook to put together proposals that would achieve just that. Just to be clear, we did not pledge to lodge amendments to that effect at stage 3, as we recognised that it would not be possible to do that. However, we have already taken steps to improve the victim notification scheme by extending it to victims of those offenders who are sentenced to 18 months or more in prison.

We have also formed a working group to consider the practicalities of the matter—and there are some serious practicalities. Bill Aitken has alluded to some, but there are others. At present, representations are made to the Scottish ministers, who can redact sensitive information. That would not be possible under the scheme in amendment 4. Also, solicitors would be excluded, but what would happen if someone who could not speak or did not have a friend or family member who could speak for them needed a solicitor? The procedure in Margaret Curran's amendment 4 would prevent that.

We have the support of both David McKenna of Victim Support Scotland and Professor Cameron of the Parole Board for Scotland, both of whom agree that our approach in setting up a working party is the correct way forward. To proceed in haste would perhaps cause us to repent at leisure. Therefore, although we agree with the sentiments behind amendment 4, I respectfully suggest that we take more time to consider the issue and come forward with a workable and effective scheme for victims in Scotland so that they have the right to make oral representations, when appropriate, at Parole Board hearings.

Margaret Curran: I am surprised by the Tories' decision and confused by the SNP's decision.

I am surprised by the Tories, who seem to be putting hurdles in the way of what is a straightforward proposal. I must say to Bill Aitken that of course emotion is involved in such circumstances, but we should not deny victims the right to speak in case they get emotional or say that professionals are more objective so there is more value in their comments. That is most unfair on victims.

I am confused by the SNP's position, too. I acknowledge that I did not anticipate the Government's lodging amendments at stage 3, but having lodged the stage 2 amendment I expected progress to be indicated somewhere along the line.

Nigel Don seemed to argue against amendment 4 in principle, as if somehow it would mean that the court case would be re-enacted. That would not be the case. The proposal is straightforward: it would allow the victim's voice to be heard, and it has been implemented in England and Wales without the terrible problems that the Government seems to be worried about. I accept that a working group is a reasonable way forward, but I do not think that there is any harm in voting for amendment 4, thereby saying that Parliament's view is that victims should be heard—if prisoners are heard, victims should be heard too; that is a straightforward principle—and allowing the working group to be established by guidance as a way of implementing the proposal.

I do not see what the big difference is, so I think that we should agree to amendment 4 in order that, yet again, we take a step forward in supporting the rights of victims and allowing their voices to be heard whenever we can make that happen.

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

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)

Glen, Marlyn (North East Scotland) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Stewart, David (Highlands and Islands) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

Against

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Finnie, Ross (West of Scotland) (LD)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hume, Jim (South of Scotland) (LD)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)

Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McArthur, Liam (Orkney) (LD)
 McGregor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMillan, Stuart (West of Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Neil, Alex (Central Scotland) (SNP)
 O'Donnell, Hugh (Central Scotland) (LD)
 Paterson, Gil (West of Scotland) (SNP)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Tolson, Jim (Dunfermline West) (LD)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 43, Against 78, Abstentions 0.

Amendment 4 disagreed to.

Section 46A—Dockets and charges in sex cases

The Deputy Presiding Officer: We come to group 15, on aggravation by intent to rape. Amendment 80, in the name of the minister, is the only amendment in the group.

Kenny MacAskill: Amendment 80 is a technical amendment that provides that it shall be competent to libel a charge of assault or abduction with the aggravation that it was committed with the intent to commit rape, by reference to the statutory offences of rape and rape of a young child at sections 1 and 18 of the Sexual Offences (Scotland) Act 2009.

There is some uncertainty as to whether a court would accept as competent and relevant a charge that the accused committed the common-law offence of assault or abduction with the intent of committing the statutory offence of rape or rape of a young child. For the avoidance of doubt, the amendment is intended to ensure that the Crown

will continue to be able to charge the offences of assault and abduction with the aggravation that they were committed with the intent of committing the offence of rape when the common-law offence of rape is repealed and replaced with the statutory offences in the 2009 act.

I move amendment 80.

13:00

Bill Butler (Glasgow Anniesland) (Lab): Amendment 80 seems to be an uncontroversial, technical addition to previous Scottish Government amendments in the area. The bill, as amended at stage 2, provides a statutory basis for the use of a docket attached to an indictment or to a complaint by the Crown informing the defence of the Crown's intention to lead evidence of an offence that has not been charged. That approach might be used when a complainer alleges that a more serious sexual offence than that which has been charged was committed against her but there is sufficient corroborative evidence to support only a less serious charge. That approach, which was proposed by the Scottish Government, was supported unanimously by the committee at stage 2. On that basis, Labour will support amendment 80.

Amendment 80 agreed to.

Section 59—Retention of samples etc from children referred to children's hearings

The Deputy Presiding Officer: We come to group 16, on DNA retention: children referred to children's hearings. Amendment 81, in the name of the minister, is grouped with amendments 191, 192 and 16.

Fergus Ewing: Amendment 81 inserts a new subsection into section 18B of the Criminal Procedure (Scotland) Act 1995, which concerns the retention of prints and samples from children who have been referred to children's hearings. Amendment 81 addresses the particular concern—which, I believe, was shared by the committee—that forensic data should not be retained from children who have been involved in only minor assaults.

Section 18B(6) of the 1995 act provides that relevant offences for the purposes of section 18B are such relevant sexual or violent offences as Scottish ministers may prescribe by order. The offences must be taken from the list of relevant violent and relevant sexual offences that is set out in section 19A of the 1995 act. The list is fairly extensive and includes, for example, rape, indecent assault and sodomy, in the case of sexual offences, and murder, assault and abduction, in the case of violent offences.

Amendment 81 widens the scope of section 18B(6) of the 1995 act. It provides for an order to be made by Scottish ministers under section 18B(6) to prescribe a relevant violent offence by reference to a particular degree of seriousness rather than by reference simply to the list of offences in section 19A of the 1995 act. Amendment 81 will, for example, allow ministers to prescribe by order that only serious assaults—not all assaults—will be relevant offences and lead to the retention of forensic data that are collected from children. That will allow a more flexible and proportionate approach to be taken to the definition of offences that are carried out by children that can lead to the retention of forensic data.

Amendment 16 changes the process by which a sheriff will extend the retention period. Robert Brown lodged an identical amendment at stage 2 and it was rejected. We believe that the arguments that were used against the amendment then apply now. He urges that Scottish ministers should be able to set out grounds, but he does not set out what those should be. He urges that we should consult, but he does not say whom we should consult. We believe that amendment 16 would see powers pass to Scottish ministers from the police and the courts, who are the people with the expertise and ability to consider individual cases, therefore we do not believe that Mr Brown's amendment 16, which was rejected by the committee, should be supported today. I urge Parliament to reject the amendments in the name of Robert Brown.

I move amendment 81.

The Deputy Presiding Officer: I again exercise my power under rule 9.8.4A(c) to extend the time limit for this group of amendments. Members should be reassured that not many members want to speak to them.

Robert Brown: I am in a somewhat invidious position between discussion of this group of amendments and lunch time, but it is an important debate.

Most people agree that DNA from children should be retained only in exceptional circumstances. The Government's approach has been to prescribe the list of offences—with some difficulty, it is fair to say—that are covered by assault, minor assault, severe assault and so forth. I accept that the list of offences that has been developed is, at least, workable. Nevertheless, my view—which is supported by Scotland's Commissioner for Children and Young People and others—is that the children's hearings system is a welfare system, and that the retention of DNA and fingerprints should occur only in cases that have serious implications for public safety. Furthermore, that should be done only by

application to the court within three months of the grounds for referral being established or accepted.

We should remember what we are dealing with in numbers. Parliamentary questions in April established that the DNA profiles of only 31 youngsters aged 12 to 15 were on the Scottish DNA database and that the database contained no profiles of anyone aged under 12. The retention of DNA samples from children is already highly unusual. It should stay that way and be subject to specific request.

Because of the time, I will not go into further detail, but I will conclude by saying that we have prided ourselves on the fact that the general regime of DNA retention in Scotland has proved to be robust and ECHR-compliant, unlike the situation in England. I urge the chamber to be similarly robust on the retention of children's DNA.

It is easy to claim that the more DNA is retained, the more crimes will be prevented. However, DNA remains a matter of fact and circumstance, and retention must be justified against proper criteria.

James Kelly: I support the use of DNA as a tool in fighting crime, particularly in Scotland, where we have 2,000 unsolved rapes and rape convictions are at a 25-year low. DNA can be used to combat that situation.

The amendments in this group deal with the sensitive issue of children's DNA. I do not support Robert Brown's amendments 191 and 192, because they seek to weaken the existing regime and make it more difficult to retain DNA correctly. I also do not support amendment 16. I concur with the minister that it is incorrect to pass to ministers powers on extending timetables for DNA retention—it is correct that such matters should be decided by sheriffs, as appropriate.

I support the Government's amendment 81, which clarifies issues around serious offences and takes on board some of the concerns that I expressed at stage 2.

Bill Aitken: The issue of serious offences was canvassed at the Justice Committee, where issues around the lack of specificity were raised. Amendment 81 deals with the required definitions.

Amendments 191 and 192 represent views that Robert Brown holds sincerely, and he has been active in pursuing them for quite some time. However, I heard nothing new in his arguments today to persuade me that my decision on the matter when it came before the Justice Committee was incorrect, therefore my party will not be supporting his amendments.

The Deputy Presiding Officer: The minister has indicated that he does not wish to wind up.

Amendment 81 agreed to.

Amendment 191 moved—[Robert Brown].

The Deputy Presiding Officer: The question is, that amendment 191 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Brown, Robert (Glasgow) (LD)
 Finnie, Ross (West of Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hume, Jim (South of Scotland) (LD)
 McArthur, Liam (Orkney) (LD)
 McInnes, Alison (North East Scotland) (LD)
 O'Donnell, Hugh (Central Scotland) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)

Against

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Allan, Alasdair (Western Isles) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 FitzPatrick, Joe (Dundee West) (SNP)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Henry, Hugh (Paisley South) (Lab)

Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McMillan, Stuart (West of Scotland) (SNP)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Paterson, Gil (West of Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 15, Against 105, Abstentions 0.

Amendment 191 disagreed to.

Amendment 192 not moved.

Amendment 16 moved—[Robert Brown].

The Deputy Presiding Officer: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Brown, Robert (Glasgow) (LD)
 Finnie, Ross (West of Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hume, Jim (South of Scotland) (LD)
 McArthur, Liam (Orkney) (LD)
 McInnes, Alison (North East Scotland) (LD)
 O'Donnell, Hugh (Central Scotland) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)

Against

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Allan, Alasdair (Western Isles) (SNP)
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 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 FitzPatrick, Joe (Dundee West) (SNP)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
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 Ingram, Adam (South of Scotland) (SNP)

Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
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 Kelly, James (Glasgow Rutherglen) (Lab)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McMillan, Stuart (West of Scotland) (SNP)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
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 Murray, Elaine (Dumfries) (Lab)
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 Whitton, David (Strathkelvin and Bearsden) (Lab)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 15, Against 104, Abstentions 0.

Amendment 16 disagreed to.

The Deputy Presiding Officer: As some members have anticipated, that concludes this morning's proceedings.

13:10

Meeting suspended.

14:30

On resuming—

The Presiding Officer (Alex Fergusson):

Good afternoon. The first item of business this afternoon is continuation of stage 3 proceedings on the Criminal Justice and Licensing (Scotland) Bill. I remind members that in dealing with amendments they should have before them the bill as amended at stage 2, which is SP Bill 24A; the marshalled list, which is SP Bill 24A-ML; the correction slip to the marshalled list; and the groupings. I also remind members that, as was the case this morning, the division bell will sound and proceedings will be suspended for five minutes before the first division. We will have a voting period of one minute for the first division after a debate and all other divisions will be 30 seconds.

Section 66—Witness anonymity orders

The Presiding Officer: We come to group 17. Amendment 82, in the name of the cabinet secretary, is grouped with amendments 83 to 89.

Fergus Ewing: Amendments 82 to 89 set out in more detail the way in which applications for witness anonymity orders can be made and how appeals arising out of such applications are to be dealt with, in particular at what points appeals must be made. The amendments are mainly technical and are designed to make the arrangements workable in practice. The overall principle behind the amendments is to ensure that the anonymity of a witness can be protected until an application for a witness anonymity order is determined. I have several more pages of speaking notes, but I propose simply to leave it there and say that I am happy to deal with any specific queries on amendments.

I move amendment 82.

Bill Aitken: On amendment 86, it is most unlikely that many summary cases will be involved. On amendment 87, perhaps I may have an explanation from Mr Ewing as to why it was felt necessary to restrict the appeal to such an extent that it must be granted by the court of first instance. I would have thought that normal appeal procedures in such matters would suffice. Those are small and minor points, but I look for some reassurance, in particular on amendment 87.

Fergus Ewing: On amendment 87, the judgment is a matter of balance. The granting of a witness anonymity order is a serious matter and it should be appealable. However, we want to safeguard against spurious appeals or delaying

tactics and have concluded for that reason that there should be leave to appeal.

Amendment 82 agreed to.

Amendments 83 to 89 moved—[Fergus Ewing]—and agreed to.

Section 68A—Excusal from jury service

The Presiding Officer: We come to group 18. Amendment 90, in the name of the cabinet secretary, is grouped with amendments 91, 92 and 186.

Fergus Ewing: At stage 2, the Justice Committee agreed to amendments proposed by David McLetchie and supported by Age Scotland to remove the upper age limit for jury service in criminal trials. The amendments provided that those aged 71 or over be entitled to be excused from jury service as of right. In other words, those aged 71 or over may serve on juries in criminal trials but do not have to if they do not wish to.

The committee also agreed to our amendments to provide that persons who seek excusal as of right do so within seven days of receipt of the revisal notice, which is the first warning of potential jury service. As I said at the time, there is an interaction between our amendments and David McLetchie's amendments. Amendments 90 to 92 and 186 seek to address that interaction. Although we believe that it is correct that most people seeking excusal as of right should do so at the earliest opportunity, which is desirable in managing court business from the Scottish Court Service's point of view, we do not believe that it is either fair or practicable to expect all those in the age group 71 or over to be able to comply with that. In consultation with the Scottish Court Service, we have decided that that age group should be able to seek excusal as of right at any time up to any trial diet to which they might eventually be cited. The Scottish Court Service has confirmed that it is ready to make the necessary operational arrangements to allow that to happen.

The other amendments in the group are minor, technical amendments, which tidy up the juror provisions.

I move amendment 90.

David McLetchie (Edinburgh Pentlands) (Con): I compliment the minister on lodging this group of amendments, which complement and, as he said, interact with the amendments that I lodged at stage 2 and which the Justice Committee supported. The combined effect will be to take Scotland ahead of the game, rather than just catching up with England, which we were doing before. I understand that a similar measure is under active consideration by the Ministry of

Justice in England, and I hope that this entirely sensible proposal will be adopted there, as it will be adopted by us today, and that, on that issue at least, the Lord Chancellor and I will be in complete harmony.

Bill Butler: I support the amendments in the name of the cabinet secretary, and I agree with Mr McLetchie's remarks. That does not make us a holy trinity, of course.

The amendments are sensible. They make a number of changes to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 relating to the excusal system for jurors. Amendment 92 sets out the rules about excusal for people aged 71 and over, and they seem eminently reasonable and worthy of support. Similarly, amendment 91, which relates to serving members of the forces, should be backed. Labour views the amendments in the group as tidying amendments, and we will support them.

Fergus Ewing: I am interested to hear David McLetchie's remarks that we are catching up on England. I look forward to the day when England catches up with us in relation to short sentences.

Amendment 90 agreed to.

Amendments 91 and 92 moved—[Fergus Ewing]—and agreed to.

Section 72—Closure of premises associated with human exploitation etc

Amendment 7 not moved.

Section 79A—Spent alternatives to prosecution: Rehabilitation of Offenders Act 1974

The Presiding Officer: We come to group 19. Amendment 93, in the name of the cabinet secretary, is grouped with amendments 94 and 95.

Fergus Ewing: Amendment 93 is a minor amendment to ensure that all the alternatives to prosecution are covered within the definition of "ancillary circumstances" contained in paragraph 2 of the new schedule 3 to the Rehabilitation of Offenders Act 1974. It was felt that the current wording would exclude anything that had been done or undergone in pursuance of a work order under the current definition.

Amendments 94 and 95 were lodged to correct errors in relation to the order-making powers that are referred to in paragraphs 6(a) and 6(b) of new schedule 3 to the 1974 act. They do not change the policy intention. The amendments ensure that our provisions mirror the existing order-making powers of the Scottish ministers under the 1974 act for spent convictions, but apply them to alternatives to prosecution.

I move amendment 93.

Amendment 93 agreed to.

Amendments 94 and 95 moved—[Fergus Ewing]—and agreed to.

Section 85—Meaning of “information”

The Presiding Officer: We come to group 20. Amendment 193, in the name of the cabinet secretary, is grouped with amendments 96, 97, 101, 102, 104, 107 to 110, 112, 114 to 116, 142, 146, 150 and 153.

Kenny MacAskill: All the amendments in the group are necessary minor and technical amendments to part 6 of the bill, concerning the disclosure of evidence by the prosecutor to accused persons in criminal proceedings.

Amendments 96, 97, 101, 102 and 104 extend the definition of “conclusion of the proceedings” where it appears, in certain sections of the bill, to include circumstances where the accused is convicted and then appeals against the conviction before the expiry of the time that is allowed for the appeal. The amendments are necessary because they complete the picture as to what “conclusion of the proceedings” means.

Amendments 150 and 153 amend sections 111 and 111A, also in relation to the meaning of the term “conclusion of the proceedings”. Amendments 193 and 109 amend sections 85 and 92 to ensure that they apply to the whole of part 6, rather than just to some sections.

Section 96F sets out the prosecutor’s duty of disclosure in cases in which the accused has been convicted and does not appeal the conviction. Amendment 107 seeks to clarify the duty of the prosecutor under section 96F by making it clear what the reference to “earlier proceedings” means—they are the proceedings in which the person was convicted. Amendment 108 is consequential to amendment 107.

Amendment 142 will extend the definition of non-attendance order that is provided in section 106B(5). Amendment 146 will amend section 107B(4) to make it clear that special counsel must not communicate with the accused’s representative about applications or appeals in which special counsel has been appointed unless the court has given permission.

Amendments 110, 112, 114, 115 and 116 seek to alter the order of the provisions so that the general provisions come after all the provisions to which they apply.

I move amendment 193.

Amendment 193 agreed to.

Section 87—Continuing duty to provide information: solemn cases

Amendment 96 moved—[Kenny MacAskill]—and agreed to.

Section 88B—Continuing duty of investigating agency: summary cases

Amendment 97 moved—[Kenny MacAskill]—and agreed to.

Section 89—Prosecutor’s duty to disclose information

The Presiding Officer: We come to group 21. Amendment 98, in the name of the cabinet secretary, is grouped with amendments 99, 100, 17 to 19, 103, 20 to 23, 105, 106, 24 to 27, 148 and 28 to 32. I draw members’ attention to the pre-emption information that is given on the list of groupings.

Kenny MacAskill: Amendments 98 to 100, 103, 105, 106 and 148 are Government amendments that seek to make minor and technical amendments to provisions in part 6 of the bill that deal with disclosure of information in criminal proceedings.

Amendments 103 and 106 are necessary to avoid duplication of effort so that when the prosecutor is required to disclose information under any of the relevant provisions of part 6, he or she need not disclose the same information more than once. Amendment 98 will remove similar provision from section 89 in consequence of amendment 103.

Amendments 99 and 100 seek to amend section 90 to clarify that, in solemn first instance cases only, the prosecutor need only provide certain specified information.

Amendment 105 is a minor technical amendment to section 96, which seeks to insert a reference to a provision concerning defence statements that was added at stage 2.

Amendment 148 deals with the interplay between the prosecutor’s statutory duty of disclosure and the effect on it of a court order for non-disclosure of certain appeals by the prosecutor or secretary of state against section 106, section 106A and ancillary orders. The amendment is necessary to make it clear that until the appeal is determined or abandoned, the prosecutor must not disclose the information in question, in order to protect the public interest at stake until the court has made a final determination.

Robert Brown’s amendments deal with two different but related aspects of part 6—defence statements and court rulings on materiality—which

are highly technical and complex matters. I am aware that the Solicitor General for Scotland has discussed those issues with various people, and I have no doubt that he will have explained things much more eloquently and confidently than I could have done but, given the complexity, I will try to explain what we are doing.

On defence statements, we accept that sections 94, 95 and 95A deal with highly technical procedural matters, but the underlying principles at their heart are simple. The accused provides a defence statement, in the light of which the prosecutor considers whether anything further needs to be disclosed. If the prosecutor decides that no further information needs to be disclosed and the accused is dissatisfied with that decision, he can apply to the court for a ruling on whether the information needs to be disclosed.

We accept that the provisions are detailed, but that detail is necessary to set out clearly for accused persons what they are required to do. There can be no room for uncertainty here. Our position on the need for defence statements is simple and twofold.

First, the provisions of the bill as drafted are designed to ensure that all that should be disclosed to the accused for them to receive a fair trial is disclosed. That is absolutely fundamental. We cannot risk something not being disclosed inadvertently and through no fault of the prosecutor because they did not appreciate, and could not have appreciated, its significance. That is not fair or just. Requiring defence statements in solemn cases is the best way confidently to secure disclosure to the accused of all the information that needs to be disclosed to him and, as a result, a fair trial. It is also a more efficient and effective way for justice to be delivered.

Secondly, if the defence seeks additional information, it should be required to provide some information to explain the materiality and relevance of the information that is sought. If the defence is to challenge lack of disclosure, we believe that it must be required to explain why it is challenging it and, in doing so, must refer to the aspects of the accused's defence to which it says that the information is material and relevant. The issue is one not of payment, as the Glasgow Bar Association suggested in its submission, but of proper argument being made in what is, after all, an adversarial system.

We recognise the complexities in these matters, and I am aware that Robert Brown has lodged amendments to deal with particular issues. He suggested at stage 2 that these provisions are unnecessary, and that the court would have implicit powers to rule on disclosure or perhaps even to request a review of new information.

However, we are creating an entirely new statutory regime, and if we wish the court to have particular powers, or if we want remedies to be available to parties in criminal proceedings, we need to set them out as part of that regime. I am conscious that Robert Brown has not lodged similar amendments with regard to sections 96D and 96H, which apply the equivalent scheme in relation to disclosure and appellate proceedings.

It is difficult to follow the logic in that. If the procedure is necessary in the course of an appeal, it must also be necessary in the first instance. The prosecutor has duties of disclosure at both stages, and although those differ in substance, the underlying principle—namely, to ensure that the accused has disclosed to the prosecutor all that is required to secure a fair trial—is identical. I therefore urge members to reject all the amendments lodged by Robert Brown.

I am happy to give further clarification beyond that which, I hope, the Solicitor General has already managed to give. These provisions are about ensuring that we provide balance. The matter is complex and technical, but we need to ensure that in an adversarial system, the system is equitable to the prosecutor and to the defence.

I move amendment 98.

14:45

Robert Brown: As the cabinet secretary rightly says, this area is very complex, and I am loth to push against the Government on such matters. However, the issue of disclosure has been difficult, and the committee was bothered by the sheer extent of the sections of the bill that deal with it.

At stage 3, therefore, I have not gone there—I have dealt with the issue of the defence statement, which also bothered the committee. It may have been satisfactory to the prosecution, but it bothered many of the senior figures with judicial and legal expertise who gave evidence to the committee.

Amendments 17 to 32 are intended to remove the requirement for the defence statement, which is a straightforward issue in one sense. For convenience, I indicate to members that if amendment 17 is rejected, I will not move amendments 18 to 32—although that is not intended as an inducement with regard to how members might vote later on.

The committee heard highly persuasive evidence at stage 1 from senior judicial and legal sources. Lord Coulsfield, who is the expert in this field, said in his report that the experience of English practitioners was

“that in the majority of cases defence statements are late, unspecific and unhelpful”

and that it would be difficult to make the system work better through more rigorous enforcement

“without either causing delay, or prejudicing a legitimate defence or both.”

He took the view that

“In Scotland there are well-established rules”

for notification of the existing special defences, and that the relatively new mechanisms for holding pre-trial hearings fulfilled most of the functions that are expected of defence statements. He went on to state in the report that he was not

“convinced that a general requirement for a defence statement would give any significant additional benefit, to justify the additional work and cost which would be generated.”

It is quite a bureaucratic process. Lord Coulsfield told the committee:

“Requiring the preparation of defence statements would have a cost in time and expense, and they could cause confusion and delay and add to complexity in the conduct of trials.”—[*Official Report, Justice Committee*, 2 June 2009; c 2003.]

Similar views were expressed by the Sheriffs Association, the Law Society of Scotland and the Faculty of Advocates.

Defence statements are something of an import from English procedure. The objections to them are that they are unnecessary and will not be used. They are unnecessary because there are already well-established special defences of alibi, impersonation, self defence and so on in Scots law that cover most of the usual situations.

The Crown argues that defence statements are needed in fairness to the defence, so that the prosecutor knows what it is likely to be relevant to disclose. I accept that, but others say that it could be covered by the defence lodging—if appropriate and necessary—a voluntary defence statement. A compulsory statement is overbureaucratic and will add to the expense and complication of cases to little advantage.

The minister has not made the case for defence statements, and he certainly has not overridden the expert evidence that the committee received at earlier stages on the difficulties that relate to this particular matter. I am unhappy that we are seeking to import something from a different legal jurisdiction, in a different situation, into the Scottish jurisdiction, which has at its heart simplicity and clarity in dealing with such matters.

I urge support for amendment 17 in particular.

Bill Aitken: When disclosure was discussed, I too favoured the minimalist approach that is favoured by Lord Coulsfield. The net result of my efforts was to see the bill extended by a further 30 pages.

I have some sympathy for Robert Brown's submissions in this respect. For the second time today, he and I are perhaps unique in agreeing that the bar over which the Crown must get should be a high one. Since the matter was determined, however, I have discussed it at some length with the Solicitor General. As has been said, there are at least several instances in which an accused person, in lodging a special defence, has in effect to provide a defence statement. The purpose of that well-established procedure is to ensure that the Crown has the opportunity to investigate exculpatory evidence to see whether it stands up. There are occasions when that would benefit the accused and might, in fact, result in the dropping of an indictment. Accordingly, there is a question of balance. While I am largely persuaded by Mr Brown's eloquence on this matter—I am not prejudiced by the inducement that he offered—I am not prepared to support his proposal at this stage. It is a question of balance, but I think that the existing position is preferable.

Kenny MacAskill: I appreciate how complex the issue is. I also appreciate Bill Aitken's comment that, notwithstanding the Justice Committee's comments, matters increased exponentially. We have not departed lightly from Lord Coulsfield's recommendations, which were fully consulted on. The provisions that we have brought forward are broadly the same in effect as those that apply in England, Wales and Northern Ireland. Those places have, as Mr Brown quite correctly said, a different system, but we are basically fleshing out our own system. We are just ensuring that the balance is the same. I appreciate that our provisions are complex and, to an extent, I apologise for the complexity. However, it was felt necessary to have these complex provisions, which will ensure that justice is served and that the Crown is aware of what information it must provide. As I said, if it could have been done in a simpler, shorter form, we would have done so. However, the provisions will ensure that justice is done. I do not think that Robert Brown's amendments are required.

Amendment 98 agreed to.

Section 90—Continuing duty of prosecutor

Amendments 99 to 101 moved—[Kenny MacAskill]—and agreed to.

Section 94—Defence statements: solemn proceedings

The Presiding Officer: Amendment 17, in the name of Robert Brown, has already been debated with amendment 98. I ask Robert Brown whether he will move or not move amendment 17.

Robert Brown: In the circumstances, I will not move amendment 17. I do not want to push a

technical matter of this sort against the Government's opposition.

Amendment 17 not moved.

Section 95—Defence statements: summary proceedings

Amendment 102 moved—[Kenny MacAskill]—and agreed to.

Amendment 18 not moved.

Section 95A—Change in circumstances following lodging of defence statement: summary proceedings

Amendment 19 not moved.

After section 95A

Amendment 103 moved—[Kenny MacAskill]—and agreed to.

Section 95B—Application by accused for ruling on disclosure

Amendment 20 not moved.

Section 95C—Review of ruling under section 95B

Amendment 104 moved—[Kenny MacAskill]—and agreed to.

Amendment 21 not moved.

Section 95D—Appeals against rulings under section 95B

Amendment 22 not moved.

Section 96—Effect of guilty plea

Amendment 23 not moved.

Amendment 105 moved—[Kenny MacAskill]—and agreed to.

Section 96D—Application to prosecutor for further disclosure

Amendment 106 moved—[Kenny MacAskill]—and agreed to.

Section 96F—Further duty of prosecutor: convicted persons

Amendments 107 and 108 moved—[Kenny MacAskill]—and agreed to.

Section 92—Redaction of non-disclosable information by prosecutor

Amendments 109 and 110 moved—[Kenny MacAskill]—and agreed to.

Section 97—Means of disclosure

The Presiding Officer: We come to group 22. Amendment 111, in the name of the cabinet secretary, is grouped with amendments 113, 117 to 141, 143 to 145, 147, 149, 151, 152 and 154 to 162. I call members' attention to the pre-emption information that is shown on the list of groupings.

Kenny MacAskill: Amendments 117 to 141, 143 to 145, 147, 149, 151, 152 and 154 to 159 relate to sections 102 to 113 concerning the procedure for the making and determination of applications for non-disclosure of information on public interest grounds. The amendments extend those sections so as to make them apply in relation to duties to disclose information that arise after the original proceedings have concluded. Those amendments and amendments 111, 113 and 160 to 162 are related to sections 96B to 96G, which were inserted into the bill at stage 2 and set out the duties of the prosecutor after the conclusion of the original proceedings and in the course of appeals. The amendments are necessary to ensure that applications for section 106 and 106A orders, and ancillary orders, can be made by the prosecutor or by the secretary of state.

Section 113 makes general provision in relation to applications to the court for orders under sections 106 and 106A and for review of those orders. Amendments 154, 155, 157 and 158 extend section 113 so that it also applies where the application or review relates to a disclosure duty that arises after the original proceedings are concluded. Amendments 119, 120, 139 and 141 are technical amendments that extend the scope of those provisions. Amendments 111, 113, 121, 145, 147, 149 and 152 are also technical amendments that widen the definition of "accused" to include "appellant" or "other person", in certain cases. Amendment 151 is a technical amendment to clarify when criminal proceedings come to an end for the purposes of disclosure post conviction and in appeals. Amendments 160 to 162 are technical amendments to ensure that references to "accused", "appellant" or "other person" should be taken to include his or her solicitor or advocate where appropriate.

I move amendment 111.

Amendment 111 agreed to.

Amendment 112 moved—[Kenny MacAskill]—and agreed to.

Section 98—Confidentiality of disclosed information

Amendments 113 to 114 moved—[Kenny MacAskill]—and agreed to.

Section 99—Contravention of section 98

Amendment 115 moved—[Kenny MacAskill]—and agreed to.

Section 91—Exemptions from disclosure

Amendment 116 moved—[Kenny MacAskill]—and agreed to.

Section 102—Application for section 106 order

Amendment 117 moved—[Kenny MacAskill]—and agreed to.

Amendment 24 not moved.

Amendment 118 moved—[Kenny MacAskill]—and agreed to.

Section 103—Application for non-notification order or exclusion order

Amendments 119 to 121 moved—[Kenny MacAskill]—and agreed to.

Section 104—Application for non-notification order and exclusion order

Amendment 122 moved—[Kenny MacAskill]—and agreed to.

Section 106—Application for section 106 order: determination

Amendments 123 and 124 moved—[Kenny MacAskill]—and agreed to.

Amendment 25 not moved.

Amendments 125 to 127 moved—[Kenny MacAskill]—and agreed to.

Section 106A—Order preventing or restricting disclosure: application by Secretary of State

The Presiding Officer: Amendment 128 is in the name of the cabinet secretary. If it is agreed to, I cannot call amendment 26.

Amendment 128 moved—[Kenny MacAskill]—and agreed to.

Amendments 129 and 130 moved—[Kenny MacAskill]—and agreed to.

The Presiding Officer: Amendment 131 is in the name of the cabinet secretary. If it is agreed to, I cannot call amendment 27.

Amendment 131 moved—[Kenny MacAskill]—and agreed to.

Amendments 132 to 138 moved—[Kenny MacAskill]—and agreed to.

Section 106B—Application for ancillary orders: Secretary of State

Amendments 139 to 142 moved—[Kenny MacAskill]—and agreed to.

Section 106C—Application for restricted notification order and non-attendance order

Amendment 143 moved—[Kenny MacAskill]—and agreed to.

Section 106D—Application for non-attendance order

Amendment 144 moved—[Kenny MacAskill]—and agreed to.

Section 107—Special counsel

Amendment 145 moved—[Kenny MacAskill]—and agreed to.

Section 107B—Role of special counsel

Amendment 146 moved—[Kenny MacAskill]—and agreed to.

Section 107C—Appeals

Amendment 147 moved—[Kenny MacAskill]—and agreed to.

After section 107C

Amendment 148 moved—[Kenny MacAskill]—and agreed to.

Section 111—Review of section 106 order

Amendments 149 to 151 moved—[Kenny MacAskill]—and agreed to.

Section 111A—Review of section 106A order

Amendments 152 and 153 moved—[Kenny MacAskill]—and agreed to.

Section 113—Applications and reviews: general provisions

Amendments 154 to 159 moved—[Kenny MacAskill]—and agreed to.

Section 115—Acts of adjournal

The Presiding Officer: Amendment 194, in the name of Rhoda Grant, is in a group of its own.

Rhoda Grant (Highlands and Islands) (Lab): Under section 305 of the Criminal Procedure (Scotland) Act 1995, acts of adjournal can be made only in relation to criminal court practice and procedure. An act of adjournal is a piece of legislation that can be brought forward by judges of the High Court without recourse to Parliament. Section 115 of the bill permits the court to create acts of adjournal

“for the purposes of ... or for giving full effect to”

part 6, which is on the conduct of criminal proceedings with regard to disclosure. Such acts would no longer be restricted to matters about the conduct of the process, but could be about anything that is within the jurisdiction of the court that comes under part 6. The Subordinate Legislation Committee was concerned that the provision in the bill would allow acts of adjournal to come into force on areas of substantive law without Parliament's having the opportunity to scrutinise the proposal.

15:00

At stage 1, the committee asked the Government why the existing powers regarding practice and procedure under section 305 of the 1995 act are not sufficient for the purposes of part 6. At that point, the Government responded that more flexibility is needed to allow the High Court to do what it would need to do to ensure that the statutory scheme works efficiently. However, it gave no examples of when that would be the case. Acts of adjournal are not subject to parliamentary procedure, so the provision in section 115 as it stands would give the courts the power to legislate in areas of substantive law, without any parliamentary scrutiny.

Amendment 194 makes it clear that the powers that will be conferred by section 115, beyond those that are conferred by the 1995 act, must be scrutinised by Parliament under the negative procedure. That means that the desired flexibility is still in the bill, but there are checks and balances on that ability.

I move amendment 194.

Kenny MacAskill: We have some sympathy for the concerns that the Subordinate Legislation Committee expressed and that Rhoda Grant has articulated. We share the committee's view that it is for Parliament and not the courts to make provision in substantive criminal law. It is not our intention that section 115 would be used in that way, and we do not imagine that the High Court would do so.

However, we accept that the section is not restricted to criminal procedure and practice—and necessarily so. This is the first time that disclosure has been put on a statutory footing. We need flexibility to enable the High Court to do everything that we think it is likely to require to do to regulate court practice and procedure in order to ensure that the scheme works efficiently.

Moreover, the provision is needed to remove any doubts that might arise as to the scope of the powers. For example, part 6, as amended at stage 2, makes provision for the duty of disclosure after conviction where there are no live criminal proceedings. It also enables applications to be

made at that stage to the court for non-disclosure on public-interest grounds. Although we are quite clear that such matters are still criminal procedure because of their direct relationship to the fairness of the accused's criminal trial, we are conscious that in such cases there are no longer criminal proceedings and believe that it is necessary to leave no room for possible doubts.

There has been too much historical uncertainty on disclosure, so part 6 is designed to put an end to that. Agreement to amendment 194 would lead to uncertainty, not only over what rules can and cannot be created, but over what rules may or may not be the subject of parliamentary resolution. We do not agree that the power that is contained in section 115 is entirely open. What the bill proposes is limited to aspects that are required to give full effect to the part 6 provisions on disclosure—no more, no less. I assure Parliament that the intention is only that rules of court may be developed that regulate court procedure and practice and that such rules should not stray into making provision on the substantive criminal law.

Although we have sympathy with where members are coming from, I ask Parliament to reject amendment 194.

Rhoda Grant: Given the reassurances that the cabinet secretary has provided, I seek leave to withdraw amendment 194.

Amendment 194, by agreement, withdrawn.

Section 115A—Abolition of common law

Amendments 28 to 31 not moved.

Section 116—Interpretation of Part 6

Amendment 160 moved—[Kenny MacAskill]—and agreed to.

The Presiding Officer: Amendment 32 is pre-empted.

Amendments 161 and 162 moved—[Kenny MacAskill]—and agreed to.

After section 124

The Presiding Officer: We move on to group 24. Amendment 195, in the name of John Lamont, is grouped with amendments 196 and 197.

John Lamont: The purpose of amendments 195, 196 and 197 is to deal with the unforeseen consequences for the sports of archery and fencing in Scotland in relation to the Custodial Sentences and Weapons (Scotland) Act 2007, which came into force on 1 June 2010.

Under the 2007 act, archery and fencing will be severely compromised in their ability to attract new participants, because the ability to buy equipment

will be restricted. Equipment for the sports is expensive and it is unfair to expect new participants to purchase items when they start. Most clubs are able to attract new members by using an equipment hiring system. Without new participants, these Olympic sports will ultimately cease to be played in Scotland.

Amendments 195 and 196 would amend the 2007 act to afford archery the same exceptions as exist for fencing. A delay in such provisions being agreed to by Parliament will be a serious risk to thousands of archers in Scotland. Furthermore, the world cup of archery, which comes to Edinburgh this summer, will be threatened. If amendments 195 and 196 are not agreed to, thousands of people will be unable to participate and there will be an economic blow due to withdrawal from future events.

Amendment 197 would support sporting goods dealers throughout the country and would ensure that participants continue to have access to equipment. The amendment would require all dealers to conform to the recording regulations under the 2007 act. The change would require a sporting goods dealer to buy one licence from the local authority where their primary place of business is located, which would cover them to operate throughout Scotland.

Scottish Fencing has been notified that two major businesses in Scotland that deal in equipment will no longer attend events if they have to purchase a licence for each event. Eastcote Archery, which is a major equipment dealer, has estimated that if it wanted to deal at every event in Scotland, licensing would potentially cost at least £4,800. That would be an unjust charge, particularly given that fencing and archery clubs exist due to the work and time that are given by many volunteers.

The sports are played by a minority of people, but that is no reason to legislate in a way that will cause problems for people who enjoy them, or to harm the sports' ability to attract new participants. The 2007 act had the best intentions for society, but to place fencing and archery alongside knife crime would be unfair.

The amendments have the support of the Scottish Sports Association, Scottish Fencing and the Scottish Archery Association. I hope that the Scottish Government will give them due consideration, particularly in the light of the forthcoming world cup of archery.

I move amendment 195.

Robert Brown: I support the thrust of John Lamont's amendments—[*Laughter.*] Perhaps that was not the best-chosen phrase that ever was.

The situation that John Lamont described illustrates the difficulty of legislating to deal with many different sorts of situation, with criminal activity on one hand and necessary, desirable and praiseworthy sports on the other. I think that I am right in saying that exemptions have been put in place in relation to fencing, but which might not be adequate to the task, as John Lamont said. However, there is no obvious reason to distinguish between fencing and archery. If the Government is not amenable to the amendments in John Lamont's name, I hope that it can satisfy members that it can deal with the issue in some other way, perhaps through its powers to make subordinate legislation under current legislation.

John Lamont has raised a valid issue, with which the cabinet secretary needs to deal.

Bill Butler: I am sympathetic to the concerns that John Lamont expressed. We should do our utmost to protect the sport of archery, especially because the world cup of archery comes to Edinburgh this summer. We would not want to send a message that archery is not welcome in Scotland.

However, Parliament has a duty to examine thoroughly any proposed legislation in order to test whether it is fit for purpose. Labour's view is that amendment 195 is drawn too widely. Exempting all sports goods dealers from the requirement to hold a licence is too far-reaching and the approach would exempt a number of dealers who sell potentially dangerous knives for hunting and fishing. I fear that exempting all sports dealers from the requirement would potentially allow premises that the Government is trying to target to sell knives without the appropriate licence. On that basis, Labour will not support amendment 195.

Amendment 196 is a different matter. It would allow a specific exception for archery along the lines of the exception that is provided for fencing. Given that the statutory instrument that provided the exception for fencing was accepted without demur, it would be perverse to object to the same exemption for archery. Amendment 196 takes a sensible and proportionate approach in relation to archery. Labour will support amendment 196, because it is specific to archery, will benefit the sport and seems to be proportionate.

Amendment 197 appears to seek to lessen the financial and bureaucratic burden on sporting goods dealers who may travel round the country, in that it would remove the requirement for them to apply for a knife dealer's licence to each local authority in whose area they seek to carry out business. Among other things, it states:

"If the local authority to whom notice is given ... is not the authority that granted the travelling knife dealer's licence, the notified authority is to treat the licence as applicable in their area as if it was a licence they had granted."

That suggests that an individual could obtain a licence in the Borders and use it to trade in Sauchiehall Street simply by notifying Glasgow City Council of his intention to do so. That begs the question as to which local authority would be responsible if a person who was granted a travelling knife dealer's licence failed to adhere to conditions that had been set by the issuing authority, where that failure occurred on premises outwith the issuing authority's area.

Labour's view is that amendment 197 has not been properly thought through and may have unacceptable, if unintended, consequences. Therefore, Labour cannot support amendments 197 and 195 but will support amendment 196.

Kenny MacAskill: I thank John Lamont for raising the issue with me. Members have received correspondence on it—Robert Brown and Bill Butler referred to that—but he stepped forward to raise the matter and the difficulties that were coming for the archery world cup.

The Government acknowledges that there is a gap. The purpose of the knife dealers licensing scheme is to make it more difficult for non-domestic knives to fall into the wrong hands. It is not meant to interfere with legitimate sports.

We do not dispute that there is a problem; the question is what to do about it. We can seek to legislate in the bill, but we face the difficulty that if we are to address the issue for the forthcoming archery world cup, the measures that we could pass in the bill would not come into force in sufficient time because of the timing of royal assent. However, I assure John Lamont in particular, and all other members, that we recognise the problem. We can address it by regulation and use the powers that we have under the Civic Government (Scotland) Act 1982 to provide for the further exemptions that are necessary. I am more than happy to assure members that we will do whatever is necessary to introduce the appropriate legislation to deal with the oversight and gap that we are all agreed upon without endangering our communities.

The Presiding Officer: I offer Mr Lamont the opportunity to parry some of the rapier-like arguments that have been thrust in his direction.

John Lamont: That is very good, Presiding Officer.

I am happy to accept the minister's undertaking in relation to resolving the matter and will not press the amendments in my name.

Amendment 195, by agreement, withdrawn.

Amendments 196 and 197 not moved.

After section 127

The Presiding Officer: We come to group 25. Amendment 198, in the name of Sandra White, is the only amendment in the group.

Sandra White: I thank the officials and clerks for their guidance. I also thank the Justice Committee for devoting time in its busy schedule to discuss my original stage 2 amendment and for outlining its concerns. I return with a new amendment that deals with those concerns.

To avoid any confusion, I reiterate the statement that I made to the committee: the amendment would not ban lap-dancing clubs. It is about the serious issue of ensuring that local people can control what takes place in their communities. It is about ensuring that local authorities have at their disposal the tools to do what their communities ask them to do.

My amendment would enable local authorities to license venues that offer sexual entertainment—in other words, lap-dancing clubs. It would be an optional scheme. It would be for a local authority to decide whether it was appropriate to apply it in its area. It would not be mandatory. It would always be a local authority's choice to apply the legislation if it so wished.

The amendment would enable a local authority to control the introduction or expansion of lap-dancing premises. It would allow the authority to specify the number of such venues that it considered appropriate for the relevant locality. That number could be zero. Local authorities would also be able to apply operating conditions to, monitor and take action against premises if they did not operate as required.

15:15

The new amendment has been significantly redrafted to offer protection to the arts. It specifically excludes licences for hosting theatrical productions and entertainment. The definition of sexual entertainment is explicit and there is provision to extend the exclusions, should that prove necessary. I note the submissions by Scottish Ballet, the Federation of Scottish Theatre, the Festival Fringe Society and others, but I believe that the redrafting covers the concerns that they raise.

This is intended to be a dual licensing regime, separate from and additional to alcohol licensing. Some premises may require both a licence for alcohol and a licence for sexual entertainment, but I am sure that no member would disagree that this activity deserves more scrutiny and control. I also note the submissions by the Law Society of Scotland and the Convention of Scottish Local Authorities, and COSLA's comments that very few premises fall into this category. I believe that that

answers any questions raised by the organisations that I mentioned previously.

By licensing sexual entertainment venues separately, we also ensure that the fact that a premises does or does not have a premises licence under the Licensing (Scotland) Act 2005 is no longer material to whether it requires a sexual entertainment licence.

I will address one of the issues that Robert Brown, I think, raised at stage 2. Where there are existing lap-dancing clubs and local authorities wish to impose a zero limit, it would be for the local authority to justify why that approach was appropriate and in the public interest. It would also be for the local authority to demonstrate that the interference with property rights could be justified in the public interest. I think that that answers the concerns that the committee raised. The amendment is about ensuring that individual local authorities are given the powers and the freedom to take the action that they deem appropriate in delivering for their local communities.

I move amendment 198.

The Deputy Presiding Officer (Trish Godman): A considerable number of members wish to speak. I can give you about one and a half minutes each.

Robert Brown: The Liberal Democrats are opposed to amendment 198, largely on technical grounds. As the Law Society points out, and as Sandra White accepts, it sets up a dual licensing regime, which is in itself complicated.

I am not sure that there is any real evidence of a problem with the current powers. As far as I am aware, no new licences for lap-dancing clubs have been granted in recent years. I am unsure, despite Sandra White's explanation, what the effect of the amendment would be on the position of existing clubs, because there could certainly be substantial legal challenges if that is not got right.

Again, despite Sandra White's assertions to the contrary, the definitions are undoubtedly difficult and they are reminiscent of the arguments that one used to read about what was permitted at the Windmill Club or the Edinburgh festival. Above all, it is not particularly helpful to try to deal with the issue without effective consultation, or consideration by the committee, and as part of a large bill dealing with many other issues and in which the relevant sections are more focused on alcohol licensing. We have not heard much from local authorities about their views.

It may well be that issues will arise from this discussion and the debate is obviously helpful, but it is a proposal that would have to come back in some other form, with a much more substantial

background consultation, if it was to attract support throughout the chamber.

James Kelly: Scottish Labour is sympathetic to many of the objectives of amendment 198. We do not want entertainment venues to be used to degrade or exploit women and we also do not want them used as vehicles for prostitution, trafficking or serious and organised crime. Such activities are unacceptable. However, we need to consider the impact that the amendment would have. In that regard, we have some issues. I cite the Law Society's submission, which reiterates that there could potentially be unintended consequences. There are serious concerns that there could be a conflict between the powers of local authorities and the powers of licensing boards. If we agree to an amendment, we want it to help address the issues, not lead to confusion.

The SNP has had three years to address the issue and I think that Sandra White has lodged the amendment out of frustration that nothing has happened. The Labour Party gives a commitment that we will work on a detailed and robust scheme that we will bring forward when we return to government.

John Lamont: We have two concerns about the amendment. First, we are concerned that it has not been properly scrutinised. Secondly, we have concerns about the dual licensing system. In addition, many—if not all—members will have received a letter from Toni Bartley, who wrote on behalf of many women who work in lap-dancing bars in Glasgow to express concerns about how the proposed regime would impact on their ability to work. Indeed, Ms Bartley speaks with some passion about the impact that amendment 198 would have on her job, as I found out when I had the opportunity to meet her here in the Parliament to discuss her concerns. Indeed, she is in the public gallery.

Toni Bartley was, quite frankly, insulted by the claims that lap dancers are prostitutes being exploited and that their work is demeaning. For those who do not know, Toni is in fact a politics student at the University of Strathclyde and hopes to become a teacher. Her job helps her to pay her way through university. Many of us made choices to work in clubs or shops or bars to support ourselves while studying. This young woman has chosen to dance. Some of us might have moral objections to that, but I am a great advocate of freedom of choice.

To ensure the safety of those who choose to work in such an environment, and to avoid exploitation, I believe that rigorous enforcement of the licensing regime, regular police visits and internal self-policing are required. I have been assured that all of that takes place. However, I am open-minded and am prepared to look at all the

evidence. If there is a need for additional legislation, it should be introduced only after further and proper examination of the current procedures.

I am perhaps not the most likely advocate of lap dancing, of which I suspect other members might have more experience, but I am happy to look at all the evidence.

We will oppose Ms White's amendment 198.

Margo MacDonald: Should I repeat my name for the benefit of the member in the front row? I have never taken part in any lap-dancing, couch-dancing or pole-dancing activity. That does not make me a bad person.

I am interested in Sandra White's amendment, and I realise how seriously she takes the issue. I am fortunate enough to have learned most of what I know about the issue from having lived—for the past 30 years now—in Edinburgh, where there has been a system of regulation and policing that provides proper intelligence about what goes on in what some people think of as burlesque clubs. I realise that Glasgow has not quite got it together, so I would support anything that required such places to be licensed if the template was the way in which the saunas in Edinburgh are dealt with.

That does not mean that I approve of lap dancing as a career, or anything like it—I do not—but I think that lap dancing is perhaps like the fashion that there used to be for topless dancing. People in Edinburgh will know that there used to be topless dancers in every bar, but that is no longer the case. The fashion passed.

Amendment 198 provides—I refer to proposed new section 45A(3)—that the licensing would apply to clubs that were judged as having solely or principally the purpose of sexual stimulation. Without wishing to go into the fine details—subsection (4) is quite graphic—would that include telephone sex, given that there are telephone sex lines now? If the purpose of the provision is to dissuade people from participating in an activity that Sandra White perhaps deems to be antisocial, should we not be looking at the role that telephone sex and the internet play in such adult activities?

I will certainly vote against amendment 198 because, although well intentioned, the provisions do not fit the job and they could do with more scrutiny.

Kenny MacAskill: We are content that amendment 198 will tackle the concerns that we previously shared with members of the Justice Committee and many arts organisations. The amendment that Sandra White moved at stage 2 could have led to the performing arts being caught by a licensing regime that is designed to regulate lap-dancing bars. We understand and agree with

Sandra White's wish for communities to be able to regulate lap dancing and, where there is sufficient evidence, to refuse to license venues that provide that type of entertainment. Therefore, we will support amendment 198.

Sandra White: I honestly did not want to bring politics into the issue—I am sorry that James Kelly did so—and I do not want to go on about the politics of it.

My reason for lodging amendment 198 is plain and simple. Some local authorities are quite happy to have lap-dancing and pole-dancing venues, but other local authorities are not. By dealing with a gap in the Civic Government (Scotland) Act 1982, the amendment would enable local authorities to decide to have zero lap-dancing clubs. That is the reason why I lodged amendment 198.

In answer to Margo MacDonald's question, I think that telecommunications are a reserved matter, but I do not want to go into that.

I have done research on lap-dancing clubs with other people, such as reporters, and what I saw makes me feel that women are being objectified and used as sexual objects. That is my belief, whether other people agree with me or not. It is also the belief of Glasgow City Council, which is why I lodged the amendment today.

I have also received a letter from Steve McDonald threatening to take me to court. All I did was repeat what I heard in a lap-dancing club from a group of young men who called the girls slappers, and said that they would not like their girlfriends, sisters or wives to be doing it. I was repeating what they said.

I still believe that lap-dancing clubs are not a great way to make a living. I have not met any girls in the lap-dancing clubs who think that it is a great way to make a living.

I am sorry that Labour, the Tories and the Liberal Democrats do not feel that it is appropriate to support the amendment. I have not lodged the amendment because of the Government. I have been fighting for this legislation for about eight or nine years, so I can say to James Kelly that it is not just a flash in the pan, and I am not the only one who has been pushing for such changes. I will be very sorry if the amendment falls, because local authorities have a duty to the communities who vote them in. Glasgow City Council wanted to reiterate what the communities have been saying to it, but now democracy has been taken away from local authorities. All they want is to be able to choose to represent their communities. I will press the amendment.

The Deputy Presiding Officer: The question is, that amendment 198 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As the division is the first one of the afternoon, there will be a five-minute suspension.

15:26

Meeting suspended.

15:31

On resuming—

The Deputy Presiding Officer: We come to the division on amendment 198.

For

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Against

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)

Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

The Deputy Presiding Officer: The result of the division is: For 45, Against 76, Abstentions 0.

Amendment 198 disagreed to.

Before section 130

The Deputy Presiding Officer: We move to group 26. Amendment 163, in the name of George Foulkes, is the only amendment in the group.

George Foulkes (Lothians) (Lab): I welcome the opportunity to move amendment 163 and to give the Parliament the opportunity to turn the aims of the barred campaign into a realistic and workable law that will enhance the ability of people with disabilities to enjoy an independent lifestyle.

There has been wide consultation on the amendment, with both the licensed trade and the organisations that represent people with disabilities. Together we have had meetings with the equalities minister, Alex Neil, and we have been very encouraged by his helpful and positive response—I hope that my praise does not do him irreparable damage.

The amendment has taken a number of forms over the months. In our papers today, it is in its most refined form, which is supported by activists and publicans alike. I thank the clerks to the Justice Committee and the lawyers for both Capability Scotland and the licensed trade for their help in drafting it.

For the sake of clarity, it is worth reminding the Parliament what I said in the members' business debate—that the proposal is not anti-pub. In fact, the amendment recognises that the licensed trade is currently struggling and that adaptations can be expensive or impossible to make due to planning regulations or listed building restrictions.

The amendment does not, therefore, put onerous burdens on licensed premises to make adjustments to their properties to maintain their licence. All that it asks is that the compliance statement that licensees are already duty-bound to complete includes a new requirement to detail the accessibility of the premises. That simple step will enable local authority licensing boards to summarise the accessibility of pubs and clubs and to get the right information about the accessibility of venues into the hands of the disabled people in their areas.

I pay a particular tribute to Mark Cooper, the pioneer of the campaign, who is with us in the public gallery. *[Applause.]* The amendment has been 15 months in the making, during which time Mark has spoken to many MSPs. Without his work, we would not have it before us today. As with so many disabled people, his spirit and determination to fight inequality and discrimination is truly admirable. No one should be barred from

accessing a pub or club or receive a poorer standard of service because of a perceived disability.

With the support of the Scottish Parliament, amendment 163, if it is agreed to, will empower disabled people to make informed choices about where they relax and socialise, and it will ensure that they have the best possible independent lifestyle.

I move amendment 163.

The Deputy Presiding Officer: Before I call those who wish to speak, I exercise my powers under rule 9.8.4A(c) to extend the debate to allow all members who wish to speak to do so.

Bill Butler: As George Foulkes says, the amendment was lodged in support of Capability Scotland's barred campaign, which aims to improve the amount of information that is available to disabled people and their friends about the accessibility of pubs and clubs. I, too, had the pleasure of meeting Mark Cooper, the parliamentary and policy officer at Capability Scotland, who started the campaign after being forced to leave a pub in Edinburgh in the middle of a night out because it had no accessible toilet, despite having a level access entrance. That is quite unacceptable in this day and age. A recent poll showed that 75 per cent of disabled people experience barriers when they attempt to access pubs and clubs in Scotland. The Parliament must act to change that.

Amendment 163 is both timely and eminently reasonable. It merely requires licensees to provide information on the accessibility of their premises to people with disabilities. It is a modest proposal that will deliver fair treatment to many of our fellow citizens and allow them fully to enjoy an evening out. It is by no stretch of the imagination excessive. I commend George Foulkes for lodging the amendment and I urge colleagues to support it.

Robert Brown: I add my support to the campaign and the amendment. I, too, have met Mark Cooper—he must have met just about everybody in the Parliament in the course of the campaign. This illustrates what success an individual and corporate campaign can achieve with a bit of determination and imagination, with people getting stuck in and doing the thing properly. Mark has approached the issue with respect and consideration, he has been prepared to take ideas on board in doing that and he has brought the campaign to a successful conclusion in the hands of George Foulkes this afternoon. Amendment 163 is simple in concept but potentially significant in what it can do for disabled people, particularly young disabled people.

George Foulkes said that the amendment is not anti-pub; in fact, it is pro-pub. It arises from people's wish to be able to exercise the social rights that most of us take for granted—going to pubs and other establishments of that sort—and doing so in the way that others take for granted, without the barriers that disablement can sometimes bring. It is a worthy matter and I hope not only that the amendment will be passed unanimously by the Parliament, but that it will be followed by effective action by the trade and the Government.

Bill Aitken: I, too, add my praise for Mark Cooper and the barred campaign. It has been an absolutely superb campaign that has struck a real chord with everyone who has been involved over the past few months. I also congratulate George Foulkes on lodging amendment 163. As we all know, his lordship is a convivial cove who is ever eager to socialise. At the same time, however, he has the sensitivity to realise that not everyone is able to enjoy a night out in reasonably safe and comfortable circumstances. I am sure that that was the thinking behind his lodging the amendment. It is a very positive amendment that will improve the lives of not only people who like a drink but, perhaps more important, those who like some conviviality and some company. As Bill Butler says, the demands that are being made of the licensed trade are not excessive but perfectly reasonable. The fact that the trade has indicated its satisfaction with the amendment commends it to the Parliament.

Nigel Don: I share in congratulating Mark Cooper on the success of the campaign. I also congratulate Lord Foulkes on lodging an amendment that has changed over time, with the duty being brought back to the provision of information so that it is not discriminatory against pubs that would otherwise have struggled to comply with it. I hope that what we finish up with is only the start of changing the culture in which pubs operate and the way in which they choose to set up their facilities. Rather than put a stick to their backsides, we have dangled in front of them a carrot of what should be good behaviour.

Kenny MacAskill: We concur with what has been said. We have been grateful to work with Capability Scotland and Lord Foulkes to ensure that the amendment works within the existing framework of the Licensing (Scotland) Act 2005. We support amendment 163 and hope that the Parliament agrees to it.

George Foulkes: There is little more to add, other than to thank the Parliament for the all-party support for my amendment—most people will know that that is not something that I am used to. I particularly want to thank not only Alex Neil, but

Kenny MacAskill, who has given the issue sympathetic consideration. I am grateful to him.

I am also particularly grateful to my old friend, Baillie Aitken, and I look forward to celebrating with him the passage of this amendment with a drink in Babbity Bowster's in the very near future.

To those who were generous enough to praise me, I say that that is inappropriate, as all the praise should go to Capability Scotland and Mark Cooper.

Amendment 163 agreed to.

Section 130—Premises licence applications: notification requirements

The Deputy Presiding Officer: We move to group 27. Amendment 164, in the name of Paul Martin, is grouped with amendment 165.

Paul Martin: By way of background, it is important to recognise that the Licensing (Scotland) Act 2005 placed a requirement on all chief constables in Scotland to provide antisocial behaviour reports in a recognised manner for all new applications. That provision was included as a result of an amendment that I lodged during the passage of the bill. My amendment was intended to ensure consistency in respect of the information that is provided in connection with antisocial behaviour around licensed premises, with police officers and police authorities providing robust information in a consistent manner.

I was disappointed to learn that the Government intended to use the legislation that we are discussing today to amend the 2005 act and to place the provision of antisocial behaviour reports at the discretion of chief constables and licensing authorities.

The experience of my colleagues throughout Scotland will be that information that is provided to licensing authorities by police authorities is, indeed, inconsistent. A number of my constituents have raised concerns about the inconsistency of such information when they have made representations to licensing authorities. My amendments will ensure that the situation reverts to the status quo of the 2005 act, which places a requirement on all chief constables to provide information in a consistent manner.

I move amendment 164.

Bill Aitken: Paul Martin canvassed those views in the Justice Committee, prior to his elevation to the dizzy heights of being Labour's chief whip. The arguments were not accepted by the committee on the basis that the proposal might create an unnecessary amount of bureaucracy. At the same time, however, as he made clear in his speech, the existing laws do not prevent the police from raising with the licensing board the history of

disorder around any premises. Therefore, although it is not mandatory to do so, the police will bring to the attention of the licensing board situations in which there has been a difficulty.

There is little value in the police bringing reports to the licensing board as a matter of routine when they should be concentrating on premises that are problematical. Those are the ones that the licensing board should know about and in relation to which it should take action. There is no merit in Paul Martin's amendments, which should be rejected.

Kenny MacAskill: We must strike the appropriate balance between the needs and wants of our communities, the requirements that are placed on the police and the amount of information that can be dealt with by a licensing board that is charged with the responsibility of deciding whether to grant an application.

Amendments 164 and 165 would impose an unnecessary burden on the police in respect of antisocial behaviour reports, as a report would be required on all premises applications, even when the licensing board and the police considered it unnecessary. That would be reporting for reporting's sake.

Sections 130 and 132 ensure that, when an application for a premises licence is being considered, the police may choose to supply the licensing board with information about antisocial behaviour in the vicinity of the premises. In addition, the licensing board may choose to request such information from the police.

Robert Brown: Does the minister believe that the new context, in which applications are made only for new licences as opposed to every year for repeat licences, alters the arguments on the matter in any respect?

15:45

Kenny MacAskill: No, I do not think that it does. What matters is the point that Bill Aitken made. Under sections 130 and 132, if the police wish to bring matters to the board's attention, they can do so, and if the board has concerns, legitimate or otherwise, it is entitled to request information. We do not need reports to be made irrespective of whether they are needed or wanted. That would not be useful to the board and it would represent a waste of police time. That is why the Government maintains that sections 130 and 132 will be operationally effective and cost effective. I therefore ask Paul Martin to withdraw amendment 164 and not to move amendment 165.

Paul Martin: The minister talks about what is necessary. I refer back to the debate that we had at stage 2 of the Licensing (Scotland) Bill. The

reason why I raised the matter is that constituents in the Ruchazie part of my constituency were concerned that, when they made representations in connection with an application, they and the licensing authority were advised by the police that there was nothing to report, yet they learned at a later stage that the police had made 212 calls to the premises. I argue that that is incompetent and inconsistent.

The only way in which to ensure that our police authorities consistently provide accurate information is to ensure that they do that in the form of antisocial behaviour reports. We should not leave the matter to police officers' discretion. We have heard from the Government many times today that police authorities know best and that communities should do as they are told. I do not accept that philosophy. Communities are entitled to be sure that, when applications are submitted, there is a proper interrogation of the antisocial behaviour that has taken place surrounding the premises.

Robert Brown makes the powerful point that, as we will now have perpetual licences, the licensing authorities' workload will be significantly reduced, as will the workload of police officers and the bureaucracy that he mentioned.

I press my amendment 164.

The Deputy Presiding Officer: The question is, that amendment 164 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)

Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Stewart, David (Highlands and Islands) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

Against

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brownlee, Derek (South of Scotland) (Con)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMillan, Stuart (West of Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)

Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Abstentions

Brown, Robert (Glasgow) (LD)
 Finnie, Ross (West of Scotland) (LD)
 Hume, Jim (South of Scotland) (LD)
 McArthur, Liam (Orkney) (LD)
 McInnes, Alison (North East Scotland) (LD)
 O'Donnell, Hugh (Central Scotland) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)

The Deputy Presiding Officer: The result of the division is: For 45, Against 64, Abstentions 13.

Amendment 164 disagreed to.

Section 132—Premises licence applications: antisocial behaviour reports

Amendment 165 moved—[Paul Martin].

The Deputy Presiding Officer: The question is, that amendment 165 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)

Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Stewart, David (Highlands and Islands) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

Against

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brownlee, Derek (South of Scotland) (Con)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMillan, Stuart (West of Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)

Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Abstentions

Brown, Robert (Glasgow) (LD)
 Finnie, Ross (West of Scotland) (LD)
 Hume, Jim (South of Scotland) (LD)
 McArthur, Liam (Orkney) (LD)
 McInnes, Alison (North East Scotland) (LD)
 O'Donnell, Hugh (Central Scotland) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)

The Deputy Presiding Officer: The result of the division is: For 45, Against 63, Abstentions 13.

Amendment 165 disagreed to.

After section 132A

The Deputy Presiding Officer: We come to group 28. Amendment 166, in the name of the cabinet secretary, is the only amendment in the group.

Fergus Ewing: Amendment 166 amends section 45 of the Licensing (Scotland) Act 2005 to provide that the provisional period within which a provisional premises licence must be confirmed is increased from two to four years.

Members of the Justice Committee will recall the debate on Robert Brown's stage 2 amendment—I think that it was amendment 543—on provisional premises licences. We said at stage 2 and continue to believe that the ability to scrutinise applications effectively, either at the start or at the end of the application process, is imperative.

The police and licensing boards must have the ability to consider provisional premises licence applications to ensure that policing and overprovision implications of proposed developments can be given timely and effective consideration. It is equally important that the public know exactly what developments are being proposed in their communities. The original

amendment did not achieve that because it undermined significantly the ability of the public to know what was being proposed in their communities and the police's ability to comment effectively on the effect on the area or the increase in policing required. For licensing boards, the vague outline effectively reduced any sensible consideration of what was or was not going to be built. When premises were completed, there was no effective method for the public, the police or even the licensing board to influence the licence until the premises were operating.

Bill Aitken raised a good point during the stage 2 debate:

"A two-year provisional licence might not be appropriate in respect of larger-scale developments. The last thing that any member wants to do is to inhibit development, in particular in the difficult economic times that are likely to be faced by the licensed trade and everyone else."—[*Official Report, Justice Committee*, 11 May 2010; c 3132.]

We agree with Bill Aitken's judgment, and not for the first time.

Under the 2005 act, the licence has to be confirmed within two years, otherwise it will be revoked. We recognise that the current timeframe of two years for provisional premises licences can, on occasion, present difficulties for some developers who do not complete the development within two years. Indeed, we recall that this place was supposed to have been completed within two years, by 2001; we might also recall that that did not happen. Developments might not be completed within two years, which is why we propose that the period be extended from two to four years. The licensing board will be able to extend the period if construction or conversion work is delayed for reasons outwith the licence holder's control.

I move amendment 166.

James Kelly: I oppose amendment 166. Although I recognise why it has been lodged, four years for a provisional premises licence is too long. Section 45 of the 2005 act allows for two years and for extensions to that period. A four-year limit without any review of how the licence application is proceeding is too long; the correct time limit is two years. The existing legislation provides opportunities to seek extensions to that period.

Robert Brown: I was conscious of the ghost of my Scottish Parliament Corporate Body past as the minister glared at me when he spoke about the Scottish Parliament building, on whose financial costs I used to have the privilege of reporting.

The Government has moved in the right direction on provisional premises licences. It will be interesting to hear the answer to James Kelly's point on the extension of the period because it is

relevant to our overall consideration. However, the basic point that companies cannot always get everything in order in sufficient time is appropriate and the minister has made the proper response to such situations.

Fergus Ewing: The key points are that there must be the opportunity properly to scrutinise the licence application and the operating plan, and for the licensing board, the police and the public to know what is being proposed. Of lesser importance is the length of time that it takes for a development to be completed. In this Parliament, we all know that developments take longer than they might otherwise have done because of economic difficulties. Are we really going to penalise developers further by stating that the limit of their provisional premises licence will be two years when, for reasons that might be outwith their control because of financial difficulties, a development could take longer than two years to complete? Are we going to put further obstacles in their place? I submit that we should not do so.

I agree with the comments that Robert Brown has made, and I agree with the comments that Bill Aitken made so sagaciously at the Justice Committee. I very much hope that Parliament will support amendment 166.

The Deputy Presiding Officer: The question is, that amendment 166 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Finnie, Ross (West of Scotland) (LD)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)

Hepburn, Jamie (Central Scotland) (SNP)
 Hume, Jim (South of Scotland) (LD)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McArthur, Liam (Orkney) (LD)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMillan, Stuart (West of Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Neil, Alex (Central Scotland) (SNP)
 O'Donnell, Hugh (Central Scotland) (LD)
 Paterson, Gil (West of Scotland) (SNP)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Tolson, Jim (Dunfermline West) (LD)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Against

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley)

(Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Stewart, David (Highlands and Islands) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

The Deputy Presiding Officer: The result of the division is: For 77, Against 44, Abstentions 0.

Amendment 166 agreed to.

After section 132B

The Deputy Presiding Officer: We now move to group 29. Amendment 167, in the name of the cabinet secretary, is the only amendment in the group.

Fergus Ewing: Amendment 167 amends the Licensing (Scotland) Act 2005 to require licensing boards to provide copies of premises licences and occasional licences, and summaries of those licences, to the police when they send copies to licensing applicants and licence holders. It is important for the police to be made aware of the licensing conditions attached to each licence in order for the conditions of that licence to be properly enforced.

We believe that amendment 167 will assist the police when they undertake their licensing enforcement duties, and that it will make a positive addition to the existing enforcement measures that are already available to licensing boards and the police under the 2005 act.

I move amendment 167.

Amendment 167 agreed to.

After section 136

The Deputy Presiding Officer: We now move to group 30. Amendment 199, in the name of James Kelly, is the only amendment in the group.

James Kelly: I seek the Parliament's support for amendment 199, which would give powers to communities in relation to 24-hour licences.

I recognise that there are special occasions when 24-hour licences are appropriate, and those are catered for, in exceptional circumstances, under the existing legislation. However, there are occasions when such licences would not be appropriate, and there have been instances when they have been granted and communities have raised concerns over excessive alcohol consumption leading to antisocial behaviour.

Amendment 199 acknowledges those concerns and gives local licensing forums the power to make their views known and to make representations to the licensing board. The licensing board will have to have regard to that advice.

The issue was raised at stage 2, when the cabinet secretary indicated that, in his view, such arrangements were covered by the existing legislation. I withdrew a similar amendment at the time to consider the matter further. I have lodged a stage 3 amendment because section 11 of the 2005 act states that local licensing forums are not allowed to “make recommendations” or “give advice”. That limits their powers in relation to 24-hour licences.

We should support local licensing forums in the bill. We should encourage them and give them an enhanced role in relation to existing and proposed 24-hour licences. That would protect our communities from the excesses of such licences where they are inappropriate.

I move amendment 199.

Bill Aitken: The matter was canvassed at stage 2, when Mr Kelly withdrew his amendment. His arguments have some merit. There can be nothing worse than living in an area bedevilled by antisocial behaviour caused by a 24-hour licence. The remedy is already contained in legislation, however, and in the police action that can be taken. Although James Kelly presents an arguable case, I am not disposed to support the amendment.

16:00

Robert Brown: I am disposed to support amendment 199 because it seems to me that, in quite an elegant fashion, it raises an issue and suggests a way forward. The point that James Kelly seeks to make is that there needs to be an element of community power in the consideration of such matters. I do not think that the amendment would make a major difference to the scheme, but it would ensure inclusion of that element. There was a time when opening up access to licensed facilities was the direction of travel, but some of us have begun to roll back from that extreme position. Amendment 199 raises a valid issue and I propose to support it.

Fergus Ewing: We certainly support the objectives that Mr Kelly seeks to achieve, but we take the view, as we did at stage 2, that, with great respect, he has misunderstood the legal provisions that already apply, which make his amendment unnecessary. The provision that he seeks to make is available under the existing law.

In Scotland, unlike in England and Wales, there is a legislative presumption against 24-hour licensing. A licensing board here must refuse an application for 24-hour licensing unless it is satisfied that there are exceptional circumstances that justify such an application.

The Scottish ministers' guidance to licensing boards states that more detailed consideration should be given to any application for a licence that requests opening times in excess of 14 continuous hours. Licensing boards must consider such matters, as I think Bill Aitken suggested earlier and in committee. There are therefore a number of safeguards in place that restrict the ability of a licensing board to grant 24-hour licences. That is right and proper. The system in Scotland has worked because we are simply not seeing such licences emerge, unlike south of the border, where 24-hour licences are granted, notably for large supermarkets.

Licensing boards are already under a general obligation to have regard to advice that is given or recommendations that are made by local licensing forums. I say with respect to Mr Kelly that that knocks on the head his suggestion that the law does not cover the issue; it does. Rightly and properly, the views of local licensing forums must be taken into account and considered by licensing boards.

Amendment 199 seeks to allow licensing boards to revoke or vary a 24-hour licence following the recommendation of a local licensing forum but, as I said, licensing boards can already take those steps—the relevant powers exist under sections 36 and 37 of the 2005 act. Therefore, if a 24-hour licence is granted and it subsequently causes concerns that are relevant to any of the licensing objectives, a licensing board has the power to take the action that is envisaged in amendment 199.

We believe that safeguards for communities against 24-hour licensing are already contained in the 2005 act and that amendment 199 could undermine the effectiveness of those safeguards. I assume that Mr Kelly has no wish to do that. If that is the case, I trust that he will seek to withdraw amendment 199.

The Deputy Presiding Officer: Before Mr Kelly winds up, in order to complete the remaining proceedings, I invite a motion without notice to extend the final time limit for consideration of amendments by up to 10 minutes.

Motion moved,

That, under Rule 9.8.5A, the debate on Groups 30 to 32 be extended by up to 10 minutes.—[Bruce Crawford.]

Motion agreed to.

James Kelly: Amendment 199 pertains to the provisions of the 2005 act, which I propose to strengthen. The 2005 act provides powers in relation to 24-hour licences, and although I accept that licensing boards must give weight to the views of local licensing forums, amendment 199 would give local licensing forums more power, in that they would be allowed to make recommendations or give advice to licensing boards. That is stronger than the provisions in the existing licensing legislation.

I intend to press amendment 199, because it would give local licensing forums more power and, in doing so, would give communities more power to deal with issues, to give voice to concerns about antisocial behaviour and to express them to the licensing board through the local licensing forum.

The Deputy Presiding Officer: The question is, that amendment 199 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)

McInnes, Alison (North East Scotland) (LD)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

Against

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brownlee, Derek (South of Scotland) (Con)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMillan, Stuart (West of Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)

Mitchell, Margaret (Central Scotland) (Con)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 56, Against 63, Abstentions 0.

Amendment 199 disagreed to.

After section 141

The Deputy Presiding Officer: We move to group 31. Amendment 168, in the name of the cabinet secretary, is the only amendment in the group.

Fergus Ewing: The Interpretation Act 1978 defines a number of commonly used terms so that separate definitions do not have to be provided in each piece of legislation by the United Kingdom Parliament. As amended by the Scotland Act 1998, it provides definitions of “Act” and “enactment” that exclude acts of the Scottish Parliament and instruments made under such acts.

There are a large number of references to “Act” and “enactment” in statute. For example, section 307 of the Criminal Procedure (Scotland) Act 1995 defines “crime” as

“any crime or offence at common law or under any Act of Parliament whenever passed”.

That leads to anomalies. There is no good reason why the definition of “crime” in the 1995 act should not include crimes that are created by the Scottish Parliament, without the Scottish Parliament specifically having to say so every time that it legislates.

Amendment 168 provides a solution specifically for the Criminal Procedure (Scotland) Act 1995, the Criminal Law (Consolidation) (Scotland) Act 1995 and the licensing provisions in the Civic Government (Scotland) Act 1982, which are the main pre-devolution statutes that are dealt with in the bill. Each reference to “Act” or “enactment” has been checked to ensure that the extension to include acts of the Scottish Parliament is appropriate.

I move amendment 168.

Amendment 168 agreed to.

Section 143

The Deputy Presiding Officer: We move to group 32. Amendment 169, in the name of the cabinet secretary, is grouped with amendment 170.

Fergus Ewing: Amendment 169 is a minor technical amendment that tidies up the wording of section 143, following amendments that were made at stage 2.

Amendment 170 is a minor technical amendment that provides that section 145 of and schedule 5 to the bill will come into force through a commencement order made by the Scottish ministers.

I move amendment 169.

Amendment 169 agreed to.

Section 148

Amendment 170 moved—[Fergus Ewing]—and agreed to.

Schedule 1

Amendment 171 moved—[Stewart Maxwell].

The Deputy Presiding Officer: The question is, that amendment 171 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)

Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Against

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)

Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

Abstentions

MacDonald, Margo (Lothians) (Ind)

The Deputy Presiding Officer: The result of the division is: For 48, Against 61, Abstentions 1.

Amendment 171 disagreed to.

Amendment 172 moved—[Stewart Maxwell].

The Deputy Presiding Officer: The question is, that amendment 172 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Brown, Robert (Glasgow) (LD)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Finnie, Ross (West of Scotland) (LD)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hume, Jim (South of Scotland) (LD)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)

Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McInnes, Alison (North East Scotland) (LD)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 O'Donnell, Hugh (Central Scotland) (LD)
 Paterson, Gil (West of Scotland) (SNP)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Tolson, Jim (Dunfermline West) (LD)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Against

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)

McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

Abstentions

MacDonald, Margo (Lothians) (Ind)

The Deputy Presiding Officer: The result of the division is: For 60, Against 58, Abstentions 1.

Amendment 172 agreed to.

Schedule 1A—Community payback orders: consequential modifications

Amendments 173 to 186 moved—[Fergus Ewing]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.

Criminal Justice and Licensing (Scotland) Bill

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is a debate on motion S3M-6604, in the name of Kenny MacAskill, on the Criminal Justice and Licensing (Scotland) Bill.

16:12

The Cabinet Secretary for Justice (Kenny MacAskill): I am pleased to open the stage 3 debate. For the purposes of rule 9.11 of the standing orders, I advise the Parliament that Her Majesty, having been informed of the purport of the Criminal Justice and Licensing (Scotland) Bill, has consented to place her prerogative and interests, so far as they are affected by the bill, at the disposal of the Parliament for the purposes of the bill. It was necessary to obtain Crown consent for the bill on the basis that part 9 of the bill makes amendments to the Licensing (Scotland) Act 2005, for which Crown consent was needed.

Some fifteen months ago—in March 2009—we introduced the Criminal Justice and Licensing (Scotland) Bill into Parliament. It would be appropriate at this juncture to give thanks to all those who have been involved in what has been a substantial bit of legislation, particularly the bill team and the convener and members of the Justice Committee. I am aware of the great periods of time that had to be given to investigating matters that are very complex, as we discovered earlier today, and matters that are deeply sensitive, as we experienced this morning.

The bill as introduced contained provisions relating to around 80 different topics. After stage 2, that number has grown to around 100 topics. The bill is a comprehensive piece of legislation that takes forward the Government's priorities to reform our justice system by providing measures that strengthen, simplify and modernise it. Despite disagreements over some of the content of the bill, we had some excellent debates this morning, as would be expected. I place on record my thanks for all the work that was done by everybody involved. With a bill this size, it cannot have been easy.

One of the Government's key priorities is to tackle serious organised crime. For too long, these crooks have terrorised and brought misery to Scottish communities. That is unacceptable and we are fighting back, but we require to have the appropriate legislation. Serious organised crime is very wide ranging and constantly evolving, and any response needs to reflect that. The four new measures on serious organised crime—the statutory aggravation and the offences of

involvement, direction and failure to report—should be seen as a package of measures that will strengthen the hand of law enforcement agencies and the Crown Office to have better, more effective tools and more flexibility to tackle organised criminals at all levels and make it easier to prosecute individuals who organise others to commit crimes.

We have introduced a power of retention of fingerprints, palm prints and other physical data for a limited time from those who have been prosecuted for but not convicted of a serious violent or sexual offence. That correctly brings the laws for the retention of fingerprints, palm prints and other physical data into line with the current laws on DNA retention. We believe that the forensic data provisions in the bill are proportionate and fair; they strike a balance between the needs of the justice system, the protection of the public and the rights of the individual.

We are committed to supporting children's rights as a key strand that underpins our activity to improve outcomes for all Scotland's children and young people. Raising the minimum age of prosecution from 8 to 12 is an important move, which addresses key concerns about the very young age at which children in Scotland can currently end up in the criminal justice system. It also brings us into line with most of Europe and strengthens our commitment to the United Nations Convention on the Rights of the Child.

We have provided a statutory regime for disclosure of evidence in criminal proceedings. It is a long-established rule in the Scottish legal system that the prosecutor has an obligation to give the accused notice of the case against him and to tell him what charges he faces and what evidence the Crown intends to bring to prove the charges. Any exculpatory material should be identified and given or disclosed to the accused or the defence. A fair trial demands that, and rightly so. We are glad that the Parliament has generally welcomed our proposals on that. The provision is deeply complex and it will have to be scrutinised, but we believe that it provides the right balance.

We appreciate the different opinions in the chamber on community payback orders. I hope that everyone recognises the desire of all members to break the culture of recidivism, to end reoffending and to ensure that paybacks are made. We all want to work together to achieve the goal of ensuring that we punish offenders but address the areas of offenders' lives that need to change and which fuel much of their offending.

On short custodial sentences, we have advanced a proposal that has evidence, experience, and expert support on its side. We recognise that the proposal has divided the

chamber, but it has been passed and we need to work at it. As I said earlier, we will work with the judiciary on the matter. I can only remind those who are aggrieved at the decision that it is a matter of a presumption. The Government position is clear: when a sheriff believes that that presumption is overturned, they will have our full support. We are about empowering our judiciary.

We believe that the evidence on the subject is clear. As I said earlier, the reconviction rate after two years for offenders who receive community service orders is 42 per cent whereas, for offenders who receive short custodial sentences—whether of six months or less, or of less than three months—the reconviction rate after two years is around 74 per cent. The experts are clear. When David Strang, the chief constable of Lothian and Borders Police, spoke for the Association of Chief Police Officers in Scotland at the Justice Committee last year, he said:

“the likelihood of reoffending is less with a community sentence than with a repeat short prison sentence. ACPOS welcomes that proposal in the bill.”—[*Official Report, Justice Committee*, 26 May 2009; c 1930.]

Margo MacDonald (Lothians) (Ind): I am interested in the detail of this. Which groups of offenders were identified in the research as recidivists?

Kenny MacAskill: I do not have the information in front of me that would allow me to drill down to which groups were identified. As I said, the research shows that those who are given a tough community sentence are less likely to reoffend—I refer to the three fifths who do not reoffend as opposed to the three quarters who do. Clearly, if we were to drill down, we would find individuals with deeply troubled lives. Part of the community payback order is meant to ensure sometimes that people do tough work. Equally, though, for many young women offenders, for example, we have sometimes to address underlying problems, which may not be simply physical but may be to do with child care—

The Deputy Presiding Officer: The minister should wind up now.

Kenny MacAskill: Twenty per cent of the order can be aimed at addressing underlying problems such as alcohol, drugs, low-level mental health or educational failure.

This is a positive bill that drives forward. We appreciate that there are areas on which the chamber is divided, but the areas on which members are united are much greater. I hope that we can get the support of others to make our communities safer and stronger.

I move,

That the Parliament agrees that the Criminal Justice and Licensing (Scotland) Bill be passed.

16:19

Richard Baker (North East Scotland) (Lab): Like the cabinet secretary, in the closing debate of the protracted consideration of the bill I pay tribute to those whose efforts have enabled the issues that the bill covers to be properly discussed and scrutinised over a period of well over a year. Labour members do not currently benefit from the advice of the civil service and rely on the extraordinary efforts of a small team. I thank Gordon Aikman in my office and Gavin Yates and Julia Braun in the Labour support unit, as well as the Scottish Parliament information centre, for its assistance. I congratulate the Justice Committee on its scrutiny of the bill, which would not have been possible without the diligence and patience of the clerks, who have been patient with a number of us. I am sure that members from all parties recognise the superb efforts of Andrew Mylne and his team. I congratulate the committee convener and members, especially the Labour members, Bill Butler, James Kelly and Cathie Craigie.

The bill arrived in the chamber in a good condition, as legislation that we could support, with a sensible approach on sentencing and meaningful action on violent crime. However, the bill as it now stands is very different, with measures that we cannot support. Unlike Iain Gray with the Scottish National Party manifesto, I will not rip the bill in two, for obvious reasons, but I emphasise how much it has been eviscerated during today's proceedings.

I must tell the cabinet secretary that what divides us on the bill is far more significant than what unites us. A bill that arrived in the chamber without the Scottish Government's flawed and reckless proposal for a legislative presumption against custodial sentences of six months and under now includes such a proposal for three-month sentences. It will apply not just to minor offending but to 28 per cent of those who are convicted of indecent assault, 68 per cent of those who are convicted of crimes of domestic abuse and almost a quarter of those who are convicted of knife crimes. The Liberal Democrats' amendments demonstrated that the measure is unworkable and unfunded, but they supported it anyway. The additional 7,000 community sentences that will follow the proposal will put an intolerable strain on an already stretched system. We support more and better community sentences; that is why we supported the plans for a pilot community court in Glasgow, which the Scottish Government opposed. That exposes the lack of consistency and credibility in its position.

At the beginning of my speech, I congratulated many of those whose hard work has been crucial to the scrutiny of the bill. I also pay tribute to those outside the chamber who have contributed to the bill's consideration. In particular, I thank John Muir, Kelly McGee and all of the families of the victims of knife crime, who have taken their campaign so passionately and—for some of us, at least—so persuasively to the Parliament. It is almost beyond belief that the Scottish Government and others have actively removed from the bill a robust and necessary measure to tackle knife crime, in the form of our proposal for mandatory minimum sentences for knife possession. That proposal has not succeeded today, but I assure the families of the victims of knife crime and the 30,000 Scots who signed their petition that this is not the end of the campaign. We will continue to work with them until we change the law in this country to take the action against knife crime that we need.

In other areas, such as tackling prostitution, the bill is also inadequate or silent. There are proposals that we can support, such as the establishment of a sentencing council, and some measures that are beneficial. We particularly welcome the new provisions on stalking. I congratulate Rhoda Grant on her important work in the area, which was inspired by those who have been victims of such crimes. If the bill falls today, I know that she will employ her member's bill as an alternative legislative vehicle to make the changes. In that event, we make clear that we will support fast-track legislation to put in place the other measures in the bill on which there is clearly consensus.

However, such measures are outweighed by the bill's failure to act on knife crime and the reckless proposals on sentencing. For more than a year, we have made clear that there are two lines in the sand for us that will determine our support or opposition to the bill. The need to reject the legislative presumption on sentencing and the need to take robust action on knife crime have always outweighed for us any other benefits of the bill. Those lines have been crossed today, so we will act as we have consistently advised the chamber that we would. Regrettably, we cannot support this flawed bill. Accordingly, we will vote that the Parliament should not pass it.

16:24

Bill Aitken (Glasgow) (Con): It is unfortunate, to say the least, that, although there is much of value in the bill, its effect has been lost by the approach on sentencing policy. The steps that have been taken to combat serious and organised crime are praiseworthy. Issues to do with disclosure cause problems, but the Scottish Government and the Crown Office and Procurator

Fiscal Service have worked constructively with the Justice Committee to ease problems. The approach to the age of criminal responsibility has been sensitive, sympathetic and realistic.

However, that is not the real issue. The approach to sentencing in the bill will cause immeasurable damage in the years ahead. It is little short of tragic that there will be no deterrent and nothing to force people to co-operate with community sentences, which can offer a constructive approach. We all want the community payback system to work. There are serious issues to do with the financing of the system, which James Kelly and other members have raised consistently and persistently, but we are all committed to ensuring that community payback works.

However, when the community payback system does not work, there must be a custodial remedy. For many of the tiny minority of people who cause us problems, getting up early in the morning to do community service is not on the radar. Those people are not prepared to pay fines, and the fines enforcement system in the country borders on the farcical. Unless we are able to persuade people that there will be an unpleasant alternative, they simply will not co-operate. That is the tragedy of the situation. I acknowledge that the Government has worked hard, but there is a real and unfortunate parting of the ways over the issue.

If the sentencing proposals had not been in the bill, we would have supported the vast majority of the measures in it with enthusiasm and alacrity. However, those provisions are in the bill and, to some extent, the Government has turned its back on the campaigners on knife crime whom we saw in the Parliament today. That is very unfortunate indeed, and we will therefore not support the bill at decision time.

16:27

Robert Brown (Glasgow) (LD): Like other members, I thank the clerks, in particular, Government officials and members of the Justice Committee for their work on the bill. I am always impressed by the elegance of the solutions that the clerks come up with on the difficult issues that we present to them.

The bill is complex, as the cabinet secretary said, but it has emerged from the process considerably improved. I absolutely part company with Richard Baker and Bill Aitken in that regard. The end result is a bill that contains significant measures. We have got the provisions on the Scottish sentencing council right, after making changes to make it an advisory council. We have sharpened up support for community sentences, and I pay tribute to the cabinet secretary's work in

that regard. As I said during consideration of amendments at stage 3, Richard Baker should reconsider the cabinet secretary's comments to me on how the matter will be taken forward. There are substantial measures in that regard.

Some provisions are less liberal and less radical than I would have liked them to be, such as the provisions that raise the age of criminal responsibility and the provisions on the DNA of children.

The major issues that dominated the debates at stage 3 were knife crime and short-term sentences. The end result is a liberal bill that Liberal Democrats are happy to support. We have made the presumption against short-term sentences practical and workable. We have reduced by half the scale of the issue—in relation to the numbers that will be affected—which is a valid approach and will provide a bit of breathing space.

I accept that, as members said, the credibility of the Government and the measures will be at stake to some extent as we go forward, but some members have taken too dismal an attitude to what is possible. It seems to me that, in providing for advances in human opportunity and advances in the protection of the public through a more effective criminal justice system, the bill has much to recommend it.

From the outset, I took the approach that I would judge the proposals on what the evidence tells us about what works and makes a difference. I regret that, on the major issues, that has not been the position of some parties in the Parliament. However, let me try to put the matter in perspective and quote from a speech by Mr Ben Skosana MP, who was the Minister of Correctional Services in South Africa. Talking about the problems that came from overcrowding in prisons and the financial challenges that South Africa faced—I suspect that the difficulties there were rather greater than they are here—he said:

“it is an indisputable fact that the vast majority of the inmates in our prison system are from the previously disadvantaged groups who are unskilled and of little value in the labour market. It is our responsibility as Correctional Services to see to it that they too are the beneficiaries of the new democratic dispensation by providing them with the necessary basic skills to better their chances of becoming economically active ... and thus helping to break the cycle of crime.”

He went on to make a number of other similar comments.

In that speech, Ben Skosana also quoted from Winston Churchill in his days as a minister in the great Liberal Government of 1906, when he was Home Secretary. Churchill's comments were echoed to a degree by the current Prime Minister at Prime Minister's questions today, when he

supported the equivalent of the presumption against short-term sentences at the UK level. Churchill said:

“The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country. A ... desire and eagerness to rehabilitate in the world of industry those who have paid their due in the hard coinage of punishment”

and

“unfailing faith that there is a treasure, if you can only find it, in the heart of every man. These are the symbols, which ... measure the stored-up strength of a nation.”

That is how we should approach the bill and the opportunities in its liberal measures.

16:31

Stewart Maxwell (West of Scotland) (SNP): I thank the clerks, the witnesses, the Scottish Parliament information centre and the other committee members for a long experience in dealing with the bill—it took around a year, from memory.

The bill has been a difficult one to get through. We have had to discuss and come to a conclusion and consensus on various difficult and complex parts of the law. We arrived at consensus on many areas, which had much to do with the willingness of many members of the committee to work hard on the bill. Other members of the committee appreciate that. The committee does not always agree, but we did a pretty good job on the bill as far as we could.

I will address some of the comments that have been made on the bill. To be frank, I am a bit disappointed that the Labour Party and the Conservatives will vote against it, not because they perceive difficulties with some parts of the bill, such as the presumption against short sentences—we have said it many times, but it is a presumption—and the lack of mandatory sentences for the carrying of knives. I must point out to both those parties that, if they successfully vote down the bill, they vote down not only the presumption against short sentences or the approach to knife crime but extremely important and much needed measures on serious and organised crime, genocide, crimes against humanity and war crimes; articles banned in prison; sexual offences, particularly indecent images of children and extreme pornography; people trafficking, slavery, servitude and forced or compulsory labour; fraud, embezzlement and conspiracy; sexual offences prevention orders—

Richard Baker: Will the member give way?

Stewart Maxwell: I have not finished yet.

They will vote down measures on foreign travel orders, sex offender notification requirements and

risk of sexual harm orders. Those provisions and the amendment moved by George Foulkes on the issues that disabled people face with getting out and about and being with friends of an evening, which we all supported, will fall. On their heads be it if that is the case.

Richard Baker: Does Mr Maxwell acknowledge that I have already made it clear that, on those areas where there is consensus—there clearly are such areas—we support fast-track legislation? That would quite easily be done and there would be no need to go through all the normal process. Indeed, emergency legislation may well be required in the Parliament in October anyway.

Stewart Maxwell: I am sorry, but no matter how fast the track might be for fast-track legislation, it would be slower than the bill that is before us tonight because, if Richard Baker and his colleagues vote down the bill, it will at the very least delay the measures on the issues that I raised. They are serious issues indeed for the people concerned and I am extremely disappointed in the Labour Party and the Conservatives on that.

I will make a couple of points about mandatory sentences for the crime of carrying a knife. We have a limited amount of money to deal with these issues and the choice that we face is clear: do we want to have more police to lower crime rates, or do we want more prisons to hold more and more people, creating long-term criminals? My choice is for more police on our streets lowering crime rates, rather than the choice that the Labour Party wishes to make.

The presumption against short-term sentences and the introduction of community payback orders, which are obviously linked, are a radical but very progressive move and I am disappointed by the reaction of other parties. The Conservative party is, this very day, facing in at least two different directions on the issue.

The Deputy Presiding Officer: The member will need to wind up.

Stewart Maxwell: In winding up, I have one final point, Presiding Officer.

The Deputy Presiding Officer: No. I am sorry, but there is no time for one final point.

16:35

Charlie Gordon (Glasgow Cathcart) (Lab): Carry a knife, go to jail is a sentencing policy that I have advocated since my time as leader of Glasgow City Council when there were, as there continue to be, high rates of knife crime in Glasgow.

As a rookie MSP back in May 2006, I floated an amendment during the passage of the Police, Public Order and Criminal Justice (Scotland) Bill proposing mandatory jail sentences for knife possession. Back then, Parliament's overwhelming view was that the way forward was to double the maximum sentence for knife possession and oppose bail for repeat knife offenders. Four years on, knife possession, knife assault and knife murder rates remain unacceptably high. In addition, many knife assaults go unreported and knife murder rates would be far higher were it not for the skill of our surgeons.

Not enough has changed since, four years ago, my constituent Craig McCulloch strolled home from a celebration. He encountered some younger acquaintances and they bantered together homeward. Two teenagers appeared and threatened Craig and his companions. Craig's reaction was typical of one who, when a schoolboy, counted two victims of bullying as his friends after Craig had sorted out the bullies: he sent his young companions home. By now, the two aggressors had armed themselves with knives. Alone, Craig offered them a square go—an old-fashioned Glasgow term for a fair fight with the fists. However, we live in different days: one of his assailants used a knife. He took the life of that fine young man, Craig McCulloch, on Craig's 18th birthday.

I want young people to aspire to live their lives like Craig McCulloch lived his, but I want to help them to avoid replicating the tragedy of Craig's death. I do not refer only to the young men of Glasgow; for be in no doubt tonight that, not only in our cities but in our seaside towns, in our rural villages and in our leafy suburbs, hundreds of teenagers will carry knives. To be sure, some will be the scared wee boys who were referred to in the debate on the amendments, but some may seek to practise the obscenity known as recreational violence. This is a major problem for our country, which has not gone away.

Carry a knife, go to jail is a campaign that will not go away until the Parliament does yet more to save the lives of our young people.

The Deputy Presiding Officer: We need to move to the wind-up speeches. I offer my apologies to members whom I could not call.

16:38

Nicol Stephen (Aberdeen South) (LD): I add my thanks to the clerks, the officials, the bill team, the minister, all the individuals and organisations that have contributed to the bill, the members of the Justice Committee and, especially, the front-bench spokespeople who have all worked so hard

on the bill. I give particular thanks to Robert Brown for all his efforts on behalf of the Liberal Democrats. Politics and the media often deal in slogans: we hear about the revolving door of crime and also the cycle of reoffending and prisons and young offenders institutions are called colleges of crime. This is our chance to do something about the big issues.

Remember the minister's words. He said that, of those who go to prison for a short sentence, three quarters reoffend, whereas of those who are given a community sentence, three fifths do not reoffend. Having tried to sort out the maths in my mind, I reckon that that means that 15 out of 20 people who go to prison will reoffend, whereas eight out of 20 who are given a community service order will do so. The proportion is not quite double, but it means that about 75 per cent more offenders will carry out a further offence if they are given a short-term prison sentence rather than community service. That is the scale of the problem and that is how serious the issue is. Serious issues deserve serious consideration and a serious response, not populism.

It might sound tough to call for longer prison sentences and automatic prison sentences as an alternative to the Scottish Government's policy proposals, but let us be clear that, if the Labour or Conservative option was followed, it would be more expensive and would lead to more crime in our communities, more victims and more lives destroyed. That is why the bill is so important.

The Liberal Democrats have been at the heart of the debate surrounding the bill. We have had many successes to date, including the deletion of sections 1 and 2, which were on the purposes and principles of sentencing, and the conversion of the Scottish sentencing council into an advisory body. The Liberal Democrats believe that we need to change the mindset of our criminal justice system so that the goal of reducing reoffending is a key objective in the effort to cut crime in Scotland.

Although imprisonment might be appropriate for serious or violent offenders, sending people to prison for short periods is a hugely expensive way of making bad people worse and communities less safe. Introducing a presumption against custodial sentences of three months or less will be a big success not just for the initiative that Robert Brown has taken on behalf of the Liberal Democrats but, I believe, for Scotland. It is a hugely significant reform. The presumption against sentences of three months or less—rather than six—will ensure that the resulting increase in the number of community payback orders is manageable.

Throughout the passage of the bill, we have pursued a robust approach that has emphasised that the quality of community payback orders is vital. We have pressed the Government to put

additional money into existing community sentences to make them speedier, more robust and more effective. In their populist efforts to appear tough on crime, Labour and the Conservatives have completely ignored the fact that replacing short sentences with tough, effective community penalties is the right way to reduce reoffending and to cut crime in Scotland's communities.

Labour has been populist on all the big issues today. If all its proposals were so fundamental and crucial and urgent, why did Labour not take the action that it has urged during its 13 years in power in England and Wales?

Richard Baker: Will the member take an intervention?

Nicol Stephen: I have no time for an intervention, but I think that that is a very strong point on which to finish.

16:43

John Lamont (Roxburgh and Berwickshire (Con): The bill has been on a long journey, and not just as it has passed through its final stages today. As others have said, many have been involved in getting the bill to this stage. I will not waste time repeating the thanks that others have given, but I will particularly thank Erin Boyle in the Conservative research team for her help to me during the stages of the bill.

The bill is complex and covers many areas of our criminal justice system. It is true that many aspects of the bill are not contentious and act simply to tidy up the existing criminal justice system, so much of the bill can be welcomed. However, as members have heard today, we take serious issue with the proposal to create a presumption against short-term sentences. The language might have changed, but the SNP Government's enthusiasm to empty Scotland's jails without putting in place a robust community sentencing regime is no less diminished.

The failing in the current system—this is a key point—is that our prisons do not offer short-term rehabilitation options to those prisoners who are on short sentences. Indeed, some would suggest that effective rehabilitation is not in place for any of our prisoners. It is bizarre to suggest that people can be rehabilitated in their communities based on a few hours of contact each week but that absolutely nothing can be achieved during a short-term sentence in prison. Simply because our prisons are not successfully rehabilitating people during short-term sentences does not mean that we should abolish such sentences completely. Much more must be done to identify the underlying causes of criminality, what can be done to support offenders during their time in prison and, perhaps

more important, what agencies should be involved in their rehabilitation once they are released.

On the other side of the coin, we should consider the impact on communities of short-term sentences when a disruptive individual has been removed and put in prison, albeit for a short time. It might not be for very long, but those residents whose neighbourhoods have been blighted by the activities of that individual—many of us have constituents in that situation—often get the respite that they have been longing for. Similarly, during the detention, albeit for a short period, opportunities might open up for local antisocial behaviour units and housing associations to put in place more permanent solutions to deal with the individual concerned.

The bill has been through a long process, so it is unfortunate that we find ourselves unable to support it at stage 3. We have supported the need for short-term sentences for many years, and the Government could have had our support today had it not insisted on reinstating the controversial proposals on sentencing. It is with much regret, but in the interests of Scotland's criminal justice system and the law-abiding majority of Scots, that we will vote against the bill at decision time.

16:46

James Kelly (Glasgow Rutherglen) (Lab): As others have done, I pay tribute to the clerks and members of the bill team who assisted with the amendments. The bill is complex and technical and, as Robert Brown said, we must pay tribute to those who make sense of our policy intentions and turn them into amendments.

It has been a long day of debates and we have covered a lot of issues, but the decision comes down to short-term sentences and knife crime. We do not support the policy of a presumption against short-term sentences. Sixty-eight per cent of those who are found guilty of domestic abuse are serving sentences of three months or less; others are serving such sentences for crimes such as indecent assault and robbery. To me, it stands to reason that the correct place for such individuals is to serve time in prison. Some members have argued with that by saying that reoffending rates have gone up. I will not run away from that issue; I have spoken about it consistently throughout the process. However, I do not accept that, because there is an issue with reoffending rates, we should just release difficult prisoners into the community. That is illogical.

The challenge is for all political parties to come up with a policy programme that makes prison work and ensures that we work with prisoners, particularly in the final days of their sentences, to try to transfer them into the community with some

stability. The Wise Group in Glasgow has had some success in that, and 19 per cent of those in the group that it has been working with have been able to go on to stable employment, compared with 6 per cent of those who have been on the normal Scottish Prison Service scheme. We should be looking towards such schemes.

As I have said throughout, the presumption against short-term sentences is the wrong policy. I also do not believe that the correct amount of finance has been put behind it, and real problems could lie ahead if there is no additional money to support the policy intention.

Today's other major issue was knife crime. The cabinet secretary spoke at length about crime statistics, indicating that homicide rates had fallen, and I understand all that. However, it is quite clear that, over a period of time, knife crime continues to rise in Scotland. Last year, 58 per cent of homicides involved knife crime, and over a 20-year period from 1982 to 2002, during which homicides rose by 83 per cent, homicides by knife rose by 164 per cent.

We heard earlier about the costs to the national health service associated with knife crime. *The Sunday Times* indicated that there are costs of £500 million as a result of 1,170 admissions, but that figure has risen—as Iain Gray revealed yesterday, last year there were 1,857 admissions to national health service hospitals as a result of knife incidents. Clearly, that puts a great deal of pressure on NHS finances. The violence reduction unit has acknowledged that and the cost of violence in general. There is also an issue as people are more vulnerable in certain parts of Scotland. For example, someone is 32 times more likely to be the victim of a knife attack if they stay in a socially deprived area. Considering all those factors, I submit that action on knife crime would save costs in certain areas.

Stewart Maxwell characterised the argument as whether we want more people in prison or more police officers on the street. As I look at it, if we pursued the minimum mandatory sentences for knife crime, we would perhaps not have to hear sad tales such as the one that Charlie Gordon gave of his constituent, Craig McCulloch, and we would save more lives. That point weighs much more heavily than the issue of cost.

The Liberal Democrats have faced both ways on a number of the issues. In December 2008, Robert Brown was quoted in *The Sun*—he was pictured in it as well—saying:

“Carrying knives is always stupid and should normally lead to a prison sentence for those caught with weapons.”

There has clearly been yet another change of policy from the Liberal Democrats.

Knife campaigners arrived here this morning looking for the Parliament to make a difference, but they were given a slap in the face by the Scottish National Party and the Liberal Democrats. Actions speak louder than words. The SNP and the Lib Dems ignored the powerful messages from John Muir and Kelly McGee, the voices of the 30,000 who signed the petition, and the voices of knife campaigners throughout Scotland. That is shameful, and Labour will stand with the campaigners at half past 5 and vote down the bill.

16:52

Kenny MacAskill: We should remind ourselves that we are dealing with the final stages of a huge bill. Everyone who has spoken has correctly paid tribute to those involved. What I am most aggrieved, surprised and perplexed by is the position that has been taken by Labour and the Tories.

Richard Baker said that more divides than unites us. I have been looking at the bill again. It is one of the biggest bills that we have ever brought to the Parliament. There are nine parts to it, and many sections in it have not been contentious at all. However, because Labour and the Tories disagree with the votes of Parliament so far on a presumption against short sentences and on knife crime, whole swathes of the bill are to be ignored. For petty party politics, Labour and the Tories are jeopardising many provisions.

Let us consider what Labour and the Tories want to vote down: provisions on serious organised crime to tackle the Mr Bigs in the city of Glasgow—not just the wee neds, but the people who hang around and sometimes apparently, if rumours are to be believed, corrupt even those in the body politic. They want to vote down those provisions.

There are provisions on articles banned in prison. We know that hits are sometimes organised from prison, but we will seek to deal with mobile phones in there. There are provisions on indecent images of children, but Labour and the Tories do not want to take action against them. There are provisions on extreme pornography, but they do not want to take action against that. The bill includes foreign travel orders to prevent the perverts and paedophiles in our communities from going away, whether to Thailand or anywhere else, to carry out abuse. Labour and the Tories want to vote down those measures simply because they did not get their way earlier in stage 3.

Patrick Harvie (Glasgow) (Green): I am sorry to ask to lower the temperature just a little, but I wonder whether the cabinet secretary will say a little more about one of the measures that has had

less debate and attention but which involves some contention—the measure that he mentioned on extreme pornography. He will be aware that the measure that exists in England and Wales is having no effect in reducing the production of genuinely violent or abusive images, but is being used just as a top-up charge in a small number of cases in which the most serious offence is rape or sexual assault, which attract a higher sentence. If we end up in a similar situation—with the charge being used in a similar way in Scotland, as a mere top-up—will we not have to look again at whether it serves any purpose?

Kenny MacAskill: I am more than happy to discuss that with the member afterwards. We must have appropriate laws, and such things have been dealt with by the Scottish Crime and Drug Enforcement Agency. Sadly, there are individuals in our communities who would perpetrate such offences.

Huge swathes of the bill are not contentious and will change criminal procedure in Scotland—which needs to be changed—for the better. We have not even debated many of the bill's provisions, which have, correctly, gone through unchallenged. Yet, Labour and the Tories say that they will vote down legislation that would make our communities safer, protect our children from sexual perverts and protect our communities from serious organised crime, simply because they did not get their way.

As we keep being told, we are a minority Government; therefore, this is not something that we have foisted on the Parliament. Let us be clear: there are aspects of the bill that the Government has had to bend to the will of Parliament. For example, the position that we have reached on the sentencing council is not the position that we started out from. Nevertheless, we recognised the merits of what was put forward and the pragmatism of what can be achieved and we agreed with that. We began with a presumption against sentences of six months or less, but we accepted that, to get the bill passed and make the progress that we needed, we had to change that to a presumption against sentences of three months or less. We are grateful to Robert Brown and Patrick Harvie for the positions that they have taken on that. It is not a matter of our forcing or foisting anything on the Parliament.

Let us be clear: the decisions on knife crime and on sentencing that we made earlier were not made by an autocracy or enforced by me; they reflected the will of Parliament and a majority vote of the SNP, the Liberal Democrats, the Greens and Margo MacDonald. Those decisions have not been foisted on the Parliament by some corrupt autocracy; therefore, it is a strange position that the Labour-Tory coalition has got itself into. When those parties do not get the wee things that they

want, they are prepared to bring down the whole bill because they are opposed to it. There is something perplexing in the society that we live in when Ken Clarke is much more liberal in his policies not simply than Jack Straw, but than the Labour Party north of the border.

The bill contains some contentious elements and things that people disagree with, and there are matters that the Government has had to accept—that is democracy. Equally, in a democracy it is incumbent on each of us to protect our children and our communities. If Labour and the Tories vote against the bill, they are voting against clear policies and legislative progress that would make Scotland much safer and stronger. We can continue to disagree on matters such as sentencing and knife crime—that is why, as a Government and as a body politic, we will have elections next year. However, they should not jeopardise the interests and safety of our communities simply because of that.

Richard Baker: Is the cabinet secretary saying that, if the bill falls tonight, he will not introduce legislation that we could support and which could be passed in a matter of days, which would cover all the issues that he is talking about?

Kenny MacAskill: It is utterly preposterous for Mr Baker to suggest that, if the bill falls, we can pass emergency legislation on all those matters before the Government ceases to be in government, next year.

Richard Baker: You did it for the budget.

The Presiding Officer (Alex Fergusson): Order. One debate at a time, please.

Kenny MacAskill: Is Richard Baker really suggesting that we could pass emergency legislation on serious organised crime, indecent images and child pornography? Frankly, that is utterly ridiculous. Sometimes, members must accept the decision of Parliament. The Government has had to accept it both in government and, in the past, when we were in opposition. Labour had eight years in government and never addressed any of those matters.

Nicol Stephen: Thirteen years.

Kenny MacAskill: Labour had 13 years in government, as Nicol Stephen correctly points out, yet it took no action on those matters. The fact is that Labour is failing to address what is necessary.

It is a good bill that will make Scotland safer and stronger. There are areas on which we divide and disagree, but we must recognise that it has been voted on by Parliament and promoted not simply by the SNP, the Liberal Democrats and the Greens, but by police officers, the violence reduction unit and those who are in the front line of Scottish policing. I commend the bill to Parliament.

The Gathering

The Presiding Officer (Alex Fergusson): The next item of business is a statement by Michael Russell, on the gathering. The cabinet secretary will take questions at the end of his statement, so there should be no interventions or interruptions during it.

17:00

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): As the minister who was, at the time, responsible for the issue, I would like to make a statement on matters relating to the Auditor General's recent report on the gathering.

First of all, I say quite clearly that the Scottish Government engaged constructively with Audit Scotland's full independent review and will carefully consider its recommendations.

The Gathering 2009 Ltd is a private company that was neither established nor contracted by the Scottish Government. As the Auditor General has set out in his report, the idea for the gathering event was originated by the company's directors, Jamie Sempill and Jenny Gilmour. They established the company in February 2007 to design, deliver and organise the event, and during 2007 the company sought and secured grant funding from Scottish Enterprise Edinburgh and Lothian, EventScotland and the City of Edinburgh Council. Those funders followed their normal procedures in assessing and awarding those grants.

In November 2007, the Scottish Government concluded a review of progress on the delivery of Scotland's year of homecoming—a plan that had, of course, been originated by our predecessors. As a result of that review, we refocused effort to ensure that all activity was directed at the key aim of achieving tourism additionality.

After discussions with the directors of The Gathering 2009 Ltd, the new homecoming team at EventScotland decided to include the gathering as one of the signature events of homecoming—one event among the 400 or so in a wonderful national programme. Around that same time, EventScotland, Scottish Enterprise and the City of Edinburgh Council formed a steering group, which met for the first time in February 2008 and was tasked with liaising with the company's directors, not providing oversight.

In June 2008, the company approached the then Europe, external affairs and culture portfolio within the Scottish Government with a specific funding proposal. The Scottish Government considered the proposal in some detail and

decided to award grant funding of £80,000 towards the Highland games element and £20,000 towards the educational outreach programme.

In April 2009, the directors of the company met me in my role as Minister for Culture, External Affairs and the Constitution. At that meeting, they reported some specific cash-flow difficulties resulting from WorldPay—the company that was processing ticket sale transactions from overseas—withholding income from advance ticket sales until after the event had taken place. That was normal practice, but the income that was held by WorldPay at that point totalled some £160,000 and was projected to rise to £250,000.

As the Auditor General commented to the Public Audit Committee on 23 June 2010, at that point,

“time was not on anyone’s side”.—[*Official Report, Public Audit Committee*, 23 June 2010; c 1820.]

Accordingly, I asked officials to investigate possible solutions.

Officials met the directors of The Gathering 2009 Ltd for detailed discussions about the WorldPay situation and the company’s cash-flow position. Scottish Government officials sought advice from Scottish Government finance specialists and concluded that the best solution was a short-term loan that would be provided under the statutory authority of section 23 of the National Heritage (Scotland) Act 1985. I agreed with that advice and approved the awarding of the short-term loan. The company was informed of that decision on 1 June 2009. The terms of the loan were that it was to be repaid within 14 days of payment being received from WorldPay, and no later than 31 August 2009.

The gathering took place over the weekend of 25 and 26 July 2009 and was, in audience and media terms, a success. A number of members of this chamber attended and praised it. A subsequent independent analysis that was carried out by Glasgow-based EKOS—a leading economic and social development consultancy—concluded that the gathering had generated 47,000 visits, with a large overseas component, resulting in £8.8 million for the Edinburgh economy and a total of £10.4 million for the wider Scottish economy, and that it had supported the equivalent of 288 annual full-time jobs.

However, in early September 2009, after failing to repay the short-term loan by the due date of 31 August, the company directors told me that they had made substantial losses on the event and that they were unable to repay the loan. I immediately commissioned officials to investigate in detail the company’s financial situation and to examine options for solutions to protect the concept of the gathering and its future economic potential. We were, of course, also mindful of the interests of the

creditors, including small firms, public bodies and the Government. The process included asking VisitScotland to commission an independent valuation of the intellectual property rights that the company owned. The results of that valuation and of the Scottish Government’s investigation into the company’s financial situation were available to the Scottish Government in early October.

The Scottish Government then helped to bring together various parties who might play a key role in securing the future of the event. In that context, the principal accountable officer took a decision to write off the amounts that were owed to the Scottish Government on the basis of a judgment that the debts were not recoverable. Other public sector partners did the same. The Scottish Government fully supported those decisions and the decision, which was announced in a City of Edinburgh Council press release on 15 October 2009, that the council and Destination Edinburgh Marketing Alliance would take over the event.

As the Auditor General noted, City of Edinburgh Council officials and Scottish Government officials worked together closely in the days before the City of Edinburgh Council issued its press release. However, the decisions that the council and DEMA made were entirely matters for them. It was deeply disappointing that the City of Edinburgh Council was subsequently unable to follow through on its commitment, which would have assisted the private sector creditors.

Let me now address some of the specific questions that have been posed by some in the Parliament since the Auditor General published his independent report. In relation to the short-term loan, let me make it clear that there was absolutely no evidence that the company was insolvent when the loan was awarded. Directors had committed to repay the loan and there was nothing—*[Interruption.]*

The Presiding Officer: There will be no interruptions or interventions during the statement, please.

Michael Russell: As I said, directors had committed to repay the loan and there was nothing to suggest at that time that the company would be unable to do so. The Scottish Government made senior EventScotland officials aware of the loan—that was appropriate, and it was done. As I said earlier, there was a clear statutory authority for the provision of financial assistance. No special arrangements, directions or dispensations were put in place.

I remind the Parliament that the Auditor General stated that the Government’s decision to find a way to assist the short-term cash flow of the company such that the event could go ahead was “not unreasonable”. Let me spell out how

reasonable it actually was. A failure to provide the support could and probably would have jeopardised the event and the £10.4 million that it brought to the Scottish economy. It would have cost jobs not just in The Gathering 2009 Ltd but across the tourism sector. The entire Parliament should bear that point in mind.

It was deeply disappointing that the private company that was delivering the event encountered serious financial difficulties after the event and that attempts to secure the future of the gathering failed.

We welcome the Auditor General's report on what was a complex set of issues and we will consider the findings and recommendations carefully. We accept that lessons need to be learned. However, the Scottish Government strongly defends its decision to intervene both before and after the event took place. We will not apologise for supporting an event that generated revenue of £10.4 million for Scotland and £8.8 million for Edinburgh. The loss of that income would have been a serious blow to Scotland's tourism industry and to Scotland's reputation around the world. It would have cost jobs, perhaps many jobs, and damaged much of the success that we achieved later in the year.

I remind the chamber once more of what the Auditor General told the Public Audit Committee on 23 June. He said:

"it is also important to place on record that clearly time was not on anyone's side by the summer of last year, because the event was committed to and was about to proceed. The Scottish Government ... would have taken the not unreasonable view that in order to allow the event to proceed it should assist the short term cash-flow problems of the company that was delivering the event."—[*Official Report, Public Audit Committee*, 23 June 2010; c 1820.]

I conclude with a further quotation from the Auditor General's evidence. He said:

"Given the advanced stage that the project had reached, with many tickets having been sold and many commitments having been made by providers of goods and services, it is understandable that the Scottish Government should have done as much as it could to ensure that the company got to the event."—[*Official Report, Public Audit Committee*, 23 June 2010; c 1827.]

Doing as much as we could is exactly what we had to do. The Scottish Government did all that it could to ensure that the benefits of the event to Scotland and Edinburgh were delivered. That was our job. That was my job. It was done with the best of motives and to the best of our abilities. Had it not been done, the consequences would have been far worse.

The Presiding Officer: The cabinet secretary will now take questions on the issues raised in his statement. We have exactly 20 minutes for those

questions, after which we will move to the next item of business.

Lewis Macdonald (Aberdeen Central) (Lab): I thank the cabinet secretary for the advance copy of his statement.

The fundamental issue is whether the Scottish Government intervened as it did on the basis of a proper understanding of the financial position of The Gathering 2009 Ltd, and whether in doing so it acted effectively to protect the interests of taxpayers and creditors. The Auditor General has raised a range of issues about accountability for spending public money and the need for due diligence, which Mr Russell has acknowledged but not yet fully addressed. I will give him the opportunity to respond to some of those points.

For example, can he tell us why he did not discuss with the project's other public sector funders the company's attempt to secure an emergency Government loan as long ago as April 2009? Why did he not act at that stage to establish what the financial health of the company really was, when he was already aware of the cash-flow issues that the company was facing, as they had been brought to his attention by it?

How many private companies have received Scottish Government funding under section 23 of the National Heritage (Scotland) Act 1985 and how many of them have subsequently gone out of business?

Mr Russell said that he sees no need to apologise to anybody. Does he realise that that will be disappointing to the many creditors in this city and throughout Scotland who were kept in the dark over several months about the fact that the company that owed them money was in no position to pay its debts and the Scottish Government knew it? Does he not understand that an apology would have been required whatever the outcome of the Auditor General's inquiry, because the Scottish Government's efforts did not protect either the taxpayer or the interests of creditors?

The Government set itself an objective, as Mr Russell has laid out, of saving the company, and it failed. The Scottish Government needs to learn the lessons of this failure, as Mr Russell said, but he needs to say sorry, too.

Michael Russell: A range of interests are involved, including the interests of the event, homecoming and the entire Scottish tourism sector. I have made it entirely clear that our sympathy lies with anybody who has suffered in these circumstances, but I have also made it clear to members—I am sorry that Mr Macdonald did not listen to this—that the situation would have been far worse had we not acted in the way that we did. There would have been very substantial

damage not just to the credibility of the gathering and its ability to take place but to the entire homecoming event and the entire tourism sector, which found homecoming the most valuable thing that it could have had in the year of the Labour-created credit crunch.

In all those circumstances, Lewis Macdonald and the entire Parliament need to look at what would have been the effect if we had not acted. We often hear from Labour criticisms *ex post facto*. The reality is that this Government is facing up to its responsibilities again and again and ensuring that circumstances in Scotland are such that people can succeed.

I will make a final point about money. The company had already provided its figures to a number of agencies and others and had received funding from them. My discussion with it in April 2009 was about a short-term cash-flow issue, which was covered by receipts that it guaranteed. The Government and I acted not only properly but out of necessity in those circumstances.

Gavin Brown (Lothians) (Con): I thank the cabinet secretary for advance sight of his statement, which raises a number of fresh questions. Audit Scotland stated that the Scottish Government carried out no background checks on the company and did not check on the company's ability to repay the loan, yet today the cabinet secretary said that there were detailed discussions about WorldPay and the company's cash-flow position. Which is correct: the position stated by Audit Scotland in its report or the position put forward by the cabinet secretary today? They cannot both be correct.

What discussion took place with the company about ticket sales at the point of the loan being given? It is clear from the Auditor General's report that ticket sales were slow and that the steering group was concerned about that. If ticket sales were slow, why was expenditure on the project not cut back? One did not have to abolish the project; one could have cut back on expenditure to reflect the low ticket sales.

Audit Scotland stated that the steering group had no knowledge of the loan. The cabinet secretary has said today that EventScotland, which chaired the steering group, knew about the loan. Which of those two statements is correct? Can the cabinet secretary please clarify the matter?

Michael Russell: I am familiar with the old trick of endeavouring to raise fresh questions after a range of questions have been asked. Let me be clear: I said, and I repeat, that officials met the directors of the company for detailed discussions about the WorldPay situation and the company's cash-flow position. At no moment could it be said

that the company was anything other than a private company operating in the private environment.

The company received—[*Interruption.*] If I may be allowed to finish. It received public funding for specific tasks. That is why funding was granted by other agencies, and I have made it clear that that is what happened as far as the Scottish Government was concerned. The company was not being run by the Scottish Government; it was receiving public funding for specific tasks.

Murdo Fraser (Mid Scotland and Fife) (Con): Come on.

Gavin Brown: Come on.

Michael Russell: If members do not understand that, their knowledge and experience of government is incredibly limited—as we know it to be, and it will remain that way if they continue to make such misapprehensions.

As far as WorldPay was concerned, we were sure that the situation was as it had been presented to us, and a short-term loan was given. That was entirely proper in the circumstances. I repeat: officials met the directors of the company for detailed discussions about the WorldPay situation and the company's cash-flow position. That was the basis on which the loan was granted.

Iain Smith (North East Fife) (LD): I thank the minister for the advance copy of his statement. Unfortunately, he failed to address any of the fundamental questions that the Auditor General raised in his report or in his evidence to the Public Audit Committee. The minister has instead chosen—like the First Minister did last week—to take one remark by the Auditor General out of context, as if it is a complete exoneration of his actions.

He seems keen to agree with the Auditor General's comment that

"The Scottish Government, I guess, would have taken the not unreasonable view that in order to allow the event to proceed it should assist the short term cash-flow problems of the company".

However, does he also agree with the Auditor General's comment that

"it is fair to say that the Scottish Government could have completed a more thorough assessment of the company's ability to repay the loan"?—[*Official Report, Public Audit Committee, 23 June 2010; c 1820.*]

Does he agree with the Audit Scotland report's finding that

"The Scottish Government did not complete robust checks of the company's ability to repay the loan"?

If no such checks were carried out, how can he say that

"there was absolutely no evidence that the company was insolvent when the loan was awarded"

to quote from his statement, especially as he made absolutely no effort to check whether the company was solvent? By the minister's failure to do that he has let down not only the Scottish people but the many Scottish businesses that have been left out of pocket and that are rightly angry about the way in which they have been treated.

Michael Russell: The purpose of the short-term loan was quite clear. I have addressed many of the points that the Auditor General raised, and I have made it clear that there are lessons to learn from the project. However, if that loan had not been given, the event would not have taken place, as a result of which there would have been considerably more damage. None of the questions that I have yet been asked has addressed that point.

Opposition members are very good with 20:20 hindsight, but it is fortunate for the Scottish people that they are not running the country, because the country cannot be run in hindsight.

The Presiding Officer: We come to back-bench questions. Quite a few members wish to ask questions. If we are all speedy, we can get them all in.

Stuart McMillan (West of Scotland) (SNP): Is it not the case that the gathering and the wider homecoming celebrations were initially devised by the previous Labour-led Administration and that, as at May 2007, nothing had been done to progress the programme of events, leaving this Scottish National Party Government to pick up the pieces?

Michael Russell: That is substantially true. Very little was done, right across Government. All of us who came into government that year discovered that there had been many fine words but very little detailed planning. I could quote curriculum for excellence, for example, but I will not.

We had to get on with the situation, however, and we refocused this excellent project on real, achievable goals. The homecoming turned out to be an immensely successful contribution to Scottish tourism last year, as masterminded by my friend Mr Mather. It was obvious at homecoming events, again and again, that the tourism sector viewed them as essential. If we had followed the course of action that members from around the chamber have, with hindsight, urged on me, that would not have been true.

Sarah Boyack (Edinburgh Central) (Lab): Why was due diligence not carried out on the capacity of The Gathering 2009 Ltd to pay back

the loan that it requested from the Scottish Government at the point at which it asked for that loan? That issue is raised in the Auditor General's report, which makes it clear that a deficit was seen as possible from the outset of the company's operation. On what date did the Scottish Government accept that The Gathering 2009 Ltd was trading insolvently and was unable to pay its creditors? Why does the minister not understand that that issue is crucial to the 103 small businesses that were cruelly let down by the failure of a company that the Scottish Government tried to get other public sector bodies to buy weeks after the event?

Michael Russell: The Scottish Government knew in the autumn that the company could not continue. The company was not trading insolvently when it went through this process.

I find Sarah Boyack's position absolutely extraordinary, because the jobs that would have been lost are in her constituency. She was at the gathering and saw it take place. Even though she knows that if it had not taken place, the result would have been catastrophic not just for the event but for the homecoming, she continues to argue the point. It is quite clear that at the time of the discussions about the short-term loan, the gathering was a work in progress, but it was in progress. All the partners were involved in it and the independent company that was delivering it, which had been contracted to do certain things, was doing those things.

The date on which I or anyone else discovered that the company could not fulfil its promises was in early September. That was made clear in the Auditor General's report, and I am happy to confirm it.

Murdo Fraser: According to paragraph 34 of Audit Scotland's report,

"The steering group members were not informed of the Scottish Government loan."

EventScotland was represented on the steering group—indeed, the group's chair was from EventScotland—but, in his statement, the minister said:

"The Scottish Government made senior EventScotland officials aware of the loan—that was appropriate, and that was done."

Those two statements cannot both be true. Who is telling the truth?

Michael Russell: I have made it absolutely clear that we made senior officials in EventScotland aware of the loan. That was appropriate and that was done. The wider question is how much more widely that information should have been made known. It is obvious that at the time, given the commercial nature of the

event, it was quite proper to share the information with EventScotland but not to share it more widely. It would not have been helpful to share it more widely.

I am surprised that Murdo Fraser pushes the point so hard. What would have happened if the event had been jeopardised at that stage? He must answer that. Jobs would have been lost, the homecoming would have been damaged and there would have been collateral damage in the tourism sector in the north, south, east and west of the country. I have still not heard a single member address that issue.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): From the minister's statement, it now seems that, regardless of the trading conditions of the company, the Government's position is that it would have provided it with any loan to secure the continuation of the event. That raises considerable issues about the use of taxpayers' money.

Why was due diligence not carried out? The statement of accounts of the company to which the Government provided the loan show that a loan of £39,000 from the directors of The Gathering 2009 Ltd to Panalba Ltd, which is owned by the same two directors, was outstanding. Was the minister aware that that £40,000 loan was outstanding?

The minister says that he followed the advice of officials on the use of the National Heritage (Scotland) Act 1985, but that relates to how a loan could be made rather than to whether a loan could be made. Will the minister confirm the options that were presented?

The Presiding Officer: Quickly, please.

Jeremy Purvis: If any other business finds itself experiencing the same cash-flow difficulties as the company to which the minister says that he had to provide the loan, will it be given the same treatment?

Michael Russell: It is quite clear that Jeremy Purvis knows nothing of the circumstances in which Government operates—[*Interruption.*—nor do the Labour members who just laughed.

It would be quite impossible for such a loan to be made unless there was statutory authority for doing so. Advice was given on the matter. On the basis of that advice, I regarded the provision of a loan as the best possible option, and I do not back away from that. There was no other way.

To deal with the ridiculous phrase "secret loan", which I am glad has now been dropped, there is no way that loans can be made in secret from Government; it is complete nonsense. The reality is that it was done in a proper way, by statute and completely legally.

Jeremy Purvis began his question with another piece of nonsense. He said that the Government would have provided a loan "regardless of the trading conditions of the company", which is complete nonsense. The company was a work in progress; work was being done. There were agencies working with it that were contracted to do things for the Government and for others. In those circumstances, there was every indication that the gathering would be delivered.

The gathering, of course, was delivered. Members on every side of the chamber attended it and commented on how successful it was and how well it had gone. The reality is that I knew of the difficulties, as others did, only in early September 2009.

The Presiding Officer: I ask members to keep questions and answers short and sharp from now on.

Rob Gibson (Highlands and Islands) (SNP): Does the former Minister for Culture, External Affairs and the Constitution agree that the tone of the Opposition attack on the gathering sits in the same dreary category as Labour's dismissal of homecoming as a "damp squib"? Does he agree that Iain Gray's gratuitous turn of phrase on the gathering at First Minister's questions last Thursday denigrates the kilt, clans and traditional Scottish culture?

Michael Russell: I think it does. I entirely agree, and I will go further; I have always found Rob Gibson to be very helpful. The convener of the Public Audit Committee made a very dismissive remark in his interrogation on the gathering about tying tartan round things, which was an unfortunate way to look at it.

I am at ease with my own culture, as I hope every member in the chamber would be. I do not fully understand the self-loathing that comes across in some of the statements.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): The minister tells us that the gathering generated £8.8 million for the Edinburgh economy. That is certainly a very large amount of money over a two or three-day period. I find it astonishing, therefore, that such an event can run at a loss.

I want to ask specifically about the secret loan, because it was indeed a secret to the steering group. The steering group was set up to work in partnership with the public organisations and the private company. Why did it not know about the loan until after the event?

Michael Russell: There was no secret loan. The loan was made in the appropriate way by statutory authority and communicated in the way that it should have been. There was commercial confidentiality involved in the work of a private

company; I am sorry that the member does not understand that, but her track record—and that of her party—on understanding any of this is severely defective.

Maureen Watt (North East Scotland) (SNP): The minister will have read—although Cathie Craigie has not—paragraph 35 of the Audit Scotland report, which states:

“Financial projections showed that the event would be loss-making except if it attracted the most optimistic gate numbers. The company directors considered a loss was acceptable in the first year as they intended to carry on the company after the event, with a view to holding a similar event in the future.”

The gathering, although loss-making, generated huge amounts of money for tourism businesses, and there is talk of a homecoming in the future. Does the minister believe that a gathering will be part of that, due to the huge support that such an event gives to tourism businesses in the face of austerity from successive Westminster Governments?

Michael Russell: The homecoming was an undoubted success, and I regret that there have been so many attempts to tarnish it by members in the chamber.

I will quote—very briefly, Presiding Officer, because I know that you want me to be brief—two individuals. John Shevlin, the manager of the Macdonald Holyrood hotel, reported in January 2009 that all his 156 rooms had been booked for the period around the gathering by members of clan Donald from North America. He said

“Although we expected there to be an increased interest because of Homecoming, we never thought there would be as much as this”.

There are members in the chamber who would not have wanted that hotel to have a single room booked because they are—in retrospect—against the decisions that were made.

I find the second quotation rather touching. Betsy Mitchell Shepherd, from California, said—*[Interruption.]*

The Presiding Officer: Order, Mr Purvis.

Michael Russell: Yes, I can hear that Jeremy Purvis is getting overexcited; I advise him to calm down. He should hear this quotation and reflect on it.

Betsy Mitchell Shepherd from California, who attended the gathering said:

“My ancestors came to the US from Dunoon in 1889 and I’ve always been truly proud that I am of Scottish descent ... The joy and excitement I felt ... filled my heart and soul with happiness.”

If only there was something like that in the chamber, rather than the grudging, curmudgeonly

attitude towards the gathering and the homecoming. *[Applause.]*

The Presiding Officer: Order. That concludes the statement and questions on the gathering. I apologise to those members I was unable to call.

Business Motions

17:30

The Presiding Officer (Alex Fergusson): The next item of business is consideration of business motion S3M-6674, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a business programme.

Motion moved,

That the Parliament agrees the following programme of business—

Wednesday 8 September 2010

1.00 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Scottish Government Business

followed by Business Motion

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 9 September 2010

9.15 am Parliamentary Bureau Motions

followed by Scottish Government Business

11.40 am General Question Time

12 noon First Minister's Question Time

2.15 pm Themed Question Time
Finance and Sustainable Growth

2.55 pm Scottish Government Business

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Wednesday 15 September 2010

2.30 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Scottish Government Business

followed by Business Motion

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 16 September 2010

9.15 am Parliamentary Bureau Motions

followed by Scottish Government Business

11.40 am General Question Time

12 noon First Minister's Question Time

2.15 pm Themed Question Time
Education and Lifelong Learning;
Europe, External Affairs and Culture

2.55 pm Scottish Government Business

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business—[Bruce Crawford.]

Motion agreed to.

The Presiding Officer: The next item of business is consideration of four business motions. I ask Bruce Crawford, on behalf of the Parliamentary Bureau to move motions S3M-6675 to 6678, setting out stage 1 timetables on various bills.

Motions moved,

That the Parliament agrees that consideration of the Autism (Scotland) Bill at Stage 1 be completed by 21 January 2011.

That the Parliament agrees that consideration of the Damages (Scotland) Bill at Stage 1 be completed by 17 December 2010.

That the Parliament agrees that consideration of the Palliative Care (Scotland) Bill at Stage 1 be completed by 10 December 2010.

That the Parliament agrees that consideration of the Property Factors (Scotland) Bill at Stage 1 be completed by 10 December 2010.—[Bruce Crawford.]

Motions agreed to.

Parliamentary Bureau Motions

17:31

The Presiding Officer (Alex Fergusson): The next item of business is consideration of five Parliamentary Bureau motions.

Motions moved,

That the Parliament agrees that the draft Dormant Bank and Building Society Accounts (Scotland) Order 2010 be approved.

That the Parliament agrees that the draft National Health Service (Reimbursement of the Cost of EEA Treatment) (Scotland) Regulations 2010 be approved.

That the Parliament agrees that the draft Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment (No. 2) Regulations 2010 be approved.

That the Parliament agrees that the draft Applications by Creditors (Pre-Action Requirements) (Scotland) Order 2010 be approved.

That the Parliament agrees that the draft Home Owner and Debtor Protection (Scotland) Act 2010 (Consequential Provisions) Order 2010 be approved.—[Bruce Crawford.]

The Presiding Officer: Iain Smith has indicated that he wishes to speak against a motion.

17:32

Iain Smith (North East Fife) (LD): I wish to speak against the approval of motion S3M-6679, on the draft Dormant Bank and Building Society Accounts (Scotland) Order 2010. The matter was considered by the Economy, Energy and Tourism Committee at its meeting last week. At that meeting, members raised concerns that the detail contained in the order and that the Minister for Enterprise, Energy and Tourism gave the committee on the directions to be given on the use of the funding was insufficient. The order states very broadly:

“A distribution of dormant account money for meeting Scottish expenditure may be made only—

(a) to third sector organisations; and

(b) for meeting expenditure on or connected with the provision of services, facilities or opportunities which promote a strong, resilient and supportive community.”

—or basically anything you like.

The minister went a little bit further by indicating that there will be four basic themes: opportunities for children and young people; addressing health inequalities through increased activity; strengthening intergenerational connections; and creating community-based employment opportunities. Again, the committee was concerned that that did not give a clear enough indication of how this particular funding—an unusual, one-off type of funding—would be used.

There was certainly concern, and the general view was that the money should be focused on supporting youth-related projects, because even the four broad themes were not addressed in the directions that were to be given to the Big Lottery Fund—BIG.

The committee got agreement from the minister that, before the matter came before the Parliament, he would bring back a copy of his draft policy directions to the BIG organisation. Unfortunately, however, that draft—frankly—does not take us any further forward. It does not give any clearer direction than the minister gave to the committee and which the committee considered not to be sufficient.

I am moving against the order because it fails to give clear directions on how the money should be used. In particular, it fails to give clear direction on how it will be different from any of the funding that BIG currently distributes. The whole point is that this is a one-off source of funding from dormant bank and building society accounts, and its use should be different; it should be used for something that is not currently available through existing funding streams. In the view of many people who responded to the consultation, it should be—

The Presiding Officer: I am sorry, Mr Smith, but I have a point of order from Mr Gibson.

Rob Gibson (Highlands and Islands) (SNP): On a point of order, Presiding Officer. Iain Smith talks about speaking on behalf of the committee, but that is not the case; he is speaking on his own behalf and not on behalf of the whole committee.

Members: Oh!

The Presiding Officer: Order.

Iain Smith: First, I never at any point said that I was speaking on behalf of the committee. I was referring to discussions that the committee had and to the specific decision that the committee made. If you look in the *Official Report* of the committee meeting, you will see the published debate and that specific decision. I am not speaking on behalf of the committee. I did not state that at any point.

The Presiding Officer: You must close, Mr Smith.

Iain Smith: I hope that the Parliament will vote against the order so that the Government can come back with a clearer and more specific one after the summer recess.

The Presiding Officer: My apologies to Johann Lamont, but the standing orders are clear: only one member may speak for and one against the motion. I call the Minister for Enterprise, Energy and Tourism, Jim Mather.

17:35

The Minister for Enterprise, Energy and Tourism (Jim Mather): I recognise the concerns that Iain Smith has expressed. As he said, the order was examined at the Economy, Energy and Tourism Committee meeting of 23 June. As the minutes of proceedings of the meeting conclude:

“the motion was agreed to by the Committee with the proviso that the draft policy directions which he”—

myself—

“will issue are sent to the Committee prior to the debate on this Order taking place in the Chamber and that the Minister comes back to the Committee in the Autumn to discuss progress.”

Both parts of the proviso have been met. A draft of the policy direction was sent to the committee convener on 25 June and I have agreed to attend committee to discuss the subject in the autumn.

In addition, the committee raised a number of useful questions that are already getting careful consideration from this Government and the Big Lottery Fund. The next step is for me to instruct BIG, which is the statutory distributor of the funds, to prepare a strategic plan, which the Dormant Bank and Building Society Accounts Act 2008 requires be subject to public consultation. The consultation will give final shape to the kind of activity that will be funded. BIG will recommend a balance of spending between priorities and propose how grants should be paid. That work is in addition to the considerable public consultation that has already taken place and the one-to-one meetings that I have had with party spokespeople.

Meanwhile, our view is that the more detailed questions that the committee identified should be taken as part of the consultation that BIG will conduct. I believe that that addresses comprehensively the matter at this stage. Embedding the conclusions in a new order would restrict considerably the scope of the consultation. My understanding is that members would wish to know the views of the organisations that need the funding and that those views have been taken fully into account in the development of the scheme.

It is important that the process gets under way soon. The act requires ministers to lay the final strategic plan before Parliament. For all concerned, it is desirable that that is done before the end of the year. On that basis, I hope that members will feel able to endorse the committee position and agree the motion.

The Presiding Officer: The question on the motion will be put at decision time.

The next item is consideration of another Parliamentary Bureau motion. I ask Bruce Crawford to move motion S3M-6684, on membership of the Congress of Local and

Regional Authorities of Europe of the Council of Europe.

Motion moved,

That the Parliament agrees to nominate, as a representative of the Parliament, Mr Frank McAveety MSP, as the alternate member on the UK delegation to the regional chamber of the Congress of Local and Regional Authorities of Europe of the Council of Europe.—[Bruce Crawford.]

The Presiding Officer: The question on the motion will also be put at decision time.

Decision Time

17:37

The Presiding Officer (Alex Fergusson):

There are four questions to be put as a result of today's business. The first question is, that motion S3M-6604, in the name of Kenny MacAskill, on the Criminal Justice and Licensing (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Brown, Robert (Glasgow) (LD)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Finnie, Ross (West of Scotland) (LD)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hume, Jim (South of Scotland) (LD)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McArthur, Liam (Orkney) (LD)
 McInnes, Alison (North East Scotland) (LD)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 O'Donnell, Hugh (Central Scotland) (LD)
 Paterson, Gil (West of Scotland) (SNP)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)

Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)

Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Tolson, Jim (Dunfermline West) (LD)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Against

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)

Stewart, David (Highlands and Islands) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

The Presiding Officer: The result of the division is: For 64, Against 61, Abstentions 0.

Motion agreed to,

That the Parliament agrees that the Criminal Justice and Licensing (Scotland) Bill be passed.

The Presiding Officer: The next question is, that motion S3M-6679, in the name of Bruce Crawford, on approval of a Scottish statutory instrument, the Dormant Bank and Building Society Accounts (Scotland) Order 2010, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brownlee, Derek (South of Scotland) (Con)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMillan, Stuart (West of Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)

Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

Against

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)

Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

The Presiding Officer: The result of the division is: For 65, Against 60, Abstentions 0.

Motion agreed to,

That the Parliament agrees that the draft Dormant Bank and Building Society Accounts (Scotland) Order 2010 be approved.

The Presiding Officer: I propose to put a single question on motions S3M-6680 to S3M-6683, on approval of SSIs. If any member objects to a single question being put, they should say so now.

As no one objects, the next question is, that motions S3M-6680 to S3M-6683, in the name of Bruce Crawford, on approval of SSIs, be agreed to.

Motions agreed to,

That the Parliament agrees that the draft National Health Service (Reimbursement of the Cost of EEA Treatment) (Scotland) Regulations 2010 be approved.

That the Parliament agrees that the draft Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment (No. 2) Regulations 2010 be approved.

That the Parliament agrees that the draft Applications by Creditors (Pre-Action Requirements) (Scotland) Order 2010 be approved.

That the Parliament agrees that the draft Home Owner and Debtor Protection (Scotland) Act 2010 (Consequential Provisions) Order 2010 be approved.

The Presiding Officer: The final question is, that motion S3M-6684, in the name of Bruce Crawford, on membership of the Congress of Local and Regional Authorities of Europe of the Council of Europe, be agreed to.

Motion agreed to,

That the Parliament agrees to nominate, as a representative of the Parliament, Mr Frank McAveety MSP, as the alternate member on the UK delegation to the regional chamber of the Congress of Local and Regional Authorities of Europe of the Council of Europe.

“Perspectives of Children and Young People with a Parent in Prison”

The Deputy Presiding Officer (Trish Godman): The final item of business today is a members' business debate on motion S3M-6377, in the name of Aileen Campbell, on “Perspectives of Children and Young People with a Parent in Prison”. The debate will be concluded without any question being put.

Motion debated,

That the Parliament welcomes the report, *Perspectives of Children and Young People with a Parent in Prison*, issued by the Commissioner for Children and Young People in Scotland and Families Outside and which explores the experiences of children and young people who have had a family member sent to prison; welcomes the consideration that has already been given to this important issue during the proceedings of the Criminal Justice and Licensing (Scotland) Bill; notes with concern the finding of the report that each year as many as 16,500 children across Scotland, including the South of Scotland region, will experience the imprisonment of a parent or carer, and believes that a cross-party approach is the best way to ensure that the rights of the children of offenders, who are often the innocent and forgotten victims of crime, are respected in the legal system.

17:41

Aileen Campbell (South of Scotland) (SNP): I thank all members who have stayed behind for the debate and who supported the motion. I know that it has been a long day for everyone.

Presiding Officer,

“the sins and traumas of fathers and mothers should not be visited on their children.”

Those are not my words, but the words of Justice Albie Sachs, the anti-apartheid campaigner and member of the Constitutional Court of South Africa. They will be familiar to the chamber, because I also quoted them during the stage 1 debate on the Criminal Justice and Licensing (Scotland) Bill, stage 3 of which we have just completed. The words form part of the landmark ruling in *S v M* in 2007, in which the Constitutional Court of South Africa set out the importance of taking into account the effect of any sentence that is passed on an offender on any children of that offender. In the *S v M* case, the court decided to pass a non-custodial sentence on the offender, a woman convicted of fraud, because of the negative effect that a custodial sentence would have had on her four children.

The report that is the subject of my motion, “Perspectives of Children and Young People with a Parent in Prison”, lays out in detail the experience and effects of parental imprisonment on a child. Scotland's present Commissioner for

Children and Young People commissioned the report to provide further evidence and understanding of issues that were first raised in a report by the previous commissioner in 2008. That report, "Not seen. Not heard. Not guilty. The rights and status of the children of prisoners in Scotland", argued that

"the children of prisoners are the invisible victims of crime and of our penal system".

The report estimated that, at that time, 13,500 children were affected every year by the imprisonment of a parent. The figure has since been revised up to 16,500, some of whom—as my motion notes—live in the South of Scotland region.

Together, the two reports present a picture of a situation in which children whose parents are locked up can become trapped in a spiral of instability, leading to stress, trauma and, ultimately, patterns of antisocial behaviour and offending. I make it clear, as I have done on many occasions when raising the issue, that I am not suggesting that offenders who pose a threat to society or who have committed serious offences should not be imprisoned or that having children is some sort of get-out-of-jail-free card. What I am arguing for—as I have since the publication of the 2008 report—is a mechanism that allows judges to take into account the whole circumstances of an offender's situation and to consider what sentences would have the best outcome for society as a whole.

A non-custodial sentence that prevents the placing of children in care saves the taxpayer money both in the short term and in the longer term, if it reduces the likelihood of antisocial behaviour and offending by the children. Even the United Kingdom Secretary of State for Justice recognises that. He is quoted in today's edition of *The Guardian* as saying:

"It is virtually impossible to do anything productive with offenders on short sentences. And many of them end up losing their jobs, their homes and their families during their short time inside."

The perspectives report from Families Outside and the children's commissioner deals in some detail with the effects of a custodial sentence on a prisoner's family. Drawing on qualitative interviews with 20 individuals—children, young people, carers and one adult who as a child experienced parental imprisonment—the report presents findings and case studies that are both moving and concerning.

According to the report, a carer who is a grandmother said that

"everything changed in her grandson's life because previously the 'father was everything, now he is not, I am'."

Another boy was described as losing all interest in playing computer games and football, which were

pastimes that he had enjoyed with his father before his father was sent to prison.

The report's author found that children and carers who are directly affected agree that it is important that the court should take children's views into account. Six of the children who were interviewed

"clearly believed that expressing their feelings to the judge would make a difference to the sentence".

Members will be aware of the considerable work that is being done to raise awareness of the issue by the children's commissioner and interest groups such as Families Outside, Action for Children, Children in Scotland and Barnardo's. I thank the representatives of those organisations who have provided information, support and their perspectives and suggestions on how to move the issue forward. The Cabinet Secretary for Justice has taken time to meet and correspond with me and those organisations, so he is aware of the issue.

Families Outside, in particular, has brought depth to consideration of the issue. Through its direct work with families, the organisation can highlight people's stories, the stresses and strains and the worries and concerns, which does more than simple statistics can do to illustrate the human suffering that children and families throughout Scotland experience. I recently chaired a conference for Families Outside and I do not think that there was a dry eye in the hall when we heard some of those moving stories at first hand. That is why the perspectives report is so important. It details and examines the human impact on innocent victims of crime.

It does not have to be like that. The example of *S v M* in South Africa shows that justice can be served without judicial decisions necessarily having a negative impact on an offender's dependent children. New Zealand does not use the same mechanisms as South Africa, but its sentencing guidelines provide that a court

"must take into account the offender's personal, family, whanau, community, and cultural background in imposing a sentence or other means of dealing with the offender with a partly or wholly rehabilitative purpose".

Mary Scanlon (Highlands and Islands) (Con):

I acknowledge everything that Aileen Campbell has said. I want to highlight the concerns of women in the Highlands who are imprisoned in Cornton Vale prison. Such women often do not see their children for months, if not years, and are therefore unable to build bonds with them. That is a particular issue.

Aileen Campbell: I thank Mary Scanlon for her intervention, which was useful and appropriate.

In New Zealand's judicial system there is explicit recognition of the issue, which is given due prominence in legislation. There are other examples of countries in which sentencers are required to take the family situation into account. That is the case in Fiji, and in Australia, as a result of the 1996 case, *Walsh v Department of Social Security*. Scotland has a long and proud independent legal tradition and I hope that international examples will help to inform our courts and, in due course, the Scottish sentencing council. I look forward to hearing what the minister will say on behalf of the Scottish Government.

The current mechanisms do not always work in the way that they were intended to work. Social inquiry reports, which have been used in arguments about caring duties that have been made at the point of sentencing, are not required in most cases and are not always requested by sentencers. Even when they are requested, such reports contain little information about an offender's family. Reports concentrate on issues to do with criminal justice and focus on the needs of the offender. Indeed, a social inquiry report might be prepared while a person is in custody on remand.

Families Outside is supporting a family in which four young children were taken into care while their mother served just one month in custody for breach of a community penalty for a driving offence. The sentence of one month was enough to make the children and their mum lose their home, and two years later the family has still not been reunited. That is a drastic but real example of how damaging custodial sentences can be for the wider family. It shows that the issue needs attention and that we need to put aside political differences so that we can figure out how to address it.

I welcome the cross-party support for the motion, which I hope indicates a willingness to work together to take the issue forward, to ensure that in future, as the motion says:

"the rights of the children of offenders, who are often the innocent and forgotten victims of crime, are respected in the legal system."

The Deputy Presiding Officer: A considerable number of members want to speak, so I ask members to keep their speeches to a tight four minutes.

17:49

Karen Whitefield (Airdrie and Shotts) (Lab): I congratulate Aileen Campbell on securing the debate. The previous children's commissioner, Kathleen Marshall, and the current incumbent, Tam Baillie, have been consistent in their commitment to raising the issue of the welfare of

children who have a parent in prison. I commend their perseverance and the efforts of the report's author.

In Scotland, we have a children's hearings system that places child welfare at the heart of the youth justice system. Therefore, it is entirely understandable that concerns are raised that that approach does not seem to be carried through with regard to the sentencing of adults with children. From the outset, I make it clear that that is not a call for a less tough approach to crime. Our criminal justice system must ensure that those who commit crimes are held to account for their actions.

The report points out that children often have varying and conflicting views about the incarceration of their parent. Sometimes imprisonment means that a violent parent is removed from the household, which can be a relief to the child, but the report makes it clear that, for most children, the imprisonment of their mother or father can be a traumatic and potentially scarring event. Indeed, it can have an impact on the rest of their lives, affecting their mental and physical health, their educational opportunities and even the likelihood that they will become involved in criminal activities.

The scale of that problem is significant. The report points out that the issue affects an estimated 16,500 children in Scotland each year. That means that, each year, more children in Scotland will experience a parent's imprisonment than a parent's divorce.

The first part of the report is a review of the literature that is currently available on the issue. It points out that there is clear evidence of intergenerational offending. A study by Kandel and colleagues in 1988 compared the criminal tendencies of 92 children of jailed parents with 513 children of similar ages with non-incarcerated parents. It found that 39 per cent of the children of incarcerated parents followed in their parents' footsteps and had already been in prison, compared with 7 per cent of those who had non-incarcerated parents. A similar study by Johnston in 1995 notes that children of incarcerated parents are five to six times more likely to follow in the footsteps of their parents in that regard in comparison with other children of a similar age. Clearly, other social and economic factors will be at play but, nevertheless, those are stark and depressing statistics.

The report also makes it clear that children of parents in prison are much more likely to experience post-traumatic stress disorder. That is an important point, as the report also concludes that the children of prisoners do not have enough support to deal with such traumatic events as a parent's incarceration and often do not speak

about them to anyone else. There is a need for improved and more systematic support mechanisms to help children and young people through the difficult time when a parent is in prison.

The report also concludes that there is a need for more research on the impact of parental imprisonment on children, including the relationship between parental imprisonment and the child's risk of imprisonment in the future. I hope that the minister will respond to that recommendation positively.

I mention two specific points that are raised in the report. First, it highlights the important role that grandmothers play in supporting and caring for children whose parents are imprisoned. Such kinship care has often been talked about in the Parliament. In fact, in the report, the children themselves ask that the grandmothers who look after them be recognised and properly supported. I ask that the minister examine that issue and how we can better address kinship care.

Secondly, the report demonstrates that children feel strongly that the courts and the Parole Board for Scotland should take their views into account. That is important. I have no doubt that, in many instances, the need to incarcerate will override the potential impact on the child, but the courts should at least take the child's views into consideration.

I welcome the report by the children's commissioner and Families Outside. I agree with the central recommendation that there is a need for further, more detailed research on this important matter.

17:54

Anne McLaughlin (Glasgow) (SNP): I congratulate Aileen Campbell on securing the debate. She has worked on the issue for a long time.

The motion is not about women or men, or about mothers or fathers; it is about children and about acknowledging the fact that, when it comes to the sentencing of adults, the rights of their kids have, on the whole, been ignored.

Nonetheless, progress has been made. The recent report by the Scottish Prisons Commission, the cross-party support that the motion has attracted and the particular attention that has been paid to the matter by both the previous and the current children's commissioners demonstrate that at least we are no longer ignoring the issue.

Social inquiry reports are often carried out before a sentence is decided. We have all heard of them, but I did not know that a significant number of women are sentenced without such a report being produced. Further, when a social

inquiry report is produced, the needs of the children are not specifically taken into account—as Aileen Campbell said, they are lumped in with other factors. I want the needs of children to be a distinct category in social inquiry reports, and I want it to be compulsory for such a report to be instructed in all cases in which a parent who lives with a child is to be sentenced.

I accept that it is sometimes necessary for a child's parent to go to prison, but please let us ensure that prison policies take into account the rights and needs of that child. Withdrawing the right of a prisoner to a visit from their child may make sense if the prison wants to punish the prisoner, but it will not make sense to the child. Where are their rights? Telling them, "It is not our fault—your mummy was naughty," will do nothing for that wee person as they cry themselves to sleep wondering when they will see their mum or dad again.

A particular group of children who have a parent in prison never need to worry that they will miss a visit to the imprisoned parent or about being separated from them. They are not separated from them because they are imprisoned alongside their parents. I refer, of course, to the children of asylum seekers whom the Home Office wishes to deport and who are held in immigration removal centres. They may be called "removal centres" but they are, in effect, prisons. The people in them may not leave, they are surrounded by perimeter fences and barbed wire, and guards in uniform lock each room after they enter it. Those parents in detention are prisoners in all but name, without ever having committed a crime, and their children are also prisoners.

I believe the detention of the children of asylum seekers to be abhorrent. The psychological damage has been well documented, and I therefore welcome moves to end it. Indeed, when I leave the chamber I will respond to the United Kingdom Government's consultation on the matter, which ends tomorrow. In doing so, I will highlight the case of 10-year-old Precious Mhango, who has twice been detained, ready to be deported. Only this morning, despite the Home Office knowing that the lawyer is appealing, she received removal directions for yet another planned deportation. Unless we can stop it quickly, any day now that wee girl could be suffering the double torment of not only having a parent locked up but being locked up herself.

Theatre Nemo works primarily with people who have mental health problems, but it recently set up a drama group for children who have a family member in prison. The idea is that the group gives them the space to express themselves in a creative and fun way with other children who know what it is like to have a family member in prison. I

recently attended a spellbinding performance by the group. It was a brilliant day not only for the children but for their families watching them.

I pay tribute to the work of the children's commissioners in producing both this report and the previous one. When such reports tell us that the effect of the imprisonment of a parent on a child is similar to bereavement, when they tell us that there appears to be a link between the imprisonment of a parent and the risk of future imprisonment of the child, and when we hear that more children will experience the imprisonment of a parent than the divorce of a parent, we know that it is surely only right that, when it comes to the sentencing and imprisonment of parents, we all remember that this is about not only the guilty parent but the innocent child.

17:58

Elaine Smith (Coatbridge and Chryston) (Lab): Like other members, I congratulate Aileen Campbell on securing a debate on such an important subject. Like her, I welcome the children's commissioner's report, which highlights the fact that children are often the forgotten victims in the justice system. If their parents are imprisoned, they can suffer stigma, they can lose their homes, their family income might be reduced and they might be separated from their siblings and sent to foster homes or care. Overall, there is an economic, psychological and social repercussion for children.

Of course, the imprisonment of an abusive parent is sometimes a respite, but even then the aftermath and the repercussions can be traumatic for children.

The evidence taken by the Equal Opportunities Committee in our inquiry into female offenders in the criminal justice system suggests that there are particular women's issues and issues for their children when mothers are imprisoned. For example, a number of women offend as a result of drug dependency, which can often be an attempt to blot out the harsh realities of things such as prostitution and sexual exploitation—or it can be the cause of their involvement in those matters. We need to offer more support to allow women to escape that cycle of violence and exploitation for their own sake, but also for the sake of their children. We need better options; centres such as the 218 centre can be invaluable.

The impact of prison is usually greater for women than it is for men because women are much more likely to lose not only their homes but their responsibility for the care of their children. As women are still the main carers in our society, imprisoning mothers really results in the punishing of children.

It is a tragedy that, as is outlined in the committee's report, so many thousands of children face life without a parent for the period of the parent's incarceration and experience the trauma of visiting their parents in a prison environment. It is therefore vital that alternatives to prison take account of the impact of a custodial sentence on children, as Aileen Campbell outlined so well.

In our report, the Equal Opportunities Committee makes the point that cancelling children's visits as a punishment for their mother's behaviour, as seems to happen frequently, is unacceptable. That ties in with the commissioner's assertion that children are not simply aids to their parent's rehabilitation but have their own needs and rights. Obviously, children can play an important role in helping sentencing to change adult behaviour, but they must be seen as people in their own right.

Overall, the committee's report contains 28 laudable recommendations that make sense for society and for the individuals involved. Respecting the rights of children, making their needs a major factor in decisions and ensuring that the children are not punished when they have done nothing wrong will benefit our society as a whole.

Once again, I congratulate Aileen Campbell on highlighting the children's commissioner's report and on bringing the issue before the Parliament this evening.

18:01

Margaret Mitchell (Central Scotland) (Con): I too congratulate Aileen Campbell on securing this important debate in the Parliament this evening.

I welcome the report "Perspectives of Children and Young People With a Parent in Prison", which has been produced for Scotland's Commissioner for Children and Young People and Families Outside. The report explores the experience of children and young people who have a family member sent to prison. In doing so, the report also serves to raise awareness about a serious issue.

Of course, the impact of having a parent in prison is different on each child, depending on the child's age and stage of development and on whether the child lived with the parent prior to the imprisonment, but the report tells us that the experience is akin to bereavement. In effect, the children of offenders are grieving.

Furthermore, a child with a parent in prison is at risk of developing a post-traumatic stress disorder, particularly if the child lived with the parent prior to imprisonment. That should come as no great surprise, given that the imprisonment of a parent can affect a child's housing, care arrangements

and schooling and can lead to victimisation, substance abuse and an increased risk of future offending by the child. In the time available to me, I want to develop that aspect, which is highlighted in the motion and in the report. The recent EOC report "Female offenders in the criminal justice system", to which Elaine Smith referred, revealed the alarming statistic that around half the children of female prisoners will also end up in prison. It is important to ensure, as the motion highlights, that those children's rights are not overlooked or dismissed.

Innocent children must not become the unintended victims of crime merely because they have a parent or parents in prison. That point is picked up by the SCCYP's report and the EOC's inquiry report, both of which comment on the visiting arrangements for children and young people who have a parent in prison. From the evidence that the Equal Opportunities Committee heard, it is clear that drug taking by prisoners has a wider relevance because it can impact on the offender's family. For example, women who take drugs in Cornton Vale may be punished by not being allowed to see their children on future visits. Clearly, that is unacceptable. The rights of the child must be paramount. Given that both reports clearly favour the proposal that such visits should be conducted in as child-friendly a way as possible, I commend the example of Hydebank Wood prison, which has put in place a facility that provides the best possible visiting arrangements for the child.

Finally, I want to mention the work of the charity Circle, which has identified the need for more structured throughcare for female offenders. After negotiation with Cornton Vale prison, in August 2008 Circle began to deliver a throughcare service for women who are released from prison in Edinburgh, West Lothian, North Lanarkshire and South Lanarkshire. Although it is early days, the charity is providing intensive support to those women, and their families, upon their release from Cornton Vale. That is encouraging.

I have much pleasure in supporting the motion's call for cross-party support as the best way of ensuring that the rights of offenders' children, who are often the innocent and forgotten victims of crime, are respected by the legal system.

18:05

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I congratulate Aileen Campbell on securing such an important debate, and I welcome the report "Perspectives of Children and Young People With a Parent in Prison", which found that the impact on children of a parent's imprisonment is severe. For example, it states that the effects on a child are the same as the child's experience of

bereavement, that children are more likely to be moved between different homes, schools and care givers at a time when stability in their lives is essential, and that they often experience

"deterioration in behaviour, in physical and mental health, and in social and financial circumstances."

Those effects can often be long term and impact on family and future relationships, can reduce coping mechanisms and can induce mental health problems. No child should be left to experience that without proper support, but 16,500 children are affected by parental imprisonment every year in Scotland. As the former children's commissioner, Kathleen Marshall, said, children are the invisible victims of crime and we must do more to ensure that their rights and best interests are protected.

In her report, "Not Seen. Not Heard. Not Guilty.", Marshall called for the use of child or family impact assessments to be provided during sentencing. Evidence that was presented to the Equal Opportunities Committee during its work on female offenders was clear that the impact of family imprisonment is not addressed by the criminal justice system as it currently stands. As Anne McLaughlin said, social inquiry reports focus on the offender, information about the offender's caring responsibilities is not always included, and social inquiry reports are not always requested by the judge.

Although an offender should never escape punishment just because they are a parent, taking account of the needs of the child on a case-by-case basis would, in some cases, be more beneficial to society by preventing some of the knock-on effects of parental imprisonment. For example, during the Equal Opportunities Committee inquiry we were presented with evidence that women are often given custodial sentences for relatively trivial crimes because community sentences are not designed for them. Because women are often the primary carer, children are far more likely to be taken from their homes and put into alternative care arrangements, with all the problems and turmoil that that causes for the child.

A key recommendation of the Equal Opportunities Committee's report on female offenders concerned children's visiting rights. Cornton Vale has lots to be proud of in its efforts to support relationships between offenders and their children, with family contact officers assisting extended visiting for children in the informal and more comfortable setting of the little cherubs facility outside normal visiting hours, but a key criterion for a prisoner to be eligible for that service is proof that they are managing their addiction programme. That means that they need to show three negative blood tests before they can enjoy

extended and informal visits with their children. Although that might seem like a good incentive to reduce drug use in prison, it punishes children again for their parent's behaviour, and it is directly in contravention of their rights under the United Nations convention on the rights of the child.

Although the Scottish Government was supportive of the majority of the committee's recommendations, its response omitted any mention of children's visiting rights. We will never stop some parents going to prison, so it is vital that we do all that we can to ensure that children have as normal a family life as we can possibly give them.

Superb work is being done in West Pilton in my constituency by the Circle project, which Margaret Mitchell mentioned. Circle is a charity that provides intensive community-based support to marginalised children and their families. Since August 2008, Circle has been working with female offenders in prison and when they return home to enable them to maintain and rebuild their family lives. Many women who enter Cornton Vale have no idea what happens to their children from the point at which they enter custody. There is a real breakdown in communication at that point, and Circle provides an important bridge in passing on information about care arrangements, facilitating parent-child visits and ensuring that the offending parent is aware of and can participate in their children's hearings sessions.

After release, Circle helps to rebuild family trust, re-establishes relations between parent and child and, when it is in the child's best interests, helps parents to get their children back. It also helps families with a range of issues such as housing, finances, and support for mental health and substance abuse problems. It is vital, therefore, that we keep up funding support for that organisation's excellent work.

I end by congratulating Circle as well as, once again, congratulating Aileen Campbell.

18:09

Hugh O'Donnell (Central Scotland) (LD): Like other speakers, I congratulate Aileen Campbell on bringing this particularly important issue to the chamber for this evening's debate.

It is clear from members' contributions that crime impacts on a wider section of society than simply the victim and the criminal. Speaker after speaker has indicated clearly the ill-considered way in which young people—children who are innocent victims—are often forgotten about when the crimes of their parents are dealt with.

Like the previous Administration, this Government has been good at addressing the

issues, through initiatives such as what we call GIRFEC—getting it right for every child. To wider society, we have highlighted the need to look after the individual needs of children, but I do not think that our prison system and the way that we operate have been quite as focused on getting it right for every child as wider society has been. I seek assurances from the minister that that particular aspect of GIRFEC will be focused on much more closely than it currently is.

Like other speakers, including Margaret Mitchell and Malcolm Chisholm, I was on the Equal Opportunities Committee during the inquiry into female offenders in the criminal justice system. Some of the impacts on children from a parent being incarcerated are traumatic. The work of Circle, in particular, is successful in bringing young people together and helping them to rebond with parents who have been absent from the family home because of criminal activity.

As possibly the only member here who has worked in a prison—for a very short time—I have seen at first hand the damage caused to children by being separated from their parents: the anxiety and stress levels that young children present, even at the point of ending a visit. We need to find a way of minimising those impacts. As Karen Whitefield and others have said, the long-standing impact possibly does not surface right away, but the potential for long-term damage is huge.

The work of the children's charities and the children's commissioner in bringing those issues to the foreground is critical. They are a vital part of thinking for the long term. Although it might be expedient to modify someone's behaviour by threatening to suspend children's visits, the damage that that does to the child and what the child subsequently does in its life need to be considered closely—and I do not think that we do that widely enough.

Finally, I have an observation about the economic impact. As Elaine Smith said in her speech, it often happens—particularly in the case of female prisoners—that the house is lost and the family breaks down. There is an economic impact from that in terms of access to benefits, employment opportunities and educational opportunities. Those factors all have an impact on our wider economic prospects. If we intervene early and provide support mechanisms at an early enough stage—through the work of the charities and inputs from the Government, whether this one or the next—we can improve the prospects for young people and make a considerable difference to their longer journey.

18:14

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I join others in thanking Aileen Campbell for lodging the motion.

One of the most shocking statements at the Families Outside conference last November was from one of Scotland's most respected judges, Lord Cullen, who said that the impact of imprisonment on families is rarely raised in court. With 16,500 children affected by the imprisonment of at least one parent each and every year, the challenge to the Parliament is to ensure that the courts are provided with an assessment of the damage that can be inflicted on those children and whether it is a price worth paying for the imprisonment of the parent.

In my view, no social inquiry report should omit an assessment of that impact if children are involved—Anne McLaughlin made the same point. I illustrate that with an example from when I worked in Cornton Vale prison. A woman was admitted for seven days for fine default—it was a very old fine and she had straightened herself out some time previously—who had seven children who were taken into care. I ask members to imagine the effect on that family of that failure to take into account the effect on the children. The judiciary should be given such information and required to take into account the impact on the children of those who are sent to prison—those who are sent there on remand as well as those who are sentenced.

As I said in this afternoon's debate on the Criminal Justice and Licensing (Scotland) Bill, the number of people who are going to prison on remand is increasing year on year, and many of them are women. The increase in the number of women who are being sent to prison on remand is significant. At a time when the crime rate is falling and the numbers of short-term sentences and fine defaults are rising, why is there a rise in the number of people who are being remanded? To me, that is incomprehensible. It is not up to the minister to explain that, but other ministers should look at that issue carefully.

We need alternatives to custody. As the Equal Opportunities Committee has pointed out, in Scotland we still have only one 218 centre, which was referred to as a time-out centre in the report "A Better Way", which was published when I was the Deputy Minister for Justice. The centre has been deemed a success, so why is it not being rolled out? Why is a similar centre for men not being piloted? The centre treats drug problems and provides a community setting in which the families can be kept together. The same applies to treatment for alcohol problems. One of the community payback orders that can be imposed under new section 227A of the Criminal Procedure

(Scotland) Act 1995 requires treatment for alcohol problems, and I hope that we will get alcohol treatment and testing orders as well as drug treatment and testing orders. That will keep the families together.

In the short time that remains to me, I will address the issue of visitor centres. That is a different issue from visiting within prisons being stopped as a punishment when prisoners fail to comply with certain prison rules, which other members have spoken about. In my experience, the Scottish Prison Service seems to be doing all that it can to obstruct the development of external visitor centres. That is certainly the case at two prisons in my constituency: Cornton Vale and Glenochil. In Glenochil, there was a suitable building but, when the community applied for it to be used, it was promptly demolished as part of a redevelopment. At Cornton Vale, the former staff canteen is still there and the prison visitor committee and the community group both want to use it as a prison visitor centre for families, but that is not being pursued. SPS's current policy is not to create more of those facilities

"unless facilities within the prison inhibit the provision of support and information to visitors."

I am not talking about formal visits; I am talking about managing the families and their children—preparing them before visits and handling and managing them afterwards.

Such visitor centres are worth while. Research by Dr Nancy Loucks in Tayside in 2002 suggested that they play a key role in encouraging family ties. All new-build prisons in England are required to include such centres and most English prisons have them. Her Majesty's chief inspector of prisons supports their development, but the SPS does not seem to be getting the message that the centres are important. They should be outside the main prison, physically or administratively. They help to reduce tension, prepare visitors for their visit and improve liaison with the prison and understanding of the prison system. I therefore ask the minister to pass on to his colleagues the message that such centres should be allowed.

Visits that are made by those who are very young should be frequent, extensive and—when the family wants it—private. The centres should also be made available for play. It is not enough that children are allowed to remain with their parents for nine months after birth. If they are to remain attached to their mothers, the children need to have continued and frequent opportunities for meetings. I hope that the 28 recommendations of the review by the former children's commissioner, "Not Seen. Not Heard. Not Guilty.", will lead to some movement, although I am not sure that that movement will be enough.

I thank Aileen Campbell for securing the debate.

18:19

The Minister for Children and Early Years (Adam Ingram): I am pleased to be here to listen to my parliamentary colleagues, some of whom have significant expertise in and knowledge of the area, discussing the important issues that Scotland faces in meeting our commitment to improve outcomes for the children of prisoners. I have heard a number of interesting suggestions this evening and I undertake either to follow them up or to pass them on to colleagues.

I agree whole-heartedly with Aileen Campbell's assertion that the children of prisoners are often the innocent and forgotten victims of crime, and I congratulate her on raising the subject for debate today.

The report, which was produced by the children's commissioner and Families Outside, confirms what, I suspect, we know already, which is that the impact of a parent's imprisonment can cause huge sadness and emotional turmoil for children—a number of members have mentioned that it is akin to a bereavement in the family. The report also highlights that the rights and views of children very often appear to be forgotten or ignored. That is, frankly, unacceptable. However, there is already a great deal happening to address those issues. I will summarise some of the activities that are under way.

Aileen Campbell knows that the Scottish Government supported her proposed amendment to the Criminal Justice and Licensing (Scotland) Bill, which would have required courts to have regard to the parental circumstances of an offender when considering sentencing. I am sorry that the amendment was defeated, but we need to move on.

We are currently revising the guidance on social inquiry reports, which were mentioned by Aileen Campbell, Anne McLaughlin and Richard Simpson. The children's commissioner and Families Outside have provided input into the content of the revised guidance, which will stress the importance of identifying the impact of sentences on families and children.

At a more strategic level, we are working with our local partners to turn round Scotland's deeply entrenched and intergenerational cycles of poverty, poor health, poor educational outcomes, deprivation and unemployment—the circumstances and environments in which crime and criminality can thrive. If we can break those cycles, we can get at the very roots of the issues that we are discussing today and reduce the risks of future generations facing the same problems.

We are in this for the long haul, but our social policy frameworks on improving outcomes in the early years and tackling poverty and health inequalities are aimed firmly at moving from managing crises once they have happened to an agenda of prevention, early identification, early intervention and multi-agency support that is built around the needs of the individual. As Hugh O'Donnell said, those are the principles that underpin the getting it right for every child programme.

We launched the guide to implementing GIRFEC at the children's summit last week, which was chaired by Tam Baillie, the children's commissioner. The GIRFEC approach is aimed at meeting the needs of every child, regardless of the needs and circumstances of that child. The needs of children of prisoners are certainly part and parcel of that approach, and we must also ensure that there are stronger links between adult and children's services, so that no child falls between services and the full range of circumstances that affect the child's wellbeing are known of by all relevant service providers.

The rights of the child are central to the issues that we are discussing today. As many members will be aware, the Government has done much to embed the UN Convention on the Rights of the Child in our policies, to improve outcomes for all our children and young people.

The wellbeing of children of prisoners was selected as one of the key priority areas for action in "Do the Right Thing", the Scottish Government's response to the concluding observations from the UN Committee on the Rights of the Child. Our colleagues in the Scottish Prison Service are already delivering or developing a full range of actions to meet the needs of prisoners and children. Children and families groups have been established in almost every Scottish prison, and they are working to good-practice guidelines that were developed by the SPS children and families strategy group.

New SPS child protection policies and procedures will reflect the principles of the UN Convention on the Rights of the Child and GIRFEC.

Malcolm Chisholm mentioned the need for assessment of the impact of parental imprisonment on children's rights. SPS has started to use just such an assessment tool. SPS also funds the Families Outside helpline and continues to work alongside local authorities and other partners to ensure that the impact of parental imprisonment is minimised as far as possible. The Scottish Government provides about £133,000 per annum to support Families Outside's running costs.

There are certainly shared concerns and a shared wish by all those who are involved in supporting children and families to improve the lives and emotional wellbeing of children who have a parent in prison. The report by the commissioner and Families Outside provides more evidence to show just how much damage can be caused to a child and must give us all further impetus to do more.

I agree with Aileen Campbell's view, as expressed in her motion, that our work with the SPS and other partners must be done on a cross-party basis, and I hope that what we do in the Parliament will move on into the next session as well. Children's needs must be our collective focal point. From what I heard in the debate, I know that members recognise that and support us in this essential work.

Meeting closed at 18:26.

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