



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 15 January 2019

Session 5



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MANAGEMENT OF OFFENDERS (SCOTLAND) BILL: STAGE 1 1

JUSTICE COMMITTEE
2nd Meeting 2019, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

- *John Finnie (Highlands and Islands) (Green)
- *Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
- *Daniel Johnson (Edinburgh Southern) (Lab)
- *Liam Kerr (North East Scotland) (Con)
- *Fulton MacGregor (Coatbridge and Chryston) (SNP)
- *Liam McArthur (Orkney Islands) (LD)
- *Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Graham Robertson (Scottish Government)
Humza Yousaf (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 15 January 2019

[The Convener opened the meeting at 11:30]

Management of Offenders (Scotland) Bill: Stage 1

The Convener (Margaret Mitchell): Welcome to the Justice Committee's second meeting in 2019. There are no apologies.

Agenda item 1 is our final evidence session on the Management of Offenders (Scotland) Bill. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper.

I welcome Humza Yousaf, Cabinet Secretary for Justice; Graham Robertson, bill team leader; Sandra Wallace, parole policy team leader; Stephen Jackson, solicitor; and Craig McGuffie, solicitor with the directorate for legal services.

I thank the cabinet secretary for his various submissions to the committee. I believe that he wishes to make a brief opening statement.

The Cabinet Secretary for Justice (Humza Yousaf): I do. Thank you, convener.

Thank you for inviting me to the committee and for your flexibility in allowing me to give evidence this week rather than last.

The committee has heard from my predecessor on the Management of Offenders (Scotland) Bill. Since then, the committee has understandably requested an extension to stage 1 to allow it to consider two independent reports on the operation of home detention curfew, which were published on 25 October 2018. I would also like to take the opportunity to put on record my condolences to the family of Craig McClelland.

Following the publication of the independent reports, all 37 of their recommendations were accepted by the Scottish Government, the Scottish Prison Service and Police Scotland. Work has been on-going to take forward all the recommendations. Some of them may be taken forward by way of this bill and I am, of course, open to feedback from the committee on that process.

I will briefly restate the purposes and principles of the three parts of the bill. Part 1 is designed to provide a single overarching set of rules that govern the use of electronic monitoring and are applicable across the breadth of the justice system, be that pre-conviction, at the point of

sentencing or on release from imprisonment. As such, the provisions of the bill are intended to be read alongside those relating to the underlying orders, which remain very much in force. Those provisions support the more extensive, consistent and strategic use of electronic monitoring that is envisioned by the report of the working group on electronic monitoring in Scotland.

Part 2 is about the basic disclosure of convictions when, for example, someone wants to gain general employment in a shop or an office, or when someone applies for home insurance. We want to reform the general disclosure system, as the evidence is clear that a system that involves too much disclosure can have a negative impact on people's lives. We propose to reduce the period for disclosure for the majority of sentences, which will bring more people within the scope of the protections under the Rehabilitation of Offenders Act 1974. We also propose to increase the clarity and accessibility of the legislation, and improve the terminology that is used in it, to reduce any confusion about the purpose of disclosure. This legislation, coupled with cultural change, will amount to progressive reform that will unlock the massive potential of people with convictions and help to reduce reoffending.

Finally, part 3 changes the term of appointment and reappointment of Parole Board for Scotland members to bring it in line with other tribunals. The intention is to maintain the expertise of members and build on their experience. Part 3 also removes the statutory requirement for there to be a psychiatrist and a judicial member on the board, relying on the particular expertise of the wider membership to fill those gaps. The bill also reinforces the continued independence of the Parole Board and its decision making and allows the Scottish ministers to set out the board's governance arrangements in secondary legislation.

As the committee may be aware, on 19 December 2018, the Government launched the consultation paper "Transforming Parole in Scotland" as part of our commitment to improving openness and transparency in the parole system. The consultation also seeks people's views on how to strengthen the voices of victims and their families.

We are consulting on supervision, review and recall arrangements for people who are released on parole, and how to further enhance the independence of the Parole Board. The consultation covers the issues that are raised in the Michelle's law proposal as they relate to parole. If issues that require legislative change are raised through that process, we will of course consider whether the bill can provide an appropriate vehicle to take those forward.

I am happy to take questions.

John Finnie (Highlands and Islands) (Green):

Someone being considered for transfer to the open estate in the Scottish Prison Service requires to be assessed by a multidisciplinary risk management team, while decisions on home detention curfew are made by a single individual. Is there any conflict in that respect?

Humza Yousaf: I understand the thread going through John Finnie's question. Following the inspectorates' reports—I reiterate that all the recommendations in them have been accepted—there will be a more robust risk management assessment process. Under the previous regime, other partners including criminal justice social work fed into that process, but the working group that will take forward the recommendations will look at the risk assessment process and consider whether it should be multidisciplinary, which other partners should be invited to give feedback and so on.

With regard to the hypothetical that John Finnie has highlighted, I point out that there is a difference between short-term and long-term prisoners, and for someone on a six-month sentence, who might serve only half of that and then go on to an HDC, it might not be appropriate to put together the kind of multidisciplinary team that would assess someone going into the open estate, given the resource and time that would be required. However, on John Finnie's general point, the working group is looking at whether the risk assessment can be done better, can involve more partners and can be improved. It is certainly one of the recommendations that is being taken forward.

John Finnie: The 75 per cent drop in the use of home detention curfew suggests either that there was something wrong with the previous system or that the Scottish Prison Service is risk averse. It is a valuable tool and I, for one, would like it to be used as much as possible, but the current position suggests that there has been a knee-jerk reaction and some form of risk aversion.

Humza Yousaf: John Finnie is correct. We live in a world where risk aversion is almost the natural instinct of public or private organisations that are subject to a lot of media scrutiny. I agree with the member that HDC is a very useful reintegration tool, and I hope that this risk-averse approach is only temporary.

The decline has been quite dramatic; in fact, I will be answering a question later in the Parliament from Liam McArthur on the increase in our prison population. Undoubtedly, the 75 per cent reduction in the use of HDC has, among other factors, contributed to prison numbers, but my hope—and belief—is that this is only a short-term situation.

As for the previous regime, there is no doubt that, when two inspectorates come forward with reports making 37 recommendations, there are clearly improvements to be made, and it is important that we learn those lessons. However, it is also important to point out that we as a Parliament have collectively agreed on much about HDC and have approved various sets of guidance and, indeed, the legislation itself. I therefore hope that, for whatever changes we can make, we can take the majority if not all the Parliament with us.

John Finnie: I know that colleagues have a number of questions that they want to ask, but I have a brief, final question about the role of G4S, which has produced the statistics for our briefings. Is it helpful for a commercial organisation to be involved in a process that also involves statutory bodies such as Police Scotland, criminal justice social work and the Scottish Prison Service? Should the entire regime not rest within the public sector, as I feel it should?

Humza Yousaf: That did not come up as a major issue of concern in the inspectorates' reports. I visited the G4S control centre to look at the regime in a bit more detail, and I was exceptionally pleased with the professionalism of the organisation and the people working in the centre and the diligence with which they did their jobs. I would not say at this stage that the commercial operation gives me huge concern.

Liam McArthur (Orkney Islands) (LD): Good morning, cabinet secretary. In response to John Finnie's questions, you suggested that the dramatic reduction in the use of HDC was a reflection of risk aversion in the Scottish Prison Service. However, to some extent, the new presumptions against HDC are less about risk aversion and more about the more limited range of situations in which it might be presumed to be applicable. Is there any likelihood of that changing while those restrictions on the use of HDC are applied?

Humza Yousaf: That is a very fair point. We would have to drill down further into the 75 per cent figure. However, I think that all of us who are in the political field or otherwise under media scrutiny have been in a position, individually or through our political parties or other institutions, in which the level of scrutiny has made us almost automatically risk averse. We all recognise that. Notwithstanding that, the point that Liam McArthur makes is correct. We have limited the scope for the use of HDC. It is important to say that there is not a ban on the use of HDC; there is a presumption against it for those who have an index offence for violence, for carrying an offensive weapon or a bladed article, or for having links to serious organised crime.

That does not mean that the number of HDCs cannot increase in the future. We may not see them reach the level that we saw under the previous regime before the presumptions were brought into place, but there is scope for HDC to increase with the legislation that is coming forward. If I take not just HDC but electronic monitoring in the round, the Government's stated goal is to continue the expansion of electronic monitoring. In fact, this committee has produced reports to that effect concerning bail supervision and other parts of the criminal justice system.

I take Liam McArthur's point and we will look at it carefully.

Liam McArthur: That is helpful. However, I am struggling to understand what might encourage those numbers to go back up, albeit at an appropriate level. We are struggling to understand whether the previous level was exorbitantly high or the current level is unsustainably low when it comes to managing the integration of prisoners back into the community. Without the opportunity to manage that process in the way that HDC has enabled up until now, the presumption seems not only to have an impact on the overall size of the prison population but to increase the risk to communities from the return of prisoners back into the community.

Humza Yousaf: Again, those are both fair points, which I will try to address. I will drill down into the figures in more detail, but my understanding is that the 75 per cent reduction is not necessarily all down to the presumption. I believe that there is an element of risk aversion. The governors are working on further guidance and we may see the numbers creep back up. However, Liam McArthur is right that, now that we have accepted the inspectorates' recommendations and put a presumption in place, it is difficult to see the numbers rising dramatically to the point that they were at previously. I accept that point fully. Therefore, HDC will be part of how we collectively agree to lower prison numbers, but we will have to look at other options that we will address later in parliamentary proceedings.

I also fully agree with Liam McArthur's second point. There have been a number of pieces of research on HDC, including a piece from the Ministry of Justice that I found quite helpful, indicating that HDC helps with the integration back into communities. If there are fewer people going through HDC, they are less involved in the reintegration process. Does that cause harm? There is absolutely the potential for that. That is why I have asked my justice analytical services to give me more qualitative research into the positive, or indeed, negative effects of the home detention curfew. That is extremely important.

When I was at the G4S control centre, I was told stories about people who found that being on home detention curfew after a period of imprisonment allowed them to reconnect with their families and access support voluntarily—having been guided to that support by others—which really helped them in their desire not to reoffend. There absolutely is merit in what you said, and the justice system must seriously consider the matter.

11:45

Liam McArthur: The committee took evidence from the Risk Management Authority, which told us:

"The recent introduction of the presumptions against HDC has inadvertently or on purpose ... raised the question of the purpose of HDC, its intention and what it is in place to achieve."—[*Official Report, Justice Committee*, 18 December 2018; c 23.]

It seems from what you are saying that the Scottish Government's intention is not to move away from HDC as a means of smoothing the transition back into the community. Is that a fair reflection of the Government's position?

Humza Yousaf: Because of the research evidence that exists, we think that HDC absolutely can be a helpful tool for reintegration into the community. I want to bolster the evidence with additional qualitative research, which I will be happy to provide to the committee once it has been done.

I still believe that HDC can be a helpful tool; what I am saying is that, when we consider the wider picture of the prison population, the desire to reduce recidivism and alternatives to custody, it is just one piece of the puzzle.

Liam McArthur: What you are saying chimes with evidence that we heard from previous witnesses about the need for presumptions and changes in approach to be reviewed. Various timeframes were offered up in that regard but there absolutely was a feeling that the matter needs to be kept under review, so that the implications of the process of reintroducing ex-prisoners into the community are assessed on a qualitative basis. At this stage, are you able to commit to a timeframe for coming back to the committee and the Parliament with that assessment?

Humza Yousaf: I have read carefully the evidence that the committee received, particularly in your two most recent evidence sessions on the issue. I noticed that the proposed timeframe ranged from three to five years. I will consider the matter with great interest. I cannot give a commitment right now; we will wait for the committee's stage 1 report and reflect on it.

I reflect on HDC quite a lot. When I look at the history of HDC, it is clear that the approach has evolved in its structure and governance. Most recently, of course, the reports from Her Majesty's inspectorate of constabulary in Scotland and HM inspectorate of prisons for Scotland made 37 recommendations, which we accept.

The Government must always be open-minded about potential improvements and adjustments to HDC, and we will continue to be so. However, we must let the current regime bed in for a period before we make fundamental changes.

Liam Kerr (North East Scotland) (Con): Some people are concerned that there is a danger that public protection will be compromised by the use of HDC to promote rehabilitation and reduce the prison population. Will you guide the committee on the priority that public protection is given over other considerations when HDC is being considered? How is the balance struck?

Humza Yousaf: I will answer your question in a second, but first let me encourage you not to think that there is necessarily a choice between one or the other—that is, between public protection and reducing an offender's reoffending behaviour—because the two are undoubtedly linked. If we can reduce an individual's reoffending, that is clearly of great benefit to victims or potential victims. That is an important distinction to make.

On your substantial point, public protection is absolutely key—it has to be the key consideration. There are a number of considerations, including public protection, preventing reoffending and securing successful reintegration. It is clear from the reports that the inspectorates think that—I paraphrase—not enough weight is put on the public protection element, which, as I have acknowledged, is a key consideration. We have therefore accepted the 37 recommendations that are for us, the SPS and Police Scotland.

There is more that we can do to understand how best to weigh the elements. The Risk Management Authority is now working with the SPS to develop a risk assessment tool for short-term prisoners. However, ultimately, even the best risk assessment tools in the world can take us only so far in protecting the public from how an individual might behave and what they might be capable of doing. Once that work has been done to develop the risk assessment tool to weigh the elements, it would be helpful if we shared that with the committee and heard your thoughts.

Liam Kerr: Do you have any indication on when the risk assessment tool might be ready?

Humza Yousaf: The RMA is working on that now. My direction to all the partners involved has been that it should be done right rather than rushed. I have not pushed them for a timescale,

but they have my direction and they understand from the inspectorates' thorough reports that, of the key assessments that have to be made, protecting the public is right at the top.

I understand that the wait for that tool is an important issue and I am sorry that I do not have a definitive timescale, but my direction has been to get it right rather than to rush it.

The Convener: On that specific point, before we move on, can you give any indication of whether the committee will see the risk assessment tool before we complete stage 3 of the bill? That is an important question.

Humza Yousaf: I can absolutely see the logic for why that should be done, so I will take that back to our partners and press them on it. I can see the sensibleness of doing that, so, if we can, we will aim to get it done before stage 3.

The Convener: That is helpful.

Liam Kerr: This is a slight change of topic. What was the thinking behind tasking prison governors with taking decisions on HDC, rather than giving the role to a multidisciplinary risk management team, as happens elsewhere in the system? On reflection, does that remain your preferred course of action?

Humza Yousaf: That goes back somewhat to the question that John Finnie asked at the beginning of the meeting.

It is important that others feed into the decision that is made. Criminal justice social work, among others, currently do that. The on-going work of the working group is to explore and examine who else could make a useful contribution to the decision making.

However, we have to be realistic. For an individual with a particularly short sentence or perhaps for whom it is the first offence—although that is unlikely—there might not be much background. In certain cases, there might be only a limited amount that an agency could feed in and it might be costly to bring together a multidisciplinary team that would not add value. All that has to be weighed up.

Prison governors are highly trained and have a great amount of expertise in what they do. I have confidence in their being tasked to make those decisions. However, they do not make them in isolation; other people feed into that process.

Shona Robison (Dundee City East) (SNP): I want to take the discussion on the assessment and management of risk a little bit further. As you pointed out, you can never eliminate risk entirely. You mentioned the working group. Is that the same group that is working on the assessment tool, or are there two different groups?

Humza Yousaf: The HDC guidance and governance working group is considering how additional information is best weighted in the risk assessments. The SPS and the Risk Management Authority are working together to develop a formal risk assessment tool for prisoners with a short-term sentence.

Shona Robison: The SPS and the RMA are presumably drawing on the experience of the working group. I guess that those two pieces of work are interlinked in terms of the guidance.

Humza Yousaf: Yes, indeed.

Shona Robison: It would be helpful to share those pieces of work with the committee, as that will allow us to examine what the process will look like in practice and understand what it will mean for those who use the guidance to judge whether the level of risk is acceptable.

I wonder whether you can say a little bit about the working group. Does it cover a variety of interests? For example, does it reflect the views of the public? Are they able to have a voice in those deliberations? I guess that I am thinking of those who represent victims. How will they be able to influence the group's work?

Humza Yousaf: My understanding is that organisations that represent victims have been feeding in their views. A lot of work had been carried out on the bill by previous working groups before the inspectorates issued their reports, and they included Scottish Women's Aid, which obviously has an interest in aspects of this issue. If you do not mind, I will hand over to Graham Robertson to give you more detail, as he is involved in various elements of the working group.

Shona Robison: That is fine.

Graham Robertson (Scottish Government): The working group involves a number of justice partners, including the police, the Prison Service, criminal justice social work and the Risk Management Authority. Initially the group will be tighter, given that some of the discussions will look at intelligence information and so on, but our intention is to widen it in its latter stages to include certainly the third sector and academics who have expressed an interest in the matter.

Shona Robison: With regard to the guidance that might emerge from the working group, you have identified two elements: the understandable presumption against the use of HDC in certain cases and a recognition of the role that HDC can play in reintegrating people into society. With regard to a person's history, how much discretion would there be in the case of, say, someone who had committed an index offence of violence 20 years ago when they were a young person and in a different place in their life? I presume that a

presumption is not absolute, so would the guidance provide scope to look at, for example, how long ago the index offence occurred? Would those be areas that the working group would look at, or are we talking about something absolute if, say, the index offence had a violent component to it?

Humza Yousaf: That is an important question, and I hope that I can give you some clarification and reassurance about it. I will also ask my officials to elaborate.

We talk about looking at the index offence, which might relate to violence, carrying an offensive weapon or bladed article, or serious organised crime—if such links can be established—rather than past offences. That said, one of the measures that we have put in place as a result of the inspectorates' reports is to feed police intelligence into decisions on home detention curfew, and that intelligence could be about links to serious organised crime or any history that the police might have with regard to individuals. However, we have to be careful in these areas.

I do not know whether my officials have anything to add.

Graham Robertson: As has been said, these are difficult and complex decisions, and a lot of work is going on to ensure that richer information is available. The inspectorates recommended that longer-term pieces of work look at what is being done to correctly weigh the various issues, and the working group is taking forward that work.

Shona Robison: Can you also commit to keeping the committee informed of the outcomes of the working group's work?

Graham Robertson: Yes. For sure.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): Picking up on Shona Robison's point about the working group, I note that in its submission Scottish Women's Aid calls on criminal justice social work and Scottish Prison Service personnel to

"receive training on the dynamics of domestic abuse",

particularly in light of the Domestic Abuse (Scotland) Act 2018. Is HDC problematic in domestic abuse cases, where it might be more difficult to monitor—and, I suppose, see—reoffending and controlling behaviours?

12:00

Humza Yousaf: Our engagement with a number of organisations, in particular Scottish Women's Aid, is very important. When we look at the bill in its entirety and at potentially extending electronic monitoring—for example, using global

positioning system technology—there is a completely understandable concern from organisations such as Scottish Women's Aid. Their concern is that being able to tell where a person is on Google maps does not mean that that person is not contacting the victim by telephone, social media or some other means and that—to paraphrase—they would have serious reservations and would need to see safeguards in place. On home detention curfew and the wider electronic monitoring discussion, partners such as Scottish Women's Aid are very important.

To some extent, I leave training to the SPS. They are well aware of the training needs of their staff. I could not tell you off the top of my head whether staff receive specific training. The Scottish Government will fund training for police officers and others on the new legislation. I would have to look into that specific aspect, but the committee has raised a good point that we will take away and reflect on.

Jenny Gilruth: I have a brief final question. The written submission from Engender asks for further exploration of

“the impact of EM on women”,

which you alluded to. It cites evidence of electronic monitoring bringing with it

“a number of problems which negatively impact on mother-child relations”

and a finding from the 2015 SPS prisoner survey that 74 per cent of female prisoners had suffered from “anxiety and depression”.

I do not know whether you can go into the detail of the working group's remit, but will it look specifically at female offenders, in terms of monitoring risk?

Humza Yousaf: It is hugely important that the working group does that, and we will feed back the points that Jenny Gilruth has put on the record. We know from all the research—and there has been some good research on the female offender population in Scotland—that there are different complexities when it comes to females in the prison estate.

We are taking forward a radically different way of doing things through community custody units, two of which, in Dundee and Glasgow, have been granted permission to establish. We are doing a lot of good things. There are some additional nuances in this agenda for the female offender population, as opposed to the male offender population. That should be part of the consideration, and, if it is not, I will ensure that it becomes so.

Daniel Johnson (Edinburgh Southern) (Lab): Reflecting on where we have got to, I have said to

colleagues that, with hindsight and following the tragic case of Craig McClelland, we overlooked a couple of key matters when we first examined the bill. We looked at how electronic monitoring might be applied under the bill's provisions, and what would happen if a person breached a condition. We did not ask how the decisions are arrived at currently and what happens right now when people breach conditions. I ask the cabinet secretary to reflect on whether, in introducing the bill, perhaps there was insufficient examination of how the assessment is made and how electronic monitoring is monitored under the existing legislation.

Humza Yousaf: I appreciate the member's frank insight and candour in relation to his own and the committee's perspective. That is helpful.

From my own perspective, the committee will know that I was in a different ministerial position when the bill made progress last year, so it is difficult for me to say what the considerations of my predecessor or the bill team were. It would be fair to say that there is no doubt that a tragedy such as we witnessed in the Craig McClelland case sharply focuses all our minds, including Government minds. Collectively, the inspectorates' reports with their 37 recommendations mean that the system could be improved from the previous regime, and it will be improved—clearly, there was room for improvement.

Whether risk management and assessment were considered carefully enough before that tragic incident is difficult for me to say, because I was not in my current position then. However, I can give the member assurances that we are better for the inspectorates' reports. There was wisdom in the committee waiting until those reports were completed before it re-examined the evidence from stage 1. The regime will be better and the public will be safer for those recommendations.

Daniel Johnson: The cabinet secretary is right in his emphasis on safety. A number of committee members have asked about the risk management regime, which is a central point. Enabling prisoners to have a degree of liberty requires a robust risk management regime. Does the cabinet secretary think the bill should give clarity about the risk management regime, certainly in relation to who is responsible for arriving at the assessment? Given the comments that HMIPS and HMICS make in their reports, the more important question is: who is responsible for monitoring the decision once it has been made?

Humza Yousaf: I have come before this committee a few times to look at legislation, and I have always been wary of putting too much on the face of a bill. It is difficult to change primary legislation—that is a particularly rigid and inflexible

process—whereas doing things through secondary legislation, or indeed through guidance, can be more flexible. I go back to Liam McArthur's question on the need to constantly review HDC and keep an open mind as it evolves over the years. If we accept, as I do, that we have to do those things, putting a risk management assessment procedure or tool in primary legislation might create a degree of inflexibility for the future.

Daniel Johnson: I was not suggesting that. In my view, it is critical that legislation identifies who is responsible and what they are responsible for.

In its report, HMIPS states:

“Whilst an assessment process clearly existed, it may not be regarded by some to meet the definition of ‘robust’.”

HMIPS also observes:

“Given that additional HDC licence conditions were not monitored, it is doubtful that they serve any purpose.”

However, when we heard from Colin McConnell, he was adamant that he was upholding the guidelines and policy as they stood.

We have a report that says that conditions were not being monitored, but the Prison Service says that it was doing everything that it should. If the bill does not identify anything new in terms of what is to be assessed, who is to assess it and, most important, who is to monitor any decisions, my concern is that the bill will not be capable of satisfying those key issues, which are identified in both reports.

I agree that the tools should not be on the face of the bill, but the high-level principles of what should be done and who should be responsible for that surely should be.

Humza Yousaf: I apologise—I misunderstood the member's original question. In terms of who should be responsible, I will look carefully, as I always do, at the committee's stage 1 report. I will be as open-minded as I can be to the committee's suggestions, especially on this issue. We may have differences in terms of nuances but ultimately we want to get to the same place. Most, if not all, of us believe that HDC can be an important tool in the criminal justice system, but appropriate safeguards for public confidence and safety have to be there. Therefore, if there are sensible suggestions on the issue, I will look at them.

With regard to the potential for the bill to say who should make the decision, I go back to my previous answer. As I am sure members of the committee do, we always have to keep it at the front of our minds that, if we put such a provision in a bill, changing it can be incredibly difficult. The process and regime have already gone through quite a bit of change in their formative years. We

have to be careful that we do not box ourselves into a corner. Notwithstanding all that, I will keep an open mind on any suggestions that come forward.

Daniel Johnson: I guess that the committee has an issue, in that we do not seem to have any key proposals in front of us to address the central issues that the reports identify, which are monitoring of conditions and information sharing. How can we assess the bill without any additional proposals to address those key points?

Humza Yousaf: Quite a lot of work has been done on information sharing. In fact, we did not have to wait for the inspectorates' reports for there to be an improvement in information sharing between, for example, the SPS and Police Scotland on potential breaches and people being unlawfully at large. There was quite a dramatic reduction in the number of people being unlawfully at large once some of the information protocols were improved. I could perhaps write to the committee on information sharing.

I go back to the convener's point on whether the risk assessment work can be concluded before stage 3. I gave an undertaking to speak to our partners about whether that will be possible, because I see the logic in the sensible suggestion that it be concluded before then. I do not know whether that will be possible, but I will certainly push them hard on it.

Fulton MacGregor (Coatbridge and Chryston) (SNP): You will know from Daniel Johnson's line of questioning that the committee heard evidence on breach of an HDC not being a specific offence. What is the Scottish Government's thinking on making breaches of HDCs an offence and increasing police powers of arrest when they suspect that somebody is in breach?

Humza Yousaf: If the member is talking about proposals in relation to being unlawfully at large, one of the recommendations in the inspectorates' reports was about the Government giving that consideration, which would reflect the position in England and Wales. In the tragic case of Craig McClelland, there was some dubiety around whether there were appropriate powers to enter a premises without being unlawfully at large being an offence. There is varying legal thought on that. We are reflecting on whether, at stage 2, to remove the dubiety that might exist by making being unlawfully at large an offence, thereby giving officers the power to enter premises. As I said in my ministerial statement, we will consider that in considering the two inspectorate reports.

I note from Police Scotland's evidence to the committee that it has made calls for the Government to explore other areas such as,

potentially, giving the police additional powers in the case of a suspected, as opposed to a confirmed, breach.

We will look at the evidence very carefully. I have some concerns that I have to discuss with the Government legal team, Police Scotland and others, but we will certainly look at all the suggestions and reflect on them.

Rona Mackay (Strathkelvin and Bearsden) (SNP): What might be the wider implications of the two reports? Will they have a bearing on the release of prisoners who are due for parole or any accused who are on bail? Will the process for those who are due to come up for parole be altered?

12:15

Humza Yousaf: As the member knows, the processes are very different. As I said in my opening statement, there is currently a consultation around parole. This committee has also made many suggestions around bail, which we will also look at.

There may be cross-cutting lessons to learn, particularly around risk management and potentially—some members have alluded to this—around multidisciplinary approaches. However, I looked at the evidence from the Parole Board and saw that its chairman, John Watt—who is here—was quite direct in saying that, from his perspective, parole is a separate process, which is currently going through a consultation, and that what is being learned from HDC will not necessarily be applicable to it. There may be some limited overlap, but we are always looking at issues such as bail, HDC and electronic monitoring and parole, which is being consulted on at the moment.

Rona Mackay: So there should be no significant bearing in that respect, as you see it.

Humza Yousaf: I do not currently see it having a major bearing. There could be some overlap, but I do not think that the impact would be major, as John Watt of the Parole Board has also said. There is a separate consultation on parole, which is important. We should always ensure that we are constantly reviewing the processes that we have in place, but my assessment is that there will be no major impact.

Rona Mackay: I know that you mentioned it earlier on, but can you clarify the effect that the two reports might have on the Government's plans for expanding electronic monitoring?

Humza Yousaf: That is an important question, which goes back to the earlier questions from John Finnie and Liam McArthur around whether there is a level of risk aversion and my, I hope,

frank answer that there will, understandably, be an element of that in high-profile cases.

As Cabinet Secretary for Justice, I absolutely want us to ensure that we have the appropriate safeguards, learn the appropriate lessons and accept the appropriate recommendations. However, we as a Government—and I as Cabinet Secretary for Justice—still see electronic monitoring as a really useful and important tool in using the various orders for which it is used and, therefore, its further use and expansion is still absolutely the Government's intention.

Rona Mackay: I suppose that the re-evaluation and scrutiny of risk assessment will affect that as well, in the sense that it will allow the Government to move forward with confidence.

Humza Yousaf: Yes, for sure. Safeguards are really important. Tragedies such as the one that we witnessed involving Craig McClelland shake public confidence a lot. It is important that we do everything that we can to restore that public confidence. We are in a good place with the inspectorate reports, and the work that is being done by the various working groups and between partners will only help to strengthen that position and boost public confidence on that measure.

The Convener: Before we move back to the new offence, will the cabinet secretary confirm whether there will be access to specialist psychiatric expertise on the Parole Board?

I am not sure whether the cabinet secretary has looked at it, but the Royal College of Psychiatrists in Scotland has made a powerful submission on the expertise that its members provide in relation to prison healthcare, not just in psychiatric hospitals but in relation to transfer and a range of other areas. I will not go into those now, but it was a compelling submission.

Although it might not be necessary for there to be judicial representation on the Parole Board all the time, it should be available as and when necessary. Will you consider whether the same applies to specialist psychiatric representation?

Humza Yousaf: I agree that the evidence from the Royal College of Psychiatrists in Scotland was compelling and strong. However, there are a couple of things to say about the potential removal of the statutory requirement for a psychiatrist, the evidence on which from the Parole Board also made a lot of sense and had a lot of logic to it. For example, it made the point, first, that it considers 2,500 cases and that one psychiatrist cannot possibly look at every single one of those cases; and, secondly, that a number of Parole Board members have experience in the field of psychiatry and so the statutory requirement is not needed. From my recollection of the evidence session, I think that it was you, convener, who

pressed the Parole Board on why, although that might be the case, we would not have a statutory provision rather than leave it to chance.

I can see the argument on both sides. I will await the committee's report on that particular provision, and I have a very open mind on looking at it again.

The Convener: That is helpful.

Daniel Johnson: I want to follow up on Fulton MacGregor's question about the new offence. I support the new offence in broad terms and, in particular, giving the police the ability to enter premises when a breach has occurred. However, the Law Society of Scotland, in its detailed submission to the committee, which contains its concerns about areas where it feels that there may be shortcomings, states that

"creating an offence will not address"

the issues around information sharing

"other than with a practical effect where when caught they then fall to be sentenced to a further period of custody in addition to serving the remainder of their outstanding sentence."

How is the Government going to address the concerns that the Law Society of Scotland has set out?

Humza Yousaf: The committee will forgive me—I have not seen the submission; I undertake to look at it after this committee session. I do not know whether it has been sent on to me, but I will certainly get a hold of it and look at it in detail.

As I said to Fulton MacGregor, our aim is to create the offence of being unlawfully at large to remove the legal dubiety that exists. In essence, having that would mirror the situation south of the border.

The Law Society of Scotland's concerns as Daniel Johnson described them would, I suppose, hold if you look at the situation completely in isolation. However, there are 37 recommendations, of which consideration of making an offence of being unlawfully at large is simply one.

As we have discussed for some time, information sharing is a critical and key part of the recommendations. I would have to look at the Law Society of Scotland's submission in detail to be able to comment more fully, but I hope that what I have said addresses some of its concerns.

Fulton MacGregor: Back on the convener's line of questioning about having psychiatrists on the Parole Board, my recollection of that particular evidence session is that there was a slight feeling that psychiatric representation on the Parole Board would represent mental health as a whole. Will the cabinet secretary comment on what the

role of mental health officers and other mental health professionals might be in informing decisions if there is no need for a psychiatrist on a particular panel?

Humza Yousaf: That discussion is topical in relation to both the bill and the consultation on parole.

In my interactions with the Parole Board—in particular with John Watt but also with other members—it is clear that the information that comes to Parole Board members is of real and paramount importance. The information that is provided to them in the dossier will largely, if not exclusively, help them to determine whether a person is released on parole or not. Therefore, it is utterly critical that they get the most comprehensive information possible.

As the Parole Board is mostly looking at people on longer sentences, there is time to gather that information, which would include information about the individual's mental health. The consultation will focus our minds on how we can provide better information to the Parole Board and what other things it needs to consider on which it might not be getting information that is as full as it could be at the moment.

The issue is very topical and is very much a part of the current considerations.

The Convener: You said that you had not looked at the Law Society's submission, but it is a powerful submission that raises many technical points on which the committee has not taken evidence and of which we were not aware. I am thinking, in particular, of effective notification of a breach, the recall notice procedure, the system for prioritising different categories of cases and the monitoring of non-compliance with additional conditions to address specific concerns about identified risk. All those issues were raised when the committee went to visit the Wise Group, which concluded that although it was totally supportive of the extension of electronic monitoring, without adequate resourcing for the use of new technology such as the global positioning system, it was more or less doomed to fail. Can you reassure the Wise Group on that?

Humza Yousaf: I agree with the broad thrust of that; the resourcing in the financial memorandum and in the budget will be hugely important. That goes back to a wider point that we will discuss later today, in the chamber, when a topical question on prison numbers will be asked.

The Wise Group does phenomenal work when it comes to rehabilitating offenders and reducing reoffending, and we must have a more consistent approach, across the country, to reducing reoffending and to community payback orders,

and that will require funding. We will continue to invest in that.

The convener makes a valid point. Our plans for a presumption against sentences of less than 12 months will be discussed by Parliament, but if the proposal is agreed to—I am hopeful that it will be—we will have to ensure that funding is available to take forward the necessary initiatives. We have already budgeted for that, but we will have to make sure that local authorities and the other organisations involved are adequately resourced for future years.

The Convener: I want to follow up on that before I bring in John Finnie. If there is satisfaction that public safety is not an issue, the bill will take us on the path to better rehabilitation—it will help to ensure that those prisoners who are not subject to early release and monitoring have more access to rehabilitation. When we first took evidence, we were told that there were many prisoners on remand who should not be on remand. The use of electronic monitoring would seem to be the most sensible option for such people; it would be less high risk than its use for those who have already been convicted, who present a greater risk. Has an opportunity been lost, because the bill does not cover remand?

Humza Yousaf: I would not say that an opportunity has been lost. I read the committee's report on remand and listened carefully to the subsequent debate and discussion. Different considerations are needed for the use of electronic monitoring in different circumstances. With HDC, for example, the protection of the public is the primary concern. With bail supervision, the primary concern is the probability of the person not appearing—that is the risk that would have to be weighed up.

The considerations are different for different applications of electronic monitoring, depending on the type of order. However, I can give you an assurance that, as we continue to consider the issues around remand, we will be very much focused on a number of the recommendations that the Justice Committee has made.

12:30

John Finnie: My question might be more of a point of clarification. It relates to your comments about the most recent evidence from the Law Society and the fact that you have not seen it. You said that you would look at it. Is there a possibility that you could respond to it within a timescale that would mean that we could consider your response as part of our work on our stage 1 report, which we will publish on our website? It would be good to round that bit off.

The Convener: That would be especially useful, given that we have not taken evidence on it.

Humza Yousaf: I thank John Finnie for giving me more bedtime reading to add to the accumulation of papers that I go through every night.

From everything that members are saying, I can see that it is an important briefing, so I do not see why I could not look at it soon and try to ensure that there is a quick turnaround on the response. I am not sure of the timetable for the production of your stage 1 report, but I will check that and try to get my response to you as quickly as I can.

The Convener: The clerks can send you the briefing, and I think that there is liaison with your officials on the stage 1 timetable.

Daniel Johnson: I thank the convener for raising our inquiry into remand, because there are some relevant points to be made in that regard. One concerns recording the reasons why bail is refused. There was some pushback when we asked whether it would be useful. However, we have taken evidence from Social Work Scotland, among others, about criminal justice social workers finding it useful to have the assessments that courts have made. From the point of view of public safety, if a court has decided that somebody should not be given bail for public safety reasons, it stands to reason that that is a useful bit of information for people who are conducting a risk assessment in relation to a home detention curfew to have.

For those reasons, might it be useful for the assessment that is made by the court regarding a refusal of bail to form part of a risk assessment for electronic monitoring and HDC?

Humza Yousaf: I can assure the member that I will consider the issue again. There can be different reasons for bail being refused, as he knows—it could be for public safety reasons or it could be because of previous non-appearance. Perhaps it might be useful if that information were shared, even to limited partners. I can see the thread of the member's logic. I am happy to consider the issue again.

The Convener: I would like to ask about one final niche point, which came up when we were talking to the Wise Group. We heard that, often, when the police make inquiries when they are trying to follow up on a breach and, perhaps, when someone is in hospital, they are told that it is not possible to provide them with information because of data protection legislation. Obviously, there is a misunderstanding somewhere about data protection issues. Will you take that issue on board?

Humza Yousaf: I will certainly consider it. It has not been raised directly with me and I do not think that I saw it being raised when I read your evidence sessions in the *Official Report*. I hold the Wise Group in the highest of esteem, knowing its work for a number of years. If it suggests that that is an issue that it has come across, I have no reason to doubt that, so I would be happy to look into the issue and to make direct contact with the Wise Group.

Like many around this table, I have often been bewildered at how, sometimes, the most basic information is not shared, even though sharing it could make a massive difference to the processes that we are engaged in. If we can nip the problem in the bud, I would be happy to do so.

The Convener: The clerks can send you the evidence that we took, and I think that, when we took evidence from the police, they confirmed to us that there was an issue there. We are happy to supply that information.

That concludes our evidence session. I thank the cabinet secretary and his officials for attending. We will now move into private session. At our next meeting, on 22 January 2019, we will seek to finalise two stage 1 reports.

12:34

Meeting continued in private until 12:45.

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