



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 2 June 2015

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JUSTICE COMMITTEE
19th Meeting 2015, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Elaine Murray (Dumfriesshire) (Lab)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)
*Jayne Baxter (Mid Scotland and Fife) (Lab)
*Roderick Campbell (North East Fife) (SNP)
*John Finnie (Highlands and Islands) (Ind)
*Alison McInnes (North East Scotland) (LD)
*Margaret Mitchell (Central Scotland) (Con)
*Gil Paterson (Clydebank and Milngavie) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Michael Matheson (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Tracey White

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Justice Committee

Tuesday 2 June 2015

[The Convener opened the meeting at 10:31]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning and welcome to the Justice Committee's 19th meeting in 2015. I ask everyone to switch off mobile phones and other electronic devices, as they interfere with broadcasting even when switched to silent. We have received no apologies.

Agenda item 1 is a decision on taking business in private. Does the committee agree to consider in private item 4, which is consideration of witnesses in relation to the Community Justice (Scotland) Bill, and item 5, which is consideration of the evidence received on the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill?

Members *indicated agreement.*

Prisoners (Control of Release) (Scotland) Bill: Stage 2

10:31

The Convener: Agenda item 2 is stage 2 proceedings of the Prisoners (Control of Release) (Scotland) Bill. I welcome to the meeting Michael Matheson, Cabinet Secretary for Justice, and his officials: Philip Lamont, head of criminal law and sentencing unit; and Fraser Gough, from the parliamentary counsel office.

Members should have their copies of the bill, the marshalled list and the groupings of amendments for today's consideration. They should also have a correction slip for the marshalled list, which refers to amendment 3. The correction is nothing enormous; it is needed simply because amendment 3 refers to

"section 1(1A) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 Act".

All that is corrected is the repetition of the word "act"—no dynamite there.

Section 1—Restriction on automatic early release

The Convener: Amendment 1, in the name of the cabinet secretary, is grouped with amendments 1A and 2 to 4.

The Cabinet Secretary for Justice (Michael Matheson): Good morning.

Amendment 1, which provides for the expansion of the policy to end for all future long-term prisoners the current entitlement to automatic early release at the two-thirds point of their sentence, has been lodged in response to comments at stage 1 that it was not clear why the bill as introduced made a differentiation between sex offenders and non-sex offenders. We consider our amendment to be an appropriate response to the issues that were raised at that time.

Amendment 1 also provides for a minimum six-month period of licence conditions supervision for all long-term prisoners leaving custody. During stage 1, it was suggested that an unintended consequence of ending certain prisoners' entitlement to automatic early release was that some prisoners would serve their entire sentence in prison and then leave custody with no licence conditions in place to help supervise them in the community. Such a situation is commonly referred to as "cold release".

We discussed the issue at some length last week and it is important to stress that the need for the operation of a mandatory period of licence conditions supervision will apply only to a limited

proportion of long-term prisoners. That is because many long-term prisoners will continue to receive Parole Board for Scotland early release or will have an extended sentence in place. For example, we know that nearly half of sex offender long-term prisoners and approximately one fifth of other long-term prisoners have an extended sentence. We also know that a significant proportion of long-term prisoners, especially non-sex offenders, receive discretionary release. For such prisoners, a period of supervision will always operate on release from custody through the imposition of licence conditions. However, long-term prisoners not in that position will be subject to this six-month period of licence conditions supervision.

It is important to explain what that means for sentences. A sentence contains a period of time that must be served in custody at the start of it, which is half of it; a period of time that must be served under supervision in the community at the end of it, which will be the last six months; and the period from the halfway point to the last six months, which will be served either in custody or under supervision in the community if the prisoner is given parole or early release. In essence, the sentence is a custodial and supervisory one.

We are clear that the mandatory period of supervision should be part of a long-term prisoner's sentence to ensure effective enforcement of the conditions of the mandatory supervision period, which will include the ability to recall a prisoner to custody. As with the current system, it will be for the Parole Board to determine the licence conditions.

Various views have been expressed about the length of the minimum supervision period. As I have explained, the minimum supervision period will affect only a limited proportion of long-term prisoners; supervision will last much longer for many long-term prisoners with an extended sentence and those who receive discretionary early release. With that in mind, we consider that the length of mandatory supervision should be six months.

As members will be aware, a considerable amount of work goes on inside prisons to plan for the release of prisoners. For long-term prisoners, that includes the direct involvement of criminal justice social work services inside prison to consider those prisoners' needs as they become eligible to be considered for release. That work seeks to ensure that the prisoner is as ready as they can be for release and includes consideration of matters that are key to successful reintegration into the community such as housing, welfare and work needs. All of that work focuses on the individual prisoner's needs at that particular point and is done in prison ahead of release. We think, therefore, that the minimum period of supervision

that is necessary for a prisoner who is serving close to four years and for a prisoner who leaves after eight years in custody, for example, are likely to be similar, given that both are long periods of time in which to be incarcerated and given the additional preparatory work that is done in prison with all long-term prisoners before release.

We do not support Elaine Murray's amendment 1A, which seeks to set the supervision period at 12.5 per cent of the sentence. We do not consider that for someone who is serving an eight-year sentence, for example, supervision should last twice as long as that for someone with a four-year sentence. That would be the effect of Elaine Murray's amendment.

We have considered the evidence that was presented during stage 1, which highlighted that the initial six to 12 weeks following release are generally the most crucial for individual prisoners. During those first weeks and months after leaving custody, prisoners have to re-establish themselves in communities, and that is when challenges with regard to housing and getting a job will often be most acute. A mandatory supervision period would therefore be most appropriate at that point.

The Scottish Government considers that a period of six months strikes an appropriate balance to ensure that, on the one hand, mandatory supervision is in place for the crucial first few weeks and months following a long period of incarceration and that, on the other, licence conditions are not left hanging over a prisoner too long as they leave custody and seek to reintegrate into the community. We consider that, by the end of the six-month period, prisoners will have had a sufficient opportunity to lay down roots in the community and will have established their housing, welfare and work under close statutory supervision. It is important to stress that non-statutory support will continue once the six months have elapsed, with community reintegration links laid down. We also consider that a prisoner assessed as dangerous should remain in custody as far as possible into their sentence before a period of supervision in the community operates.

On that basis, we do not support Elaine Murray's amendment 1A, and we ask the committee to support amendment 1 instead. If amendment 1 is agreed to, it will end automatic early release for all future long-term prisoners with an extended sentence and restrict it to the last six months of the sentence for those without an extended sentence.

Amendment 2 operates in tandem with amendment 1. The bill as introduced would have left it to subordinate legislation to make provision for how reforms to the early release system would affect existing prisoners. The Delegated Powers and Law Reform Committee expressed concern

about whether that would give members an adequate opportunity to scrutinise the important question of how the reforms would affect prisoners serving sentences at the time of commencement. Amendment 1 therefore makes it clear that the reforms do not affect prisoners who are already serving sentences when the new regime comes into force, and amendment 2 removes the power for ministers to include savings and transitional provisions in subordinate legislation, as that job will be done if amendment 1 is approved. I am pleased that, at its meeting last week, the Delegated Powers and Law Reform Committee welcomed what the Government has done in that respect.

Amendment 3 is a minor amendment that allows for the commencement order to add in the specific date when provisions are brought into force so that they appear in the relevant section of the Prisoners and Criminal Proceedings (Scotland) Act 1993, thereby aiding users' understanding of that act. Finally, amendment 4 seeks to make a minor change to the bill's long title.

I move amendment 1.

Elaine Murray (Dumfriesshire) (Lab): I lodged amendment 1A following last week's evidence session on the bill with Professor Tata and Professor McNeill, both of whom felt that six months was insufficient for a supervisory sentence for people who had served long-term sentences. We should bear in mind that a prisoner serving those six months might already have been in prison for eight years, for example, by the end of their sentence and that the Parole Board for Scotland would previously have assessed that it was too risky to release them earlier. It seems to me that it would be disproportionate for that person to be supervised under licence in the community for a period of only six months, particularly when a prisoner who had served a longer sentence might be more institutionalised and might or might not have gone through programmes, depending on whether they had accepted or rejected the support that they were offered in prison.

The professors at last week's evidence session argued that the supervisory part of the sentence should be at least 25 per cent. As you will see, I have not gone as far as suggesting that figure in amendment 1A; the 12.5 per cent that I suggest is not particularly evidence based, but it has been suggested because, cabinet secretary, I believed that you must have had some evidence for thinking that six months was appropriate for somebody who had served a four-year sentence. A supervisory period of 12.5 per cent of their sentence would allow someone serving a four-year sentence to serve the final six months under supervision in the community, but the period would

increase proportionately for longer sentences. Such an approach would reflect the institutionalisation of prisoners and the fact that somebody serving a long sentence had probably committed a more serious crime and required more effort in rehabilitation. It would also take into account that the very fact that the person had not been released on parole meant that they were probably a particularly risky prisoner who required a longer period of supervision in the community.

As I have said, I have introduced the proposal for discussion. I am pleased that the cabinet secretary used the phrase "custodial and supervisory" with regard to the six-month period, because I think that we need to change the terminology on sentencing to ensure that we are talking not about automatic early release but about sentences that have two parts. I think that in amendments 1 and 1A, the cabinet secretary and I are recognising that we need to take a more sophisticated attitude to sentencing. However, I think that, in its recommendation in the stage 1 report on the bill, the Justice Committee thought that there would be a proportional element to the community supervision to reflect the length of time that somebody had served and the severity of the offence that they had committed. I think that a blanket six-month period will not do that.

I move amendment 1A.

John Finnie (Highlands and Islands) (Ind): I agree with Elaine Murray's view that a blanket six months will not fit all sentences. If I have noted it correctly, cabinet secretary, you talked about criminal justice social work activity in prisons and individual prisoners' needs, and you have also said that the initial six-week period will be the most testing. You will be familiar with the discussions that we had at last week's meeting; perhaps you will also be familiar with my use of the term "risk assessment" and how such assessment relates to an individual prisoner. It has long been established that treating people equally does not mean needing to treat them the same, and that six-week period will be far more compelling for someone who does not have housing than for someone who has served a long period in prison and who has housing and a more stable background to go back to.

I am reassured when you say that non-statutory support will continue after the six months, but can you give me any more reassurance on this matter? The trouble that I have with the six-month period that you propose, or with any version of it, is that it does not appear to take account of individual needs, which will vary. What reassurance can you give me that the assessed needs of someone who has been released from prison will be met if we agree that the period should be six months?

10:45

Roderick Campbell (North East Fife) (SNP):

The important point to remember is that there are prisoners other than the prisoners who will be affected by the bill: prisoners who will be sentenced to a period of extended supervision in accordance with their original imprisonment as set by the court; and all those prisoners who will have the opportunity of trying to obtain discretionary release from the Parole Board.

One thing that has been slightly overlooked is the possibility that the new legislation will provide people with an incentive to co-operate and to try to obtain discretionary release. I accept, however, that there will still be people who will fall through the net and who will not qualify for discretionary release.

I listened carefully to what Elaine Murray said, and I respect the intellectual argument that she is making—and, indeed, that made by the distinguished academics who spoke on the matter. However, I simply do not accept the argument that the longer someone has been in prison, the longer they need to be supervised in the outside world.

I agree that, in the period following release, people ought to be provided with the sort of proactive support in relation to accommodation, employment, education and benefits that Dr Barry talked about when she gave evidence on 13 January. However, I do not think that a proportionate timetable is needed for that.

Colin McConnell, the chief executive of the Scottish Prison Service, said in evidence:

“the first six to 12 weeks after release can be extremely risky, as people try to establish links and support in the community space.”—[*Official Report, Justice Committee*, 20 January 2015; c 19.]

That was accepted by the cabinet secretary. Even Fergus McNeill said last week:

“The cabinet secretary is absolutely right that the first six weeks to three months are the critical period for establishing the basics for successful resettlement, when reintegration must be achieved.”—[*Official Report, Justice Committee*, 27 May 2015; c 3.]

It is fair also to mention that, in February, Professor McNeill said:

“for public safety reasons, and for reasons to do with the right of reintegration, it is critical that the system combines custodial sentences with post-release support.”—[*Official Report, Justice Committee*, 24 February 2015; c 40.]

I accept what the cabinet secretary has said regarding the terminology in the bill. I also accept that there is an argument that individuals might become more institutionalised the longer that they are incarcerated in prison. However, I do not think that that should somehow lead to a proportionate timetable.

Let us bear in mind the Scottish Prison Service’s plans to increase the mentoring of prisoners approaching release. As we heard in evidence from Eric Murch, it also plans to increase the number of throughcare officers to 42, and those officers will be targeted in particular at offenders serving sentences of four years or more.

All those factors, together with the cabinet secretary’s comments on the continuation of non-statutory support after six months, incline me to the view that the cabinet secretary has got the balance about right.

Margaret Mitchell (Central Scotland) (Con):

Cabinet secretary, you emphasised the point that the proposed measures will affect only a small number of prisoners. Given that they are some of the most difficult prisoners, what does the proposed provision in amendment 1 do that the original provisions on release at the two-thirds point did not do, aside from create the hope that the measures will be an incentive for them to engage all of a sudden? Your proposal does not abolish automatic early release. Arguably, it leads to more risk in the community, as difficult and potentially dangerous prisoners will be supervised less, over a shorter length of time. There is also the question of a possible human rights challenge in cases where prisoners are not given the opportunity or sufficient time to prove that they are not a risk to the community.

Although a period of six months covers the initial period when, we are told, breaches take place most frequently—and when people deal with housing and perhaps employment—it does not mitigate risk, which can still exist and which it would be dangerous to underestimate. I am genuinely puzzled as to what the bill will actually achieve.

The Convener: I will give the cabinet secretary the opportunity to come back on all those points when he winds up. Is that what you wish, cabinet secretary? I think that that is probably the best way to do it.

Michael Matheson: I will try my best to cover as many of the issues as I can.

The Convener: We know that you will try your best.

Christian Allard (North East Scotland) (SNP):

I know that the cabinet secretary talked about cold release, but there may be a point that has not been talked about yet: why the mandatory period should come into force. Evidence that we received showed an increase in the numbers of prisoners opting to max out their sentences. That is a very important point. We have to address not only the six-month period to stop cold release, but this new thing that we did not know about—the maxing out of sentences by prisoners. The amendments that

the cabinet secretary has brought in front of us address those points.

Regarding the length of the supervision period, I was pleased to hear Elaine Murray say that her proposal is not evidence based; it would be difficult to find an evidence base for 12.5 per cent or 25 per cent. From my perspective, I was happy to hear Sacro talk about three months, because three months is what we talked about, with the first weeks and the first month of supervision on licence being the most important. I was happy with three months, but I am also happy to go with the cabinet secretary extending the period to six months.

I agreed with John Finnie when he talked about proportionality. Proportionality is not so much about the length of sentence that someone is given but about the approach being more individually based. I was quite happy with three months, but I am happy with six months for long-term prisoners. Let us not forget that it is not all long-term prisoners who will be under supervision, but only those who have not been given discretionary early release or who do not have extended sentences.

Maybe the cabinet secretary can reflect on what John Finnie proposes. I do not think that it should be on the face of the bill, but maybe there should be an individual approach and an understanding that it is not proportionality or the length of sentence but the quality of the work done in the six months that should be regarded as important. It is about the individual more than anything else.

Gil Paterson (Clydebank and Milngavie) (SNP): I would like to speak on Elaine Murray's amendment 1A. I see it as another form of automatic early release. It simply changes the parameters.

The proposal can be measured in relation to the time served. If my calculation is right, a five-year sentence would equate to 142 days early release, and a 14-year sentence would be 398 days early release. It seems to me that, in effect, the most dangerous people would get the most benefit in terms of serving a shorter sentence. That seems wrong.

To be honest, either we want to end automatic early release or we do not. I think that the amendment's approach would be just another form of automatic early release. For that reason I will not support amendment 1A.

Alison McInnes (North East Scotland) (LD): I too want to speak to amendment 1A. In our stage 1 report, we spoke about the need for a mandatory period of supervision, and I was grateful that the minister listened and came back with a suggestion of six months.

All that we spoke about in the stage 1 report was whether the supervision period should be three months, six months or a year. The issue of proportionality, as Elaine Murray addresses it, arose only last week when we took some evidence—granted, it was vociferous evidence.

The figure of 12.5 per cent seems to have been plucked from the air. Elaine Murray said that the figure is not particularly evidence based, and therefore it is hard to support. She has not addressed the additional cost of a longer period of supervision, so I am not sure about the impact of that.

I am aware that the Scottish Human Rights Commission has expressed concerns about unduly long periods of supervision on licence and has talked about the restrictive nature of supervision, its interference with daily life and the need for it to be proportionate. We have heard from other people that the time on licence is a very stressful time and that we should be proportionate.

On the basis that it has not been particularly well evidenced, I cannot support amendment 1A.

The Convener: I very much support what Alison McInnes has just said. I appreciate that the key figure of 12.5 per cent is not evidence based. Our evidence suggests that a period of six to 12 weeks is required, since that is the danger time for people who are being released. This is to do with rehabilitation and supervision, and the period that is required for that; it is not a proportion of the sentence. If our evidence shows that six to 12 weeks is the danger zone, six months satisfies that. My problem is that, as Alison McInnes said, the figure has been plucked from the air. We had no evidence on 12.5 per cent, and therefore I cannot support the measure.

I now ask the cabinet secretary to wind up.

Michael Matheson: Thank you, convener. I am grateful to members for their comments on this matter, which we have discussed at previous committee meetings.

During Elaine Murray's contribution, I was conscious that the witnesses who spoke last week will not be satisfied with either my proposal or her proposal, given the position that they have taken on automatic early release. I recognise their view, but I am conscious of other evidence that the committee has received, namely that the six to 12 weeks after a prisoner is released are critical in helping to reintegrate them back into the community and to re-establish them. In earlier evidence, the committee heard from Sacro, which thought that three months was a reasonable period in which to undertake that work; others thought that it should be six or nine months, or possibly as long as a year. There are a variety of views about the most appropriate length of time,

and we have tried to strike a balance, based on the evidence that the committee heard during stage 1.

Some specific issues have been raised. John Finnie made the important point that this is much more about the quality of the supervision period rather than the quantity of supervision. That will be key in securing the reintegration of prisoners back into the community. The ministerial group on offender reintegration, which I chair, is looking at how we can improve the joined-up nature of what goes on in prison and in our communities, in order to build bridges more effectively. That involves housing, welfare and employment. As committee members will be aware, a range of measures can be taken in relation to long-term prisoners before they move into the community. For example, some may be granted release in order to start an employment opportunity, while others could move to the open estate if that is viewed as the most appropriate way to manage their move towards release from the prison estate and their reintegration back into the community.

In considering the timeframe at the end of a sentence, it is important to realise that the approach is part of the work that has been taking place within prison. Prisoners' particular needs may have been assessed at that time. That is why the individual approach is extremely important and why the Scottish Prison Service now places so much emphasis on its throughcare officers, who have responsibility for building up a picture of what is needed for each individual prisoner and for putting building blocks in place to manage their offending behaviour and their move back into the community more effectively. There is more that we can do, and the ministerial group that I chair is very focused on how we can achieve that more effectively in future. Some of the pilot work that I have mentioned previously to the committee on housing and creating those links is about exactly that type of approach.

Margaret Mitchell was not entirely sure what my amendment 1 does that the bill does not. The committee has heard evidence about those crucial six to 12 weeks, and amendment 1 creates a mandatory period of community supervision to manage those prisoners back into the community.

The concern that the committee heard from a range of stakeholders was about the risks associated with cold release—prisoners being released back into the community with no period of mandatory supervision. The bill seeks to ensure that there is that period of mandatory community supervision so that, if there are concerns and if the person finds themselves struggling, there is a structure in place to address the situation. In my view, that is about trying to manage a risk much more effectively. If there is a risk to the

community, it is that there is no support for that individual and that they may end up committing another offence.

I would prefer to provide the right type of support in order to minimise that potential risk in the community. That is why it is extremely important to have that minimum period, based on the evidence that the committee has heard from a range of stakeholders, at the end of a prisoner's sentence, to support them and to reintegrate them back into the community. As I have said, we believe that a six-month period is a reasonable period of time to get that right and provide the right quality of support.

11:00

The Convener: Thank you, cabinet secretary. I invite Elaine Murray to wind up and to indicate whether she intends to press or withdraw amendment 1A.

Elaine Murray: First, I will address the point that Gil Paterson made. He said that amendment 1A would not end automatic early release. If he wants to look at it from that angle, neither my amendment nor the cabinet secretary's amendment 1 would actually end automatic early release. Either someone is automatically released six months before the end of their sentence or they are released when they have 12.5 per cent of their sentence left to serve. If we look at it that way, neither amendment ends automatic early release. I am suggesting that we move away from that sort of interpretation and look at the balance between the custodial part of the sentence and the community part of the sentence to see what produces the best results.

I heard what John Finnie said about assessment of individual need. The only problem with that is that the assessment may be rejected. A prisoner may get out only six months before the end of a long sentence, and if they reject the requirement for additional support thereafter, at the end of the six-month period, there is nothing to compel them. During those six months, they are compelled to accept assessments, but they are not compelled after that, so if somebody needs a longer period of support there is no guarantee that they will get it.

I used the figure of 12.5 per cent to stimulate debate. I selected it because it equated to six months of a four-year sentence, and I presumed that the cabinet secretary had some evidence to support his view that six months was the appropriate period of time for a four-year sentence. The figure was chosen on that basis but, as the cabinet secretary said, the professors who came to speak to us last week would be satisfied with neither amendment 1 nor amendment 1A, because they were arguing for a

period equivalent to at least 25 per cent of a sentence. To be honest, that would not be terribly different from the situation that we are in at the moment. In their evidence, the witnesses made some points that go beyond the scope of the bill but which also need to be considered.

I am content not to press amendment 1A at this stage, having listened to what colleagues have said. I hope that, before stage 3, we will have the opportunity to receive evidence from other stakeholders that may inform any amendment that I bring forward at that stage.

Amendment 1A, by agreement, withdrawn.

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
 Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Campbell, Roderick (North East Fife) (SNP)
 Finnie, John (Highlands and Islands) (Ind)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 McInnes, Alison (North East Scotland) (LD)
 Murray, Elaine (Dumfriesshire) (Lab)
 Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions

Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the amendment is: For 8, Against 0, Abstentions 1.

Amendment 1 agreed to.

Section 1, as amended, agreed to.

Section 2 agreed to.

Section 3—Commencement

The Convener: Amendment 5, in the name of Margaret Mitchell, is in a group on its own.

Margaret Mitchell: Despite the cabinet secretary's valiant attempts to justify the bill, the evidence that we heard at stage 1 and the supplementary evidence that we heard following the Scottish Government's stage 2 amendments really only confirm that the bill is not fit for purpose. The original policy memorandum states:

"The Bill ends the system of automatic early release for certain prisoners in the interests of protecting public safety."

The Government's amendments at stage 2 would not end automatic early release, hence the proposed change to the long title to say that it is a bill to

"amend the rules as to automatic early release of long-term prisoners".

The cabinet secretary's amendments merely replace automatic early release at the two-thirds point of a sentence with automatic early release six months before completion of that sentence. That has proportionality implications which, in turn, may well lead to a potential human rights challenge. The Government has not adequately made the case for why it rejected the proportionate approach. Six to eight weeks is the key period for reoffending. A period of up to six months allows a prisoner to be resettled and to look at housing and benefits, but it does not address the potential risk to the public from the release of what could be a very difficult prisoner, and nor does the bill, even after being amended, provide the public with clarity on sentencing or improve public safety.

Given all that, it is hard to work out what the Government is attempting to achieve with the introduction of the bill. The inevitable conclusion is that this was bad legislation to begin with and that the Scottish Government's attempt to address stakeholders' extensive and legitimate criticisms at stage 2 have muddied the waters further and made things worse.

Furthermore, given the extremely narrow scope of the bill, it is not possible to alter it to ensure that it becomes fit for purpose. I contend that that poses an insurmountable problem for us as a scrutiny committee, which is why I have lodged this probing amendment—it is probing at this stage—which seeks to delay commencement of the bill. *[Interruption.]* I notice that people are laughing at that, so perhaps I should not have a probing amendment. Maybe I will consider it once I have heard the response. This is far too serious to be dealt with flippantly, Mr Campbell.

The Convener: I think that that is unfair. Just proceed, Margaret. You are doing a grand job—go for it.

Margaret Mitchell: Amendment 5 seeks to delay the commencement of section 1 until the day after the Criminal Justice (Scotland) Bill receives royal assent. It would provide the committee and the cabinet secretary with breathing space to look at the criminal justice system in the round, including short-term sentencing, early release and associated recidivism rates. Crucially, it would also provide the opportunity for the thoughtful, helpful and constructive suggestions from Professor Tata, Professor McNeill and Dr Barry, which were sent to the committee following the professors' pertinent and forensic criticisms of the bill when they gave evidence last Wednesday, to be taken into account and properly considered.

The issue of automatic early release, which is confusing for the public and vexing for victims of crimes and their families, is far too important to

tinker with. It should be given the consideration that it deserves to get it absolutely right. I look forward to the cabinet secretary's response.

I move amendment 5.

Elaine Murray: I appreciate Margaret Mitchell's concerns, which are reflected in some of the evidence that we have received. However, there are two things that I am not really sure about. I know that the proposals were originally supposed to be amendments to the Criminal Justice (Scotland) Bill, but I am not sure that the rest of the Criminal Justice (Scotland) Bill interacts in any particular way with this bill. Amendment 5 would mean that this bill could not come into effect until the Criminal Justice (Scotland) Bill receives royal assent. To a certain extent, this bill was an add-on to that bill. I am not sure why, in terms of the Criminal Justice (Scotland) Bill, we would require to delay this bill.

The other thing is that if there are issues in this bill that we are still concerned about, I do not see how they can be addressed in the Criminal Justice (Scotland) Bill or that there is much that we can do about them during the passage of that bill. The issues that were raised by the professors and so on are probably for reflection on in future legislation rather than in the Criminal Justice (Scotland) Bill when it comes back to us in the autumn. I am grateful to Margaret Mitchell for lodging amendment 5 so that we can reflect on the issues, but I am not convinced that a delay in the commencement of this bill is required.

Roderick Campbell: I do not have anything to add to the points that Elaine Murray has made about delay.

The Convener: I am supportive of the bill because we have tackled the huge issue of cold release. The key for me is that we have management of rehab and supervision in the context of the prison and, more important, that that transition continues out in the community. For me, that will deal with the issues that were legitimately raised about the risk in the case of very long-term prisoners. At least now there will be a six-month period in which it will be mandatory for them to have supervision and rehabilitation. I do not want to see that delayed.

John Finnie: I do not support amendment 5, but I support the scrutiny role that the committee has. For the reasons that the convener has given, we have seen movement. In life, none of us gets what we want all the time, but given that, in a consensual way, we have got to the point where there has been movement by the Scottish Government, I think that we should commend the Government for that movement and commend the committee for its work—if, indeed, we can commend ourselves.

The Convener: You go and commend yourself, John, especially as you do not get everything that you want in life. We are already feeling sorry for you, so you get an extra muffin.

Gil Paterson: The committee has not mentioned the provisions in section 2, which I would not like to see delayed. The idea that someone can get released on a day when they cannot access any services is just madness.

The Convener: Yes, that is a good point.

Gil Paterson: That is an excellent section. A tidying-up exercise should have been done long ago and a lot of people—

The Convener: Well said. We had forgotten about that bit.

Margaret Mitchell: Convener, can I—

The Convener: We will come back to you when you sum up, Margaret. Sorry, Gil.

Gil Paterson: Thanks, convener. I do not interrupt anyone else. I do not blame you for that, convener.

A lot of people in really poor circumstances who need help will benefit from that simple, straightforward section of the bill.

The Convener: Margaret Mitchell will get the chance to sum up the debate. We will now hear from the cabinet secretary and I will come back to you, Margaret.

Michael Matheson: I have listened carefully to what Margaret Mitchell has said about amendment 5, which seeks to delay the commencement of these important reforms pending parliamentary approval of the Criminal Justice (Scotland) Bill and that bill receiving royal assent.

At present, there are no provisions in the Criminal Justice (Scotland) Bill relating to early release, and we do not see any reason for delaying commencement of the Prisoners (Control of Release) Scotland Bill, which is what would result from amendment 5 being agreed to. It is appropriate that any stage 2 amendments to the Criminal Justice (Scotland) Bill should be considered by the committee at stage 2. To amend the Prisoners (Control of Release) (Scotland) Bill to tie it in with that future legislation would be to pre-empt Parliament's consideration of the Criminal Justice (Scotland) Bill, and I do not believe that that would be appropriate.

It is worth noting that Margaret Mitchell's amendments to the Criminal Justice (Scotland) Bill would provide for a system of cold release for long-term prisoners, which is precisely what members of the committee have just voted against. In any event, Parliament will have the chance to consider Margaret Mitchell's

amendments when stage 2 of the Criminal Justice (Scotland) Bill takes place.

I have listened to what Margaret Mitchell has had to say on the matter, but we do not consider that there is any good justification for delaying this important piece of legislation and the contents of the bill until after the Criminal Justice (Scotland) Bill has received royal assent. On that basis, I ask the committee to reject amendment 5.

Margaret Mitchell: The point of information that I wanted to make in relation to Gil Paterson's comments is that section 2 would still be implemented if amendment 5 was agreed to.

The Convener: I understand that, but I thought that you could say that in your summing up.

Margaret Mitchell: Well, I thought that it was worth explaining exactly what the amendment would do.

There is some confusion about what amendment 5 proposes. It proposes a breathing space in what has been a very tight scrutiny period in which we have had to turn the bill upside down. The bill was bad to begin with and, although it has been improved slightly, it is still not fit for purpose.

As a scrutiny committee, we are dealing with one of the most important issues in the criminal justice system, and it is sensible and reasonable that we take advantage of a period of time, not least to look at the significant evidence that has been presented by the academics and by the two professors last week, who raised some very relevant points.

11:15

As for the Criminal Justice (Scotland) Bill, that will be tested. This amendment is a probing amendment, and I think that it is quite wrong to fixate on that. What is important is that this amendment would allow us the time until and during the consideration of that bill to look at where we are going with this bill. I firmly believe that the best way forward is to delay commencement of section 1 to ensure that there is the best possible outcome from scrutiny of the Criminal Justice (Scotland) Bill.

Not least, we must ensure that the period of mandatory supervision in the community is sufficient and that the practicalities are addressed and properly thought through, including housing, benefits and employment. Those things have not been addressed and, given past experience, I do not have a great amount of confidence that they will be addressed in throughcare in the future. There must also be adequate resources to ensure that essential criminal justice social work is in place, and it must be supported by a level of surveillance using all the modern technology that

is available in accordance with the assessment of risk. Those are important bits of the jigsaw that we should have time to consider in order to get the bill right.

I will not press amendment 5 today. I lodged it to air the issues. I hope that the cabinet secretary, who genuinely has a good track record on listening to concerns about legislation and proposals that were championed by his predecessor, will reflect on the advantage of delaying the commencement of section 1 and will support the proposal at a later stage.

Amendment 5, by agreement, withdrawn.

Amendment 2 moved—[Michael Matheson].

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

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McInnes, Alison (North East Scotland) (LD)
Murray, Elaine (Dumfriesshire) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions

Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 8, Against 0, Abstentions 1.

Amendment 2 agreed to.

Amendment 3 moved—[Michael Matheson].

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McInnes, Alison (North East Scotland) (LD)
Murray, Elaine (Dumfriesshire) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions

Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 8, Against 0, Abstentions 1.

Amendment 3 agreed to.

Section 3, as amended, agreed to.

Section 4 agreed to.

Long Title

Amendment 4 moved—[Michael Matheson].

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

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McInnes, Alison (North East Scotland) (LD)
Murray, Elaine (Dumfriesshire) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions

Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 8, Against 0, Abstentions 1.

Amendment 4 agreed to.

Long title, as amended, agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the cabinet secretary and his officials for attending. I will suspend the meeting for a couple of minutes.

11:18

Meeting suspended.

11:19

On resuming—

“Scotland’s National Action Plan for Human Rights”

The Convener: We move on to agenda item 3. As members are aware, John Finnie is our rapporteur on “Scotland’s National Action Plan for Human Rights”. I invite him to update the committee on his latest meeting with Professor Alan Miller, chair of the Scottish Human Rights Commission.

John Finnie: Thank you, convener. I do not know the extent to which you wish me to go into this. You have the clerk’s paper, but I can make some general comments.

I am very grateful to Professor Alan Miller, who is a very busy man, not just in respect of human rights in Scotland but, as you know, on the European and international stages, where he holds various positions. We discussed Scotland’s national action plan, which is the focus of a lot of the work of the Scottish Human Rights Commission.

In paragraph 5 of the clerk’s paper you will see that culture features in the SNAP. Paragraph 5 talks about

“Innovation Forums to identify opportunities to empower people to understand and use their rights”.

I know from engagement with some groups that historically people have not seen human rights as being particularly relevant to them within a variety of fields, such as health and social care, in which there can be issues with welfare, care homes, the right to dignity and simple things such as levels of hydration—fundamental human rights.

Last week we heard a ministerial statement on the historical child abuse inquiry, which the Scottish Human Rights Commission has been involved in. As you know, it is also a regular respondent to calls for evidence from this committee.

The SHRC has also been involved with the police service, which contributes to Scotland’s national action plan. Members will be aware that the SHRC has engaged on issues such as human rights training at the Scottish Police College. It is fair to record that there have been discussions on some of the issues in relation to stop and search and questions of proportionality. It is good that the SHRC can be seen as an honest broker in the scheme of things; people are willing to engage with it.

There has been planning for a disability summit in 2015 and we discussed the publication of a draft report and delivery plan. I provided some information on the work of the committee and the Justice Sub-committee on Policing in providing scrutiny of issues such as human trafficking and fatal accident inquiries.

I said on behalf of the committee that I would be very happy to keep in touch with Professor Miller on any emerging issues. It is fair to record that one of those emerging issues, regardless of where it sits at the moment, is the difference between the position of human rights in Scotland and their position in the rest of the United Kingdom, and the debate that is to be had on that.

I am happy to answer any specific questions.

The Convener: I do not know whether Dungavel falls within the SNAP. I and other members have raised in Parliament the issue of the failure to allow welfare checks on the condition of people detained, who after all are not criminals. It has also been raised by the trade unions—the Scottish Trades Union Congress and others. Does that fall in your discussions with Professor Miller? Does he have any remit there? Although technically Dungavel is a UK detention centre, it is on Scottish soil.

John Finnie: Indeed. We did not discuss that particular issue, but I am happy to engage with Professor Miller on it. Historically there have been particular issues about children and young people.

The Convener: That was dealt with, I recall, by the previous Commissioner for Children and Young People. Children are not detained there now.

John Finnie: Indeed. They are at Yarl's Wood, as I understand.

The Convener: Yes, but that is in England.

John Finnie: Only last week we saw a raid there involving children and UK Visas and Immigration. I am happy to discuss what role if any there is for the SHRC.

The Convener: I am talking about adults, because children are not detained at Dungavel anymore. We dealt a blow to that through the previous children's commissioner, who really took the issue on board. As she succeeded there, I wonder why, notwithstanding that it is a UK institution in Scotland, Professor Miller of the SHRC cannot do the same thing for adults. On the principle that such things were prevented previously, could people not be let in to see the welfare of the detainees?

John Finnie: I visited Dungavel in the past and I wrote to ask to visit again, but I was told that that was inappropriate. I can certainly speak to

Professor Miller about that. There is also the Equality and Human Rights Commission, which is the UK body. I am happy to pick up on that issue and report back.

The Convener: I do not know whether other members share my concerns about people detained there, with nobody to check on their welfare. People have no time for them. We have just dealt with control of release of prisoners. Detainees at Dungavel do not know when they will be either accepted in the community or sent back. It seems to me just inhuman. Are members content that that human rights issue is raised?

Members indicated agreement.

The Convener: Nobody has put themselves forward to speak, so I will ask about the case studies, which are very interesting. I dispute the idea that people are not aware of human rights.

John Finnie: No. I said that there is a growing—

The Convener: I think that the public have become increasingly aware of their human rights. I am interested in the case studies. Is the Health and Sport Committee dealing with those under the pilot projects?

John Finnie: Yes. They are to go to the Health and Sport Committee.

The Convener: Do we know anything else about that? Do we know what it is dealing with? Do we know what those case studies are?

John Finnie: There was no specific information about that, but I understand that that is imminent because, as you can see, the case studies are to go to the Health and Sport Committee this month.

The Convener: Yes. I am interested in whether people do not know their rights because of how they are treated in hospital. I would like to know more about that.

John Finnie: I will certainly report back on that.

Roderick Campbell: For clarification, there is a reference to an

"Action Plan on Justice for Victims of Historic Child Abuse".

With the appointment of Susan O'Brien last week, can you comment on the SHRC's involvement or otherwise in that issue?

John Finnie: That appointment was subsequent to my meeting with Professor Miller, but I think that there was an awareness that there was going to be an announcement. The Scottish Human Rights Commission acted as a go-between and did sterling work in getting people who had been in conflict around a table to discuss issues and how to take things forward. I am sure

that there will be further updates. Again, I can come back to the committee with that information.

Roderick Campbell: That would be helpful to know.

Elaine Murray: I dispute with the convener for disputing with John Finnie that people do not know about their human rights. I do not know that people are really aware of what their human rights are or what human rights are about. A lot of what people read in the papers is about offenders and all sorts of people whom they might consider to be undesirable folk. Maybe they do not realise what human rights mean for everybody.

On the innovation forums in particular, I think that, if they involve discussions at the United Kingdom level about repealing the Human Rights Act 1998, it is extremely important that people are made aware of the whole gamut of human rights and how they benefit all of us.

The Convener: People are more aware of their human rights. Not everybody is, but it is certainly clear from my inbox that quite a lot of people are aware of human rights.

John Finnie: There is an issue, which is not a party-political one, about the growing diversity of views. The action plan is being promoted very positively and is being picked up by the Scottish Government and on a cross-party basis, but there is some negative public relations work on the whole concept elsewhere in these isles.

Jayne Baxter (Mid Scotland and Fife) (Lab): To go back to the issue about health and social care, I remember what we were told on our visit yesterday about the incidence of mental health issues and the problems that the police face in dealing with them. If there are health and social care pilot projects, I would like mental health to be looked at specifically. It is not just about hospitals; it is about community-based services and what the integration board in particular is doing. There should be a more specific look at mental health rather than just the broad heading of health.

John Finnie: Again, Professor Miller did not go into detail about that, because that is exclusively for the Health and Sport Committee, but I would be very surprised if mental health, which quite often features in rights issues, were not considered. I can confirm that and come back to the committee.

The Convener: To clarify, the case studies that are

“to be considered by the Parliament”

have not been set up yet. Am I correct?

John Finnie: They are to be considered by the Health and Sport Committee this month.

The Convener: So you could comment on our behalf that we want mental health to be included. That would be something.

John Finnie: Indeed.

Christian Allard: Under the “Culture” heading, the paper refers to a

“series of Innovation Forums to identify opportunities to empower people to understand and use their rights”

Do we know whether any of those innovation forums will talk about what this committee is doing, and particularly about the fact that nobody should be ignorant of the law? A lot of people who have just settled in this country will have big problems understanding what their rights are. Will that come under the programme of innovation forums? Can we get more about the innovation forums?

John Finnie: The particular example that was cited was from the north of Ireland and related to housing regeneration in Belfast. The community was empowered to make decisions, and it fed information into an event that occurred in Glasgow to coincide with world human rights day in December last year. It is about picking up on community empowerment issues and the point that Elaine Murray made about people having an awareness of how rights can be used to support decision making and how they should be embedded in policy decisions.

Christian Allard: What about understanding the law and people knowing their rights under the justice system?

John Finnie: At the Justice Sub-Committee on Policing, I raised the issue of information being made available by the police, because it is in the interests of the police for people to understand their rights. I commended a booklet that was issued in the police force that I was in many years ago. I think that the assistant chief constable assured us that that information would be made available online to encourage young people. That is particularly pertinent with regard to stop and search and individuals knowing their rights and entitlements.

I would certainly support the wider teaching of human rights, because they are too often seen by the establishment as threats rather than things that we all have an opportunity to benefit from.

Christian Allard: It would be good if you could come back to us and let us know about the innovation forums.

John Finnie: Right.

The Convener: I note that the paper says:

“SNAP are observing training programmes on human rights issues at the Police College.”

Maybe your wee book is involved.

John Finnie: That would be nice.

11:31

The Convener: Thank you for that very interesting discussion. We will now move into private session.

Meeting continued in private until 12:01.

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e-format first available
ISBN 978-1-78568-719-8

Revised e-format available
ISBN 978-1-78568-721-1