



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# MEETING OF THE PARLIAMENT

Tuesday 7 October 2014

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# Scottish Parliament

*Tuesday 7 October 2014*

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

## Time for Reflection

**The Presiding Officer (Tricia Marwick):** Good afternoon. The first item of business this afternoon is time for reflection. Our time for reflection leader today is the Very Reverend Thomas Canon Millar VG from Our Lady of Good Aid Cathedral, Motherwell.

**The Very Reverend Thomas Canon Millar VG (Our Lady of Good Aid Cathedral, Motherwell):** Presiding Officer, members of the Scottish Parliament, thank you for the opportunity to address a few words to you this afternoon.

Several years ago, just before Christmas, I was shopping in one of the supermarkets in the Motherwell area. As you would expect, the supermarket was very busy at that time of year and everyone seemed to be in a big hurry—buying this, buying that, rushing from one aisle to another.

When I came to the checkout and lined up in the queue with everyone else, I looked around me. Among other things, I noticed that the checkout assistant was just doing her job without paying much attention to the customers or the goods she was processing for them. Her thoughts seemed a million miles away from the supermarket. Perhaps she was thinking of all that she had to do for Christmas, thinking of her family, and maybe worrying about making ends meet for Christmas. Who knows?

Then I noticed a mother with a young baby. The mother was unloading the goods from her trolley at the checkout and trying to manage her baby at the same time. That was not an easy task, as you will appreciate. When it was her turn to have her goods checked through, the checkout assistant noticed the young baby and the mother, and then everything changed. The checkout assistant came to life. She smiled, she spoke to the mother and she made a fuss of the baby. They spoke about the baby and about life and work.

The checkout assistant was smiling now and was quite animated. She spoke to the other customers who followed, including me. This little baby, without saying a word, was able to help two adults to see beyond the sometimes dull routine of life and gave them a new perspective in life, at least for that moment.

We all need to keep a perspective in life. We need time to reflect on what we are doing and

where we are going. We can be so immersed in the present moment and so busy that we can fail to notice what is really going on round about us. Think of that baby, who lifted two adults out of the monotony and dullness of daily life and gave them purpose and hope.

Here at the Scottish Parliament, I pray that you will give hope and purpose to all those whom you are called to serve, especially those who are burdened by the daily demands of life in the world of today.

## Business Motions

14:03

**The Presiding Officer (Tricia Marwick):** The next item of business is consideration of business motion S4M-11113, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Courts Reform (Scotland) Bill.

*Motion moved,*

That the Parliament agrees that, during stage 3 of the Courts Reform (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 4: 40 minutes

Groups 5 to 7: 1 hour 15 minutes

Groups 8 to 10: 1 hour 50 minutes

Groups 11 to 16: 2 hours 40 minutes.—[*Joe FitzPatrick.*]

*Motion agreed to.*

**The Presiding Officer:** The next item of business is consideration of business motion S4M-11117, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a revision to the business programme for today.

*Motion moved,*

That the Parliament agrees to the following revision to the programme of business for Tuesday 7 October 2014—

delete

5.00 pm Decision Time

and insert

6.00 pm Decision Time—[*Joe FitzPatrick.*]

*Motion agreed to.*

## Topical Question Time

14:04

### Longannet Power Station

**1. Annabelle Ewing (Mid Scotland and Fife) (SNP):** To ask the Scottish Government what action it is taking regarding the future of Longannet power station. (S4T-00804)

**The Minister for Energy, Enterprise and Tourism (Fergus Ewing):** The Scottish Government has regular dialogue with Scottish Power, the United Kingdom Government and National Grid about Longannet power station and its contribution to our energy security.

Last week, Scottish Power announced that it has not put Longannet forward for the UK Government's capacity market auction, which is one of the potential mechanisms for supporting the plant's continued operation. I have written to the Secretary of State for Energy and Climate Change, Ed Davey MP, seeking urgent talks on the future of Longannet and the wider implications for energy security. I have also spoken to Neil Clitheroe, Scottish Power's chief executive officer for retail and generation, who stands ready to join the talks. Given the capacity margin warnings for the coming year from the Office of Gas and Electricity Markets and the vital role that Longannet plays, and given that the 260 people who are directly employed at the plant will be looking for certainty, I urge Ed Davey to come to the table as soon as he can.

**Annabelle Ewing:** Does the minister share my view that the UK Government's unfair transmission charging regime is putting the 260 jobs at Longannet, as well as local supply contracts, at risk? Will he do everything in his power to ensure that the UK Government works with the Scottish Government to safeguard the future of Longannet and all those vital jobs?

**Fergus Ewing:** I think that members of all parties are concerned about the future of the workforce throughout Scotland, and Longannet is of particular concern, because of the difficulties that Scottish Power has identified.

Annabelle Ewing is correct in that at Longannet a Scottish generator, Scottish Power, pays a disproportionate penalty in transmission charges, which amount to an additional £41 million every year, whereas I understand that, if it were generating electricity in, for example, London, it would actually be paid £4 million to contribute to the grid. That discrimination affects generators in Scotland and is a serious, albeit not new, problem, on which I have advised the Parliament on several occasions.

**Annabelle Ewing:** Further to his reply, will the minister spell out the consequences of failure on the part of the UK Government to review policy on base-load capacity and to reform the discriminatory transmission charging regime, which has been in place for far too long?

**Fergus Ewing:** I am concerned to guarantee success, so I am concerned to work with the UK Government in a constructive fashion, in so far as we can do so. I hope that our shared analysis is that the continued operation of Longannet is essential to the maintenance of security of supply in Scotland. Longannet provides voltage stability. In the event of a total loss of power, Cruachan would start up first, then Longannet. Longannet plays a pivotal role in the security of the grid; I—as a non-engineer—understand that National Grid recognises that.

I am concerned that we get a solution. Of course, energy is, in essence, a reserved matter, so the ultimate responsibility for finding that solution rests squarely with the UK Government. However, I want to work constructively with the UK Government to identify and deliver the solution sooner rather than later.

**Cara Hilton (Dunfermline) (Lab):** I was pleased to hear the minister say that he will work constructively with the UK Government.

In recent years, Scottish Power has invested more than £200 million in Longannet, which has sustained hundreds of jobs in Kincardine and thousands of additional contractor jobs in my constituency and beyond. In his discussions with the UK Government, will the minister commit not only to stressing Longannet's strategic importance but to recognising the skills and commitment of my constituents, who were responsible for keeping the lights on in more than 2 million homes last year?

**Fergus Ewing:** Cara Hilton made fair points, which I will certainly stress to Ed Davey as soon as we can meet to discuss the matter. The jobs are extremely important, and the challenges that Longannet faces are substantial, as I found during a lengthy meeting at Longannet some time ago, when I learned about the substantial investment of £200 million to render the plant compatible with European Union requirements in relation to emissions reduction. Credit should be given to Scottish Power for its massive investment to reduce emissions of SO<sub>x</sub> and NO<sub>x</sub>—that is, sulphur oxides and nitrogen oxides—and other chemicals. However, the fundamental problem that Mr Clitheroe identified in his press release last week is that Scottish generators account for 12 per cent of the generation capacity that is connected to Britain's high-voltage electricity network but pay around 35 per cent of the charges. That makes it extremely difficult for them to offer guarantees about the future, and that is

the problem that I wish to help to solve over the coming weeks.

**Murdo Fraser (Mid Scotland and Fife) (Con):** In addition to the transmission charging regime, which the minister mentioned, two other fundamental issues affect Longannet's future viability. One is the European Union emissions regulations, to which he referred, and the other is carbon pricing proposals. What are his views on those two other issues?

**Fergus Ewing:** Mr Fraser is correct that those issues are serious ones. I discussed them in detail with Scottish Power when I visited Longannet, and they make Longannet's continued operation more challenging. However, I believe that there are options to find a solution.

I understand that National Grid spends in the region of £1 billion a year—I am awaiting confirmation of that in writing—to maintain grid stability. It is not for me to say what precise amount would be required to bring about a solution and longer-term certainty to 2020 at least for Longannet, but it would be a very small proportion of that budget. The opportunity to derive a solution by means of a bespoke contract has therefore existed for a considerable time. It is sad to reflect that it is only after Scottish Power puts these matters in the public domain that progress is made and that it is necessary to go to the press to galvanise those who are involved in coming up with solutions to do that.

I understand that Scottish Power will meet National Grid next Wednesday. I will meet Scottish Power directly after that, and I will most certainly meet National Grid. I have already made it absolutely clear over a long period of time in the chamber, in committee and with National Grid that it must find a solution. It should have found that by now, but it will have to find that in the coming weeks or there will be a more serious debate in the chamber about how Scotland's generators are treated in the United Kingdom.

## **Nuclear Power Stations (Safety)**

**2. Alison Johnstone (Lothian) (Green):** To ask the Scottish Government what role it has in ensuring the safety of nuclear power stations. (S4T-00805)

**The Minister for Energy, Enterprise and Tourism (Fergus Ewing):** Powers over nuclear safety are reserved to the United Kingdom Government. The Office for Nuclear Regulation has specific responsibility for regulating safety and security at the nuclear-licensed sites in Scotland, but the Scottish Government is responsible for consequence management and engages closely with the UK Government and the ONR to ensure that robust resilience plans are in place.

**Alison Johnstone:** We should not be alarmist about the Hunterston cracks, but they make the overwhelming case for a full environmental impact assessment and public scrutiny of any decision to extend the lifetime of these plants. In July, the minister and I corresponded about the Espoo convention and the Aarhus convention, both of which make it clear that, even if no new works are required, the public should be involved in decisions. Will the Government support a full environmental impact assessment of any lifetime extension for nuclear power stations in Scotland?

**Fergus Ewing:** First, let me confirm that the Office for Nuclear Regulation, to which I spoke this morning, has confirmed what it has made absolutely clear. As the regulator, it has provided an assurance that there are no immediate safety implications for Hunterston B and that it is safe to continue to generate electricity. The safety issue has therefore been dealt with by the regulator.

Ms Johnstone referred to whether there should be a wider environmental impact process. I assure her that the environmental case was considered when Hunterston B's life was extended to 2023. That extension was made two years ago, and it has already been fully discussed and reported in the Parliament.

In addition to that and the life extension case, it is my understanding of the process from my discussions with the ONR this morning and previously that there is a periodic safety assessment. The next periodic safety assessment is due to be carried out in 2016 or thereby.

I assure Ms Johnstone that the defect that has been found was not unexpected. On the contrary, it was to be expected and was known about by both EDF, the operator, and the ONR. I am sure that no one in the chamber would wish to be unduly alarmist about highly technical matters on which the regulator has been closely involved in working with the company. Indeed, I also spoke to a representative of the company on the matter this morning.

**Alison Johnstone:** EDF estimates that the graphite bricks have lost almost 13 per cent of their weight. The current safety limit is 15 per cent, but EDF appears to be able to ask the ONR for that limit to be raised—it has done exactly that in Kent. What role does the Scottish Government have in such decisions to lower safety thresholds whenever a nuclear power station appears to risk being in breach or whenever the lifetime is extended?

**Fergus Ewing:** We take such matters extremely seriously. It is not simply a matter of what powers we have; all of us are concerned to ensure that all aspects of safety are properly maintained across the electricity generation world. We have received

an assurance from the ONR that that is the case. I was determined to obtain confirmation of that assurance, which is why I spoke to a senior representative of the ONR this morning.

I suggested that—with your permission, Presiding Officer—both EDF and the ONR should hold a briefing for MSPs after the October recess, and they have agreed to do that. Scottish Government officials will be involved with that and at that briefing EDF and the ONR will answer transparently all the questions that Ms Johnstone and all other members have. I hope to attend that briefing, which will be held when the Parliament is sitting but not during a plenary meeting. With your permission, Presiding Officer, all members will be able to ask questions directly of both the company and the regulator. The willingness of the company and the regulator to accede to my suggestion this morning demonstrates their good faith and I look forward to taking part in that session when it takes place, which I suspect and hope will be in November.

**The Presiding Officer (Tricia Marwick):** I thank the minister for the advance notice of the intention to have such a session.

**Kenneth Gibson (Cunninghame North) (SNP):** I thank the minister for confirming that Hunterston will continue to be closely monitored to ensure that it remains operationally safe for the duration of its working life, which is expected to end in 2023. However, will he confirm that, if there is any possible threat to public safety, remedial action will be taken immediately and that if, in the interests of safety, Hunterston B has to close sooner than 2023, hundreds of people will continue to be employed at Hunterston through the commencement of a decommissioning process that will last for several decades at least?

**Fergus Ewing:** As the local member, Mr Gibson has been assiduous in representing the interests of his constituents who work at Hunterston, not least when we both attended the event at which the education centre was opened and went on a tour of the plant. The plant is accessible to all members.

Mr Gibson asked a series of questions about what may happen to Hunterston in the future. The life extension to 2023 was granted fairly recently and a very rigorous process is in application. I am satisfied with that. The Scottish Government is regularly in contact with the company, and the company is happy to take an open and transparent approach. Therefore, I am hopeful that, although difficulties may arise, they will be dealt with in a businesslike and efficient way; that none of the eventualities that the member raises will occur; and that the station will continue to operate effectively and safely throughout the remainder of its life.



**Iain Gray (East Lothian) (Lab):** The First Minister recently wrote to EDF, the operator of Hunterston, admitting that we need our nuclear fleet well into the next decade, as the two stations generate just under half of our electricity. It is therefore very welcome to have heard the public reassurance that the minister has given on the safety of Hunterston and its capacity to continue to generate electricity. However, would it not have been better if the Scottish Government had issued that reassurance yesterday, rather than have the Deputy First Minister call the issue “hugely concerning”, which simply contributed to the alarm that the minister said that we need to avoid. Is it not the problem that, as always, the Scottish Government is trying to face both ways at the same time when it comes to nuclear power?

**Fergus Ewing:** I will stick with the facts, which are that, ever since I was appointed as energy minister, I have made it clear that nuclear generation by the existing power stations in Scotland will have a continuing role. That was made clear almost from the outset of my tenure in 2011. It comes as news to people who do not follow the *Official Report*, which is usually the case with MPs and less frequently with MSPs. We expect Hunterston and, of course, Torness—which is in Mr Gray’s constituency and which I have also visited—to continue to generate until 2023. Provided that they can do so efficiently and safely, we support that. Those power stations are an important part of the grid.

However, there is a real challenge. The problem is that the nature of the transmission charging regime is such that the charges in Scotland make up 35 per cent of the total, when it has only 12 per cent of the generating capacity. Were we to seek to replace thermal generation, for example, why then would any company that was to invest hundreds of millions of pounds choose to invest in a place where it would have to pay an extra £40 million a year? No one from the UK parties has answered that question and, until and unless they do, they will not get anywhere with their political arguments. Those are the commercial realities, which have not been addressed by the UK Government over the past decade.

#### **Human Rights Act 1998 (Proposed Repeal)**

**3. Jamie Hepburn (Cumbernauld and Kilsyth) (SNP):** To ask the Scottish Government what its position is on the Conservative Party’s plans to repeal the Human Rights Act 1998. (S4T-00803)

**The Minister for Community Safety and Legal Affairs (Roseanna Cunningham):** The Scottish Government is strongly opposed to any attempt by a future United Kingdom Government to repeal the Human Rights Act 1998, or to withdraw from the European convention on human

rights. The Human Rights Act exists to protect the interests of everyone in society. Safeguards in the act have been actively used to protect the everyday rights of ordinary people in Scotland, including by helping some of the most vulnerable people in society to challenge iniquitous policies such as the bedroom tax. The Scottish Government’s position is that implementation of the Conservative Party’s proposals would require legislative consent, and that this Parliament should make it clear that such consent will not be given.

**Jamie Hepburn:** Does the minister share the concerns that were expressed by the chair of the Scottish Human Rights Commission, Professor Alan Miller, who said that the Conservative Party’s plan is

“irresponsible, undermines the rule of law, sets a dangerous precedent to other states and risks taking us backwards when it comes to protecting people’s rights in everyday life”?

**Roseanna Cunningham:** Professor Miller was absolutely correct to issue that warning. Over the past week, some highly irresponsible proposals and statements have been made by people who hold high political office and who should know better, frankly. Attacks on human rights must never be used as a cheap political manoeuvre by any party. David Cameron and Chris Grayling are running scared of the UK Independence Party and are pandering to the Europhobic extremists in their own party, and appear not to care about the damage that they are doing. The proposals are dangerous and they threaten rights that all of us enjoy. If they were ever implemented, they would inflict immense damage on the UK’s international reputation, and on international efforts to protect and secure human rights around the world. We could hardly lecture other people if we were not prepared to abide by those international rules.

Scotland deserves better, the rest of the UK deserves better and the international community deserves better, and the influence that Scotland and the UK have in the wider world mean that we in this Parliament have a responsibility to show leadership on the issue and to make it clear that what Chris Grayling is proposing is simply unacceptable. I am sure that the overwhelming majority of members of this Parliament agree on that.

**Jamie Hepburn:** The minister alluded to the fact that last year a woman with multiple sclerosis was, on human rights grounds, successful in challenging Glasgow City Council’s decision to apply the bedroom tax against her. Does the minister share my concern that such recourse could be stripped away if the Human Rights Act 1998 were to be scrapped? Is not that case a perfect example of why the act matters to us all?

**Roseanna Cunningham:** That is, of course, a precise example of a danger of the changes that seem to be being proposed. Chris Grayling said in a document on Friday that what he wants to do is

“Limit the use of human rights laws to the most serious cases.”

Of course, we do not have a list of what those “most serious cases” might be or of what might, in his mind, be trivial cases. The paper goes on to say that use of the proposed new British bill of rights

“will be limited to cases that involve criminal law and the liberty of an individual, the right to property and similar serious matters. There will be a threshold below which Convention rights will not be engaged, ensuring UK courts strike out trivial cases.”

Of course, what might be trivial to Chris Grayling might be a matter of near life and death to an ordinary human being in our society.

The proposal sounds very much like an excuse for depriving the most vulnerable people in society of hard and enforceable rights. It sounds like a mechanism for removing the right to challenge unfair and unjust policies, and it sounds like a plan to silence dissent and to prevent inconvenient court rulings that demonstrate just how ill-conceived and damaging policies like the bedroom tax are. That is not just my view or the view of the Scottish Government; it also happens to be the view of some very big names within the Tory party itself. For example, Ken Clarke has voiced precisely the same concern. The Scottish Parliament cannot allow what is proposed to happen; it involves a principle that should unite us all.

**Margaret Mitchell (Central Scotland) (Con):**

Does the minister consider that there is an opportunity here to sort out some of the not inconsiderable problems that have arisen from our incorporation of ECHR into the Scotland Act 1988 without fully appreciating the unintended consequences?

**Roseanna Cunningham:** I note that Margaret Mitchell has not bothered to give us any specific examples of what those problems might be. I believe that Governments can occasionally be made uncomfortable by decisions that are made elsewhere in terms of human rights. However, in a sense, that is as it should be.

I recall in the early years of this Parliament a then justice minister being warned frequently and vociferously that slopping out in our prisons would simply not stand in terms of human rights, but he nevertheless chose to take the budget for fixing it away and then—lo and behold—it ultimately went to court, and of course it did not stand.

It is not as if we often do not understand in advance when things are going to be a problem,

so we should be able to look forward in order to try to fix them. Sometimes, Government will be discomfited by results, but if a human rights act did not occasionally discomfit Government, what on earth would be the point of having it in the first place?

## Courts Reform (Scotland) Bill: Stage 3

14:27

**The Presiding Officer (Tricia Marwick):** The next item of business is stage 3 of the Courts Reform (Scotland) Bill. In dealing with the amendments, members should have: the bill as amended at stage 2, which is SP Bill 46A; the marshalled list, which is SP Bill 46AML; and the groupings paper, which is SP Bill 46AG.

The division bell will sound and proceedings will be suspended for five minutes before the first division of the afternoon. The period for voting in the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. Members who wish to speak in the debate on any group of amendments should press their request-to-speak buttons as soon as possible after I call the group. Members should now refer to the marshalled list of amendments.

### Section 2—Power to alter sheriffdoms, sheriff court districts and sheriff courts

**The Presiding Officer:** Group 1 contains minor and technical drafting amendments. Amendment 19, in the name of the Cabinet Secretary for Justice, is grouped with the other amendments that are shown on the groupings paper. I call the cabinet secretary to move amendment 19 and to speak to all the amendments in the group.

**The Cabinet Secretary for Justice (Kenny MacAskill):** In the main, the 24 amendments in the group are minor and technical in nature, and will in general improve the clarity and consistency of the bill's provisions. However, a couple of the amendments will benefit from some explanation.

Amendment 31 will remove section 101(7)(b) from the bill. I am satisfied that the provision in the section is unnecessary. The inherent power of the court to deal with vexatious proceedings was recognised by Lord Reed in the case of the Lord Advocate v Andrew McNamara, on which he observed that

"an action might be dismissed as incompetent if it was not brought for a legitimate purpose."

I consider that the provision in section 101(7)(b) could have been read as a limitation of that power. Its removal clarifies that the power to dismiss vexatious proceedings is not just available to the court in proceedings that are brought by a litigant who has had a vexatious litigation order made against them.

In addition, the bill will, under new sections 96(1) and 97(1), expand the Court of Session's

powers to make rules, thereby allowing the court to make provision both for and about the steps that the court may take where there has been an abuse of process—for example, the raising of vexatious proceedings—in any case.

14:30

Amendment 37 will amend section 111, which will amend the Court of Session Act 1988 by replacing its section 40. The effect of the replacement is to provide that permission will be required prior to an appeal being possible from the Court of Session to the Supreme Court. The amendment is consequential on that change, and will ensure that appeals from decisions, whether final or interlocutory, in exchequer or tax cases continue to be treated in the same way as appeals to the Supreme Court from final judgments: that is, on their merits.

I am happy to answer members' questions.

I move amendment 19.

**Elaine Murray (Dumfriesshire) (Lab):** I do not have a question on the amendments. My only question is why 24 drafting amendments are being brought here at stage 3, in addition to a number of other amendments, when the Government drafted the bill. Why do we have all these errors that must be corrected at the final hurdle?

**Kenny MacAskill:** The bill is very complicated and drafting is, by its nature, a very complicated action. We should welcome the diligence that parliamentary draftsmen have shown.

*Amendment 19 agreed to.*

### Section 5—Summary sheriffs

**The Presiding Officer:** Group 2 is on the number of summary sheriffs. Amendment 60, in the name of Margaret Mitchell, is the only amendment in the group.

**Margaret Mitchell (Central Scotland) (Con):** In his written evidence, the Lord President emphasised the importance of the appointment of summary sheriffs when he stated:

"The absence of this third judicial tier ... has been a flaw in our court system for too many years."

The introduction of summary sheriffs will fill that void and is to be welcomed.

The Lord President also confirmed in evidence at a Justice Committee meeting the vital part that summary sheriffs would play in securing the success of the court reforms when he stated:

"The key to the whole thing is the appointment and effective deployment of summary sheriffs, because that arrangement provides the opportunity to take out a huge case load from the lower end of the sheriff court and to free up that court. The reforms start at the bottom and work their

way up. The key is to get the summary sheriffs system working effectively.”—[*Official Report, Justice Committee*, 22 April 2014; c 4533.]

However, during oral evidence on 29 April, the Minister for Community Safety and Legal Affairs emphasised that

“it will take about 10 years to make the crossover”.—[*Official Report, Justice Committee*, 29 April 2014; c 4567.]

She also emphasised that summary sheriffs will be phased in when it is appropriate to do so.

Amendment 60 is a probing amendment; it is not an attempt to micromanage the Scottish Court Service. Its effect would be to ensure that an adequate number of summary sheriffs would be appointed during the implementation phase of the reforms, in order to safeguard the efficient delivery and administration of justice. Furthermore, it would assist members to hold the Government to account on the reform as we conduct much-needed post-legislative scrutiny. Therefore, I would be grateful if the cabinet secretary could provide further clarification and reassurance about the appointment of summary sheriffs.

I move amendment 60.

**Kenny MacAskill:** I am happy to try to do that. Amendment 60 seeks to ensure that

“The First Minister must recommend a sufficient number of individuals for appointment to the office of summary sheriff ... in order to ensure the efficient administration of justice.”

The amendment is unnecessary, although I accept the spirit in which Margaret Mitchell has moved it as a probing amendment.

The Lord President of the Court of Session is under an obligation in terms of section 2(a) of the Judiciary and Courts (Scotland) Act 2008 to ensure

“the efficient disposal of business in the Scottish courts”.

Under section 1(2)(a), the First Minister is under an obligation to have regard to the need for the judiciary, which includes the Lord President,

“to have the support necessary to enable them to carry out their functions.”

The appointment process for judges, which will also apply to the appointment of summary sheriffs, involves a close working relationship between the Scottish Government, the Judicial Appointments Board for Scotland, the Lord President and the Scottish Court Service. That working relationship was established under the 2008 act, which the Parliament passed unanimously.

The substance of Margaret Mitchell’s amendment already forms part of the obligations that are incumbent on the First Minister under the 2008 act. I urge her to withdraw amendment 60 in the recognition that the information and requirements are already sufficient.

**Margaret Mitchell:** I thank the cabinet secretary for his explanation. It is good that that is on the record and that the point has been highlighted, which raises awareness. On that basis, I am happy to seek to withdraw amendment 60.

*Amendment 60, by agreement, withdrawn.*

## Section 39—Exclusive competence

**The Presiding Officer:** Group 3 is on proceedings for damages for personal injury. Amendment 61, in the name of Elaine Murray, is grouped with amendments 65 and 7 to 9.

**Elaine Murray:** The Parliament has always taken seriously personal injury that is caused by exposure to asbestos. Many members have raised the issue in Parliament through various mechanisms, including members’ business debates. Des McNulty promoted a member’s bill on it back in 2006 and we passed the Scottish Government’s Damages (Asbestos-related Conditions) (Scotland) Act 2009.

My colleague John Pentland brought amendments similar to amendments 61 and 65 to the Justice Committee at stage 2, when the cabinet secretary assured us that the Government believes that all cases that merit counsel will continue to benefit from counsel. The cabinet secretary also said that later stage 2 amendments to ease the test for remit from the sheriff court to the Court of Session would allay concerns.

Mr MacAskill assured the committee that he would continue to meet Clydeside Action on Asbestos regularly during the bill’s passage, to ensure that those who suffer from asbestos-related conditions and those who have lost loved ones to such conditions are supported through the court process and receive the justice that they deserve. However, I do not believe that he has reassured Clydeside Action on Asbestos because, at 4.15 last Wednesday, I was contacted with the request that we lodge the amendments again. I welcome CAA members to the public gallery to hear the proceedings.

The illnesses—many of which have been caused by occupational exposure to asbestos fibre, often many years ago—include mesothelioma, lung cancer, asbestosis and pleural plaques. The victims who suffer from those conditions are a legacy of Scotland’s industrial history and they deserve the Parliament’s full support.

I expect the Government to argue that the complexity of asbestos-related conditions will ensure that cases are remitted to the Court of Session and are not considered under simple procedure. I do not doubt that arguments will be made about the difficulties of legislating for one group of personal injuries.

However, the Parliament has already legislated for this group of personal injury sufferers by passing the legislation that the Government introduced in 2009. What has changed? Even if, because of the complexity of asbestos-related cases, it is highly unlikely that such cases would be considered under simple procedure or heard outwith the Court of Session, why not make it clear in the bill that the exclusive competence will not apply to asbestos-related cases and that they will not be considered under simple procedure? What is the harm in providing that reassurance to sufferers of such industrial disease and their families and to surviving relatives? Amendment 61 would disapply the sheriff court's exclusive competence from personal injuries that were caused by exposure to asbestos.

Amendment 65 would exclude such cases from being heard under simple procedure. The stage 2 amendments to prevent any cases that are raised in the specialist personal injury court from being subject to simple procedure might cover that amendment's intention; I will listen to what the cabinet secretary says about that. However, I am not sure that the entire intention is covered, and my amendment would prevent any asbestos-related cases from being heard under simple procedure.

Amendments 7 to 9 concern appeals from the personal injury court going to the Court of Session rather than the sheriff appeal court. Similar amendments were defeated by five votes to four at stage 2, but my opinion is still that there are compelling arguments for considering the amendments, so I have brought them back.

The intention in the bill is to set up a specialist personal injury court, where cases will be heard by two specialist personal injury sheriffs—not sitting together—and, unless certain conditions apply, cases will be heard by a jury of 12 people. As the bill stands, appeals against the decisions of that court could be heard by a sheriff appeal court that might consist of one sheriff sitting alone, possibly without the specialist expertise in personal injury cases that the original sheriff had. That seems inconsistent, as surely appeals against decisions that are made by a specialist court should be heard by a specialist court. The Court of Session, which, of course, will be hearing personal injury cases of values above the privative limit will have that specialism.

At stage 2, the Minister for Community Safety and Legal Affairs expressed confidence that the rules of court and the president of the sheriff court would ensure that the appropriately constituted court would hear the appeal. She also argued that section 106 allows

“the sheriff appeal court to remit the appeal to the Court of Session”. —[*Official Report, Justice Committee*, 17 June 2014; c 4757.]

In addition, the minister argued that section 102B, which was inserted into the bill by a very welcome amendment from John Finnie, would also help to ensure that. It applies the test that was proposed by Sheriff Principal Taylor that, in both the sheriff court and the sheriff appeal court, the court must have regard to the difficulty or complexity of the case and to what we have termed equality of arms when deciding to sanction the employment of counsel.

Finally, the argument was made that there was no justification for treating one category of case—personal injury—differently from all others. However, if that is the case, why is the only specialist court that is being set up the personal injury court? We are already treating personal injury differently.

Those arguments miss the point of the principle behind my amendment. It is not about equality of arms or what the president of the sheriff court is able to do. It is about whether it is appropriate for an appeal heard by a specialist sheriff and a civil jury to be potentially heard by a single sheriff or even three sheriffs, none of whom might be specialist injury sheriffs. I contend that it is not appropriate and that those appeal cases should be heard in the Court of Session.

I move amendment 61. [*Interruption.*]

**The Presiding Officer:** Order. Stuart McMillan is next.

**Stuart McMillan (West Scotland) (SNP):** I highlight my declaration in the register of members' interests.

I am very much aware that all cases that merit counsel will continue to benefit from it. That is true of the sheriff court, the new personal injury court and the sheriff appeal court. However, I am also very much aware of Sheriff Principal Taylor's comments at the Justice Committee:

“a complex asbestosis case will probably be remitted to the Court of Session. However, even if it were to remain in the sheriff court, it would almost certainly merit sanction for counsel.”—[*Official Report, Justice Committee*, 22 April 2014; c 4527.]

Given the comments that have been made in the past, I seek assurances from the cabinet secretary that asbestos-related cases will receive the funding for counsel that they require and that they can revert to the Court of Session due to the complex nature of such cases.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** I welcome Clydeside Action on Asbestos to the public gallery and pay tribute to its great campaign.

Of course, asbestos-related illness does not apply just in Clydeside and I have written to the Cabinet Secretary for Justice about one of my constituents, who is affected by asbestos in that particular way.

The answer that members want—the answer that Clydeside Action on Asbestos wants—is in the answer to three questions that were put very succinctly and effectively by Elaine Murray. First, what is the harm in doing what Elaine Murray proposes in her amendments? Secondly, what is the answer to the question about exceptional circumstances? We already treat asbestos as an exceptional circumstance and the legislation that we passed in 2009 bears testimony to that. Thirdly, if the cabinet secretary still does not accept Elaine Murray's amendments, can he at least tell us what he has done to fulfil the commitment that he made at the Justice Committee to ease the test for remit from the sheriff court to the Court of Session?

I support the amendments in Elaine Murray's name and I hope that, at the last minute, the cabinet secretary will have a change of mind.

**Margaret Mitchell:** I will address amendments 7, 8 and 9 first. It seems entirely logical that, if a claim is to be heard in a specialist court, an appeal from that court should be able to be heard in the Court of Session. It is then up to the Court of Session to grant disposal as it sees fit. I am happy to support those amendments in Elaine Murray's name.

However, although I have huge and immense sympathy with the intention behind amendments 61 and 65, section 88 already allows the sheriff to remit proceedings to the Court of Session if

"the importance or difficulty of the proceedings makes it appropriate to do so"

and I think that it would be wrong to single out asbestos cases. We should not distinguish between those cases and other cases in the personal injury category, which are wide ranging.

14:45

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** My recollection is that the Justice Committee took the view that Margaret Mitchell just elucidated—although we have huge sympathy for asbestosis cases, we did not want to select one category from all the other kinds of injury cases that might arise from employment, in the past or in the future. That was why we did not support similar amendments at stage 2, and I seem to remember that all members agreed with that at the time.

**Kenny MacAskil:** The Scottish Government and ministers have great sympathy for those who

suffer from asbestos-related diseases and for their families. We have heard similar thoughts from around the chamber. Concerns have been expressed, but we have also heard the points that Christine Grahame and other members have made. I will try to give Stuart McMillan the reassurance that he desires. I know that he, along with Clydeside Action on Asbestos, has been tenacious in looking after the interests of those who have suffered.

We have legislated to ensure that a person who is dying from mesothelioma can receive damages without preventing members of their family from making a future claim. We have also supported legislation that clarifies Scots law as it relates to damages for fatal personal injuries. The argument behind amendments 61 and 65 is that, due to the complexity of personal injury cases that are caused by exposure to asbestos, those cases should be treated differently from other cases. Amendment 61 would result in all damages claims for less than £100,000 in respect of personal injuries that were caused by exposure to asbestos remaining competent in the Court of Session. Amendment 65 would result in cases with a value of less than £5,000 being excluded from being dealt with under the new simple procedure.

I fully acknowledge that asbestos cases can be complex. However, on whether they should all be able to be raised in the Court of Session, regardless of value, I agree with Sheriff Principal Taylor, who said:

"a complex asbestosis case will probably be remitted to the Court of Session. However, even if it were to remain in the sheriff court, it would almost certainly merit sanction for counsel."—[*Official Report, Justice Committee*, 22 April 2014; c 4527.]

The Government believes that all cases that merit counsel will continue to benefit from it. That is true of the sheriff court, the new personal injury court and the sheriff appeal court.

Section 102B, which was inserted by an amendment by John Finnie at stage 2, has secured that position by putting the test that Sheriff Principal Taylor recommended for sanction for counsel in the bill. The section enshrines the equality of arms principle and addresses the concerns about access to appropriate legal representation in complex cases in the sheriff court.

At stage 2, John Pentland lodged an amendment that was similar to amendment 61 and would have excluded actions for damages in personal injury asbestosis cases from the exclusive competence, but it was withdrawn on the basis that the content of the bill on sanction for counsel was improved in the way that I have outlined. Members of the Justice Committee, including Margaret Mitchell, raised concerns

regarding some types of complex cases being treated differently from others. The convener stated at stage 2:

"I have huge sympathy for the amendment but if we take one group and say that it is special, another group will come along and say that it is special, too."—[*Official Report, Justice Committee*, 10 June 2014; c 4663.]

Amendment 65 would result in cases with a value below £5,000 being excluded from being dealt with under the new simple procedure. Sections 70A and 75A, which again were inserted by amendments by John Finnie at stage 2, will allow cases with a value below £5,000 to be held, where appropriate, in the personal injury court and not be subject to simple procedure.

Under the bill, the Scottish Civil Justice Council will be able to make specialist rules in personal injury cases and in personal injury cases under the simple procedure. The Government believes that all cases that merit counsel will continue to benefit from the expertise of counsel. Most asbestosis-related disease cases, even those of relatively low financial value, will fall into that category. When those cases are heard in the sheriff courts or the specialist personal injury court, the sheriff, who will have all the facts before him or her, will be best placed to decide whether sanction for counsel is appropriate.

Elaine Murray lodged similar amendments to amendments 7 to 9 at stage 2. The amendments, which are a package, would mean that all appeals against final decisions by the personal injury court would be heard in the Court of Session rather than the sheriff appeal court, although decisions of the personal injury court that do not constitute final judgment would continue to go to the sheriff appeal court.

It is an important principle of Lord Gill's review that courts have the flexibility to allocate the right judicial resources to the right courts, which is why he recommended the establishment of a sheriff appeal court to deal with all appeals from the sheriff courts. I am confident that the rules of court and the president of the sheriff appeal court will ensure that an appropriately constituted bench will hear all appeals. That bench will be made up from among the six sheriffs principal and other appeal sheriffs who will all be sheriffs of more than five years' experience.

There may be concern about the complexity of a personal injury appeal. I understand that that might be a particular issue following section 69 of the Enterprise and Regulatory Reform Act 2013, which removes automatic civil liability for breach of statutory health and safety duties. The bill permits the sheriff appeal court to remit an appeal to the Court of Session on the application of one of the parties if it is satisfied that the appeal raises a complex or novel point of law.

I oppose Elaine Murray's amendments and believe that we have satisfied the concerns that Stuart McMillan and others have expressed.

**Elaine Murray:** I will clarify what happened at stage 2. John Pentland withdrew his amendment and said that he was doing so for the time being because we were promised that other amendments would address all his concerns and, indeed, those of Clydeside Action on Asbestos. The people at Clydeside Action on Asbestos are the experts on the issue. They were not reassured and asked for the amendments to be reconsidered at stage 3 in light of the amendments to the bill.

We have, rightly, already legislated for asbestosis-related conditions separately in 2009. The Parliament has recognised that there are specific issues with that form of personal injury, which is the result of a shameful industrial legacy. The Scottish justice system must serve those who are affected justly, fairly and with the utmost efficiency. The victims of such conditions and their families are entitled to have in the bill the sort of assurances that my amendments present.

The issue with the personal injury court is still about the level of specialism that has to exist in the appeal court when it hears an appeal against a judgment of a specialist court. It is only appropriate that another court with a similar level of expertise be able to hear that appeal. Therefore, I continue to support my amendments 7 to 9 on that matter and will press amendment 61.

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

**Members:** No.

**The Presiding Officer:** There will be a division. As this is the first division at stage 3, I suspend proceedings for five minutes.

14:53

*Meeting suspended.*

14:58

*On resuming—*

**The Presiding Officer:** We move to the division on amendment 61.

**For**

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (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)  
 Fee, Mary (West Scotland) (Lab)

Findlay, Neil (Lothian) (Lab)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Kelly, James (Rutherglen) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McMahon, Michael (Uddingston and Bellshill) (Lab)  
 McMahon, Siobhan (Central Scotland) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pearson, Graeme (South Scotland) (Lab)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Stewart, David (Highlands and Islands) (Lab)

#### Against

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (SNP)  
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
 Biagi, Marco (Edinburgh Central) (SNP)  
 Brodie, Chic (South Scotland) (SNP)  
 Brown, Gavin (Lothian) (Con)  
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
 Buchanan, Cameron (Lothian) (Con)  
 Burgess, Margaret (Cunninghame South) (SNP)  
 Campbell, Aileen (Clydesdale) (SNP)  
 Campbell, Roderick (North East Fife) (SNP)  
 Carlaw, Jackson (West Scotland) (Con)  
 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)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Finnie, John (Highlands and Islands) (Ind)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Goldie, Annabel (West Scotland) (Con)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hume, Jim (South Scotland) (LD)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Johnstone, Alison (Lothian) (Green)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)  
 Lochhead, Richard (Moray) (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)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McLeod, Aileen (South Scotland) (SNP)  
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)  
 McMillan, Stuart (West Scotland) (SNP)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Paterson, Gil (Clydebank and Milngavie) (SNP)  
 Robertson, Dennis (Aberdeenshire West) (SNP)  
 Robison, Shona (Dundee City East) (SNP)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (Ind)  
 Yousaf, Humza (Glasgow) (SNP)

**The Presiding Officer:** The result of the division is: For 31, Against 81, Abstentions 0.

*Amendment 61 disagreed to.*

#### After Section 41

**The Presiding Officer:** Group 4 is on all-Scotland jurisdiction: concurrency with local jurisdiction. [*Interruption.*]

I ask those who are leaving the chamber to do so quickly and quietly.

Amendment 20 in the name of the cabinet secretary is grouped with amendments 22, 23, 27, 30 and 40. [*Interruption.*]

We will have a short suspension to allow the public gallery to clear.

14:59

*Meeting suspended.*

15:01

*On resuming—*

**The Presiding Officer:** I call the cabinet secretary to move amendment 20 and speak to all the amendments in the group.



**Kenny MacAskill:** Section 41 provides that the Scottish ministers may make an order providing for the jurisdiction of a sheriff of a specified sheriffdom sitting in a specified sheriff court to extend throughout Scotland for specified kinds of civil proceedings. It allows the setting up of the specialist all-Scotland personal injury sheriff court.

As the bill stands, it is not clear that a designated all-Scotland personal injury court is, in relation to personal injury cases, still able to sit and function as a local sheriff court. Amendment 20 clarifies that, and the other amendments in the group are consequential. Thus, a designated specialist sheriff court could deal with a personal injury case in two ways: either as the specialist all-Scotland court or as the local sheriff court. Section 41(5) leaves the choice up to the pursuer. Section 41(6) preserves the sheriff's power to overrule if the sheriff considers that a case would be better dealt with by the specialist all-Scotland court or, as the case may be, by the local court.

I move amendment 20.

*Amendment 20 agreed to.*

#### **Section 46—Jurisdiction and competence**

**The Deputy Presiding Officer (John Scott):** We move to group 5. Amendment 62, in the name of Margaret Mitchell, is grouped with amendments 63 and 64.

**Margaret Mitchell:** Amendment 62 is consequential on amendment 63. The effect of the amendments would be to ensure that the de facto seniority of appeal sheriffs is duly recognised when any decision that they may make in their capacity as a sheriff under section 49(4) is appealed in the sheriff appeal court. The amendment provides that those appeal cases would be heard either by a sheriff principal or a senator of the College of Justice, who also hold office as appeal sheriffs. That is to satisfy the Gill review recommendation and view that it would be

“inappropriate for an appellate court to consist of members of the same level of judicial hierarchy as those from whom an appeal is marked.”

The amendments take on board the comments made by the cabinet secretary at stage 2 when I attempted to address this concern. In particular, the cabinet secretary questioned the availability of resources with regard to the stage 2 amendments that I lodged in an attempt to address the issue. I emphasise therefore that amendments 62 and 63 would place little or no additional burden on the resources of the court system.

Also at stage 2, the cabinet secretary emphasised that

“the bill proposes that the sheriff appeal court should hear not only civil appeals from the sheriff court but summary criminal appeals”

and that the appeal sheriffs

“will be highly qualified and experienced judges and will ... have the appropriate expertise.”—[*Official Report, Justice Committee*, 10 June 2014; c 4676.]

On the strength of those remarks, amendment 64 would require that candidates for the role of the appeal sheriff must

“appears to the Lord President to have a high level of legal knowledge and experience in civil and criminal law and practice.”

I move amendment 62.

**Elaine Murray:** I rise to support the amendments, which I believe are in the same spirit as my amendment 79. They would require an appropriate level of expertise in the sheriff court, and we will support them.

**Kenny MacAskill:** Amendments 62 and 63 would severely restrict the choice of judges in the sheriff appeal court who can hear appeals that arise from a case that was initially heard by a sheriff who is also an appeal sheriff. Although there is no suggestion that the same judge would hear the appeal, it would be a logistical problem to ensure that, in those cases, and without regard to complexity or importance, such an appeal could be heard only by a sheriff principal, of whom there are only six, assuming that all are in post, or a former appeal sheriff who had also been a sheriff principal, of whom there are not and will not be many.

The sheriff appeal court may deal with a variety of appeals, from straightforward procedural issues to weighty matters of legal uncertainty. As such, the bill empowers the president of the court to determine which judge or judges sit on the bench in any case; it also empowers the Court of Session to set out in rules of court the quorum of judges required for particular sittings of the court. Amendments 62 and 63 would cut across that flexibility and impose a rule that would severely curtail the number of judges who may be deployed. It is easy to see delays occurring.

Section 2A(c), which amendment 63 would introduce, does not make sense in terms of the bill. It purports to allow a Court of Session judge who has ceased to act as an appeal sheriff under a provision in schedule 1A to be one of the restrictive categories of judge, provided that they had been appointed as a re-employed appeal sheriff under section 50. The bill does not permit that. Schedule 1A expressly provides that a Court of Session judge is not eligible for appointment under section 50 as a re-employed former appeal sheriff.

Amendment 64 displays a lack of trust in Scotland's judiciary that I do not share. It would require that appeal sheriffs appointed under section 49 must not only have been sheriffs for five years, as currently provided for, but also, in the Lord President's view,

"have a high level of legal knowledge and experience particularly in civil and criminal law and practice."

The amendment presumes that not all sheriffs have a high level of legal knowledge. That undermines the reputation of the judiciary in Scotland and I take issue with that. It suggests a lack of trust in the Lord President, in that they might appoint someone to the role of appeal sheriff who had neither a high level of legal knowledge nor a high level of experience. I trust the Lord President to appoint suitable sheriffs to be appeal sheriffs and find it worrying that Margaret Mitchell does not.

I oppose amendments 62, 63 and 64.

**The Deputy Presiding Officer:** I have had a late request to speak from Graeme Pearson, which gives the cabinet secretary the right to respond, should he so wish.

**Graeme Pearson (South Scotland) (Lab):** I speak on a matter of clarity. Dr Murray indicated our support for the amendments. To be clear, we support amendments 62 and 63, but we believe that amendment 64 is unnecessary.

**The Deputy Presiding Officer:** Cabinet secretary, do you have anything to add?

**Kenny MacAskill:** No.

**The Deputy Presiding Officer:** I call on Margaret Mitchell to wind up and press or withdraw amendment 62.

**Margaret Mitchell:** I am not persuaded by the cabinet secretary's argument. Rather than restricting the choice of judges, amendments 62 and 63 would address Lord Gill's fundamental point, namely that it is

"entirely inappropriate for an appellate court to consist of members of the same level of judicial hierarchy as those from whom an appeal is marked."

Amendment 64 would merely put in place the prerequisite that sheriff court appeal judges have the same experience as is required by sheriffs principal.

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

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

## For

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Brown, Gavin (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Dugdale, Kezia (Lothian) (Lab)  
 Fee, Mary (West Scotland) (Lab)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Findlay, Neil (Lothian) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kelly, James (Rutherglen) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McMahon, Michael (Uddingston and Bellshill) (Lab)  
 McMahon, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pearson, Graeme (South Scotland) (Lab)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stewart, David (Highlands and Islands) (Lab)

## Against

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (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 (Cunningham 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)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Finnie, John (Highlands and Islands) (Ind)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Gibson, Kenneth (Cunningham North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)

Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hume, Jim (South Scotland) (LD)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alison (Lothian) (Green)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McInnes, Alison (North East Scotland) (LD)  
 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)  
 Robison, Shona (Dundee City East) (SNP)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Salmond, Alex (Aberdeenshire East) (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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (Ind)  
 Yousaf, Humza (Glasgow) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 43, Against 68, Abstentions 0.

*Amendment 62 disagreed to.*

*Amendment 63 moved—[Margaret Mitchell].*

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

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Brown, Gavin (Lothian) (Con)  
 Buchanan, Cameron (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)

Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Dugdale, Kezia (Lothian) (Lab)  
 Fee, Mary (West Scotland) (Lab)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Findlay, Neil (Lothian) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kelly, James (Rutherglen) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McMahan, Michael (Uddingston and Bellshill) (Lab)  
 McMahan, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pearson, Graeme (South Scotland) (Lab)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stewart, David (Highlands and Islands) (Lab)

**Against**

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (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)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Finnie, John (Highlands and Islands) (Ind)  
 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)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hume, Jim (South Scotland) (LD)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alison (Lothian) (Green)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)

Lochhead, Richard (Moray) (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)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McInnes, Alison (North East Scotland) (LD)  
 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)  
 Robison, Shona (Dundee City East) (SNP)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Salmond, Alex (Aberdeenshire East) (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)  
 Urquhart, Jean (Highlands and Islands) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (Ind)  
 Yousaf, Humza (Glasgow) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 44, Against 67, Abstentions 0.

*Amendment 63 disagreed to.*

### **Section 49—Appointment of sheriffs as Appeal Sheriffs**

*Amendment 64 moved—[Margaret Mitchell].*

**The Deputy Presiding Officer:** The question is, that amendment 64 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### **For**

Brown, Gavin (Lothian) (Con)  
 Buchanan, Cameron (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Johnstone, Alex (North East Scotland) (Con)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)

#### **Against**

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (SNP)

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (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)  
 Dugdale, Kezia (Lothian) (Lab)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Fee, Mary (West Scotland) (Lab)  
 Findlay, Neil (Lothian) (Lab)  
 Finnie, John (Highlands and Islands) (Ind)  
 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)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Harvie, Patrick (Glasgow) (Green)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hilton, Cara (Dunfermline) (Lab)  
 Hume, Jim (South Scotland) (LD)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alison (Lothian) (Green)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kelly, James (Rutherglen) (Lab)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lochhead, Richard (Moray) (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)  
 Martin, Paul (Glasgow Provan) (Lab)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McInnes, Alison (North East Scotland) (LD)  
 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)  
 Robertson, Dennis (Aberdeenshire West) (SNP)  
 Robison, Shona (Dundee City East) (SNP)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Salmond, Alex (Aberdeenshire East) (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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (Ind)  
 Yousaf, Humza (Glasgow) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 12, Against 100, Abstentions 0.

*Amendment 64 disagreed to.*

#### **Section 54—President's responsibility for efficient disposal of business**

*Amendment 21 moved—[Kenny MacAskill]—and agreed to.*

#### **Section 61—Civil jury trials in an all-Scotland sheriff court**

*Amendments 22 and 23 moved—[Kenny MacAskill]—and agreed to.*

#### **Section 70—Simple procedure**

*Amendment 24 moved—[Kenny MacAskill]—and agreed to.*

*Amendment 65 moved—[Elaine Murray].*

**The Deputy Presiding Officer:** The question is, that amendment 65 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### **For**

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Brown, Gavin (Lothian) (Con)

Carlaw, Jackson (West Scotland) (Con)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Dugdale, Kezia (Lothian) (Lab)  
 Fee, Mary (West Scotland) (Lab)  
 Findlay, Neil (Lothian) (Lab)  
 Goldie, Annabel (West Scotland) (Con)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kelly, James (Rutherglen) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McMahon, Michael (Uddingston and Bellshill) (Lab)  
 McMahon, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pearson, Graeme (South Scotland) (Lab)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stewart, David (Highlands and Islands) (Lab)

#### **Against**

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (SNP)  
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
 Biagi, Marco (Edinburgh Central) (SNP)  
 Brodie, Chic (South Scotland) (SNP)  
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
 Buchanan, Cameron (Lothian) (Con)  
 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)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Finnie, John (Highlands and Islands) (Ind)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hume, Jim (South Scotland) (LD)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alison (Lothian) (Green)  
 Keir, Colin (Edinburgh Western) (SNP)

Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McInnes, Alison (North East Scotland) (LD)  
 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)  
 Robison, Shona (Dundee City East) (SNP)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Salmond, Alex (Aberdeenshire East) (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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (Ind)  
 Yousaf, Humza (Glasgow) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 40, Against 71, Abstentions 0.

*Amendment 65 disagreed to.*

*Amendments 25 and 26 moved—[Kenny MacAskill]—and agreed to.*

### **Section 70A—Proceedings in an all-Scotland sheriff court**

15:15

*Amendment 27 moved—[Kenny MacAskill]—and agreed to.*

### **Section 72—Rule-making: matters to be taken into consideration**

*Amendment 28 moved—[Kenny MacAskill]—and agreed to.*

### **Section 73—Service of documents**

*Amendment 29 moved—[Kenny MacAskill]—and agreed to.*

### **Section 75A—Proceedings in an all-Scotland sheriff court: transfer to simple procedure**

*Amendment 30 moved—[Kenny MacAskill]—and agreed to.*

## **Section 85—Judicial review**

**The Deputy Presiding Officer:** That takes us to group 6. Amendment 5, in the name of Dr Elaine Murray, is grouped with amendments 1, 6 and 2.

I draw members' attention to the note on the list of groupings. Amendments 5 and 1 are direct alternatives, which means that I can call both. If amendment 5 is agreed to, the Parliament will still be able to decide whether to agree to amendment 1. If it does, amendment 1 will replace amendment 5. The same applies to amendments 6 and 2. I hope that that is clear.

**Elaine Murray:** I lodged an amendment on this matter at stage 2, arguing that the three-month time limit in the bill for applications for judicial review should commence when the applicant becomes aware of the grounds for an appeal rather than when the grounds arise. The Minister for Community Safety and Legal Affairs argued that that would be a subjective test, that it could lead to legal arguments about when the requisite knowledge had been acquired and that that could protract proceedings unnecessarily. As that approach was rejected on those grounds, my amendments 5 and 6 would extend the period of application for judicial review from three to six months.

The committee heard a range of views from witnesses on the time limit. Several argued that three months is insufficient time to put together a case and secure funding, particularly in the case of appeals from community groups. On the other hand, it is desirable that judicial review be made promptly and resolved quickly, but that should not be at the expense of fairness.

At stage 2, the minister also made the point that the three-month period operates satisfactorily in England and Wales. However, her colleague Roderick Campbell informed the committee that judicial review is much less common in Scotland than it is in England and Wales. I therefore contend that the time limit can be extended to ensure fairness to applicants when an appeal may be more complicated, in circumstances in which community groups are involved or when the securing of funding for an appeal is not straightforward.

Six months seems a sensible compromise, considering the different opinions that the committee heard from witnesses. My feeling is that 12 months would be too long and could result in a protracted review process and that, under the circumstances, six months is the appropriate time.

I move amendment 5.

**Alison McInnes (North East Scotland) (LD):** A three-month limit for applications for judicial review

is needlessly restrictive and will erode access to justice. As Elaine Murray said, her amendments 5 and 6 seek to raise it to six months. My amendments 1 and 2 seek to go further and extend the time limit from three to 12 months.

During the committee's consideration of the bill, a significant number of witnesses and organisations told us that the provisions in the bill are fundamentally imbalanced. Jonathan Mitchell QC said that the proposed three-month limit would be "unique" in Scotland. It is far more restrictive than other limits such as the three-year limit for claiming after a road accident and the five-year limit for a contract dispute. It also provides insufficient time to assemble a case and secure funding.

It is reasonable to expect that community groups will take longer than is proposed to marshal a case given their need to gather, discuss options and agree on a course of action. The evidence that we received also indicated that such a short period would present real challenges to those who require legal aid or need to find a solicitor who is willing to act pro bono or for a reduced fee.

Although the time limit can be waived, it will still prevent the proper exploration of alternative dispute resolution. Pursuers will be hurried into an appeal almost immediately or will commence proceedings to preserve their position, and the presumptive limit is likely, unreasonably, to put others off exploring judicial review altogether.

The Legal Services Agency tells us that the lesson from England and Wales is that the three-month deadline that operates there is very tight—and that is in spite of the fact that petitioners there enjoy a comparative wealth of expertise and resources that simply does not exist in Scotland because of our weaker history in the area.

Rather than ride roughshod over the 12-month limits in the Human Rights Act 1998 and the Scotland Act 1998, I believe that it would be appropriate to bring the bill into line with those acts. Justice Scotland, Friends of the Earth, the Environmental Law Centre Scotland and the Legal Services Agency all agree.

Ministers have repeatedly told us that there is a public interest in judicial review challenges being made promptly and resolved quickly. However, judicial review is the public's final opportunity to contest acts of the state and ensure that public bodies do not exceed or abuse their jurisdiction. It is certainly not in the public's interest to risk undermining a just and proportionate process in the pursuit of undue haste.

**Roderick Campbell (North East Fife) (SNP):** I declare an interest: I am a member of the Faculty of Advocates.

I accept that the existing common-law situation, with the requirement to plead mora, taciturnity and acquiescence in issues to do with delay in judicial review petitions, is no longer fit for purpose. I also agree with Elaine Murray that Scotland is not overburdened by the volume of petitions for judicial review, outside the field of immigration and asylum. The climate here is different.

However, if we are to have a time limit, what should it be? Is a three-month time limit too restrictive? Clearly it will be a shock to the system for practitioners, and it is certainly short in comparison with other time limits in the system, such as we have in relation to human rights action, as Alison McInnes said.

Nevertheless, the Justice Committee heard evidence about the merits of a pre-action protocol, which is something that the Scottish Civil Justice Council can consider. We also heard from Lindsay Montgomery, from the Scottish Legal Aid Board, that when there is an issue to do with funding for a judicial review petition SLAB can

"deal with special urgency cases in 1.1 days on average."—  
[*Official Report, Justice Committee*, 1 April 2014; c 4498.]

As we heard, there is provision in section 85 for the court to extend the period to

"such longer period as the Court considers equitable".

There is therefore a fall-back position.

If I were persuaded that the three-month time limit would deny a significant number of people access to justice, I would oppose it. I am not so persuaded.

**Margaret Mitchell:** I share Alison McInnes's concern that a three-month time limit might not give community groups adequate time in which to organise, marshal their arguments and—crucially—secure funding, and that it might therefore restrict access to justice. My preference is for a 12-month limit in relation to judicial review, but six months would be preferable to three months.

**Christine Grahame:** I echo what Roddy Campbell said—I did not know that he was going to speak on this group of amendments. Under section 85, proposed new section 27A of the Court of Session Act 1988 provides:

"(1) An application to the supervisory jurisdiction of the Court must be made before the end of—

(a) the period of 3 months beginning with the date on which the grounds giving rise to the application first arise, or—

I emphasise "or"—

"(b) such longer period as the Court considers equitable having regard to all the circumstances."

If paragraph (b) were not there, I would share the concerns of members of other parties. However, the court will always have discretion to look at all the facts and circumstances of the application.

**Kenny MacAskill:** The sets of amendments that Elaine Murray and Alison McInnes lodged would significantly extend the time limit beyond what Lord Gill suggested in his review—to six months and 12 months, respectively.

There is a public interest in judicial review challenges being made promptly and resolved quickly. Some 73 per cent of the respondents to the Scottish civil courts review consultation thought that the system needed reform. It should be possible to challenge public authorities' decisions, but if decisions are made appropriately they should not be delayed. A balance has to be struck.

The time limit is drafted to provide fairness to applicants, while reflecting the public interest in having settled decision making. We recognise that there might be occasions on which the time limit needs to be extended, so the bill gives the court discretion to do that, having considered all the circumstances.

Lord Gill recommended a three-month time limit. Such a time limit has operated satisfactorily in England for a considerable time. The Scottish Government consulted on the matter and a majority of the respondents were in favour. In evidence to the committee at stage 1, Sheriff Principal Taylor and Lord Gill supported a three-month limit.

During stage 1, anxiety was expressed about whether legal aid could be arranged within such a timescale, but Lindsay Montgomery, from the Scottish Legal Aid Board, assured the committee that the timescale would not present a problem. Indeed, applications could be made under the legal aid special urgency provisions, if necessary.

At stage 2, Asda, supported by the Scottish Retail Consortium, campaigned for a shorter period of six weeks for planning cases and sponsored an amendment in that regard, which Margaret Mitchell lodged—the amendment was subsequently withdrawn.

We considered Asda's case carefully before we decided to oppose the amendment; we are aware that delays in planning cases can have serious consequences for the applicant and for the local and/or national economy. In its written evidence to the Justice Committee, Asda made it plain that delays result in lost investment, delays in local job creation, financial impacts on the building industry, and uncertainty about the project's overall viability.

We finally opposed the amendment because we were aware of the sensitivities that the committee had expressed about the period of three months and because we were satisfied that a simple, straightforward and consistent time limit should apply to all applications. The Lord President concurred. However, an increase in the time limit to 26 weeks or 52 weeks would bring all Asda's arguments into play. It is not in Scotland's interests to introduce further delays by longer time limits.

If members are not swayed by the argument in the case of a supermarket, they should consider the effect of delays in planning developments for schools and hospitals in their constituencies. Similar delays would affect them and the local communities that they serve if the time limit is extended.

Even at the individual level, longer time limits are a problem. An everyday example would be that a person who has been granted planning permission for an extension to their house should at some point be entitled to build it without fear that permission will be quashed on judicial review. Six or 12 months is a long time for an individual to wait for certainty. In addition, the longer the time, the higher the legal fees are likely to be.

For those reasons, I oppose Alison McInnes's and Elaine Murray's amendments, and I ask Dr Murray to withdraw amendment 5.

**Elaine Murray:** I will press my amendment 5.

**The Deputy Presiding Officer:** The question is, that amendment 5 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Brown, Gavin (Lothian) (Con)  
 Buchanan, Cameron (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Dugdale, Kezia (Lothian) (Lab)  
 Fee, Mary (West Scotland) (Lab)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Findlay, Neil (Lothian) (Lab)  
 Finnie, John (Highlands and Islands) (Ind)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Harvie, Patrick (Glasgow) (Green)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Hume, Jim (South Scotland) (LD)



Johnstone, Alex (North East Scotland) (Con)  
 Johnstone, Alison (Lothian) (Green)  
 Kelly, James (Rutherglen) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahon, Michael (Uddingston and Bellshill) (Lab)  
 McMahon, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pearson, Graeme (South Scotland) (Lab)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stewart, David (Highlands and Islands) (Lab)  
 Wilson, John (Central Scotland) (Ind)

#### Against

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (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)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (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)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (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)  
 Robison, Shona (Dundee City East) (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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Yousaf, Humza (Glasgow) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 50, Against 61, Abstentions 0.

*Amendment 5 disagreed to.*

*Amendment 1 moved—[Alison McInnes].*

**The Deputy Presiding Officer:** The question is, that amendment 1 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### For

Brown, Gavin (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Finnie, John (Highlands and Islands) (Ind)  
 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)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Wilson, John (Central Scotland) (Ind)

#### Against

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (SNP)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (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)  
 Dugdale, Kezia (Lothian) (Lab)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Fee, Mary (West Scotland) (Lab)  
 Findlay, Neil (Lothian) (Lab)  
 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)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hilton, Cara (Dunfermline) (Lab)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kelly, James (Rutherglen) (Lab)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lochhead, Richard (Moray) (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)  
 Martin, Paul (Glasgow Provan) (Lab)  
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 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 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)  
 Robertson, Dennis (Aberdeenshire West) (SNP)  
 Robison, Shona (Dundee City East) (SNP)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Yousaf, Humza (Glasgow) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 17, Against 93, Abstentions 0.

*Amendment 1 disagreed to.*

**The Deputy Presiding Officer:** We come now to amendment 6, in the name of Dr Elaine Murray, already debated with amendment 5. Dr Murray, do you wish to move or not move the amendment?

**Elaine Murray:** As the bill would be inconsistent if amendment 6 were moved, I will not move it.

*Amendment 6 not moved.*

*Amendment 2 not moved.*

**The Deputy Presiding Officer:** We move to group 7. Amendment 66, in the name of Margaret Mitchell, is grouped with amendments 67 and 68.

15:30

**Margaret Mitchell:** Amendment 66 would remove the “real prospect of success” test, which was criticised by the Law Society of Scotland and other respondents at earlier stages of the legislative process. It replaces that test with a “stateable case” and is supported by the Law Society of Scotland. Amendment 68 is consequential on amendment 66.

A “real prospect of success” test is subjective in nature and crucially, as respondents have pointed out, restricts access to justice, which goes against the spirit of the bill and the Gill review. The phrase “stateable case” suggests that an applicant must have reasonable grounds for making an application for judicial review, which is a much fairer and less arbitrary test.

Furthermore, given the importance of the permission stage, which prevents unmeritorious applications from proceeding to a hearing on their respective merits, amendment 67 introduces a third test that specifically precludes cases that are “frivolous, vexatious or wholly without merit”

from being granted permission for judicial review. Such cases use up considerable court time and financial resources.

Members may recall that, as a further safeguard against that occurring, at stage 2—the cabinet secretary referred to this—I lodged two amendments that addressed a specific concern of the business community that judicial review is

frequently used by commercial rivals to delay the development proposals of competitors, which has ramifications for investment and job creation in local communities.

At the time, although members and the minister were sympathetic to the intention behind the amendments, they expressed concern that the proposed time limit of six weeks went too far. Amendment 67 has, therefore, the advantage of providing an alternative approach to preventing that problem from occurring through the exclusion of vexatious applications.

I move amendment 66.

**Elaine Murray:** I do not recall the matter that Ms Mitchell raises being discussed particularly at stage 2. I am also puzzled as to what a “stateable case” would be. Surely, a case could be stateable but not reasonable and without much prospect of success. I presume that Ms Mitchell’s support of the 12-month limit would be for such a requirement to be operable, but I wonder whether any assessment has been done of what the consequence would be for court time if the test was changed in the way that she proposes.

**Kenny MacAskill:** Margaret Mitchell’s amendments 66 to 68 would lower the threshold at the permission stage of a judicial review case from “real prospect of success” to “stateable” and not “frivolous, vexatious or wholly without merit”.

Amendment 67 is unnecessary. If a case is “stateable”, it is, by definition, not

“frivolous, vexatious or wholly without merit”.

As for amendments 66 and 68, Lord Gill’s review proposed the wording “real prospect of success”, which is currently in the bill. Lord Gill’s recommendation was arrived at after careful assessment and consideration and was agreed by the Government, but Margaret Mitchell’s amendments would remove that wording. The phrase “real prospect of success” encapsulates the concept that a case should not proceed if it is unmeritorious, frivolous or vexatious. However, it goes further, setting out that a case should proceed only if it is actually, rather than potentially, arguable. It does not mean that the litigant must show that they will actually win, but it allows the court to prevent cases from proceeding that are based on fanciful arguments, assessing them as able to proceed only when there is a realistic chance that they will succeed.

As Elaine Murray suggests, Margaret Mitchell’s amendments set the permission bar too low and would allow the court to weed out not cases that were unlikely to succeed but only those that were wholly unstateable. To put that in context, the test of whether a case is stateable is the test that any

lawyer would be required to apply currently prior to raising any case in court.

A refusal of permission is not an arbitrary decision of the court. The bill envisages permission being sought first on the basis of paperwork and then being reviewable at an oral hearing. If permission is again refused, the case may be appealed to the inner house. In short, the Government’s position is that, if a case is potentially arguable but, after up to three separate assessments by the court at the permission stage, it still does not appear to have a real prospect of success, the case should not be allowed to proceed to a full hearing.

The use of language is also key to ensuring certainty in the application of the law in granting permission. As Lord Gill set out, the real prospect of success test is one that has been in operation in England and Wales for some time. Further, the test is already employed in the Court of Session as part of its assessment of whether to grant a protected expenses order in certain cases. A real prospect of success is therefore an established concept with a substantial body of case law that the Court of Session can draw on in determining applications for permission, so its use in the bill gives public bodies, developers and litigants alike a degree of certainty about whether a judicial review action is likely to succeed.

Earlier, I referred to Margaret Mitchell’s support for Asda’s views on judicial review. One of Asda’s concerns was that judicial review was being used as a delaying tactic by competitors. The combination of the introduction of a time limit and a permission-to-proceed stage is a package that was recommended by Lord Gill to obviate unnecessary delays in judicial review and the associated uncertainty and costs. The permission stage, with its test of a real prospect of success, is essential as an effective tool in filtering out cases that are not actually arguable. Margaret Mitchell’s amendments would merely maintain the status quo.

For those reasons, Margaret Mitchell’s amendments should not be supported.

**Margaret Mitchell:** To answer Elaine Murray’s question, “stateable case” is a legal term and the use of the stateable case test is supported by the Law Society of Scotland because, in its view and in the view of other respondents during the legislative process, the real prospect of success test serves only to restrict access to justice—hence the reason for amendments 66 and 67.

I submit that the delays that affect the business community and impact on the local economy, investment and job creation, to which the cabinet secretary referred, will be a real prospect if my amendments are not agreed to.

**The Deputy Presiding Officer:** Do you intend to press or to withdraw amendment 66?

**Margaret Mitchell:** I press amendment 66.

**The Deputy Presiding Officer:** The question is, that amendment 66 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### For

Brown, Gavin (Lothian) (Con)  
 Buchanan, Cameron (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (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)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)

#### Against

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (SNP)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (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)  
 Dugdale, Kezia (Lothian) (Lab)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Fee, Mary (West Scotland) (Lab)  
 Findlay, Neil (Lothian) (Lab)  
 Finnie, John (Highlands and Islands) (Ind)  
 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)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)

Hilton, Cara (Dunfermline) (Lab)  
 Hume, Jim (South Scotland) (LD)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kelly, James (Rutherglen) (Lab)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
 Martin, Paul (Glasgow Provan) (Lab)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McInnes, Alison (North East Scotland) (LD)  
 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)  
 Robertson, Dennis (Aberdeenshire West) (SNP)  
 Robison, Shona (Dundee City East) (SNP)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (Ind)  
 Yousaf, Humza (Glasgow) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 13, Against 96, Abstentions 0.

*Amendment 66 disagreed to.*

*Amendment 67 moved—[Margaret Mitchell].*

**The Deputy Presiding Officer:** The question is, that amendment 67 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

Brown, Gavin (Lothian) (Con)  
 Buchanan, Cameron (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (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)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)

**Against**

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (SNP)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (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)  
 Dugdale, Kezia (Lothian) (Lab)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Fee, Mary (West Scotland) (Lab)  
 Findlay, Neil (Lothian) (Lab)  
 Finnie, John (Highlands and Islands) (Ind)  
 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)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hilton, Cara (Dunfermline) (Lab)  
 Hume, Jim (South Scotland) (LD)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kelly, James (Rutherglen) (Lab)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
 Martin, Paul (Glasgow Provan) (Lab)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McInnes, Alison (North East Scotland) (LD)  
 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)  
 Robertson, Dennis (Aberdeenshire West) (SNP)  
 Robison, Shona (Dundee City East) (SNP)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (Ind)  
 Yousaf, Humza (Glasgow) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 13, Against 96, Abstentions 0.

*Amendment 67 disagreed to.*

*Amendment 68 not moved.*

**Section 101—Vexatious litigation orders:  
further provision**

*Amendment 31 moved—[Kenny MacAskill]—  
and agreed to.*

**Section 96—Power to regulate procedure etc  
in the Court of Session**

*Amendments 32 and 33 moved—[Kenny  
MacAskill]—and agreed to.*

**Section 97—Power to regulate procedure etc  
in the sheriff court and the Sheriff Appeal  
Court**

*Amendment 34 moved—[Kenny MacAskill]—  
and agreed to.*

### After section 97

**The Deputy Presiding Officer:** We move to group 8. Amendment 14, in the name of Graeme Pearson, is grouped with amendment 15.

**Graeme Pearson:** Amendments 14 and 15 are aimed at addressing the overriding objective of the bill. Amendment 14 seeks to place court users at the centre of the rule-making process and, indeed, the overall operation of the courts. If amendment 14 is not accepted, I will move amendment 15 as a compromise for members who have argued that amendment 14 is unduly restrictive on judicial discretion, albeit that I do not agree that that is the case.

We on this side of the chamber agree with the Law Society of Scotland that the bill has the opportunity to establish the overriding objective that the civil procedure in Scotland should adopt. It would be similar to the approach taken by the Woolf review in England and Wales, and amendment 14 mirrors the overriding objective as recorded in England and Wales. We believe that a principle-based approach such as is proposed would be more effective for court users. The Law Society made the point in its written evidence that such an approach can encourage parties to resolve cases by alternative dispute resolution. I hold that that would be a good outcome.

At stage 2, the Government sought to dismiss amendments similar to amendments 14 and 15 as unnecessary. If members are of the view that the factors referred to in the amendments are already taken into account by the judiciary, then I urge them to support amendment 14 to ensure that that is the case in all cases. If we agree that those factors should underpin our justice system, why leave to judicial discretion whether they are taken into account in practice in all cases?

Our role is not to unduly fetter judicial discretion, and amendments 14 and 15 do not seek to do that. However, we do have a duty to ensure that our justice system operates fairly. It is not sufficient to defer to the Scottish Civil Justice Council responsibility for such a fundamental matter. In my view, it requires parliamentary accountability.

In the past, the Government members have supported the concept of a written constitution being necessary to set out the principles by which the people of Scotland would live. I therefore hope that they would agree with me that a similar approach would benefit our civil justice system.

I move amendment 14.

**Margaret Mitchell:** I support the intention behind Graeme Pearson's amendment 14, but I share the concern that some of my fellow committee members expressed on a similar

amendment at stage 2 that the proposed list is too restrictive.

On amendment 15, the minister reassured the committee at stage 2 that the Scottish Civil Justice Council has already adopted the principle referred to. So, in the circumstances, it looks as though the amendment is unnecessary, although I am sympathetic to the intention behind it, which is for the court to conduct proceedings justly, which is surely the essence of what it does.

15:45

**Kenny MacAskill:** Amendments 14 and 15 seek in different ways to ensure that civil court rules are made and interpreted in the light of the overriding principle that cases be dealt with justly. We agree with the principle but do not think it appropriate to set it out in primary legislation.

The act establishing the Scottish Civil Justice Council, as Margaret Mitchell said, provides that in carrying out its functions the council must have regard to the principle that the civil justice system should be "fair, accessible and efficient". The council's rules rewrite working group in its interim report sets out that it is considering a statement of principle in the rules to indicate that its purpose is

"to provide parties with a just resolution of their dispute in accordance with their substantive rights, within a reasonable time, in a fair manner with due regard to economy, proportionality and the efficient use of the resources of the parties and of the court, and that parties are expected to comply with the rules."

As the council has adopted the principle, I ask the member not to press his amendments. I cannot help but agree with the Justice Committee's convener, Christine Grahame, who said at stage 2:

"Frankly, I think that the amendments are unnecessary. In my experience ... the bench takes these matters into account; indeed, I would be most concerned if proceedings in our sheriff courts, our lower courts or the Court of Session were not conducted justly.—[*Official Report, Justice Committee*, 17 June 2014; c 4729.]

I fully concur with those sentiments.

**Graeme Pearson:** I understand all the sentiments expressed in the chamber. However, it is my fundamental belief that if we wish to persuade communities across Scotland that the systems operate in their interests, having a declaration in the legislation of the principles that we adhere to and hold so dearly would add weight to our commitment.

Although I welcome the Scottish Civil Justice Council's commitment to writing down the principles by which it will apply the standards, the council is not democratically accountable to the people of Scotland; we are. Therefore, having

such a commitment in the bill would show the responsibilities that we bear in the matter.

I press amendment 14.

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

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### For

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (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)  
 Fee, Mary (West Scotland) (Lab)  
 Findlay, Neil (Lothian) (Lab)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Kelly, James (Rutherglen) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central 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)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Stewart, David (Highlands and Islands) (Lab)  
 Wilson, John (Central Scotland) (Ind)

#### Against

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (SNP)  
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
 Biagi, Marco (Edinburgh Central) (SNP)  
 Brodie, Chic (South Scotland) (SNP)  
 Brown, Gavin (Lothian) (Con)  
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
 Buchanan, Cameron (Lothian) (Con)  
 Burgess, Margaret (Cunninghame South) (SNP)  
 Campbell, Aileen (Clydesdale) (SNP)  
 Campbell, Roderick (North East Fife) (SNP)  
 Carlaw, Jackson (West Scotland) (Con)  
 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)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)

Fabiani, Linda (East Kilbride) (SNP)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Finnie, John (Highlands and Islands) (Ind)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Goldie, Annabel (West Scotland) (Con)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hume, Jim (South Scotland) (LD)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Johnstone, Alison (Lothian) (Green)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McLeod, Aileen (South Scotland) (SNP)  
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)  
 McMillan, Stuart (West Scotland) (SNP)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Paterson, Gil (Clydebank and Milngavie) (SNP)  
 Robertson, Dennis (Aberdeenshire West) (SNP)  
 Robison, Shona (Dundee City East) (SNP)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Yousaf, Humza (Glasgow) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 32, Against 78, Abstentions 0.

*Amendment 14 disagreed to.*

*Amendment 15 moved—[Graeme Pearson].*

**The Deputy Presiding Officer:** The question is, that amendment 15 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (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)  
 Fee, Mary (West Scotland) (Lab)  
 Findlay, Neil (Lothian) (Lab)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Kelly, James (Rutherglen) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central 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)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Stewart, David (Highlands and Islands) (Lab)  
 Wilson, John (Central Scotland) (Ind)

**Against**

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (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)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Finnie, John (Highlands and Islands) (Ind)  
 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)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hume, Jim (South Scotland) (LD)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alison (Lothian) (Green)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McInnes, Alison (North East Scotland) (LD)  
 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)  
 Robison, Shona (Dundee City East) (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)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Yousaf, Humza (Glasgow) (SNP)

**Abstentions**

Brown, Gavin (Lothian) (Con)  
 Buchanan, Cameron (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Johnstone, Alex (North East Scotland) (Con)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)

**The Deputy Presiding Officer:** The result of the division is: For 32, Against 65, Abstentions 12.

*Amendment 15 disagreed to.*

**Section 102A—Power to provide for fees for SCTS, court clerks and other officers**

**The Deputy Presiding Officer:** We move to group 9. Amendment 35, in the name of the cabinet secretary, is grouped with amendments 39 and 58.

**The Minister for Community Safety and Legal Affairs (Roseanna Cunningham):**

Amendment 39 will confer functions on the Scottish courts and tribunals service to pay the salary of the Scottish Land Court's chair, to determine and pay the salaries of other members of that court and to determine and pay the expenses of members of the court. The power to carry out those functions currently lies with the Scottish ministers; the amendment provides that



they will be carried out by the Scottish courts and tribunals service on its establishment.

Amendment 39 also provides for the determination and payment of the salaries of the clerks and other employees of the court, and for the payment of the court's administrative expenses, although those functions will remain with the Scottish ministers. The Scottish Land Court differs from other courts and tribunals in that it is not currently the responsibility of the Scottish Court Service or the Scottish tribunals service. In the longer term, we will consult on an order under the Judiciary and Courts (Scotland) Act 2008 to bring the court within the Scottish courts and tribunals service's ambit. That was discussed when the 2008 act went through Parliament.

Amendments to the administration of judicial salaries must be made in primary legislation, which is why they are included in the bill. Without amendment 39, there would be the anomalous situation of the administration of Land Court members' salaries remaining with the Scottish ministers while the SCTS undertook that function for all other judicial offices.

Amendment 35 will add the Scottish Land Court to the list of Scottish courts in respect of which the Scottish ministers may make provision for charging fees under section 102A(1). That is linked to the transfer to the Scottish courts and tribunals service of the functions that relate to remuneration and expenses in the Land Court, and it is also linked to the longer-term aim of bringing the court wholly within the SCTS's ambit for administration purposes.

Amendment 58 is purely technical and will amend the bill's long title to reflect the new provisions about the Land Court.

I move amendment 35.

**Elaine Murray:** I have no intention of opposing the amendments, but I wonder again why such issues have come to light at stage 3, rather than being dealt with in the bill from stage 1.

**Roseanna Cunningham:** Elaine Murray has asked the same question as she asked my colleague, the cabinet secretary, and the answer is basically the same. Since eagle eyes have picked up the problems, I am sure that the member would prefer that they be fixed, rather than not fixed.

*Amendment 35 agreed to.*

### **Section 102B—Sanction for counsel in the sheriff court and Sheriff Appeal Court**

**The Deputy Presiding Officer:** We move to group 10. Amendment 69, in the name of Alison McInnes, is grouped with amendments 70 to 72 and 16 to 18.

**Alison McInnes:** The significant increase in the sheriff court's privative jurisdiction from £5,000 to £100,000 will have a considerable impact on many litigants who currently choose to bring their cases in the Court of Session. It will not only compel them to proceed in the sheriff court, but will limit their ability to instruct counsel.

In the Court of Session, a litigant who is awarded expenses from another party automatically recovers the expenses of instructing counsel. That is not the position in the sheriff court, where the expenses of instructing counsel are recoverable only if the sheriff sanctioned the employment of counsel.

It is therefore welcome that the Justice Committee unanimously backed John Finnie's amendment 142 at stage 2 to introduce the Taylor test, as recommended in the committee's stage 1 report. That means that a sheriff who is considering, for the purposes of any relevant expenses rule, whether to give sanction for counsel must employ a general test of reasonableness and have regard to equality of arms.

My amendments would gently nudge the matter a little further forward. Amendments 69 to 72, which are in my name and which the Faculty of Advocates supports, would improve the test by supporting litigants' choice. They would cause sanction to be refused only if the litigant's decision to instruct counsel was unreasonable. That would strike a better balance between parties' freedom to be represented by skilled advocates and the court's control over expenses. My amendments also make it clear that the importance or value of the claim to the party who is instructing counsel should always be relevant when a sheriff considers whether to grant sanction.

I move amendment 69 and I urge Parliament to support it.

**Graeme Pearson:** Amendment 16 seeks to enable members to debate thoroughly the issues that surround the situation that we are debating with regard to section 102. The purpose of amendment 17 is to establish a presumption in favour of sanction for counsel for victims of work-related injuries and for all personal injury cases in which more than £20,000 is claimed, or that involve a death.

Although I welcomed John Finnie's amendment at stage 2 and recognise that it improves litigants' ability to access counsel in the sheriff courts, in my view it does not go far enough. We need to ensure that victims of work-related injuries have access to counsel and benefit from their expertise, particularly in order to mitigate the effects of section 69 of the Enterprise and Regulatory Reform Act 2013.

**John Finnie (Highlands and Islands) (Ind):** Does Graeme Pearson accept that those cases are, because of their complexity, guaranteed counsel anyway?

**Graeme Pearson:** The absence of confidence in such a guarantee is what I seek to resolve through amendment 17. Section 69 of the 2013 act, which the cabinet secretary mentioned earlier, removed the automatic assumption that a breach of health and safety law is a breach of the duty of care that an employer owes to employees. As a result, most workers seeking compensation for injuries that were suffered as a result of accidents at work in or after October 2013 are no longer able solely to rely on a breach of health and safety regulations to establish liability. Instead, workers are able to seek compensation only where it can be shown that the employer was at fault or was negligent. That makes it substantially more difficult for every victim of a workplace accident or injury to secure just recompense, and many victims who previously would have been able to obtain compensation will have lost that right. It increases the complexity of cases.

The Scottish Parliament may not have the legislative competence to reverse section 69 of the 2013 act, but we can use the power that Parliament has to mitigate the impact of section 69 as much as possible. That is what Scottish Labour wants to do with our amendment on sanction for counsel. We therefore urge members to support the amendments, rather than allowing the bill to pass in its current form, which will potentially make the situation worse for victims.

**Roderick Campbell:** I will speak primarily about Alison McInnes's amendment 69, about which I have mixed feelings. On the one hand, I recognise the progress that has been made in having the test that was proposed by Sheriff Principal Taylor in the bill and I regard that as a substantial step forward.

On the other hand, I accept the argument that individuals may still be impeded in their choice of lawyer by the test as it is drafted. Therefore, I have some sympathy with Alison McInnes's amendment 69, but I certainly do not accept the argument that the instruction of counsel per se involves a disproportionate cost, as is suggested by some stakeholders.

We should remember that recent changes to practice enable counsel to appear in the sheriff court without solicitors—a change that was introduced shortly after Sheriff Principal Taylor reported. It is certainly my understanding that, even in the Court of Session at present, in legally aided judicial review cases, counsel now routinely appears without a solicitor.

However, on the other side of the argument, it seems that section 102B(4) of the bill provides an opportunity for the court to take into account “other matters”. One such matter could be that it might be relevant—when a sheriff is considering whether to grant sanction for counsel and the application has been made by a solicitor—to take account of the argument that has been put forward by the solicitor that, if the application is granted, he himself will not be present at the hearing. It seems to me that the bill gives the opportunity for a court to consider that as an appropriate matter when considering the question whether to give sanction for counsel.

I accept, however, that this is perhaps not the right time to take that debate further. I hope that the matter will remain under review whether by the Scottish Civil Justice Council or otherwise.

16:00

**Christine Grahame:** In the bill as amended at stage 2, the provision on sanction for counsel in the sheriff court and sheriff appeal court mentions

“the desirability of ensuring that no party gains an unfair advantage by virtue of the employment of counsel.”

That was an important addition to ensure equality of arms. One of my concerns with Alison McInnes's amendments is with amendment 72, which would insert after “proceedings” in section 102B(3)(a)(ii)

“including its importance or value to the party instructing counsel”.

Everyone who goes to court thinks that it is valuable to them—of course they do, no matter what the issue is. Therefore, I think that that test is not really appropriate.

On Graeme Pearson's amendment 17, subsection (5) in the proposed new section states that “relevant proceedings” would include

“all work related personal injury proceedings, or ... any other personal injury proceedings in which the damages claimed, exclusive of interest and expenses, exceeds £20,000.”

The important word there is “claimed”. As we know from evidence and as I know from experience, the claims will be substantially higher than the amount that is settled on at the end of the day, which might just be £5,000. My issue is that that test of a claim exceeding £20,000 is not really a practical test in law.

**Margaret Mitchell:** Amendments 69 to 71 would create a presumption for sanction for counsel in the sheriff court, which would strengthen the principle of equality of arms and ensure that pursuers are not dissuaded from raising an action because of the fear of

unaffordable and often disproportionate costs. I am therefore happy to support the amendments.

Although I am sympathetic to the intention behind amendment 17, I once again feel that it is too prescriptive in nature and quite limited in scope. Alison McInnes's amendments relating to sanction for counsel are preferable in this instance. In particular, amendment 72 would ensure that the "importance or value" of any claim to the party that is instructing counsel would be taken into account when decisions regarding sanction for counsel are made. That seems to me to be a fair provision, so I am happy to support the amendment.

**Malcolm Chisholm:** I strongly support Graeme Pearson's amendments 16 and 17. John Finnie intervened on Mr Pearson to say that victims of workplace accidents and disease would be "guaranteed counsel anyway". I presume that he means that that is the case in practice—which the minister might want to comment on—but it certainly will not be guaranteed in law. Therefore, that seems to me to be an argument in favour of Graeme Pearson's amendments rather than an argument against them.

I am sure that most, if not all, members are concerned about the way in which the scales of justice have been tipped against the victims of workplace accidents and disease in favour of defending employers or insurers by section 69 of the Enterprise and Regulatory Reform Act 2013. As Graeme Pearson said—this must be an argument that appeals to Government party members—surely the least that we can do in this Parliament is use the powers that we have to tip the scales in the other direction and lessen the impact of section 69. I therefore hope that the Government will accept Graeme Pearson's amendments.

**Roseanna Cunningham:** At stage 2, John Finnie lodged an amendment that has become section 102B and which put in the bill the test that was recommended by Sheriff Principal Taylor in his "Review of Expenses and Funding of Civil Litigation in Scotland". The committee agreed to that without division, yet here we are considering two sets of amendments, the first of which would set the presumption for counsel on its head and the second of which would replace it.

Alison McInnes's proposed amendments to section 102B(2) would totally distort the test that Sheriff Principal Taylor recommended from one in which sanction must be granted if the court considers it reasonable to do so, to one in which sanction must always be granted unless it is unreasonable. I believe that amendment 72 would introduce to the test a subjective element that is not currently there. The value of the test is that the court will have to assess the case objectively and

not from the point of view of one of the parties. The amendments would make it very difficult to dislodge a presumption in favour of counsel in all—I emphasise "all"—cases, which I consider would be to go too far.

I continue to believe that the tests that are set out in section 102B will ensure that those who require access to counsel will receive it, and that the best person to decide whether sanction is appropriate is the sheriff. By allowing changes through an act of sederunt, we have ensured that the test can be easily and quickly amended if it is felt that the system is restricting access to justice.

Reducing the cost of litigation to parties is one of the main aims of the reforms. I do not believe that Alison McInnes's amendments will fulfil that aim.

Graeme Pearson's amendment 17 is the same as one that was lodged by John Pentland at stage 2. That amendment was not agreed to. Further, Graeme Pearson's amendment 16 would remove section 102B from the bill, despite unanimous agreement to it by the Justice Committee.

Amendment 17 would establish in primary legislation a presumption in favour of sanction for counsel in specified types of personal injury cases in an all-Scotland specialist court. One such type, which is set out in the amendment, is work-related personal injury proceedings. I am concerned that that could place part 3A of the bill outwith legislative competence, given the reservation on health and safety in the workplace.

Amendment 17 would provide that the presumption in favour of sanction for counsel could be rebutted only where special cause is shown that the case is

"(a) is straightforward,

(b) involves settled law,"

and

"(c) involves a small number of witnesses whose ... evidence is not expected to be ... complex".

That is a very high test.

The Scottish ministers are to be given a power by order to vary the list of relevant proceedings to which sanction will automatically be given. Amendment 18, which is also the same as one that was lodged by John Pentland at stage 2, would make that order subject to affirmative procedure. The rules are otherwise inflexible—precisely the kind of rule that the Scottish Government considers should not be placed in primary legislation.

I ask Alison McInnes and Graeme Pearson to respect the decision of the Justice Committee and to seek to withdraw or not move their amendments.

**Alison McInnes:** The minister has made much of the fact that the Justice Committee unanimously accepted the amendment that introduced section 102B at stage 2. Indeed we did, but that was because it was a step forward and an improvement on there being nothing in the bill about sanction for counsel.

My amendments 69 to 72 are reasonable and would better strike the balance between the freedom to choose to be represented by skilled advocates and being controlled by the court over expenses. Without the amendments, individuals will still be constrained in their ability to instruct counsel. We need to strike a fairer balance. Roderick Campbell acknowledged that my approach would not necessarily be costly.

To respond to Christine Grahame's point, it is important to acknowledge that my amendment 72 recognises that more than the monetary value should be taken into consideration, and that the importance of the claim to the party needs to be considered.

I will press amendment 69.

**The Presiding Officer (Tricia Marwick):** The question is, that amendment 69 be agreed to. Are we agreed?

**Members:** No.

**The Presiding Officer:** There will be a division.

#### For

Brown, Gavin (Lothian) (Con)  
 Buchanan, Cameron (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Hume, Jim (South Scotland) (LD)  
 Johnstone, Alex (North East Scotland) (Con)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)

#### Against

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (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)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Finnie, John (Highlands and Islands) (Ind)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alison (Lothian) (Green)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (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)  
 Robison, Shona (Dundee City East) (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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (Ind)  
 Yousaf, Humza (Glasgow) (SNP)

#### Abstentions

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (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)  
 Fee, Mary (West Scotland) (Lab)  
 Findlay, Neil (Lothian) (Lab)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Kelly, James (Rutherglen) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)

Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central 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)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 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 64, Abstentions 31.

*Amendment 69 disagreed to.*

*Amendment 70 moved—[Alison McInnes].*

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

**Members:** No.

**The Presiding Officer:** There will be a division.

#### For

Brown, Gavin (Lothian) (Con)  
 Buchanan, Cameron (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Hume, Jim (South Scotland) (LD)  
 Johnstone, Alex (North East Scotland) (Con)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)

#### Against

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (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)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Finnie, John (Highlands and Islands) (Ind)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Harvie, Patrick (Glasgow) (Green)

Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alison (Lothian) (Green)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (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)  
 Robison, Shona (Dundee City East) (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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (Ind)  
 Yousaf, Humza (Glasgow) (SNP)

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Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (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)  
 Fee, Mary (West Scotland) (Lab)  
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 Grant, Rhoda (Highlands and Islands) (Lab)  
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 Henry, Hugh (Renfrewshire South) (Lab)  
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 Kelly, James (Rutherglen) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central 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)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 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 64, Abstentions 31.

*Amendment 70 disagreed to.*

*Amendment 71 moved—[Alison McInnes].*

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

**Members:** No.

**The Presiding Officer:** There will be a division.

#### For

Brown, Gavin (Lothian) (Con)  
Buchanan, Cameron (Lothian) (Con)  
Carlaw, Jackson (West Scotland) (Con)  
Fraser, Murdo (Mid Scotland and Fife) (Con)  
Hume, Jim (South Scotland) (LD)  
Johnstone, Alex (North East Scotland) (Con)  
McGrigor, Jamie (Highlands and Islands) (Con)  
McInnes, Alison (North East Scotland) (LD)  
Milne, Nanette (North East Scotland) (Con)  
Mitchell, Margaret (Central Scotland) (Con)  
Scanlon, Mary (Highlands and Islands) (Con)  
Scott, John (Ayr) (Con)  
Smith, Liz (Mid Scotland and Fife) (Con)

#### Against

Adamson, Clare (Central Scotland) (SNP)  
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
Allard, Christian (North East Scotland) (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)  
Eadie, Jim (Edinburgh Southern) (SNP)  
Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
Ewing, Fergus (Inverness and Nairn) (SNP)  
Fabiani, Linda (East Kilbride) (SNP)  
Finnie, John (Highlands and Islands) (Ind)  
Gibson, Kenneth (Cunninghame North) (SNP)  
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
Harvie, Patrick (Glasgow) (Green)  
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
Hyslop, Fiona (Linlithgow) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alison (Lothian) (Green)  
Keir, Colin (Edinburgh Western) (SNP)  
Kidd, Bill (Glasgow Anniesland) (SNP)  
Lochhead, Richard (Moray) (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)  
Matheson, Michael (Falkirk West) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)  
McDonald, Mark (Aberdeen Donside) (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)  
Robison, Shona (Dundee City East) (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) (Ind)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
Wheelhouse, Paul (South Scotland) (SNP)  
White, Sandra (Glasgow Kelvin) (SNP)  
Wilson, John (Central Scotland) (Ind)  
Yousaf, Humza (Glasgow) (SNP)

#### Abstentions

Baillie, Jackie (Dumbarton) (Lab)  
Baker, Claire (Mid Scotland and Fife) (Lab)  
Baker, Richard (North East Scotland) (Lab)  
Baxter, Jayne (Mid Scotland and Fife) (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)  
Fee, Mary (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
Grant, Rhoda (Highlands and Islands) (Lab)  
Griffin, Mark (Central Scotland) (Lab)  
Henry, Hugh (Renfrewshire South) (Lab)  
Hilton, Cara (Dunfermline) (Lab)  
Kelly, James (Rutherglen) (Lab)  
Macdonald, Lewis (North East Scotland) (Lab)  
Macintosh, Ken (Eastwood) (Lab)  
Malik, Hanzala (Glasgow) (Lab)  
Martin, Paul (Glasgow Provan) (Lab)  
McCulloch, Margaret (Central 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)  
Rowley, Alex (Cowdenbeath) (Lab)  
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 divisions is: For 13, Against 64, Abstentions 31.

*Amendment 71 disagreed to.*

*Amendment 72 moved—[Alison McInnes].*

**The Presiding Officer:** The question is, that amendment 72 be agreed to. Are we agreed?

**Members:** No.

**The Presiding Officer:** There will be a division.

**For**

Brown, Gavin (Lothian) (Con)  
 Buchanan, Cameron (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Hume, Jim (South Scotland) (LD)  
 Johnstone, Alex (North East Scotland) (Con)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)

**Against**

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (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)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Finnie, John (Highlands and Islands) (Ind)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alison (Lothian) (Green)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (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)

Robison, Shona (Dundee City East) (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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (Ind)  
 Yousaf, Humza (Glasgow) (SNP)

**Abstentions**

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (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)  
 Fee, Mary (West Scotland) (Lab)  
 Findlay, Neil (Lothian) (Lab)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Kelly, James (Rutherglen) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central 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)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 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 divisions is: For 14, Against 64, Abstentions 31.

*Amendment 72 disagreed to.*

*Amendment 36 moved—[Roseanna Cunningham]—and agreed to.*

*Amendment 16 not moved.*

**After section 102B**

*Amendment 17 moved—[Graeme Pearson].*

**The Presiding Officer:** The question is, that amendment 17 be agreed to. Are we agreed?

**Members:** No.

**The Presiding Officer:** There will be a division.

**For**

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)

Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (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)  
 Fee, Mary (West Scotland) (Lab)  
 Findlay, Neil (Lothian) (Lab)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Kelly, James (Rutherglen) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central 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)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Stewart, David (Highlands and Islands) (Lab)

#### Against

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (SNP)  
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
 Biagi, Marco (Edinburgh Central) (SNP)  
 Brodie, Chic (South Scotland) (SNP)  
 Brown, Gavin (Lothian) (Con)  
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
 Buchanan, Cameron (Lothian) (Con)  
 Burgess, Margaret (Cunninghame South) (SNP)  
 Campbell, Aileen (Clydesdale) (SNP)  
 Campbell, Roderick (North East Fife) (SNP)  
 Carlaw, Jackson (West Scotland) (Con)  
 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)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Finnie, John (Highlands and Islands) (Ind)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Goldie, Annabel (West Scotland) (Con)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hume, Jim (South Scotland) (LD)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Johnstone, Alison (Lothian) (Green)

Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McGregor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McLeod, Aileen (South Scotland) (SNP)  
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)  
 McMillan, Stuart (West Scotland) (SNP)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Paterson, Gil (Clydebank and Milngavie) (SNP)  
 Robertson, Dennis (Aberdeenshire West) (SNP)  
 Robison, Shona (Dundee City East) (SNP)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (Ind)  
 Yousaf, Humza (Glasgow) (SNP)

**The Presiding Officer:** The result of the divisions is: For 31, Against 80, Abstentions 0.

*Amendment 17 disagreed to.*

16:15

#### Section 104—Appeal from a sheriff to the Sheriff Appeal Court

*Amendment 7 moved—[Elaine Murray].*

**The Presiding Officer:** The question is, that amendment 7 be agreed to. Are we agreed?

**Members:** No.

**The Presiding Officer:** There will be a division.

#### For

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Brown, Gavin (Lothian) (Con)



Buchanan, Cameron (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Dugdale, Kezia (Lothian) (Lab)  
 Fee, Mary (West Scotland) (Lab)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Findlay, Neil (Lothian) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Hume, Jim (South Scotland) (LD)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kelly, James (Rutherglen) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahon, Michael (Uddingston and Bellshill) (Lab)  
 McMahon, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pearson, Graeme (South Scotland) (Lab)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stewart, David (Highlands and Islands) (Lab)

#### Against

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (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)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Finnie, John (Highlands and Islands) (Ind)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alison (Lothian) (Green)

Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (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)  
 Robison, Shona (Dundee City East) (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)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (Ind)  
 Yousaf, Humza (Glasgow) (SNP)

**The Presiding Officer:** The result of the division is: For 46, Against 63, Abstentions 0.

*Amendment 7 disagreed to.*

#### After section 107

*Amendment 8 moved—[Elaine Murray].*

**The Presiding Officer:** The question is, that amendment 8 be agreed to. Are we agreed?

**Members:** No.

**The Presiding Officer:** There will be a division.

#### For

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Brown, Gavin (Lothian) (Con)  
 Buchanan, Cameron (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Dugdale, Kezia (Lothian) (Lab)  
 Fee, Mary (West Scotland) (Lab)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Findlay, Neil (Lothian) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)

Hilton, Cara (Dunfermline) (Lab)  
 Hume, Jim (South Scotland) (LD)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kelly, James (Rutherglen) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahon, Michael (Uddingston and Bellshill) (Lab)  
 McMahon, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pearson, Graeme (South Scotland) (Lab)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stewart, David (Highlands and Islands) (Lab)

#### Against

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (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)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Finnie, John (Highlands and Islands) (Ind)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alison (Lothian) (Green)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)

McDonald, Mark (Aberdeen Donside) (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)  
 Robison, Shona (Dundee City East) (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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (Ind)  
 Yousaf, Humza (Glasgow) (SNP)

**The Presiding Officer:** The result of the division is: For 46, Against 64, Abstentions 0.

*Amendment 8 disagreed to.*

#### Section 110—Effect of appeal

*Amendment 9 not moved.*

#### Section 111—Appeals to the Supreme Court

*Amendment 37 moved—[Roseanna Cunningham]—and agreed to.*

#### Before section 116A

**The Presiding Officer:** We come to group 11, on the appointment of judges, et cetera. Amendment 38, in the name of the cabinet secretary, is grouped with amendments 53, 54 and 57.

**Roseanna Cunningham:** Amendment 38 substitutes sections 21 to 23 of the Judiciary and Courts (Scotland) Act 2008 with new sections 20A to 20G. The new sections make provision for the appointment of judges, temporary judges and re-employed retired judges of the Court of Session and for the remuneration and expenses of temporary and former judges. Amendments 53 and 54 are consequential amendments required as a result of amendment 38.

Effectively, amendment 38 repeals and re-enacts without significant policy modification the current law relating to the appointment of judges, temporary judges and re-employed retired judges of the Court of Session, modernising the law and placing the provisions in a more accessible part of the statute book—they are currently referred to in the Law Reform (Miscellaneous Provisions) (Scotland) Acts of 1985 and 1990.

Amendment 57 is a purely technical amendment that amends the long title of the bill to reflect the new provisions on the appointment of the judiciary that are added by amendment 38.

I move amendment 38.

**Elaine Murray:** I query—yet again—why the amendments were lodged two days before the deadline. In this case, it is not just a moan; I raise that query because, had the proposed provisions been in the bill at stage 1, we might have wanted to consider amending them.

Proposed new section 20A(1)(a)(ii) of the 2008 act, which amendment 38 would insert, states that the person has to have

“held office as either sheriff principal or sheriff throughout the period of 5 years immediately preceding the appointment”.

I query whether that is discriminatory, in that it would exclude women who had been on maternity leave, or fathers who had been on paternity leave, within that five years, or someone who had been absent from work because of caring responsibilities.

I am therefore disappointed that we are considering the amendments only at stage 3, when issues around whether the proposed new provisions are discriminatory cannot properly be explored. I seek the minister's advice on the issue, because I think that it is an important point of principle.

**Roseanna Cunningham:** I regret to say that we are where we are. Amendment 38 was intended purely as a tidying-up amendment to repackage what is in currently in two separate Law Reform (Miscellaneous Provisions) (Scotland) Acts, which is precisely the kind of legislation that we wanted to get away from when the Scottish Parliament was set up. There is very little to add to that.

*Amendment 38 agreed to.*

#### After section 116B

*Amendment 39 moved—[Roseanna Cunningham]—and agreed to.*

#### Section 122—Subordinate legislation

**The Presiding Officer:** I call Graeme Pearson to move or not move amendment 18, which was debated with amendment 69. *[Interruption.]*

Mr Pearson is not here.

*Amendment 18 not moved.*

**The Presiding Officer:** Group 12 is on exclusive competence and simple procedure: commencement. Amendment 10, in the name of Elaine Murray, is grouped with amendments 11 and 13.

**Elaine Murray:** I rise to speak to amendments 10, 11 and 13. Similar amendments were defeated by five votes to four at stage 2—*[Interruption.]*

**The Presiding Officer:** Will members settle down a wee bit, please?

**Elaine Murray:** However, I believe that the case for the introduction of a sunrise clause remains pertinent, despite the Government's arguments that such provisions are very unusual.

There was an unusual degree of concern about the financial resolution on the bill, which three Opposition parties took the unusual course of voting against.

During the stage 1 debate, Malcolm Chisholm explained the concerns that the Finance Committee heard when it considered the financial memorandum. There was uncertainty regarding the loss of fee income to the Scottish courts due to the transfer of cases from the Court of Session to the sheriff court. There were also concerns about the implications of an increased workload on already overburdened sheriff courts, and about the suggested savings to the legal aid budget, which were not explained satisfactorily. It was stated that the Government had relied heavily on figures from third parties, which, when the financial memorandum came to be debated at the Finance Committee, officials were unable to substantiate.

The cabinet secretary's letter to the convener of the Justice Committee of 23 September revised the financial memorandum in light of the reduction of the exclusive competence of the sheriff court to £100,000.

The Scottish Legal Aid Board seems to have undertaken more rigorous modelling of its savings. Oddly, although it initially estimated a saving of £1.2 million through the transfer of an estimated 80 per cent of cases from the Court of Session to the sheriff court, it has now decreased that saving to between £550,000 and £750,000 with only a 70 per cent transfer. It seems strange that a reduction of 10 per cent of cases should reduce the estimated saving by at least 38 per cent. That suggests that some of the calculations around the financial memorandum remain somewhat dubious.

The dubiety regarding the level of savings that the bill will achieve is matched by concerns over workload in the sheriff courts as the court closure programme takes effect. This weekend, there was a report in my local press that Dumfries sheriff court resolves only 64 per cent of its cases within 26 weeks, yet the Scottish Government's target is that 100 per cent of cases should be resolved within that period. Similar problems have been reported at Hamilton sheriff court, following the closure of Motherwell sheriff court.

The possibility that funding shortfalls might be met by increasing court fees was flagged up as a concern in the Justice Committee's stage 1 report.

All those things support the argument for a sunrise clause. The bill will work only if it is adequately resourced, and the provisions on exclusive competence and simple procedure should be introduced only when sufficient provision has been made for staffing, resources, technology, courtroom space and judicial appointments, on which other members have touched in the course of debating amendments today.

The Government will argue that a sunrise clause is not necessary, but it is important. It is in nobody's interests for those provisions to be commenced before resources are in place. We should not simply accept the reassurance that somehow everything will be all right on the night when they come into force.

The issues are so important to Parliament that we must be satisfied that the provisions in question can be introduced successfully. I am not making a case for re-debating the entire bill, but when we introduce such important and radical changes to the civil justice system in Scotland, we must be sure that they can be introduced without detriment to court users.

I move amendment 10.

**Malcolm Chisholm:** I support Elaine Murray's proposal for a sunrise clause. I am a member of the Finance Committee, and members may remember that many in the Parliament voted against the financial resolution on the bill, which is fairly unusual.

As Elaine Murray said, the proposals must be adequately resourced and the technology must be available. On the subject of technology, perhaps the minister or the cabinet secretary can comment on information technology for the specialist court. We were told that only £10,000 has been set aside for that, which was a concern, and we are now told that the new system will not be in place until autumn 2016, which is obviously a concern too.

The cabinet secretary's letter to the Finance Committee and to Christine Grahame, which contained some revised costings, did not substantially alter the concerns that I and others expressed at stage 1, which included concerns about the loss of fee income and the increase in the sheriff court workload; the letter addressed neither issue.

The change in the legal aid costings was perhaps an admission that the previous estimates had been overgenerous, but it is still a bit of mystery as to where even £0.75 million of legal aid savings will come from. The Scottish Legal Aid

Board already supports the most complex and difficult cases—the savings will come from not having counsel, yet we are told that those complex cases will still have counsel. In addition, most costs are recovered in any case. There is still a great deal of mystery, and many questions, around the financing of the bill, and I believe that Elaine Murray's proposed sunrise clause is the correct response to those problems.

**Roseanna Cunningham:** Amendments 10 and 11, in the name of Elaine Murray, would make the commencement of sections 39 and 70 subject to the affirmative procedure in the Parliament, which would be very unusual indeed.

Amendment 13 would place another set of procedural hurdles in the way of the commencement of those sections, which relate to exclusive competence and simple procedure, by requiring the Parliament to have approved a draft order under section 41(1), on setting up an all-Scotland sheriff court, and to have considered a report on the resources of the court system in general, including the prospective resourcing of the specialist court, before orders bringing those sections into force could be laid.

Elaine Murray lodged equivalent amendments at stage 2. The equivalent of amendment 10 was not agreed to, and the other two amendments were not moved at that stage.

I appreciate that the reasoning behind the amendments is to give Parliament an opportunity to consider whether the time is right to introduce the changes that are envisaged in sections 39 and 70. However, those questions have already been asked in committee, and the Lord President, the chief executive of the Scottish Court Service and Sheriff Principal Stephen have all given evidence to the effect that plans have been made and resources have been allocated.

It would be in no one's interest to commence the provisions in section 39 or section 70 before the time was right. The argument for reform has been made eloquently in the "Report of the Scottish Civil Courts Review" and the matter has been extensively debated in committee.

With regard to the report that would be required under amendment 13, I remind members that, under the Judiciary and Courts (Scotland) Act 2008, which was passed unanimously by the Parliament, the Scottish Court Service is now an independent, judicially led corporate body that runs the Scottish courts. Under section 2(2) of the 2008 act, the Lord President is responsible for making and maintaining arrangements to secure the efficient disposal of business in the Scottish courts.

If a report on staffing, resources, IT, court capacity and judicial capacity were to be desired, it

would be for the Lord President to provide it. In fact, no such report is required. As I have mentioned, evidence has already been heard in committee that resources have been allocated and that the reforms will permit the courts to work more efficiently.

16:30

The chief executive of the Scottish Court Service highlighted that sheriff courts face less pressure today than they did two years ago due to a general downward trend in demand for civil court services. Sheriff Principal Stephen told the Justice Committee that the proposed reforms would allow the courts to work more efficiently, thereby freeing up current resources.

Sheriff Principal Stephen also highlighted that, if the bill is passed,

“cases will start in the sheriff court and there will be a gradual build-up of the volume.”

She added:

“There will not be a tsunami of work descending on the sheriff court.”—[*Official Report, Justice Committee*, 1 April 2014; c 4482.]

That point bears repeating. Many have spoken of a “transfer” of business from the Court of Session, and I have used that shorthand myself, but the bill will not transfer existing cases from the Court of Session to the sheriff court. All that it does is provide for the future, and the build-up of work in the sheriff court will be a gradual one that takes place over time as new cases are raised. There is, therefore, no need for a report to be done before commencement.

I ask Elaine Murray to withdraw amendment 10 and to not move amendments 11 and 13.

**Elaine Murray:** I am not going to argue against the reforms that the bill will bring in. I think that there is agreement that they are all necessary. However, the important point is that they must go along with resources: the resources have to be there.

I note again the unusual circumstances in which a large number of members had sufficiently serious concerns to vote against the financial resolution. That is a most unusual step in this Parliament, and it shows the need for us to take on our responsibilities. We are responsible as a Parliament for ensuring that the legislation that we pass is properly resourced, and the bill contains particularly important reforms of the Scottish civil justice system. Surely we have a responsibility to ensure that, when we bring it in, it will work and it will not overburden our court system to the detriment of court users.

I also remind the Parliament that we do not see the level 4 budgets of organisations such as the Scottish Court Service. We are not able to interrogate those budgets when it comes to the budget process in the way that we interrogate those of the Scottish Government’s directorates, and we have less opportunity to ensure that the money is following requirements and the need for resources.

I say to members that we should not just let the implementation of the legislation be an operational matter for the Scottish Court Service. Far too often, things are operational matters for somebody else. Let us take responsibility as a Parliament.

I press amendment 10.

**The Presiding Officer:** The question is, that amendment 10 be agreed to. Are we agreed?

**Members:** No.

**The Presiding Officer:** There will be a division.

**For**

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Brown, Gavin (Lothian) (Con)  
 Buchanan, Cameron (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Dugdale, Kezia (Lothian) (Lab)  
 Fee, Mary (West Scotland) (Lab)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Findlay, Neil (Lothian) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Hume, Jim (South Scotland) (LD)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kelly, James (Rutherglen) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McGregor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahon, Michael (Uddingston and Bellshill) (Lab)  
 McMahon, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pearson, Graeme (South Scotland) (Lab)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)

Smith, Liz (Mid Scotland and Fife) (Con)  
Stewart, David (Highlands and Islands) (Lab)

### Against

Adamson, Clare (Central Scotland) (SNP)  
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
Allard, Christian (North East Scotland) (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)  
Eadie, Jim (Edinburgh Southern) (SNP)  
Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
Ewing, Fergus (Inverness and Nairn) (SNP)  
Fabiani, Linda (East Kilbride) (SNP)  
Finnie, John (Highlands and Islands) (Ind)  
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)  
Harvie, Patrick (Glasgow) (Green)  
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
Hyslop, Fiona (Linlithgow) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alison (Lothian) (Green)  
Keir, Colin (Edinburgh Western) (SNP)  
Kidd, Bill (Glasgow Anniesland) (SNP)  
Lochhead, Richard (Moray) (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)  
Matheson, Michael (Falkirk West) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)  
McDonald, Mark (Aberdeen Donside) (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)  
Robison, Shona (Dundee City East) (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) (Ind)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
Wheelhouse, Paul (South Scotland) (SNP)  
White, Sandra (Glasgow Kelvin) (SNP)

Wilson, John (Central Scotland) (Ind)  
Yousaf, Humza (Glasgow) (SNP)

**The Presiding Officer:** The result of the division is: For 46, Against 65, Abstentions 0.

*Amendment 10 disagreed to.*

*Amendment 11 moved—[Elaine Murray].*

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

**Members:** No.

**The Presiding Officer:** There will be a division.

### For

Baillie, Jackie (Dumbarton) (Lab)  
Baker, Claire (Mid Scotland and Fife) (Lab)  
Baker, Richard (North East Scotland) (Lab)  
Baxter, Jayne (Mid Scotland and Fife) (Lab)  
Beamish, Claudia (South Scotland) (Lab)  
Bibby, Neil (West Scotland) (Lab)  
Boyack, Sarah (Lothian) (Lab)  
Brown, Gavin (Lothian) (Con)  
Buchanan, Cameron (Lothian) (Con)  
Carlaw, Jackson (West Scotland) (Con)  
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
Dugdale, Kezia (Lothian) (Lab)  
Fee, Mary (West Scotland) (Lab)  
Fergusson, Alex (Galloway and West Dumfries) (Con)  
Findlay, Neil (Lothian) (Lab)  
Fraser, Murdo (Mid Scotland and Fife) (Con)  
Goldie, Annabel (West Scotland) (Con)  
Grant, Rhoda (Highlands and Islands) (Lab)  
Griffin, Mark (Central Scotland) (Lab)  
Henry, Hugh (Renfrewshire South) (Lab)  
Hilton, Cara (Dunfermline) (Lab)  
Hume, Jim (South Scotland) (LD)  
Johnstone, Alex (North East Scotland) (Con)  
Kelly, James (Rutherglen) (Lab)  
Macdonald, Lewis (North East Scotland) (Lab)  
Macintosh, Ken (Eastwood) (Lab)  
Malik, Hanzala (Glasgow) (Lab)  
Martin, Paul (Glasgow Provan) (Lab)  
McCulloch, Margaret (Central Scotland) (Lab)  
McGrigor, Jamie (Highlands and Islands) (Con)  
McInnes, Alison (North East Scotland) (LD)  
McMahon, Michael (Uddingston and Bellshill) (Lab)  
McMahon, Siobhan (Central Scotland) (Lab)  
McNeil, Duncan (Greenock and Inverclyde) (Lab)  
McTaggart, Anne (Glasgow) (Lab)  
Milne, Nanette (North East Scotland) (Con)  
Mitchell, Margaret (Central Scotland) (Con)  
Murray, Elaine (Dumfriesshire) (Lab)  
Pearson, Graeme (South Scotland) (Lab)  
Rowley, Alex (Cowdenbeath) (Lab)  
Scanlon, Mary (Highlands and Islands) (Con)  
Scott, John (Ayr) (Con)  
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
Smith, Drew (Glasgow) (Lab)  
Smith, Liz (Mid Scotland and Fife) (Con)  
Stewart, David (Highlands and Islands) (Lab)

### Against

Adamson, Clare (Central Scotland) (SNP)  
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
Allard, Christian (North East Scotland) (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)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Finnie, John (Highlands and Islands) (Ind)  
 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)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alison (Lothian) (Green)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (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)  
 Robison, Shona (Dundee City East) (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)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (Ind)  
 Yousaf, Humza (Glasgow) (SNP)

**The Presiding Officer:** The result of the division is: For 46, Against 64, Abstentions 0.

*Amendment 11 disagreed to.*

### Section 125—Interpretation

*Amendment 40 moved—[Kenny MacAskill]—and agreed to.*

### After section 126

**The Presiding Officer:** Group 13 is on a report on the operation of court functions. Amendment 12, in the name of Elaine Murray, is the only amendment in the group.

**Elaine Murray:** Amendment 12 is concerned with a report to Parliament on the operation of court functions. At stage 2, I suggested that the Scottish Government should report annually to the Parliament on how the bill works in practice. I have altered my approach since stage 2; amendment 12 would require biannual, rather than annual, reporting. That would be less onerous for the Scottish Government, which would have to lay a report before the Parliament only twice per parliamentary session.

At stage 2, Ms Cunningham argued that my proposed approach would duplicate the requirement under the Judiciary and Courts (Scotland) Act 2008 for the Scottish Court Service to produce an annual report to the Scottish ministers, which is laid before the Parliament. I therefore withdrew my amendment, so that I could consider her argument.

At stage 3, I have lodged amendment 12, which would place a less onerous requirement on the Scottish Government, because, on reflection, I do not think that my proposed approach duplicates the approach in relation to the Scottish Court Service report. I am requesting information specifically about the operation of the legislation that we are considering and not about the operation of the Scottish Court Service generally.

Amendment 12 would require ministers—not the Scottish Court Service or the Lord President—to report on the number and types of cases and on the average length of time that is taken to dispose of each kind of case, which is important. I refer members to what I said in the context of other amendments: at a time when Dumfries sheriff court manages to get only two thirds of its cases through in the required time, there is an issue that the Parliament needs to take seriously. It is important that the average time that is taken to dispose of cases is reported to the Parliament, along with information on the provision of resources to meet the demand for court services, given that we do not see level 4 data on the Scottish Court Service.

The proposed approach would facilitate parliamentary scrutiny of the legislation that we pass and would provide transparency. It would ensure that there was ministerial responsibility, rather than leaving the implementation of the bill to become an operational matter for the Scottish Court Service or the Lord President.

I move amendment 12.

**Margaret Mitchell:** Amendment 12 would facilitate post-legislative scrutiny as we move to implementation of the bill. A requirement to produce, every two years, a report on the time that is taken to dispose of cases and on resourcing issues would enhance accountability to the Parliament, which is important in view of the delays that are currently being experienced in the context of the requirement for courts to hear cases within the 26-week target. I support amendment 12.

**Roseanna Cunningham:** The Government's position is that the approach in amendment 12 continues to be unnecessary. The Lord President and the chief executive of the Scottish Court Service emphasised in their evidence to the committee that the sheriff court will be able to cope. As the reforms will take pressure off the Court of Session, there should be no problems there, either.

Section 67(1) of the Judiciary and Courts (Scotland) Act 2008 provides:

"As soon as practicable after the end of each financial year, the SCS must—

(a) prepare and publish a report on the carrying out of its functions during that year,

(b) send a copy of the report to the Scottish Ministers, and

(c) lay a copy of the report before the Scottish Parliament."

I remind members that the 2008 act was unanimously passed by the Parliament and rightly places on the Scottish Court Service and not on the Scottish ministers the responsibility of preparing an annual report. For those reasons, I ask Elaine Murray to seek leave to withdraw amendment 12.

**Elaine Murray:** Yet again, the minister says that the approach that is proposed in amendment 12 is unnecessary. However, we are talking about two different types of report. The Scottish Court Service report will not contain information on the operation of this bill once it is passed. It will not enable us to carry out post-legislative scrutiny in that regard. It will contain information on the functioning of the Scottish Court Service, but that is not what the amendment asks for; it asks for information on how the legislation is operating and whether the necessary resources are there to ensure that it is functioning properly.

Requiring ministers to do what is asked for twice in the course of a session is not a huge burden to place on them. When we have reformed our judicial system, it is important that we know that the reforms that we have brought in are working properly. There is no point in bringing in further reforms if we find out that the reforms that we

brought in are being held up because of a lack of resources and so on.

I still think that it is important that Parliament is given that information, so I press my amendment 12.

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

**Members:** No.

**The Presiding Officer:** There will be a division.

## For

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Brown, Gavin (Lothian) (Con)  
 Buchanan, Cameron (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Dugdale, Kezia (Lothian) (Lab)  
 Fee, Mary (West Scotland) (Lab)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Findlay, Neil (Lothian) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Hume, Jim (South Scotland) (LD)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kelly, James (Rutherglen) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahon, Michael (Uddingston and Bellshill) (Lab)  
 McMahon, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pearson, Graeme (South Scotland) (Lab)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stewart, David (Highlands and Islands) (Lab)  
 Wilson, John (Central Scotland) (Ind)

## Against

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (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)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Finnie, John (Highlands and Islands) (Ind)  
 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)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alison (Lothian) (Green)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (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)  
 Robison, Shona (Dundee City East) (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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Yousaf, Humza (Glasgow) (SNP)

**The Presiding Officer:** The result of the division is: For 47, Against 64, Abstentions 0.

*Amendment 12 disagreed to.*

### **Section 127—Commencement**

*Amendment 13 moved—[Elaine Murray].*

**The Presiding Officer:** The question is, that amendment 13 be agreed to. Are we agreed?

**Members: No.**

**The Presiding Officer:** There will be a division.

### **For**

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Brown, Gavin (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Dugdale, Kezia (Lothian) (Lab)  
 Fee, Mary (West Scotland) (Lab)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Findlay, Neil (Lothian) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Hume, Jim (South Scotland) (LD)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kelly, James (Rutherglen) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahon, Michael (Uddingston and Bellshill) (Lab)  
 McMahon, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pearson, Graeme (South Scotland) (Lab)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stewart, David (Highlands and Islands) (Lab)

### **Against**

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (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)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)

Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Finnie, John (Highlands and Islands) (Ind)  
 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)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alison (Lothian) (Green)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
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 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (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)  
 Robison, Shona (Dundee City East) (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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (Ind)  
 Yousaf, Humza (Glasgow) (SNP)

**The Presiding Officer:** The result of the division is: For 45, Against 65, Abstentions 0.

*Amendment 13 disagreed to.*

### **Schedule 1—Civil proceedings, etc in relation to which summary sheriff has competence**

**The Presiding Officer:** Group 14 is on summary sheriffs: civil competence. Amendment 3, in the name of Alison McInnes, is grouped with amendment 4.

**Alison McInnes:** Amendments 3 and 4, which are supported by the Law Society of Scotland, propose removing adoption and forced marriage proceedings from the list of civil proceedings in which a summary sheriff has competence, as set

out in schedule 1. That is due to their distinct complexity.

Last week, it became a criminal offence to force someone into marriage, punishable by up to seven years in prison. Given that new criminal liability, the continuing civil remedies for those who are at risk of forced marriage and those who have already entered into a forced marriage—forced marriage protection orders—will become even more multifaceted and sensitive. We know that those cases can be further complicated by challenging international, cultural and ethical dimensions.

Similarly, the Law Society of Scotland says that adoption and the grant of authority to adopt are the most serious form of interference in family life, and as such should not be the responsibility of the most junior tier of the judiciary. The society tells us that such cases are among the most demanding that are heard in the sheriff court. In establishing the facts, sheriffs regularly consider a wealth of reports and records and hear from a number of witnesses. It can be a difficult balancing act to satisfy the requirements of domestic and international law, such as the European convention on human rights.

Indeed, during stage 2, the cabinet secretary told the Justice Committee:

“The rationale for the introduction of summary sheriffs is that they should undertake work in the sheriff court to relieve sheriffs of the burden of dealing with the more legally straightforward civil cases and to thus permit sheriffs to be available for more complex casework.”—[*Official Report, Justice Committee*, 10 June 2014; c 4667.]

He made my case for me. Both forced marriage and adoption cases require a greater level of shrieval competence than other cases that are listed in schedule 1, such as the consideration of warrants and interim orders and the extension of time to pay debts. Sheriffs and specialist family sheriffs are best placed to respond to the complexity of those cases and to take into account their far-reaching consequences.

I move amendment 3.

16:45

**Margaret Mitchell:** As I stated at stage 2, Alison McInnes makes a compelling case. Such cases are complex and emotive, and it makes sense to move them from the competence of the summary sheriffs' jurisdiction. I, too, am mindful of the cabinet secretary's statement at stage 2, on 10 June, which Alison McInnes just quoted. It seems entirely logical to remove those complex cases from the remit of the summary sheriffs.

**Roseanna Cunningham:** Amendments 3 and 4 would remove adoption proceedings and forced marriage protection orders from the competence

of summary sheriffs. The summary sheriffs will be highly qualified and will have at least 10 years' legal experience—the same as sheriffs. All judicial officers, at whichever level of the courts system, will be recommended for appointment by the Judicial Appointments Board for Scotland and trained as required by the Judicial Institute for Scotland.

The assignment of cases in order to ensure the efficient disposal of the business is for the local sheriff principal. If a case is particularly complex, the sheriff principal may assign it to a sheriff, as opposed to a summary sheriff, and, where family specialists are appointed in a sheriffdom, sheriffs principal should have regard to ensuring that such cases are dealt with by those specialists.

Giving evidence at the Justice Committee on 18 March, the Sheriffs Association said that it welcomed the jurisdiction of the summary sheriffs and that the summary sheriffs will be “perfectly competent” and “comfortable” in dealing with family cases. Drawing summary sheriffs from areas of specialist expertise and bringing practical experience is seen by some solicitors, including experienced family practitioners, as a good opportunity. The Family Law Association told the committee that

“it does not really matter whether they are summary sheriffs or sheriffs as long as they are experienced and have knowledge of family cases. That is the most important thing.”—[*Official Report, Justice Committee, 25 March 2014; c 4411.*]

Amendments 3 and 4 do not divide cases up along lines of importance. They would, for example, leave domestic abuse proceedings and children's hearings within the competence of the summary sheriffs, neither of which matters is, I respectfully suggest, less important than adoption or forced marriage. The Government believes that the amendments would lead to incoherence in the summary sheriffs' jurisdiction.

For those reasons, I oppose the amendments.

**Alison McInnes:** It is not about other cases being less important; it is about the complexity surrounding the particular issues that the amendments deal with. I will press amendment 3.

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

**Members:** No.

**The Presiding Officer:** There will be a division.

**For**

Baillie, Jackie (Dumbarton) (Lab)  
Baker, Claire (Mid Scotland and Fife) (Lab)  
Baker, Richard (North East Scotland) (Lab)  
Baxter, Jayne (Mid Scotland and Fife) (Lab)  
Beamish, Claudia (South Scotland) (Lab)  
Bibby, Neil (West Scotland) (Lab)  
Boyack, Sarah (Lothian) (Lab)

Brown, Gavin (Lothian) (Con)  
Carlaw, Jackson (West Scotland) (Con)  
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
Dugdale, Kezia (Lothian) (Lab)  
Fee, Mary (West Scotland) (Lab)  
Fergusson, Alex (Galloway and West Dumfries) (Con)  
Findlay, Neil (Lothian) (Lab)  
Fraser, Murdo (Mid Scotland and Fife) (Con)  
Goldie, Annabel (West Scotland) (Con)  
Grant, Rhoda (Highlands and Islands) (Lab)  
Griffin, Mark (Central Scotland) (Lab)  
Henry, Hugh (Renfrewshire South) (Lab)  
Hilton, Cara (Dunfermline) (Lab)  
Hume, Jim (South Scotland) (LD)  
Johnstone, Alex (North East Scotland) (Con)  
Macdonald, Lewis (North East Scotland) (Lab)  
Macintosh, Ken (Eastwood) (Lab)  
Malik, Hanzala (Glasgow) (Lab)  
Martin, Paul (Glasgow Provan) (Lab)  
McCulloch, Margaret (Central Scotland) (Lab)  
McGrigor, Jamie (Highlands and Islands) (Con)  
McInnes, Alison (North East Scotland) (LD)  
McMahon, Michael (Uddingston and Bellshill) (Lab)  
McMahon, Siobhan (Central Scotland) (Lab)  
McNeil, Duncan (Greenock and Inverclyde) (Lab)  
McTaggart, Anne (Glasgow) (Lab)  
Milne, Nanette (North East Scotland) (Con)  
Mitchell, Margaret (Central Scotland) (Con)  
Murray, Elaine (Dumfriesshire) (Lab)  
Pearson, Graeme (South Scotland) (Lab)  
Rowley, Alex (Cowdenbeath) (Lab)  
Scanlon, Mary (Highlands and Islands) (Con)  
Scott, John (Ayr) (Con)  
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
Smith, Drew (Glasgow) (Lab)  
Smith, Liz (Mid Scotland and Fife) (Con)  
Stewart, David (Highlands and Islands) (Lab)

**Against**

Adamson, Clare (Central Scotland) (SNP)  
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
Allard, Christian (North East Scotland) (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)  
Eadie, Jim (Edinburgh Southern) (SNP)  
Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
Ewing, Fergus (Inverness and Nairn) (SNP)  
Fabiani, Linda (East Kilbride) (SNP)  
Finnie, John (Highlands and Islands) (Ind)  
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)  
Harvie, Patrick (Glasgow) (Green)  
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
Hyslop, Fiona (Linlithgow) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alison (Lothian) (Green)

Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (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)  
 Robison, Shona (Dundee City East) (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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (Ind)  
 Yousaf, Humza (Glasgow) (SNP)

**The Presiding Officer:** The result of the division is: For 44, Against 65, Abstentions 0.

*Amendment 3 disagreed to.*

*Amendment 4 moved—[Alison McInnes.]*

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

**Members:** No.

**The Presiding Officer:** There will be a division.

**For**

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Brown, Gavin (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Dugdale, Kezia (Lothian) (Lab)  
 Fee, Mary (West Scotland) (Lab)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Findlay, Neil (Lothian) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Hume, Jim (South Scotland) (LD)

Johnstone, Alex (North East Scotland) (Con)  
 Kelly, James (Rutherglen) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahon, Michael (Uddingston and Bellshill) (Lab)  
 McMahon, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pearson, Graeme (South Scotland) (Lab)  
 Rowley, Alex (Cowdenbeath) (Lab)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stewart, David (Highlands and Islands) (Lab)

**Against**

Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (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)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Finnie, John (Highlands and Islands) (Ind)  
 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)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alison (Lothian) (Green)  
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 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lochhead, Richard (Moray) (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)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (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)  
 Robison, Shona (Dundee City East) (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) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (Ind)  
 Yousaf, Humza (Glasgow) (SNP)

**The Presiding Officer:** The result of the division is: For 45, Against 65, Abstentions 0.

*Amendment 4 disagreed to.*

*Amendment 41 moved—[Roseanna Cunningham]—and agreed to.*

### **Schedule 3—The Scottish Courts and Tribunals Service**

**The Presiding Officer:** Group 15 is on the Scottish courts and tribunals service: tax tribunals. Amendment 42, in the name of the cabinet secretary, is grouped with amendments 43 and 44.

**Roseanna Cunningham:** Amendments 42 to 44 are technical in nature and provide for transitional arrangements that relate to the merging of the Scottish tribunals service into the Scottish Court Service to form the Scottish courts and tribunals service.

Amendment 42 will add both the tax tribunals—the first-tier tax tribunal for Scotland and the upper tax tribunal for Scotland—to the list of tribunals that are to receive administrative support from the Scottish courts and tribunals service in advance of being transferred into the Scottish tribunals.

Paragraphs 3(3) and 3(4) of schedule 3 to the bill make transitional provision that allows the presidents of various existing tribunals to be appointed as judicial members of the Scottish courts and tribunals service under paragraph 2(2)(g) of schedule 3 to the Judiciary and Courts (Scotland) Act 2008, as inserted by paragraph 1(8)(c) of schedule 3 to the bill, in place of a chamber president. Amendment 43 provides that the president of the Scottish tax tribunals will be eligible to be appointed to that position.

I turn to amendment 44. Section 58 of the Revenue Scotland and Tax Powers Act 2014 is

intended to allow Scottish Government officials acting under the badge of the Scottish tribunals service to provide administrative support to the Scottish tax tribunals in their initial guise as free-standing tribunals. It is similar to section 77 of the Tribunals (Scotland) Act 2014, which it is proposed will be repealed by paragraph 8 of part 3 of schedule 3 to the bill. I consider that section 58 of the RSTP act ought to be equivalently repealed in part 3 of schedule 3 to the bill, and amendment 44 provides for that.

I am sure that all members followed that with interest.

I move amendment 42.

**The Presiding Officer:** No member has asked to speak, so do you wish to wind up, minister?

**Roseanna Cunningham:** No.

**The Presiding Officer:** I did not think so.

*Amendment 42 agreed to.*

*Amendments 43 and 44 moved—[Roseanna Cunningham]—and agreed to.*

### **Schedule 4—Modifications of enactments**

*Amendments 45 to 54 moved—[Roseanna Cunningham]—and agreed to.*

**The Presiding Officer:** The final group—group 16—is on citation of jurors. Amendment 55, in the name of the cabinet secretary, is the only amendment in the group.

**Roseanna Cunningham:** Amendment 55 will remove the current restriction on how the Scottish Court Service cites persons for juries in order to permit a choice of methods. In England and Wales, for example, citation is by means of first-class post rather than recorded delivery. The proposal was part of a package of efficiency measures in the Criminal Justice (Scotland) Bill. The reason for lodging the amendment at stage 3 of the Courts Reform (Scotland) Bill is simple: it will save the Scottish Court Service up to around £169,000 per annum. At a time when budgets in public organisations are under pressure, it seems wholly appropriate to ensure that this cost-saving measure can be implemented as soon as possible. The savings will arise as a result of the SCS being able to choose first-class post, or perhaps even electronic citation, rather than being compelled to use recorded delivery.

I move amendment 55.

**Alison McInnes:** I understand what the minister is saying, but I seek assurances from her that there will be safeguards to appeal if there is non-delivery of the item, because failing to turn up when cited can lead to a fine of up to £1,000. So,

what kind of appeal process will there be to cover that?

**Roseanna Cunningham:** My understanding is that what is proposed will have to be dealt with by a Scottish statutory instrument. I think that the issues to which the member refers would be discussed at that point.

*Amendment 55 agreed to.*

*Amendment 56 moved—[Roseanna Cunningham]—and agreed to.*

### Long Title

*Amendments 57 to 59 moved—[Roseanna Cunningham]—and agreed to.*

**The Deputy Presiding Officer (John Scott):** That ends consideration of amendments.

## Courts Reform (Scotland) Bill

### The Deputy Presiding Officer (John Scott):

The next item of business is a debate on motion S4M-11101, in the name of Kenny MacAskill, on the Courts Reform (Scotland) Bill.

I call on the Cabinet Secretary for Justice, Kenny MacAskill, to speak to and move the motion.

16:56

### The Cabinet Secretary for Justice (Kenny MacAskill):

I am delighted to open the debate on the Courts Reform (Scotland) Bill. The bill takes on the majority of Lord Gill's recommendations from the Scottish civil courts review. I wish to thank all those organisations and individuals who responded to the consultation and who gave evidence to the committee, as well as our justice partners. I would especially like to thank the members and the clerks of the Justice Committee for their work over the past year.

The bill delivers on many of the Scottish civil court review recommendations to improve what Lord Gill described as the "slow, inefficient and expensive" Scottish civil justice system. Lord Gill emphasised at stage 1 that these reforms are "50 years overdue". The main principles of the bill are that the right cases should be heard in the right courts at the right costs, unnecessary delays to users should be minimised, and the efficiency of the courts should be increased.

The bill will set a new exclusive competence for the sheriff court in order to remove a proportion of cases from the Court of Session so that it can focus on Scotland's most challenging and complex civil cases and develop the law. A new national specialist personal injury sheriff court will be created, maintaining a centre of expertise where personal injury cases from throughout the country can be heard. Other key planks of the reforms include further specialisation at the shrieval level, a new sheriff appeal court and a new judicial tier in the sheriff court involving summary sheriffs, who will use a new simple procedure, facilitating easier access to justice.

A number of important improvements were made to the bill at stage 2, many of which responded to suggestions raised during the Justice Committee's stage 1 scrutiny of the bill. In response to an amendment proposed by Sandra White, we agreed to reduce the exclusive competence from the proposed £150,000 to £100,000. Many stakeholders who appeared in front of the Justice Committee believed that the £150,000 figure proposed by Lord Gill was too high, and the committee agreed with that view. The figure of £100,000 that was agreed will help to

meet those concerns and will still be able to underpin the reforms by delivering the more efficient and affordable system envisaged by Lord Gill. The Law Society of Scotland called the figure a “significant improvement”.

The committee also heard concerns from some witnesses, including the Scottish Trades Union Congress, that litigants whose cases will now be raised in the new personal injury court rather than in the Court of Session will no longer have to use counsel and will instead have to apply to the sheriff to grant expenses for the use of counsel if they wish it.

Trade unions have always seen the litigation process as important to improving workplace safety, and they have engaged fully and constructively throughout the courts reform debate, all the way back to Lord Gill’s original review. They have shown willingness to support change; they have also expressed legitimate concerns to which we in the Scottish Government have listened.

The trade unions are also very worried about section 69 of the Enterprise and Regulatory Reform Act 2013. They see the dangers in a system in which the cost-recovery regime—perhaps unintentionally—stacks the deck in favour of those with the deepest pockets. If the Scottish Government had the power, we would reverse section 69 tomorrow. We lost that opportunity in the referendum, but perhaps powers over health and safety will be given to this Parliament as part of the promised package of new powers. If that happens, we will act.

In the meantime, we will use the powers that we have to ameliorate the worst consequences of section 69. Therefore, we supported John Finnie’s stage 2 amendments to allow, where appropriate, health and safety cases of any financial value to be heard by the specialist personal injury court, and to put Sheriff Principal Taylor’s recommendation on sanction for counsel on a statutory footing. That test will ensure those who require counsel will have access to it, while leaving the decision whether that is applicable to the person best placed to decide—the sheriff.

It will be for each sheriff to determine if one or more aspect of the Taylor test for sanction is met. However, it would seem to me to be self-evident that, for at least the next few years until the courts have had the chance to properly set the parameters of the law in light of section 69, the sanction test is likely to be met in the majority of work-related personal injury cases. Included in the test is that sheriffs must have regard to the equality of representation of the parties. That will ensure that counsel is available to parties when appropriate.

Scotland is—rightly—proud of the considerable skills and expertise of its independent referral bar. I agree with the learned dean that the bar exists

“to represent those who need skilled representation wherever and whenever they need it.”

I do not see that in any way diminished by the bill’s measures. I agree with the Lord President, who said:

“the opportunity should still exist for the specialist bar to work in the sheriff courts because some significant litigation will be taking place there. It would be helpful and in everyone’s interests if members of the Faculty were given proper opportunities to appear in significant sheriff court actions. I would greatly regret it if they didn’t.”

He also said:

“In my view, owing to the excellence of our independent bar, the Faculty of Advocates will survive these reforms and continue to co-exist with its solicitor colleagues, each complementing the other’s services and skills and maintaining a high standard of advocacy in all of the courts.”

The bill will ensure that litigants can access representation by counsel when they need it. However, sanction for counsel is not the only factor in the important equality of arms issue. Another issue is the procedures used in low-value personal injury cases.

I have said in the past—I will repeat it now—that a small claims type procedure with very limited cost recovery is no place for personal injury cases. There must be fair cost recovery in personal injury cases of any value. I do not see how that could be achieved by a fixed-cost regime. Therefore, I agreed with the Lord President when he recommended a separate table of fees for personal injury cases raised under simple procedure. That, along with other issues relating to the costs and funding of litigation, will be progressed by the Scottish Civil Justice Council in responding to Sheriff Principal Taylor’s recommendations on that issue.

In response to concerns that the test for transfer of complex cases to the higher courts was too strict, we lodged further amendments at stage 2 to ensure that that is not the case. That will ensure that those complex and challenging cases that require the attention of Scotland’s top civil court are able to be heard there, irrespective of the value.

As we have discussed in relation to amendments tabled by Elaine Murray and Graeme Pearson on ensuring that provision has been made for staffing and resources in terms of the new courts established by the bill, those matters are fully catered for.

Lord Gill, Sheriff Principal Stephen and Mr McQueen all emphasised in their evidence to the

committee that the sheriff court system will be able to cope. The Lord President said:

"I am absolutely certain that the capacity exists in the sheriff courts to absorb all of the business".—[*Official Report, Justice Committee*, 22 April 2014; c 4541.]

A deluge of cases will not descend on the sheriff courts. That will not happen, as Sheriff Principal Stephen pointed out to the committee. The exclusive competence will not be raised until the personal injury court is ready to receive cases, as the Scottish Court Service's chief executive, Eric McQueen, told the committee. Existing cases will not suddenly be transferred from the Court of Session to the personal injury court; rather, the number of cases will gradually build.

Existing personal injury cases in the Court of Session will see out their lives there. People will be able to raise new personal injury cases in the most appropriate court, whether that is the personal injury court, their local sheriff court or—for cases whose value is more than £100,000—the Court of Session. At an exclusive competence of £100,000, we expect only a 3 per cent rise in the number of civil cases that are raised in local sheriff courts, and we expect the majority to be raised in the new personal injury court.

The Judiciary and Courts (Scotland) Act 2008 compels the Scottish Court Service to prepare and publish a report on the carrying out of its functions each year, which is sent to the Scottish ministers and laid before Parliament.

The bill's passage is an important milestone in the court reform journey. We will take that journey together with our justice partners to ensure that our court system is fit for purpose in the 21st century. I look forward to hearing members' views on the bill.

I move,

That the Parliament agrees that the Courts Reform (Scotland) Bill be passed.

17:06

**Elaine Murray (Dumfriesshire) (Lab):** On Radio Scotland this morning, the bill was described as an important reform of the civil justice system, which it is.

The bill has had a long gestation period. In 2007, my good friend Cathy Jamieson, as the then Minister for Justice, invited Lord Gill to review the civil courts, following the publication of a document on civil courts reform by the civil justice advisory group. She asked him to review the provision of civil justice by the courts and to have regard to the cost of litigation, the role of mediation in dispute resolution, the development of modern methods of communication and case management, the specialisation of courts and procedures, and the

relationship between the civil and criminal courts. Lord Gill's final report was presented in October 2009. Five years later, we are at the final stage of the bill's passage.

Labour does not disagree that the civil courts system requires reform and modernisation or that the cost of litigation is an important issue for parties and the public purse. We welcome the introduction of simple procedure, which we understand will be less confrontational and will involve negotiation, mediation and dispute resolution. We also welcome the appointment of specialist sheriffs and the formation of the specialist personal injury court, although we had reservations about the exclusive competence level.

Our concern has been that the reforms should not be motivated by cost cutting to the extent of being to the court user's detriment. When individuals take on wealthy and powerful organisations, as with personal injury claims, we want to ensure that the legal representation that is provided to claimants can match that which defenders can buy. We were also concerned that the measures should not place additional pressures on the sheriff courts, which we—and, I am sure, all of us—have been told are overburdened.

We therefore welcomed a number of stage 2 amendments. For example, John Finnie's amendment to ensure that certain personal injury cases below £5,000 could still be raised in the specialist personal injury court addressed concerns about cases that are of low financial value but which are complex and of considerable interest to those who bring them. John Finnie's amendment on sanction for counsel, which put Sheriff Principal Taylor's test on equality of arms in the bill, was a considerable improvement on the bill as it stood previously.

The amended bill now enables the sheriff court and the sheriff appeal court to sanction the employment of counsel when cases are difficult or complex and to prevent any party from gaining an unfair advantage, such as when a company that is defending a claim can afford to employ an advocate or Queen's counsel, while the claimant cannot afford that.

We would have liked to go further. Graeme Pearson's amendment 17 today would have introduced a presumption of sanction for counsel when someone had died as a result of a personal injury, in all work-related personal injury cases and in personal injury cases when the damages that were claimed exceeded £20,000. Under the amendment, a sheriff could have directed that that was inappropriate in certain cases, so there was a safeguard.



Despite the fact that that amendment and, indeed, Alison McInnes's proposed amendments—for which we had considerable sympathy; it was only the fact that they competed with our amendments that prevented us from supporting them—were not passed, the amendments to the bill at stage 2 addressed the significant concerns that were expressed by a range of stakeholders, including the Association of Personal Injury Lawyers and the Scottish Trades Union Congress.

The exclusive competence limit was reduced at stage 2 from £150,000 to £100,000 on an amendment from Sandra White. That was a considerable reduction, which we welcomed. The revised financial memorandum suggests that that would apply to 70 per cent of personal injury cases, which would transfer from the Court of Session to the sheriff court, rather than to 80 per cent of such cases, as was originally envisaged. However, the figure of 80 per cent was hotly disputed by APIL and by the Faculty of Advocates at stage 1. APIL in fact envisaged that 96 per cent of cases would have transferred at the original level. It remains to be seen whether that 70 per cent estimate is correct and is borne out in practice.

Some committee members, myself included, argued for limits of £30,000 and £50,000, which would have been similar to the limits in other parts of the United Kingdom, although England and Wales have recently increased levels to £100,000 for non-personal injury cases. I considered resubmitting an amendment on a lower privative level. However, apart from the fact that it would have been unlikely to succeed, the amendment on sanction for counsel helps to address some of the initial concerns, particularly in light of the amendments from Graeme Pearson and Alison McInnes, which unfortunately were not successful.

We also welcomed the clarification by amendment that the exclusive competence limit applies to the aggregate value of the claim where more than one order is sought.

The committee supported ministerial amendments to sections 88 and 89 on the remit of cases between courts. Those amendments are also an improvement. A sheriff may request that a case below the limit of exclusive competence be remitted to the Court of Session if that sheriff feels that the importance or the difficulty of the case makes that appropriate. The test of exceptional circumstances, which Lord Gill himself felt was too high in the original form of the bill, was also removed. An additional amendment enables a decision by a sheriff not to remit a case to the Court of Session to be appealed to the sheriff appeal court. Those amendments were all welcomed.

As I stated during discussion of my amendments on behalf of Clydeside Action on Asbestos, that organisation was not reassured by Sheriff Principal Taylor's statements that cases of sufficient complexity would be remitted to the Court of Session. I am not sure what was discussed in the regular meetings that the cabinet secretary promised he was having with Clydeside Action on Asbestos, but it was clearly insufficient to meet its requests. Therefore, it was disappointing that Parliament was not willing to give sufferers from asbestos-related diseases and their families the reassurance that they sought on how they will be supported through the courts system. We witnessed that disappointment when the members of CAA left the public gallery today. They had hoped that Parliament would continue to support them in the way that Parliament has supported them in the past, and I know that they were extremely disappointed.

During the stage 1 debate, I stated that Labour would support the bill at stage 1 but wished to see it amended. It has been amended, although not to the extent that we might have wished. In summing up, I will return to some of our remaining concerns.

As most of the major concerns that were raised with us when the bill was introduced have been addressed to a significant extent, we will support the passage of the bill, in recognition that reform and modernisation of the courts system is necessary. However, I repeat that it is also very important that the resourcing of the reforms is scrutinised and that, as we are not able to do that through my proposed amendments, I hope that we will find other ways of scrutinising how the reforms are resourced as they take effect in future years.

17:14

**Margaret Mitchell (Central Scotland) (Con):** I welcome the stage 3 debate on the Courts Reform (Scotland) Bill and I thank the Justice Committee clerks for their hard work and the convener, fellow committee members and respondents for their contributions.

It is imperative that the Scottish Parliament seeks to improve not just the quality of justice but, crucially, access to justice. That view formed the foundations of the comprehensive Scottish civil courts review. As the cabinet secretary stated, alarmingly, the review concluded that Scottish civil courts are "failing to deliver justice" because of a system that is "slow, inefficient and expensive." It is clear that that is an entirely unacceptable situation for the people of Scotland, not least because justice delayed is justice denied. The Scottish Conservatives have therefore supported the bill in principle, as it will put in place long-overdue reforms to Scotland's courts. However, without doubt, there are areas of concern and

provisions that I argue should have been implemented to strengthen and improve the legislation.

For example, as I have already stated, increasing the public's access to justice is of paramount importance, yet in relation to judicial review it remains unclear whether that particular criterion has been fulfilled. It is far from evident that a three-month time limit and the real prospect of success test will increase access to justice for the public. Amendments in my name sought to clarify the test, which could, not unreasonably, be perceived as subjective. Amendments that were lodged by Alison McInnes would have suitably extended the time limits to ensure that community groups in particular had sufficient time to organise themselves, marshal their arguments and secure the necessary funding. It is a matter of great regret that those amendments, together with those that Elaine Murray lodged on the issue, were voted down.

Furthermore, ensuring that sufficient summary sheriffs are in place will be key to the success of the legislation. Any piecemeal introduction of summary sheriffs by the Government would put that success in jeopardy. That is especially the case given the detrimental impact of court closures on the efficient delivery of justice. As recent figures confirm, those court closures are already adversely affecting the time that it takes to resolve cases. In June this year, only 63 per cent of sheriff and justice of the peace cases were resolved from caution to verdict within the target 26 weeks, which compares with 74 per cent in September 2013. Between 2009 and 2014, the number of sheriff court cases that were seen within the target 26 weeks fell from 75.7 to 70.9 per cent, which is a five-year low. That comes despite a 14 per cent fall in the number of cases heard over the same period.

The full impact of the court closures remains to be seen but, at a time of declining court capacity, it is not in doubt that the bill will further stretch sheriff courts, which already face the prospect of losing nearly 2,000 sitting days. Worse still is the fact that Crown Office and Procurator Fiscal Service staff, victims and witnesses and innocent people who have a case hanging over them are the ones who will suffer further.

The creation of a sheriff appeal court is a sensible provision. However, because the bill differs considerably from the Gill review's original proposals, the issue was rightly the subject of much debate at stage 2. The sheriff appeal court is central to many of the reforms in the bill and its successful implementation is vital to the success of court reform more generally. However, Lord Gill's concern that it is

"inappropriate for an appellate court to consist of members of the same level of the judicial hierarchy as those from whom an appeal is marked"

remains, because an amendment to address the issue was unsuccessful.

Court reform is needed and welcome, but the Scottish Government must not conflate the opportunity for change with an opportunity to cut costs. It is therefore entirely right that we keep a watching brief on the provisions to ensure that they increase the efficiency of our courts and genuinely increase access to justice for the public.

**The Deputy Presiding Officer:** We move to the open debate, with speeches of four minutes, please.

17:19

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** I thank Margaret Mitchell for thanking committee members and me. I am not being frivolous, but I also thank the witnesses, who give up their time to give evidence to committees so often.

My goodness, it seems a long time since we started on the bill. I say to Elaine Murray that we do not need reports to the Parliament to tell us whether legislation is working, because we can have post-legislative scrutiny. We did that today with the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 on grooming. Of course, it is always open to Opposition parties to lodge motions in the Parliament to hold the Government to account.

I join others in welcoming the bill, which modernises the civil court system—in which I used to practise many moons ago—following, in the main, Lord Gill's review but excluding the review of the children's hearings system, which is dealt with elsewhere.

One must remember the flexibility of the civil court process in Scotland. Let us take, for example, raising the privative limit from £5,000 to £100,000 in the sheriff court—bearing in mind that that figure is the claim and not necessarily where we end up at the end of a proof or in settlement. It is always open to seek a remit to a higher court, such as the Court of Session. It is open to the sheriff to decide to remit a case, regardless of whether he feels that it is of great complexity in law or in fact, or one of the parties to an action can remit it. Therefore, the limits are not set in stone.

The provision for a specialist personal injury sheriff court is to be welcomed, but litigants have the option of having the case dealt with in their local sheriff court or a specialist sheriff court, presumably on legal advice.

I very much welcome the introduction of summary sheriffs. I was often involved in cases way back in which the sheriff's time was pretty much wasted with the level of case with which he or she was dealing, which could have been dealt with in a different manner. Without saying that there is a top-level sheriff and a lower-level sheriff, we could certainly use shrieval time to better effect, particularly if we are going to pare off some sheriffs to become specialists in areas of law, which is also to be welcomed.

On the allocation of cases, I say to Margaret Mitchell and others that it is for the sheriff principal to examine a case in the early stages and decide whether it should go to the court to which, on paper, it seems that it should go. It may have to go elsewhere or to a sheriff rather than a summary sheriff.

I certainly welcome equality of arms in the sanction for counsel. In my early, youthful days as a mature student graduating to be a practitioner, I was horrified to find an advocate on the other side, complete with wig and a whole lot of books in front of him. Usually, they were just props; he did not even look at the books, but it looked as if he was going to use them all and it terrified me in those early days. I felt that the client would be asking why they had me and not somebody else wearing a wig.

Equality of arms is terribly important, but it cannot be based on the importance of the case to the client. Every client's case is important to them. That is why they are standing in court. That is why they have pushed it that far.

I welcome the simple procedure and the £5,000 limit. I welcome the fact that there will be intervention by the sheriff in such cases to move them along where necessary. Again, if a case proves to be complex, it can be remitted to a higher court.

I will quickly say something about asbestosis cases. Members should not misunderstand the fact that I, among others, was not prepared to make them a special case in a special court. I was extremely sympathetic but, when we are making laws, we must consider the principle that is being applied. That principle must be applied across as far as we can see. Worthy though those cases were, I was concerned that, if we made a special case for them and something else came along that also ought to be in a special category, we would have to create that. Where would we end? We get into all kinds of difficulties of judgment.

Therefore, I regret it but, working on principle, it is important that we put cases on the same basis. Indeed, many asbestosis cases will be remitted to the Court of Session if complexity provides for that.

17:24

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** I am obviously not as well informed as other speakers, who all seem to be either ministers or members of the Justice Committee. I first became interested in the bill as a member of the Finance Committee when it studied the financial memorandum. Subsequently, I listened to the concerns of those who have been affected by workplace accidents and diseases. Therefore, like Elaine Murray, I certainly support the need for reform to the civil courts.

I am grateful that my former colleague Cathy Jamieson commissioned the review some seven years ago. My conclusion, however, is that, in some respects, reform has gone too far and that, in other respects, it is financially problematic.

Access to justice has been a theme of two or three debates this afternoon. I spoke in a couple of them, and I do not want to repeat the detail of what I said. However, I will say that I am still concerned in particular about those who have been affected by workplace accidents and diseases. It is unfortunate that they have not been granted automatic right to counsel, and it is particularly regrettable that those who have been affected by asbestos have not been given the right to have their cases heard in the Court of Session. Those cases are usually very complex, and it might be that most of them end up in the Court of Session, but I think that it would have been better to state that this Parliament regards those affected by asbestos as comprising a special case. It is regrettable that we did not do so today.

In general, as the cabinet secretary said in his speech, because of section 69 of the UK Parliament Enterprise and Regulatory Reform Act 2013, the scales of justice have been tipped against those affected by workplace accidents and diseases. However, the least that we could have done would have been to take every action possible to redress the balance in favour of those victims.

Having said that, some welcome changes were made at stage 2, which made the bill better than it was when it was introduced.

On the financial memorandum, I spoke in the debate in favour of Elaine Murray's sunrise clause, which I think would have been the best way in which to deal with the financial problems. I still think that no satisfactory answer has been given to the question of the loss of fee income. We can debate whether 70 or 80 per cent of cases are being transferred, but the figure of £1 million lost in fee income is generally accepted.

As I said earlier, the legal aid savings are doubtful, and there is the issue of the increased workload. We are already hearing that it is taking

longer to process cases in sheriff courts, partly because of sheriff court closures. Clearly, there will be an increased workload as a consequence, and it is not obvious how that will be managed. Of course, there will be the specialist court, but will two sheriffs be able to cope with all the work of that court, or will other sheriffs have to be deployed as well?

Earlier, we heard that only £10,000 had been set aside for the information technology systems. We were told that other money would be used for that. However, I would like to know when the systems are to be in place. I have been told autumn 2016. I would like that to be confirmed or otherwise in the minister's summing-up speech.

On the issue of access to justice in relation to environmental matters, the Justice Committee recognised the differences between the Aarhus convention and the scope of judicial review in Scots law. One way of alleviating the decision would have been to extend the time for appeal. That was rejected by the Government. The best solution is the introduction of an environmental tribunal. I am told that that was in the Scottish National Party's 2011 election manifesto, so I would be interested to know when the tribunal will be set up.

17:28

**Alison McInnes (North East Scotland) (LD):** I thank the members of the legislation team for supporting me in drafting amendments. I also thank the Justice Committee clerks, as ever, and those who took time to give evidence to the committee.

Working in conjunction with the Scottish Civil Justice Council's modernisation programme, the bill will enable our court structures to undergo significant reform. Noteworthy innovations include the creation of the Sheriff appeal court, summary sheriffs and specialist sheriff courts with Scotland-wide jurisdiction.

It was welcome that we were able to make progress on issues including revising the tests on remitting cases to the Court of Session, and the inclusion of the Taylor test for granting counsel. However, as I said earlier, I remain concerned that, although the Taylor test is a step forward, the ability of parties to be represented by skilled counsel will still be unreasonably restricted. I am therefore disappointed that my amendments 69 to 72 were not agreed to today.

I would like to offer the Minister for Community Safety and Legal Affairs the thanks of my colleagues Liam McArthur and Tavish Scott, who are away on parliamentary business. They welcome her assurances that the gradual abolition of honorary sheriffs will take place in rural and

island communities only if the alternatives have been shown to meet the needs of those communities. We are grateful for that reassurance.

In the short time that I have remaining, I would like to remind members about some of the problems that we encountered during the passage of the bill with unsubstantiated and inconsistent proposals.

The bill provided an opportunity to ensure that disputes are heard at the most appropriate level; the increase in the privative jurisdiction of the sheriff court was the most significant change in that respect. However, there was a dearth of evidence to inform our consideration of the correct limit. With the little information that we were given, it was

"unclear how robust the data in question is and the degree to which it can be considered as a representative or reliable sample of cases".

Those are not my words but those of the Scottish Parliament's independent information centre. We considered alternative privative jurisdictions and whether the limit should be £30,000, say, or £50,000, but without more information, the committee was forced to take a stab in the dark in setting it at £100,000. That is not good enough and it remains to be seen whether a 1,900 per cent increase will erode access to justice.

On judicial review, I am disappointed that the time period allowed for applications has remained at three months. That will increase the probability of it being needlessly restrictive, and it will unduly erode access to justice, especially for community groups.

Under this SNP Government, sheriff courts in 13 towns across Scotland have closed in the past year, including those in Stonehaven and Arbroath in my North East Scotland region, and four more will follow in January 2015. Those closures appear to be incompatible with the transfer of business that the bill will generate. Aberdeen has already received an influx of business from Stonehaven and is already running close to capacity. Can it cope with more? We have been given scant assurances. I worry, because the cabinet secretary has already confirmed to Parliament that the average time that is taken for the conclusion of summary criminal cases in the sheriff court increased from 139 days in September 2013 to 157 days in June 2014.

Parliament was given the opportunity today by Elaine Murray to receive regular feedback and be assured that the system could manage before key sections of the bill are implemented. I am really disappointed that her proposals were rejected.

Finally, it is worth recalling that at the conclusion of stage 1, members unanimously agreed to the general principles of the bill. However, the main

Opposition parties took the rare step of rejecting the financial memorandum amid concerns about its accuracy. I urge ministers to ensure in the future that they develop more coherent and properly evidenced and costed legislation before presenting it to Parliament.

Nonetheless, Scottish Liberal Democrats broadly believe that the package of reforms will better equip our courts to deal with the demands that are placed on them, and that they will improve the experience of service users. We will support the bill today on that basis.

17:32

**Sandra White (Glasgow Kelvin) (SNP):** I join others in thanking my fellow committee members, the clerks and the many organisations and individuals who gave evidence. I also thank the cabinet secretary, the minister and the Scottish Government for listening to a number of concerns that were raised and for accepting a number of amendments, including my own, which was agreed to by the committee.

There is no doubt that reform of the Scottish Court Service is long overdue. As Elaine Murray said, it was first looked at by the Labour Minister for Justice Cathy Jamieson in 2007 who declared:

“The review will have a clear remit to produce recommendations for change to ensure that the civil justice system deals with cases justly, within a reasonable time and”—

most important—

“at a reasonable cost.”

I make that point because Elaine Murray and others raised the issue of cost.

Lord Gill said at the committee at stage 1:

“From the work that has been done by the Scottish Court Service and the Scottish Civil Justice Council, I am absolutely satisfied that the reforms can be adequately funded. They are part of the long-term planning of the Scottish Court Service.”—[*Official Report, Justice Committee*, 22 April 2014; c 4536.]

I hope that that will allay some of the fears that Elaine Murray and others have raised throughout the debate.

I, along with my colleagues Gil Paterson, Bill Kidd and Stuart McMillan, as well as many other members, have worked alongside Clydeside Action on Asbestos for many years, so I am sorry that the group is not in the gallery to listen to the debate. However, I thank Clydeside Action on Asbestos very much for the work that it has carried out, and for its sheer tenacity. If it was not for that group, I doubt very much whether we would be where we are just now.

I want to highlight some of the issues that have been raised. The committee itself—not just individual members of it—was not persuaded to adopt asbestosis as a particular criterion or a special case. It has been said time and again that all cases that merit counsel will continue to benefit from the expertise of counsel. They are not just my words; they are others’ words, as well. Sheriff Principal Taylor said:

“a complex asbestosis case will probably be remitted to the Court of Session. However, even if it were to remain in the sheriff court, it would almost certainly merit sanction for counsel.”—[*Official Report, Justice Committee*, 22 April 2014; c 4527.]

That was said over and over again in evidence, and I thought that people from Clydeside Action on Asbestos had accepted the fact that Sheriff Principal Taylor, the cabinet secretary and learned friends from the judiciary had said that asbestosis cases would get counsel—indeed, they did not think at all that such cases would not get counsel. My memory is that the people from Clydeside Action on Asbestos who came to the committee took that on board, but that seems to have changed.

I will go back to speak to Clydeside Action on Asbestos. I do not need to go into the number of issues that it has raised and which the Scottish Government has looked at in terms of legislation—the cabinet secretary talked about them in his opening remarks, which people will be able to read. We have done as much as possible. I thank Clydeside Action on Asbestos, which has worked so diligently alongside MSPs from all political parties and the Government.

The changes that are being introduced by the bill, including those regarding sheriffs principal, should be accepted. They are very good and will make a vast improvement to what we have.

17:36

**John Finnie (Highlands and Islands) (Ind):** Civil law is very important in the lives of our citizens, because it deals with their rights and obligations. I will echo the cabinet secretary, who quoted Lord Gill, who said that the present system was “slow, inefficient and expensive.” It was for those reasons that Lord Gill looked at its structure and functions.

On a local level, I was concerned by the issue that my colleague Alison McInnes picked up about temporary sheriffs and the wording that was used in that respect. I do not expect that there will be many changes. The policy memorandum talked about things being “envisaged” and used the phrase “seems doubtful”, so it is important that we keep a watching brief on how our remoter areas are affected.

The intention to have maximum flexibility in deployment is terribly important, and picks up the Justice Committee convener's point about directing cases to the most appropriate person to deliberate over them.

There are issues around part-time sheriffs, the number of whom will decrease over time. I recently met a part-time sheriff who had been very casually dressed, but had robed up for an emergency sitting. Clearly there is a need for part-time sheriffs.

Throughout the evidence taking we heard competing views about what is important and special. I have to say that I think that every case is important.

Some of the terminology has inadvertently offended people. When we talked about summary and simple procedures, supporters of domestic violence victims saw that—quite wrongly—as a downgrading. I am a keen supporter of domestic violence courts, which I would like to see being extended.

I am also a strong supporter of alternative dispute resolution, although we heard from domestic violence groups that it is inappropriate for domestic violence cases.

There was much discussion of exclusive competence which, following agreement to an amendment from Sandra White, will rise from £5,000 to £100,000. Although some people have criticised that, I think that it shows the worth of scrutiny of the bill.

There has been widespread support for the proposal regarding personal injury courts. The cabinet secretary alluded to the attack on health and safety for workers and workplaces that the UK Government made, and the steps that have been put in the bill to ameliorate that. I would certainly support the removal of section 69 of the Enterprise and Regulatory Reform Act 2013, if we get the opportunity. The role of trade unions in respect of the role of personal injury courts has been vital and they watched very closely how the committee responded to it. I hope that they appreciate that we consider their role to be very important and that we have responded positively with amendments. Workplace incidents are inherently complex because of the nature not only of the specific case but of the relationships that exist in that environment.

The changes in the bill will create a vibrancy throughout the system, as all changes do. With those changes will come new challenges, and the real test will be whether the citizen is properly served by the civil justice system. Only time will tell, and I am sure that we will maintain a watching brief in that respect.

I see that Malcolm Chisholm is back in the chamber, so I will pick up on a point that he made. I refer him to paragraph 38 of the Justice Committee's stage 1 report, in which we said:

"The Committee is sympathetic to calls for the introduction of an environmental tribunal for Scotland."

Like Malcolm Chisholm, I hope that the Scottish Government will pick up on that.

17:40

**Margaret Mitchell:** We have had a good debate. The Courts Reform (Scotland) Bill's provisions represent a radical departure from the status quo, and many members have voiced concerns about some aspects of the legislation. In particular, the absence of empirical evidence to inform certain basic provisions, including the threshold for transferring cases from the Court of Session to the sheriff court, has been less than satisfactory. There is no doubt that the threshold at which those transfers should be pitched has been keenly debated, and that the threshold level has potentially far-reaching consequences for ensuring equality of representation for court users who are involved in litigation.

At present, counsel can be instructed and automatically granted in the Court of Session, which is not the case in the sheriff court. Although the ability to refer complex cases that are below the £100,000 threshold to the Court of Session is provided for in the bill, it is nonetheless important that we keep a watchful eye on the important issue of equality of arms and the associated costs of litigation. The Taylor review's provision on expenses goes some way towards tackling that issue, and it is true to say that the bill lays the foundation for Sheriff Principal Taylor's recommendations, which in large part address the impact of litigation expenses on access to justice. The recommendation on damages-based agreements may encourage solicitors and solicitor advocates in the sheriff court to take on the financially riskier cases of people who do not qualify for legal aid but who, equally, cannot privately fund litigation.

In so doing, the recommendation seeks to ensure that access to legal representation is more widely available. In addition, the recommendation on qualified one-way costs shifting seeks to ensure that no one should be deterred from litigation through fear of bankruptcy, which is arguably an injustice in itself.

In short, the Taylor review serves as a reminder that the delivery of justice is predicated on a number of interrelated elements, and not just on courts reform. Those two measures provide an important remedy for litigants who do not pursue

genuine cases because of the fear of, and the uncertainties surrounding, potential costs.

It is understood that the Government intends to implement the recommendations incrementally. However, some of the recommendations go some way towards creating a fairer and more accessible justice system, and as such I urge the cabinet secretary to implement them as expediently as possible.

I end on a cautionary note. With court closures still under way, and with so many unknowns, proactive and diligent scrutiny must be maintained on how the bill's provisions are working in practice. Court closures were decided on without consulting Parliament and, although there is now a commitment to involve members in the decisions, that lack of consultation is an unhappy precedent that should not be repeated.

Perhaps the cabinet secretary can, in his closing remarks, further clarify how the Government intends to increase the burden of cases being heard in the sheriff courts while simultaneously advocating a policy of court closures.

17:44

**Elaine Murray:** I, too, start by thanking the clerks and the witnesses. I particularly thank witnesses who took the trouble with people such as me, who do not have a background in the justice system, to illustrate things to us and to take us to courts to ensure that we understood the issues that we were discussing.

In my opening speech, I rehearsed some of the changes that were made to the bill at stage 2 to address stakeholders' concerns. Like others, however, I repeat that we still have concerns—not so much just about the wording of the bill or the principles behind it, but in particular about whether there is sufficient capacity to adequately resource the changes that it will bring into effect.

As I said, there was significant disagreement about the number of cases that will be transferred from the Court of Session to the sheriff court. I mentioned the difference between the Government's estimate and the estimates of organisations such as the Association of Personal Injury Lawyers. We will see who is right. We do not know at the moment. If the Association of Personal Injury Lawyers turns out to be right, we will have to ask what will be done to address the situation.

Malcolm Chisholm mentioned the potential loss to the Scottish Court Service of £1 million of fee income. If that comes to pass, issues will also have to be addressed there.

Alison McInnes made points about the transfer of cases between the courts. There is to be one

specialist personal injury court sitting in Edinburgh, although there may well be specialist personal injury sheriffs available at other courts. The Government's figures state that the average annual number of personal injury cases initiated in the Court of Session over the past three years was 1,855. If 70 per cent of those are going to change, it is anticipated that, when the bill is fully implemented, 1,300 personal injury cases a year will transfer to the sheriff court.

I do not think that that includes cases that are below the exclusive competence but are remitted to the Court of Session because of complexity or the need for equality of arms, so the figure might be lower than that, and admittedly many cases will settle before coming to court, as they do in relation to the Court of Session. However, there could be 25 personal injury cases coming in to the new specialist personal injury court each week, and at first that court will have only two specialist sheriffs. That raises concerns as to how cases are to be handled.

The Government's figures also suggest that at least 227 other cases—commercial, family and ordinary—could be transferred to the sheriff court. Mr MacAskill's letter in which he describes amendments to the financial memorandum in the light of the stage 2 changes suggests that that figure is an underestimate. We were told that 27 per cent of commercial cases and 25 per cent of ordinary cases had been recorded as having no value, but actually have a "sum in the alternative"—I have absolutely no idea what that might be—which suggests that a portion of those cases will also transfer.

People say that there will not be a tsunami of cases, but it looks as if there is potential for a fair number of cases to come through.

The other side is that the Court of Session stands to lose 42 per cent of its business, which suggests that it could be rather underemployed. I do not know a lot about judges, but I imagine that they have contracts and are still entitled to be paid, so I question what the efficiency savings will be. The Government believes that 85 per cent of commercial cases in the Scottish courts system will remain with the Court of Session and it hopes that additional commercial cases will be attracted to the Scottish system, but I have not seen any evidence for its optimism on that issue.

Malcolm Chisholm made another important point about the Aarhus convention and the need for the introduction of environmental tribunals. That was mentioned when we discussed the Tribunals (Scotland) Bill. At that time, we were informed that the Minister for Environment and Climate Change had advised the Rural Affairs, Climate Change and Environment Committee that he intended to bring in legislation on an

environmental tribunal, but things have gone quiet since then. I repeat the question that Malcolm Chisholm posed in his speech. When is that going to happen? It appeared to be a manifesto commitment by the Government and we have had a minister saying that he intends to do it, yet we have less than two years of the current session of Parliament remaining. Perhaps, when we are eventually told about the legislative programme for this year, we will find that there is to be an environmental tribunal. One can maybe hope so.

As far as the burdens on sheriff courts are concerned, we have heard many reassurances from the Lord President, the Scottish Court Service, the sheriffs principal and the Scottish Government that everything is going to be fine on the night—that the resources will be in place and the volume of build-up will be gradual. We all hope that that is true. I am sure that they hope that it is true and that they intend that it will be so, but we also hear from our constituents about congestion in the courts.

We hear about people turning up at court only to be turned away because no sheriff is available to hear their case. We hear about family law cases, which involve the care of children, being dragged out because of a lack of capacity in the courts.

We also know that the process of closing sheriff courts has not been completed. We have been told of delays in that regard. I mentioned the recent report about Dumfries sheriff court, and we know about problems at Hamilton. Phase 3 of the programme, which includes the sheriff courts at Dingwall, Duns, Peebles and Haddington—Haddington is a busy sheriff court—is scheduled for January. Those closures have not yet happened; what pressure will they bring to bear on the courts in Edinburgh, which we know are already very busy?

The Justice Committee has agreed to look at the courts service as part of its scrutiny of the budget this year, which should help to identify some of the problems. However, if serious resourcing issues emerge, the committee's scrutiny will have come too late to influence the bill.

My amendments on reporting and the commencement of sections 39 and 70 were unsuccessful. Policy is the responsibility of Government; ensuring that adequate resources are available to implement policy decisions is also the responsibility of Government. I am disappointed that Parliament did not take forward those responsibilities. We will support the bill at decision time tonight, but we expect the Government to ensure that its provisions do not cause detriment to court users.

17:51

**The Minister for Community Safety and Legal Affairs (Roseanna Cunningham):** I thank members for their comments during the debate, most of which were constructive, and I acknowledge the concerns that members expressed. We take due note of those concerns.

Central to the bill are the two important objectives of making justice more accessible to more people and lowering the cost of getting justice. The proposals in the bill will make a tangible and positive difference in both respects.

We received broad support from advocacy and consumer groups, solicitors firms and the judiciary for the concepts and proposals that were set out in the consultation on the bill. Even organisations that expressed concern about certain aspects of the bill, such as the Faculty of Advocates and the STUC, have expressed general support for the bill's overall aims. I think that such support was reflected in the comments of Opposition spokespeople—in general terms, members support the overall aims of the bill.

I will briefly expand on what the cabinet secretary said about complex cases. The committee heard evidence from a number of stakeholders on the matter. It is important that we get the approach right in the bill, as I think that we have done. We have made improvements to the bill, as a result of debate and discussion, which will ensure that where cases are complex there will be the ability to access appropriate legal representation.

**Gil Paterson (Clydebank and Milngavie) (SNP):** Sufferers of asbestos-related conditions have had to fight all the way, particularly against insurance companies, for proper compensation. The cabinet secretary and this Parliament have been at the forefront of that battle. Given that Sheriff Principal Taylor said that counsel will be available in asbestos cases, whichever court the case is heard in, is there an implicit right to counsel in asbestos cases?

**Roseanna Cunningham:** We have given repeated reassurances in respect of asbestos cases. It is our expectation that the overwhelming majority of asbestos cases will continue to have counsel. It is difficult to envisage an asbestos case in which counsel would not be arguing. I will come back to asbestos cases, because the issue is important in the context of this debate.

We want to ensure that there is access to appropriate legal representation in complex cases. However, the changes in the bill reflect an acknowledgement that it is not up to the Government or even parliamentarians to decide what is or is not a complex case. Instead, the bill



quite rightly provides the necessary flexibility for the courts to decide in individual cases.

We have enshrined the principle that sheriffs need to have regard to the resources of each of the parties when granting sanction for counsel. I think that we can safely say that the approach enshrines the principles of fairness and equality that Sheriff Principal Taylor espoused when he made his recommendations.

We have acknowledged that we needed to provide more flexibility in relation to the ability to bring cases in the personal injury court, and we have responded to concerns about the tests on remit, to enable genuinely complex cases to be remitted to the higher courts.

I would like to take a few moments to look forward to what we envisage if the bill is successfully passed, as I hope that it will be.

As members will be aware, the bill is one of the key planks in the making justice work programme. We will work together with the Scottish Court Service, the Judicial Office for Scotland, the Scottish Legal Aid Board and other justice partners to ensure that the measures in the bill are implemented in a timely and appropriate fashion. I know that the Lord President is keen to see the reforms that he recommends take shape swiftly. We will work with our partners in monitoring progress to ensure that sufficient resources are in place to deliver the key measures in the bill.

My colleague Gil Paterson raised the issue of asbestos cases. A number of members have, understandably, raised that issue throughout the afternoon. Asbestos cases can be complex, of course. We expect that those cases will continue to be heard in the Court of Session. If not, they would almost certainly merit sanction for counsel; it would be a very unusual asbestos case that would not. The cases already in the Court of Session before the exclusive competence is raised will see out their natural life there. Complex cases will also be able to be remitted to the higher courts under the legislation.

The changes that we have made mean that the equality of legal representation of both sides in a dispute will be taken into account by the sheriff. The circumstances that my colleague Christine Grahame described—when she began as a very new lawyer and confronted an advocate on the other side—would be an issue for the sheriff to consider when he was looking at a request for sanction. That will enshrine in law the principles of fairness and equality from Sheriff Principal Taylor's recommendations.

A number of members have raised issues that come under the category of costs, savings and budget. The committee noted that a substantial budget has not been set aside for courts reform,

but the reforms are about a reorganisation of the courts' existing resources as well as doing things in the most efficient way possible.

I refer to the specific point that Malcolm Chisholm raised. The £10,000 figure in the financial memorandum is to cover updates to existing systems for implementation. However, the member is correct, in that a larger IT project is being undertaken, irrespective of the specific reforms in the bill. That larger project is rightly the responsibility of the Scottish Court Service.

A number of other members have talked about the impact of court closures on various business volumes. The current programme of court closures was approved by Parliament, and it results in the redistribution of 5 per cent of sheriff court business to other courts. As I stated earlier, there will not be a sudden transfer of the existing cases from the Court of Session into the personal injury court; rather, there will be a gradual building of workload.

Eric McQueen from the Scottish Court Service told the committee that the exclusive competence will not be raised until the personal injury court is ready to receive cases. It should be remembered that, overall, the civil case load in Scotland continues to fall. The latest statistics from our civil law statistics in Scotland show a 41 per cent decline in civil actions from 2008-09 to 2012-13.

We have not yet consulted on the specific point that Malcolm Chisholm, John Finnie and Elaine Murray raised on the setting up of an environmental tribunal or court, because we think that it is appropriate that the significant programme of reforms to the civil justice system should come into effect before we consider with stakeholders the need for an environmental court or tribunal. Those reforms include protective expenses orders, the Regulatory Reform (Scotland) Act 2014 and, indeed, the Courts Reform (Scotland) Bill. We wanted to ensure that all that was in place before we went back to stakeholders to talk about what extra might be needed.

We have a role to play in ensuring that Scotland's court services are first class and efficient and that they provide access to justice for the people of Scotland. I believe that the reforms will significantly improve the administration of justice in our courts, improve the experience for users, and deliver a civil courts system that is fit for the 21st century, not only on paper but in reality.

Lord Gill has stated that our civil courts system is "slow, inefficient and expensive". He recently reiterated that the reforms are "50 years overdue". By passing the bill, we will be saying that people should not pay over the odds to litigate their cases; that they should not experience

unnecessary delays to their cases; and that they deserve a system that secures a just resolution to their issues in a reasonable timeframe.

For all those reasons, I commend the bill to the Parliament.

## Motion without Notice

18:00

**The Presiding Officer (Tricia Marwick):** Before we proceed to decision time, I inform members that the subject of tonight's members' business debate in the name of Marco Biagi, on Edinburgh's housing policy 10, is now the subject of active proceedings in the Court of Session.

At the time that the business managers considered nominations for this week's business, there were no active court proceedings. That changed as of yesterday.

I have consulted the member in charge and all the business managers, and I am minded to accept a motion without notice from the Minister for Parliamentary Business to postpone tonight's members' business debate to a later date.

*Motion moved,*

That, under Rule 7.5.1, the Members' Business debate on motion S4M-10800 in the name of Marco Biagi be postponed.—[*Joe FitzPatrick.*]

*Motion agreed to.*

## Decision Time

18:00

**The Presiding Officer (Tricia Marwick):** There is one question to be put as a result of today's business.

The question is, that motion S4M-11101, in the name of Kenny MacAskill, on the Courts Reform (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament agrees that the Courts Reform (Scotland) Bill be passed.

[*Applause.*]

*Meeting closed at 18:01.*

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

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