The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Wednesday 27 October 2010

Session 3

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Wednesday 27 October 2010

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Scottish Parliament

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

Time for Reflection

The Presiding Officer (Alex Fergusson): Good afternoon. Our first item of business is time for reflection. Our time for reflection leader today is Laura Hemmati, a former member of the Scottish Interfaith Youth Committee, who has travelled from Brussels to be with us.

Laura Hemmati (Former Member, Scottish Interfaith Youth Committee, Brussels): Good afternoon, Presiding Officer and members of the Scottish Parliament.

I would like to talk to you today about empowerment—the need to empower neighbourhoods, children and young people in Scotland and beyond.

We live in an age of contradictions, in which our neighbours are fast becoming strangers. It is an age in which we are more likely to turn a blind eye and keep to ourselves than to engage with the community around us. The consequences of such trends are graver for the future of our children and young people than for any other part of society, as suspicion and indifference not only fuel the spread of prejudice, but have the most disturbing capacity to extinguish a social conscience within our young people.

Young teenagers, in particular, are all too often written off by their neighbourhoods as problematic and lacking in respect when, in reality, such young people are unrivalled in their

"acute sense of justice, ... eagerness to learn"

and their

"desire to contribute to ... a better world."

Neighbourhoods must not be left to the paralysis of apathy and anonymity, but must be empowered by their leaders and encouraged to come together in starting their own innovative and sustainable projects for social integration.

Youth and voluntary work, after-school initiatives, youth groups, environmental projects, local sports clubs and Sunday schools are some of the countless activities that create the heartbeat of a community and give young people of all backgrounds ownership over their own development, the power of expression, moral clarity, skills for service and the opportunity to forge lasting friendships.

Young people are ready to make a contribution to the progressive development of their communities, but they need to be afforded the necessary tools and support mechanisms to use their real potential as part of a vital, spiritual learning process that occurs outside formal education, just as those members of the community who take pains to set up activities that engage and motivate our youth must also be acknowledged, valued and supported.

Never has the need to transform how we guide and assist our young people been more urgent than now. Nurturing a new culture of grass-roots youth initiatives at the neighbourhood level is, indeed, the surest way to ensure that future generations of young people will come to realise the benefits of contributing to the betterment of their society and to its unity. It is the surest way to ensure that young people will become facilitators of their own wellbeing and be confident in their ability to bring about change. This is a kind of education with

"the heaviest responsibilities and the most subtle influences",

for which the entire community is responsible and which it must come together to accomplish.

Business Motion

14:04

The Presiding Officer (Alex Fergusson): The next item of business is consideration of business motion S3M-7274, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a revised business programme for this week.

Motion moved,

That the Parliament agrees—

(a) the following revision to the programme of business for Wednesday 27 October 2010—

delete

followed by	SPCB Question Time
followed by	Ministerial Statement: Literacy Action Plan
followed by	Health and Sport Committee Debate: Report on out-of-hours healthcare provision in rural areas
followed by	Business Motion
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business

and insert

followed by	Debate on a Government Motion to treat the proposed Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill as an Emergency Bill
followed by	Stage 1 Debate: proposed Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill
followed by	Financial Resolution: proposed Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill
3.20 pm	SPCB Question Time
followed by	Ministerial Statement: Literacy Action Plan
followed by	Standards, Procedures and Public Appointments Committee Debate: Report on Draft Revised Code of Practice for Ministerial Appointments to Public Bodies in Scotland
followed by	Parliamentary Bureau Motions
followed by	Committee of the Whole Parliament: Stage 2 Proceedings: proposed Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill
followed by	Parliamentary Bureau Motions
followed by	Stage 3 Debate: proposed Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill
followed by	Business Motion
followed by	Parliamentary Bureau Motions
6.00 pm	Decision Time
followed by	Members' Business

(b) the following revision to the programme of business for Thursday 28 October 2010—

delete

followed by	Standards, Procedures and Public Appointments Committee Debate: Report on Draft Revised Code of Practice for Ministerial Appointments to Public Bodies in Scotland

and insert

followed by	Ministerial Statement: Economic and Social Impact of the Strategic Defence and Security Review—[*Bruce Crawford.*]

Motion agreed to.

Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill (Emergency Bill)

The Presiding Officer (Alex Fergusson): The next item of business is consideration of motion S3M-7266, in the name of Kenny MacAskill, to treat the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill as an emergency bill.

14:05

The Cabinet Secretary for Justice (Kenny MacAskill): I propose that the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill be considered under the emergency legislation procedure. If Parliament allows the bill to be dealt with under that procedure, I will explain the background in more detail in the stage 1 debate. For now, I will outline why the bill should be handled under that exceptional procedure.

The need for the bill stems from the judgment of the United Kingdom Supreme Court in the case of Cadder v HMA, issued yesterday, which decided that the practice of police interviewing detained persons in a police station without allowing them access to legal advice is contrary to the European convention on human rights and therefore Scots law. That overturned decades of Scots law and overruled the decision of the highest criminal court of appeal here in Scotland just last year. We did not choose this situation, but we are required to address it.

There are three main reasons why I believe the legislation needs to be passed under emergency procedure. First, the judgment affects current practice in detaining suspects. That is at the heart of our justice system, with tens of thousands of detentions taking place every year. The ruling of the UK Supreme Court, notwithstanding the decision of our High Court of criminal appeal in 2009, means that, as we stand here, our statute is incompatible with the ECHR in a key part of the justice system. In my view, we must act immediately to correct that. Although the Lord Advocate's guidance provides some protection in individual cases, it is a poor substitute for a specific and identifiable right in statute.

Robert Brown (Glasgow) (LD): The cabinet secretary seeks to justify emergency legislation going through in one day with no scrutiny other than what we will have today. Will he make it clear exactly what difference there would be in leaving the Lord Advocate's guidelines in place until we have proper scrutiny of legislation, rather than concluding matters today? Would he have any additional cases to worry about that he does not have in the first place?

Kenny MacAskill: I think that we might do. Clearly, the police operate under section 14 of the Criminal Procedure (Scotland) Act 1995. As the member knows, we are not entitled in Scotland to have legislation that is contrary to the ECHR. Accordingly, there is a possibility of challenges that could strike down the basis on which the police operate. We are in a situation in which 1,000 or so people are detained every week. Without new legislation, there is the danger that matters could be struck down and that we could be left in a position in which we have no right of detention, so I believe that it is essential.

Robert Brown: I am sorry to press the point, but it is important. The Lord Advocate's guidelines operate at the moment. Is the cabinet secretary suggesting that the guidelines are not being followed by police officers? If he is not suggesting that, what is the problem?

Kenny MacAskill: Of course the Lord Advocate's guidelines are followed: the police accept the instructions and act as directed by our senior law officer. The law that stands in Scotland is section 14 of the Criminal Procedure (Scotland) Act 1995. The police are correctly taking actions on the basis of the wise and sound counsel given by the Lord Advocate, but at present we face the possibility of detention being struck down. In fact, we could find ourselves in the position of not having the power to detain, full stop. That would be a retrograde step that would damage the rights of those who are the victims of crime, never mind the safety of our communities.

Patrick Harvie (Glasgow) (Green): I want to develop Robert Brown's point. Is the cabinet secretary confident that the interim practice that has been in place while the court case has been going on is sufficient to ensure that no further challenges could be brought on the same terms? If the current arrangements are sufficient to have prevented further challenges, they are sufficient to prevent them for even just a few weeks longer, which would give us time for at least some cursory scrutiny.

Kenny MacAskill: There are two matters to consider. First, the guidelines were introduced on an assumption of what the decision that became available only at 9.45 yesterday may or may not have been. They were wise actions taken by the Lord Advocate to protect the nature of convictions in cases that are outstanding. They are guidelines only: they are not the statute that currently stands, which is why we are required to act.

Secondly, are we certain that we will not be subject to challenges? If only that were the case. Because of the lack of protection that this

Government and Parliament have, we face challenges on each and every thing. It is feasible to envisage a situation in which the bill, if it is passed, will be the subject of challenge yet again by a small industry out there that seems to think that it can take public funds, in many instances, and go to the Supreme Court, bypassing the High Court of appeal in Scotland. There is a clear necessity to take action.

The creation of a right of access to advice from a solicitor cannot stand on its own. If we are to create such a right, we must also act immediately to put in place the means to give effect to that right and to maintain an effective system of police investigation. I therefore believe that it is necessary to act immediately to revise the maximum period of detention and to provide powers to adjust legal aid to make that work.

Finally, the bill contains provisions to ensure that we give effect to the court's intention that closed cases are not reopened.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Will the minister take an intervention?

The Presiding Officer: No, I am sorry but we do not have time.

Kenny MacAskill: Certainty and finality are important principles. It is vital that we move immediately to apply time limits to certain types of summary appeals and ensure that the Scottish Criminal Cases Review Commission takes account of those principles. Passing the bill today will show that the Parliament is committed to maintaining the ECHR compatibility of Scots law; that we intend to give practical effect to that right; and that we want to maintain an effective, balanced system of police investigation. It will also signal our intention to bring certainty to concluded cases as quickly as possible, which is very much in line with the spirit of the judgment.

The bill is longer and more complex than emergency legislation that has been passed previously in the Parliament; however, for the reasons above, I believe that the bill must be seen as a package, all the elements of which are critical to maintaining an effective system of justice in Scotland and must be included.

For those members who are conscious of the adage of legislating at haste and repenting at leisure, I offer the reassurance that, although we are required to act as a result of a UK Supreme Court decision, all these matters will be subject to further consideration in Lord Carloway's review of law and practice, which will start very soon.

I move,

That the Parliament agrees that the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill be treated as an Emergency Bill.

Motion agreed to.

Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill: Stage 1

The Presiding Officer (Alex Fergusson): The next item of business is a debate on motion S3M-7267, in the name of Kenny MacAskill, on the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill. I warn members that time is very limited and that they should stick to the times that they are given.

14:13

The Cabinet Secretary for Justice (Kenny MacAskill): Yesterday, the United Kingdom Supreme Court issued its decision in the case of Cadder v Her Majesty's Advocate. The case considered the practice in Scotland of the police interviewing detained persons in a police station without ensuring that they have had access to legal advice. The Supreme Court decided that that practice was contrary to the European convention on human rights, changing decades of law in Scotland and overturning an earlier Scottish appeal court ruling by our highest court of criminal appeal just last year. The idiosyncrasies of the Scotland Act 1998 mean that Scotland is uniquely susceptible to the effect of ECHR challenges in criminal cases. Normally, in criminal matters, the Scottish court of appeal has the final say. However, this route of raising devolution issues is undermining its final authority. I will make clear to the UK Government our view that the centuries-old supremacy of the High Court as the final court of appeal in criminal matters must be restored.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): In Parliament, we are always to pass laws on the basis of evidence that is presented to Parliament. Could the minister make any evidence at all available to Parliament to support the view that there is a requirement to increase the period of people's detention in police stations? I am afraid that I cannot see that any evidence for that has been made available.

Kenny MacAskill: I am happy to advise that the Lord Advocate is happy to discuss such matters with any member in relation to any requirements for stage 2. If Mr Rumbles wishes, the Lord Advocate, as the senior law officer and prosecutor in Scotland, will explain why the Crown holds that view. Equally, we predicate our view on information from the Association of Chief Police Officers in Scotland. I would think that, if Mr Rumbles spoke to any police officer in his constituency, he would be advised that the scales of justice require to be balanced. When they are changed in one direction, in the interests of the rights of the accused, they require to be balanced in the other direction, in the interests of the rest of our community.

Robert Brown (Glasgow) (LD): On the issue of balance, can the minister advise us who has been consulted by the Scottish Government? For example, have the Scottish Human Rights Commission and the Glasgow Bar Association been consulted? Apart from the prosecution interest, in the form of the Law Society of Scotland, which is the only body that is mentioned in the document, has anyone else been consulted?

Kenny MacAskill: There have been many meetings throughout the preparation period to discuss the difficulties that we knew would come, details of which were made available to us only at 9.45 yesterday. Obviously, those meetings included the Law Society, which represents the bulk of solicitors in Scotland. Also included were representatives from ACPOS, the Scottish Police Services Authority, the Crown and so on. I cannot confirm whether any of the other organisations that have been mentioned were contacted but, as I said previously, we cast our net widely to ensure that those who are part of the legal family—the court, the prosecution, the police and the defence—were all taken into account and had their views brought in.

We need to respond to the implications of the decision. I have announced my plans to establish a judicially led review of the law and criminal procedure in Scotland. However, we cannot wait for that to conclude. We need to act now.

The bill has four main aims. It will enshrine in statute a right to legal advice for suspects who are detained and questioned by the police. It will give us the necessary powers to ensure adequate provision of state-funded legal advice to suspects. It will extend the existing maximum six-hour period for detention to 12 hours, with the possibility of further extension to 24 hours, along with appropriate safeguards. Finally, it will make provision in relation to cases that occurred prior to the Cadder decision.

The provisions on legal advice create a right for suspects who have been detained to have access to advice from a solicitor before and during questioning by the police. That is necessary in order to bring statute into line with the Supreme Court judgment.

Alison McInnes (North East Scotland) (LD): Does the cabinet secretary intend children to be treated in the same way as adults?

Kenny MacAskill: Children have never been treated in the same way as adults, and that will continue to be the case. Children are viewed in a special category as are, for example, those with learning difficulties. Clearly, they will be dealt with

differently. Such matters are dealt with in the ACPOS and Crown guidelines. Children are dealt with according to their nature and are subject to the provisions around detention periods. However, they would usually be dealt with in the presence of a responsible adult, and that will continue.

The bill makes provision to ensure that we have the necessary powers to make the right to legal advice for suspects effective in practice. Section 2 will therefore amend the Legal Aid (Scotland) Act 1986 to give the Scottish ministers a regulation-making power to allow state-funded legal advice to be made available to suspects in certain circumstances without reference to the financial eligibility criteria.

Section 3 relates to the detention period. The six-hour maximum has been in place since 1980. Advice from ACPOS, the SPSA and the Crown is that the establishment of an automatic right to consult a solicitor places intolerable strain upon the six-hour limit. We believe that an immediate extension of the limit to 12 hours, with the possibility of extension to 24 hours, is essential to maintaining the effectiveness of police investigations. It will also assist with the practicalities of giving access, particularly in remote and rural locations.

Bill Butler (Glasgow Anniesland) (Lab): The cabinet secretary referred earlier to safeguards that are built into the provision for the possible extension to 24 hours of the detention period. What are those safeguards?

Kenny MacAskill: Those safeguards are that the investigating officer will not be present; that the provision will be used only in relation to a serious crime; and that the officer who is present will be of an inspector grade or higher and will not have been involved in the case. Those are appropriate safeguards and they mirror those that are in place south of the border. As I said earlier, the parties' business managers and justice spokespeople will have opportunities to discuss the guidance with ACPOS as it is produced.

To repeat, an extension to 24 hours will happen only in exceptional cases and only when a senior police officer confirms that it is needed. Justice requires checks and balances.

The final sections of the bill relate to appeals. The Supreme Court emphasises the importance of finality and legal certainty in concluded criminal cases, and the judgment takes us a long way towards that objective by ruling out statutory appeals on these grounds in concluded cases where time limits have elapsed.

Christine Grahame (South of Scotland) (SNP): On the question of finality and certainty, I have concerns about section 7. It appears to undermine the Scottish Criminal Cases Review Commission's role and purpose by introducing what seems to be something new, which is

"the need for finality and certainty in the determination of criminal proceedings".

That can apply to many cases. Section 7 will also allow the High Court, when it sits as an appeal court, to reject a reference from the SCCRC.

Kenny MacAskill: Lord Hope and Lord Rodger referred to those matters, and advised that they should be dealt with so that there was not a back route by which people would seek to bring through the SCCRC cases of some vintage that would not be brought in through the front door of the High Court of appeal.

That is appropriate where an appeal was made timeously or the relevant point was made, but we must balance matters. According to the Crown Office, there could be up to 120 appeals outstanding among the live cases that are currently affected, so we need to ensure that we protect the validity of those judgments and provide some certainty.

The bill applies the principle of finality through the remaining common-law appeal route and to consideration of cases by the SCCRC. That is why we have introduced section 7, which relates to the issues to which Lord Hope and Lord Rodger have referred. It makes clear that finality and certainty are essential for legal judgments, but it does not preclude the possibility of other factors being taken into account: it simply requires the SCCRC to take that factor—along with others—into account to decide whether a case should proceed through that body.

I urge Parliament to endorse that approach. We must ensure that we have the requisite checks and balances; when the scales of justice are tilted, it is necessary that we balance them.

I move,

That the Parliament agrees to the general principles of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill.

14:22

Richard Baker (North East Scotland) (Lab): We on the Labour side of the chamber are keenly aware of the momentous nature of the United Kingdom Supreme Court ruling with regard to our justice system. Today we are debating the issues that require our urgent action and attention, but the wider ramifications for Scots law will need much greater deliberation in the Parliament at a later date.

We can debate now whether the situation in which we find ourselves is fair to our legal system, of which we are rightly proud. We can debate how

we got here, and whether ministers should have done more at the time of the European Court ruling in the Salduz case. However, we agree that today we must deal with the actions that we must take urgently and rightly to minimise the judgment's effect on our courts and on the victims of crime.

There is no doubt that the fact that the ruling is not, broadly speaking, retrospective in effect means that we will be dealing with fewer cases than may have been feared. However, there will still be cases that involve very serious offences, and that is why we recognise the need to act.

We have seen the comments from the chair of the Equality and Human Rights Commission that counsel against emergency legislation, and the solicitor advocate John Scott has made the point that legislation that is made in haste is often repented at leisure. As members have said, this is not an easy issue; we agree.

I do not believe that any member views as desirable the fact that we have to consider emergency legislation. However, while we are always ready to provide opposition to Government measures when it is the right thing to do, we believe that in this situation it is responsible to accept the cabinet secretary's argument for emergency legislation and the broader direction that he has decided to take as a result of the judgment.

The more I examine the detail of the judgment, the more I accept the case that the cabinet secretary has made for the legislation. Although I understand the restrictions that emergency legislation necessarily places on debate, some of my concerns would have been afforded reassurance by more dialogue and more notice of the detail of some proposals. However, I understand that we are where we are.

Mike Rumbles: Does the member share the concern that I have expressed? Since July, we have been operating a system whereby the police service has had six hours in which to interview suspects. Is he aware of any evidence that has been produced to us in the Parliament today that shows that that has been a problem and that the time should be increased at the police's request to 24 hours?

Richard Baker: I am simply aware of the advice that ACPOS has given. I would have liked us to have had more debate and dialogue on the issue, but there are practical considerations about the time for which people can be detained if they are to access legal representation. I am sure that we will debate some of those issues during today's debate.

I am persuaded that we should act quickly to change our laws on access to legal representation during detention and, as a consequence, the time limits for detention. I do not believe that we should continue with our laws if they have been deemed to be incompatible with European law. I also believe that it is important to act quickly to legislate to include the need for finality and certainty in the factors that the SCCRC must consider when it deals with applications, as I understand that that will have a material impact on how many appeals can go ahead. I accept the case that the cabinet secretary made in his response to Christine Grahame's question.

However, that is not to say that we should not debate the issues in the limited time that is afforded to us today. Specifically, we question whether there should not be greater debate on whether it should be possible for an application to extend the period of detention from 12 hours to 24 hours to be determined by a police officer of the rank of inspector or above. If such extensions are to be made only in exceptional circumstances, perhaps the role would be more appropriately performed by a sheriff. I understand from the legislation team that we will be able to debate that proposal through an amendment from Robert Brown. I ask the cabinet secretary to give the matter serious consideration and provide a response during the debate.

The financial memorandum suggests that the costs to the public purse might be higher than was previously indicated, not only because of the cost of legal aid but because the provision of the necessary police staff will cost the police some £20 million. My colleague James Kelly will raise more questions on that.

I mentioned the concerns that many have understandably expressed about the emergency legislation. It is important that we allay some of those fears by ensuring that the Parliament has an opportunity in the near future to consider these important issues in the normal detail and timescale that we afford to legislation.

There are, of course, far broader implications for Scots law, particularly with regard to our long-established laws on corroboration. In that context, we welcome the cabinet secretary's request for Lord Carloway to undertake his review.

Many will argue that we should not be in a position where we have to review the operation of such key tenets of our well-established legal system. However, we must recognise that, although our own court of appeal made its view on the matter clear, the UK Supreme Court, including the Scottish senators, had to reflect on what the European court said on the matter. The ruling on Salduz is already affecting other European jurisdictions such as Belgium, France, the Netherlands and Ireland. In any circumstance, we cannot be immune to that. Unless people are

suggesting that we opt out of the ECHR, or out of Europe entirely, this is where we were always going to be. I do not dispute that it would be good to see an ECHR issue discussed that was not about the rights of the offender but more about the rights of victims, but the idea of having human rights guaranteed throughout Europe is important.

Those broad debates are for the future. We have important issues to resolve today, and our approach is that the Parliament should work together to do that.

14:28

John Lamont (Roxburgh and Berwickshire) (Con): The Supreme Court's decision is of importance to Scotland's criminal law—of that there can be little doubt. However, it would be wrong to suggest that it was the decision of some foreign court that was imposing its will on Scottish law. I detected more than a hint of that in some of the comments from the Cabinet Secretary for Justice during his various media interviews in the past 24 hours. I do not remember the Scottish National Party raising any of those concerns when the Scotland Act 1998 or the Human Rights Act 1998 were passing through Parliament. We should also remember that the leading judgments were given by Scottish law lords.

I would like to deal with two points in my speech. The first is the suggestion by some in the legal profession that the Supreme Court's decision is itself not compliant with the human rights convention in so far as it does not apply to all cases, even those that are subject to final determination.

In my view, that argument flies in the face of the long-established principle of the rule of law, the basic intuition of which is that the law must be capable of guiding those who are subject to it. It must provide certainty and predictability; after all, we must know what the law is if we are to plan our lives and organise our affairs, and that applies as much to public officials as to private individuals. In other words, judicial decisions must enable public officials to administer the criminal law and requiring all judicial decisions in criminal matters to apply to all prior decisions would be a radical departure from the simple truth that lies at the heart of the rule of law.

That truth is captured in paragraph 103 of Lord Rodger's opinion, in which he cites Chief Justice Murray's judgment in the Supreme Court of Ireland's decision in the Arbour Hill prison case. This useful analysis illustrates not only how the law can effectively operate retrospectively but, more important, how new judgments can affect previously closed cases. Chief Justice Murray said:

"No one has ever suggested that every time there is a judicial adjudication clarifying or interpreting the law in a particular manner which could have had some bearing on previous and finally decided cases, civil or criminal, that such cases be reopened or the decisions set aside."

The reason that it has not been suggested is that no legal system comprehends such an absolute or complete retroactive effect of judicial decisions. To do so would render a legal system uncertain, incoherent and dysfunctional, the consequences of which would cause widespread injustices. On that basis, I do not accept the view that the judgment itself should be retrospective in terms of reopening previous cases, and I hope that the legal profession does not use it as the basis for future challenges.

Of more concern, however, is the SCCRC's position. Does it have the power to reopen closed cases, as is perhaps suggested in the Supreme Court judgment? In paragraph 62 of the Cadder judgment, Lord Hope notes that it is for the commission to

"make up its own mind, if it is asked to do so, as to whether it would be in the public interest for ... cases"

already subject to final determination

"to be referred to the High Court."

Furthermore, I note that under section 194C of the Criminal Procedure (Scotland) Act 1995, as amended, the commission

"may refer a case to the High Court"

where it believes

"that a miscarriage of justice"

has

"occurred"

and that

"it is in the interests of justice that a reference should be made".

Given my earlier argument about the need of retrospective judicial decisions in a common law system, it is not clear whether there is anything amounting to a "miscarriage of justice" in cases that are already subject to a final determination. In any event, it would surely not be

"in the interests of justice"

for the commission to refer any such cases. Ultimately, there might be concerns about chilling the courts in that, if the commission referred cases after the Cadder judgment, future courts might be reluctant to make decisions on criminal matters that would involve important changes to the law in case such a move led to a flood of cases under the SCCRC process.

Christine Grahame: Will the member give way?

The Presiding Officer: No. Mr Lamont is closing.

John Lamont: It is critical that we legislate as far as possible to limit the commission's ability to reopen decided cases. Although we certainly hope that the bill achieves that aim, I am not sure that it does. Indeed, I know that the Law Society of Scotland has a number of concerns in that respect. I hope that my concerns do not prove to be legitimate, but only time will tell.

14:33

Robert Brown (Glasgow) (LD): Now that the terms of the judgment are available, it is clear that the decision of the United Kingdom Supreme Court in Peter Cadder v HMA is neither an isolated spasm of eccentricity from judges unversed in Scots law nor an overreaction to a ruling in the Salduz case by the Grand Chamber of the European Court, on which it was based. In fact, the two lead judgments in the UK Supreme Court were given in uncompromising terms by Lord Hope and Lord Rodger, Scottish judges of significant calibre on the Supreme Court, and follow a substantial body of jurisprudence that has required changes to practice in a considerable number of European countries, leaving Scotland increasingly isolated.

As a result, the chamber should take issue with—and take with a large pinch of salt—not only the indignant claims that we have heard in the past 24 hours that the European Court of Human Rights is unwarrantably trampling over our rights in this country but the strident claims that in some way the integrity of the Scottish criminal justice system is being impugned. Such claims are nonsense. It is absolutely right that Scots law be judged by the same standards of justice, procedure and respect for human rights that apply in other European countries.

Liberal Democrats were ready to back action to close off a flood of retrospective appeals, but the judgment rightly does not have retrospective effect. Live cases could not be affected by the legislation, of course, and the interim action that the Lord Advocate took with the agreement of the Scottish Government in July was timely and appropriate to halt problems with future cases.

I have listened with care to the cabinet secretary and am grateful to him for keeping Opposition parties briefed over the summer, but I am astonished that no consultation has taken place with the Scottish Human Rights Commission on one of the Parliament's biggest human rights issues. The Scottish Human Rights Commission was set up by the Parliament with exactly the sort of situation that we discussing in mind. Its advice would have been the same as the view of the Law Society of Scotland: that there is no problem with the bill undergoing a proper process of development and consultation. Such discussion as has taken place has been highly unbalanced and has been primarily with the police and prosecution interests. That is an extraordinary fact about a basic civil liberty issue.

I have come to the view that the bill is ill considered, not justified by evidence and unsuitable for emergency legislation. The explanatory notes add nothing to the sum of human knowledge, and the policy memorandum is extraordinarily tentative on the evidence base for extending the six-hour detention period. It refers to "limited empirical statistical evidence", securing the attendance of responsible adults in juvenile cases—that is adduced as an argument, but is, in fact, irrelevant—and additional options for police investigation by putting forensic evidence to the suspect. All those issues may be valid, but they are no justification whatever for emergency legislation.

Section 1 gives a detained suspect a statutory right to have access to a solicitor, but that right is watered down by defining such access not as a private interview; rather, the right is satisfied by other means such as a telephone call, perhaps even an e-mail exchange, "as may be appropriate". Appropriate to whom? Subsection (8) of proposed new section 15A of the Criminal Procedure (Scotland) Act 1995 then takes that right away entirely by stipulating that the police can start the interview and questioning anyway with no solicitor present if that is necessary to the interests of the investigation. It seems to me to be questionable at the very least whether that is compliant with the ECHR and the judgment.

Section 3 allows the extension of the period of detention from six to 12 or 24 hours. It is not obvious to me that the net result is an extension of civil liberties, but the extension manifestly requires to be consulted on and justified. Six hours should remain the normal maximum, and the extension to 24 hours should be allowed only with the approval of an independent judicial official, such as a sheriff or magistrate. Richard Baker touched on that.

In summary, Liberal Democrats are unpersuaded of the need for emergency legislation and regard the bill as unnecessary in part and meaningless in part. We regard the need for the extension of the detention period as unproven at best, and wider issues are tacked on by the appeal procedures in sections 5 and 6. Christine Grahame touched on that. I will lodge amendments to tackle the most obvious deficiencies, but the Liberal Democrats will oppose the bill at stage 3 if it is not substantially changed to meet our concerns.

The bill raises vital issues relating to the proper balance between the rights of a suspect and the interests of the public in convicting people who have committed serious criminal acts. I am not convinced that it is ECHR compliant. Those serious matters need proper scrutiny by the Parliament in the normal way.

14:38

Stewart Maxwell (West of Scotland) (SNP): Today, we are in a predicament that has been forced on us by the UK Supreme Court, which is a folly built by Labour and supported by other unionist parties. Creating the Supreme Court took a historical anomaly whereby civil appeal cases were heard in the House of Lords and hard-wired it into the system. There should be no UK Supreme Court, as we simply do not have a single legal system within the UK. We warned those who supported its creation that it would result in a diminution in the independence of Scots law at the very least, and that is what we are now seeing.

Bill Butler: I am slightly concerned by the tone of Mr Maxwell's opening remarks. Is he saying that the Scottish National Party is now against the ECHR?

Stewart Maxwell: Mr Butler must have misheard me. I said that we are against the UK Supreme Court. We were against it when it was created: we have been against it from the beginning and we are against it now. It is Labour's folly.

At the point of its creation, we were told that the Supreme Court would deal only with civil cases, yet it is dealing with an issue in a criminal case. The promises that were made about how it would act have been broken. It is time that we rid ourselves of the so-called Supreme Court and returned Scots law to where it belongs: Scotland.

In the past 24 hours, I have heard various reports about the matter, insinuating that, because our law is different from that of England, we are obviously in the wrong. That notion is simply mistaken.

Detention in Scotland is for a maximum of six hours. In England, it is 24 hours and can be extended to 36 hours or even 72 hours. In Scotland, a person can remain silent during detention, with no inference whatever being drawn from that silence. That is not the case in England. In Scotland, all interviews are recorded and, of course, there is the requirement for corroboration. The system is different from that in England and has served us well for decades. Although it is not perfect, it has provided a balance between the various parties' rights.

David McLetchie (Edinburgh Pentlands) (Con): Will the member give way?

Stewart Maxwell: Sorry, but I do not have time.

In October 2009, seven appellate judges in the High Court of Justiciary in Scotland unanimously ruled that Scots law and practice provide adequate safeguards to protect the interests of suspects during detention. Among the seven judges were the two most senior judges in Scotland—the Lord Justice General and the Lord Justice Clerk. I have more confidence in the decision of seven judges with a lifetime of experience in the law of Scotland than I have in a decision of the UK Supreme Court sitting in London with a majority of English judges.

On that point about English judges ruling on issues of Scots law, I remind members of what the Lib Dems told us back in 2004, when the Supreme Court was being created. Margaret Smith stated:

> "if the supreme court is considering a peculiarly Scottish case, there is no question of Scottish judges being in the minority."—[*Official Report*, 29 January 2004; c 5300.]

That has been proved to be completely wrong and Margaret Smith should withdraw that wholly inaccurate statement.

Underlying all the difficulties is the relationship between the ECHR and Scottish legislation. If there is an ECHR issue in a case, that should be taken to the European Court of Human Rights to rule on, as happens in any other jurisdiction. If that court rules against our procedures, that should be a matter for the Parliament to deal with, after due consideration. However, we are in the invidious position of having to suffer at the hands of the UK Supreme Court while we have it embedded into our rules that all legislation must be ECHR compliant. That is very different from the situation of every other country and it has the effect of leaving us extremely vulnerable to such cases and to the consequences that follow.

That is not to be against the ECHR; it is to be against the way in which the convention is implemented particularly and peculiarly in Scotland. As things stand, any ruling against us on ECHR grounds has the effect of making our legislation null and void—it is as if it never existed. That is not how the system operates elsewhere and it is not how it should operate in Scotland.

14:42

Bill Butler (Glasgow Anniesland) (Lab): I regret the tenor of Mr Maxwell's speech, which was unhelpful. We should be considering the issue in terms of the rule of law and not through any nationalistic prism.

Brian Adam (Aberdeen North) (SNP): Will the member give way?

Bill Butler: No, thank you.

Instances of emergency legislation such as the proposed legislation that is before the Parliament are mercifully rare. Given the unicameral nature of this legislature, it is a necessary prerequisite, in all but the most exceptional of circumstances, that legislation should undergo exhaustive examination in committee after a period of extensive public consultation. That is correct and entirely sensible. However, there is little doubt that today is one of those exceptional occasions when circumstances dictate that the Parliament must act swiftly but try to act sensibly in a short space of time.

The UK Supreme Court has overturned a unanimous decision of seven judges sitting in the Scottish appeal court last October. However, two of the senior judges in the Supreme Court were members of the Scottish senate. We should consider the situation as we have it today.

The First Minister (Alex Salmond) *rose—*

Bill Butler: No, thank you.

The Cadder judgment has to be dealt with, which means that we must act quickly. On that point, I agree with the cabinet secretary. However, I wonder why, when the verdict in the Salduz v Turkey case was made known in 2008, the Government did not use the two years following that to consult the public and to exhaust the parliamentary procedure so that we could have a sensible and timely examination of the serious matters that are before the Parliament today.

Stewart Maxwell *rose—*

Bill Butler: No, thank you.

Given the few hours that are available to us because of the emergency nature of the proposed legislation, it will be difficult to discharge that important duty to act sensibly, but we must try. In the course of the afternoon's business, we must test as far as is humanly possible the effectiveness of the proposals and try to ensure that they contain no unintended consequences.

We must try to remedy matters by way of the emergency legislation; there is no other way. Labour is willing to work with the Government to introduce appropriate reforms to deal with the serious issues that need to be addressed following yesterday's ruling. In particular, I see no reason why agreement cannot be reached on the provision that will introduce a right of access to legal advice before and during questioning in police detention. That is a most sensible provision that is surely worthy of support across the chamber. The provision of an enabling power to allow for the adjustment of legal aid eligibility rules for legal advice and assistance, which will allow new arrangements to be designed for the provision of legal advice at police stations, is an aspect of the bill that seems both necessary and rational and is worthy of support.

However, I am not convinced of the need for the provision that would allow a person to be detained for a further 12 hours, making 24 hours in total, on the say-so of a senior police officer, where necessary and proportionate. I am concerned that such an extension might be disproportionate, with insufficient checks and balances. Perhaps during today's proceedings the Government will offer some comfort on that aspect of the bill, and I will listen with interest to what ministers have to say on the matter. I hope that they can engage positively on the issue with parties across the chamber, especially with regard to the amendment that will be lodged by my Justice Committee colleague, Robert Brown.

14:46

Patrick Harvie (Glasgow) (Green): On one level, I welcome the eagerness to bring the law into compliance with the ECHR as soon as possible. However, I have concerns about the possible risks that we might run by introducing the bill as emergency legislation. I am also concerned that whenever we discuss human rights legislation, there is a general tendency for some people to view it as an inconvenience to be worked around rather than as an important principle in our society.

It is essential that people have a right to bring a challenge where they feel that human rights violations might have occurred. That is a mark of a civilised society. The cabinet secretary seems concerned that there is some kind of overactive human rights mischievousness going on among a number of lawyers. Even if that concern were valid and the challenge were not the exercise of a necessary right in a human rights-based system, it would only deepen my concern about the haste with which we are legislating. If we make mistakes in a piece of emergency legislation, we could be making law without consultation or considered scrutiny and we might run the risk of further challenges that could be avoided but for a few weeks or months of scrutiny.

On the wider concern about how human rights are considered, and in reply to Stewart Maxwell in particular, we should be proud in Scotland and as members of the Scottish Parliament that Scottish Parliament legislation is not permitted to violate the ECHR—that is the correct relationship between this Parliament and the law. I was surprised that Stewart Maxwell seemed to imply that we should do things the way that Westminster does them, when Westminster so clearly has it wrong.

The First Minister: I will explain briefly why Scotland is in a difficult position. In a normal country, when the Supreme Court and, in our case, the Court of Session—

The Presiding Officer: First Minister, I am sorry, but I must ask you to speak into the microphone.

The First Minister: If the Court of Session ruled against a person, they would have recourse to the Strasbourg court and we would be able to argue our case in front of that court. The reason why Scotland is uniquely vulnerable is that the system in Scotland does not even allow us the right to argue the case in front of the court in whose name we are required to make the changes to Scots law.

Patrick Harvie: That only makes me wonder further why the criticism seems to be directed at the Supreme Court, but I will pass over that aspect.

An argument has been made about balance. The cabinet secretary's idea is that, in bringing the law into compliance with the ECHR, we have to do so in a way that offers balance. I see no clear reason why time limits need to be extended in response to the recent case. The cabinet secretary seemed to imply that whatever change is necessary for human rights reasons must, for purely perception-based reasons of balance, be countered by a quite separate change in the other direction.

Of course the Association of Chief Police Officers in Scotland says that the time limits ought to be extended. When the Scottish Parliament asks security consultants what we should do, they tell us to spend more money on security measures. When any of us ask a life insurance salesperson whether we should get more life insurance, they say yes. In the same way, if we ask the police whether there are circumstances in which longer time limits would be useful to them, they will say yes. However, that does not mean that it is the right thing to do.

There are wider questions of detail, which we do not have time to go into—that is part of the problem—including concerns about section 7. Even in older cases, there must be the possibility of challenge, as Parliament was reminded only yesterday.

If the bill is passed in its current form, we will run the risk not only of facing further challenges as a result of errors that we might be making but of having to go back and rewrite the whole thing again next year.

14:50

Dave Thompson (Highlands and Islands) (SNP): The Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill is a very important piece of legislation that we should not even be considering. Unfortunately, the UK Supreme Court did not respect the position and decision of the Scottish criminal appeal court, where seven senior and highly respected Scottish High Court judges, each with a strong grasp and deep understanding of Scottish law, ruled that Scots law pertaining to detention and questioning did not breach the European convention on human rights. That is the response to what Patrick Harvie said: our senior judges made a ruling that Scots law did not breach the ECHR. However, the UK Supreme Court chose to muscle in on our criminal law by using its power under civil law and the ECHR. Importantly, that crucial decision was taken by five Supreme Court judges, only two of whom have a background in Scots law. [*Interruption*.]

The Presiding Officer: Order. Mr Thompson, I would be grateful if you could address more directly the general principles of the bill, which is what we are supposed to be debating at this point.

Dave Thompson: We are dealing with the decision and the ECHR, but I will do that, Presiding Officer.

A court with limited Scottish representation has overruled a court consisting of very senior Scottish judges.

The UK Supreme Court was established in October 2009 to deal with civil matters, despite opposition from the SNP. We warned that it was irrational for a court without a majority of Scottish judges to decide on cases involving Scots law. We also pointed out that the practice of hearing Scots civil cases in the House of Lords was a historical anomaly and that that role should be repatriated to Scotland. What other legal jurisdiction allows its appeals to be heard in another jurisdiction?

Unfortunately, the previous Labour-led Administration failed utterly to stand up to Westminster and protect the independence of Scots law. Cathy Jamieson, the then Minister for Justice, said at the time:

"The proposal for the creation of a new supreme court for the UK does not impact on the integrity and independence of Scots law".

Unfortunately, she was wrong. Our warning that the UK Supreme Court was a threat to the integrity of Scots law has come to fruition. The complacency of Opposition parties has led us to this situation.

The Presiding Officer: Mr Thompson, could you come now to the general principles of the bill, please?

Dave Thompson: Okay.

Robert Brown mentioned the 12-hour limit. Does he know that in England, under the Lib Dems—where they are in government—the limit is 24 hours? Does he support that?

Mike Rumbles: This is Scotland.

Dave Thompson: Why is Robert Brown arguing against the 12-hour limit here, when the Lib Dems are in favour of a 24-hour limit south of the border?

The Scottish Human Rights Commission has claimed that this is no time for emergency legislation, but it fails to acknowledge that, in anticipation of the Supreme Court finding, the Scottish Government had already prepared emergency legislation that is intended to protect the victims of crime and minimise the possible number of appeals.

Indeed, for more than a year, the Scottish Government, the Crown Office and Procurator Fiscal Service, the Scottish Legal Aid Board and ACPOS have been working on the contingency plans. The Lord Advocate issued interim guidance to the police on 9 June, requiring them to offer detained suspects access to a solicitor before and during an interview in serious cases. That was rolled out to all cases on 8 July. The reality is that the SNP Government has been preparing for all possible decisions and, as a consequence, is ready to act immediately to protect the Scottish legal system and taxpayers alike.

It is ludicrous to suggest that the change should have been introduced a couple of years ago—we had to wait for the decision before we knew what we had to do.

David McLetchie: Will Dave Thompson give way?

The Presiding Officer: No. Dave Thompson must close now, please.

Dave Thompson: The case highlights dangers for the independence and integrity of Scots law.

14:55

Pauline McNeill (Glasgow Kelvin) (Lab): The Scottish Government has the Scottish Labour Party's full co-operation in examining the bill today, which is all the more reason why the cabinet secretary should be embarrassed by his back benchers' speeches. Stewart Maxwell should be aware—as I am sure that he is—that, before the Supreme Court was established, more than 300 cases on devolution points were considered under the same mechanism. Does he not know that?

Dave Thompson asked what other country allows another jurisdiction to hear appeals on its cases. If members are not aware of it, I tell them that every country that signs up to the European convention on human rights signs up to the declaration—[*Interruption*]—that there can be a court judgment based on the convention.

Government members' ignorance is staggering. If the point that the First Minister has made all day is about special leave to appeal to the Supreme Court, which was given in the Cadder case, there is scope for discussion. I do not want the special leave provisions to be used in every case. However, we must be clear that, as we are signed up to the convention on human rights, even if the Cadder case had not gone to the Supreme Court, it would have gone to the European Court of Human Rights. I am pretty certain that that court would have ruled in the same way as the Supreme Court did.

The First Minister: If the case had been heard before the European court, the checks and balances of the Scots system could have been examined before that court.

When the Scotland Act 1998 was passed, no one envisaged that the devolution route of appeal—whether to the House of Lords or now to the Supreme Court—would be used in criminal cases to second-guess the Court of Session. Neither Donald Dewar nor anyone else envisaged that unintended consequence—that is what is wrong.

Pauline McNeill: If that is the Government's position, why did it say nothing when 300 cases on devolution points went to the Judicial Committee of the Privy Council? Is the First Minister not aware of that system?

I will address the issues that are pertinent to scrutiny in the stage 1 debate. Whether or not we agree with the decision in Cadder v HMA, it is a judgment of the Supreme Court that is based on the court's view of the convention on human rights. It is down to the Parliament to deliver on that.

New guidelines that relate to the six-hour provision have operated for six months. A pertinent question that the Government should answer in the stage 1 debate is what has gone wrong—if anything—in the six months during which the guidelines have operated and why moving to a 12-hour limit is necessary. I remain open-minded about that, but I want to be convinced that the extension is necessary.

I share the concerns of Richard Baker and other members about allowing the period of detention to be extended to 24 hours in some circumstances. If we are to change the provisions, we must have clarity. The bill says that, if an extension is necessary, a person of inspector level can sign that off, provided that they are not involved in the case. That proposal needs serious scrutiny. The

suggestion that it would be better for a sheriff to decide on an extension is worthy of consideration. A sheriff is available 24/7. Involving a sheriff would build safeguards into the system.

I think back to my experience of when the Parliament debated custody time limits and the Bonomy reforms. Courts are now repeatedly breaching the custody time limits that we in the Parliament set, because of how the legislation is worded. I do not want us to make the same mistake. The detention period must be extended to 24 hours only in exceptional circumstances, and the decision must be taken by someone at an appropriate level.

The Presiding Officer: We come to the closing speeches.

14:59

Mike Pringle (Edinburgh South) (LD): We are, of course, in the chamber today to debate an emergency bill, as a result of an appeal in the 2009 case of McLean v HMA. That was followed by an appeal brought by Peter Cadder in which he claimed that, under European human rights laws, because he had no lawyer present during his police interview, his human rights had been breached. In the McLean appeal, a full bench of seven of Scotland's most senior judges ruled that the position was not in conflict with human rights laws and that it complied with the ECHR. It was therefore perhaps a surprise to some that the UK court then got involved in the Cadder case. I am pleased that the cabinet secretary will take up the issue of the independence of the criminal law in Scotland with the UK Government. I am concerned about the subject.

The Lord Advocate appeared for the Crown in front of the Supreme Court. She was obviously concerned by what she perceived the result of the process might be. She therefore immediately put into effect interim guidelines under which suspects were allowed to insist on being given legal advice before and while being interviewed. We believe that that approach has worked well in the majority of cases. Of course, we really do not have any information about that, so it would be interesting to know the exact results of the guidelines and how they have worked.

There is concern that we are rushing into this legislation too quickly. This morning, I received an email from Professor Alan Miller, chair of the Scottish Human Rights Commission, in which he shows that concern and from which I think it worth while to quote:

"The Commission welcomes the UK Supreme Court's careful and considered decision in the case of Cadder v HMA.

This is no time for emergency legislation as there is no emergency. The floodgates have not been opened—this decision clearly does not apply to concluded cases. Rather, now it's time to get it right, and we have the time to get it right.

Interim steps which are already in place provide an adequate basis on which to launch a broad based consultation so that the practical implications of the decision are properly understood before a response is adopted. This should take into account experience so far in implementing the Lord Advocate's interim guidance as well experience elsewhere in Europe, including our near neighbours, which already have increased access to legal advice for those who are questioned by the police.

The Commission is concerned by a number of elements of the response announced today by the Cabinet Secretary for Justice. Not only does the timetable present no reasonable prospect for a considered response, but the proposed extension of the six hour time limit for detention on reasonable suspicion to twelve and then possibly twenty four hours at the discretion of the police seems a disproportionate response to a decision which was based on the need to recognise the vulnerability of those questioned in police detention."

Like my colleague Robert Brown and the rest of the Liberal Democrat group, I am a strong supporter of the ECHR. However, we have concerns about rushing through this legislation just 24 hours after the Supreme Court ruling. The new system is likely to be considerably more costly. If the reports are correct, it may add up to £4 million pounds to the legal aid bill. Our greater concern is that it will allow suspects to be locked up for up to 24 hours, which could be a breach of their civil liberties.

I agree that the judgment is binding and that we have to accept it, but, in accepting it, we have to make as good a job of things as we can. As my colleague Robert Brown said, the Liberal Democrats will lodge a number of amendments at stage 2 that we believe will improve the bill.

Scots law stands on its own. There are at least two principles of Scots law: first, that corroboration is needed to get a conviction; and, secondly, that silence is not an admission of guilt and cannot be taken as such. As two lawyers suggested on "Newsnight Scotland" last night, yesterday's judgment might bring both those principles into question. If that were to be the case, it could result in a fundamental change to Scots law. I am sure that we all would agree that none of us wants that unintended consequence. I am therefore very pleased that Lord Carloway is to conduct a review. I am sure that he will look at both those aspects.

Like Professor Alan Miller, the Liberal Democrats have concerns about our rushing through this legislation the day after the judgment in London. It is too hasty, and a period of reflection and consideration would have been a more considered response.

15:04

Bill Aitken (Glasgow) (Con): This afternoon's exercise is one of fire fighting. We accept Robert Brown's point that we are dealing with the matter rather more speedily than was necessary and have some criticisms of the way in which the Government has handled the matter, but it was confronted with a problem and it had to act. We fully accept that, which is why—in general terms—we will support the bill at decision time.

That said, I cannot but respond to some of the issues that Government back benchers have raised. The problem is not yesterday's judgment or the judgment of the European Court of Human Rights in the original Salduz case, but the fact that we signed up to the European convention on human rights in a manner that has undoubtedly prejudiced Scotland. The Salduz case came from Turkey, which is a jurisdiction in which human rights have been treated in a somewhat cavalier fashion over many years. The case demonstrated oppression: a 16-year-old boy was held for three days for a politically related offence. The justices in Strasbourg had no option but to accept that that was wrong.

Unlike certain Scottish football managers, I do not think that there is much percentage in criticising the referees. Once the decision had been made in Strasbourg, it was inevitable that the Supreme Court would reach a similar verdict, as it did yesterday. It is a bit much for members who criticise the Supreme Court not to recognise that the problem arose much earlier, when they enthusiastically committed themselves to including the European convention in Scots law.

We find the bill unobjectionable in many instances. No one wishes anyone to be held in custody for any longer than is necessary, but we must recognise the practicalities. If someone is charged with a section 1 offence on the Isle of Skye, there is no possibility—especially in January—of getting a solicitor there from Inverness, Fort William or wherever within the time limits that have been laid down. We have no option but to extend those limits.

Mike Rumbles: That is complete rubbish.

Bill Aitken: I am sorry, but time is restricted and I cannot take interventions.

There are unresolved issues. I have already mentioned to the cabinet secretary that there is a problem with section 7, which deals with appeals. I intend to lodge amendments, pending clarification of the matter. I hope that it can be resolved.

We must recognise that we are where we are and that there is no possibility of dealing with the matter other than by legislation. There is genuine and unanimous agreement on that. However, I express regret and some resentment at the fact that, as a result of the judgments, the Scottish law system—which, for all of its imperfections, is recognised throughout the world as, if not a paragon, at least one of the best justice systems—is being equated with the legal systems of Turkey and other countries in which human rights are not upheld. The Labour Government was responsible for the Human Rights Act 1998, which was supported by the SNP. That is a matter of considerable regret.

15:08

James Kelly (Glasgow Rutherglen) (Lab): There is no doubt that this is a unique parliamentary occasion. We meet in emergency session as a result of yesterday's Supreme Court ruling, which has serious implications for the Scottish legal system. The matters that are before us this afternoon require a serious debate. It is regrettable that some of the speeches by nationalist members did not address the issues that are before us in the bill. The cabinet secretary has spoken the language of consensus throughout the process, but Dave Thompson did not address the general principles of the bill and Stewart Maxwell's speech was akin to something that would be heard at the SNP conference.

Patrick Harvie and Robert Brown expressed fears about passing emergency legislation. The decision that has been made is a landmark ruling that changes a central feature of Scottish law relating to suspects' access to a solicitor. The Scottish Government is right to act. We have received representations from Alan Miller and others who say that it is wrong for us to rush into legislation, but my view and the view of Scottish Labour is that we cannot operate in a vacuum.

Robert Brown: Will the member take an intervention?

James Kelly: No. I am sorry, I am rushed for time.

In my view, yesterday's judgment means that our law is incompatible, in this aspect, with ECHR. Taking that view, it is not enough simply to have the guidelines that the Lord Advocate introduced in the summer. There is a vacuum, and we need legislation. We need certainty for the judiciary, for the police and for suspects. Above all, we need to legislate for victims. We must not expose ourselves to unsafe verdicts.

A number of serious representations have been made, and I have reflected on them overnight, but I think that the Government is right to introduce the emergency bill.

A central aspect is the introduction in statute of access to a lawyer. Like other Labour members, I

recognise the guidelines that have been in force concerning the six hours of detention. The bill seeks to increase that to 12 hours. Bill Aitken pinpointed some of the practical issues in that regard, and spoke about the reason for there being support and sympathy for the proposal. As for the move from 12 to 24 hours, I am not unsympathetic to it, but so far I have not been totally convinced by the cabinet secretary's explanation as to why that needs to be encompassed in emergency legislation.

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

James Kelly: I am sorry, but I do not have time.

I urge the cabinet secretary to address those concerns, as well as the concerns that Bill Butler, Pauline McNeill and other members have raised regarding further authorisations being built into the bill.

One of the untold stories in this morning's press is that of the cost implications of the bill. We were told that the potential legal aid costs are £4 million, and that is covered in the financial memorandum. On police costs, there could be £7 million of set-up costs for police consultation rooms. The requirement for the police to be on site to administer the new arrangements will mean that 480 officers will be required—144 sergeants and 336 constables. That will come at a cost of £20 million per year. That is a matter of serious concern, and its implications need to be considered. We need an impact assessment to assess what that means for front-line policing, and that requirement lends weight to demands for early publication of the budget.

The bill is necessary legislation. There are reservations about some aspects of it, but Scottish Labour is pleased to support the general principles of the bill.

15:13

Kenny MacAskill: I am grateful to members for their contributions. It is appropriate to touch on three matters that have been raised in the debate. First is the reason for the urgency; second is the action that is being taken and why it is being taken now; and third is the extension of the period of detention.

On the urgency of the situation, the judgment is clearly not as cataclysmic as one of the scenarios that we planned for. Had the judgment been retrospective, it would have been calamitous—that is accepted. That said, the decision is not simply prospective. There are current, pending and live appeals, so the consequences are still severe. We already have 3,420 devolution minutes relating to the Cadder case, but thankfully, according to the Crown Office, the serious cases number only 120. However, we should not underestimate the significant changes that require to be made to Scots law. The consequences—for victims, the courts, the police and everyone else—require us to act urgently. The world changed at 9.45 am yesterday.

Moving to the action to be taken, we require to clarify some of the points that Pauline McNeill and other members have made. As the First Minister correctly said, the normal situation in most jurisdictions is that there is a final court of appeal. That court of appeal in Scotland is the High Court of appeal, in which the case of McLean v HMA was dealt with. The First Minister was also quite correct to say that when the Scotland Bill was being considered and it was envisaged that human rights would be part of it in the context of the ECHR, nobody anticipated that solicitors would seek to take appeals on criminal law matters to the Supreme Court, which had not even been envisaged at that juncture.

However, we find ourselves having to take action, as happened with Somerville—I was grateful to members, whatever their party, for bringing in the one-year period of limitation, because without that protection from ECHR challenges we were exposed. Equally, in the current circumstances, people can use a devolution minute to deal with matters that are fundamentally meant to be dealt with by the criminal law and the highest court in Scotland.

On Pauline McNeill's comments, I think that the First Minister made the position clear. The question is whether other jurisdictions are affected and find themselves challenged in respect of the ECHR. The answer is, of course, yes, because those who sign up to the ECHR accept that it is binding. We accept that it is incumbent on us—indeed it is part of our founding principles—to abide by the ECHR. However, other jurisdictions have the opportunity to go to the European Court of Human Rights, put forward their case and reflect on matters. Such an opportunity is precluded for the Government and law officers of Scotland. The decision of the UK Supreme Court was based on an interpretation of a Strasbourg decision. It was not a decision of Strasbourg on Scots law, so we do not have the opportunity to go to Strasbourg.

Bill Butler suggested that we should have addressed matters after Salduz v Turkey in 2008. It is clear that matters relating to Salduz v Turkey were considered in McLean v HMA in October 2009, when, as Stewart Maxwell said, the High Court of Scotland, presided over by the Lord Justice General, who was supported by his deputy the Lord Justice Clerk and by five other High Court judges of significance and stature in Scotland,

found that Scots law in relation to the period of detention and lack of access to a solicitor was not incompatible with the ECHR.

I do not know whether Mr Butler was suggesting that we should have second-guessed the High Court's decision before October 2009 or that after 2009 the Government should have unilaterally said, "Well, the Lord Justice General has got it wrong." It would be scandalous for a justice minister to second-guess, never mind criticise, a decision of a supreme court sitting on a criminal appeal matter in Scotland.

David McLetchie: Will the cabinet secretary give way?

Kenny MacAskill: No. I do not have time.

The period of detention clearly requires to be addressed. First and foremost, let us remember the circumstances and where we are being taken by the UK Supreme Court, which is down the road to replicating the position south of the border under the Police and Criminal Evidence Act 1984. South of the border—a Labour Government presided over this situation; I used to meet Jack Straw and others—the period of detention is initially 24 hours, and on cause shown and by request of a senior officer to another senior officer it can be extended to 36 hours. At 36 hours, the case can be put before a magistrate and the period of detention extended to 72 hours.

In Scotland, as I said, there has been a significant change, with a lawyer being in for the interview that takes place. We simply seek to strike a balance by extending the period to 12 hours. Only on cause shown and in the most serious cases and indictable matters will that period be extended. It will not be extended on the basis that a breach of the peace or anything like that is being investigated. However, in cases such as attempted murder, rape and serious assault, there can be forensic and ballistic investigations. Mr Brown should consider that. If someone has been detained for 12 hours in a rape case and forensic and other investigations are taking place, must the person be released because we have not managed to secure a report of significance, which would allow an officer to put questions of fundamental importance to the accused? Is the person to be liberated just because he has been detained for 12 hours?

The question is how the extension is to be signed off. South of the border it is simply a matter of going to an equivalent senior officer. To require the issue to go before a judge or a justice of the peace seems to me to undermine the police investigation. It is a matter of balance, which is why we have introduced the bill as a matter of urgency. The scales of justice require that we acknowledge the importance of having a lawyer in for an interrogation during an investigation. Equally, we must remember the rights of victims and ensure that a fair balance is struck for those who police our communities and prosecute. If there is no extension, we undermine that balance.

The Deputy Presiding Officer (Trish Godman): The question is, that motion S3M-7267, in the name of Kenny MacAskill, on the general principles of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As this is the first division, it will be five minutes.

15:19

Meeting suspended.

15:25

On resuming—

The Deputy Presiding Officer: Members can vote now on the general principles of the bill.

The Minister for Parliamentary Business (Bruce Crawford): On a point of order, Presiding Officer. Can you clarify where we are? I thought that we had been in the process of actually recording our votes.

The Deputy Presiding Officer: No. There was a suspension of five minutes, and we are now in the vote. If you have voted, it is all right. [*Interruption*.]

Right, can you listen carefully? There has been a slight hiccup. Will everybody vote again, please? The hiccup was not—[*Interruption*.] That's it now.

Members: No, it's not.

The Deputy Presiding Officer: The vote will be rerun.

Bruce Crawford: On a point of order, Presiding Officer. [*Interruption*.]

The Deputy Presiding Officer: Will members please be quiet? There is a point of order that I would really like to hear.

Bruce Crawford: There is some confusion about where we are in the process. Can we start everything again?

The Deputy Presiding Officer: That is indeed what we are doing. Your vote will be on the general principles of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill.

Members can vote now. It is working.

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)
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, 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)
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)
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)
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)
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)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
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)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
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)
Simpson, Dr Richard (Mid Scotland and Fife) (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)
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 111, Against 3, Abstentions 0.

Motion agreed to,

That the Parliament agrees to the general principles of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill.

Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill: Financial Resolution

15:27

The Deputy Presiding Officer (Trish Godman): The next item of business is consideration of motion S3M-7275, in the name of John Swinney, on the financial resolution in respect of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b)(iii) of the Parliament's Standing Orders arising in consequence of the Act.—[*Kenny MacAskill.*]

Motion agreed to.

The Deputy Presiding Officer: We will move to the next item of business. Members leaving the chamber should do so quietly, because if we do not proceed with the next item now it will give them less time for the later debates. [*Interruption*.] Please be quiet when you are leaving.

Scottish Parliamentary Corporate Body Question Time

15:28

Budgetary Savings

1. Margo MacDonald (Lothians) (Ind): Prior to my question, I feel that I should offer an apology, as this is the education minister's literacy action plan day: the syntax of my question appears very strangled, and for that I apologise.

To ask the Scottish Parliamentary Corporate Body whether it has identified a figure or a percentage of total expenditure feasible to achieve the budgetary savings it has identified as necessary. (S3O-11767)

Tom McCabe (Hamilton South) (Lab): The SPCB has been planning on the basis that it will reduce its overall budget in line with the real-terms reduction in the Scottish budget, while seeking to deliver efficient parliamentary services to members and the public. We are currently reviewing the outcome of the United Kingdom comprehensive spending review, which reported last week, and the SPCB will present its budget submission to the Finance Committee on 23 November.

Margo MacDonald: He would say that, wouldn't he, Presiding Officer? I wonder whether the member can assure me that the non-Executive bills unit will be judged no more harshly than any of the other departments in the Parliament. If we are to serve the public and to enhance the quality of the work that is contributed by the members of the Parliament, NEBU is essential.

Tom McCabe: The degree of harshness is perhaps subjective, but I assure the member that we will do our best to ensure that the approach that is taken is as fair as it can be to all sections of the Parliament and all members.

Consultants

2. John Wilson (Central Scotland) (SNP): To ask the Scottish Parliamentary Corporate Body how much has been spent on consultants in the last financial year and in what specialist areas of expertise. (S3O-11769)

Tom McCabe (Hamilton South) (Lab): In the financial year 2009-10, just over £59,000 was spent on consultants. The bulk of that was spent on business continuity support. Most of the remainder was spent on information technology advice, and £2,600 was spent on management consultancy advice.

John Wilson: What steps are being considered to reduce the use of consultants and consequently the expenditure on consultants in future years?

Tom McCabe: The breakdown of that expenditure in 2009-10 shows that the vast bulk was spent on business continuity support and initiatives to restructure the management arrangements within the Parliament. All of that work was aimed at reducing costs in the medium to long term. The focus has been very much on reducing the need for external support, and any external support has been focused on a further attempt to reduce the costs of the Parliament.

Disability Discrimination Acts (Toilets)

3. Ian McKee (Lothians) (SNP): To ask the Scottish Parliamentary Corporate Body whether it is satisfied that all toilets in the Parliament complex are fully compliant with relevant disability discrimination legislation. (S3O-11768)

Mike Pringle (Edinburgh South) (LD): The answer is yes—the SPCB is satisfied that all toilets comply with regulations under the Disability Discrimination Acts. However, we are aware that regulation requirements change over time. For that reason, we have mechanisms in place continually to monitor and review our existing practices to identify where further improvements can be made. With that in mind, we have made a number of modifications to the toilets in the Parliament building as part of our on-going commitment to the promotion of disability equality. For example, the door runners have been replaced and new hinges have been installed in all accessible toilets with folding doors to make it easier for the doors to open and close. We have also installed a changing places toilet in the Holyrood complex to improve access for people with profound and multiple learning disabilities.

Ian McKee: Does the member share my concern about those toilets for the disabled that are situated on the committee room levels, where the door opens with a middle hinge? The handle is so small that I cannot envisage anyone with a weak grip being able to lock the door. As a relatively able-bodied person, I find it difficult to shut the door, so I am sure that a wheelchair user must find it almost impossible. Furthermore, when the door is shut, the only way in which people outside can tell whether the toilet is in use is by pulling the handle from the outside, causing the door to move in a way that alarms the person in the toilet. I have heard that one lady MSP sings loudly when she is in such a toilet to let those outside know that it is occupied. Finally, when the toilet door is opened, the room is in darkness, so it is impossible to distinguish between the light and alarm switches, causing consternation if the alarm switch is used by accident. Will the corporate body sort those things out as a matter of urgency?

Mike Pringle: The member raises a number of issues, all of which are good points to make. Officials investigated the accessible toilets that are located next to committee rooms 4 and 5 and on the other committee room levels, which revealed that some improvements were required. Improvements were made regarding the door runners, new hinges and so on. However, having used some of the disabled toilets myself—perhaps I should sing as well on the appropriate occasions—I take the points that the member has made. The suggestion is that we will have a look at his concerns and get back to him.

The Deputy Presiding Officer: That ends questions to the corporate body. I remind members that the emergency bill now proceeds to stage 2 and that members have until 3.45 to lodge amendments with the clerks in the legislation team. The Committee of the Whole Parliament will meet at 4.20 to consider the bill at stage 2.

Literacy Action Plan

The Deputy Presiding Officer (Trish Godman): The next item of business is a statement by Mike Russell on the literacy action plan. The cabinet secretary will take questions at the end of his statement, and there should therefore be no interventions or interruptions.

15:34

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): The development of literacy skills is vital to people of all ages in Scotland. We recognise without question that a strong, successful country requires strong and secure literacy skills.

Literacy is key to life chances for learning, employability and full participation in our society. Without literacy skills, health and wellbeing are impaired or negated. Without literacy skills, the chances of offending and repeat offending behaviour are greater. Without literacy skills, it is also more likely that an individual will live in poverty. Most profoundly of all, the likelihood is that the children of the person without literacy skills will also lack those skills. Without literacy skills, people in our society become locked into a cycle of difficulty that leads to impairment in learning.

In January, during our debate on the literacy commission's report and its recommendations on ways to advance literacy across society, I made a commitment to work with the commission to bring forward an action plan for literacy in Scotland. Today, I am fulfilling that commitment and I am launching the Scottish Government's literacy action plan. This is the first time since devolution that a Scottish Administration has laid out a concerted plan of action aimed at improving literacy levels.

The plan sets out our vision to raise standards of literacy for all, from the early years through to adulthood. It is designed to improve the literacy of all who would benefit from support across the continuum of learning. That will require sustained commitment and continuing action at all levels of Government, and support at all points of the education system and through wider public services. There needs to be a particular focus on those with the lowest levels of literacy. The action plan will build on existing good practice and ensure that literacy will have a central and continuing focus in education and related Government policies. I am confident that it will raise standards.

We have worked closely with members of the literacy commission as we have developed the literacy action plan, drawing on their expertise. I thank them for their support and look forward to working with them as we implement its actions.

The plan draws on the recommendations of the literacy commission, which were set out in its report, "A Vision for Scotland". Those recommendations reflect in great part the aims of the Government, and many of the commission's priorities feature in the literacy action plan.

I am sorry that Rhona Brankin is not in the chamber, but I would like to commend her—

Rhoda Grant (Highlands and Islands) (Lab): She is behind you.

Michael Russell: I am sorry that Rhona Brankin is not in her usual place, but I am glad that she is in the chamber, as I would like to commend her and others in the Labour Party on the establishment of the literacy commission, which has been a valuable innovation.

It is important to note, without being in any way complacent, that the need to improve literacy is not unique to Scotland. It is a persistent problem throughout the United Kingdom and internationally. The literacy skills of the majority of people in Scotland compare well across the world, but poor literacy among a minority is unacceptable.

We know that the majority of children in Scotland develop a good grounding in literacy skills in early primary education. However, a minority do not and, as pupils progress through primary and into secondary, the proportion that achieves expected levels of literacy decreases. That must be addressed.

We know that the overall Scottish adult population has a good level of literacy skills. Although around 25 per cent of the adult population would benefit from improving their literacy skills, only around 3.6 per cent of the adult population have very limited capabilities. Those results are encouraging, but we still have work to do to reduce the numbers of people who have issues with reading and writing.

We also know that literacy skills are linked to socioeconomic status and levels of deprivation, with those from more deprived areas experiencing lower achievement. Our ambition must be to break that link in order to create a more successful country, with opportunities for all of Scotland to flourish.

The evidence suggests that there need to be a number of priorities across learning: breaking the link between poor literacy levels and deprivation; improving the skills of the few who have difficulties with basic literacy, particularly those who are vulnerable; ensuring that young people progress successfully from basic to advanced literacy skills; and raising advanced literacy skills for all.

The literacy action plan sits within the context of existing policy frameworks, and it is important that it does so. The curriculum for excellence is clearly one of the key routes to drive forward improvement, but the broader education system and wider socioeconomic policy are also important. The early years framework, the curriculum for excellence, the getting it right for every child agenda and our adult literacy and numeracy strategy are of central importance as the national policy frameworks through which we will deliver our vision.

What happens to children in their earliest years is key to outcomes, including the improvement of educational attainment in childhood, adolescence and in adult life. There is a strong relationship between early life experiences and how children learn. Positive influences in the early years are important and will improve a child's life chances.

We will ensure that literacy development is a key priority for our youngest children as they take their first steps into learning, helping to stem the problem of poor literacy early on. We will encourage our early years delivery partners, including those in health and social work as well as in education, to develop new and innovative approaches that will lay the foundations for literacy development for our most vulnerable children.

For school-age learners, curriculum for excellence is already under way. It will ensure that young learners develop the basic literacy skills that they will need to thrive in the 21st century and move beyond those to gain the more advanced skills that will help them to reach their full potential.

Curriculum for excellence inevitably has literacy at its core. Literacy is mainstreamed across all subjects and it is the responsibility of all practitioners to work on it with our young people.

The new Scottish qualifications are progressing with the development of new literacy units, which are available to those in our schools and adult learners. The units will help to develop literacy skills and ensure that learners' attainment is recognised.

We must acknowledge that early identification of a child's additional support needs and learning difficulties is important in breaking down barriers to literacy and attainment. We will therefore encourage all local authorities to ensure the early identification of support needs for each child, and encourage all early years practitioners to be aware of and act on the personalised assessment and the learning and support needs information.

I expect that, for each child, any barriers to literacy will be identified early and appropriate support to overcome those barriers will be put in place. Interventions are most effective before a child falls behind, and it is important that we work together to ensure that no child does so.

We know that as learners progress into adulthood some will still need support to develop their literacy skills. Adult learners have different needs, motivations and personal circumstances, and there are critical transition points at which the provision of support is more important. Those include leaving formal education, finding a job, re-entering a community after a period in prison and becoming a parent. To reach the diverse range of adult learners, we will continue to offer a variety of learning opportunities, with flexible delivery methods and learning programmes that are relevant to learners' lives.

The recently published 2009 Scottish survey of adult literacies provides a good basis on which to move towards a refresh of our existing adult literacy and numeracy strategy, which we will launch by the end of the year. We will build on collaboration with our partners and service providers to strengthen our support for adult learners, particularly those in our most deprived communities. We will build awareness of and access to the appropriate services, ensure that our practitioners are well equipped to support learners and continue to monitor and evaluate impact.

The action plan highlights the importance of supporting young people and adults in the justice system to help to improve their future prospects. That will include prioritised screening for offenders who are likely to have profound and particular literacy difficulties.

Beyond the learning environment and community, there are other key influences on literacy. Employers, for example, have a role in developing vocational literacy skills so that employees can improve their chances in their professional and working lives.

The media, and the broadcast media in particular, can have a strong influence on how we use language, and it has a broader impact on literacy. We will engage with the media to discuss their role and responsibility in contributing to our vision.

We want to develop a strong reading culture in Scotland, where reading is a valued activity from the earliest age. Sharing books in a family environment and the love of reading that it creates enriches the family experience immeasurably, is likely to be passed from generation to generation and has a major beneficial impact on individual outcomes. We will continue to work with partners to support measures to develop Scotland as a literate, reading nation and continue to encourage Scottish writing and publishing activities, on which much Scottish reading depends.

At this time of challenging financial circumstances and huge pressure on resources, it is more important than ever for all of us to work together to improve literacy for all, with a determined focus on the most vulnerable. We must use our combined resources productively to ensure that we achieve our vision for literacy in Scotland.

We will facilitate a broad partnership, including with those agencies that are outwith the formal education sector. We need involvement from all services—including health, justice and employment—that can make a positive contribution to our vision.

We will identify the key support relating to literacy that is currently being delivered by agencies and institutions. That will enable us to make the most effective use of resources, target future work more effectively on priorities and encourage interagency working throughout the country. We have worked closely with many partners to develop the plan, and we will continue to do so as delivery of it progresses.

We want to maintain the momentum that was begun by the literacy commission and followed up by the launch of our plan. We will establish a standing literacy commission to facilitate and oversee the delivery of the actions that the plan contains, and I give a commitment that we will report to the Parliament on progress over three years.

I commend the first literacy action plan to the Parliament.

The Deputy Presiding Officer: The cabinet secretary will now take questions on the issues raised in his statement. I will allow 20 minutes for that.

Des McNulty (Clydebank and Milngavie) (Lab): I thank the cabinet secretary for advance sight of his statement. Given that the literacy commission reported in January, I would have welcomed the statement more warmly had we not had to wait so long. The cabinet secretary says that it is a statement of ambition, and it is much more that than a plan of action. Although we on this side of the chamber support the establishment of a standing literacy commission, we would have been much more enthusiastic had the cabinet secretary, first, taken forward the literacy commission's core recommendation that there should be zero tolerance of illiteracy in Scotland and, secondly, put in place the resources that are needed to remove the barriers that prevent too many people from learning to read, write or count.

This morning, we heard from the cabinet secretary that teacher numbers are in a continuing downward spiral, for which he gave a sort of grudging apology while blaming the councils. I therefore ask him what discussions he has had with local authorities about making resources available for the development and implementation of local literacy plans, what help he can give with the continuous professional development that is needed to make the changes to which we all aspire, and whether authorities are in a position to protect existing learning support provision as well as to add to it in order to meet the needs that have been identified by the literacy commission and in the document that was published today.

Through you, Presiding Officer, I also ask the cabinet secretary when any of that will start. Try as I might, I cannot find a timetable or a financial commitment in either the plan or the statement. To use a phrase that was coined by a US presidential candidate, where is the beef?

The Deputy Presiding Officer: I call Elizabeth Smith, to be followed—[*Interruption*.] Sorry. I call the cabinet secretary.

Michael Russell: I thought that I should reply, Presiding Officer, although I accept that the question was scarcely worthy of it.

I regret the tone that Mr McNulty has taken, although I suppose it is typical, and I am used to it after 11 months in my post. The Administration has worked hard with the literacy commission, and the people whom Labour chose to lead it, to develop a plan. We are already implementing parts of it because, as I said at the beginning, it focuses the work and attention of a range of agencies on the priority that literacy has become.

There is no downward spiral of anything in Scottish education. What we have is a commitment to take forward the key issue of literacy as a priority, as I said when I responded to the literacy commission, but to do so across Government, across agencies and within the curriculum. We already have a number of actions that are bringing those together and focusing on the curriculum for excellence. It is all in the document, which has been welcomed by those who work in the sector.

I am sorry that Mr McNulty thinks that the production of Scotland's first-ever literacy action plan is simply an excuse for him to tediously repeat his political prejudices. I do not think that it will be seen like that by those who are keen on improving Scotland's literacy and I deeply regret that he takes that attitude. I had believed that he might behave differently on this occasion, but then I suppose I will never be disappointed by the low level of Mr McNulty's ambitions.

Elizabeth Smith (Mid Scotland and Fife) (Con): I thank the cabinet secretary for prior sight of both his statement and the literacy action plan. I welcome the majority of the contents, particularly the commitment that he has made to the synthetic

phonics method of teaching, which has unquestionably raised standards in three local authorities in Scotland and which I believe can go a long way towards improving the disappointing statistics for reading literacy. Attainment in primary 3 is generally pretty good at 75 per cent, but I am afraid that it falls to only 40 per cent by secondary 2.

I have two questions. First, what specific plans does the Government have to improve teacher training in teaching literacy skills, which is urgently requested by several primary headteachers writing in the current edition of *The Times Educational Supplement?* Secondly, will the cabinet secretary spell out the specific detail of what page 9 of the document states will be a better assessment process of literacy standards among primary school pupils?

Michael Russell: I thank Elizabeth Smith for those important questions, which serve to highlight where the issue is going.

With regard to specific plans for teaching training, I have discussed the issue with Graham Donaldson on one occasion. Indeed, I indicated to the Education, Lifelong Learning and Culture Committee that I have continued a dialogue with Mr Donaldson throughout his review of initial teacher education. Some interesting information is emerging that although primary teachers in particular might be confident in teaching and pedagogy, they lack confidence in specific skills, which might well include certain aspects of literacy. The issue will feature in Mr Donaldson's review and I expect that we will be able to take it forward.

As for assessment, I have a particularly strong interest in ensuring that early interventions take place. Where literacy problems arise as a result of learning difficulty, which is the case in many, though not all circumstances, we should be in a position to assess that difficulty as early as possible and assist children in setting things right. I think that that is one of the key tools that we can use. Indeed, some local authorities are already doing so, and I encourage other local authorities to do the same. I find it profoundly wrong that in one or two places in Scotland it is still possible for a young person with a learning disability to fail to have it diagnosed throughout their entire schooling. Anyone who has heard Sir Jackie Stewart talking about his school experiences will know that that has happened in the past and that the earliest intervention that we can possibly make in identifying learning difficulties and disabilities and helping young people with them will pay profound dividends.

Margaret Smith (Edinburgh West) (LD): I welcome the literacy action plan and the establishment of a standing literacy commission to oversee its delivery. I support, in particular, the cabinet secretary's comments on early intervention and the need to focus on our poorest children.

On early identification, which I think is absolutely crucial, how will the cabinet secretary guarantee that any barriers to literacy are identified early and how will such work be taken forward? Secondly, what is the Scottish Government doing to identify what works and what does not work in improving literacy to ensure that best practice can be shared across Scotland? Finally, given that local authorities will be expected to develop local literacy strategies to reflect need in their own areas, will those strategies be subject to any central monitoring or evaluation to ensure that they are improving standards and are contributing to the sharing of best practice across authorities?

Michael Russell: The standing commission will play a strong role in sharing good practice and I look forward to its work. In its new incarnation within the newly merged organisation, Her Majesty's Inspectorate of Education will also play a strong role in ensuring that literacy and numeracy, which now form a core element of the curriculum, are observed. The fact that literacy and numeracy are no longer being put to one side or seen as a specialist matter, but actually form part of the curriculum, is actually a very important innovation in Scotland, and we should not forget that.

As the plan indicates, I am keen to take that a step further and ensure that the practice of early identification grows. A number of local authorities are carrying out that work and I am happy to provide information on those that we know about; after all, some hide their light under a bushel while others do not. We will also want the standing commission to encourage the practice to spread elsewhere and I am very happy for the chamber to debate the issue and examine other means of ensuring that it happens. It is crucial to what we are trying to achieve.

Christina McKelvie (Central Scotland) (SNP): Will the cabinet secretary confirm that this is Scotland's first literacy action plan? Does he agree that it shows that the Scottish National Party takes action where it sees need; that it is shameful that Scotland had to wait until the SNP was in power before any action was taken on literacy; and that it is rank opportunism for a party that was in power for 10 years to start whining about it only after the Scottish people consigned them to opposition?

Michael Russell: I tend to agree with the member, but I am trying to be generous. I hope that, as the questioning continues, Mr McNulty will be seen to be an aberration in this matter. However, I will not say anything more about that, because I hope that we will have a positive

response to what has been my positive gratitude to Rhona Brankin and the Labour Party for the establishment of the literacy commission. I responded warmly to the commission. I met it on the day that it published its report. We had a debate on the commission in the chamber. I took the issue forward, the commission has been involved in developing the plans, and I have paid tribute to it. I see an opportunity for us to work together to get things right, and I hope that we can do so.

Ms Wendy Alexander (Paisley North) (Lab): I, too, welcome the action plan and the establishment of the standing commission.

The cabinet secretary will know that the most recent evidence from the 2009 survey of achievement indicates that 20 per cent of pupils in primary 7 did not reach their expected reading level and a third of primary 7 pupils did not reach their expected writing level. I have had the opportunity to look at the plan and to see the proposals relating to continuous professional development, the assessment of literacy skills and reports to parents. Will the cabinet secretary expand on what will change in P1 to P7 to address those figures?

Michael Russell: Wendy Alexander raises an important issue. We know that there are unacceptable dips in performance at various stages of the educational journey. One of the many purposes of the curriculum for excellence was to show that they had been smoothed out and high standards had been maintained. We need to ensure that work is done on assessing and following up literacy levels from the earliest stages in primary schools. It is not enough, as has happened until now, to shine a spotlight on primary 6 or 7; rather, we need to check literacy levels and, if there are shortfalls, ensure that we make them up. We need earlier assessment in primary 1 or primary 2. If that is coupled with the assessment of learning difficulties, we will get a good, personalised picture of the individual child in the very early years of primary school and will then be able to follow that child through personalised learning. To ensure that high levels are maintained, they can be checked later on in primary school and again at the crucial stage after the transition from primary to secondary school. It is a matter of the combination of the curriculum for excellence and the methodology, and ensuring that education is personalised and literacy is integrated as a core activity in all education. We hope that that will be picked up.

The member will know that there tend to be rises after dips, which is interesting. Transition seems to create inconsistencies as well as other difficulties, and emphasising better transition will certainly work out well. It is rather interesting that one tends to find that transition difficulties are not nearly as great in schools with a single campus and a flow-through. There are issues to do with change.

Wendy Alexander asked questions that it is correct to ask. A lot of work is being done and will continue to be done to address those questions.

Kenneth Gibson (Cunninghame North) (SNP): I warmly welcome the cabinet secretary's statement.

The literacy commission has highlighted the decline in Scottish performance in international tests of literacy in the programme for international student assessment and progress in international reading literacy study tests between 2000 and 2006, when Labour and the Lib Dems were in power. Does the cabinet secretary have any insights into what went wrong in that period that might have led to such a decline? What has the Scottish Government taken from that period as examples of what to do and what not to do to meet best practice?

Michael Russell: That is an interesting question. I know that Kenny Gibson is tempting me to be partisan, but I do not want to be and I will not be.

It seems to me that, from 1999 to 2003, the Parliament decided that there was a problem with Scottish education in general. Those who remember the national debate on education, in which Wendy Alexander was deeply involved, and the Education, Culture and Sport Committee's inquiry into the purposes of education will know that broadly similar conclusions were reached in that debate and by the committee. It was concluded that there was over-examination and over-inspection in Scottish education, that it was too shallow and that not enough connections were being made. Therefore, it was agreed that Scottish education needed to change. That change started in 2004-05 with the introduction of the curriculum for excellence, and the change is working its way through. However, education is like the proverbial tanker—it takes a while to turn round—so I do not think that we will see the effect of the change in improving education in Scotland for some time. That is not to say that standards of education in Scotland are low, but they could be higher. I think that the curriculum for excellence will make the difference.

All successful education systems throughout the world have two characteristics in common. One is that they rely on the highest quality of teaching and the second is that they have a consistency of policy and a consensus about policy that is not short term. If we stick with curriculum for excellence and do not succumb to the temptation of being partisan about it, and if we can get it

operating well, which we are trying to do, we will achieve long-term benefits. I appeal to the Parliament to accept that advice.

Rhona Brankin (Midlothian) (Lab): I, too, welcome the Government's literacy action plan. There is little in it with which I disagree. I also welcome the establishment of a standing literacy commission. However, I am still concerned that the references to assessment are too woolly. I am sure that the cabinet secretary knows that the key feature of successful literacy plans such as that in West Dunbartonshire Council and those in several other councils has been the regular use of diagnostic assessment using standardised testing. There are references in the plan to functional literacy, but the report of the literacy commission is underpinned by a commitment to ensuring that, as a minimum, all youngsters become functionally literate. How, specifically, will functional literacy be tested?

If we wait until primary 1, there is a danger that that will be too late for some children, particularly those from deprived backgrounds. Will the cabinet secretary give a commitment to consider screening children in nursery school for communication and pre-literacy skills, which several local authorities do and which is another key feature of successful literacy plans?

Michael Russell: The member raises two important issues. On pre-school screening, there are arguments for screening early, but also arguments against. One of the arguments against is that some learning disorders and difficulties do not develop and are not identifiable until later on. I am by no means ruling out that suggestion, as it is an interesting development. I would like to continue to debate it with the standing literacy commission to consider whether it is possible.

Curriculum for excellence provides the framework for assessment. Having literacy at the core of curriculum for excellence means that there will be personalised assessment of what has been achieved, of capability and of how to proceed. That is a rigorous process, but I am happy to meet the member to discuss further how we should do that. I want to ensure that the member's connection with the literacy commission is renewed with the standing commission, so that she can continue to make her points. I know that she has a commitment to the issue.

The Deputy Presiding Officer: I want to get in all members who have a question, so I ask for succinct questions and answers.

Hugh O'Donnell (Central Scotland) (LD): In his statement, the cabinet secretary referred to CPD, which is an important element of the overall plan. What consideration have he and the other partners that will be involved in implementing the plan given to teacher training? Teachers who are not specific English teachers are responsible for addressing literacy, but they might not feel confident about that. Has the cabinet secretary spoken to Graham Donaldson about the review of teacher training that is taking place? What steps are being taken to ensure that Learning and Teaching Scotland and the Scottish Qualifications Authority are tied into that? I have had a look at some of the materials on the LTS website, and it seems to me that it would perhaps stretch those who are not English teachers by profession to follow what is expected of them.

Michael Russell: I said to Elizabeth Smith that I have spoken to Graham Donaldson about precisely that matter, but I just confirm that I have spoken to him about the confidence of people who undergo teacher training in their teaching skills—the pedagogy—and about their lack of confidence in specific subject skills, even in primary. We are concerned about that, and I am sure that Graham Donaldson will take that forward.

On the other issues that the member raises, I am absolutely certain that, with the standing literacy commission, we can consider the matters and make progress on them productively. The standing literacy commission will focus the work of a range of organisations. LTS, the SQA and HMIE have been key players in developing the plan and they will be key delivery agents. I expect them to show the strongest commitment to getting it right.

Alasdair Allan (Western Isles) (SNP): One key step in addressing literacy in secondary schools has been the introduction of the Scottish Government's new foundational national literacy qualification. Will the cabinet secretary provide an update on progress on the qualification and say how he sees it fitting into the overall literacy strategy?

Michael Russell: I decided early on in my tenure that the existing plan needed to be refined. We have tried to make sure that it fits in with the examination system in the fourth year and that there are specific freestanding units. That is going well and I am happy to let the member consider the advice on the qualification that I am currently receiving from the management board.

Public Bodies (Ministerial Appointments)

The Deputy Presiding Officer (Trish Godman): The next item of business is a debate on motion S3M-7212, in the name of Gil Paterson, on the Standards, Procedures and Public Appointments Committee report on the draft revised code of practice for ministerial appointments to public bodies in Scotland.

16:05

Gil Paterson (West of Scotland) (SNP): I am pleased to open this debate on the draft revised code of practice for ministerial appointments to public bodies in Scotland on behalf of the Standards, Procedures and Public Appointments Committee.

On 10 June, the Commissioner for Public Appointments in Scotland laid before the Parliament a consultation document on a proposed revision to the code of practice for ministerial appointments. The consultation is on the first revision to the code of practice that has been proposed since 2005.

Public bodies play an important role in delivering services to a wide range of communities and parts of Scottish life. The boards of such bodies are required to ensure that those services are provided efficiently and effectively. The code of practice plays a key role in ensuring that there is transparency and fairness in the way in which ministers make appointments to the boards of public bodies and ensures that those individuals who are appointed have the necessary skills and experience to maintain and develop the services that are provided by public bodies. The revised code that we are debating today is intended to support that process by setting out clearly what should be expected at each stage of the appointments process for applicants, members of public bodies, Scottish Government ministers and officials, as well as the commissioner and her team.

In considering the code of practice, the committee heard evidence from the commissioner on the various aspects of the code. I put on record the committee's thanks for that evidence and for the commissioner's engagement with the committee in developing the revised code. The committee also notes that issues that were raised by the commissioner in previous reports to the Parliament, such as the requirement that ministers should always have a choice of candidates from which to make an appointment, have been addressed in the proposed revision. The committee welcomes that.

The committee report makes specific comments on four areas of the revised code: ministers being provided with a choice of candidates from which to make an appointment; the use of alternative application methods; the requirement for ministers to keep a written record of appointment decisions; and the fit-and-proper-person test that will be introduced in the revised code.

Ministerial choice in appointment decisions was considered by the committee in 2009. The draft revised code moves away from requiring that ministers be given a choice of candidates in relation to every appointment. That reflects the nature of some appointments for which potential appointees are required to meet certain specific criteria, such as holding a professional qualification or having held a particular office. However, the committee noted that in circumstances where a choice of candidates cannot be provided, it is important to ensure that any individuals who are recommended to ministers have been assessed to confirm that they have the necessary skills and experience for the role.

The committee noted the potential benefits of using a range of alternative application methods to encourage and enable a wider range of applicants to become involved in the public appointments process. Although it recognises that potential benefit, the committee believes that some form of written application, adapted to suit the particular position, continues to provide a reliable way of assessing a candidate's suitability.

I turn to the requirements for ministers to keep a written record of appointments decisions. The committee had some concerns about the potential for the appointments process to become subject to politicisation.

The Deputy Presiding Officer: You should be finishing now, Mr Paterson.

Gil Paterson: Okay.

An element of subjectivity in appointments decisions would be necessary where a minister was presented with a choice of equally qualified candidates from whom to make an appointment.

Having said all that—and given that you are looking at me, Presiding Officer—I will conclude. Subject to my comments, the committee is content to endorse the draft revised code of practice.

I move,

That the Parliament agrees that the Standards, Procedures and Public Appointments Committee's 6th Report, 2010 (Session 3): *Draft Revised Code of Practice for Ministerial Appointments to Public Bodies in Scotland* (SP Paper 491), together with the Official Report of the Parliament's debate on the report, should form the Parliament's response to the consultation by the Office of the Commissioner for Public Appointments in Scotland.

16:10

Paul Martin (Glasgow Springburn) (Lab): I commend the Standards, Procedures and Public Appointments Committee for its diligence in preparing the draft revised code of practice, which is before us today. The current consultation is on the first revision to the code of practice since 2005 and it is intended to reflect the experience of the code since we last revised it. It also follows the introduction of the Scottish Parliamentary Standards Commissioner's equalities strategy, "Diversity Delivers", in 2008.

I am sure that a number of my colleagues are away preparing their amendments for the item of business after this one, but I can say on behalf of the Labour Party that the approach that has been taken in revising the code is to be welcomed. It is a step forward to move away from the detailed chronological approach of the current code to a format that sets out the requirements that should be met at each stage.

In the short time that is available to me, I will refer to one particular area: the alternative application methods. I recognise that the current code anticipates that every applicant will complete an application form, the content of which will determine whether they are selected for interview. I agree with the commissioner, who has observed that that process appears to favour applicants who carefully orchestrate and complete application forms. She recognises that that is a barrier to people from underrepresented groups. That view was reinforced by a number of stakeholders, including chairs of public bodies. I welcome the revision in that regard. The proposed code will allow a selection panel to choose any fair, open and transparent method of selection for interview that it considers appropriate, given the position to be filled and the people to attract.

I will highlight some exchanges between the commissioner and members of the committee. Robert Brown referred to the "magic circle" of applicants who become serial applicants to public bodies. That is a well-chosen phrase and I concur with his view. I have noted over the years those who have become well-kent faces on the quango boards. Many people serve our quango boards well, but I have to say that many of them have been recycled from other elements of public life. We should recognise that those who play a crucial role in community organisations in our constituencies, such as housing associations, community councils—dare I say it?—and tenants and residents associations seem to be underrepresented on quango boards.

The approach that has been taken is to be welcomed and the draft revised code of practice is to be welcomed, but more important is that we look forward to ensuring that it is taken forward in practice.

16:14

Nanette Milne (North East Scotland) (Con): I am happy to make a very brief contribution to this short debate and to support the committee's endorsement of the draft revised code of practice, subject to the comments that the committee's convener has made.

It is clear that people who are appointed to public bodies should have the appropriate skills and knowledge to allow them to make a useful contribution to the work of the bodies on which they serve. In seeking the right people for the positions in question, it should be open to anyone with those skills and knowledge to apply and to be considered for appointment by ministers.

The appointing board must have the necessary levels of skills and knowledge to be able to select the right people to recommend for appointment by ministers, because it is crucial to get the right people in position for each public body.

One of my concerns, on which I questioned the commissioner when the committee took evidence from her, is about the competence of panel members who are tasked with assessing applicants for public appointments. That issue was flagged up in consultation on the revised code by stakeholders who include—importantly—the chairs of public bodies.

The current code requires selection panel members to be familiar with its content, but it does not say that panel members must be competent to assess applicants by the assessment methods that are chosen, nor does it require them to be knowledgeable about equality and diversity issues and about how such matters might affect the outcome of appointment rounds. I share the commissioner's belief that a requirement for competence and knowledge of those matters should have an impact on the people who apply for roles on selection panels and—ultimately—on the make-up of the boards that they select. I therefore agree with her that those attributes should be a requirement in the revised code of practice. The committee made no comment on that in our report, so we agree, too.

Some selection panel members might well have all the necessary skills and knowledge at the outset, but I am reassured by plans to support new members and to help them to develop in their roles. It is important that selection panellists are effective and can select the right people to put before ministers for appointment.

When I asked the commissioner whether she envisaged a general induction for new panel members, she said that

"quite a good briefing happens at the panel pre-meeting"—[*Official Report, Standards, Procedures and Public Appointments Committee*, 14 September 2010; c 399.]

and that she plans to run familiarisation workshops on the new code. She intends to use the five months between the code's publication on 1 April and its implementation on 1 September for training. If the Government says that it, too, would like some initial training of panellists, that could be done in the months from April to September.

In this short debate, not all speakers can go into detail on all aspects of the revised code, but the committee's convener did so ably at the start. I will close merely by reiterating that I am happy to support the motion that is in his name.

16:16

Robert Brown (Glasgow) (LD): As Paul Martin said, the debate has a link with the broader debate on the Cadder situation, which we are dealing with during the rest of the afternoon. The link relates to high standards in public life—the need for a code of ethics, human rights standards and all that sort of thing to apply to everything that we do, particularly in relation to public issues and public appointments.

Paul Martin was right to touch on the fact that the pool of people who apply for public appointments is perhaps too small. Behind the formality of reports such as the committee's, the key issue is that we widen ordinary people's knowledge of the availability and potential of posts and give them confidence to become part of a wider pool of candidates from which to choose. It is undoubtedly an issue that some people are recycled around the public appointments scene. To an extent, the appointments process lends itself to that, because it requires a certain skill—which all students who go through schools, colleges and universities today have developed to perfection—in how to write a curriculum vitae. That is an element that lies behind the situation.

It is important to remember that, as the code says, the overriding principle is that selection should be based on merit. The people who are appointed should best match the skills, knowledge and personal qualities that are needed for the appointment. It is reasonably clear that many people should have the qualities to match the job specifications for public appointments that are on offer, but we do not always manage to reach such people to get them to apply.

I will make two comments on the report. Paul Martin touched on alternative application methods. As the convener of the cross-party group on visual impairment, among other things, I think that it is important that people who require to make applications in alternative formats should be able to do so. However, even that is subject to the overriding principle of appointment on merit and of people matching the job's requirements. That is important.

My final point is that, having been a minister, I am aware that it is important that ministers should have a choice in appointments. However, we should not allow the system to be bogged down by formalities, if difficulties arise in particular situations. The committee's comments about that achieve the right balance.

On the whole, we are moving forward well on public appointments. The improvements that the commissioner has suggested and the committee's comments in the report form a good basis for going forward. With those comments, I support the motion.

16:19

The Minister for Parliamentary Business (Bruce Crawford): Scottish ministers welcome the opportunity that the Standards, Procedures and Public Appointments Committee has given the Parliament to debate the Office of the Commissioner for Public Appointments in Scotland code consultation document.

All public bodies, including those that are regulated by the commissioners, play a vital role in Scottish civic life. They serve Scotland's diverse population. Indeed, it is precisely that diversity of background, experience and skills that we are committed to seeing reflected on the boards of the bodies. We therefore welcome the intention behind the revised code for greater simplicity, reduced bureaucracy and a proportionate and risk-based approach to public appointments. If those intentions flow through to the way in which the code is implemented, we believe that it will encourage a wider and more diverse range of applicants. Scottish ministers are very clear that they want to see people who have never before applied for a public appointment applying for such appointments.

The commissioner indicated that she will publish guidance to support the new code. It is essential that the Government be fully involved in developing that guidance. At that stage, it will be much easier to iron out any scope for misunderstanding or differences of interpretation than will be the case at a later stage. The last thing that anyone wants to see is appointments being held up by debates on process. Working together will ensure a common understanding and the most appropriate approach to delivering successful outcomes for such ministerial

appointments. Our aim is to reduce the length of time that the appointments take. We cannot afford to elongate the process; under the current code, appointments can take up to six months.

I turn to the new code, a key change in which is the welcome reduction in the number of principles. We believe that clarity of outcomes must be the first consideration. Once that is agreed, it will help us to focus on the skills and expertise that we seek in potential applicants for a role. We welcome the focus on encouraging people to apply. In addition, we are committed to ensuring that the experience of applicants who go through the public appointments process is a positive one. Clearly, not everyone can be successful in gaining an appointment, so it is essential that they are treated with dignity, professionalism and respect throughout the process. Constructive feedback is therefore a very important part of the process. The feedback must be based on gathered evidence and should be offered in a way that helps the applicant to learn from the experience and allows them to give feedback on how the process was for them.

The proposed code includes a responsibility on ministers to ensure that the person to be appointed is a fit and proper person for the role. Clearly, we always want to ensure that anyone who is offered a public appointment is a fit and proper person. It is very important that the Government understands what the commissioner means in making such a statement. Being a fit and proper person appears to us to be a normal part of any appointments process. Such a statement is therefore not strictly necessary in the code.

We welcome the intentions that lie behind the revised code for greater simplicity, reduced bureaucracy and the proportionate and risk-based approach to public appointments. That said, we want to engage with the commissioner to understand more clearly the intentions that lie behind some of the detail and to ensure that the move from intention to implementation is as smooth and effective as possible for all parties—applicants, public bodies, commissioners and ministers.

16:24

Marilyn Livingstone (Kirkcaldy) (Lab): I am pleased to close the debate on behalf of the Standards, Procedures and Public Appointments Committee. I thank members who contributed to the debate and committee members for their work in considering the draft code of practice. I also thank the commissioner in that regard. In addition, I thank the clerking team for the work that they undertook in support of the committee.

The code of practice is the core document in relation to the operation of the Scottish public appointments process. It sets out the requirements and expectations that apply at each stage of the process. As such, it is important for the code to be maintained and revised in the light of experience, if we are to ensure that ministers continue to make appropriate appointment decisions. Together with the commissioner's equality strategy, the code has an important role to play in engaging a broad range of people from across Scotland in public appointments. This afternoon's short debate has reflected that.

Paul Martin spoke about the alternative application method and barriers to underrepresented groups. Importantly, he spoke about people who play vital roles in our communities. As all of us know, those people are underrepresented. Nanette Milne spoke about the skills that are required by panel members; the committee discussed that issue. Robert Brown spoke about the higher standards that are required in public life and the fact that the pool of people who go forward is too small. The minister spoke about the need for diversity to be reflected. The committee debated those issues.

The main themes of the committee's consideration of the revised code were ensuring that candidates for appointment are assessed fully, ensuring that the work of public bodies is supported effectively, and ensuring that the appointments process is—and is recognised as being—open and fair. In the light of those themes, there are two areas in which the committee recommended that the commissioner might wish to consider changes: the requirement to keep a written record of appointment decisions and the operation of the fit-and-proper-person test at specific stages of the appointments process.

Notwithstanding its specific recommendations, the committee is content that the revised code of practice, along with the supporting guidance that the Commissioner for Public Appointments in Scotland intends to issue, will provide an effective framework to support the operation of the public appointments process and contribute to the effective operation of Scottish public bodies. I support the motion in the convener's name.

Points of Order

16:26

The Deputy Presiding Officer (Trish Godman): To allow members to consider the amendments that have been lodged at stage 2 of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill, I will suspend the meeting until 5 o'clock.

Patrick Harvie (Glasgow) (Green): On a point of order, Presiding Officer.

Margo MacDonald (Lothians) (Ind): On a point of order, Presiding Officer.

The Deputy Presiding Officer: I will take Patrick Harvie's point of order first.

Patrick Harvie: This is the first that we have heard of a change of timing. The amendments that have been lodged were circulated recently to members by e-mail, without any indication that the timing of the process would change. Can you provide an indication of the expected timescale for the rest of the process and indicate at what point it was decided that the time at which stage 2 would start, which was previously 4.20, should change?

The Deputy Presiding Officer: The Presiding Officer took the decision that members would wish to have a bit longer to consider the amendments. I cannot answer the last part of the question—which was not a point of order—at the moment, but I will do so as soon as I can. Does Margo MacDonald have the same point of order?

Margo MacDonald: My point of order refers to the code that is established when members are sworn in as members of Parliament. The clear implication is that we will produce to the best of our ability legislation that is required by the people whom we serve. I suggest that we are not doing that this afternoon. What we produce may be correct, but it will be subject to much less scrutiny than such an important piece of legislation requires. I request that we consult standing orders to see whether there is any other way of treating the matter properly.

The Deputy Presiding Officer: That is not a point of order, but you have put your comments on the record. I suspect strongly that the Presiding Officer has allowed a suspension simply because members want longer to examine the amendments that have been lodged.

Patrick Harvie: Further to my earlier point of order, Presiding Officer, in what way is a query about the timing of decision time not a point of order? If it is not, how are we to find out when decision time will be?

The Deputy Presiding Officer: It was not about decision time—we were about to consider a bill at stage 2. Those proceedings will now start at 5 o'clock.

16:28

Meeting suspended.

Committee of the Whole Parliament

[The Presiding Officer *opened the meeting at 17:00*]

Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill: Stage 2

The Convener (Alex Fergusson): The next item of business is stage 2 proceedings on the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill, which will be considered in a Committee of the Whole Parliament. The occupant of the chair is the convener.

In dealing with amendments, members should have the marshalled list and the groupings that I have agreed. The division bell will sound and proceedings will be suspended for five minutes for the first division this afternoon—I think that it is still afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. All other divisions will be 30 seconds.

Section 1—Right of suspects to have access to a solicitor

The Convener: Amendment 1, in the name of Robert Brown, is grouped with amendments 5 and 6.

Robert Brown (Glasgow) (LD): I am conscious that there is a long list of amendments to this difficult emergency legislation; that indicates the problems with trying to pass such legislation so quickly.

The first grouping is pretty minor, and I will explain briefly what it is about. It relates to line 12 on page 2 of the bill, under section 1, which states with regard to the right of the suspect to have access to a solicitor that

"The suspect has the right to have intimation sent to a solicitor"

in certain circumstances. I am quibbling over whether "sent" is the right word in that context. Such things are normally done by telephone, and "made" is perhaps a better word. I would appreciate a response from the Cabinet Secretary for Justice on that point—to which amendments 5 and 6 also relate—with regard to how he anticipates that the intimation would be made in such situations. Would it normally be made by telephone, or does he have in mind—as the wording suggests—a more elaborate procedure in that regard?

I move amendment 1.

The Cabinet Secretary for Justice (Kenny MacAskill): I welcome the spirit in which Robert Brown has lodged amendment 1. However, it is a technical amendment that we believe would achieve nothing in practice, and it might cause confusion. The term "sent" is consistent with the wording in sections 14, 15 and 17 of the Criminal Procedure (Scotland) Act 1995, and to use a different term in the current bill would be likely to cause confusion.

Mr Brown himself will have been—if I can put it in inverted commas—"sent" intimation from his clients in custody. The process is well established; the bill simply uses the legal term for what takes place in a variety of ways. It is custom and practice, and we do not seek to change that in any way. A change of the nomenclature would disturb a pattern that is already settled in the 1995 act.

Robert Brown: Given the cabinet secretary's response, I seek to withdraw amendment 1.

Amendment 1, by agreement, withdrawn.

The Convener: Amendment 2, in the name of Robert Brown, is grouped with amendment 7.

Robert Brown: Amendment 2 is a paving amendment for amendment 7, which is the substantial amendment that refers to lines one to five on page 3, under section 1. Again, it relates to the right of suspects to have access to a solicitor.

It is worth reading out the phrasing in subsection (8) of proposed new section 15A of the 1995 act. It states:

"A constable may delay the suspect's exercise of the right under subsection (3)"

—that is, the right to have a solicitor present—

"so far as it is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders that the questioning of the suspect by a constable begins or continues without the suspect having had a private consultation with a solicitor."

If ever I saw a clause that gave a right with one hand and took it away with the other, that is it. I question whether the Government has got that particular matter right.

I refer members to the decision in the Cadder case, which went into the matter in some detail and made clear that the right of a suspect to the presence of a solicitor was an absolute right. The right was certainly subject to the procedures that surround it in the individual jurisdiction, but it was not intended that there should be a systematic exception to it. Lord Hope made all sorts of observations in that regard. He made it clear that the grand chamber of the European Court of Human Rights

"was determined to tighten up the approach that must be taken to protect a detainee against duress or pressure of any kind that might lead him to incriminate himself."

He also made it clear that, although there would be an interval of time before the arrival of the solicitor, and arrangements would be made for that,

"there is no hint anywhere in its judgment that"

the European court

"had in mind that the question ... will depend on the arrangements the particular jurisdiction has made".

He said that it does not permit a "systematic departure" from the requirement. That was his major objection and difficulty with the decision in Her Majesty's Advocate v McLean.

I suggest to the Parliament and particularly to the minister that the provision as it is worded at present goes significantly beyond the Cadder decision, establishes a systematic exception to the right, and is therefore questionably compliant with the European convention on human rights. More to the point, it seems to me that any policeman worthy of his salt could readily justify an extension of the time for detention just by reference to the needs of the investigation of the case. The provision is not specific, adds nothing to the substance, gives no criteria of real meaning, and is exactly the sort of thing that requires further detailed examination before we go in that direction. Against that background, I strongly suggest to the Parliament that subsection (8A) of proposed new section 15A of the 1995 act should be removed from the bill.

I move amendment 2.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I support amendment 2. I would like to hear from the justice secretary an explanation of subsection (8). The reason why we have the legislation is to give people the right to consult a solicitor. Subsection (8) states:

"A constable may delay the suspect's exercise of the right ... so far as it is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders".

Are those not the reasons why people are detained in the first place? In other words, what is the purpose of the provision? When a suspect is brought to a police station, it is for those reasons and no other, is it not?

Kenny MacAskill: I can understand why, at first glance, Robert Brown would have raised his eyebrows and seen some cause for concern, but the provision is necessary. It replicates a high test that is already contained in section 15 of the 1995 act, under which intimation can be delayed. It is nothing new because it is already in that act. I point out to Mr Rumbles that it will be exercised only in compelling circumstances but will be necessary in some serious cases. I assure him that it is ECHR compliant.

Mike Rumbles: Will the minister take an intervention?

Kenny MacAskill: Not at the moment. Moreover, I do not know whether Mr Rumbles had read the judgment, but I doubt it—

Mike Rumbles: There was no time.

Kenny MacAskill: It was published at 9.45 yesterday.

Mike Rumbles: Oh, great.

The Convener: Order.

Kenny MacAskill: Lord Rodger accepts at paragraph 95 that there may be compelling reasons to restrict the right, and he quotes a similar matter. Amendment 2 would take away the ability of the police to delay access to a solicitor. There are instances in which the interests of justice could be jeopardised, somebody could evade capture, some further witness could be threatened, or vital evidence could be interfered with. Such cases are very rare. They are few and far between, but the provision replicates what we already have in section 15 of the 1995 act to ensure that we protect the interests of justice. It is an extremely high test that has been used but sparingly by our police. That is why it is necessary.

Mike Rumbles: Will the minister take an intervention?

Kenny MacAskill: By all means.

Mike Rumbles: I thank the cabinet secretary for taking an intervention. I would accept everything that he says if he had said that in the bill that we are considering, but it does not say that in subsection (8). It states:

"A constable may".

There is nothing about exceptional circumstances. Under the law that he is asking us to pass today, we are giving people the right to legal representation, but in subsection (8) we are taking it away again.

Kenny MacAskill: The Government just does not accept that. Indeed, I argue that Mr Rumbles is in danger of putting the police at a disadvantage and jeopardising victims, witnesses and, in the most serious cases, the opportunity to apprehend and detain people and ensure that they are brought to justice.

Robert Brown: I find the cabinet secretary's tone unfortunate. This problem has arisen because we are having to deal with legislation that he and his Government are seeking to force through today. Had we had the time to consider

the issue properly, as we should have been able to, we would not be in this position.

As for Lord Rodger's comments, which the cabinet secretary rightly referred to, I point out that he did not say that section 15 of the 1995 act should be continued. Indeed, there must be a question mark over that in light of the decision. Lord Rodger says that the type of circumstances in section 15

"could perhaps constitute compelling reasons",

but we need to go a bit further and define what we are talking about here. The provision does not relate to exceptional circumstances, substantial reasons or any other criteria beyond the reason for having the person there in the first place, which is the investigation of the crime. Although I accept that in certain cases a delay might be possible, we should remember that, under the cabinet secretary's proposals, it will be possible to extend the time for detention at a later time. This provision is designed to allow the police to question someone without the presence of the solicitor concerned, which is the significant issue that was raised in the Cadder case. Frankly, the cabinet secretary has not responded to that point properly and I certainly do not think that subsection (8) responds to it either.

Against that background, I am afraid to say that I will press amendment 2.

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

Members: No.

The Convener: There will be a division. As it is the first division in the proceedings, we will have a five-minute suspension.

17:11

Meeting suspended.

17:16

On resuming—

The Convener: Before we come to the vote, I inform members that, thanks to Bill Kidd, who has generously agreed to postpone it, the members' business debate will not be held this evening.

Members: Aw!

The Convener: I agree.

We move to the division on amendment 2.

For

Brown, Robert (Glasgow) (LD)
Finnie, Ross (West of Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
MacDonald, Margo (Lothians) (Ind)
McArthur, Liam (Orkney) (LD)
McInnes, Alison (North East Scotland) (LD)
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)
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)
White, Sandra (Glasgow) (SNP)

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, 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)
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)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (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)
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)
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)
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)
Morgan, Alasdair (South of Scotland) (SNP)
Mulligan, Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
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)
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, 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)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 18, Against 100, Abstentions 0.

Amendment 2 disagreed to.

The Convener: Amendment 3, in the name of Robert Brown, is grouped with amendment 4. I draw members' attention to the pre-emption information on the groupings paper.

Robert Brown: Amendment 3 relates to what section 1 inserts in the 1995 act on the method of consultation. In that regard, I draw members' attention to lines 26 to 28 on page 2 of the bill, which say that consultation between the solicitor and the client

"means consultation by such means as may be appropriate in the circumstances, and includes, for example, consultation by means of telephone."

The Convener: Order. I am sorry, but there is far too much background noise. Will members please respect the member who is on his feet?

Robert Brown: I have lodged two alternative amendments, as the issue is difficult. I think that most of us would regard consultation with a solicitor as involving a private meeting with that solicitor in a room in a police station, or something of that sort. Conversation by telephone or perhaps by e-mail or carrier pigeon for all I know seems to me to be a slightly odd concept when we are talking about the protection of a suspect in custody. The provision refers to

"consultation ... as may be appropriate".

Appropriate to whom? That is an issue. Who would decide what might be appropriate in the circumstances?

I propose that the provision is not necessary, as consultation with a solicitor is well understood and does not need to be defined in the bill. The only purpose behind the Government trying to define it in the bill is to narrow its scope. Alternatively, if the Government thinks that consultation has to be defined, it must be defined rather more narrowly than has been proposed. I accept that there could be a distance problem, for example, or exceptional circumstances in which there might have to be some other form of contact. Perhaps provision could be made for that, but that should not suborn the whole section. Therefore, amendment 4 suggests that the normal thing would be consultation in person at the police station or other place where the suspect is being detained,

"except where the suspect requests that alternative means be used".

I do not know what those alternatives might be, but I can envisage that there might be something in that regard.

Amendment 3 would pre-empt amendment 4. Primarily—although subject to the cabinet secretary's comments—I seek to delete subsection (5) of proposed new section 15A of the 1995 act. However, if there is merit in what I say and there are circumstances in which a meeting in person is not the only possibility, I am open to a slightly broader approach. I am interested in the cabinet secretary's responses on that.

I move amendment 3.

Kenny MacAskill: Of course there is merit in what Robert Brown asks us to do, but the issue is covered by the existing proposals. The issue is about providing the right balance between ensuring that there is access to a solicitor and allowing the accused to make an informed choice on certain occasions as to whether a solicitor's presence is required. There will be cases in which the accused will be reluctant to wait. As Mr Aitken said, the lawyer might have to come from Inverness or Fort William to Portree, but the accused might well decide that they do not want to wait that long and might say, "Can we just get on

with it and get it over with?" However, he will have to have the opportunity to take advice. The solicitor might say, "Don't be so daft—wait until I get there," or they might say, "That's fine—this is what I advise you to do and if you want to get on with it, feel free to do so."

That is one example. There will be instances in which somebody is not sure whether they need advice. In some instances, they will not need advice, but they should at least have the opportunity to speak to a solicitor and be told what they think. The accused might be persuaded that they need advice or be satisfied that they do not.

There are other practical matters. For example, there could be force majeure. There could be a landslip on a road that means there is no access. Such things occasionally happen in Scotland. The time limit would be expiring and it might be that the matters could be dealt with by telephone. Equally, as I am sure all members know, we are looking to move towards the use of new technology, such as Skype and videoconferencing or whatever. We must take it into account that, in some instances, as well as a telephone call being offered, some other new form of technology might be available.

There is a legitimate question to be raised, but I hope that Mr Brown accepts that the issue is about allowing an informed choice for the accused, while ensuring that he has the opportunity to access a solicitor. If, because of the circumstances or by his own choice, he does not want to access a solicitor, the police can press on.

Robert Brown: I want to clarify the issue of whose choice it is. The bill talks about

"consultation by such means as may be appropriate",

but it does not say that that is the suspect's choice. Rather, it indicates that it is the choice of the authorities in a general sense. We need clarity on that point.

Kenny MacAskill: The accused will have access to a solicitor, apart from in the situations that we have already discussed in relation to amendment 2. The police would ask the accused whether he wanted to speak to his agent or whoever. That is a matter of discussion between the suspect and the police. The police would not say that it is a phone call only. In some instances—if for example the suspect declined—the police would ask the accused whether they wanted to clarify anything and inform them that they could speak to a solicitor. The accused might just want to get on with it, but the police, for good reason—to minimise appeals—might say, "Actually, you should speak to the solicitor in the first place." Some of the issue must be left to common sense and discussion, with the balance that matters can be appealed.

Pauline McNeill (Glasgow Kelvin) (Lab): It is helpful to have clarification of the meaning of the provisions. I support what the cabinet secretary has said so far. Is it clear that it is a matter for the accused to determine what form access to a lawyer would take and that it is for the accused to determine whether a lawyer is present during the interview? Who makes that determination?

Kenny MacAskill: That has to be a matter of balance. I talked about force majeure. If a solicitor is on their way but there has been a landslip on the A-whatever-it-is and he cannot come, he can speak to the suspect on the phone. I do not think that it would be legitimate if justice were to be circumvented in that situation. As I said, if the process is not satisfactory, that will be borne in mind by the procurator fiscal when matters are reported and, ultimately, the issues will be clarified by the High Court. It cannot be an absolute mandatory choice for an accused to say, "I'm not doing anything other than having a solicitor here," if, for example, there are good reasons why a solicitor cannot get there in time and some alternative method has been suggested.

That said, it is clear from where the Association of Chief Police Officers in Scotland is heading in its guidance that police will ask the accused how they want to deal with matters. There must be some flexibility and pragmatism to take into account a variety of eventualities. Those eventualities will be rare, but they might well arise.

Robert Brown: I have listened to what the cabinet secretary has said and there is obviously a lot of content to it. However, frankly, I do not think that it deals with the point, as Pauline McNeill said. There is an important issue to do with where the rights of the matter lie that cannot be dealt with by ACPOS guidance. That is the substance of the issue, or so it seems to me.

In the circumstances, I will seek leave to withdraw amendment 3 and press amendment 4. There might be some advantage in defining "consultation". I am not entirely certain that amendment 4 does the trick, but I am definitely unhappy with the current phraseology of the section. At least amendment 4 arrives at the point at which it is up to the suspect. The suspect does not have to have legal advice; he has the right to have legal advice or not, and nothing takes away his right to refuse legal advice if he wants to do that.

I am certain that the police will make arrangements for telephone conversations when that is appropriate. However, the central point is that the normal situation will still be a face-to-face, private meeting in a cell or a meeting room of some sort at the police station. That must be reflected in the statute and, against that background, I will press amendment 4.

Amendment 3, by agreement, withdrawn.

Amendment 4 moved—[Robert Brown].

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

Members: No.

The Convener: There will be a division.

For

Brown, Robert (Glasgow) (LD)
Finnie, Ross (West of Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
MacDonald, Margo (Lothians) (Ind)
McArthur, Liam (Orkney) (LD)
McInnes, Alison (North East Scotland) (LD)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
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)
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, 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)
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)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (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)
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)
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)
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)
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, 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 Convener: The result of the division is: For 18, Against 102, Abstentions 0.

Amendment 4 disagreed to.

Amendments 5 and 6 not moved.

Amendment 7 moved—[Robert Brown].

The Convener: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, Ross (West of Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
MacDonald, Margo (Lothians) (Ind)
McArthur, Liam (Orkney) (LD)
McInnes, Alison (North East Scotland) (LD)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
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)
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, 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)
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)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (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)
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)
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)
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)
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, 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 Convener: The result of the division is: For 17, Against 102, Abstentions 0.

Amendment 7 disagreed to.

Section 1 agreed to.

Section 2 agreed to.

Section 3—Extension of period of detention under section 14 of 1995 Act

The Convener: Amendment 8, in the name of Robert Brown, is grouped with amendments 9 to 23 and amendment 28, as shown in the groupings. I should point out to members that the amendment that is shown between numbers 13 and 15 on the groupings paper should read "14" and not "4". I think that that is a satisfactory explanation. I also call members' attention to the pre-emption information on the groupings.

17:30

Robert Brown: Perhaps that shows the potential for deficiencies creeping into the bill by accident during this sort of procedure.

Section 3 is perhaps the most substantial part of the bill because it relates to arrangements for the extension of the six-hour period of detention under section 14 of the Criminal Procedure (Scotland) Act 1995. I have tried to subject the cabinet secretary's proposals to a degree of critical, but I hope friendly, scrutiny.

Amendment 8 relates to the six-hour period of detention. The only reason why we should be considering the extension of the period today is the result of the Cadder case and any difficulties that there might be in securing the attendance of a solicitor at a police station to provide the support that is required. Any other agenda that might exist behind the scenes to extend periods of detention for other reasons should be dismissed from our minds during this debate.

Through subsection (4) of proposed new section 14ZA of the 1995 act, which amendment 8 would insert, I have tried to give the police—in this instance, it is the police who should make the decision—the authority in exceptional circumstances to extend the period of detention from six hours to 12 hours,

"if the officer is satisfied that the detained person wishes to exercise the right ... but has been unable to do so due to a difficulty in securing the attendance of a solicitor."

That is straightforward enough. As with the principal act, we are talking about an officer of the rank of inspector or above.

There is also the situation with the period of detention going beyond 12 hours, which I am trying to tighten up significantly. I have two suggestions to make, one of which would pre-empt the other. Amendment 9 is my substantive amendment, through which I seek to suggest that there is no hurry on this matter. It is perfectly able to be examined at leisure by the Justice Committee.

Dave Thompson (Highlands and Islands) (SNP): Does Robert Brown accept that the regulations for which amendment 9 would provide would take at least two months—maybe a bit longer—to go through Parliament? For that time, the 12-hour period alone would be set. Is not there a danger that forensic evidence in the case of an accused rapist or paedophile would not necessarily be available within 12 hours and that therefore such an accused person could be released if amendment 9 were agreed to?

Robert Brown: I suggest to Mr Thompson that he has not listened to what I said. I said that it was important to distinguish the reason for the emergency legislation today—the need to deal with Cadder—from more general arguments of the sort that he makes. There might well be a case for the argument that Mr Thompson makes in general terms, but if there is—we are talking about individuals' civil liberties—it should be dealt with properly by legislation through this Parliament, not as a by-blow, and it should not be used as an excuse to take things forward in that way. Mr Thompson is approaching the matter in the wrong way altogether.

Margo MacDonald (Lothians) (Ind): Would Robert Brown's remarks apply equally if more than one person were being detained? I am thinking of a smaller police facility in which a number of people were being detained for 12 hours or more.

Robert Brown: I take the point, but I am bound to say that the Scottish Government has been in power since 2007. If it thought that that was such a compelling issue—on the advice of the Lord Advocate, who engages with the Government from time to time on such matters—then I am at something of a loss to understand why we have not had legislation since then to deal with that particular point. Even the emergency arrangements that have been made by the Lord Advocate continue the six-hour provision—obviously she could do only that. They have operated reasonably satisfactorily over the summer. Things operated that way before the Cadder decision was made and would otherwise—but for the bill—have continued to operate after the decision was made. If there are arguments about the point that Margo MacDonald makes, they have to be examined properly by substantive legislation on a different basis.

The point that I was making on amendment 9 was that we could move forward to the 12-hour period if the Government wishes, but that, through the Justice Committee following the statutory instrument process, the amendment would ensure that the more substantial change from the 12-hour period to the 24-hour period would benefit from proper examination by the Parliament. The process would allow the committee to conduct that

examination, to hear people's views and to make a more considered and proper decision about what is required. That would be the best way of tackling the matter.

However, if amendment 9 does not find favour, my amendment 10 offers the Parliament the option that the extension of a detention period to 24 hours would be sanctioned by a sheriff and not by a police officer. That proposal is pretty important. In all sorts of situations, warrants are sought from sheriffs and other judicial officers when the police require to do searches or obtain information. To involve a sheriff is the obvious way to proceed. Apart from anything else, that would protect the police from allegations that funny things went on in the police office and that the inspector simply rubber-stamped the request to extend the time.

All the other amendments in the group are consequential, so I need not deal with them in detail.

I move amendment 8.

Richard Baker (North East Scotland) (Lab): In the stage 1 debate, we asked whether applications to extend the detention time should be agreed by sheriffs rather than by police officers of the rank of inspector or above, which Robert Brown has just discussed. We welcome his raising the issue for debate.

We accept that, in England and Wales, senior police officers consider such applications. However, that will be a substantial change to our system, so we should consider the best checks and balances for us. We have sought to look further into the matter and we have met the Lord Advocate in doing so.

It is regrettable that we have no evidence beyond the ACPOS advice, but we cannot obtain such evidence because of the strictures that we are under. We have been told that securing permissions from sheriffs would involve practical difficulties in rural areas. On the parliamentary timescale, we cannot gainsay that claim, so—most regrettably—we will not support amendment 8. However, we will have to return to the matter when Parliament properly scrutinises legislation on the issues later. In other circumstances, we might well have supported Robert Brown's amendment.

Iain Smith (North East Fife) (LD): I am slightly at a loss. If we pass the emergency bill today, it will become a statute of the country on Friday, when it will receive royal assent. When will Parliament have a chance to return to the provisions? I presume that that would require a new bill from the next Government. To say that a future Parliament can consider the matter, if we have got it wrong, is the wrong way of operating. We need to get the bill right today, because it will be law on Friday.

Richard Baker: Our not taking action today might have unintended consequences. However, Mr Smith is right: the issue needs to be the subject of new legislation—probably from a new Government after the next election. When such legislation is introduced, we will be able to debate the points fully. That is the right way to proceed.

We have sympathy with Robert Brown's amendment 9, which would give the Justice Committee new opportunities to debate the matters on a shorter timescale. However, agreeing to it would mean removing the bill's current provisions on extending detention times, and we are concerned about what would happen in the interim. The best way to proceed is for me to speak further with Robert Brown before stage 3 to consider whether there is any way to give effect to the proposed mechanism after the provisions in the bill are passed. I hope to have further dialogue with him on that before stage 3.

Bill Aitken (Glasgow) (Con): Robert Brown's amendments are arguable and have some merits. They are based on his wish—which every one of us has, I am sure—for people to be detained in custody for the minimum possible period before being charged. I have no difficulty in going along with that. The problem is with the practicalities.

No difficulty should arise in 99.9 per cent of cases, because they occur in urban areas, where no problems are experienced in getting hold of solicitors. I have no doubt that figures will be produced in the fullness of time to show that the vast majority of people are charged and released or are kept in custody after consulting a solicitor.

I do not think that the problem should arise very often. The practicality element falls down in cases such as that on the Isle of Skye, which I cited earlier. Under Mr Brown's amendment 9, it would be impossible to guarantee access to a solicitor within the period. If we were to agree to his consequential amendment 10, a sheriff would be involved in having to agree on the cause shown to extend the period. It is highly unlikely that that would be practicable. Sheriffs do not always live in rural areas. I assume that Mr Brown wants the sheriff to have the deponent—namely the custody officer—come before him to put him on oath. On the basis of what is said, the sheriff will either extend or refuse to extend the period. Practicality is not with Robert Brown in this instance. What he proposes is well meant, but it is simply not workable.

Kenny MacAskill: I understand the points that Richard Baker made. Yesterday, when we held the meeting subsequent to the announcement, I said that I would encourage discussion—indeed, ACPOS is also quite willing to discuss matters. There is legitimate reason to ensure that we get right the provisions. Equally, I know that Mr Baker

has had discussions with the Lord Advocate, who is monitoring the matter. Again, she will be more than happy to co-operate. Finally, we give the assurance that Lord Carloway will review the matter.

The Government feels that it is necessary to resist amendments 8 to 10 and we support Bill Aitken's comments in this respect. The six hours that Robert Brown proposes in amendment 8 are simply not enough to deal with serious cases. We have information from ACPOS on a variety of scenarios that have occurred since the introduction of the Lord Advocate's guidelines. We have been told of instances, including of multiple accused or people being held in different geographic areas, and of solicitors who have turned up to see multiple accused and who have refused to deal with them collectively—which is understandable in many instances. Nonetheless, the six-hour time limit was threatened in all of those. Six hours is entirely inappropriate. The scales of justice have been tipped. The requirement is now for a solicitor to be present for the interview. A change to the period of detention therefore needs to be made and the period before review that we propose is shorter than that which applies in England and Wales. In many instances, the safeguards that we propose are similar to those in England and Wales; in some instances, they go beyond them.

I turn to amendment 9. As Richard Baker correctly flagged up, we do not believe that we can wait. The amendment would require us to wait for royal assent and to bring to the Parliament regulations under affirmative procedure. As Dave Thompson correctly pointed out, we could be approaching Christmas before we could do that and, in the interim, no one could be detained beyond the 12 hours. As I said, serious criminals could evade capture or jurisdiction. As Dave Thompson said, if someone was detained in Portree or Inverness and forensic or ballistic evidence was required, the 12 hours could be up by the time the information became available. That is unacceptable—

Mike Rumbles: Will the cabinet secretary give way?

Kenny MacAskill: I need to make progress.

Safeguards are appropriate. As I said, Lord Carloway will review the matter. Delay is entirely unacceptable. We need the legislation and we need it now.

Mike Rumbles: I am a bit concerned about the language that the cabinet secretary is using. We are passing criminal law and the cabinet secretary keeps referring to "criminals". Surely someone who is detained in a police station is a suspect and not a criminal.

Kenny MacAskill: What we are trying to address is serious legislation of fundamental affect to the people of our country. The pedantry and nomenclature that Mr Rumbles is employing ill befits him.

I turn to amendment 10. The period of detention that we propose before review is shorter than that which applies in England and Wales, I remind Mr Brown and Mr Rumbles. The position that we suggest for Scotland, which ACPOS supports given the review that it has undertaken, are 12 and 24 hours. The 12 hours can be extended by an officer of at least inspector rank and only in serious cases of an indictable nature. The situation in England and Wales under the UK Government—the Liberal Democrats are part of that coalition Government—is a mandatory 24 hours that can be extended by an officer or someone of similar rank to 36 hours. A magistrate can extend the period to 72 hours, but a magistrate is not even on a par with a sheriff in Scotland.

Mr Aitken's points on the difficulties in accessing sheriffs are correct. We require to work with the Lord Advocate who will work with the Parliament and the police to develop the guidelines. We need sheriffs to focus on what is their best use of judicial time. We also need to ensure that unnecessary matters do not interfere with the due process of law and we need to let the police get on with their investigations.

The bill strikes the correct balance. The scales of justice have been tipped by the Supreme Court's decision in Cadder v HMA. We must ensure that the police are armed equally to the solicitors who are there to assist the accused. That is why I oppose Mr Brown's amendments.

17:45

Robert Brown: This has been an interesting and important debate on an issue that is at the core of the bill. The cabinet secretary is scratching about a bit if he is blaming the current coalition Government, which has been in power for only five months, for the legislative situation at Westminster. I am not sure what he expected us to do about the situation within that period, even if it became an issue.

Mike Rumbles was right to say that there is an issue of language that affects the approach that is taken. As I said in the stage 1 debate, the cabinet secretary has consulted people on the prosecution side: the Crown Office, the Lord Advocate and ACPOS, which has been brought into the debate. There is a balance to be struck when one is dealing with criminal legislation. Mike Rumbles was right to say that we are dealing with people who are suspects—people who are accused of

crimes but who may or may not have committed them.

I am saying not that there should be no extension of the detention period but that, over the summer, since the Lord Advocate's guidelines have been in place, we have had a bit of experience of one or two of the issues relating to timescales and so on that may be thrown up. That may justify extension of the detention period to 12 hours, for the sake of argument, but it does not necessarily follow from that that we must do so immediately, without the possibility of detailed consideration of the implications.

The cabinet secretary indicated that some information about possible problems is coming through from ACPOS. The Parliament has no knowledge of that, bar a throwaway paragraph—in fact, a subordinate clause—in the policy memorandum. We do not have the details and nor do we know the strength of the information. We do not know the extent of the problem or how often it occurs. The suggestion that, because there may be a problem on the Isle of Skye, we must change the legislation completely to deal with that, seems peculiar. Clearly, we must deal with the problem on the Isle of Skye, but the normal position ought to be one that is applicable and reasonable in the rest of Scotland. There ought to be further discussion of the issue, as we are talking about periods of six, 12 and 24 hours' detention.

I accept the point that Bill Aitken made about sheriffs not living in rural areas, but we live in an era in which there are such things as e-mails and telephones and it is possible to transmit information to a distant point. Surely it is possible, in the exceptional circumstances that have been described, to deal with matters in a satisfactory way. I do not pretend to know the answer, but situations that are relatively exceptional should be dealt with as such.

The bill is a criminal statute that will allow the prosecution authorities—in particular, the police—to lock up people for longer than has hitherto been possible. There may be good cause for that, but it should not be done without careful consideration and examination. Amendment 9 offers the Parliament the opportunity to consider the issue with a degree of leisure after the detention period has been extended to 12 hours, if members are so minded.

We are dealing with a significant matter of civil liberties. The position should not be changed by way of a by-blow, and the bill should not take on board all of the other issues that members have raised. The Government could have dealt with those in other ways, if it had concerns about them. Due consideration should be given to the matter. Against that background, I will press the amendments in my name.

The Convener: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brown, Robert (Glasgow) (LD)
Finnie, Ross (West of Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
MacDonald, Margo (Lothians) (Ind)
McArthur, Liam (Orkney) (LD)
McInnes, Alison (North East Scotland) (LD)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
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)
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, 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)
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)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (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)
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)
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)
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)
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, 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 Convener: The result of the division is: For 18, Against 102, Abstentions 0.

Amendment 8 disagreed to.

The Convener: If amendment 9, in the name of Robert Brown, is agreed to, amendments 10 to 23 will be pre-empted.

Amendment 9 moved—[Robert Brown].

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

Members: No.

The Convener: There will be a division.

For

Brown, Robert (Glasgow) (LD)
Finnie, Ross (West of Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
MacDonald, Margo (Lothians) (Ind)
McArthur, Liam (Orkney) (LD)
McInnes, Alison (North East Scotland) (LD)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
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)
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, 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)
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)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (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)
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)
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)
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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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Paterson, Gil (West of Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
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, 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 Convener: The result of the division is: For 18, Against 101, Abstentions 0.

Amendment 9 disagreed to.

Amendment 10 moved—[Robert Brown].

The Convener: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brown, Robert (Glasgow) (LD)
Finnie, Ross (West of Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
MacDonald, Margo (Lothians) (Ind)
McArthur, Liam (Orkney) (LD)
McInnes, Alison (North East Scotland) (LD)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
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)
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)
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)
Marwick, Tricia (Central Fife) (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)
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

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (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)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Foulkes, George (Lothians) (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)
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)
Stewart, David (Highlands and Islands) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)

The Convener: The result of the division is: For 18, Against 61, Abstentions 41.

Amendment 10 disagreed to.

Robert Brown: You might be relieved to know, convener, that I do not propose to move the rest of the amendments in this group.

The Convener: I am perfectly content, Mr Brown, and I think that members in the rest of the chamber are, too.

Amendments 11 to 23 not moved.

Section 3 agreed to.

Sections 4 to 6 agreed to.

Section 7—References by the Scottish Criminal Cases Review Commission

The Convener: Amendment 24, in the name of Bill Aitken, is grouped with amendments 25 and 26.

Bill Aitken: Amendments 24 to 26 would all amend section 7, and relate to the appeal process—specifically to references by the Scottish Criminal Cases Review Commission. From time to time in the course of the debate, we have indicated that there must be finality in the legal process. Everyone is entitled to a fair trial, and everyone is entitled to appeal where there are grounds to do so—no one could possibly object to that—and that is to maintain the standards of human rights that we in Scotland support.

However, under section 7(4), the issue is left open to some strange interpretation. As it stands, the bill states:

"Where the Commission—"

that is, the Scottish Criminal Cases Review Commission—

"has referred a case to the High Court under"

the relevant section of the earlier legislation,

"the High Court may ... reject the reference if the Court considers that it is not in the interests of justice that any appeal arising from the reference should proceed."

Frankly, that is a pretty fatuous piece of legislation. If proceeding with the appeal would not be in the interests of justice, why would it be allowed to proceed? That should be the end of the matter, pure and simple.

One can continue with the appeal process only so far, and I would be very surprised if the High Court were ever to hear an appeal when it was not in the interests of justice to do so. Why would we want legislation that said that that would be appropriate? There should be a prohibiter in section 7(4), which would be achieved by changing "may" to "must". Amendment 25 takes that approach.

I suspect that amendment 26, in Christine Grahame's name, is predicated on her involvement in the Megrahi case. I do not share Ms Grahame's views in that respect, but she is perfectly entitled to put them forward.

We can allow an appeal process to continue only so far. The interests of justice demand that appeals be heard, and heard appropriately. The current wording of the bill will leave us in an extremely anomalous position, which will be profoundly unhelpful in respect of future determinations.

I move amendment 24.

Christine Grahame (South of Scotland) (SNP): Amendment 26 is a probing amendment, which is supplementary to my intervention during the cabinet secretary's opening speech in the stage 1 debate and further develops my concern about section 7. There has been a focus on the Supreme Court's role, the Scottish criminal legal system and the period of detention during which representation is required, and the ramifications of section 7 have been overlooked, in the main. I intend to redress that problem.

The current position is that if, after consideration, the SCCRC thinks that there might have been a miscarriage of justice, it will make a referral to the High Court if an appeal is in the interests of justice—full stop. Section 7(3)(b) will insert a further test, which can override the current criteria. The test is:

"the need for finality and certainty in the determination of criminal proceedings."

Therefore, the interests of justice can be outweighed by the need for finality and certainty. Finality for whom? Certainty for whom? In whose interest?

Further to that substantial change to the SCCRC's remit, section 7(4) will introduce for the High Court the power to reject a referral if it is not in the interests of justice, having regard to

"the need for finality and certainty"—

that phrase again. The current position is that when the SCCRC makes a referral to the High Court, the court must accept it—it has no discretion in the matter. The approach in section 7(4) is a substantial change. The court of appeal will be able to reject the referral, even if the case has met the test in section 7(3)(b).

Bill Aitken referred to the Megrahi case, so I will use that case as an example. Let us suppose that on Abdelbaset al-Megrahi's death a third party steps into a dead man's shoes and applies to the SCCRC for referral to the court of appeal, and the SCCRC says—even though the finality and certainty test has been introduced—"Yes, we agree to that referral to the High Court." However, the High Court says, "No, we do not think that it is in the interests of justice that the referral is taken up by us; that is not in the interests of finality and certainty." The problem is that the judges who make that decision are the very judges whose previous judgment is being challenged. There is a conflict of interest, which compounds the problem.

I referred to the Megrahi case because Bill Aitken mentioned it. Let us consider the general purpose of the SCCRC. In 2010, 97 cases were referred to the High Court. Of those, the High Court determined 73, with 44 appeals granted, 20 refused and nine abandoned. The success rate was therefore 60 per cent. If two extra hurdles are put in place—that the SCCRC and then the High Court must say that the appeal is in the interests of justice, having regard to the need for finality and certainty—how many cases will proceed in 2011?

My concern is that the provision not only deals with the Cadder case but affects all cases that are referred to the SCCRC and we have had no evidence on it. It is a substantial change to what the SCCRC can do and to the powers of the court of appeal, but not one shred of evidence have we been able to hear on it. It also follows that the amendments that the Conservatives propose would make the situation worse by taking away discretion and making the exercise of the power mandatory.

I look forward to hearing what the cabinet secretary has to say—it is important to put that on the record—and I hope that, if the provision is agreed to, the Megrahi case does not follow the path that I suspect it might if it is taken to the SCCRC.

18:00

James Kelly (Glasgow Rutherglen) (Lab): One of the striking points about yesterday's judgment was the need for finality and certainty. The judgment specifically referred to cases that were referred to the Scottish Criminal Cases Review Commission. One of the many concerns is that cases that would come into the retrospective category would go to the commission and might be reopened.

The important point about section 7 is that it addresses that loophole and limits the exposure on certain of the cases that have been discussed in the media of late. From that point of view, the section is essential, therefore I do not support Christine Grahame's amendment 26.

The Conservative amendments 24 and 25 seem logical, in that, if the commission comes to the view that continuing a case is not in the interests of justice, it should make an absolute referral on it instead of leaving it open, as is the case with the way in which the bill is drafted.

In summary, I oppose Christine Grahame's amendment and support the Conservative ones.

Robert Brown: I have some difficulty with section 7. I must confess that when I first read the bill, my attention was on its earlier sections, and I took at face value the cabinet secretary's assurance that sections 6 and 7 were designed to deal with the need to avoid additional cases going into the pool. We have representations from a number of legal sources about the difficulties of

the matter, and the more I hear about it the more I am unhappy with the direction of travel.

To a degree, it might be argued that at least part of section 7 should make little difference to the Scottish Criminal Cases Review Commission, because the questions of finality and the interests of justice should be part of its remit and process in any event. However, the commission exists for a purpose—to provide a long stop against injustice that has gone on for a period—and has fulfilled a useful role in that regard.

Christine Grahame is right: the issues that section 7 raises go far beyond sorting out the Cadder judgment and show again why it is so difficult to draft emergency legislation that is confined to a particular issue. In practical terms, we are dealing with the remit of the Scottish Criminal Cases Review Commission and its relationship with the Scottish court of criminal appeal. We should not touch that important and sensitive relationship ill-advisedly and without full examination of the consequences. In section 7, we are not only sorting out issues that arise from Cadder—and I am not sure that it will make that much difference to the Cadder implications—but going far beyond that and affecting the commission's operation, which is highly undesirable.

Christine Grahame is entirely right to raise the issue. Her recommendations to the cabinet secretary should be supported, and I will be interested to hear what he has to say in reply. The Liberal Democrats were concerned about the pool of cases, but I am not satisfied that section 7 makes enough difference to the pool to allow us to override the other, important issues.

Patrick Harvie (Glasgow) (Green): James Kelly seems confident and certain that the provisions in section 7 will prevent from coming into play only cases that would have come into play had yesterday's judgment been retrospective, but it seems clear to me that section 7 is not specific—it is general and will apply in all cases in which a reference might be made to the SCCRC. That point was debated over a long period and after proper, in-depth parliamentary scrutiny when we considered the original legislation.

I have some sympathy with the comments that Christine Grahame made in speaking to her amendment 26. In general terms, both Bill Aitken and the Government are trying to change the general procedures in the referral of cases. Why should we consider a general change to the procedure as an emergency? That speaks to my concern about the whole bill. Even if, as the Government argues, some aspects of the bill need to be treated as an emergency, why is a change to the general operation of the commission such a question of emergency?

Kenny MacAskill: Amendments 24 and 25 are almost diametrically opposed by amendment 26. Although we have more sympathy with Mr Aitken, the fact that we have two conflicting proposals makes us think that our suggested course of action is the one that members should initially follow.

I will deal first with Christine Grahame's amendment 26. James Kelly was correct to make the points that he did. Lord Hope and Lord Rodger made it clear in their judgment that there are difficulties and that we require finality and certainty. As members will know if they have had the opportunity to read the judgment, those difficulties are predicated not on matters relating to the Supreme Court and Scotland or the position of the SCCRC but on matters that are almost universal to other jurisdictions. That is why the major case that they referred to was from the Supreme Court of Ireland—the case of A v The Governor of Arbour Hill Prison. The Supreme Court of Ireland made it clear that we have to have finality and certainty and that matters cannot subsequently be vastly changed, with the great difficulties that would follow. That is required in any jurisdiction and is not related to any one case or specifically to Scotland. It is what all sensible jurisdictions do to ensure that we have finality and certainty. I agree with James Kelly on those points.

To reassure Christine Grahame, I point out that the interests of justice cannot be overridden by the additional test. It is not meant to be an either/or; the bill introduces an additional and parallel test. We are saying to the SCCRC that, as well as looking at the interests of justice, it should also bear in mind the requirements for finality and certainty. On the question of judges, I can also assure her that the judge who considers a referral from the SCCRC will always be different from the original trial judge. She can have no doubts about that.

I have some sympathy with Bill Aitken's points and where he is coming from, but the current provision in the bill is reasonable and proportionate. We believe that the existing provision is and will be acceptable to the High Court. We also have great faith in and trust the High Court's judgment—it is not likely to act in a contrary manner. We have great sympathy for it, and we think that it will bear in mind all the issues.

We are happy again to give an undertaking that the provision will be reviewed by Lord Carloway, which provides an appropriate balance in relation to the positions taken by Patrick Harvie, Robert Brown and Christine Grahame. The bill provides an interim measure to bring in a parallel test so that the test is not simply the interests of justice. We provide for the requirement for finality and

certainty that Lords Hope and Rodger correctly flagged up in their judgment, but we undertake that the provision will be reviewed by Lord Carloway and could be amended thereafter.

Patrick Harvie: If the cabinet secretary regards the provisions in the bill as an interim measure, why is there no sunset clause?

Kenny MacAskill: I will be happy to address that point when we come to the next amendment. I think that the convener would rather that I hold my fire until then—unless he wishes otherwise.

The Convener: I call Bill Aitken to wind up.

Bill Aitken: I will largely adhere to my earlier arguments. Despite what the cabinet secretary has said, I am still not persuaded that section 7 is appropriate. Indeed, if we are to have finality and certainty, we cannot have it with section 7.

With regard to some of the appeals that have repeatedly come before the High Court and which have required an ever-increasing bench each time, I was tempted to think that, by means of arithmetic progression, we will run out of available judges to hear cases and that the High Court of Justiciary will become a cast of thousands. Every time that there is a bigger bench, there will be fewer judges to hear the case who have not previously been involved in it.

There must be certainty and an underlining of the judicial process. We cannot have a situation whereby appeals that are not in the interests of justice proceed.

The Convener: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (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)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Foulkes, George (Lothians) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
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)
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, Elizabeth (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
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)
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)
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)
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)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
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)
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)

The Convener: The result of the division is: For 57, Against 63, Abstentions 0.

Amendment 24 disagreed to.

Amendment 25 moved—[Bill Aitken].

The Convener: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (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)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Foulkes, George (Lothians) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
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)
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, Elizabeth (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
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)
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)
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)
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)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
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)
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)

The Convener: The result of the division is: For 57, Against 63, Abstentions 0.

Amendment 25 disagreed to.

Amendment 26 moved—[Robert Brown].

The Convener: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brown, Robert (Glasgow) (LD)
Finnie, Ross (West of Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
MacDonald, Margo (Lothians) (Ind)
McArthur, Liam (Orkney) (LD)
McInnes, Alison (North East Scotland) (LD)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
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)
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, 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)
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)
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)
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)
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)
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)
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)
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, 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)

Abstentions

Grahame, Christine (South of Scotland) (SNP)

The Convener: The result of the division is: For 18, Against 101, Abstentions 1.

Amendment 26 disagreed to.

Section 7 agreed to.

Sections 8 and 9 agreed to.

After section 9

The Convener: Amendment 27, in the name of Robert Brown, is in a group on its own.

Robert Brown: We move to the eve of proceedings at this point. Amendment 27 would introduce a sunset clause, such as was referred to earlier. It refers to the implications of the extension of the detention periods in section 3. As things stand at the moment, the chamber has seen fit to reject a number of changes to the cabinet secretary's proposals in that regard. We will, therefore, be bringing into effect a number of extensions to custody periods—a significant civil liberties issue that has not been examined by the Justice Committee or through the procedures of the Parliament. I welcome the setting up of the review group by Lord Carloway to look at such issues and I hope that the cabinet secretary—[*Interruption*.]

The Convener: Order. Can members keep the background noise down, please?

18:15

Robert Brown: I hope that the cabinet secretary will take on board some of the concerns that have been expressed in the debate today about this issue and others, and that he will have Lord Carloway examine them in more detail.

It seems to me that, given that this is emergency legislation and contains provisions that have not been examined in detail by the Parliament, it is appropriate that its duration should be limited. I have suggested that the legislation's duration be limited to 31 December 2012—or earlier, should other legislation be put in place, perhaps following Lord Carloway's review, which I understand the cabinet secretary wants to be under way before the next Scottish Parliament elections. That seems to me to be both a reasonable period and a reasonable proposition.

We have not made too much use of sunset clauses in this Parliament—indeed, I cannot think of one that has been passed in the way that we are discussing. However, I think that, in this context, it is an important consideration and will put pressure on the Government to ensure that the matter is examined properly as evidence develops in these areas and that the issues are dealt with properly by the Parliament. It will also help to ensure that more substantial legislation can be produced that will deal with the matter more satisfactorily.

I move amendment 27.

Richard Baker: I have given particular consideration to the issue of a sunset clause, in light of the reasonable comments that Robert Brown has made and which Patrick Harvie made to me earlier. We would all hope that it is possible to ensure that full legislation is in place before mid-2012, but I have a concern that, if there is an unforeseen delay—or for unforeseen reasons—we could end up rushing through legislation again or, indeed, find ourselves in contravention of European Union law. I recognise that those circumstances are remote possibilities and I want to make it clear that it would be our intention to legislate within that timescale. However, we will not oppose the amendment; rather, we will abstain.

Patrick Harvie: Is Richard Baker actually saying that he thinks that we could pass legislation in a more rushed fashion than we are doing today?

Richard Baker: It is hard to see how that could be a possibility, and I concede that point to Patrick Harvie. What I am saying is that I do not think that it is entirely impossible that we could be in a situation in which we were rushing through legislation again, although perhaps not to this extent. I accept that that might be a remote possibility, but we have to take on board that important consideration when passing this statute today. Therefore, we have to take a cautious approach. I take on board the intention of what is being proposed, but I think that there are issues over practical implementation.

However, the issues that Robert Brown raised earlier around the need for fuller scrutiny of certain issues, particularly that of the extension of detention periods, are a different matter, and

perhaps further measures can be introduced in that regard at stage 3.

Kenny MacAskill: I understand members' concerns. We have come to the Parliament with emergency legislation only reluctantly. We said at the outset that we did not wish to be in this position. However, the decision that was published at 9.45 yesterday has brought us to this point, and we are required to act. As I said, it would have been preferable if we had been able to take more time, but I think that the points that Richard Baker made are correct. Like him, I do not think that amendment 27 is necessary. The Government is doing its utmost to ensure that there is a full discussion of the relevant matters, whether that is with ACPOS or the Lord Advocate. Equally, we are giving an assurance that Lord Carloway will deal with the matters in the bill and with many others.

As I said, those who are welcoming a great advancement of civil liberties in Scotland may very well reap what they sow. I can only refer them to certain articles, whether by Paul McBride or Lord McCluskey, about what the outcome of this situation might be. I do not necessarily see the ruling as representing a great advance for civil rights in Scotland.

Richard Baker is also correct to say that we cannot tie the hands of a future Administration, although we can argue over who that should be. We have given an undertaking that Lord Carloway will come back to Parliament on the issues, which means that they can be debated and discussed after May 2011 and that the next Administration can consider them at that point. However, if a situation arose in which, for example, the required legislation were to be dealt with as part of a wider bill that took longer than expected to pass, we might end up in a situation in which the sunset clause wiped out what we will pass today before the new legislation could be enacted. We cannot afford for that to happen. That would be fundamentally dangerous, but the situation could arise as a result of the timetable of any future Administration or because the legislation was tied in with other issues.

In the interests of good governance, and with the assurance that Lord Carloway is going to review matters and that, as all members have accepted, the status quo that we create today will be in place only temporarily, until we can reflect on it as a community and legislate on the issues at a later date, I urge members not to support amendment 27.

Robert Brown: I will press amendment 27, as it is rather important. It is a sensible stricture on Government; I say to Richard Baker that his exchange with Patrick Harvie was perhaps not his finest moment in making a compelling argument.

We are taking an important decision today. We are putting through legislation that is said to be temporary, but which will manifestly be permanent in its implications. It is highly unlikely that we will roll back that legislation in the future, and certainly not—it would appear—under the direction of the current cabinet secretary.

These are important civil liberties issues and we need to get them right. However, we have not had the opportunity to do so, because hardly anyone has been properly consulted until now. The Parliament in particular has not been consulted in the sense of the legislation going through the proper arrangements for justice in the Parliament. That is an important issue, and we should not lose track of it in the rush to pass the bill.

The bill has many implications for police practice, the rights of suspects, the way in which solicitors operate and many other aspects of the criminal justice system, some of which are not immediately obvious. It has not had the advantage of undergoing Justice Committee scrutiny and being examined in the detailed way that it ought to be. In my view the approach that has been taken was not necessary, given the limited retrospective effect of the Cadder judgment, and amendment 27 would at least provide a stricture on any future Government of whatever complexion to ensure that it comes back to the legislation within a certain period.

Frankly, if emergency legislation can be produced within 24 hours, it should not be beyond the wit of members in the chamber and of any Government that is elected next May to do something to sort out the matter by 31 December 2012.

Against that background, I press amendment 27.

The Convener: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brown, Robert (Glasgow) (LD)
Finnie, Ross (West of Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
MacDonald, Margo (Lothians) (Ind)
McArthur, Liam (Orkney) (LD)
McInnes, Alison (North East Scotland) (LD)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
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)
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)
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)
Marwick, Tricia (Central Fife) (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)
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

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (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)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Foulkes, George (Lothians) (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)
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)
Stewart, David (Highlands and Islands) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)

The Convener: The result of the division is: For 18, Against 61, Abstentions 41.

Amendment 27 disagreed to.

Section 10 agreed to.

Long title

Amendment 28 not moved.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill.

It has been intimated during stage 2 that members may wish to lodge amendments at stage 3. I will now suspend proceedings for five minutes in order to allow them to discuss whether they will do so. If there are to be amendments at stage 3, I will require a further suspension. I ask members who wish to lodge amendments to come to the well of the chamber to discuss the matter with the clerks.

Meeting closed at 18:23.

Scottish Parliament

18:30

On resuming—

The Deputy Presiding Officer (Alasdair Morgan): I advise members, for their guidance, that proceedings will be suspended until 7 o'clock.

18:30

Meeting suspended.

18:59

On resuming—

Motion without Notice

The Deputy Presiding Officer (Alasdair Morgan): I am minded to take without notice a motion to suspend rule 2.2.5(c) of the standing orders to allow the Parliament to continue beyond 7 pm.

Motion moved,

That Rule 2.2.5(c) be suspended to allow the Parliament to continue beyond 7 pm.—[*Bruce Crawford*.]

Motion agreed to.

Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill: Stage 3

18:59

The Deputy Presiding Officer (Alasdair Morgan): We come to stage 3 of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill. The Presiding Officer has accepted one manuscript amendment. Members will find the marshalled list on their desks. Amendment 1, in the name of Robert Brown, is in a group on its own.

Robert Brown (Glasgow) (LD): The chamber will be glad to know that amendment 1 is the only amendment in the stage 3 process; nevertheless, it is an important amendment. I refer members to what I said earlier about problems with section 1(8). I said that the section undermines the right of a suspect to access a solicitor, given that it indicates that a constable can continue the interrogation of a suspect without a solicitor being present. The circumstances that are given are quite elaborate. The Cabinet Secretary for Justice was kind enough to say that he envisaged that the provision would be used in exceptional circumstances. Amendment 1 proposes to add to section 1(8) the words "in exceptional circumstances". I anticipate with confidence that the cabinet secretary will be able to accept the amendment.

Bill Aitken (Glasgow) (Con): I am anxious to have a definition, even by means of example, of what constitutes "exceptional circumstances".

Robert Brown: I am hastily trying to think of what the circumstances might be. It could well be where there is information about other terrorist suspects or drug people—something of that sort. It is difficult to know exactly what the position would be. My difficulty is that I am not clear what the cabinet secretary had in mind in having the section so drafted in the first place.

Patrick Harvie (Glasgow) (Green): Given that we are, apparently, about to pass very rushed legislation, we may find many errors in the bill—errors that we do not have time to correct before the bill goes to the final vote. If we accept Robert Brown's amendment 1, could legitimate challenge be made if the practice became regular and routine? If that were to happen, could people say, "This is not being used in exceptional circumstances. This is being used routinely." Surely that would provide a reasonable safety lock to the provision becoming standard practice.

Robert Brown: Patrick Harvie's intervention is helpful. Certainly, that is the intention of the

amendment. In the circumstances under section 1(8), we have to have confidence to a degree in the ability of the court to interpret things reasonably, given the set of circumstances that come before them. I do not pretend to have a comprehensive view of all the circumstances that may arise. Patrick Harvie got to the nub of the matter. As he said, we do not want the situation to arise where the rights that Cadder purports to give to people—following on from Salduz and the European convention on human rights considerations—are taken away by routine avoidance of the requirements.

Bill Aitken: I am still having a little bit of difficulty with the proposal, but I think that Robert Brown can clear things up for me. I asked him for an example. I know that it is late in the evening and that it is difficult to come up with a spontaneous response. That said, the example that he cited of terrorism, of course, comes under United Kingdom terrorism legislation under which the powers of detention are much firmer. As such, the example is not an apposite one.

Robert Brown: I take the rebuke. The point is correctly made. The central core of my argument is that, under the ECHR arrangements, people should have a right of access to a solicitor to advise them during questioning while they are under police detention. My central point is that that ought not to be aborted routinely. If we add into the bill the wording "in exceptional circumstances", it makes it clear that justification of a substantial kind—the kind of justification that would stand up in court—is required. All of this is likely to be the subject of comment by courts at various levels, if people object to what happens in particular situations. Clearly, there will be no issue if people see no difficulty or if they have agreed certain things and are happy with what has been said or done. However, if accused persons' solicitors take the view that what has taken place has denied them their rights or has affected the outcome of the case in a substantial way, they will have an objection. Earlier I made the point that I thought that the bill might not be compatible with the European convention on human rights, given the terms in which the Cadder judgment was expressed. Bill Aitken may accept that point.

I am interested in the cabinet secretary's response to the amendment, which is a genuine attempt to improve the bill in relation to an issue about which we have made valuable points without our amendments having been successful so far. Amendment 1 is a valid amendment that could be accepted. Given the cabinet secretary's earlier comments, I hope that he will view it favourably.

I move amendment 1.

The Cabinet Secretary for Justice (Kenny MacAskill): The Government is happy to accept the amendment. I have had an opportunity to speak to both the Association of Chief Police Officers in Scotland and the Crown Office, which confirm that it merely puts on the face of the bill what is common practice. Mr Graham from ACPOS made it clear that the police would utilise the power only in exceptional circumstances, but we are happy to state that in the bill.

Patrick Harvie can rest assured that agents will use the amendment to challenge the practice that he describes, in the few instances where that happens. Doubtless the High Court will set guidance and guidelines at that stage. We cannot be too precise—I have every sympathy with Mr Brown in that regard—and will have to wait and see what exceptional circumstances arise. However, we accept the spirit in which the amendment has been lodged. The amendment confirms what is happening in reality. Mr Brown and Mr Harvie can be assured that the police and the Crown already acknowledge that but are happy for it to be stated in the bill.

Robert Brown: I am grateful to the cabinet secretary for accepting the amendment. He referred to ACPOS. An important distinction must be made throughout between ACPOS guidance, which is not the law, and the law of the land, which the Parliament is passing. On a number of occasions this afternoon, the cabinet secretary has elided that difference. We are debating a provision that will be included in the bill. I am grateful to the cabinet secretary for accepting the amendment, which will make a reasonably significant difference to understanding the procedure in this matter.

Amendment 1 agreed to.

Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is a debate on motion S3M-7268, in the name of Kenny MacAskill, that the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill be passed.

19:07

The Cabinet Secretary for Justice (Kenny MacAskill): I thank members for their forbearance; it has been a long day and a fairly gruelling couple of days. I am grateful to members, as this is an important matter that we must address. I put on record my thanks to all the staff involved, especially those in the bill drafting team. The bill had to be drafted at breakneck pace. Although preparations were made and scenarios were planned for, details were not available or known about until 9.45 yesterday—[*Interruption*.]

The Deputy Presiding Officer: Order. Far too many conversations are going on that could, if necessary, take place outside the chamber.

Kenny MacAskill: Members of the bill team, the justice department, my private office and people in the Parliament have worked above and beyond the call of duty to ensure that essential and necessary legislation is passed. They have the Government's thanks for the efforts that they have made to ensure that we have been able to deal with these matters.

There has not been the usual delay of many weeks, if not months, since stage 1, so many of the issues have already been discussed. Given the time, I will not seek to inflict those points yet again on Parliament. Suffice it to say that the Government did not wish to find itself in this position, which is the result of a decision by the Supreme Court. We have had debates about constitutional matters, which will be continued elsewhere. However, we are grateful that the Parliament has worked with us to respond to the decision in the way that is required.

Pauline McNeill (Glasgow Kelvin) (Lab): The cabinet secretary said that he did not want to repeat any of the points that were made earlier. I apologise for repeating my point, but before we vote on the bill I want to be clear about who will decide on the nature of the representation that is provided. Will it be the accused or the Scottish Legal Aid Board?

Kenny MacAskill: I struggle to understand the point. We are having to change things—the matter was raised with us by the criminal law committee of the Legal Aid Board. Previously, there would always have been a nominated solicitor. The Legal Aid Board and legal aid lawyers do not wish to be troubled in the middle of the night on many an occasion, and this is at their request—they are asking for the arrangements to be changed so as to involve a directed solicitor. That is done on the agreement—

Pauline McNeill: Will the cabinet secretary give way?

Kenny MacAskill: If I could just finish the point. One of the worries that lawyers used to have—and I practised in that profession myself—was that if they did not have access and could not deal with the situation, they might lose their client to somebody else. It is fair to say that the legal profession is now striking a balance: lawyers do not wish to be disturbed at all hours of the night to deal with their clients, so there will be a solicitor who is directed by the Legal Aid Board. However, that solicitor will not necessarily be the one who will appear should the person subsequently be brought into court. It will be a matter of the Legal Aid Board making that direction, and that would be done with the consent of the criminal lawyers, but on the basis that the person who attends at the police station is not necessarily the person who will be the lawyer thereafter. I do not know whether that clarifies the point for the member.

Pauline McNeill: I refer to a point that Robert Brown raised earlier. We discussed whether or not a phone call would be held in private, or whether there would be a private consultation. Who decides whether the accused gets access to the lawyer via a phone call or through a private consultation? That is what I meant.

Kenny MacAskill: The assumption is that it will be a private consultation, unless there is some good reason for things to be otherwise. That good reason might come from the client—the individual who is detained—who might not want to wait for two hours, say, for the lawyer to come and see them. They might be happy to take their chances, and they might not have much to say, so they might ask simply to get on with it rather than wait. Sometimes, they will be happy to speak to their lawyer on the phone rather than waiting two hours for them to arrive, and to discuss the situation that way. There might be occasions involving force majeure or whatever, when the lawyer cannot get there and time ticks on. Such situations are a matter of balance.

There is the ultimate caveat that, if any admission is made, it will not be a factor that is considered at the trial before any presiding sheriff or at any appeal. It is not a matter of either/or—it is a matter of circumstances. The initial view is that the right of access is there, but there can be circumstances that overcome it.

Pauline McNeill has reminded me of the question about constitutional matters and what aspects the Government had worked on beforehand regarding matters going before the Privy Council and the House of Lords. When we instructed Professor Neil Walker to carry out an investigation into questions around the Supreme Court and ultimate appeals in Scotland, he looked into that aspect, and it is contained in his report. The matter was flagged up to us by the Crown.

The issues have been canvassed, and we accept that the change in the law of Scotland is a significant one. It has been brought upon us, and the Government sees, with perhaps the same heavy heart that Paul McBride and Lord McCluskey referred to, a pyrrhic victory on the part of those who view the developments as a great advancement of civil liberties in Scotland. It might very well be so, if that is how people see it—I have to say that I do not see it that way. The downside could be significant, and it could be a change for the worse.

That is where we are, and we have had to deal with the situation. We have provided what is necessary within the European convention on human rights; we have balanced the provisions with the extension of periods of detention; we have ensured that those who are required to attend are provided for with legal aid funding; we have dealt with the question of the certainty of appeals; and we have dealt with matters in respect of the Scottish Criminal Cases Review Commission. The Parliament, especially those members in other parties who have some concerns, have the assurance that all those matters will be reviewed by Lord Carloway. They will have to be the subject of primary legislation after May 2011. If Lord Carloway or others flag up some issues, there is the possibility of returning to the matter. I do not see that as being the situation, however.

The bill is a temporary fix that allows us to deal with the consequences of Cadder v HMA. In due course, the Parliament post 2011, however it is constituted, will have a bill dealing not simply with the aspects that we have touched on today but with deeper, more fundamental matters. At that stage, many of us might ask whether it was worth the candle as far as Cadder v HMA was concerned. However, this is the position that we find ourselves in.

I move,

That the Parliament agrees that the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill be passed.

19:14

Richard Baker (North East Scotland) (Lab): This has been a constrained but important process, in which key issues for our justice system and Scots law were raised, the most important of which for us is that we act for the benefit of justice and our legal system.

We heard the debate on the necessity for and quality of the bill, and I remain persuaded by the cabinet secretary's arguments on the need to support it, notwithstanding the efforts of some Scottish National Party backbenchers to persuade me otherwise during the stage 1 debate, when they tried to turn the matter into a debate on independence. Their arguments were odd, given their party's support for legislation on ECHR and enthusiasm for Scotland in Europe.

We must be realistic, and it is not realistic to suggest that we should not be treated in the same way as Belgium, Ireland and the Netherlands, which face exactly the same situation, are treated. We heard the point that the First Minister made, but a hearing by the European Court of Human Rights would have only delayed matters, not changed them.

All the evidence is that situations such as the one that we face are best addressed expeditiously, so we agree that it is right to move quickly to ensure that our provisions on access to legal representation during detention are compliant with European law, in statute as well as in practice. It is not evident that not moving to such a position would not carry a risk of further legal challenge. It is right to be cautious and accept what the cabinet secretary said.

I agree that it is necessary that the SCCRC considers finality when it deals with applications. That could make a material difference in the number of cases that will be affected by the Cadder judgment.

We had some sympathy with the idea of a sunset clause and with the idea that extensions to detention should be approved by sheriffs. If we had had more time, we might have come to different conclusions, particularly on the latter point, but due to the issues of practicality, which we are not currently in a position to gainsay, we supported the Government position.

However, I remind members that the issues will be fully debated when we consider new legislation on all those matters, which should happen as soon as is practicable and sensible. Labour is committed to bringing forward legislation, if we are in a position to do so, on the most feasible, sensible and expeditious timescale. The problem with a sunset clause is that we do not know what is in the future. Any Parliament can face unforeseen circumstances and it is not acceptable that we should potentially again face a situation in which we mush rush through legislation or in which we are not compliant with European law.

That is why I stand by our position on amendment 27.

The process will be informed by a much fuller debate on a bill, subsequent to Lord Carloway's important review, which we welcome. Even at this late hour, I want to inject optimism into the debate—as Ed Miliband said, "We are the optimists". We should not accept that it is inevitable that at the end of the process we will have a worse legal system. The process might ultimately provide an opportunity to seek improvement, as a consequence of Lord Carloway's review. We did not seek to review the arrangements, but we do so now and we might end up with better law and better legislation. We should at least look forward to that happening—it might not be inevitable but it is surely possible.

The process has been somewhat traumatic, but today we did what needed to be done as an interim measure. The Government was right to introduce the bill on that basis. We look forward to further debate on and full legislative scrutiny of the matters in the fullness of time.

19:19

John Lamont (Roxburgh and Berwickshire) (Con): I am pleased that the Parliament will vote in favour of the bill at decision time—I hope that it will do so.

Notwithstanding the European convention on human rights and the Human Rights Act 1998, I would argue that, in the past, Scotland has gone above and beyond what is required to protect its citizens' rights. Despite the Supreme Court's ruling, we have a fair justice system. The third verdict of not proven and the need for corroboration are just two ways in which the Scottish system achieves justice and respects individuals' rights.

We should not forget that the consequences of the Salduz v Turkey case, which was brought to the European Court of Human Rights, are the reason for the emergency bill that we are considering. In that case, a juvenile had not been granted the right to see a lawyer during the first few hours of interrogation, during which he self-incriminated.

In light of the circumstances of Salduz, I find it remarkable that the case can now be used through the human rights convention to influence Scots law in the way that it has. Salduz was convicted of participating in a demonstration for an organisation that Turkey had deemed to be illegal and for hanging an illegal banner. Was the real injustice committed by Turkey when it denied him the right to a lawyer during his interrogation or when it denied him the right to participate in a demonstration? The human rights convention argues that the right to a lawyer is a fundamental human right, but is the right to speech, protest and association not far more fundamental?

It would not be our job to determine the validity of Turkish law, but the consequences of the case are felt here today because of the Supreme Court's decision and the decision of others to incorporate the human rights convention into Scots law in the way that they did. As we heard from many speakers over the afternoon, the impacts of the decision will be far reaching. The costs to the public purse will increase significantly and the police fear that our relatively high conviction rates will be compromised.

The decision has also significantly shifted the balance of our justice system in favour of the criminal rather than the victim and the law-abiding majority in Scottish society. Scottish criminal law will never be the same again. Scotland has lost control of its criminal justice system, not as a result of the UK Supreme Court's decision but because other political parties decided to incorporate the European convention on human rights into Scots law through the Scotland Act 1998.

We have heard much nonsense from some Scottish National Party back benchers. They say that, in an independent Scotland, things would be much different, but we would still be subject to the convention through the European Court of Human Rights and we would still be living with the consequences of the decision to incorporate the convention into Scots law.

The Conservatives are pleased to support the bill and will participate fully in the review of Scotland's criminal law and practice.

Alex Johnstone (North East Scotland) (Con): Well said, John.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): The conscience of the Tory party is at the back of the chamber.

The Deputy Presiding Officer: Order.

19:21

Robert Brown (Glasgow) (LD): The emergency bill process has been fairly long, but this has nevertheless been an important event and the Parliament has risen to the occasion.

The dispute is about a major issue of civil liberties, rights and detention periods. Normally, I take a cautious approach on such matters. As I think the cabinet secretary will concede, when we have dealt with justice bills in the past I have often been prepared to accept his position, backed as it is by Government resources. However, in this

case I am not by a long, long straw convinced of the position that he has taken.

Obviously, I do not object to the fact that there must be legislation and that action must be taken to deal with the results of the Cadder decision; my concern arises from the fact that it has been so rushed—unnecessarily. The Lord Advocate rightly put in place interim arrangements to deal with the position from July. I am not clear that any additional cases would have been produced had we not legislated on the matter today, but taken the bill through the Parliament properly.

The debate has drawn out the fact that the bill gives rise to a lot of issues. For example, there is the fairly arcane but important debate about the attempt to adjust the balance between the Scottish Criminal Cases Review Commission and the High Court. Some of the issues could not be developed in the time available. Alison McInnes made an interesting point about the effects on children. The point was not taken further, but it emerged that the detention periods for children who are in custody—in the context of the bill, children are people aged under 18—will be the same as for adults. The Parliament has not examined that.

We heard some issues about consultation. It became clear that the cabinet secretary consulted primarily prosecution interests. The interests that take a broader view, such as the Law Society of Scotland and the Scottish Human Rights Commission, take the view that it would have been possible to go ahead with legislation in the normal way, given the precaution that the cabinet secretary put in place.

I am not clear about the position that the cabinet secretary and the SNP Government take on the European convention on human rights. They seem to have considerable qualms about the Cadder decision. Not to beat about the bush, I understand where they come from on that—I share some of them—but it is clear from a reading of the judgment, which, as I have said before, had two significant Scottish lawyers as the lead judges, that whether the decision was by the UK Supreme Court or by the European Court of Human Rights is academic; it was obvious what was going to happen. The result would have been the same even if the decision had been taken in another jurisdiction. Any other argument is a red herring.

We have a decision that we have to follow up. The cabinet secretary recognised that if we had not taken action on it we would have left Scotland exposed as one of the only countries in Europe that did not afford the level of protection that the European convention provides in other European countries. That is not a position that I would like to be in.

Against that background and the Government's failure to accept a number of points—the need for a sheriff to certify detention periods, to change the detention period and to allow a bit of time on some of the issues, and the uncertainty on section 1—Liberal Democrats will vote against the bill tonight. We do not do that easily; we do it because we are convinced that major issues in the bill have not been satisfactorily dealt with. Indeed, in this process they could not have been, which means that we will be subject to further challenges if we are not careful and the implications of the major changes the bill makes have not been worked through.

The Deputy Presiding Officer: The member should finish.

Robert Brown: I will come to an end on that point. There are major issues that still need to be dealt with and which will come back to haunt us in the weeks and months to come.

19:26

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I am extremely concerned at how the Government has used this emergency bill to change the criminal law of Scotland in ways that have no relevance to the emergency that we faced. Our justice minister has been keen to quadruple, from the current six hours to 24 hours, the time that suspects can be detained by the police before charge or release. That is simply wrong.

I have been somewhat alarmed by the justice minister's use of language in the debate—

Kenny MacAskill: For goodness' sake.

Mike Rumbles: That intervention is indicative of the justice minister's attitude to the issue. I am disappointed that, even now, from a sedentary position, he dismisses my comments in that way.

The justice minister consistently referred to criminals being detained by the police and the risk of criminals escaping justice. I ignored it at first because I thought it was a slip of tongue, but it was not and I intervened to point it out to him at stage 2. It is indicative of the justice secretary's approach that, when I pointed it out, he did not understand the difference between a criminal and a suspect. I find that extremely worrying.

What is more, the justice secretary says that he has consulted, but he has consulted only the police, the Association of Chief Police Officers in Scotland, the prosecution and the Lord Advocate.

Kenny MacAskill: Has the member made any representations to his colleagues in Westminster about what will happen when people are warned about, and sometimes detained for, making false

applications for social security benefits because they did not understand the form? Does it concern him that people could lose their benefits, or is this a case of him being more sympathetic to those who are charged with serious offences than to those who are the poorest and most vulnerable?

Mike Rumbles: That intervention says everything about the attitude of our so-called justice secretary. I think that he should be ashamed of what he has just said and of the approach that he has taken to the debate. It is entirely wrong.

I am a member of the Scottish Parliament, as is the justice secretary. We should take the passing of criminal legislation in this Parliament extremely seriously—not smile and laugh about it and dismiss it, but take it seriously. I made the point—

Kenny MacAskill: That is pathetic.

Mike Rumbles: The minister said that that is pathetic.

Kenny MacAskill: Yes.

Mike Rumbles: Well, I am making what I think to be reasonable and serious points, and I would hope that our justice secretary would listen to them carefully. He may not like what I am saying, but that is my job as an MSP. I represent the people of West Aberdeenshire and Kincardine. I want to represent them properly in this Parliament to ensure that no innocent people are detained for 24 hours without charge. It might come as a surprise to the justice secretary that innocent people are arrested by the police. The police do a really good job, but not everybody they arrest is a criminal, and I am shocked that the justice secretary has a problem with that. We are facing a fundamental issue.

In my view, it is simply wrong to use an emergency bill to increase so dramatically—to 24 hours—the time that innocent citizens can be detained without charge. Let us not forget that the emergency bill was intended to allow suspects legal representation. The Government has misused the process. What we have now is a bill that changes the law without our having any evidence before us. This is a bad bill. It has been an unsatisfactory process that has produced a bad law, and the Liberal Democrats will not support it.

19:30

Patrick Harvie (Glasgow) (Green): We have really not shown ourselves at our best today, in terms of our process and the muddle that always comes with rush. I am sorry to say that I also do not think that the cabinet secretary has shown himself at his best. He knows that, when he has previously taken very controversial decisions and been attacked by Opposition parties, I have not taken an opportunistic oppositional position. I have been prepared to back him on some controversial issues in the past. However, I am prepared to say that the cabinet secretary has not shown himself at his best today either on points of process—for example, he acknowledges that the bill is an interim measure but opposes the idea of a sunset clause precisely because the legislation will be temporary: an argument that makes no sense—or on points of substance.

There are times when we feel that being challenged by Mike Rumbles is an indication that we are on sure ground—but today was not one of them. The point that Mike Rumbles made in his most recent speech was significant. At one point in his speech, the cabinet secretary dismissed the distinction between criminals and suspects as "pedantry"—he dismissed the presumption of innocence as pedantry. I hope that he comes to regret that intemperate remark.

The cabinet secretary and the Government have made a poor show of arguing either that there is an urgent need to change the period of detention—indeed, to quadruple the period of detention in some circumstances—or that there is an urgent need to change the remit of the SCCRC. They have made a poor show of arguing that there is no need for a sunset clause, and I would say that they have made a poor show of arguing that the bill should be treated as emergency legislation at all. In his first speech in the stage 1 debate, Bill Aitken described the bill as a form of firefighting. I am sorry to say that I think that we are firefighting while nothing is burning down. This is not an emergency, and there are slower, calmer and more considered ways of dealing with the situation.

There are members of all parties who are a bit tired and annoyed at having had to cancel other plans that they had for this evening. There are, no doubt, community groups around the country that have been deprived of our fine presence this evening. I had a pleasant evening planned, so, in compensation, I will be going to the bar after the debate. If any member wants to join me there, I will offer a wager. I will wager a drink—a double if they are a minister—that, within a year, we will come to regret some detail of this bill; some detail that we cannot fully understand because there has been no scrutiny to date. I will offer a further wager that, in the next session, we will have to rewrite the whole thing.

Like the Liberal Democrats, the Greens will vote against the bill at decision time.

19:34

Robert Brown: I will make just a couple of comments because I appreciate that members

have heard a lot from me today, but what I have to say is not unimportant. The central point of the debate on the bill has been the lack of evidence that has been brought forward by the Scottish Government to justify not legislation, but legislation at this particular point in time. That is the point on which it is hung up today.

I have two points to make on that. First, during the course of the debate, I received an e-mail—not in the chamber, but when I went back to my office—from the president of the Glasgow Bar Association. In response to the point that was made about six people being seen by a solicitor, he pointed out that a solicitor should not see more than one accused in custody anyway, according to the code of conduct. He said that, therefore, there would be no danger of their exhausting six hours by interviewing multiple accused. I do not know the ins and outs of it, but I seem to recall that changes that were made to the relevant provisions separated out representation of such matters a little while ago. Whatever the rights and wrongs of that might be, it is an example of the sort of point that has not been addressed in the debate, but which should have been the subject of proper consultation that would have enabled us to find out the precise reality of the situation.

There is no need to legislate quickly. There is no evidence that there will be a flood of other cases because of the lack of retrospectivity of the decision. At the end of the day, this is an important issue. There used to be a sort of theme that criminal statutes were strictly construed—in other words, that one had to establish a case before one could do things that would interfere with the liberty of the subject. That is a good rule, which ought to be applied to this bill. Unfortunately, it has not been and, against that background, the bill ought to be defeated when we vote on it tonight.

19:35

Bill Aitken (Glasgow) (Con): It has famously been said that people should be careful what they wish for. All of us in the chamber are uncomfortable because, today, we have simultaneously taken away some of the civil rights that people regarded as being acceptable—namely on detention by the police beyond the prescribed time—and, undoubtedly, made life easier for the criminal elements. That has resulted because of the original case in Turkey, a country on account of whose appalling human rights record we are now suffering.

The blame for that, as I said earlier, lies not with the courts in Europe or London, or with the High Court in Scotland, which got it entirely correct in relation to the McLean case, but with the fact that, under the Human Rights Act 1998, we were tied into the ECHR. As far as I am aware, everyone in this chamber believes in human rights. However, the European conception of human rights is exceptionally dangerous and has been proved dangerous because of its one-cap-fits-all requirement. What was appropriate in respect of the Turkish case to ensure that human liberties were protected there could surely not apply in Scotland. Those who signed up so enthusiastically in 1998 are in fact the authors of our current misfortunes.

I note Patrick Harvie's offer. I would have been a little bit more impressed if he had offered a drink rather than a wager, but nevertheless he made his point. He said that I referred to today's duties as firefighting duties. I reiterate that, because we have had to act. There are many imperfections in what we have had to do, but the fact is that Lord Carloway will now carry out the appropriate review. If there had not been that provision, we would have been very tempted indeed to vote for a sunset clause. However, the fact that it will happen has safeguarded the position.

Mike Rumbles: Bill Aitken said that in his opinion the bill will make it easier for the criminal. In that case, is he going to vote for it?

Bill Aitken: I am forced to vote for it, because it is the only thing that will protect wider society. It will make it easier for the criminal. Throughout this procedure, the point that has been omitted is that the existing situation, which had been in place for many years, had caused absolutely no difficulties whatever. The court ruling has put that in jeopardy, which is why I and every other responsible member of the Parliament has to vote for the bill at decision time.

19:38

James Kelly (Glasgow Rutherglen) (Lab): There is no doubt that this has been a long and, at times, difficult afternoon, but the process has been absolutely necessary. As a direct consequence of yesterday's judgment, there is no doubt that the Government had to act. I do not think that we could have continued with a situation in which certain elements of Scottish law were not compatible with the ECHR. Therefore, with some reservations, the Labour Party supports the bill at stage 3.

On the key elements that have been discussed this afternoon, the Government clearly had to address the issue of giving suspects the right to access to a solicitor. That was a direct consequence of the judgment.

There was a great deal of controversy around the extension of time periods. The current guidelines, which the Lord Advocate issued in July, set the time limit at only six hours. The provision in the bill moves that to 12 hours, with

the potential for an application for an extension to 24 hours to be made.

There is reasonable justification for the move to 12 hours, and some practical examples have been given during today's debate. A lot of members have expressed reservations about the move to 24 hours, and some discussions took place prior to the lodging of stage 2 amendments. To an extent, we have taken assurances from law officers and the Government on trust, so we will see how that process pans out.

Certain elements of the bill are necessary in order to close loopholes. There has not been much mention of the provisions in the bill for bills of advocation and suspension under summary procedures. The bill introduces procedures to deal with that and sets a 21-day limit, which will, I hope, put a cap on any challenges that emerge under those provisions.

The issue of finality and certainty, which was cited in the judgment and which we discussed earlier, had to be addressed; it could not have been left aside. As such, the provisions under section 7 of the bill are relevant.

I remain concerned, as I said earlier, about the costs of the legislation. The financial memorandum states that there will be costs of £30 million. A police summit took place earlier in the week that was attended by the cabinet secretary and other justice spokespersons. A direct consequence of the legislation would be £20 million of police costs, which would have an implication for front-line policing. The Government must carry out an impact assessment on that.

It is welcome that the judgment was not retrospective, and there has been some debate about how many live cases the Government is potentially exposed on. It is hoped that the provisions that we will progress today will limit the number of cases that can be challenged.

We will engage constructively with the work that Lord Carloway will undertake, because it is absolutely key. It will examine some central features of Scottish law, such as corroboration, and will provide an opportunity to review the bill that will be passed today and to assess any changes that may be required. That will, we hope, give some comfort to members who have reservations.

I emphasise that Labour supports the bill at stage 3. We have engaged constructively with the Government; SNP back benchers who lined up to attack the Labour Party in their speeches should perhaps remember that. We have put a certain element of trust in the Government, so we will look closely at how the provisions work in practice and bring forward changes in the future if they are required.

19:43

Kenny MacAskill: I reiterate my thanks to all those involved today—not simply to members, who have been delayed and stayed late, but to the staff in the Government, in Opposition parties and in the Parliament in particular.

I will clarify a couple of matters. All members of the Government—and indeed all members in the chamber—accept the justification for signing up to the ECHR. We disagree on why it is contained in the Scotland Act 1998, imposing powers and obligations on us that are not replicated elsewhere. It is, therefore, not the ECHR that we view as the problem. In the chamber, we are, perhaps, occasionally gobsmacked by some interpretations of it, just as people outwith the chamber are sometimes outraged about payments that are made in respect of slopping out or other such issues. Members share concerns, but nobody doubts the requirement for the ECHR.

As I have said, the issue is not the ruling of the European Court of Human Rights on Salduz but the interpretation made by the United Kingdom Supreme Court.

Robert Brown: After the whole debate and after reading the judgment, is the cabinet secretary seriously maintaining that the European Court of Human Rights would have made a different decision from the United Kingdom Supreme Court on the matter?

Kenny MacAskill: Well, we do not know. What we do know is that, in October 2009, a court of seven judges, presided over by the Lord Justice General and assisted by the Lord Justice Clerk, considered the case of Salduz v Turkey and held that the system under Scots law was perfectly compatible with the ECHR. The difficulty that we now face is that the UK Supreme Court has taken a decision that it is incompatible. It has turned Scottish criminal law on its head.

David McLetchie (Edinburgh Pentlands) (Con): Scottish judges.

Kenny MacAskill: Reference has been made to the Scottish judges.

David McLetchie: Exactly.

The Presiding Officer (Alex Fergusson): Order, Mr McLetchie.

Kenny MacAskill: However, as was pointed out, Mr McLetchie, the self-same judges—Lord Hope and Lord Rodger—sat in Scotland for more than 30 years. I started practising in 1980 and they were on the bench then. Indeed, they were in law officer positions and they did not see any problem. That point has been much more eruditely pointed out by Lord McCluskey. Something or other seems to have happened between when they sat on the

bench or as law officers in Scotland and when they took on the—I was going to say ermine, but I will not say that as they appear in their lounge suits down there.

We do face a challenge and we are grateful to others for rising to it. I regret that Patrick Harvie does not view the matter as significant. A fundamental change was wreaked upon the Scottish legislative position yesterday.

Patrick Harvie: Will the minister give way?

Kenny MacAskill: No. Time is moving on.

The fact of the matter is that there is a fundamental change—lawyers will now require to be in for interviews with detainees. As I have said, that changes matters. It has always been the case that the scales of justice have to be balanced. That is why, as soon as that became required within Scots law, we required to act to deal with other consequential matters, including the lengthening of the period of detention.

Finally, let me deal with the question of the Liberal Democrats. I understand that they intend to vote against the bill. As I pointed out earlier, it is rather remiss that they do not seem to have any care or concern for the vulnerable who are affected south of the border but they do seem to worry about those who are affected by the change here. [*Interruption*.]

The Presiding Officer: Order.

Kenny MacAskill: I say quite clearly to Mr Rumbles that the next time I meet the Scottish Police Federation or the police in Grampian, I will point out to them that I believe that police officers in Scotland do not detain people on a whim or a fancy and that we have the checks and balances of the procurator fiscal acting in the public interest. For him to express the view that, somehow or other, police officers the length and breadth of Scotland are out arresting innocent people—

Mike Rumbles: They do arrest innocent people.

Kenny MacAskill: —is frankly a ridiculous, scurrilous attack on hard-working officers who often put their lives on the line. Mr Rumbles can rest assured that we will be transmitting this debate to the Police Federation.

In winding up, I reiterate my thanks. I regret having to introduce the bill, but it is necessary because of what happened south of the border, which was pronounced upon at 9.45 yesterday.

Business Motions

19:48

The Presiding Officer (Alex Fergusson): The next item of business is consideration of business motion S3M-7260, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, which sets out a business programme.

Motion moved,

That the Parliament agrees the following programme of business—

Wednesday 3 November 2010	
2.00 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Stage 3 Debate: Housing (Scotland) Bill
followed by	Business Motion
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Thursday 4 November 2010	
9.15 am	Parliamentary Bureau Motions
followed by	Scottish Labour Party Business
11.40 am	General Question Time
12.00 pm	First Minister's Question Time
2.15 pm	Themed Question Time Health and Wellbeing
followed by	Stage 1 Debate: Historic Environment (Amendment) (Scotland) Bill
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Wednesday 10 November 2010	
2.00 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Stage 3 Proceedings: Alcohol etc. (Scotland) Bill
followed by	Business Motion
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Thursday 11 November 2010	
9.15 am	Parliamentary Bureau Motions
followed by	Scottish Government Business
11.40 am	General Question Time
12.00 pm	First Minister's Question Time
2.15 pm	Themed Question Time Rural Affairs and the Environment; Justice and Law Officers

followed by	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 business motion S3M-7261, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, which sets out an extension to the stage 2 deadline for the Children's Hearings (Scotland) Bill.

Motion moved,

That the Parliament agrees that the deadline for consideration of the Children's Hearings (Scotland) Bill at Stage 2 be extended to 5 November 2010.—[*Bruce Crawford.*]

Motion agreed to.

The Presiding Officer: The next item of business is consideration of business motion S3M-7262, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, which sets out an extension to the stage 1 deadline for the End of Life Assistance (Scotland) Bill.

Motion moved,

That the Parliament agrees that the deadline for consideration of the End of Life Assistance (Scotland) Bill at Stage 1 be extended to 26 November 2010.—[*Bruce Crawford.*]

Motion agreed to.

The Presiding Officer: I am minded to take a motion without notice to take business motion S3M-7284, to remove members' business from today's business programme.

Motion moved,

That the Parliament consider Business Motion S3M-7284.—[*Bruce Crawford*.]

Motion agreed to.

The Presiding Officer: Accordingly, the next item of business is consideration of business motion S3M-7284, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, which—believe it or not—revises today's business programme.

Motion moved,

That the Parliament agrees the following change to the Business programme for Wednesday 27 October 2010—

delete

followed by Members' Business—[*Bruce Crawford*.]

Motion agreed to.

Parliamentary Bureau Motions

19:50

The Presiding Officer (Alex Fergusson): The next item of business is consideration of Parliamentary Bureau motions S3M-7263 to S3M-7265, on the approval of Scottish statutory instruments.

Motions moved,

That the Parliament agrees that the Revised Code of Conduct for Councillors for the Ethical Standards in Public Life etc. (Scotland) Act 2000 be approved.

That the Parliament agrees that the Welfare of Farmed Animals (Scotland) Regulations 2010 be approved.

That the Parliament agrees that the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010 be approved.—[*Bruce Crawford*.]

The Presiding Officer: The questions on the motions will be put at decision time, at which we have finally arrived.

Members: Hooray!

Decision Time

19:50

The Presiding Officer (Alex Fergusson): The first question is, that motion S3M-7212, in the name of Gil Paterson, on the Standards, Procedures and Public Appointments Committee's report on the draft revised code of practice for ministerial appointments to public bodies, be agreed to.

Motion agreed to,

That the Parliament agrees that the Standards, Procedures and Public Appointments Committee's 6th Report, 2010 (Session 3): *Draft Revised Code of Practice for Ministerial Appointments to Public Bodies in Scotland* (SP Paper 491), together with the *Official Report* of the Parliament's debate on the report, should form the Parliament's response to the consultation by the Office of the Commissioner for Public Appointments in Scotland.

The Presiding Officer: The next question is, that motion S3M-7268, in the name of Kenny MacAskill, on the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill, 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)
Alexander, Ms Wendy (Paisley North) (Lab)
Allan, Alasdair (Western Isles) (SNP)
Baillie, Jackie (Dumbarton) (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)
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)
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)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (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)
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)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Tom (Hamilton South) (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)
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)
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, Elizabeth (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Sturgeon, Nicola (Glasgow Govan) (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)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Against

Brown, Robert (Glasgow) (LD)
Finnie, Ross (West of Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
MacDonald, Margo (Lothians) (Ind)
McArthur, Liam (Orkney) (LD)
McInnes, Alison (North East Scotland) (LD)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)

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)
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 Presiding Officer: The result of the division is: For 97, Against 18, Abstentions 0.

Motion agreed to,

That the Parliament agrees that the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill be passed.

The Presiding Officer: The final question is, that Parliamentary Bureau motions S3M-7263 to S3M-7265, on the approval of Scottish statutory instruments, be agreed to.

Motions agreed to,

That the Parliament agrees that the Revised Code of Conduct for Councillors for the Ethical Standards in Public Life etc. (Scotland) Act 2000 be approved.

That the Parliament agrees that the Welfare of Farmed Animals (Scotland) Regulations 2010 be approved.

That the Parliament agrees that the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010 be approved.

The Presiding Officer: That concludes decision time.

Meeting closed at 19:52.

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