The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Tuesday 25 September 2012

Session 4

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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 (Tricia Marwick): Good afternoon. Our first item of business is time for reflection. Our time for reflection leader this afternoon is Father Eamonn Sweeney, the parish priest at St Patrick's church, Coatbridge.

Father Eamonn Sweeney (St Patrick's Church, Coatbridge): Presiding Officer and members of the Scottish Parliament, from the moment we open our eyes to a new day until we find our way to the end of that day, we are confronted with many decisions, challenges and opportunities. I do not believe for a moment that the day of a politician—or anyone else for that matter—is any different from mine in that regard. During the course of a day, we can experience pleasant and unpleasant, good and bad, happy and sad circumstances of life. I can experience all of those within the same hour, depending on where my work takes me.

One of the really happy areas of my ministry is the baptism of children. We spend valuable time preparing parents for a significant event in their child's life—entry into the Christian community through baptism. Having requested baptism, the parents undertake serious responsibilities in relation to the child's spiritual development. They must provide the environment for their child to grow in faith. Above all material considerations, a child needs a parent's love, concern and time. Parental influence is vital, it is important and it cannot be overestimated.

Not all parents provide the spiritual and material support that their child needs and deserves so, to help us to reflect, I wish to conclude by reading the lyrics from a song by the late Harry Chapin called "Cat's in the Cradle". If this song is true, it is a very sad song. It is told by a father who is too busy to spend time with his son. The final verse is a reverse of the roles, where the father asks his grown-up son to visit, but the son responds that he is now too busy to find the time. The father then reflects that they are both alike, saying:

"My boy was just like me."

The first verse of the song goes:

"My child arrived just the other day
He came to the world in the usual way
But there were planes to catch and bills to pay
He learned to walk while I was away
And he was talkin' 'fore I knew it, and as he grew
He'd say 'I'm gonna be like you dad
You know I'm gonna be like you'"

This trend of being busy continues over the next couple of verses, throughout the child's valuable adolescent years until he graduates. The song continues:

"Well, he came home from college just the other day
So much like a man I just had to say
'Son, I'm proud of you, can you sit for a while?'
He shook his head and said with a smile
'What I'd really like Dad, is to borrow the car keys
See you later, can I have them please?'"

The last verse goes:

"I've long since retired, my son's moved away
I called him up just the other day
I said, 'I'd like to see you if you don't mind'
He said, 'I'd love to, Dad, if I can find the time
You see my new job's a hassle and the kids have the flu
But it's sure nice talking to you, Dad.
It's been sure nice talking to you.'
And as I hung up the phone it occurred to me
He'd grown up just like me
My boy was just like me."

Thank you.

Scottish Government Question Time

Topical Questions

14:04

Scottish Court Service (Court Closures)

1. Iain Gray (East Lothian) (Lab): To ask the Scottish Government whether it supports the proposals that the Scottish Court Service is consulting on regarding court closures. (S4T-00057)

The Cabinet Secretary for Justice (Kenny MacAskill): The consultation is being led by the Scottish Court Service and sets out its proposals for the future structure of our courts. Any final proposal to close courts will need to come before Parliament, most likely in spring 2013, and I am therefore not prejudging the outcome of the current consultation process for any specific proposal.

However, I am clear that reform of the courts is necessary. We cannot deliver better access to justice by avoiding the need for change. The towns that we live in, the places where we work, the way in which we do business, and the availability of transport have all changed considerably since Victorian times, when many of our court buildings were established. Crime is at its lowest level for 37 years and the number of civil proceedings has fallen sharply. Major reforms of the justice system are in train, and our court structures must adapt to reflect those reforms.

Iain Gray: The Cabinet Secretary for Justice has been hiding behind the process for almost a year now. At every stage he has told us that there are no proposals to close courts, but there always have been. He told me that I could attend consultation meetings, but there were none. He told me that the Lord President would engage with me on the issue and the arguments for my local court in Haddington, but the Lord President said that he could not do that. What reassurance can the cabinet secretary give me that this latest consultation stage is anything more than a sham?

Kenny MacAskill: I do not think that Mr Gray recognises or understands the landscape that was created by the Judiciary and Courts (Scotland) Act 2008. The Parliament decided that the separation of powers was appropriate and important, and that there should be a differentiation and separation between the executive, the legislative and the judicial. It also recognised that it is important that the judiciary should be independent from political interference and that the judiciary are the people who are best placed to deal with the Scottish Court Service.

I am sorry that Mr Gray is so disparaging about our most senior judge. If he engages with the Scottish Court Service, which is running the consultation, I will not prejudge the situation. I have more faith in the Lord President and the Scottish Court Service than Mr Gray does and I understand the need, in a democracy, for the separation of legislative and judiciary powers to preserve the democracy that we all hold so dear.

Iain Gray: Frankly, if the cabinet secretary thinks that the proposals are a response to changes in the way in which we live, it is he who does not understand how the court system for which he is responsible operates in modern Scotland. The proposals will undermine the viability of towns such as Haddington in my constituency, condemn victims and witnesses to lengthy and expensive journeys, take police off our local streets for longer, and create barriers to civil redress for our citizens. The truth is that this is a cost-saving exercise that has nothing to do with providing the access to justice that people in modern Scotland need, require and deserve. Will the justice secretary listen to my constituents and the users of my local court, and will he put them, rather than his bottom line, first?

Kenny MacAskill: Many of Mr Gray's worries are legitimate. We should be trying to ensure that courts are as proximate as they can be, and that we take into account the cost of travel to people who work there and those who have to give evidence or appear there. That is why I suggest that Mr Gray would be well advised to read the document, particularly the chapters that relate to Haddington. As I recall, there is a clear statement of the cost, time and availability of transport from Musselburgh, Tranent and Prestonpans to Haddington, showing that it is cheaper, quicker and easier for people in those areas to go to Edinburgh than it is for them to go to Haddington. Mr Gray would do well to read the consultation document, to consider whether the needs and wants of his constituents in those parts might be better served by going to Edinburgh, and thereafter, perhaps, to give the Lord President the dignity of his office and engage more meaningfully with him.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): The consultation is proposing the closure of the Dingwall sheriff court and the moving of business to Inverness. However, neither Dingwall nor Inverness is fit for purpose to deal with cases in the 21st century. In my response to the consultation, I will propose that a brand new court be built in the inner Moray Firth area in Dingwall to replace the courts in Dingwall and Inverness. Of course, for that to happen, capital

funding will need to be provided. Will the cabinet secretary look seriously at that as an option?

Kenny MacAskill: Again, those matters should be put to the Scottish Court Service. The service accepts Mr Thompson's point that the current facilities in Inverness and Dingwall have limitations, and I am sure that it would welcome the opportunity to have new purpose-built court facilities to replace some of its older and less flexible sites, but the financial situation is such that funding new facilities will be extremely challenging in the short to medium term. However, if local stakeholders believe that a business model exists that could fund a new court using proceeds from finding new uses for the existing buildings, I encourage those stakeholders to engage with the Scottish Court Service on that. It is clear that the current buildings cause great difficulties. I urge Mr Thompson to discuss the matter with the Scottish Court Service—he might find a willingness to see whether we can work towards shared solutions.

Graeme Dey (Angus South) (SNP): If a court closes, as is proposed in the case of Arbroath in my constituency, and the business that it conducts is transferred to a neighbouring court—in this case, Forfar—will some or all of the jobs at the court that is to be closed transfer over with that business?

Kenny MacAskill: There is a clear expectation that the jobs will follow the work. There will not be less work; it will just be conducted in a more productive manner and in buildings that are more suited for the purpose. I can give staff an assurance that the Scottish Court Service proposals are that staff who currently work in a court that is designated to close will simply move to where the work is due to take place.

Claire Baker (Mid Scotland and Fife) (Lab): In light of the fact that the Scottish Court Service consultation states that it cannot close courts of its own hand and that that is the decision of the Scottish ministers, will the Scottish Government reconsider the proposal to remove jury trials from Kirkcaldy, given that the consultation recognises that Kirkcaldy is the most appropriate location for a sheriff and jury centre serving east Fife?

Kenny MacAskill: As Claire Baker will know, the decision is not for the Scottish ministers but for the Scottish Parliament. However, it is my responsibility to bring those matters to the Parliament once the Scottish Court Service and the Lord President have carried out their duties. The review deals not only with the proposed closure of some courts, including sheriff and justice of the peace courts, but with aspects relating to where the High Court sits on circuit and to where jury trials are carried out. Those matters are best dealt with by people contributing to the consultation, which is not yet finished, and discussing with the Lord President and the Scottish Court Service to see what actions can be taken from there. Thereafter, a formal consideration can be made, ultimately, by the Parliament.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I remind the cabinet secretary that Peebles sheriff court, which is on the current hit list, was targeted for closure several years ago by the Labour-Liberal Administration and got a reprieve by relocating to Rosetta Road and co-locating with the police headquarters. I would like that to be taken into consideration. Further, of the 12 cases in Peebles sheriff court tomorrow—the one day of the week when it sits for civil business—five are in the small claims court. Those are party litigants. In considering removing sheriff courts, one should consider the interests of party litigants.

Kenny MacAskill: Absolutely. That is why, as I said in response to Iain Gray, the Scottish Court Service has considered where the people who appear in courts, to give evidence or as jurors, come from. Party litigants are a particular aspect that must be dealt with. Equally, we must deal with the issues for those who are cited to give evidence or to sit on juries. Those aspects must be considered in the round. It is clear that transport issues and the nature of communities change, whether that is through the opening up of the A1 in East Lothian or perhaps the improvement of roads in the Borders or the construction of the Borders railway. The document is a consultation, so we should not prejudge matters; we should do the Lord President the honour of allowing the consultation to take place. I am certain that Christine Grahame's points will be taken on board, because it is appropriate that we ensure that people can access justice as easily as possible.

Lewis Macdonald (North East Scotland) (Lab): Does the cabinet secretary recognise the wider impact on county towns such as Stonehaven in Kincardineshire or Haddington in Iain Gray's constituency of proposals that local people should no longer look to those towns for local access to justice? Does the cabinet secretary acknowledge that a town court can be just as important as a village school to a community's sense of identity and, if so, that that is a matter for the Government as well as for the Scottish Court Service?

Kenny MacAskill: I am glad that Mr Macdonald raised that issue because I am extremely knowledgeable about those matters.

I went to school and grew up in Linlithgow, as did the First Minister. When I first practised law, I appeared in Lithlithgow sheriff court. A previous Administration closed that court and moved it to Livingston. It did so on the basis that most people who were using and were required to appear in

the court were likely to be located in the south rather than the north of the county. I do not remember a great deal of outrage from the Labour benches about moving the court to Livingston but, equally, both the First Minister and I reassure Mr Macdonald that, although that had an impact in terms of job relocation, the apocalypse has not struck Linlithgow. The town, which I know well, is thriving, albeit that the court is now located where the people are, as opposed to where it was located historically when the county was Linlithgowshire.

Nigel Don (Angus North and Mearns) (SNP): I am concerned about the interaction with the police, because the police are a can-do organisation that will say, when consulted, that they will do anything that needs to be done. Will the cabinet secretary assure me that the police will be specifically consulted in such a way that they do not respond on a can-do basis but are allowed to give serious advice on the implications of courts moving from A to B or B to C, so that we have the officers on the streets rather than waiting somewhere else to be called to court?

Kenny MacAskill: I assure Nigel Don that the police are consulted on such matters. Indeed, informally and anecdotally, my experience with the police is that they take the view that the less travel they have to various places, the better. Equally, some courts are no longer fit for purpose in terms of safety or security. We have also seen changes in how people are detained in custody. We must have a synergy in those matters between where people are detained and the courts at which they are to appear. The police are already ahead of the game in reducing the number of places where people are held, and that must tie in with the pace at which they will be taken to an appearance from custody.

In Vitro Fertilisation (NHS Fife)

2. Roderick Campbell (North East Fife) (SNP): To ask the Scottish Government what its position is on NHS Fife's recent announcement regarding restrictions on the availability of IVF, in light of the imminent publication of a national fertility review. (S4T-00054)

The Cabinet Secretary for Health and Wellbeing (Alex Neil): The national infertility group's report, with recommendations on eligibility criteria, is expected to be with ministers by the end of December 2012. My preference would have been for all health boards to consider the implications of the report before making any announcements.

Roderick Campbell: I welcome the Scottish Government's commitment to £12 million of investment in IVF treatment, and I note the Cabinet Secretary for Health and Wellbeing's preference for NHS Fife to have delayed its decision. As I am sure he is aware, there are important issues relating to smoking, obesity and the number of treatment cycles. Will he confirm that the national infertility group will deal with those issues in its review?

Alex Neil: I confirm that the national infertility group will make recommendations in the report on smoking, obesity and the rules on the number of IVF treatment cycles. I look forward to receiving the group's report at the end of December.

Murdo Fraser (Mid Scotland and Fife) (Con): Have any other NHS boards restricted access to IVF treatment for smokers, or is this just a cunning ploy by NHS Fife to reduce its already very long waiting lists?

Alex Neil: It should be recognised that NHS Fife has invested an additional £100,000 in reducing its waiting list. Other boards have considered restrictions but, as I say, I would much prefer that we moved together once the report is available in December and the expert group has made its recommendations.

Jackie Baillie (Dumbarton) (Lab): The cabinet secretary will be aware that, in almost half of Scotland's health boards, IVF waiting times are increasing. In NHS Fife, couples are waiting three years before treatment, which is the longest waiting period in the country. Although the cabinet secretary's announcement of additional funding is, of course, welcome—if long overdue—will he confirm that that funding will tackle the postcode lottery in treatment cycles and the cut-off age for treatment, as well as reducing waiting times?

Alex Neil: I expect the report that I receive at the end of December to deal with all those issues. I am glad that Jackie Baillie welcomes the additional £12 million that Mr Matheson, the Minister for Public Health, announced at the weekend is to be invested in reducing waiting across Scotland. Before we are critical of waiting times, we must look at and take account of the increased throughput figures, too, although I accept that NHS Fife's three-year waiting time is far too long.

Reforming Scots Criminal Law and Practice (Public Consultation)

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-04234, in the name of Kenny MacAskill, on the public consultation on the Carloway report, "Reforming Scots Criminal Law and Practice". We can be generous if members take interventions.

14:20

The Cabinet Secretary for Justice (Kenny MacAskill): Today's debate is a timely opportunity to engage members in the further development of the historic reforms proposed by Lord Carloway in his report on criminal law and practice. I again thank Lord Carloway for his report and the huge amount of work that lies behind it, and congratulate him on his recent appointment as Lord Justice Clerk. I am sure that the whole chamber will share those sentiments.

The debate is timely because the First Minister announced in the programme for government a criminal justice bill that will enact Lord Carloway's proposals and because the Scottish Government is currently running a consultation on how to implement those proposals. The debate is an opportunity for members to contribute to that process.

Members will recall the decision of the United Kingdom Supreme Court in HMA v Cadder and the emergency legislation that had to follow. I am grateful for the forbearance of all those who participated in that process. Although the emergency legislation has proven effective as an immediate response, there was and is a clear need to reappraise our justice system for the future. I believe that Lord Carloway has provided us with a clear and coherent package of reform from first arrest and detention through to final appeal. His recommendations are clearly reasoned, carefully constructed and closely interconnected. They provide us with a landmark opportunity to redesign our system around modern, fundamental concepts of human rights, while preserving the integrity of a system that we are rightly proud of.

The Scottish Government consultation paper on the Carloway report reflects on comments and developments since last year's publication of the Carloway recommendations. It covers debate in this chamber, before the Justice Committee and beyond. I express my appreciation for the committee's work and my thanks to all those who gave evidence. Although I have made clear my view that Lord Carloway's recommendations are a comprehensive package from first arrest to final appeal, there remain many issues to discuss on how they can be made a reality. As always with legislative matters, the devil is in the detail.

Lewis Macdonald (North East Scotland) (Lab): I welcome the debate. Can the cabinet secretary assure us that his comments about the process so far do not imply that this is the last that we will hear of these matters before a bill is produced? In other words, once the consultation is complete and we know the views of all parties, will Parliament have an opportunity to consider those responses?

Kenny MacAskill: Lewis Macdonald makes a fair point. The consultation is not yet concluded, although a clear steer has been given. Discussions will have to take place, and I have no doubt that I will make an appearance before the Justice Committee. I give an assurance that we will take time to reflect on the consultation responses. I will be more than happy to engage with the member, with other justice spokesmen and, indeed, anyone else about our direction of travel.

I give Lewis Macdonald a clear assurance that we intend to provide as much opportunity as possible to reach as much consensus as it is possible to do. It might not be entirely possible to reach a consensus, because strong views are held on either side on issues such as corroboration. Ultimately, people might have to come down on one side or another, as I will come on to discuss. Equally, we should take the opportunity to debate, engage and focus, so that when we ultimately proceed we will have brought on board as many people and as good a majority as possible.

It is clear from the debate and the committee sessions that many of Lord Carloway's recommendations have been widely welcomed and accepted. There has of course been debate on and challenge to some of the recommendations—for example, on the role of the Scottish Criminal Cases Review Commission—but most of the focus has centred squarely on corroboration, to which I shall return shortly. It is not my intention to revisit the debate on Cadder, or even the general findings of Lord Carloway's report. Instead, I will focus on how Lord Carloway's recommendations are to be taken forward. That is the approach of the Government's consultation and I will focus on some of the key questions in the consultation paper.

The consultation paper accepts the recommendations for sweeping change to the system for arrest and detention of suspects. Allowing the police to arrest suspects on reasonable suspicion should provide a transparent and easily understood process. Those changes will balance the needs of the police in their duty to investigate crime with recognition of the rights of

individuals. The consultation seeks views on whether Lord Carloway's proposed maximum periods of 12 hours for detention and 28 days for investigative liberation are sufficient and whether there should be extensions in certain exceptional circumstances. The consultation also asks for views on the practicalities of investigative liberation and what operational challenges it presents. I look forward to debate on those issues.

On the length of time that suspects spend in police custody, Lord Carloway observed that if suspects are held for longer than 36 hours under the new regime, weekend courts should be considered. The Government fully accepts that suspects should not be held unnecessarily or disproportionately in police custody pending appearance at court, and the consultation seeks views on the best way to bring suspects before court as quickly as possible. Advances in videolink technology may well be part of the solution by helping to offset some of the operational and financial challenges involved. We all know that technology can help make savings, but it comes at a cost.

It is fair to say that our consultation on Lord Carloway's recommendations will not take place in isolation. We judge that the Government's making justice work programme is ensuring that work is co-ordinated among police, the Scottish Legal Aid Board, prisons and courts so that all aspects are dealt with. Some members may have already had the opportunity to see that prisoners in full committal at Barlinnie or elsewhere can be seen by a sheriff sitting in Glasgow sheriff court. Some aspects such as that will be able to be replicated and used across Scotland, certainly with regard to Lord Carloway's recommendations.

On suspects accessing legal advice, the Government agrees in principle with the recommendation that legal advice for suspects should be provided at the point of detention. There are legal aid implications to that and the consultation seeks views on how the recommendation can be delivered in a way that is effective and affordable because, as with technology, legal advice comes at a cost. Work is under way and the Scottish Legal Aid Board is engaging with the Law Society of Scotland and other representatives.

Lord Carloway restated the requirement for suspects to obtain legal advice from a solicitor before and during questioning. He accepted that suspects may decline the right to a lawyer, but recommended special protections for child and vulnerable adult suspects. The consultation places that within the general context of avoiding unnecessarily drawing children who are accused of minor offences into formal criminal justice processes, while ensuring a strong system of protection for those who are suspected of serious offences. I urge members who have an interest in the issue to participate in the consultation. Such matters are subject to engagement, and agencies and organisations such as Families Outside seek to ensure that we get the balance right.

The consultation paper highlights changes to criminal investigations and prosecutions that would have a substantial effect on the legal aid budget. We must continue to ensure that people have access to legal representation when they need it and that solicitors are fairly remunerated. At the same time, we must consider the potential implications for legal aid expenditure in Scotland at a time of reduced budgets. As I said, the Scottish Legal Aid Board seeks to engage constructively with the Law Society on the matter. I thank the Law Society for its tholing—if I can put it that way—and constructive approach to our recent discussions on matters that pre and post-date the Cadder decision.

The Government cherishes the independent role of the Scottish Criminal Cases Review Commission, which is a critical part of the checks and balances in justice. There was considerable debate in the Justice Committee about the merits and appropriate powers of the High Court when it considers cases that the commission refers. With regard to the finality and certainty of recommendations, we will listen carefully to the views that are offered in the consultation.

It is perhaps understandable that Lord Carloway's recommendations on corroboration have generated the most interest and sparked the most comment, although they are part of a package that deals with matters from arrest to the outcome of the ultimate appeal, as I said. Lord Carloway explained that the rationale for the rule stems from another age, that its usage has become subject to overly complex rules and that it can bar prosecutions that would seem entirely appropriate in any other legal system.

Lord Carloway made a compelling case. As a Scots lawyer—once, but no longer—I share the historic pride in our system that inspires many people to argue for the requirement for corroboration to remain. However, I can see that there are times when the tide of history becomes too strong to resist. Lord Carloway could find no other western criminal justice system that has a general requirement for corroboration. We should reflect on the fact that all his research and endeavours turned up no other western democracy that appears to have such a rule. I have a good conceit of the justice system in Scotland, but I also admire many other western democracies, which I think get the balance right.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): Does the

cabinet secretary concede that when we compare systems we are not always comparing like with like? For example, other systems might not have majority or not proven verdicts.

Kenny MacAskill: Christine Grahame makes a fair and valid point. Some criminal justice systems are adversarial, some are inquisitorial and some are a hybrid. I will come on to what she said, because many people think that there are requirements that will be necessary if corroboration is dispensed with, as Lord Carloway suggested.

Lord Carloway found that the rule focuses artificially on quantity rather than quality of evidence. He found that the law has developed into a tangle of complicated rules, which are applied differently from court to court, and he found an alarming number of cases that might reasonably have gone to trial if there had been a different test for sufficiency of evidence.

I appreciate that abolition causes concern to many people. Indeed, it would be worrying if there were no debate around changing something that is so synonymous with Scots law. However, I note that much of the concern has, rightly, focused on whether abolition should proceed without any other changes being made—Christine Grahame correctly and understandably alluded to the matter.

First and foremost among the views that have been expressed is the view that it would be unfair to remain with a simple majority for jury decisions. There are also wider points about how judges direct juries and how they decide that a case is not strong enough to go before a jury in a specific case. I have noted with interest Michael McMahon's proposed member's bill, which seeks to reform our three-verdict system.

I welcome debate and responses to the consultation on all those issues, but I am not minded to revisit Lord Carloway's recommendation on corroboration or to refer the issue to a royal commission for further study. The requirement has been appraised and found wanting by the second most senior judge in our country, and it strikes me that conducting a further review would simply extend the current uncertainty over our system for years to come. We have had to address aspects of that uncertainty by emergency legislation. However, I am fully committed to listening and reflecting on all consultation responses that look at how reform can best be achieved and, if necessary, to bringing forward proposals for additional protections that may be needed to create a fair and balanced system. Therefore, I call on all interested parties—those who will speak today or those who will respond to the consultation—to tell me about what, if any, additional safeguards they think need to be put in place.

I am aware of recent criticisms of the Parliament's legislative record, which have even gone so far as to draw unfavourable comparisons with Westminster's reforms of Scots law. As members would expect, I utterly repudiate those claims, but they lead me to stress the importance of engagement. If stakeholders want a different course of action, they should make the case for it and show us the evidence that supports it. The consultation is the time for engagement, as I said earlier in response to a question from Mr Macdonald.

The Carloway report is but one part of a coherent modernisation package that is under way, which will bring together the Carloway report and Lord Gill's recommendations for reform of the civil courts, Sheriff Principal Bowen's proposals for sheriff and jury reform, and on-going work to improve the efficiency and effectiveness of the summary courts. Taken together, those things will give us the right legal framework, court structures and procedures for many years to come.

We need to re-evaluate our criminal justice system following Cadder and show deference and respect to Lord Carloway for his work, as I have said. Issues that are raised relating to corroboration will have to be further considered, but we should not hesitate and lose a historic opportunity to review and reshape our justice system for the 21st century.

I move,

That the Parliament welcomes the Scottish Government consultation paper setting out its approach to implementing Lord Carloway's historic recommendations to reform the investigation and prosecution of crime in Scotland; notes the Scottish Government's inclusion in *Working for Scotland: The Government's Programme for Scotland 2012-13* of a Criminal Justice Bill to deliver these historic reforms as a package; highlights the importance of delivering these measures in a coherent way alongside wider reforms to courts and tribunals planned through the Making Justice Work programme, and encourages all interested persons to make a response to the consultation.

14:37

Lewis Macdonald (North East Scotland) (Lab): The Government's motion proposes that the Parliament

"highlights the importance of delivering these measures in a coherent way alongside wider reforms to courts and tribunals".

We agree with the principle that underlies that phrase: that law reform cannot be considered in isolation from the practical context in which the legal system operates. That is why we lodged an amendment that makes even more explicit the link between the consultation on Lord Carloway's

proposals and the consultation on the future of the court service, which was flagged up by Iain Gray's topical question earlier.

We could hardly be in more topical territory. The consultation on the Carloway report is due to close in 10 days' time, on 5 October, and the Government's announcement of plans for a criminal justice bill was made—to Parliament at least—in the legislative programme on 5 September. Only last Wednesday, the Government's budget confirmed that funding for the court service is to be cut by 10 per cent in cash terms and 14 per cent in real terms over the next two years, and the consultation on court closures began only last Friday. A lot is happening, but the question is whether the Government's enthusiasm for changes to the prosecution of crime, its cuts to the courts budget, and the proposals for court closures add up to a "coherent" approach, which its motion calls for. The answer appears to be that they do not.

Lord Carloway's review made a compelling case for change, not least on the central issue of the need for corroboration. However, by any measure, the implementation of such recommendations is bound to increase rather than reduce the burden of work on Scotland's courts, not to mention the implications of the parallel reviews by Bowen on sheriff and jury trials and Lord Gill on civil justice.

John Finnie (Highlands and Islands) (SNP): On the requirement for corroboration, if only one police officer, rather than two, is required to turn up at court, surely there will be a saving.

Lewis Macdonald: I absolutely accept John Finnie's point. There are clear benefits in the proposals. My point is about the consequence of the removal of the requirement for corroboration on the sheer volume of cases that are likely to be placed before our courts and considered by them.

On the impact of removing the need for corroboration, which John Finnie raised, the evidence is there in annex A to the Carloway report. The Crown Office examined the records of 600 serious criminal cases and sexual offence cases in 2010 that were dropped either after an initial court appearance or before they came to court, and it found that, in nearly 60 per cent in one category and two thirds in the other, there would have been a reasonable prospect of conviction if there had been no requirement for corroboration. Had those 350 or 400 additional cases been taken forward, they would have represented a significant extra case load for Scotland's procurators fiscal to take to Scotland's courts.

We should bear it in mind that, although I have been talking about serious and sexual offences, the proposal to remove the need for corroboration would apply to all crimes and not just to those categories. The number of extra cases would therefore be even higher than the numbers that are identified in the Carloway report and the Government's consultation paper.

Kenny MacAskill: Does the member not accept Lord Carloway's comments on cases in which there are real doubts about whether justice has been done? Whether there would ultimately be convictions is a matter for the courts, but we should do everything that we can to ensure that justice is done.

Lord Carloway suggests that, in the main, we should proceed by way of seeking corroboration for convictions but, as John Finnie correctly suggested, considerable savings will be made and money freed up if, instead of two officers routinely going to London, Edinburgh or wherever to uplift a label and then requiring to speak to it in court, justice is dealt with at higher levels. Frankly, we have to question why two officers are required to speak to a label.

Lewis Macdonald: I think that I accept every point that the cabinet secretary made in that intervention. My purpose is not to say that there is no case for removing the requirement for corroboration or that we should not do so. I completely agree with the cabinet secretary that justice should be done in as many cases as possible. My argument is not that we should therefore have no change in the law of corroboration but that, if there is a change and it produces more work for the courts and the Procurator Fiscal Service, that should be reflected in the support that it receives from the Government instead of the trend going in the opposite direction.

Since the research was done on the serious cases in 2010, the Procurator Fiscal Service has seen a 4 per cent increase in the number of crimes that were reported for action in a single year and an 8 per cent rise in the number of serious crimes that were reported on petition in the same period, but according to the Procurator Fiscal Society section of the First Division Association, there has been an 8 per cent reduction in the number of in-house legal staff over two years.

The Lord Advocate has suggested that removal of the need for corroboration could have retrospective effect, not in cases that failed, but where no proceedings were taken because there appeared to be insufficient evidence to proceed. Again, that would clearly be welcome if the outcome was that justice was done, but if there are many such cases, there will be a particularly heavy demand on the time of procurators fiscal and the courts in the next couple of years, which is

precisely when Government budget cuts are likely to have the greatest effect.

The Law Society of Scotland and others have argued that changes on the scale proposed by Carloway should proceed only in the context of a full-scale review of Scottish criminal procedure. We do not favour endless delay, but it would be helpful if the Government's budget decisions supported the law reform approach that it wants to endorse instead of undermining it by taking resources away from front-line service delivery at the very time when they are most needed.

The Law Society is not alone in raising concerns about what it sees as undue haste and urging caution in how we proceed. Scottish Women's Aid, for example, supports the proposal to remove the requirement for corroboration, but it has raised concerns about the proposals for police bail. It is worried that liberation from custody could allow an accused person to tamper with evidence or intimidate witnesses; indeed, in domestic violence cases, the victim might be under direct threat. From its experience, it is concerned about how a victim would be advised of a suspect's liberation, how a suspect's compliance with conditions would be monitored and how the courts would deal with breaches. Although such matters are not arguments against proceeding, they are not trivial and suggest that certain questions have not been answered for those who need those answers the most.

In that sense, today's debate might be a little premature. Members can raise issues and ministers respond but as the consultation process has not yet ended such a process is bound to be incomplete. It would clearly be helpful to have a debate when the Government responds to the consultation process and I am glad that Mr MacAskill has agreed today that that should happen.

Of course, the key question of corroboration raises policy and resource issues. For instance, the Scottish Law Commission has argued that as corroboration and majority verdicts are two sides of the same coin there should be no change to one without change to the other. It is argued that if the requirement for corroboration were to be removed without reform of majority verdicts, an accused person could be convicted on the evidence of a single witness and a prosecution case that convinces only eight out of 15 jurors.

Margo MacDonald (Lothian) (Ind): This might be a completely ridiculous question, but I want an answer to it. Given that in Scots law different kinds of cases require different standards of proof, is there any reason why the crime—or an accusation—of rape should not be in a category of its own and not need corroborative evidence while everything else remains?

Lewis Macdonald: I have no doubt that members and ministers will want to reflect on that interesting proposition. As a non-lawyer, I feel that the lack of the need for corroboration would in principle apply to every offence or to none; however, I am sure that others will reflect on the matter in this afternoon's debate.

Linked with the majority verdict question is the not proven issue and the Scottish Law Commission has expressed concern about the retention of that verdict if there is no longer any need for corroboration. It argues, again, that if the only reason that a jury does not convict is the absence of corroboration it will, one would presume, straightforwardly find the accused person guilty; equally, if the evidence is still not convincing, even in the absence of the need for corroboration, it should straightforwardly find the accused not guilty. Whether or not one agrees with the Scottish Law Commission, many people clearly take the view that removing the need for corroboration must be followed by some indication of the safeguards that will take its place. So far ministers have chosen not to go down that route although, having listened carefully to the cabinet secretary's comments on the matter, I was pleased that it sounded as if he had not closed the door on action in these areas.

The Government's consultation paper described the not proven verdict as one that offers the jury

"a verdict which accepts there is evidence against the accused but not enough to convict";

however, surely in every case that is brought there is evidence against the accused. In the light of the proposed changes the argument for a third verdict must be that much the weaker.

Earlier this month, in the debate on the legislative programme, I called on ministers to engage with Parliament in the evidence to be taken on Michael McMahon's member's bill on these issues, and I repeat that call this afternoon. It is important to get the balance right and pay heed to all the evidence.

We should recognise that the Government's proposed bill is not just about the issue of corroboration or police bail. As the cabinet secretary has made clear, changes are proposed to a wide range of procedure and practice. For example, important proposals have been made on the legal rights of vulnerable adults and children, and there are questions about the knock-on effects of extending the protection of children to those aged 16 or 17. Moreover, ministers themselves have admitted that

"in a time of reduced budgets"

and in light of their already controversial proposals to cut criminal legal aid even for people on relatively modest incomes they are worried about

the cost of extending the right to legal advice to persons who are not being questioned.

I hope that ministers will accept the link between the Carloway report and court restructuring; will agree that a fully informed debate must continue and, indeed, must come back to Parliament after the consultation closes; and will be prepared to carefully consider their stance on majority and not proven verdicts in light of evidence taken in the parliamentary process on Michael McMahon's bill as well as their own.

I move amendment S4M-04234.1, to leave out from second "programme" to end and insert:

"; recognises the demands that these proposed reforms are likely to place on the Procurator Fiscal Service and the Scottish Court Service, which will require to be adequately resourced to meet these demands; encourages all interested persons to respond to the Scottish Government's consultation on Lord Carloway's recommendations so that the Parliament can debate these proposals on the basis of a completed consultation process and the Scottish Government's response, and also encourages people to respond to the consultation on the future structure of Scotland's court services to ensure that a coherent approach is taken to reform."

14:49

Margaret Mitchell (Central Scotland) (Con): I welcome the review that Lord Carloway carried out into criminal law and practice and the subsequent consultation by the Scottish Government.

With hindsight, it is perhaps surprising that, before 2010 and the Supreme Court's decision in the Cadder case and the emergency legislation that followed, no one questioned the practice of police interrogation of suspects without the presence of a solicitor. Today's debate provides the opportunity to examine past shortcomings in the justice system in that respect.

The Carloway review contains a number of useful and well-thought-out proposals that are widely supported, including: streamlining the concept of arrest and detention; having timescales restricting detention without charge; and having a new statutory definition of vulnerable suspects.

However, there have been mixed comments about the proposal for police investigative bail. Although the Law Society has welcomed the proposal, Scottish Women's Aid has raised concerns about the effect on the victims of domestic abuse and has highlighted the difficulties in ensuring that victims are notified of the suspect's temporary release prior to charge or report to the procurator fiscal and pending further investigation.

As the cabinet secretary confirmed, the proposal to abolish corroboration has attracted major and widespread criticism. Therefore, I call on him to implement the other, less controversial proposals of the Carloway review but defer the abolition of corroboration for further consideration. That approach makes sense for a number of compelling reasons.

First, we cannot predict how many cases would result in conviction if the requirement was abolished. Research for the Carloway review concluded that 81 per cent of 458 cases that had been marked "no further proceedings due to insufficient evidence" would have been likely to be prosecuted further without corroboration, with nearly 60 per cent having a reasonable prospect of conviction.

Furthermore, about 5,000 serious cases are prosecuted under solemn procedure before a judge and jury each year. It is estimated that the removal of corroboration would affect less than 10 per cent and lead to conviction in barely 5 per cent of those cases. As the standard of proof in criminal cases is beyond reasonable doubt, corroborated evidence would be likely to continue to be the norm in practice.

Some people support the abolition of corroboration as a means of addressing the poor conviction rates for rape cases. It is worrying that only 5 per cent of reported rapes lead to prosecutions but, in England and Wales—where there is, of course, no requirement for corroboration—the conviction rates for rape cases are no better. That suggests that many other factors are at play, which is confirmed by some of the members of the cross-party group on adult survivors of childhood sexual abuse, from whom I sought views. Importantly, members of the group emphasised that the justice system must protect the rights of the accused against false accusations. Some had witnessed situations in which there would have been a serious miscarriage of justice had the rules on corroboration not existed.

Although the members of the group acknowledged that corroboration can make it even more difficult to secure convictions, they also pointed out that complete abolition could lead to yet more plea bargaining, which would drastically reduce sentences that are already viewed as paltry for rape, sexual assault, child sexual abuse and domestic violence.

Instead of abolishing the law on corroboration for those interpersonal cases of violence, in which the execution of the offence has relied on secrecy and concealment, a much wider definition of corroboration could be permitted that would maintain the principle of fairness to the accused. Therefore, it was strongly advocated that the current law on the application and definition of corroboration be revised rather than abolished.

The following measures, rather than legislation, would encourage a more proportionate and considered approach and increase the chances of victims and survivors accessing justice in criminal proceedings.

Kenny MacAskill: What is meant by the suggestion that there should be further revision of the law of corroboration, given that it has been revised so that we have corroboration by admission and corroboration by special knowledge? Over many centuries we have revised, ameliorated and watered down corroboration so that it does not require, as many members of the public think, two police officers or two individuals. What further suggestions is the member making?

Margaret Mitchell: Some of the suggestions that I will outline from adult survivors make it clear that, rather than abolishing corroboration, a full and comprehensive review of the law of criminal procedure would be worth considering.

Perhaps the cabinet secretary will be convinced when he listens to the suggestions, which include: enabling more cases to be taken to court with a more robust use of the Moorov doctrine—there is currently a definite time-limited element to that, which dilutes an important piece of evidence that could help with convictions; training of procurators fiscal and court officials on sexual abuse and the impact on victims; changing the way in which the victims of sexual crime are cross-examined; making more use and giving more weight to the testimony of expert witnesses; and having more realistic sentencing. They also emphasised that it was not tenable to rush unnecessarily to abolish corroboration for all crimes because it was thought to impede convictions in some instances.

In conclusion, corroboration was introduced to protect against miscarriages of justice and reduce the prospect of a judge or jury convicting an accused on the basis of a single piece of testimony. One leading Queen's counsel states that by removing corroboration

"the evidence of a single, duplicitous, lying, skilful witness would be sufficient to put a person in prison for the rest of his life."

Corroboration cannot be considered in isolation from the wider law of criminal procedure. The Government must take time to get this right. For that reason, I move amendment S4M-04234.2, to leave out from "the Scottish Government's inclusion" to "Making Justice Work programme" and insert:

"with concern the Scottish Government's inclusion in *Working for Scotland: The Government's Programme for Scotland 2012-13* of a Criminal Justice Bill, including the proposal to abolish corroboration, and considers that any change to the law of corroboration in Scotland should instead form part of a full-scale review of Scottish criminal procedure; highlights the importance of delivering the other recommended measures in a coherent way alongside wider reforms to courts and tribunals planned through the Making Justice Work programme".

14:57

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I will have a little moan first and ask the Parliamentary Bureau to reflect on the fact that this is essentially a justice debate and that the Justice Committee sat until 12.45 today, with a substantial agenda—indeed, I had to guillotine business to allow members a breathing space and a little ham roll before they came to the chamber. Is it not possible for the bureau to ensure that when there are what are virtually subject debates in the afternoon, they do not take place on a day on which the subject committee is meeting in the morning? I feel better for having said that.

The consultation is still on-going, so the timing of the debate is a bit of a mystery to me. However, members can all take this as my contribution to the consultation.

The Government motion

"highlights the importance of delivering these measures in a coherent way".

The issue for me is coherence. The terms of reference for Lord Carloway's inquiry indicate that he was not asked to consider the not proven verdict or the majority verdict. The inquiry was held in a very specific context. Paragraph 1.2 of Lord Carloway's report states the terms of reference. I do not have time to read them out, but members can see them.

That takes me to the concerns that I have aired previously in the chamber about the proposed abolition of the necessity for corroboration in criminal cases. The concern is not new and it is not just mine. I refer the cabinet secretary to the letter sent to him by the Justice Committee on 26 January. I think that I am quoting the sentences fairly. The letter states:

"the Committee noted an underlying consensus; that the corroboration rule should not be seen as sacrosanct, and that it was legitimate to re-investigate from first principles whether it continues to serve a useful purpose in 21st century Scots criminal law."

That is fair enough. We went on to say that it was important to ensure

"that any future work on corroboration should avoid considering that single issue in isolation. Instead, it should also take into account the complex web of factors that, taken together, set the current balance between the state's ability to secure a conviction and the individual's right to a fair trial, and to be acquitted where there is a reasonable doubt."

That is terribly important. Let us take the oft-quoted example of how no longer needing corroboration would lead to an increase in successful prosecutions in cases of alleged rape. I say to Margo MacDonald that we cannot say that we do not need corroboration for one crime and that we will park the others. In some respects, a serious sexual assault can be far worse than rape for the victim. Would we say that we needed corroboration for that assault but not for something else? No—I do not think so. I will debate that afterwards.

Sandy Brindley from Rape Crisis Scotland thinks that it would be a great idea to abolish corroboration in rape cases, but my view is much more cautious. If a case simply comes down to the credibility of the accused and the credibility of the witness—the alleged victim—it is perfectly open to the defence advocate to conduct on behalf of his client a rather brutal cross-examination of the alleged victim that addresses previous sexual behaviour, behaviour on the evening in question and so on. Why not? Some people will look and behave like victims and some will not. Some people will look like rapists and some will not.

In addition, as I said, we retain majority verdicts. We must remember that the Crown must prove its case beyond reasonable doubt. The accused is innocent until proven guilty beyond reasonable doubt. If a member of the jury says—rightly—"This is about credibility and I've a wee bit of a doubt," there might be many more acquittals, not guilty verdicts, not proven verdicts, appeals and referrals to the SCCRC, and double jeopardy might even be used more, to bring in evidence that it is alleged was not available at the first instance.

As far as I can see, there is no evidence that removing the necessity for corroboration in England and Wales has led to an increase in successful prosecutions for rape. Given the time pressures, I have been unable to ascertain the number of hung juries and retrials south of the border—where a verdict must be unanimous—but that would be good evidence to have. I am sympathetic to the thrust of the Opposition amendments on that issue, although I do not agree with everything that is in them.

Another issue is the removal of the High Court's gatekeeping role, which the 2010 emergency Cadder legislation introduced, when the SCCRC makes a referral. The High Court should not be allowed to reject a referral from the SCCRC in the interests of finality and certainty; that makes it judge and jury in its own case. The removal is fine, but it does not go far enough. Even if the High Court hears an appeal that is referred to it and agrees that a miscarriage of justice has occurred, it is still allowed to consider whether allowing the appeal is in the interests of justice. I am a simple soul. I thought that, if a miscarriage of justice was proven, it was a miscarriage of justice—full stop—and the appeal should be allowed.

15:03

Graeme Pearson (South Scotland) (Lab): The Carloway report marks an important milestone for the administration of Scottish justice, as it contains many and complex recommendations and it offers the opportunity to redesign, refresh and update Scottish criminal procedures and to provide the citizen with appropriate protection in the face of state intervention. I welcome the report.

Such opportunities come barely once in a lifetime and must not be squandered. Some resist change and insist that our system for the administration of justice is among the best in the world. I feel sure that the reality is somewhat different. That reality demands that we learn lessons from experience and improve where we can.

Others have commented on many aspects of Carloway. I will focus on the element of the report that has attracted much attention, which is corroboration and its value as a required standard of proof in criminal cases.

For hundreds of years, the principle of corroboration has stood the test of time—a necessary check for the courts in weighing the level of evidential material necessary to prove guilt, not solely in terms of avoiding miscarriages of justice but as a means of protecting an accused from a callous or criminal attempt on the part of prosecutors to use a single witness or piece of evidence to convict a citizen. Corroboration was, and is still seen by many as, an essential safeguard.

Initially, I shared that view. My experience in my previous working life indicated that, although it was operationally inconvenient, the need for corroborative evidence ensured that prosecutors pursued an investigation with a view to providing not only a sufficiency of evidence but a level of confidence in the integrity of the evidence provided. However, Lord Carloway provided evidence to the Justice Committee explaining his thinking in detail, and I was impressed with his explanation of the nature of evidence in terms of its quality rather than the quantity provided. I was persuaded by his arguments in principle.

Nevertheless, I want to hear in detail what the Government proposes. How does the Government want any new approach to be implemented? Does it propose a blanket abandonment of the need for corroboration on an agreed date, or will the changes be retrospective in their application? Will the Government expect a series of cold case reviews by the Crown Office, or is the intention to

set a date on a calendar from which corroboration will no longer be an essential part of the process?

There is no doubt that Scotland is out of step with much of the rest of the civilised world in this regard. Nevertheless, the Government should not carelessly cast aside a much-valued safeguard without properly setting out precisely what it intends to replace it with for the future. That is particularly important in a Scotland in which the SNP Government is seeking to cut the legal aid budget over the next three years by up to £20 million in real terms. It also plans to cut court administration costs by £3 million and expects that solicitors will gather from clients an element of the fees that is not currently covered by legal aid provision or that—a novel idea—lawyers will see the loss of a fee as a good decision in the light of possible future business opportunities. There is also the prospect of closure of many of our local courts that hear evidence in criminal cases and the abolition of independent prison visiting committees, not to mention—my personal concern—a lack of any meaningful democratic oversight of the new national police force. Taken together, those steps do not enhance the rights of suspects, nor do they provide a balanced approach to criminal justice. They do provide real reasons why we must have clarity on the Government's intentions.

Many of Carloway's recommendations make sense in a system that is properly maintained and administered, but added to all those cuts and changes they will create a real test for justice seen and justice delivered. I hope to be assured that Government ministers understand the challenges and will deliver a justice system that is fit for the 21st century. I hope that they take care to ensure that the justice system that we value today will be regarded in future as a world leader.

The Deputy Presiding Officer (Elaine Smith): I remind members that we have some time in hand. Although speeches must be six minutes, time will be given back for interventions.

15:09

John Finnie (Highlands and Islands) (SNP): Lord Carloway described the Cadder judgment as

"a serious shock to the system".

Others, perhaps unfamiliar with the protections afforded by the Scottish legal system, may have been shocked at the absence of legal representation for people in custody at police stations. The Scottish Parliament responded to that and we moved on.

Lord Carloway said:

"The task facing the Review was to identify how criminal law and practice in Scotland ... should be re-cast to meet the challenges and expectations of modern ... legal thinking."

He said that the focus, in doing so, would be on applying

"a human rights approach".

One or two of the key recommendations cover that, including the recommendation that legal advice should be a right for anyone who is taken into custody; that the period of arrest before charge should be limited to 12 hours; that there should be protection for child suspects and vulnerable adults; and that there must be no adverse inferences from someone choosing to exercise their right to silence.

The report proposes fundamental changes, and as always a balance must be struck with regard to whose interests are being served and which criteria are involved. Police investigations are key in criminal matters, and the clarification of the distinction between detention and arrest on suspicion is helpful.

I support the robust application of a rights-based system, with regard not only to Lord Carloway's recommendations but to the forthcoming legislation that a number of members have mentioned. I will concentrate on a couple of rights—article 5, which is the right to liberty, and article 6, which is the right to a fair trial—from the perspective of Scottish Women's Aid, which is an important and informed user of the criminal justice system.

The emphasis is on a presumption in favour of liberty. That may seem self-evident in any system, but it requires to be mentioned and regarded, and I will refer to it later. Indeed, one or two members—such as Margaret Mitchell—have already mentioned it in relation to concerns about the release of the accused.

A letter of rights will be provided to every suspect, who will be able to choose their solicitor or waive their right to a solicitor, and appropriate protections will be put in place for children and vulnerable adults, which is important.

As members have mentioned, training will be required not just for police officers but for the Crown Office and Procurator Fiscal Service and solicitors. That will bring about some consistency and comprehension of each participant's role in the proceedings.

It is important that if a suspect is charged, they should be brought to court within 36 hours of arrest. The implications for our courts have been mentioned, but I certainly do not see any problem with the courts responding by holding weekend, public holiday or—dare I say it—evening sittings. The additional clarification around the idea of a suspect being liberated to allow time for further

investigation by the police before further questioning is very important, not least in relation to issues concerning the forensic examination of computers and accounting systems.

Lewis Macdonald: On John Finnie's point about the potential for courts to sit at weekends and on public holidays, does he accept that there are resource implications from any such developments, and does he believe that the Government should consider such changes in examining the Carloway proposals?

John Finnie: There are resource implications, but there is also the potential for greater use of technical equipment. We do not want to increase the number of people going to court; we want to deter criminals, detect crime and divert people away from prosecution.

Most members have touched on the question of corroboration. The Carloway report states that evidence should be assessed

"free of the current restrictive rules and principles, such as the general requirement for corroboration".

That is a simple phrase, but it has significant implications.

Continuity of evidence, which saw two people involved in picking up productions, is nonsense, and it is not what most people are concerned about.

Christine Grahame: Will the member take an intervention on that point?

John Finnie: Yes.

Christine Grahame: I am spinning out John Finnie's time. Is there not a procedure in court whereby evidence can be agreed so that there is no need for two police officers to agree a label if it is not contentious?

John Finnie: They may have to agree that the production has been jointly collected, so the implication exists right from the word go.

Christine Grahame: It can be agreed.

John Finnie: Yes, there are minutes, so I am sure that agreement could be reached, and it is clear that they have their place.

Scottish Women's Aid is keen to explore the implications of the proposals for victims of domestic abuse. We know the figures, but I will put them on the record again. There are almost 52,000 incidents of domestic abuse, of which 10,000 end up in court, and only half of the cases that are reported to the procurator fiscal reach court. The situation with regard to rape and sexual assault is worse. Recent Scottish Government statistics show that the number of reported rapes is rising and the number of prosecutions is falling. It is clearly important that we do something in that regard.

Law and practice are evolving, and Scottish Women's Aid mentions two important developments that have helped along the way: the Matrimonial Homes (Family Protection) (Scotland) Act 1981 and Lord McCluskey's 1982 decision, which opened the door for a man to be prosecuted for raping his wife. Those are examples of how the law evolves and of how the removal of corroboration could be seen in a positive light.

On the right to liberty, in reality there is an understandable concern on the part of women that the alleged perpetrator of a crime is free to interfere with the house or the evidence or to get an alibi. That is why it is important to realise that each case is about individuals—the individual victim; the individual accused—and that there is no one-size-fits-all approach.

Margo MacDonald: On the point about no one size fitting all, I am intrigued by why we are going for an end to corroborative evidence. Is it because we think that there will be a purer justice at the end of it? Is it to save money? Or is it more convenient in pursuing a case?

John Finnie: The arguments have been about quality versus quantity. Just because there are two witnesses, that does not mean that they are necessarily reliable witnesses or that they will be treated as such by the court, whereas there could be a very credible individual witness.

We strive to maximise the evidence that is presented to the court at all times—in terms of not simply eye witnesses but all the evidence. Nothing that is part of this is a dilution of the investigation, the aim of which is to acquire the maximum evidence to present to the court.

Christine Grahame: I just want clarification that corroboration is not two witnesses; it is two independent pieces of evidence. Corroboration does not have to be two people.

John Finnie: Yes, I recall that point well from 36 years ago, when I learned it by rote. I accept that point.

The Scottish Government is keen that all these pieces of legislation are delivered in a coherent way. The making justice work programme is important. I encourage everyone to participate in the consultation in the short time that is left and to give us their views—it is important.

15:17

Roderick Campbell (North East Fife) (SNP): I refer to my register of interests—I am a member of the Faculty of Advocates.

As we all remember, in 2010 the cabinet secretary asked Lord Carloway to carry out a review of Scots criminal law and practice given the decision of the UK Supreme Court in HMA v Cadder and in the wake of the emergency legislation that followed. I hope that the criminal justice bill that follows the on-going Government consultation contains provisions that will prevent the requirement for emergency legislation in the future.

The Carloway report has a lot in it apart from the proposal to abolish corroboration. There are important aspects in relation to arrest and detention, and I welcome the general support for the concept of arrest on reasonable suspicion.

In relation to detention, the consultation seeks to test whether there is support—as I hope—for the proposal that the police would be required to consider the proportionality of holding a suspect in custody, taking account of the nature and seriousness of the crime and probable disposal if convicted. Carloway also recommended that questioning be completed within 12 hours.

The principle of keeping detention without charge to a minimum should be welcomed, and it is a key aim of Lord Carloway's report. However, while welcoming that proposal, we must ensure that it will work. Some commentators suggest that it is an unrealistic period and the consultation seeks to invite comment on it. During a Justice Committee evidence session, we floated the idea of exceptions to it and it will be interesting to see how the consultation goes on that.

Additionally, Carloway recommends that charged suspects appear in court within 36 hours of custody. Although that is a laudable aim, we need greater detail on what that means in practical terms—weekend court sittings, for example—and further input from the Government seems necessary, as Mr Macdonald perhaps hinted.

On the right to legal assistance, Carloway proposes a requirement for legal assistance to be provided to a detainee

"as soon as practicable after the start of detention",

regardless of whether he or she is to be questioned by police. Access to sound legal advice is a cornerstone of a fair justice system, but we need to consider whether there would be a sufficiency of solicitors to cope with the increase in uptake of legal advice if it were to become a statutory right, and how that would be funded.

Additionally, Carloway identifies scope for the offer of legal assistance to be waived if detainees are fully aware of the consequences. That seems to be a fair proposal.

With regard to children and the law, Carloway makes an important recommendation with regard to those aged between 16 and 18 waiving their right of access to a lawyer and recommends that those under 16 should never be allowed to waive their right of access to a lawyer. I hope that we follow that path, even if there are those who argue that many children under the age of 16 are mature enough to know their own minds.

The Scottish Government intends to take forward Lord Carloway's recommendations on abolishing corroboration. I have no issue with that. As lawyers, we seek to get around the rule by relying on technical rules such as distress and the Moorov doctrine, and I believe that Lord Carloway was right to suggest that corroboration

"has developed into a series of rules which, realistically, are not capable of being understood by many outside the world of criminal legal practice."

I do not believe that there is any substantial evidence that the requirement for corroboration prevents significant miscarriages of justice—although evidence is difficult to find—and nor do I believe that its abolition will necessarily lead to significantly larger numbers of successful prosecutions in the longer term. However, we must consider carefully the implications of abolishing it for the remaining safeguards to prevent miscarriages of justice. Elevating to a higher level the concept of cases needing to be proved beyond reasonable doubt as our principal safeguard is neither appropriate nor sensible.

It is perhaps unfortunate that Carloway did not consider majority verdicts to be within his remit, even if we have a good idea about his views on the matter. That means we have not had any direct consideration of the impact of the abolition of corroboration on majority verdicts. Although the Government does not believe that there is any need to change the rules on majority verdicts at present, surely it would be wise to consider responses to the consultation on it, as indeed it would be to consider the possibility of an additional safeguard that the trial judge should be entitled to acquit if he or she is satisfied that no jury properly directed could convict. Is it right to restrict that safeguard to the appeal court? We need to reflect further on that.

Although I share the Government's view that those who question whether the wider system of protections in Scots law is sufficient to prevent miscarriages of justice in the absence of a requirement for corroboration should bring forward their evidence, it is important not to set the bar too high and to expect too much hard evidence because there is limited evidence at present on how far corroboration prevents miscarriages. The Government should accordingly take any well-argued concerns seriously, even if they are not fully empirically based.

On appeals and the role of the Scottish Criminal Cases Review Commission, I welcome the recommendation to abandon what is called the gatekeeping role for the High Court in relation to SCCRC references that was introduced by the 2010 act in the wake of Cadder. However, on the proposed new test that it is in the interests of justice that the appeal be allowed, I agree with Gerard Sinclair, the chief executive of the SCCRC. He gave evidence to the Justice Committee that that proposal is:

"not to remove the gatekeeping role of the High Court at all, but instead to dismantle the gates at the bottom of the driveway and reassemble them at the entrance to the front door."—[*Official Report*, *Justice Committee*, 13 December 2011; c 651.]

The Government needs to consider that carefully.

I welcome the consultation, and I encourage anyone who has not participated to do so before the closing date.

15:23

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Unlike the previous speakers who, I am sure, are all justice experts in their varying capacities, I read the Carloway report for the very first time during the past few days. I found it to be very persuasive. It is set out with great clarity.

I am sure that everyone is aware that there have been strongly different reactions to the report, so it is very important for us to hear all the views and acknowledge the issue's complexities. Large parts of the report are probably not too contentious, particularly those parts on detention, arrest, questioning and access to a lawyer.

I welcome the changes that happened after Cadder because we must always remember that some people who are arrested and charged are, in fact, innocent, and we must ensure that all our judicial processes are consistent with human rights. I am pleased that Carloway says that interviewing in the presence of a lawyer should take place only within a police station because I know that Scottish Women's Aid's initial response to the Carloway consultation expressed concerns about interviews at the scene of the crime.

Like Roderick Campbell, I welcome the proposal that detention should be limited to 36 hours, although making that happen is going to be one of the challenges for the Scottish Government. I particularly support that proposal because, not too long ago, one of my constituents in Edinburgh was arrested on a Friday night and held in cells until Monday—in Dumfries, as there was no room in the Edinburgh cells—but eventually his court case was dismissed.

Like Margaret Mitchell, I note the concerns of Scottish Women's Aid in relation to police bail. That option perhaps has to be used carefully, although it would clearly be useful in certain cases.

In all my views on the review, I have been influenced by Scottish Women's Aid and Rape Crisis Scotland. As I think is widely known, both those organisations support the removal of the need for corroboration. Scottish Women's Aid has emphasised the importance of the quality rather than the quantity of evidence, and Rape Crisis Scotland has said that the change could make a significant difference but, crucially, only if other action is taken. Rape Crisis Scotland suggested to the Justice Committee that there should be independent representation for complainers in rape or other sexual offence cases. I am sure that many other actions need to be taken. I do not think that any organisation says that removing corroboration will, in itself, improve the situation, but it will help.

That view was taken by Professor Fiona Raitt, when she gave evidence to the Justice Committee at the end of 2011. I found her evidence to be probably the most powerful of all the evidence that the Justice Committee took on the issue. If members, or members of the public, have not read her evidence, they should do so, as it is certainly well worth reading. She gave various reasons for supporting the abolition of corroboration, the first of which was to do with sexual crime. Very strikingly, she referred to something that Lord Hope said:

"In a public lecture at the University of Edinburgh in 2009, Lord Hope of Craighead posed the question whether the demand for corroboration in circumstances such as those"—

she had been talking about sexual crime and sexual violence—

"might make us conclude that certain crimes in Scotland were beyond the reach of the criminal law. Of course, were that to be the case, it could not be a fair or proper outcome of a modern justice system."—[*Official Report*, *Justice Committee*, 13 December 2011; c 628.]

That was central to Professor Raitt's point. By the way, she is professor of evidence and social justice at the University of Dundee.

Professor Raitt made two other relevant and interesting points. The first was that the criterion should be "a sufficiency of evidence", which is quite separate and not dependent on corroboration. Also, looking into the history, she argued that corroboration has become "eroded over the decades", that its application is often "artificial and technical" and that its integrity is now "discredited". I found her evidence to be persuasive, and it backed up what I had already read and heard about for a long time from Scottish Women's Aid and Rape Crisis Scotland.

Margo MacDonald: I apologise for not having read the same resources that the member has, but did the professor say what would constitute a sufficiency of evidence? Is there any way to define that?

Malcolm Chisholm: I cannot answer that in the one minute that remains of my speech, but I am sure that the member could read Professor Raitt's writings. She has various articles on Carloway that can be found if the member googles her name. She has certainly written about that.

Other changes might be made as part of the forthcoming legislation, although personally I do not think that they are directly related to removing the requirement for corroboration. An example of that relates to the eight-to-seven majority on a jury. For a long time, I have felt uneasy about that, irrespective of the issue of corroboration. For example, I feel very uneasy about anybody being sent to prison for life on the basis of an eight-to-seven jury verdict, and so I would be happy if that rule was changed. Obviously, the rule could be changed in various ways, but a minimal change might be to make the necessary majority 10 to five, although a more radical change could be made if that is what people wished.

Obviously, I do not agree with Christine Grahame on corroboration, but I agree with her on the very last section of the Carloway report. Lord Carloway let himself down on the very last page, because he suddenly says that the High Court should still consider whether an appeal is in the interests of justice, which seems to me to be inconsistent with what he said on the previous pages. The High Court had the gatekeeping role post Cadder in case there were lots of appeals but, like Christine Grahame and Roderick Campbell, I do not see why the High Court should have that role or something similar to it now.

That apart, and with the other caveats that I mentioned, I certainly welcome the report.

15:30

Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP): The presumption of innocence is the cornerstone of a just society and a fair justice system. I thank all the organisations, such as Scottish Women's Aid and Rape Crisis Scotland to name just a few, that have been and continue to be constructive in informing us as we progress towards the fair justice system that we strive for.

As we know, Lord Carloway published his report on criminal law and practice last November. He was asked to carry out the review after the Supreme Court ruled in October 2010 that evidence in the case of Peter Cadder was inadmissible as he was questioned by police without a lawyer present.

The review is extensive: the report has more than 400 pages and includes 76 recommendations, 76 meetings were held, and a public consultation was carried out that received 50 responses. There was also an investigation into jurisdictions elsewhere, along with conferences and the commissioning of a research project for the Crown Office and Procurator Fiscal Service. It was a robust investigation and analysis, and I tried to read all the report last night in preparation for the debate.

Lord Carloway argued that, in incorporating the European convention on human rights and ensuring the correct rights-based approach, there need to be changes in the law and alterations in the thinking of all those working in the criminal justice system—we have heard about that from previous speakers. It is essential that an effective justice system continues to evolve, which ties into what the Cabinet Secretary for Justice said earlier about the need for a longer-term review of our laws. They are evolving and not just an event.

The report mentions the need for training and guidance for the police, the Crown Office and Procurator Fiscal Service, solicitors and everyone else involved, to bring consistency, as John Finnie mentioned earlier. As someone who was previously a training officer in a professional capacity, I cannot state that enough, and members will not be surprised to hear me say that training is a key to ensuring that our important people make sound judgments—judgments that affect the lives of the accused, but especially the victims. Effective training and continuous professional development build a competent and confident workforce that underpins a professional service.

The proposals to give police increased powers to liberate a suspect from custody temporarily give me and others cause for concern. Those powers will be subject to certain conditions, such as restrictions on the suspect's whereabouts and conduct and a consideration of the possible negative consequences on women, children and young people experiencing domestic violence. Groups supporting people in the area of domestic violence have raised grave concerns about that matter. I ask the cabinet secretary to ensure that, in order to protect victims, an effective risk assessment is undertaken of all accused persons in such circumstances.

Scottish Women's Aid has expressed concern that the issue of accused persons released on bail will be further exacerbated by the numbers likely to be afforded temporary release. That matter has particular relevance in domestic violence incidents: the safety of women and other victims, especially children, should always be considered if

that situation arises and, in most cases, the suspect should be detained if there is any risk at all of them perpetrating further crimes.

Scottish Women's Aid further asserts that such a blanket release policy could also interfere with police investigations, and we have heard from Margaret Mitchell and others on that point. Sometimes key evidence is picked up when police investigations are at an early stage, and there could be an opportunity for someone who is released early to tamper with and destroy evidence, to establish an alibi after the fact, and to intimidate and interfere with victims and witnesses. As members of the cross-party group on men's violence against women and children know, there are cases in which that has happened and people have received phone calls, letters or Twitter or Facebook messages. We should be looking at that issue, too.

John Finnie: Scottish Women's Aid commended the great strides forward in the police treatment of domestic violence cases, and that extends to the application of that rule. Does the member accept that?

Christina McKelvie: I certainly do, and I thank the member for his intervention. That is an issue that I will refer to later on in my speech.

A further issue is how to administer the process of advising victims of a suspect's liberation, which is a matter of significant importance in domestic violence cases and, indeed, any case in which violence is perpetrated on someone. I hope that the cabinet secretary will give us some assurances on how that process will work in practice. There can be nothing scarier for a victim than to see the accused on the street or back at their front door when they had not even known of their release.

As we have heard, if the need for corroboration is removed, it is vital that careful consideration is given to the introduction of new safeguards to minimise miscarriages of justice. I must put on record my support for the removal of the requirement for corroboration, for largely the same reasons as those given by my colleague Malcolm Chisholm. Women's Aid agrees. It has said that there is a need to explore further

"the implications of removing the requirement for corroboration ... However, in doing that, we should look not at what will happen if that is done but at how we can make such a move work."—[*Official Report*, *Justice Committee*, 20 December 2011; c 780.]

It is extremely important to remember that.

As I said at the outset, and as John Finnie also said, the presumption of innocence is the cornerstone of a just society and a fair justice system. John Finnie also referred to the fact that, of the 51,926 incidents of domestic violence that the police recorded in 2009-10, 10,259 ended up being dealt with in court. In other words, the proportion of such incidents that reach court is relatively small. Only half of the 21,660 cases that were reported to the procurator fiscal made it to court. As is well documented, the situation with rape and sexual assault cases is even more worrying. I know that the Scottish Government is working on that issue, and I hope that the cabinet secretary can give us an update and reassure us that it is a priority for the Government.

As part of its remit, the cross-party group on men's violence against women and children has had concerns about the role of corroboration for many years. In light of the comments that have been made, I hope that we will be able to work together to fix that.

John Finnie will be happy to hear me say that, in the past few years, there have been welcome developments in how the police respond to domestic violence. Their approach to evidence gathering has broadened, and they now take a more forensic and robust approach to the investigation and presentation of evidence. I think that such professionalism is in the best interests of victims and the accused.

As a number of members have said, we need better conviction rates for rape. That can be achieved by using the rule of quality evidence, which may bring a sense of justice to the victims of such crimes. The cabinet secretary informed us:

"The review has unearthed striking research. In 268 of the 458 cases that were dropped in 2010 on the basis of insufficient evidence, there would have been a reasonable prospect of conviction if there had not been a requirement for corroboration."—[*Official Report*, 1 December 2011; c 4246.]

That is an extremely important point.

I ask the cabinet secretary to ensure that first responders and others who are engaged in supporting victims of crime are adequately trained to identify victims of trafficking.

I see that I am well over my time, so I will make two quick final points. The introduction of greater support for vulnerable suspects is very important to me, and the letter of rights is welcome. I see that one recommendation of Lord Carloway that the Law Society of Scotland agreed with was that on child suspects. The society suggests that safeguards should be put in place for people under the age of 18 and that children under 16 should not be allowed to waive their right to a lawyer. I ask the cabinet secretary to ensure that the children's hearings system matches that proposal, so that a welfare-based approach is adopted when we deal with children in the criminal justice system. The same should be true of

vulnerable adults, and we should perhaps look at the appropriate adult scheme.

I believe that a robust, fair and effective justice system is evolving and that, with the changes that have been outlined and a commitment to certain safeguards, we will progress further down the path to a fairer and more just society.

15:38

Michael McMahon (Uddingston and Bellshill) (Lab): The American Supreme Court justice Oliver Wendell Holmes once said:

"This is a court of law, young man, not a court of justice."

That may have been his view of the American judicial system from where he sat, but I would like to think that anyone who looks at or works within the Scottish legal structure would believe that justice is what should be pursued here at all costs.

I would never describe myself as having a high level of detailed knowledge of the ways of Scotland's legal profession, but I am keen to speak in the debate, as there are areas in which I have a specific interest. I welcome Lord Carloway's report, as it is an insightful commentary that I have found extremely helpful in understanding some arcane aspects of the law.

Although the Scottish Government has already responded positively to several of Lord Carloway's proposals, it is clear that some of his other proposals that are being consulted on will require a lot more consideration, given their more controversial nature.

Not surprisingly, most members have focused on one of Lord Carloway's more contentious proposals: the removal of corroboration. We must look at that objectively to arrive at a firm conclusion as to whether corroboration is suitable in modern day Scots law. Some will argue strongly that the principle of corroboration ensures that innocent people are not convicted on the basis of one person's oral evidence. Others will argue that if it is removed, subsequent changes must be made to Scots law to preserve the integrity of the practice of the systematic use of evidence to convict an individual. It is in that area—the conviction of people in Scottish courts—that I have a particular interest. Whatever opinion people hold on the matter, few would argue that the three-verdict system of guilty, not guilty and not proven is uncontentious.

I thank the cabinet secretary for his recent letter to me, in which he expressed an interest in the outcome of my consultation on the three-verdict system. I am happy to tell him that I will provide him with the final analysis and any relevant information I obtain, in order to inform his deliberations. In the meantime, he may be interested to know that I have included in my proposal for a reform of criminal verdicts bill a mock juror study that established clearly the relationship between the strength of evidence presented to a jury and the verdict delivered by that jury.

Although we cannot categorically say what impact removing corroboration will have, evidence and studies show that it is highly probable that it will increase the number of not proven verdicts arrived at by juries. To mitigate such potential effects, additional measures will have to be introduced if the Scottish Government goes ahead with its plans to remove corroboration.

First, as has been said a few times today, the number of jurors that is required to reach a verdict must be increased from the current simple majority. In normal circumstances a minimum of eight over seven jurors is required. I do not have a definitive proportion for what the majority should be, but I believe that no less than two thirds of the jury should be required to reach a decision. I invite anyone to give their views on this subject by responding to my consultation, which is currently published and in which I seek an answer to that question.

Secondly, if we change the threshold that is required for a jury to make a decision, the outdated three-verdict system used by Scots courts must be done away with. If we stick with a three-verdict system after increasing the majority required, it will be more difficult for a majority verdict to be reached. It is highly probable that that will result in an increase in the number of controversial and unsatisfactory verdicts being reached in Scottish courts. I advocate that the three-verdict system in Scotland should be changed to a simple two-verdict system. I am unsure whether the two verdicts should be named "guilty" or "not guilty", "proven" or "not proven", or whether different terms, which can be suggested, should be used.

Christine Grahame: That is very interesting. How many not proven verdicts have there been over a period of time? I do not know, but Michael McMahon may know from his consultation. Does he have figures for that?

Michael McMahon: There are figures, but I cannot remember them off the top of my head. I will send Ms Grahame information on that if she would like. Information is contained in my report and I will get it to her if it helps with her consideration.

Christine Grahame: Thank you.

Michael McMahon: I welcome all responses to my consultation and I encourage members to look at it closely and let me know their opinions. The

more information that I have, the better the consultation will be.

With or without the removal of corroboration, there are areas that must be reformed and my proposal for a reform of criminal verdicts bill details my views on that. If the removal of corroboration goes ahead, it must go hand in hand with other changes that offer protections.

As the Law Society of Scotland said,

"If corroboration is removed, it is vital that careful consideration is given to the introduction of new safeguards to minimise miscarriages of justice based on uncorroborated allegations."

I started off by questioning the views of Oliver Wendell Holmes. I will conclude by agreeing with Sir Arthur Conan Doyle, who wrote in "The Memoirs of Sherlock Holmes":

"It's every man's business to see justice done."

The cabinet secretary has brought us an interesting debate. Lord Carloway's report goes a long way to addressing some of my concerns about seeking justice in our judicial system. If we move forward with the right resources and make the right practical changes, we can enhance our judicial system. The debate will obviously inform the outcomes that we can achieve.

15:45

Colin Keir (Edinburgh Western) (SNP): There has been excellent input into the debate this afternoon.

Since we last debated the Carloway review, there has been much discussion in and around the legal fraternity on the issues that have been raised. These are times of change in the Scottish legal system. We have not just the Carloway report but Lord Gill's recommendations for reform of the civil courts as well as Sheriff Principal Bowen's proposals for sheriff and jury reform. There is also the Scottish Civil Justice Council and Criminal Legal Assistance Bill, which is being discussed at stage 1 in the Justice Committee and which will establish the Scottish civil justice council and reform legal aid. Given the scale of the changes that are proposed, it is understandable that the legal profession feels a bit nervous. After all, how many of us like major change in our lives? Many people in the legal profession have been in practice for many years.

The proposed reforms in the making justice work programme amount to some of the biggest changes in the legal profession in decades. As we heard from the cabinet secretary and others, the headline issue is the future of corroboration, although there are other interesting reforms in the mix.

Lord Carloway's criticisms of the rules on corroboration were severe. He said that the requirement

"has no place in a modern legal system".

It is obvious that his view is not shared by everyone in the legal profession. In his evidence to the Justice Committee, Lord Carloway explained:

"Corroboration is a misunderstood term. The important thing to recognise is that corroboration is about the number of witnesses there are to speak to a given fact."

He also said:

"we need to switch the thinking away from the quantity of evidence—the number of witnesses—to the quality of evidence."—[*Official Report*, *Justice Committee*, 29 November 2011; c 528, 527.]

It took him quite a bit of time to explain what corroboration means.

In principle, I have no problem with quality coming before quantity when it comes to evidence. The fact that most if not all other legal jurisdictions have abandoned the requirement for corroboration should give a degree of comfort that the sky will not fall in if we abandon the approach as a mainstay of prosecution. However, if we move to a system in which corroboration is not required, as Lord Carloway proposed, there should be more checks and balances, as is the case in other legal jurisdictions. I look forward to more discussions on the matter. The organisation Justice mentioned the matter in the written submission that it provided last year.

On rape cases, I warmly welcome the comments of Christina McKelvie and Margaret Mitchell. I am not sure whether an effect of the removal of the requirement for corroboration will be more convictions—Margaret Mitchell talked about that. However, I take on board the comments of Rape Crisis Scotland in its written submission last December, every one of which is worthy of further discussion. I agree with what Christine Grahame said about fears about how a victim or the accused behaves in court. How individuals act is important and might lead to problems with securing a conviction. There is the question whether the legal system currently accords victims more dignity. As Christina McKelvie said, there are serious problems for women in the court system.

Issues to do with the clarification of the SCCRC and High Court roles are also worthy of further discussion before we make a decision.

I am pleased that Saturday courts are in the mix. Saturday courts would help with detention times, particularly in the context of weekend detention.

In the previous debate—I say this more to Michael McMahon—I asked the cabinet secretary

whether he would consider the issue of the three-verdict system within the parameters of the Carloway discussions. I look forward to any information on that subject that Mr McMahon may produce.

I am very comfortable with the issues that relate to dealing with arrest, the point at which people require to be offered legal representation, and the time for which people can be held by the police. Again, Saturday courts are the way forward, and I hope that we will be able to come to an agreement on that.

I have said before that I warmly welcome the proposed changes on how we deal with children and vulnerable adults. We had a discussion not quite about that, but about a subject that is very close to it in the Justice Committee. There are serious problems. People do not necessarily know or understand what is happening once they head into the court system. Everyone should have a right to at least have information about that. That is the way forward. The law and the process of law can, of course, be daunting to those involved at the best of times.

Lord Carloway informed the Justice Committee that the reference group involved in the review was not asked to vote on the issues because there could have been disagreement, so the report is in his name. It would have been good to know the breakdown of the views that were held in that group.

As Lord Carloway pointed out in giving evidence, we live in the 21st century. The legal establishment now is a highly trained professional group unlike, he suggested, most of those who practised several hundred years ago. Unlike their predecessors, 21st century lawyers work in an interdependent legal system that must take account of international law, which, of course, includes the European convention on human rights and the work of the United Kingdom Supreme Court. I look forward to seeing the results of the consultation paper, and encourage people to take part in the consultation in the little time that is left.

I support the motion.

15:52

Sandra White (Glasgow Kelvin) (SNP): Although the motion is on the public consultation on the Carloway report about reforming Scots criminal law and practice, most of the speeches have focused on corroboration, to which I will return.

A number of aspects of the proposed reform have been generally welcomed and accepted. The cabinet secretary and other members have mentioned them. They are: there will be a simplified unitary system of arrest on reasonable grounds for suspicion and detention; an arrest will trigger a set of rights, including access to a lawyer; any proceedings against the suspect should constitute a fair trial; and suspects who are charged should be brought before the court within 36 hours of arrest. The cabinet secretary raised those issues in his speech, particularly that of legal advice and representation.

I completely take on board the cabinet secretary's and other members' comments on the legal aid budget. The Justice Committee, of which I became a member today, is looking at that issue. I very much look forward to seeing exactly what is happening to the legal aid budget and hope that justice will be served for people who want to access legal aid through that budget.

I return to corroboration. Many have said that our current rule is archaic, that other countries do not have it, and that we must move with the times into the 21st century. We have to change and move into the 21st century in some areas. I absolutely take on board John Finnie's point about two police officers being needed to corroborate a label, although Christine Grahame's intervention seemed to make that particular aspect of John Finnie's contribution slightly redundant. I take the point on board, but I am very concerned about how the removal of corroboration would be perceived by the general public.

Christine Grahame: To clarify, I did not say that John Finnie's point was redundant. I said that evidence could be agreed. If it is contentious, corroboration is needed, but items that are not contentious can be agreed and it is encouraged that they be agreed in evidence.

Sandra White: I thank Christine Grahame for pushing that point even further. I know that John Finnie accepted her point in his reply to her intervention.

As I was saying, I am concerned about how the removal of the requirement for corroboration will be perceived by the public. Corroboration is not just about the need for two witnesses. It is much deeper and more complex than that. I believe that my colleague Stewart Maxwell will go into the issue in more detail, so I will leave it to him. However, I want to raise two constituency cases that I dealt with that might have a bearing on corroboration.

In the first case, someone reported my constituent for alleged racial abuse. The police came to their door and they were taken into custody and kept in a police cell for two nights. There was no corroboration. It was one person's word against the other's. In the second incident, a lady was arrested for alleged homophobic

remarks. She was taken down to the police station, questioned and asked for evidence. Again, there was no corroboration and it was one person's word against the other's.

John Finnie: The member might not be familiar with the Moorov doctrine, which is a system whereby a series of unrelated incidents corroborate themselves. Although those particular acts might not have been corroborated, there might have been justification for the arrests on each of those occasions.

Sandra White: I thank Mr Finnie for the explanation. I just put it down to, perhaps, Strathclyde Police being overzealous in those two cases, but I accept his explanation and I will perhaps look forward to Strathclyde Police coming back with the same explanation for those incidents. There have been other, similar incidents. I raise them simply because constituents have raised them with me, and the issue is something that we should bear in mind.

A number of members have mentioned Scottish Women Aid. On page 11 of its response to the consultation, it answers the question

"Should the requirement for corroboration be abolished?"

It states:

"Overall, we are undecided on this difficult matter as there are compelling arguments for, and against, removing corroboration ... The arguments broadly in favour of removing corroboration refer mainly to the issue that it is a 'quantitative', numerical, counting test requiring the presence of at least two sources of evidence to assess 'sufficiency', as opposed to a 'qualitative' test of these sources.

On the other hand, the case in favour of retaining corroboration states that abolition would require the Fiscal to base their assessment of the success, or otherwise, of a likely prosecution solely on the basis of the complainer's evidence, meaning that Fiscals would spend more time assessing credibility and reliability. Unintended consequences could arise in relation to the treatment of victims in domestic abuse and rape and sexual assault cases; removal of corroboration, particularly in rape cases, would likely place a greater emphasis on their testimony, character, sexual history, medical history, etc, with the defence arguing that questioning has to be more 'robust' and probing."

I know that the proposals are out to consultation, but those important points must be kept in mind. I also mention that, although the requirement for corroboration has been removed in England and Wales, conviction rates have not risen.

In conclusion, I ask everyone to put forward their thoughts in the consultation.

The Deputy Presiding Officer (John Scott): We have a little time for interventions.

15:58

Helen Eadie (Cowdenbeath) (Lab): I am happy to speak in this debate. I rise to speak to and support the amendment in the name of Lewis Macdonald MSP. I declare an interest in that my oldest daughter is a senior depute fiscal in the Crown Office and Procurator Fiscal Service and my youngest daughter is a trainee solicitor there. Both have many years of service.

I ask why we are debating the issue now. Surely it would have been more appropriate to discuss these important matters after the conclusion of the consultation. The Scottish Parliament should show all those who have taken the time to offer a response to the consultation the courtesy of considering their responses before it offers its own views.

I understand that at the launch of the Carloway report the press's questions were dominated by the proposed abolition of the corroboration rule; however, when faced with a 412-page report that was commissioned in the wake of the Cadder case and which makes 76 recommendations we need to pay attention to the review's wider remit. I agree with the professionals who say that we should applaud the stated approach of seeking to incorporate

"Convention rights in larger measure and at greater depth ... to re-establish Scotland at the forefront of the law and practice of human rights in general".

However, as the former president of the Law Society of Scotland Cameron Ritchie has pointed out, Lord Carloway does not claim to have put together a package of proposed reforms that ought not to be cherry picked.

I also understand that the Sheriffs Association went one step further and suggested that the key reforms would mean consequences for a number of aspects of our procedure and that, moreover, there are financial implications. Given that increased court activity might not be acceptable to a number of criminal justice participants such as the judiciary, the Crown Office, Scottish Court Service staff and security and defence agents and would place more of a burden on their funding and criminal legal aid provision, it would be prudent to have what I hope would be meaningful discussions with all relevant parties and representatives.

However, the consultation document warns that such a move would have "significant implications" for the public purse as a result of an increase in legal costs—indeed, the cabinet secretary has agreed as much this afternoon—and as a result the Scottish Government's cut to the Scottish Court Service budget is a matter for concern. We need a commitment from the Scottish Government that additional funding will accompany any

change. After all, the Scottish Court Service's budget is to be cut in real terms by £5.5 million in 2013-14—or by a total of £10.9 million or 14 per cent between 2012-13 and 2014-15—and I believe that such a move could, as the document says and as the cabinet secretary touched on earlier,

"have significant implications for legal aid in a time of reduced budgets, if ... advice is to be publicly funded."

On the issue of opening courts at weekends and bank holidays, the consultation document warns that "pragmatism" will be required to meet the 36-hour target for bringing people to court and, in that respect, mentions videolink technology and videoconferencing. The cabinet secretary, too, mentioned such moves. We also know that at the moment Scotland's courts are open on bank holidays and at other such times.

There is also more scope to incur costs that will stretch the Crown Office and Procurator Fiscal Service's already severely stretched budgets. Its own research found that under these proposals at least 600 serious cases from 2010 would have proceeded; it is also worth pointing out that although the estimate was restricted to serious cases the proposals will apply to all crimes. The Lord Advocate has indicated that some cases that have not proceeded so far could be revisited in future. If the legislation is to be retrospective, it will greatly increase workload, at least in the short term. Moreover, the COPFS research does not cover cases that, after assessing lack of corroboration, the police did not report, which means that the number of additional cases that might have to be considered and prosecuted—and, in turn, the cost—is likely to be even higher.

As a result of a number of relatively recent legislative and non-legislative developments, including those in relation to the law on disclosure, the interviewing of suspects and the taking of biological samples, each case now requires significant additional work. Legislative developments in, for example, the treatment of vulnerable witnesses and admissibility of evidence are leading to new procedures and also require more work, as do the advances in technology and the increasing globalisation of crime that add a fresh layer of complexity to criminal investigations. Challenges to the compatibility of criminal proceedings with the ECHR remain commonplace and require additional work to assess and debate the issues in question, all of which impacts on court programming.

Other professionals have raised interesting questions about the Scottish Government's consultation, which invited views on a number of issues. Of particular interest is question 32, which invites opinions on changes that should be made to the Scottish criminal justice system if the corroboration requirement is abolished. Perhaps, as Michael McMahon suggested, jury thresholds should be adjusted. Very unusually, however, respondents are then asked for evidence to support their positions.

That is more than unusual. As Professor Robert Black QC has noted, it is utterly nonsensical. It is not possible to provide any evidence as such because corroboration has not been abolished, so there has been no need for alternative mechanisms to be implemented. There cannot possibly be any direct evidence from the past about the effectiveness of untried future reforms, and there is no use simply looking to other jurisdictions because their present systems do not exist against the background of a recently abolished corroboration requirement.

Many of the questions that Scottish Women's Aid raised have been referred to. I will not repeat them; I will simply agree with the great majority of what has been said. However, one issue was not raised: childcare issues and the difficulties in travel costs that may follow some of the changes that are envisaged.

The reviews that have followed the publication of the Carloway report make valuable contributions to our deliberations on what progress is possible on the report's recommendations. The utmost care must be taken to address the financial costs to ensure that any changes that take place are workable, are feasible and do not simply end up being undeliverable. Justice for the victim and the criminal is paramount for all of us in the chamber.

16:06

Stewart Maxwell (West Scotland) (SNP): I welcome the Scottish Government's consultation on Lord Carloway's recommendations. His report covered a considerable number of areas, and the consultation contains 41 questions, many of which are split into multiple questions. The Carloway report is an important report with far-reaching recommendations on possible reforms of Scots criminal law and practice. As other members have done, I urge as many people as possible to submit their views to the Scottish Government before the consultation closes on 5 October.

Because of the breadth of the topics that the report covers, I will deal with only some of the issues that it raises. I start with recommendations on custody.

The recommendation to limit to 12 hours the maximum time for which a suspect can be held in detention prior to being charged or reported to the procurator fiscal is sensible, because it strikes the right balance between the various parties involved. It provides time for the police to do what they have to do, but also puts pressure on them to do it

timeously. Question 6 of the consultation document asks whether there is scope for that time limit to be extended in exceptional circumstances. My view on that has not changed since the debate that we held on the Carloway report at the end of last year: there must be scope for the possibility of extension of the 12-hour maximum time limit, under certain circumstances. However, extensions must not become routine, so I ask the cabinet secretary to consider making extensions the subject of applications to a sheriff, or some similar process. I also support the necessity of having a senior police officer review the period of detention after six hours.

The proposals on corroboration have gained much attention. Most, if not all, members have focused on them. Lord Carloway's report points out that the requirement for corroboration is not a requirement that every fact in a case must be proved by two witnesses. As is pointed out in the consultation document, the report states:

"Corroboration is about the number of witnesses available to prove facts. It is not about number of facts available to prove guilt."

The report then provides a number of examples of corroboration. I will focus on one of those examples: DNA. Lord Carloway's report points out that

"a forensic sample can be the only evidence required to identify a perpetrator, but there must be two 'witnesses' to: (a) the finding of the sample at the crime scene; (b) the obtaining of a sample from the accused; and (c) the comparison between those two samples."

For me, that is the perfect illustration of why change is required. Most people believe that corroboration is about two pieces of evidence that corroborate each other, but in the case of DNA, it refers to two people providing evidence about several facts concerning one piece of evidence.

Christine Grahame: As Stewart Maxwell knows, I probably disagree with him. The point about two people giving evidence on the DNA trail concerns traceability. It shows firmly and securely that the DNA sample that is produced in court is the sample that was found at the scene and taken to the lab. That is terribly important.

Stewart Maxwell: I do not disagree with Christine Grahame that that is important, but I disagree about whether it is required to be done in the way that it is done now. That example proves to me that the world of criminal evidence has moved on, but the rules of Scots criminal law have not moved with it. Instead, as other members have said, the system has had to find ways of working around the rules on corroboration by, for example, having two people speak to particular scientific evidence. A workaround is not, and should not be seen as, a cornerstone of Scots criminal law. Corroboration was an important part of ensuring fair trials in the past because it provided accused persons with protection from the possibility of an overzealous system of justice. However, the reasons for its introduction have passed into the history books and so has the justification for keeping it as part of our system of criminal law and practice in the 21st century.

That said, it is clear that we need to proceed with caution, because the proposal is a major change in how our criminal law operates. The cabinet secretary will need to provide Parliament with a bill that answers many legitimate questions about the recommendation, and will need to ensure that the change will in no way unbalance our criminal justice system.

Some members have argued that if corroboration goes, there must be accompanying changes in other parts of the system, such as in respect of majority verdicts. There has been a call for unanimous verdicts or qualified majority verdicts to be introduced at the same time as any change to corroboration. However, I agree with Lord Carloway's statement that there is no direct connection between the two issues. I think that some people misunderstand what happens in systems that require verdicts to be unanimous or by a qualified majority. In those other jury systems a failure to arrive at a verdict does not result in an acquittal.

The consultation document summarises the Carloway report very well on the issue when it points out that

"if a jury is unable to reach a decision, the accused is not acquitted. Instead, a decision has to be made about a retrial. Scotland does not operate retrials in this way and there are no 'hung juries': the agreement of 8 jurors is required for a conviction, otherwise the accused is acquitted."

Lewis Macdonald: I acknowledge Stewart Maxwell's point, but will he confirm that although the English system is as he described it, there is no reason why a reform of the Scottish system would be confined to either maintaining the status quo or to imitating other jurisdictions?

Stewart Maxwell: I agree with Lewis Macdonald and I will make some more comments on that point.

Christine Grahame: I remind Stewart Maxwell that the terms of reference for Lord Carloway's inquiry did not include a reference to the not proven verdict or to the current majority verdict. It was not part of his job to consider corroboration within that ambit.

Stewart Maxwell: I am well aware of the Carloway inquiry's reasons for being, but I do not accept that Lord Carloway did not express a view on the issue. As I said, he felt that there was no direct connection between the two issues. If

members let me develop the point, my view will become clearer.

On acquittal in other jurisdictions, an important point that is often overlooked by those who call for a change to majority verdicts is that in Scotland a person is either convicted or acquitted, and does not face being tried again under those circumstances. Whether we move away from simple majority decisions on juries is therefore not tied to any decision on corroboration. Instead, it is an issue that should be looked at on its merits. There may well be a case for a move to more qualified majority voting, but it is not reliant on the abolition of corroboration.

My final point on corroboration is that the absence of the necessity for corroboration does not equate to the necessity of absence of corroboration. Just because corroboration is not required does not mean that corroboration will not still form a part—probably a large part—of evidence gathering in criminal cases. Any change means that when corroboration is in some way redundant or unnecessary, it will no longer be a requirement. DNA is a very good example of that. However, I expect that when corroboration assists in proving a case beyond doubt it will continue to be used regularly.

In conclusion, I wish quickly to support some of the other recommendations in Lord Carloway's report.

The Deputy Presiding Officer: Do so very quickly, please. You are well over time.

Stewart Maxwell: I support the recommendations on liberation from police custody, on investigative liberation and on child suspects under 16 being unable to waive their right to legal advice. I also support the recommendation that rules concerning vulnerable adult suspects need to be placed in statute.

Finally, I welcome the fact that the Government is moving swiftly on the recommendations. I urge it to do the same on another area that has been the subject of a Scottish Law Commission report: the use of previous convictions under certain circumstances.

16:14

Mary Fee (West Scotland) (Lab): I was eager to speak in the debate in order that I could highlight my concerns about Lord Carloway's recommendations on arresting and detaining suspected offenders. I have spoken many times in the chamber about the need for a uniform approach to the forgotten victims of the justice system—children. I was pleased by and I welcome Lord Carloway's recommendations on child suspects, but I am disappointed that none of the recommendations on arrest and detention mentions children. Sadly, Scotland lags behind many of its counterparts on that. Poland and many jurisdictions in the United States have police protocols for arresting a suspect in the presence of a child.

According to a study by the University of Illinois, when a child witnesses their parent's arrest, they often feel anxiety, suffer post-traumatic stress and feel scared, because nobody has explained to them what has happened and what will happen. Not only that, but the effect of witnessing a parent's arrest can differ according to the child's age and their stage of development.

Many members might not know that, last week, the UK published its response to the United Nations universal periodic review of human rights. One recommendation of that review was to

"Ensure that the best interests of the child are taken into account when arresting, detaining, sentencing or considering early release for a sole or primary carer of the child".

The UK welcomed that recommendation, and being part of the UK means that we need to ensure that it is taken into account.

I welcome many of the recommendations that Lord Carloway made, but there is not, in all his proposals on arrest and detention, one mention of the rights of a parent and a child. If changes are to be made to arrest and detention of suspects, the rights of the child should be considered as well.

Even simple things such as allowing a parent to arrange for someone to care for their child while they are detained, or taking the child into another room when their parent is arrested, can make a huge difference to the child. Such action minimises disruption and unnecessary trauma to children by providing the most supportive environment possible during and after an arrest, and it cuts down intergenerational reoffending.

I feel that the review is lacking in its recommendations on arresting and detaining suspects, but I agree with Lord Carloway that corroboration should be abolished. Corroboration is an ancient and archaic law that is preventing justice from being served in some of the most heinous crimes, such as rape and serious assault. Judges and juries should be free to consider all the relevant evidence, and to say whether they are satisfied beyond reasonable doubt that the accused person committed the offence. Abolition of this outdated rule will bring Scots law up to date and into line with the law of many other countries, on how to approach evidence. However, if corroboration is abolished, it will be vital that we give careful consideration to the introduction of new safeguards to minimise miscarriages of

justice that are based on uncorroborated allegations.

As many of my colleagues have pointed out, research by the Carloway review group found that, if corroboration had been removed, 81.7 per cent of rejected cases in 2010 could have proceeded to trial, with a reasonable prospect of conviction in 58.5 per cent of those cases.

Christine Grahame: I may accept that such cases might have got as far as the court door, but I do not see how it can be said that the prospect of success was reasonable when that has never been tested. We are back to juries or sheriffs looking at credibility, which we cannot prejudge. We would have to have run the cases to find out the outcome.

Mary Fee: I thank Christine Grahame for her knowledgeable intervention; I may take advice. This is a grey area. We can only speculate on what might have happened and I can work only with the figures that were in the review document.

In 2009-10, 276,000 prosecution reports were submitted to the Crown Office and Procurator Fiscal Service, of which 242,000 were submitted by the police and involved 278,000 people. When corroboration is abolished, there will be many more court cases, and many more convictions and offenders in prison or serving community sentences. Scotland's prisons are already overcrowded, and the number of prisoners is predicted to hit 10,000 by 2019-20.

Abolition of corroboration will mean that more cases will make it to court. I was, therefore, surprised to hear that the Scottish Government is looking to close many sheriff courts and justice of the peace courts. If corroboration is removed, that will have an impact on the work of the Crown Office and Procurator Fiscal Service as well as on the Scottish Court Service and the prison sector. There being fewer courts in which to prosecute offenders will mean that victims, witnesses and accused persons will have to travel extra distances, which will make it more difficult for people to attend court. That will result in the threat of more delays and disruptions to cases.

This does not seem to be the time to close courts while taking away a rule that has seen so many cases in the past rejected for trial. When that is coupled with the budget cut of £10.9 million over the next three years, which the Scottish Government has just announced, we could be looking at serious delays and disruptions to many court cases. Cases will be rushed through because of the backlog and many people will not receive the justice that they deserve.

Although I agree that corroboration should be removed from the Scottish legal system, the justice minister needs to look at the implications that its removal will have for the courts and prisons, or many cases may be delayed and the prison system may become overcrowded. If some of the proposals that have been mentioned today are enacted, we could be looking at a crisis in the courts and prisons in the years to come. Our justice system needs reform, but that reform must be carried out with care and consideration, with the protection of vulnerable people at the forefront of that deliberation.

16:22

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): In the debate in December, the cabinet secretary said:

> "The status quo is not tenable. We have to make changes and it is therefore important that we set the tone by showing, as we have done today, that this is about having a discussion and debate with the legal profession and with the general public."—[*Official Report*, 1 December 2011; c 4249.]

Today's wide-ranging debate has maintained the proper tone to help us all to be better informed as we move to further discussions on the subject.

I very much welcome the opportunity to return to justice debates. In session 1 I served on the Justice 2 Committee, and in session 2 I served on the Justice 1 Committee. Having a major prison in my constituency, I have taken a close interest in the penal system and have visited Peterhead, Porterfield and Saughton prisons. I have also visited Polmont young offenders institution, la Bapaume, near Paris, and Parc prison in Wales. I have visited sheriff courts in Dornoch and Glasgow, and I served on a jury 30 years ago at Linlithgow sheriff court. On one occasion, I visited the hospital for the criminally insane at Carstairs. However, none of that makes me an expert. I am surrounded by a lawyer, a policeman, a Queen's counsel and another lawyer, all of whom have spoken in the debate and have expertise to which I am not going to try to aspire. Just as Rumpole of the Bailey might have been an Old Bailey hack, I am an old Parliament hack, in such matters.

We know that justice operates very differently in other countries. In 2006, I was in Georgia, in the Caucasus, on two occasions under the sponsorship of the Westminster Foundation for Democracy, running courses for local political parties on how democracy works. I had the opportunity to meet the Georgian justice minister, whose great claim to fame was that he had put 3,000 more people in prison and had reduced the time that people had to queue to visit their relatives in prison from a week to three days. That was a very different environment from the one that we face today.

It is obvious that not every customer of the system is entirely satisfied. I say that from the

point of view of both the victims and those who are being prosecuted. When I was coming down to Parliament on the train yesterday, I heard an animated conversation in the seat behind me. One person was clearly a criminal; he had just broken the terms of his parole and thought that he was going down for four years. However, his chum trumped him, as he was up on an attempted murder charge and out on bail. I did not attempt to engage them to get more details; I thought that that might not be the thing to do.

On another occasion, I was in a cell in Saughton with six murderers—as a day visitor—and I was hearing their stories. One of them complained to me that, although he had served his life sentence and been released, he had been recalled simply because he had been present at another murder. He had not committed it—he had only been present, so he thought that it should not have counted.

Those stories show that we can probably discount significantly some of the things we hear about the criminal justice system and its operation. However, we should not imagine that we have a perfect system, and it is necessary that we examine the system and seek ways of improving it.

Several members have mentioned ways—such as television—of allowing people to appear in court before a sheriff without necessarily being physically present. That is important, as many of the current processes are done very much by rote and do not obviously contribute to justice.

I once visited Glasgow sheriff court with the Justice 1 Committee on a Monday morning. We were in the court for an hour sitting in the jury box, which was not being used. We saw 59 appearances being dealt with in a single hour, and we were left pretty baffled as to how any of that process contributed to justice. We should certainly consider any ways in which we can avoid, by using modern technology, having to aggregate a lot of people in one location.

Thinking back to my appearance as a juror at Linlithgow sheriff court some 30 years ago, and listening to our discussion today of the issues around corroboration and evidence, it strikes me that evidence is now a much more complex and diverse matter than it was 100 or 150 years ago. In the two-day trial on which I was a juror, I found that the sheriff was first class in summing up, explaining what was expected of the jury and outlining the tests that we might apply to the evidence in considering the guilt or innocence of the two accused in front of us, and which verdicts we should come to.

However, I cannot help but imagine that, given the increased complexity of evidence, the sheriff might usefully have told us about the sort of tests that we might want to think about as we heard the evidence and before we considered it.

In a two-day trial, one can think back to the start, but I had a professional colleague who was once on a trial that lasted for four months. I cannot even remember what happened last week most of the time, let alone what happened three months ago; I know that I am not alone among those of us who are of a certain age.

I will bring my remarks a conclusion as soon as the Presiding Officer nods more vigorously.

The Deputy Presiding Officer: You have one minute.

Stewart Stevenson: Thank you. That is helpful.

About 150 years ago, we were looking very much at remembered evidence, and the evidence of what people saw was reported in court. Now, we are often looking at evidence that is recorded. Technology has provided the evidence, so the character of it and, therefore, how we should judge it are quite different.

It is 110 years since the first person was a victim in the criminal justice system of the benefits of dactyloscopy, which is the science of fingerprint recognition. From that point onwards, science became part of the evidence base, and we may not have fully caught up with everything that has come along since.

I am interested in Michael McMahon's efforts on the three verdicts, but we should abolish the not guilty verdict and keep the not proven verdict, because that is the older of the two. Incidentally, in my experience in the sheriff court, there were, out of the 14 charges, seven not proven verdicts, five not guilty verdicts and two guilty verdicts. Juries are quite capable of dealing with such matters when they have the evidence.

The Deputy Presiding Officer: We move to closing speeches. I remind all members who have taken part in the debate that they should be in the chamber. I call Annabel Goldie—you have a generous six minutes.

16:30

Annabel Goldie (West Scotland) (Con): The debate has been interesting, if somewhat familiar. Last December, Parliament debated the Carloway review recommendations; nine months later, the Scottish Government has failed to advance the debate, because we are now considering a consultation that largely replicates the recommendations in the report, despite extensive criticism surrounding the proposed ending of corroboration.

Although it is understandable—as the cabinet secretary said—that the controversial proposal to abolish corroboration has been the focus of comment and debate during the past few months, another important element has been overlooked: the fact that the review recommendations that relate to arrest, detention, custody, investigation and the interrogation of suspects all go to the very heart of compliance with the European convention on human rights. We must do all that we can to avoid the situation that arose out of the Cadder case, when Parliament was forced to debate emergency legislation to ensure that Scots law complied with basic human rights.

That failure lay with the Scottish Executive of the time. It did not, as the First Minister and Cabinet Secretary have suggested in the past, lie with the Supreme Court. However, there is clearly a debate to be had surrounding the abolition of corroboration; one has only to listen to the contributions from members this afternoon—including, encouragingly, from some Scottish National Party back benchers.

The abolition of corroboration might mean that more people can be prosecuted, but that does not mean that more people will be convicted. Experience suggests that where the burden of proof is reduced for the prosecutor, reasonable doubt may loom larger for the jury. If a jury is in doubt after hearing all the evidence, because non-corroborated prosecution evidence is simply denied by the accused, the jury will acquit or find not proven. I have to say that I thought that Christine Grahame made a robust and courageous speech in that respect.

Christine Grahame: That bodes ill for me.

Annabel Goldie: In support of the point that I have just advanced, I remember the review of sexual offences that was published in 2006. It made 50 recommendations that were designed to improve the investigation and prosecution of rape and other sexual crimes. All 50 recommendations, including a number on decisions to prosecute and evidential requirements, were implemented by the summer of 2009.

However, convictions for rape and attempted rape still remain very low—indeed, they were at their lowest level in 2010-11, when the proportion of reported rapes and reported attempted rapes leading to conviction was 3 per cent.

A number of members—including Colin Keir and Sandra White—rightly signalled their concerns. I urge the cabinet secretary to listen very carefully to those concerns.

It is also the case that if a jury does convict, an equally alarming consequence of the abolition of corroboration is the prospect of miscarriages of justice, particularly if—as some members have indicated—related aspects of Scots criminal law are not also considered.

The SNP has undergone something of a change of heart on the issue. The Cabinet Secretary now describes corroboration as a rule

"that stems from another age"

and appears to be hell-bent on abolishing it, regardless of what the experts say. However, I observe that he is the same individual who thought it appropriate to claim that two of Scotland's most senior and universally respected judges in the Supreme Court had gained their knowledge of Scots law through visits to the Edinburgh festival.

The cabinet secretary has previously castigated the Cadder decision as being one that

"overturns decades of criminal procedure in Scotland, a proud, distinctive, justice system, developed over centuries, and predicated on fairness with many rigorous protections for accused persons."

Those are bold and stalwart words that I entirely support. The irony is mocking: by "rigorous protections" the cabinet secretary was, of course, referring primarily to—yes—corroboration; a principle of evidence that he robustly supported when lambasting the evil Supreme Court.

The Law Society of Scotland, the Faculty of Advocates and Justice Scotland have all warned against implementing the corroboration recommendation in isolation. This is not about the establishment resisting change—this is about effecting change that makes things better, not worse.

We are talking about getting a major change to a criminal legal system right and not reforming it in a higgledy-piggledy and illogical fashion. Removing the requirement for corroboration without seriously considering introducing other safeguards against miscarriages of justice would not only be dangerous; it would also be a missed opportunity to consider related matters. Some of those matters have been referred to this afternoon; for example, majority verdicts, and the burden of proof in criminal cases being beyond reasonable doubt. Should Scottish judges be able to warn juries about the reliability of a single piece of evidence, as is the case in England and Wales? What about the not proven verdict?

The Scottish Government's consultation has given only passing consideration to those questions. It is, perhaps, unsurprising that Lord Carloway did not recommend a full-scale review of Scottish criminal procedure. That was not his remit, as Christine Grahame rightly observed, but the proposal to abolish corroboration in isolation is causing widespread unease, which is clearly shared by members of Parliament across the political parties. In December last year, the

convener of the Justice Committee, Christine Grahame, listed no fewer than seven concerns that she had heard against removal of the requirement for corroboration without wider reform.

Stewart Maxwell has called for a debate on majority verdicts, and Colin Keir has said that now is the appropriate time to re-examine the three verdicts. Almost a year on, it is worrying that the Scottish Government has failed to listen to such legitimate and reasonable concerns, many of which have been echoed by the cabinet secretary's own colleagues during this afternoon's debate.

Although I appreciate that the cabinet secretary wants to press ahead with the useful reforms that Lord Carloway has proposed, I urge him to exclude corroboration from the forthcoming criminal justice bill. The issue needs to be part of a wider debate and it needs to be informed by the very sort of evidence that Mary Fee, to her credit, confessed she did not have, and which Christine Grahame quite rightly indicated is an essential part of informing the debate.

For that reason, although I have found today's debate to be genuinely interesting, I support my colleague Margaret Mitchell's amendment.

16:37

Jenny Marra (North East Scotland) (Lab): It is a pleasure to speak in this afternoon's debate on all these important issues in the landscape of Scots law and evidence. The Parliament is being asked to consider some of the most far-reaching reforms to Scots law, and it is important for us to debate them well and often to get the changes absolutely correct for everyone who is involved in the legal system, not least the victims of crime in our country.

I start by considering this afternoon's debate. We have heard many informed and learned speeches, in which members have raised good points that I hope the minister will consider during his closing speech, and which we should all take to committee and to subsequent debates.

I was hoping to intervene on Roderick Campbell, but I did not want to interrupt him because he always makes very learned speeches on these issues. I wanted to pick up on a point that he made in his opening remarks about Cadder and the emergency legislation that the Scottish Parliament had to consider as a result of that judgment. Annabel Goldie also picked up on that point. Last year, in its manifesto, Labour proposed to conduct a full audit of Scots law to make sure that the law in our country is ECHR compliant. Such a full-scale audit would prevent scenarios such as the emergency legislation that we faced in the wake of the Cadder case.

Kenny MacAskill: On the Cadder judgment, how would an ECHR review have affected the position, given the appeal court's decision in HMA v McLean? Is the member suggesting that our review could have overturned the decision of a High Court bench?

Jenny Marra: No, I am not suggesting that. I am suggesting that we need to look forward and consider Scots law with an eye on ECHR. The Cadder judgment was not the first time that Scotland had heard of the problem with section 14 of the Criminal Procedure (Scotland) Act 1995; there had been the Salduz case a few years earlier. Such an approach would have given the Parliament a bit more time to prepare and we would not have had to consider emergency legislation. I hope that ministers might consider carrying out such an audit as part of a wholesale look at Scots law.

Roderick Campbell also made points about the resource implications of the Carloway proposals, and there were many other thoughtful speeches. Christine Grahame drew the Parliament's attention to the fact that we must consider the majority verdict. Malcolm Chisholm made a good speech in which he pointed to Professor Fiona Raitt's points on the sufficiency of evidence. As a result of his speech, I think that we will all read Professor Raitt's comments. I understand that she has called for a wholesale review of the law of evidence. Ministers might want to comment on that, because it perhaps does not serve the system properly to look at the issue in a piecemeal fashion.

Mary Fee made welcome remarks about children. The voice of children is often drowned out in debates on Scots law, but she advocates powerfully for children's rights in the legal system, and under these proposals.

I am glad that the cabinet secretary took the time to bring the motion to Parliament, because it is important to debate the proposals often and well. We have heard in the debate that many questions remain to be answered on the Carloway review and how it is to be implemented. Although I generally support many of Lord Carloway's recommendations, it strikes me as a little curious that the cabinet secretary should bring the debate to the chamber before the consultation on the proposals has even closed and therefore without the evidence that has been offered by legal experts. Nonetheless, the debate is a good opportunity.

It is clear to me from the speeches made today that we need further detailed consideration of and debate about how we can effectively implement Carloway's recommendations. Full engagement

with stakeholders is a necessary part of that debate. The end of the requirement for corroboration in Scots law would be a major shift, not only in the way that verdicts are reached in our courts, but in the number of cases that will reach our courts in the first instance. It is vital that we have the foresight to envisage the impact that the removal of corroboration would have on our legal system.

We have heard that the pressure that is being put on our court services through budget cuts and the proposed closures of sheriff courts throughout the country would undoubtedly have a bearing on the courts' ability to undertake a much bigger case load. From that perspective, I ask the cabinet secretary to consider fully the consultation on the future of our courts, not just through the lens of the challenging financial situation that he faces, but through the lens of promoting effective and speedy justice for victims of crime, as Carloway recommends. I am in no doubt that limiting the number of jury trials too much and closing too many courts could have an adverse effect when the Carloway recommendations are implemented.

We have heard about the complexities that surround the proposal to make any change to the corroboration rule retrospective in its application. Not least of those is the potential to put our police service and Procurator Fiscal Service under considerable strain as a result of dealing with an increased case load and the reopening of cases that did not originally come to trial. As has been mentioned, in 58.5 per cent of cases in 2010 that did not go to trial because of insufficient evidence there would be a reasonable chance of conviction if the need for corroboration were removed.

Annabel Goldie: I want to test the member's presumption. In my speech, I referred to evidence that shows that the significant changes to the way in which we prosecute rape, attempted rape and sexual offences have not led to an increase in convictions. How can the member assert that simple abolition of corroboration will ensure more convictions?

Jenny Marra: I do not think that that is exactly what I asserted. I am saying that we need to look at things in the round to ensure that we get more convictions; we also need to look carefully at the proposals for corroboration to see what impacts they may have.

We have heard of the need to consider the changes in the wider context of access to justice. Christine Grahame eloquently outlined Carloway's remit and gave the Government good reason to think carefully about the proposal from my colleague, Michael McMahon, who has quite rightly taken a broader view of criminal justice that includes a debate about the not proven verdict.

Those are just a few of the issues that the SNP must face up to if it is serious about improving our criminal justice system. The principles underlying Carloway's recommendations are good—they are based on the rights of victims and witnesses to speedy and efficient justice, and they have their roots in human rights legislation.

If we are to have a fully informed debate about the virtues of the report, we must include the voices of all interested parties from all corners of our justice system. We must have a holistic assessment of the criminal justice landscape, too—one that includes Michael McMahon's proposal for reforming the verdicts that can be reached in jury trials.

16:46

Kenny MacAskill: The debate has been good and wide ranging, with some contributions that were excellent and to which I will return.

A point was made about the debate being premature, and the issue of timing was raised by Helen Eadie. I assure her that, as I said to Lewis Macdonald, we are not at the end of the process. Further debate will be required, especially given the safeguards that we have commented on, and the bill will be subject to full parliamentary scrutiny.

In Annabel Goldie's closing remarks, she was critical that we had been dilatory in not moving fast enough since a debate last December; she also seemed to say that we are going too far, too fast. Doubtless, as ever, the truth is somewhere in the middle.

Rod Campbell made an excellent speech in which he pointed out that corroboration has been, understandably, the basis and focus of debate externally and in the chamber. He commented on the many other significant matters that require to be considered and addressed. We will have to come back to them.

Rod Campbell and others, including Lewis Macdonald, commented on the issue of police bail, which we need to take a significant look at. Lord Carloway has made proposals, and there are safeguards in the operation of the bail system, but there are doubtless opportunities for the Crown Office and Procurator Fiscal Service to move for, and the court to grant, bail on strict conditions.

A variety of issues relate to that, but whether we are dealing with the victims of domestic violence or other victims, we must ensure that the circumstances are right. I assure Rod Campbell—who correctly raised issues other than just corroboration—and Lewis Macdonald, who raised that particular issue, that we agree that we need to look at it carefully. However, I believe that there are sufficient initial checks and balances in the

system—as a chamber, we have recognised that over many years. There has been frequent comment on the issue; indeed, the policy directions given by the Crown in relation to advice and guidance on police bail and other matters have changed.

The SCCRC has also been mentioned, and we must consider that, too. In particular, the interests of justice test has been touched on by some. I think that Lord Carloway was right when he anticipated that people would perceive that the gatekeeper role was, once again, being given to the High Court to close matters down. I refer members to the evidence given by Lord Carloway to the Justice Committee. He stated that he sees that test being applied in situations such as when the High Court receives new information about a case. That new information may not have been included in the SCCRC reference, or it may have emerged since the reference. Therefore, rather than seeing that as a duplicitous act, we should see that Lord Carloway was seeking to assist the SCCRC when further matters may have come to light. We should look more closely at the evidence that was given.

Christine Grahame: Regrettably, I do not have a copy of what was said with me, but I know that the committee challenged Lord Carloway on that very point. That leaves it open to the High Court, when there has been a miscarriage of justice—notwithstanding everything else—to come out with the line that it is not in the interests of justice to allow an appeal. That cannot be right in principle.

Kenny MacAskill: We have to look at the issue in the round, which is why it was appropriate for Rod Campbell to mention that there are aspects other than corroboration that need to be looked at. I think that Lord Carloway was seeking to assist in situations in which new evidence may have come to light that could not have been available to the SCCRC. That is an issue that Ms Grahame's committee and others will no doubt look at; I just thought it important that we should put on record where we are in that regard.

As with the debate externally, the focus in this debate has been on corroboration. There are three questions that we must consider. Why do we have corroboration in Scots law? What has changed? If we are to abolish corroboration, what safeguards require to be given? Margo MacDonald dealt with why we have corroboration. When I asked Lord Carloway about the issue, he indicated—as I think is mentioned in his report—that, as far as he could see, it goes back to Romano-canonical law. It is not for me to criticise Romano-canonical law, which is the basis of law in many jurisdictions and which has doubtless provided great support. Scotland has benefited from the fact that the civil law that we have practised is based on aspects of Roman law. There no clarity on the basis on which corroboration came in, but it came in at those times.

Annabel Goldie: I am grateful to the cabinet secretary for outlining to the chamber the eminent origins and the genesis of this important principle, but if it was rubbish—as he seems to think—why has it endured for so long?

Kenny MacAskill: I do not think that I have ever suggested that it was rubbish. I think that Annabel Goldie denigrates my argument. Stewart Stevenson made a valid point when he said that things have changed. We must take account of that. We had corroboration at a time when some of the judiciary lacked education and legal expertise. The situation now is different. We did not have DNA evidence, which provides certainty to the millionth degree, or video evidence. The world has changed. Matters require to be considered in that context, in the round.

Margo MacDonald spoke about the basis for the intention to remove the rule of corroboration. The intention is to enable the court always to have the best evidence before it, so that it can assess its credibility. As Lord Carloway stated, corroboration can be seen as an archaic rule. We want to focus more on the quality than on the quantity of evidence, as John Finnie said.

Corroboration has served Scotland well. Equally, the 110-day rule—which, as Annabel Goldie will recall, was viewed as one of the gold standards of Scots criminal law when I was going through university—has gone, but Scots law has not collapsed. We have moved into the 21st century and recognised that some changes need to be made. We must set corroboration and why we have it in context, and look at what has changed.

As many members have said—and as Lord Carloway accepted, although he did not think that it was appropriate for him to address the issue—there require to be safeguards. As an Administration, we, too, accept that there require to be safeguards. The primary matter that has been raised was mentioned by Michael McMahon, with whom we have been in communication. We are happy to take on board the valid work that he has already done, for which we are very grateful to him. The verdict system has to be looked at. We will not prejudge what the outcome of that process may be, but I accept that it is valid for the verdict system to be examined. I welcome the contribution that Michael McMahon has made through his consultation, and we look forward to being able to build on that.

Clare Adamson (Central Scotland) (SNP): I am not a member of the Justice Committee, but I have listened to the debate with interest.

Traditionally, the operational practices of the police have been based on corroboration, and we are used to seeing our police officers operating in pairs. Can the cabinet secretary reassure us that, if the need for corroboration is removed, the single deployment of policemen would not be adopted without the risks being fully assessed?

Kenny MacAskill: Absolutely. First and foremost, we must recognise that Lord Carloway made clear something that is accepted by the Crown: in the vast majority of cases there will be no change to the evidence that is required. Preferably, there will be evidence from more than one source, and if there are two eye witnesses, that will be even better—the more, the merrier. I give an assurance that we do not have a desire to change the whole way that either the police or, indeed, the Scottish legal system operates. It is a matter of making sure that we go for quality of evidence, not quantity.

Some members have spoken about how matters can be agreed. I have been involved in discussions with a major Scottish financial institution at the request of one of Scotland's constabularies—representing the views of all constabularies—about the problem that they have faced whereby they must routinely send two officers down to London to pick up information to be used in prosecutions. Christine Grahame is right: we have agreement of joint minutes of admissions. Equally, however, routinely, two officers are required to pick up and speak to what is, in effect, a label. They do not know what the item is; they just say, "I was the officer that flew south. I picked this up along with my colleague and that, before you, is the item I uplifted." Frankly, that is nonsensical. When folk worry about costs, let us look at that.

Let us look at what others think. I surprised that the Tories did not refer to this, but

"If abolishing corroboration means that more people can be brought to trial then that is to be welcomed."

It was not me who said that—it was David McLetchie. I have to say that I am not necessarily looking to see more people prosecuted, but I think that the right people should be prosecuted.

I take on board the view of Scottish Women's Aid, which has said:

"Our organisation's clear position is that the implications of removing the requirement for corroboration must be explored further. However, in doing that, we should look not at what will happen if that is done but at how we can make such a move work."—[*Official Report*, *Justice Committee*, 20 December 2011; c 780.]

The Tories should take that on board.

Annabel Goldie: Does the cabinet secretary accept that increasing the number of accused brought to trial will be a complete chimera if we do not increase the number of convictions based on persons presented for trial?

Kenny MacAskill: It is not for me to increase the number of convictions—that will be for the judicial system. We have to make legislative changes that may change how the scales of justice are balanced. We are looking to make sure that justice is done. That is why I will also quote the views of Susan Gallagher, the deputy chief executive of Victim Support Scotland, who said:

"The recommendation to eliminate corroboration in Scotland is particularly welcome as long as any test applied ensures that it does actually lead to better quality of evidence."

I refer the chamber to Malcolm Chisholm's speech. This is not about getting more convictions per se; it is about achieving justice. If people who should be convicted because they have perpetrated heinous crimes are going free, we owe it to victims and our broader communities to achieve justice. This is not simply about a system of rules of engagement for m'learned friends on either side—prosecution and defence; it is about making sure that we address the problem.

Lewis Macdonald: In confirming that the objective is not to get more convictions and in accepting that the outcome will be more prosecutions, will the cabinet secretary also accept that resource implications arise from that? Will he tell the chamber how he intends to address them?

Kenny MacAskill: We and the Crown do not necessarily accept that. The figures may be offset by the increased likelihood and propensity of people to plead guilty, because the evidence will be quite clear and there will not necessarily be the same palaver to be gone through.

Christina McKelvie: I thank the cabinet secretary for some of the reassurances that he has given members this afternoon.

In his final comments, will the cabinet secretary refer to the question that I asked him about ensuring that the children's hearings system matches up with the proposed changes, especially when dealing with children under the age of 18?

Kenny MacAskill: Obviously, the children's hearings system sometimes deals with civil matters, where the burden of proof is different. Clearly, matters that are referrals follow the same circumstances elsewhere. Both Aileen Campbell and I will deal with that issue, and I will be happy to come back to Christina McKelvie on that.

On resources, the Administration does not envisage that there will necessarily be a huge increase in resources. There is on-going cant and hypocrisy from the Labour Party, which presided over huge cuts south of the border—Alistair

Darling's cuts were to be deeper and tougher than those of Thatcher—that have been slightly mitigated by the Conservative Party. When we bring forward proposals to streamline matters, whether we are talking about the Scottish police service, the Scottish Court Service or legislative changes, all we get from Labour members is a palaver of matters that would involve increased expenditure—they never tell us where they would make cuts.

The reforms will ensure that we protect justice. I welcome Lord Carloway's submission to the Parliament.

Decision Time

17:00

The Presiding Officer (Tricia Marwick): There are three questions to be put as a result of today's business.

The first question is, that amendment S4M-04234.1, in the name of Lewis Macdonald, which seeks to amend motion S4M-04234, in the name of Kenny MacAskill, on public consultation on the Carloway report, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)

Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Abstentions

Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McArthur, Liam (Orkney Islands) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)

The Presiding Officer: The result of the division is: For 33, Against 59, Abstentions 17.

Amendment disagreed to.

The Presiding Officer: The next question is, that amendment S4M-04234.2, in the name of Margaret Mitchell, which seeks to amend motion S4M-04234, in the name of Kenny MacAskill, on public consultation on the Carloway report, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Harvie, Patrick (Glasgow) (Green)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)

Against

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)

McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Abstentions

Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Hume, Jim (South Scotland) (LD)
Kelly, James (Rutherglen) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

The Presiding Officer: The result of the division is: For 15, Against 59, Abstentions 35.

Amendment disagreed to.

The Presiding Officer: The next question is, that motion S4M-04234, in the name of Kenny MacAskill, on public consultation on the Carloway report, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (North East Scotland) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)

McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Abstentions

Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Harvie, Patrick (Glasgow) (Green)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McArthur, Liam (Orkney Islands) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)

The Presiding Officer: The result of the division is: For 92, Against 0, Abstentions 18.

Motion agreed to,

That the Parliament welcomes the Scottish Government consultation paper setting out its approach to implementing Lord Carloway's historic recommendations to reform the investigation and prosecution of crime in Scotland; notes the Scottish Government's inclusion in *Working for Scotland: The Government's Programme for Scotland 2012-13* of a Criminal Justice Bill to deliver these historic reforms as a package; highlights the importance of delivering these measures in a coherent way alongside wider reforms to courts and tribunals planned through the Making Justice Work programme, and encourages all interested persons to make a response to the consultation.

Gambling Proliferation

The Deputy Presiding Officer (John Scott): The final item of business is a members' business debate on motion S4M-03812, in the name of John Mason, on gambling proliferation. The debate will be concluded without any question being put.

Motion debated,

That the Parliament notes the recent comments made by the former Leader of the House of Commons, Harriet Harman MP, when she said that the previous UK administration had made a mistake by allowing an increase in the number of betting shops on the UK's High Streets; further notes the study by Professor Jim Orford of the University of Birmingham, which suggests that, on average, richer areas have around five betting shops for every 100,000 people, whereas less well-off areas have up to twelve; believes that many forms of gambling are effectively a tax on the poor; understands that money spent on buying lottery tickets in poorer areas is considerably higher than that being invested back into these communities, and would welcome a review of the legislation on gambling in order to protect vulnerable people in Glasgow Shettleston and the rest of Scotland.

17:05

John Mason (Glasgow Shettleston) (SNP): I thank all the members who signed the motion to enable the debate to take place.

A few years ago, a guy I knew came round to see me late on a Friday night. His partner had been saving up money for a while so that she and the kids could go on holiday—I suspect that they did not do that very often—but he had taken all the money, put it on one horse and lost the lot. He came round to see whether I would lend him the money so that he could put it back before his partner found out.

That is the kind of problem that we are here to discuss. Most of us are quite comfortable putting a few pounds on the grand national or another big event. Bingo and raffles, for example, are quite acceptable to most of us these days, and having a little bit of a gamble as part of social activities can be good fun. However, there is a darker side to gambling, when it moves from fun to addiction, as in the case of my friend.

The Channel 4 "Dispatches" programme in early August was one of the reasons why I lodged my motion. Professor Jim Orford of the University of Birmingham and Harriet Harman contributed to that programme. As a former minister at Westminster, Harriet Harman commented on the clustering of betting shops following the Gambling Act 2005. Among other things, she said:

"If we had known then what we know now, we wouldn't have allowed this, because it's not just ruining the High Street it's ruining people's lives".

Many of us will remember that, a few years ago, betting shops were much more closed places. Only adults could go into them, and the doors and windows could not be seen through. Nowadays, betting shops are much more transparent and open. In one sense, that appears to be a positive move. If betting is legal, why should it not be out in the open? The other side of the argument is that gambling has been given much more of an air of respectability. In addition, the national lottery has drawn more people into regular gambling than used to be the case. For many, that is no more of a problem than buying chocolate or some other pleasure in life, but for others it has led to addiction problems that were not previously given such an opportunity.

We must ask why people gamble. It is a bit of fun for some, but others gamble because their life seems hopeless. They think that, if only they could get a big win, it would take the pressure off their life. The topic is therefore linked to the economy, the gap between rich and poor, unemployment and poor wages. Many ordinary people struggle to make ends meet and dream of a magical win that would really change their life.

The national lottery has to shoulder some of the blame for that change. We read stories about ordinary people who have won huge sums of money, but we hear less often that those winnings can ruin lives. We are told how many good causes benefit from their share, but it seems that the net effect is to extract more money from poorer areas, where it appears that more tickets are bought. It also appears that more of the good causes tend to be in the richer areas, where there is the expertise to apply for the grants.

Professor Orford's study suggested that there would be around five betting shops for every 100,000 people in the average affluent area. I understand from colleagues in Aberdeenshire West—which is, allegedly, one of those affluent areas—that that is approximately the number of betting shops there. The study also suggested that poorer areas would have around 12 betting shops. That intrigued me, as I had the gut feeling that there were more than 12 betting shops in my constituency, so I thought that I would count them over the summer. My constituency does not even have a population of 100,000—its population is probably more like 70,000. There were 31 betting shops for those 70,000 people. Our constituency also has the largest bingo club in Europe.

I am grateful to those who have made an input to the debate, especially Gamblers Anonymous and the Church of Scotland's church and society council, which gave us comments. Gamblers Anonymous tells us that its membership has increased significantly recently, particularly among young, low-income men who have become addicted to fixed-odds betting terminals. FOBTs, as they are known, were introduced in 2001 and the most common game is roulette. I understand that four machines can make about £2,000 a week, that £123 million is wagered each day in the United Kingdom and that the profit for the gambling companies is some £3.3 million a day. I was struck by a quote that sums up the problem with FOBTs. David Armstrong, a former gambling addict, said:

"You lose your sense of money when you're on the machines - it means nothing. It's so quick, you're thinking just one more spin, just one more - until you walk out and you've lost it all."

Although we are mainly focusing on bookmakers in today's debate, I want to mention in passing some other, modern forms of gambling that can be a problem. Smart phones now have applications for folk to gamble, and online gambling via the internet is also a huge issue. In a recent constituency case that I had, a guy had won some £10,000 online and the company, which is well known but is based in Gibraltar, made it difficult for him to withdraw his winnings. Temptation proved too much and he gambled the £10,000 and lost the lot. I am not saying that the individual does not shoulder some of the responsibility, but I question whether the balance between the gambling organisations and the individuals who take part has swung too far in favour of the former.

I was somewhat disappointed by some of the things that I read in the briefing that we received from the Association of British Bookmakers. For example, it claims to be part of the retail sector. That is stretching things a bit. Wikipedia's definition of retail is

"the sale of goods and services from individuals or businesses to the end-user."

I do not think that bookies quite fit in there. The association also claims that bookmakers contribute £352 million to the Scottish economy. Come on! If that £352 million was not going to the betting shops, it would still be in the economy. It might be paying for food and heating for families that really need those things.

I am conscious that gambling is a reserved matter, but I would be grateful if the minister could comment on a few issues. For example, schools rightly teach pupils about sex, drugs and alcohol, but does the minister agree that schools also have a role in teaching them about the dangers of gambling? Does she agree with Harriet Harman that the Gambling Act 2005 relaxed things too much? Will the minister make representations to the UK Government about possible amendments to the legislation, for as long as it is under Westminster control? Finally, will she press for better regulation of the betting companies,

especially those that are based in places such as Gibraltar?

17:12

Anne McTaggart (Glasgow) (Lab): I welcome the opportunity to speak on the topic of gambling as I agree with John Mason in this instance. There are far too many betting shops in Glasgow and it is clear to me that betting shops are indeed preying on the vulnerable in our society. I am seriously concerned about the number of betting shops that exist and their locations near pubs and ATMs. They are luring new customers, particularly young people, off our high streets and through their doors.

Although I acknowledge that the majority of those who choose to gamble do so responsibly, gambling addiction is a problem, albeit one that is not often discussed. I commend the excellent work that organisations such as Gamblers Anonymous and the RCA Trust do in working with those who are affected by gambling addiction. I am pleased that a question on gambling was included in the latest Scottish health survey and I look forward to seeing the findings when the report is published later this year.

A number of issues need to be raised regarding betting shops, including the safety of their staff. Changes in working practices have meant that lone staffing is now commonplace. Worryingly, workers can be left to work alone in betting shops for hours at a time, often early in the morning or late at night. More than 55 per cent of betting shop workers are women, so there are concerns about how appropriate lone working is for betting shops, particularly as stores that are staffed by one person are more vulnerable to attack. No one should feel frightened to go to their place of work.

In 2008, the Scottish Trades Union Congress and Community, the only union that represents betting workers in all the major and independent betting shop chains in Scotland, launched a fantastic poster campaign that was geared towards eliminating violence against betting shop workers and which was highlighted in a motion lodged by my colleague John Park. The campaign achieved cross-party support and did an excellent job in raising awareness of what betting shop staff are subjected to every day.

Community members' experience suggests a direct link between increasing levels of violence and abuse in betting shops and the proliferation of FOBTs, which make up a rapidly increasing share of the profits generated by high-street bookmakers. Although official police figures suggest that violence and criminal damage in betting shops are falling, that does not reflect the daily experience of Community members and I want to share with the chamber two concerns that the union has raised.

First, Community believes that police authorities are neither gathering data effectively nor recognising that betting shops form a particular usage group that ought to be monitored more closely. Secondly, we know that some major betting shop operators are systematically discouraging the reporting of incidents involving FOBT machines to the police. Two members from two of the major betting chains in Scotland have noted:

"Company don't want police involved unless staff are hurt"

and

"Company policy not to involve police, apparently due to low conviction rate".

Betting shop chains provide limited support for staff who have been victims of a violent robbery and many have to return to work after they are threatened with loss of sick pay. Many betting shop workers are subject to regular verbal and physical attacks. That is wholly unacceptable.

We must put more pressure on betting shops operating in Scotland to provide safe environments for their workers and I believe that ending lone working in such shops is a step in the right direction.

17:17

Graeme Dey (Angus South) (SNP): Let me begin with a confession: I placed my first bet before the age of 16. Given that I turn 50 next month, I feel secure about making such a confession, given that the statute of limitations on that misdemeanour has probably come into play. I was able to gamble underage at a particular bookies in Aberdeen because my friend's mum worked there; from that, I developed a keen interest in horse-racing, as a result of which I spent the August before I turned 18 in Yorkshire taking in the Ebor meeting at York and enjoying a very productive day at Beverley races.

The fact that all these years later I still remember backing six of the eight winners at Beverley is testament to the joy that people derive from successful punting. However, although problem gamblers always tell people when they win big, no one ever hears about the losses. I never became a problem gambler—some might say that I was helped in that regard by being an Aberdonian and therefore too tight to part with too much of my cash—but I retained my interest for many years, especially after moving to Dundee and becoming a regular at Perth races.

Nevertheless, I hardly bet any more. I cannot remember the last time that I placed a wager;

upbringing, common sense and other interests probably kept me off gambling's slippery slope. However, had I been born in this day and age—and especially into a poorer household—I might not have been so fortunate. As John Mason noted, well-off areas in the UK have an average of five bookmakers per 100,000 people, whereas the average in less-affluent areas is 12 per 100,000. Why is there such a discrepancy if there is no underlying drive to exploit the most vulnerable in our society? We are told that less than 1 per cent of society has a gambling problem. However, if we strip out from the statistics the non-gamblers and those who have only a once-a-year flutter on the grand national, we find a sizeable number of people whose lives and the lives of those around them are being impacted on.

Back in the late 1970s, when I was sneaking into the bookies of a Saturday, betting shops were pretty unappealing places. Coverage of the racing was via an often crackling audio-only service and the prices were conveyed over the Tannoy and marked up manually on paper sheets on the boards. As there was not even a toilet in the shop I tended to frequent, only pretty hardened gamblers could stay there for hours on end.

If we fast forward 30 years, we find that the betting shop environment has changed completely. Bookies have become far more adept at getting money out of our pockets. The Association of British Bookmakers states that over the past decade the number of betting shops has remained constant at around 950. Perhaps so—but there has been a sea change in the nature of bookmaking. The wee backstreet bookies have largely gone, swallowed up by chains that now ply their wares on high streets where the clustering phenomenon is all too apparent.

Prior to 2005, bookmakers were generally not allowed to open in close proximity to rivals but, if members have a wander down Leith Walk, they will find two of the majors operating within a shop's width of each other and, 500m further on, located directly opposite each other. On Easter Road, those same chains have shops no more than 25m apart. The change in the environment within the shops has been just as striking. There are comfy seats and sofa-type seating in some. The shops sell snacks, and one major chain even offers the equivalent of a loyalty card.

The range of gambling opportunities is amazing. If there is no horse-racing on in the UK or Ireland, the shops beam in racing from South Africa or even tempt people to bet on online virtual racing. Banks of screens offer early prices on races and, as somebody mentioned, there are now roulette games on which up to £500 can be won on a spin. It is not only betting shops that entice Joe Public to part with their cash: there are telephone betting accounts, betting in running and spread betting—the possibilities are endless and potentially dangerous to the vulnerable.

On that last point, I welcome the inclusion in the motion of a reference to the buying of lottery tickets, which I take it also covers scratchcards. I confess to being repeatedly disquieted when queueing in newsagents and supermarkets by the sight of elderly folk who have spent relatively little on food buying up to £10 of scratchcards at a time.

It is difficult to tackle the issue. The genie is out of the bottle and, realistically, we cannot go back by reducing the number of shops. I note some of Anne McTaggart's concerns, but I suggest that, whatever else happens and whoever drives our approach, we need to develop a far more extensive body of research on current betting practices and their impact on the vulnerable.

17:21

Nanette Milne (North East Scotland) (Con): I, too, commend John Mason for bringing this important issue to the chamber. As others do, I recognise that problem gambling can be every bit as addictive as smoking or drinking alcohol. It is right for us to acknowledge that it is, in many respects, an illness that is often ignored.

As John Mason said, the social side effects of gambling are often to be seen in our poorest areas and communities, where families sometimes go without basic food and clothing because an individual has an addiction to gambling. His motion draws attention to the comments that were made last month by Labour's deputy leader, Harriet Harman, who admitted that the previous Government at Westminster had made a mistake in relaxing the gambling laws. That view is also shared by the former Home Secretary, David Blunkett.

That is why I was pleased to read press reports that the coalition Government intends to impose restrictions on the high-stakes gambling machines that allow people to bet more than £15,000 an hour. Those casino-style machines, which are found in hundreds of betting shops throughout the country, have been described as the crack cocaine of gambling, because they are so addictive.

Although I acknowledge that gambling is a reserved matter, I look to the minister to tell us what discussions she has had with her counterparts down south regarding those fixed-odds betting terminals, which often allow users to accrue huge debts because they can stake as much as £100—Graeme Dey said £500—a time on roulette, blackjack or poker.

We would all accept that gambling in small measures is not, in itself, necessarily harmful. Indeed, I am an occasional national lottery player and freely admit that it is a form of gambling. I look back with great fondness to my late aunt, whose devotion to one-armed bandits was said to keep the local golf club afloat—although she would turn in her grave if she were classed as a gambler.

Mr Mason's considered motion is summed up by its title—"Gambling Proliferation". He is perhaps right to say that the east end of Glasgow is saturated with bookmakers shops. The fact that there are more than 30 of them in his constituency of Shettleston should be seen in the context of its being, I believe, only 6 miles in length.

If it is true that, as has been suggested, gambling companies are targeting vulnerable people by siting betting shops next to pubs, bank machines and post offices in some of our poorest areas, that is obviously of concern. However, as with most matters, a measured response to a difficult situation is required. We must remember that the gambling industry employs 40,000 people throughout the UK, including 7,000 in Scotland, and contributes around £350 million to the Scottish economy.

I do not think that anyone would want us to return to the old days, when illegal gambling was underground and, therefore, impossible to police. By and large, the industry is responsible. It is regulated locally through the need to have licenses, which can be revoked at any time.

I fully understand the concerns that are being expressed by individuals such as John Mason, many of whom are opposed to gambling for moral, religious or ethical reasons. However, it is a legal activity, although I would not be inclined to argue, as one of my colleagues did, that that it falls within the sport element of my brief.

I believe that the industry is working hard to combat problem gambling through initiatives such as staff training, whereby workers behind the counter are taught how to recognise potential problem gambling behaviour. I also believe that the trade organisation, the Association of British Bookmakers, takes its role seriously.

The debate will continue, but I reiterate that although I understand the concerns that have been expressed by John Mason and the need to keep a very close eye on the situation, co-operation and compromise with the industry represent the best way forward.

17:25

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): I thank John Mason for securing a debate on an extremely important issue. Although I believe that the occasional flutter is okay, there is a fine balance to be struck between allowing people the freedom to place a bet or have a go at the bingo and protecting vulnerable people in our society from what can, as we have heard, be a damaging addiction.

I grew up surrounded by gambling: the football pools, the horses, cards and—of course—the one-armed bandit, which Nanette Milne mentioned and which is aptly named. When I was a boy—I admit that that was not yesterday—I took bets on the horses down to the bookies for my dad. I am not sure that that was altogether legal. In those days the bookies was up an outside stair above a paper shop. The bet and the money, along with a nom de plume, were handed to a man through a wee window, so at least there was a bit of culture in it. My dad's nom de plume was "Black Jet" after our jet black cross Labrador-Alsatian, who was my best friend. I therefore know a bit about gambling.

Of course, gambling gives people hope, especially those who are without a faith. Winston in George Orwell's "Nineteen Eighty-four" was always hoping that his lottery ticket would come up and lift him out of his despair, but it never did. It is a trick that is played on us by Government and big business.

There is nothing wrong with a bit of hope, however someone gets it, but gambling can become a real problem for many people, and it can get a grip before they know it. Bookmakers know that and so do Governments. Recent research has highlighted the staggering proportion of bookies' profits that are derived from people who have a serious gambling problem. Addiction to gambling not only affects the addict but has, as with addiction to drugs and alcohol, detrimental effects on the people closest to them. We must therefore recognise the damaging effects of gambling addiction on families and move to minimise it.

Research by the Theos think tank suggests that lower-income gamblers spend proportionately more on the lottery than the rest of the population and, I believe, benefit least from it.

As John Mason said, Professor Jim Orford highlights the fact that there are significantly more betting shops by population in poorer areas than there are in more affluent areas. That demonstrates that the poorest areas of our society are, in effect, paying a voluntary tax with a low level of return.

I highlight a new form of lottery that I think is particularly distasteful—the People's Postcode Lottery. Members might find that strange, but in that model of gambling everyone in the country is entered by default, but must pay to be eligible for a share of the prize if their postcode wins.

Psychologically, that puts people in a similar position to a regular lottery player who uses the same numbers each week and is afraid to miss a week lest their numbers be drawn. The crucial difference, of course, is that in the postcode lottery the pressure to participate and not miss out on the prize exists regardless of whether someone has played before or not. Look at the newspaper headlines: "Get in! We've won £10,000 just in time for Christmas!" and "If you don't enter, you won't win it!" That puts pressure on people. It is an insidious pressure that works subconsciously and is a step too far. It is past time for another look at how Government and big business are exploiting our communities through gambling. We must tackle the issue. I hope that the minister agrees.

17:29

Hanzala Malik (Glasgow) (Lab): I thank John Mason for securing the debate. As many members have said, gambling is a reserved matter and the Parliament does not have the power to regulate betting shops. However, as a former councillor in Glasgow, I am aware of local authority licensing boards' responsibilities in granting gambling premises licences under section 153 of the Gambling Act 2005. There is a strong case for giving local authorities increased powers and more flexibility to limit the number of betting shops in their areas. Gambling might not be a direct responsibility of the Parliament or the Scottish Government, but we are right to discuss it, because it affects our people and their quality of life, particularly when people develop a gambling problem.

The most recent gambling prevalence survey pointed to a number of facts that increase a person's risk of developing a gambling problem. Of particular interest to me was the fact that people from an Asian ethnic background are three times more likely to have a gambling problem than is someone from a white ethnic background.

The issue is also one of social justice. People who are in poor health are four times more likely to have a gambling problem, as are unemployed people. Those with severe money problems are 12 times more likely to have a gambling problem than are those with no money worries.

The motion refers to Harriet Harman's acknowledgement that the pendulum has swung too far in respect of the number of gambling premises. Her main concern is about the growth in high-stake rapid-play B2 machines, and I support her call for lower limits on stakes for those machines and on prize pay-outs.

We must take all possible steps to safeguard our communities against the dangers of gambling. As I come from Glasgow, a major issue for me is that some areas have so many gambling shops that social activity is limited and so people feel obliged to gamble.

John Mason referred to the frightening way in which gambling shops encourage customers—especially younger people—to gamble. More and more machines are being used to attract young people, who sometimes mislead themselves into thinking that they are playing a game, although real money is used. They do not have enough resources to start with.

I press the minister to share with Westminster our fears and concerns about the legislation and to ask for the issues that we face in Scotland—and, I am sure, throughout the country—to be addressed. I would very much welcome hearing the minister's comments and how she can support us.

17:33

Patrick Harvie (Glasgow) (Green): Like other members, my instinct is not to come over authoritarian and judgmental about gambling. I have been known to play the odd hand of poker—badly. I have been known to lose the odd few quid on political betting websites. However, I thank John Mason for bringing the motion to the chamber, because the impact of gambling and of the gambling industry—the impact of not a recreation but an industry—has become unacceptable because of its scale, the lack of responsibility that participants in the industry show and the promotion and, as the motion says, "proliferation" of the industry.

The industry is supposed to be regulated under the 2005 act, so I looked back at the debate when we considered the Sewel motion on what was the Gambling Bill and at the reasons why the Greens voted against that motion. In my speech, I pointed out that the first part of the bill set out to facilitate an expansion of the gambling industry and that the second part set out to deal with or ameliorate the problems that would arise from that expansion. The bill was deeply contradictory. I described it as

"a pay-off to the gambling industry for the introduction of better regulation".—[*Official Report*, 12 January 2005; c 13405.]

That is exactly what it was.

That fact is borne out by the briefing from the Association of British Bookmakers, to which John Mason referred and by which I was disappointed. The briefing talks about the early history of the "liberalisation" of gambling. The phrase that struck me was this:

"In return"—

for that process of liberalisation—

"our industry submitted itself to increased regulation."

Well, how magnanimous of it. Government has a responsibility, duty and right to regulate industries that cause social harm. We do not do that in exchange for anything from industry. We do not regulate the alcohol industry or other industries that can cause social harm in exchange for things; we do it because we think that it is right.

Other aspects of the briefing are equally disappointing. It states:

"Betting shops are generally places of community with high regulatory standards enforced by well trained staff."

What a different picture that paints from the evidence shown by the "Dispatches" programme to which John Mason referred, which is backed up anecdotally by a friend working in our parliamentary group. A friend of his had a summer job working in a bookmaker's not long ago and could not stomach it for more than two weeks because of the clear impact that its work was having on problem gamblers.

The final point in the briefing that I will highlight is this statement:

"Shop staff is also fully trained to recognise potential problem gambling behaviour, and they also have self-exclusion programmes, where a customer who believes they are developing a problem can bar themselves".

Would we expect that kind of approach in relation to any other addictive behaviour? We are talking not about a retail leisure industry, but about an industry that is promoting something that creates addictive behaviour. Instead of requiring a pub to decline to serve someone who was clearly intoxicated at the bar, would we say that that person could sign up to a self-exclusion programme if they thought that they were developing a problem? We simply would not accept that.

The last point that I will address is the comparison with sex shops. The local power exists for a limit to be placed on the number of sex shops in an area—I have much less of a problem with sex shops than I have with the gambling industry—and I see no reason why we could not apply the same power at the local level to place a limit on the number of gambling establishments that are allowed in a community. I welcome Harriet Harman's comments and urge the minister to put that case to the Government.

I disagree with Nanette Milne's remark that co-operation with the industry is the best way forward. There is a difference between what she described as illegal and uncontrolled gambling and free-market and uncontrolled gambling. We do not have to think of it as a dichotomy between those two—there is the option of proper regulation in the middle, and that is what I hope the minister will put to the UK Government.

17:38

The Minister for Community Safety and Legal Affairs (Roseanna Cunningham): I am rather astonished by the intimate knowledge of gambling shared by colleagues in this chamber. I have a confession to make: I know next to nothing about the practice of gambling. I know nothing about even the alleged trap of the People's Postcode Lottery, to which Dave Thompson referred. Gambling is something that I do not get, and I guess that there must be others in the chamber who have not spoken in the debate who are in the same position.

I congratulate John Mason on securing the debate, which is a valuable attempt to draw attention to an important problem. As most members have recognised, gambling is reserved to Westminster and the levers of control lie there. However, the consequences of problem gambling are manifest right here in Scotland—up to and including broken families, suicides and criminality. Both Graeme Dey and Anne McTaggart reminded us of those very negative impacts.

I welcome Hanzala Malik's comments, which informed us about a differential impact of gambling on different ethnic groups. I was not aware of that. That was an important contribution.

The Government cannot be complacent about the consequences of problem gambling. In March, the Cabinet Secretary for Justice spoke at a conference that was organised by Money Advice Scotland at which those who see the effects of gambling problems every day and those who can make a difference came together with the intention of ensuring that help gets to those who need it.

Constitutional constraints mean that the Government cannot do as much as we would like, but it is important that we at least do what we can to ensure that there is a more widespread acknowledgement of the problem. Scarcely enough effort has been made to quantify and research the scale and nature of problem gambling, never mind to deal with its consequences, particularly given the changes to the industry in recent years.

Although there is anecdotal evidence—as a number of members have mentioned—of problems that are related to fixed-odds betting terminals, it is currently unsupported by detailed research in the UK. I am not saying that the anecdotal evidence is wrong—just that it is not substantiated by research. My impression is that other countries have benefited from far more comprehensive studies that go further in exploring problem gambling, which may offer a response to some of Nanette Milne's comments.

Patrick Harvie: Will the minister give way?

Roseanna Cunningham: Yes.

Patrick Harvie: I am sorry—I have taken my card out.

The Deputy Presiding Officer: The member is lost for words.

Patrick Harvie: I beg your pardon, Presiding Officer.

I accept entirely what the minister says about the reserved nature of the regulatory powers, but is it within the Scottish Government's power to commission some of the research that she says is lacking at present?

Roseanna Cunningham: I suppose that it is possible for any Government to commission research, but one of the difficulties would lie in knowing what we would do with the research if we did not have the powers to act on it. That is a hurdle that cannot be overcome, although I do not doubt that we need more information.

Britain's gambling industry contributes voluntarily to gambling research, education and treatment, so there is a wider research context, but the UK Government's decision that it will no longer fund the highly comprehensive prevalence survey is regrettable.

I am concerned about other recent developments south of the border. I find it extraordinary, for example, that the recent House of Commons Culture, Media and Sport Committee report called for relaxation to allow more rather than fewer betting terminals in betting shops. There are some contradictory voices out there.

The 2010 prevalence survey provided data by specific area for the first time, and what it revealed about Scotland is interesting. Scotland had the highest levels of gambling participation in no fewer than seven categories: football pools, slot machines, bingo, fixed-odds betting terminals, sports betting, betting on non-sports events and online betting. There must be concern that that will translate into higher levels of problem gambling.

The wider picture of gambling liberalisation over the past twenty years has been significant. It was right that the 2005 act addressed developments that were simply unimaginable to previous legislators who did not have to consider internet and mobile phone betting, and I fully accept that the act could not put genies back into their bottles. The difficulty of regulating gambling internet sites that are based offshore is not to be underestimated.

I recognise that, as gambling is a widely enjoyed activity—although, as I indicated, I cannot say that I have ever seen the attraction—there is no inherent reason that people should not place their bets using modern methods of delivery. However, I wonder whether the act fully recognised the potential consequences of the all-pervasive nature of gambling in the 21st century, including the advent of 24-hour gambling. People can bet from their mobile while they watch football in the pub, and come back from the pub and power up the computer for a session of poker or switch on a late-night interactive bingo channel. Internet sites are available 24/7, and there are 24-hour casinos available as well as many other options. Graeme Dey's comments were certainly an eye-opener in that regard.

I have mentioned our limited scope for action in Scotland, but we are determined to do what we can. John Mason asked about teaching in schools. As he will appreciate, I cannot make commitments for the education portfolio, but I will communicate his inquiry to those who are working in that area.

I can confirm that the Scottish Government has already called on the UK Government to fund research, examine specifics such as the clustering of shops and take any necessary action. I am happy to provide an assurance that we will work with the Gambling Commission and others on those occasions where we do have a locus or simply to ensure that agencies work together to ensure better enforcement. As I indicated, the cabinet secretary has already written to John Penrose, the Minister for Tourism and Heritage—who is apparently the relevant minister for this policy area south of the border—in respect of research on fixed-odds betting terminals.

John Mason's speech reminded me that we should acknowledge the tremendous work that Gamblers Anonymous has done in helping to pick up the pieces.

A wider debate on gambling is certainly worth having, as there are questions to be answered. Are there greater concentrations of betting shops in particular localities? Are those localities in areas of deprivation? Is there an association between the number and location of licensed gambling premises and problem gambling? I certainly welcome the fact that the debate has been opened up. There is no complacency on my part, and I fully recognise that problem gambling is a serious issue that can blight lives. We need to begin a debate on what an independent Scotland can do differently to balance the economic benefits and the enjoyment that gambling undoubtedly brings with a new approach that better mitigates the harm that problem gambling can bring.

Those two things—the good and the harm—must be recognised together. We must consider what we can do now, and what we would be able to do if we had the powers in future.

Meeting closed at 17:45.

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