OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 2 April 2019

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 2 April 2019

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JUSTICE COMMITTEE
11th 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:

Bill Kidd (Glasgow Anniesland) (SNP) (Committee Substitute)
Humza Yousaf (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 2 April 2019

[The Convener opened the meeting at 10:00]

Management of Offenders (Scotland) Bill: Stage 2

The Convener (Margaret Mitchell): Welcome to the 11th meeting in 2019 of the Justice Committee. We have apologies from Shona Robison. I welcome back to the committee Bill Kidd, who is attending as her substitute.

A group of officials from the Jordanian Parliament is in the gallery. I welcome them to the Parliament and its Justice Committee.

Our first agenda item is consideration of the Management of Offenders (Scotland) Bill at stage 2. I ask members to refer to their copy of the bill, the marshalled list of amendments and the groupings of amendments.

I welcome to the meeting the Cabinet Secretary for Justice, Humza Yousaf, and his officials. Towards the end of our consideration today, the officials who are supporting the cabinet secretary will need to swap over. I will suspend the meeting briefly at that point.

Section 1—Requirement when disposing of case

The Convener: Amendment 2, in the name of Daniel Johnson, is grouped with amendments 3 to 30, 32 to 63 and 68 to 70. Amendments 54 and 55 are pre-empted by amendment 93 in the group entitled "Minor and technical", amendment 58 is pre-empted by amendment 95 in the group entitled "Details in relation to monitoring", and amendment 59 is pre-empted by amendment 99 in the group entitled "Details in relation to monitoring".

Daniel Johnson (Edinburgh Southern) (Lab): I reassure colleagues that, although there are almost 70 amendments in the group, I will probably need only around five minutes to cover each one. In all seriousness, although there are a lot of amendments in the group, there is one simple idea, which is that we should avoid using the word "offender" in legislation and public statements. That is because language matters.

On 1 May 2015, the Scottish Government gave a commitment to stop using the word "offender" in respect of ex-offenders or ex-prisoners, and it was right to do so. It is important that we give people who are changing their lives, rehabilitating and returning to society every opportunity to do so. By continuing to use terminology such as "offender" and "prisoner" once a conviction has been discharged and spent, we continue to stigmatise the individual and make it more difficult for them to make changes in their life.

The purpose of the amendments is to replace the word "offender" wherever possible in the bill with the term "relevant person", which is much more neutral and avoids that issue. I do not believe that that has any technical implications, although I would appreciate insight on that from the Government.

The bill is an opportunity to alter the language and use new language. I understand that much of the bill relates to previous legislation, but we can, through drafting, use it to draw a line under the use of that terminology to refer to people who are no longer prisoners and therefore help their rehabilitation and destigmatise them and the issues that they face.

I move amendment 2.

Liam McArthur (Orkney Islands) (LD): I thank Daniel Johnson for lodging all the amendments in the group and for not spending five minutes speaking to each of them. The points that he has made are very relevant. In the early evidence that the committee received, we heard about the impact that constant reference to "offenders" would have on our efforts to improve the rehabilitation of those who have served a custodial sentence. I confirm my support for the amendments.

When we took evidence, there was a concern that, because the bill talks about offenders, the use of electronic monitoring for those on bail pre-conviction would not be possible, so I wish to ask the cabinet secretary whether such monitoring would be possible if the committee supported the amendments that would change "offender" to "relevant person". I appreciate that that would be quite a substantive amendment to introduce at stage 3, but I would welcome the cabinet secretary's comments now or after he has had time to reflect on the matter.

John Finnie (Highlands and Islands) (Green): I will lend support to Daniel Johnson's amendments. Language is very important, and people are stigmatised enough through their involvement in the criminal justice system without there needing to be a lasting legacy. The amendments are very positive.

Liam Kerr (North East Scotland) (Con): I cannot support the amendments at all. I understand the point that is being made, but I do not agree with it. The term "offender" is used because that is what a person is—someone who has offended. I accept that language matters, but

that is why we need to use language that is relevant and language that says what has happened. We cannot airbrush the fact that an offence or a crime has been committed. I point to the seminal work "The Rule of Law", by Lord Bingham, which sets out that the first principle of law is that it must be "accessible, clear and predictable". The law must say what it refers to and, as far as possible, it should not deal in semantic gymnastics, as Daniel Johnson is trying to do. For that reason, I will oppose the amendments.

The Convener: To answer Liam McArthur's question, amendment 63 says:

"In this Part, "relevant person" means an individual who has been convicted of any offence."

I totally agree that language matters, but there is a need for the law to be as clear and unambiguous as possible. Although I have a lot of sympathy with the argument that people are often referred to as "ex-offenders" when there is no need for them to be, Daniel Johnson's amendments would muddy the waters, when we should be ensuring that the bill is as clear as possible.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I have a lot of sympathy with Daniel Johnson's amendments. However, before I decide to vote, I would like to hear from the cabinet secretary whether there would be any unintended consequences of agreeing to the amendments.

The Cabinet Secretary for Justice (Humza Yousaf): I thank Daniel Johnson for lodging the amendments, and I thank the other committee members for their thoughts. I will try to pick up on the variety of points that were made. Daniel Johnson, Liam McArthur, John Finnie and Fulton MacGregor all, in some way or another, asked about the unintended consequences that might arise as a result of the amendments being agreed to, and I will touch on them.

However, before I do so, I associate myself with Daniel Johnson's remarks. I have a different opinion from that of Liam Kerr, because this is about more than just "semantic gymnastics". When I talk to those who work with people who have transformed their lives after being in prison or serving community sentences for the offences that they have committed, they often tell me—I am sure that they would tell committee members if they visited the Wise Group and other organisations—that the stigma that those people face, even though they have paid back their debt to society, causes incredible difficulties with employment and future opportunities.

Liam Kerr: I do not disagree with your point, but does that not go back to the convener's point about the bill very much dealing with people who are in the offending cycle, if you like? The convener was making a distinction about how language is used after a sentence has been served. Is that the distinction that you are making?

Humza Yousaf: Liam Kerr's point is not wrong; the bill's purpose is to look at electronic monitoring that is the result of an offence that has been committed. I will touch on those issues, and I thought that the evidence that was given at stage 1 by a number of organisations from Howard League Scotland to community justice partners and many others was very convincing. In that context, we will support the vast majority of the amendments.

However, some of the language is necessarily tied to the language that was used in earlier reserved legislation, such as the Rehabilitation of Offenders Act 1974—that is an important point. I will touch on those technical issues in my remarks. Although I do not concede that the term "offender" is wrong in part 1 of the bill, I am not opposing most of the amendments. The term "relevant person" has the advantage of removing grounds for misunderstanding over the potential narrowness or breadth of the term "offender", but I recognise that that was the focus of some discussion at stage 1. At stage 3, I will consider the use of the term "relevant person" in part 1 to ensure that substitution in place of "offender" does not make for awkward reading in conjunction with the various references in part 1 to "designated person".

I take a very different position on amendment 63, in which a definition of the term "relevant person" is proposed. By defining it so as to include only those individuals who have been convicted of an offence, the amendment would significantly limit the scope of part 1. I am very clear that part 1 is not limited to post-conviction disposals, so it could cover pre-conviction disposals, such as bail conditions, at a later date.

I oppose amendments 68 to 70 for the same reason. They would alter the long title of the bill to refer only to persons who have been convicted of an offence. I remind members of the background here, as section 1 explicitly refers not to "convicted persons" but more simply to "persons", who are then more generally described as "offenders" as a shorthand label for the purposes of this part of the bill.

In addition, section 1 does not refer to "disposals" as being final or post-conviction. Cases are disposed of at various stages of proceedings; bail is a particular disposal at a specific stage. Although at present the list of disposals in section 3(2) does not include any pre-conviction disposal, section 4(2) explicitly states that entries may relate to anything

"at any stage in criminal proceedings".

It is important to note that the statement is obviously and deliberately unqualified by reference to conviction having occurred.

I indicated at stage 1 my intention to bring forward an amendment to further clarify that very position in part 1 of the bill. Unfortunately, my amendment was ruled inadmissible on grounds of scope by the convener when I tried to lodge it. It is of course the convener's decision to make. I repeat that part 1 was devised with the intention of enabling pre-conviction disposals to be added to the list in section 3 at a later date via subordinate legislation. There was clear support at stage 1 by a number of witnesses and committee members for the addition of bail to the list of disposals that can be electronically monitored. I am clear that pre-conviction disposals, such as bail, can be included via subordinate legislation.

I hope that committee members can agree with that point. I emphasise that there is no disrespect to the convener over her ruling on the admissibility of my amendment. At stage 3, the matter will be in the hands of the Presiding Officer.

Daniel Johnson: My understanding is that, even on technical grounds, the word "offender" can and has referred to people pre and post-sentencing, which gives rise to the opportunity to look at whether amendments could be made for those who have not yet been sentenced. Is that the cabinet secretary's understanding? I would be interested in any technical insight that he may have.

10:15

Humza Yousaf: That goes back to what I said a minute ago. Section 1 does not refer to "convicted persons". It refers only to "persons", who are then generally described almost in shorthand as "offenders". Amendment 63 gives a definition that relies on conviction whereas we do not want to limit the scope of the bill. In fairness, I think that Daniel Johnson will not want to limit the scope. The stage 1 report showed broad support for also looking at pre-conviction uses of electronic monitoring.

I reiterate my support for Daniel Johnson's amendments but simply point out the unintended consequences. I support most of Daniel Johnson's amendments to replace "offender" with "relevant person". The exceptions are the restrictive definition of "relevant person" in amendment 63, and the restrictive changes to the long title in amendments 68 to 70. If amendments 63 and 68 to 70 are pressed, I invite members to reject them, but I also ask Daniel Johnson not to move them.

As the convener has already said, amendments 54, 55, 58 and 59 are no longer necessary in light of other amendments that we are making to part 1 of the bill.

In summary, I support the amendments in the group that change the terminology, but I urge the member not to move amendments 63 and 68 to 70. If he does move them, I urge the other members to reject them.

The Convener: You referred to the admissibility of some amendments so it is worth putting on the record that the Management of Offenders (Scotland) Bill is about post-conviction measures and relates to the management of persons after their guilt has been established. The amendments that you refer to cover persons before they have been convicted of an offence. As such, they contravene one of the grounds for admissibility in that an amendment is not admissible if it is not relevant to the bill. The amendments that were ruled to be inadmissible are not within the scope of the bill.

As the cabinet secretary rightly says, at stage 2, under standing orders, it is for the committee convener to rule on admissibility, and for those reasons the amendments to which the cabinet secretary refers have been ruled to be inadmissible.

Daniel Johnson, please wind up and indicate whether you wish to press or withdraw amendment 2.

Daniel Johnson: I begin by thanking all the members who have contributed to the debate in a constructive manner, and I thank members, particularly those who disagree with the amendments, for recognising the intent with which I lodged them. I also thank the cabinet secretary for his constructive remarks.

I will not move amendments 63 and 68 to 70. I accept the cabinet secretary's arguments that I would not want to limit the scope of the bill.

Two key arguments were made by those opposing the amendments. One was on precision and clarity, and the other was on principle.

On precision and clarity, as the cabinet secretary rightly pointed out, the bill deals with people who are at a number of different stages in the criminal justice process. Continuing to label people and give them one identification throughout that process is not helpful. It lacks precision.

On the point of principle, I have one clear principle when it comes to the criminal justice system. It must seek to rehabilitate people and give them every opportunity for rehabilitation. When they fail to take that opportunity, the justice system absolutely must respond swiftly and robustly, but people must be given that

opportunity. It is unhelpful to use stigmatising labels such as "offender" throughout the stages of the process and once people cease to be prisoners. For those reasons, I will press amendment 2 and move all the others except amendments 63 and 68 to 70.

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

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 2 agreed to.

Amendments 3 to 7 moved—[Daniel Johnson]

The Convener: The question is, that amendments 3 to 7 are agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendments 3 to 7 agreed to.

The Convener: Amendment 78, in the name of Liam Kerr, is in a group on its own.

Liam Kerr: Amendment 78 seeks to ensure that the court will make available a summary of evidence during the case.

Members will recall that during stage 1, James Maybee of Social Work Scotland told us:

"On the information and evidence that criminal justice social work receives to inform our risk and needs assessment and the level of service/case management inventory tool, what is sorely lacking is the summaries of evidence that are narrated in court."

He went on to say:

"It is a critical part of enabling the social worker to provide a much more evidence-based and objective report on risk and need. Without it, we are entirely reliant on the offender's version of events. There may be important information missing from that, particularly in relation to victims."—[*Official Report*, *Justice Committee*, 8 May 2019; c 7.]

What we learn from that is that summaries of court evidence are critical to having risk assessments that are objective and accurate. Without them, social workers are flying blind, with no access to information about how decisions might affect victims—apparently, their main source of information is the offenders themselves.

Colleagues will recall that we made a recommendation on the issue in our stage 1 report. Recommendation 182 says:

"the Committee calls on the Scottish Government to explore with the Scottish Courts and Tribunals Service how to more routinely supply criminal justice social workers with summaries of evidence from court cases, to inform the preparation of any risk assessments. Such summaries would help for both pre-sentence reports and reports issued prior to release from a custodial sentence."

Amendment 78 seeks to give effect to that recommendation to ensure that social workers have as much evidence as practicable in front of them before making crucial risk assessments, which will inform judges' decisions.

I move amendment 78.

John Finnie: I recall that that recommendation was unanimous, and there is certainly merit in it. My concern is about who produces the summary and what its status is. Ideally in a busy court, there would be a criminal justice social worker there, but I would be concerned about their capacity to produce the summary.

What would the status of a summary be? Perhaps Mr Kerr can help with that point. Would the summary be open to challenge? It could have a significant impact on the individual to whom it refers.

On first reading the amendment, I thought that it was a good idea because it is important that everyone has the maximum information around which to make an informed decision. I will keep my position open at this stage, because I am interested in the mechanics of the proposal. I hope that we will hear more from Mr Kerr on some of those issues.

Daniel Johnson: I support amendment 78. When we consider the findings of both Her Majesty's Inspectorate of Constabulary Scotland and HM Inspectorate of Prisons Scotland following the tragic death of Craig McClelland, we see that

the important point about information sharing was at the forefront of both reports. It is vital that all the relevant information is available to those making decisions throughout the criminal justice system. It strikes me that if a court takes the time to carefully examine evidence, it would be a mistake not to use that evidence subsequently.

Amendment 78 is in line with amendment 131, which is in my name and which seeks to include in subsequent decisions consideration of whether bail had previously been granted. Both amendments follow from the same insight: careful deliberation and examination of facts should inform subsequent decisions.

Liam McArthur: I thank Liam Kerr for lodging the amendment. As he said, it reflects the recommendation that we made in the stage 1 report. As John Finnie said, the practicalities of how it is delivered are of interest to all members of the committee.

Because the amendment has been lodged at stage 2, we have an opportunity to spend time, if necessary, adjusting it to make clear where the responsibility lies and to ensure that the way in which it is applied is not overly onerous on those who already have heavy workloads. That would seem to me to be time well spent.

I look forward to hearing what the cabinet secretary has to say.

Rona Mackay (Strathkelvin and Bearsden) (SNP): While I accept that Liam Kerr's amendment is well meaning, I agree with John Finnie and Liam McArthur that the mechanics of it are worrying. It is ambiguous; its purpose is not terribly clear. It would place an enormous burden on and be costly and time consuming for the Scottish Courts and Tribunals Service. How would the service identify which was the "relevant local authority"? Until there is more clarity about the mechanics, I cannot support the amendment.

Fulton MacGregor: Like John Finnie, Liam McArthur and Rona Mackay, I feel that the main issue with the amendment is in the practicalities and the mechanism. However, as a former criminal justice social worker, it would be remiss of me not to say that while I accept that Liam Kerr directly quoted James Maybee, that quotation is perhaps not representative of what he was trying to say at the time. In our evidence sessions and in the report, it became clear that there is a lot more to a criminal justice social work assessment than solely hearing the individual's views. Although those views are an important part of the assessment, I have made the point several times that there are other parts to it.

The amendment is definitely well meaning; I appreciate that the intention is to support social work staff. However, it might have unintended consequences and might end up not being supportive to the social work staff doing the assessment.

Before coming to a decision, I would like to hear the cabinet secretary's views on the amendment, but I am inclined not to support it.

The Convener: It seems eminently sensible to make a summary of the evidence that was presented during the case available to the relevant local authority. That would implement the committee's recommendation in our stage 1 report. However, I look forward to hearing what the cabinet secretary says.

Humza Yousaf: Thank you, convener.

I echo what other members have said: the intention behind Liam Kerr's amendment is admirable. I think that we can coalesce around that. My concern—and this is why the Government cannot support the amendment—is with the mechanics and the process, which Rona Mackay, Fulton MacGregor, John Finnie and Liam McArthur asked about. I will go into those issues in more detail, but it is perhaps worth starting with what the convener said in relation to group 1. The law should be precise, and the difficulty with amendment 78 is that, despite the good intention behind it, it is not precise.

On the mechanics, any new information-sharing arrangements that are created in the justice system must demonstrate clear benefits relative to the cost of putting those arrangements in place. At present, there is no mechanism across all court business for routinely collecting and transmitting such evidence from a court. What would a summary of evidence look like?

The Scottish Courts and Tribunals Service has commented on the amendment; it noted that it might be costly for the service and potentially time consuming for members of the judiciary, if they were to have to participate in such a process. The service has also said that there may be other mechanisms that may be more proportionate for the occasions on which a summary would be required. For example, dialogue with court-based social workers might achieve the same effect.

In practical terms, I note that it is not clear how the court would identify which local authority was the "relevant local authority" at the time of sentencing.

10:30

John Finnie: On the involvement of a court-based social worker, the reality is that, as we saw at Edinburgh sheriff court, a criminal justice social worker does not attend every trial. What has been suggested will require tremendous co-ordination, which might add to the many challenges with co-

ordination that already exist in our criminal justice system. As I understand it, it is not the case that every court has a criminal justice social worker in attendance.

Humza Yousaf: I will come on to address this in a moment, but a summary of evidence might not be needed for every single case that goes to court, although one might be required in certain cases. There is clearly and understandably a sense from some quarters of social work that it might be very helpful to have a read-out of the evidence or further information. As parliamentarians, we should work with the Scottish Courts and Tribunals Service to try to find an appropriate process.

I also think it important to put on record the fact that, with the risk assessment process, it is crucial that we are led by the Risk Management Authority's considerations as to what information will be most relevant. Accordingly, as parliamentarians, we need to be cautious about not pre-empting such considerations and—to respond to John Finnie's point—predetermining the information that would be considered as having some bearing on risk. We need to avoid prescribing information that might not be required by those tasked with making decisions on electronic monitoring or which is irrelevant or detrimental to any such decision.

As it stands, amendment 78 would cut across all forms of court-imposed electronic monitoring. Because a social work report is prepared for the court when a restriction of liberty order is being considered, social work will already be aware of the background to such cases. As a result, a requirement for the court to provide information to a local authority seems to have very limited merit, given that the authority is likely to be aware of that information already.

In addition, social work involvement in monitoring an individual serving a community sentence will vary, depending on the community sentence that is imposed. For example, there is no requirement for a supervising officer to be appointed by a local authority for an individual sentenced to an RLO, so the provision of a summary of evidence in such circumstances will be a relatively pointless exercise.

As I have said, the mechanics of amendment 78 and its lack of precision in the way that it cuts across all court business concern me, and, although I think that it is well intentioned, I ask Liam Kerr not to press it. Instead, I ask him to work with us and other interested partners and stakeholders to see whether we can reach an agreed position by stage 3. If he chooses to press the amendment, I ask committee members to consider rejecting it for the reasons that I have outlined.

Liam Kerr: Can I make an intervention on that point just before you finish?

Humza Yousaf: Sure. Why not?

Liam Kerr: Just on a point of process, surely my pressing the amendment and its being voted down do not preclude our working together on an amendment for stage 3.

Humza Yousaf: Sure. I am always open to working with Liam Kerr and other committee members. He can choose to press the amendment, and we will see what happens. Regardless of whether or not it is defeated, my offer to work with him is an open one.

The Convener: I call Liam Kerr to wind up on amendment 78 and indicate whether he wishes to press or withdraw it.

Liam Kerr: I genuinely thank committee members and the cabinet secretary for their thoughts and comments. I will respond to a few of the concerns that have been raised.

I am not convinced by Rona Mackay's comment that the purpose behind the amendment is not clear. In fact, I think that it is completely clear.

With regard to the point that Mr Finnie made about the court process, it cannot be beyond the wit of man to make the proposal work in a court situation. He mentioned the court-based social worker, but I think that what has been proposed can be done. It is possible. I understand and accept the point about resourcing and see where it comes from, but members will be aware that amendment 76, which is also in my name and which we will consider later, specifically deals with the resources for the bill. I have no doubt that members will be looking forward to agreeing to that amendment, because if it is agreed to, the resourcing will be available for the process that is set out in amendment 78.

I hear Mr Finnie's point about the status of a summary, but the proposal is not just about assisting and ensuring fairness for all parties—including the relevant person, accused or offender—but about ensuring that social workers are fully resourced.

To pick up on James Maybee's point about information on victims being missing, there is a real concern that we focus an awful lot on offenders—

John Finnie: Will the member give way?

Liam Kerr: Yes, of course.

John Finnie: For the avoidance of doubt, I support the direction of travel, but, as ever, I am interested in the practicalities. On the status of the report, would it be open to the individual whom the report is about, or to a victim, to challenge it? Liam

Kerr is right that technical solutions are possible. Also, who would compile the report?

Liam Kerr: I am grateful for that intervention. John Finnie is quite right: we would need to work that out as part of a process. The principle that I am arguing for is that there needs to be equality of arms between the offender, the victim and social work, to make sure that we come to the best decisions, and the right resourcing decisions, once the process is in place.

The final challenge that I faced was from Fulton MacGregor, who said that the amendment might not be helpful to social work staff. I attach particular weight to his comments. Given his background, I was interested to hear what he had to say. In response, I suggest that James Maybee was very clear that, because of the lack of summaries, social work is effectively flying blind. It seems to me that my amendment would help; it would improve the system.

Fulton MacGregor: Have you had any discussions with Social Work Scotland, social workers and all the relevant agencies about the amendment?

Liam Kerr: No, which is why I attach particular weight to your contribution. I refer to the evidence that we heard and the committee's unanimous recommendation to call for such an approach. I am simply bringing forward the committee's view. My amendment will help to address the very point that James Maybee made and ensure that social work is not flying blind. The amendment would help social workers, and we should agree to it.

I press amendment 78.

The Convener: The question is, that amendment 78 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

Against

Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 78 disagreed to.

Amendment 8 moved—[Daniel Johnson].

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

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 8 agreed to.

Section 1, as amended, agreed to.

Section 2—Particular rules regarding disposals

Amendment 9 to 12 moved—[Daniel Johnson].

The Convener: The question is, that amendments 9 to 12 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendments 9 to 12 agreed to.

Section 2, as amended, agreed to.

Section 3—List of the relevant disposals

The Convener: Amendment 81, in the name of the cabinet secretary, is grouped with amendments 82 and 83.

Humza Yousaf: Amendment 81 will introduce electronic monitoring for supervised release orders, which combine court-imposed supervision with early release. The SRO is not one of the court disposals that are listed in section 3, and it is not one of the various forms of licence condition that could attract an electronic monitoring requirement that are listed in section 7.

An individual who is the subject of an SRO is released with a supervision requirement and licence conditions that are set by the court. Therefore, it is appropriate to add SROs to the list in section 3, so that the court can impose an electronic monitoring requirement. That will enable a movement restriction in an SRO to be electronically monitored, in the same way as a movement restriction in any other form of early-release licence—parole, home detention curfew, temporary release and so on—can be monitored.

Amendments 82 and 83 will amend section 3 to remove all references to quasi-criminal sexual offences prevention orders and sexual harm prevention orders. The bill is aimed solely at criminal proceedings: it brings all the existing powers to impose electronic monitoring in criminal proceedings into a single statutory provision. The policy intention is that the bill will not extend to orders that are given outwith criminal proceedings, because different safeguards and oversights apply to criminal orders from those that apply to civil orders—for example, in relation to the duration of monitoring.

Amendments 82 and 83 make it clear that, in relation to orders that can be imposed in criminal proceedings or on application by a chief constable, the bill applies only to orders that go through the criminal proceedings route. That is an important clarification that will ensure that the legislation, as a single statutory provision for electronic monitoring in criminal proceedings, does not inadvertently cast doubt on the ability of any court to proceed with its existing powers to impose electronic monitoring.

It is not the intention to insinuate, simply by excluding all civil orders from the list in section 3, that the court has no power to impose electronic monitoring in civil proceedings. Rather, the bill will make no changes to the existing powers that are available to the civil courts when they impose movement restrictions on an individual. Where those powers enable the civil courts to order electronic monitoring of movement restrictions, the civil courts should, of course, retain that discretion.

I move amendment 81.

Liam Kerr: On amendments 82 and 83, I understand what you said about SOPOs and SHPOs being covered by different legislation. However, can you clarify whether the practical effect of removing such orders from the bill will be that more people who are subject to such orders—sexual offenders—might be out on licence, or some such, and not the subject of electronic monitoring? Will the practical impact of the amendments be a reduction in protection of the public?

Humza Yousaf: I appreciate that important question. The answer is no—there will be no diminution or degradation of, or detrimental effect on, protection of the public because, as you rightly pointed out in asking the question and as, I hope, I said, we are not casting doubt on the ability of a court to proceed using its existing powers. Legislation is already in place to cover restrictions in relation to the quasi-criminal orders that we are talking about.

If Liam Kerr or the committee need further reassurance on that, I will be happy to provide it in writing. I am happy to say on the record that the change will not reduce the practical impact or effect of SOPOs and SHPOs.

The Convener: That is an important point to have on the record. Amendments 82 and 83 will not adversely affect monitoring of sexual offenders.

Amendment 81 agreed to.

Amendments 82 and 83 moved—[Humza Yousaf]—and agreed to.

Section 3, as amended, agreed to.

10:45

Section 4—More about the list of disposals

Amendments 13 to 16 moved—[Daniel Johnson].

The Convener: The question is, that amendments 13 to 16 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendments 13 to 16 agreed to.

The Convener: Amendment 84, in the name of Humza Yousaf, is grouped with amendments 85 to 89, 91, 92 and 94 to 100. Agreement to amendment 95 will pre-empt amendment 58, and agreement to amendment 99 will pre-empt amendment 59.

Humza Yousaf: The amendments in the group are minor technical amendments that are designed to provide additional clarification of some of the language that is used in the bill. They will make no substantive change to the operation of the provisions, but are, I think, useful for a clear and full understanding of what the provisions say and do.

There are various references in part 1 of the bill to movement restrictions: amendments 84, 85, 86 and 96 will clarify those references by stating that movement restrictions include

"being at, or not being at, a particular place".

Section 8(2) describes the types of devices that may be specified as "approved devices". Amendment 87 provides that the provision would include devices that measure

"the level of alcohol, drugs or other substances"

taken by the offender, rather than just measuring the presence of alcohol, drugs or other substances in the offender's body. That ties in with amendment 98, which I will come to shortly.

Amendment 88 will add a subsection to section 8, to provide that any apparatus that is linked to the approved device can also be prescribed as an approved device under section 8(1). That will ensure that there can be no doubt as to the legitimacy of using a radio frequency box, for example, alongside an electronic tag.

Section 9(3) provides that regulations that are made under section 9

"may set out how a device is to be worn ... or used ... by an offender."

Amendment 89 provides that regulations may set out how "or when" a device is to be worn or used. That provision is to provide for circumstances in which the monitoring requirement might be intermittent.

With regard to amendment 91, section 12(2) provides that an

"offender must obey the instructions given by the designated person on how an approved device ... is to be ... worn ... or ... used".

Daniel Johnson: Amendments 89 and 91 seek to improve the specificity on wearing of devices. There is concern about offenders cutting off devices or tampering with them in other ways. Will the amendments improve the ability to respond to such instances, especially when the intention of the individual is to tamper with the device in order to evade the restrictions that the monitoring is supposed to place on them?

Humza Yousaf: I will make a couple of points. I will probably come on to that specific issue and some of the unintended consequences when Liam Kerr speaks to his amendments on cutting off or tampering with tags.

In my amendments 89 and 91, the change of language is to provide sufficient flexibility in how monitoring might be given effect. A designated person might need to provide instruction on intermittent monitoring, so there should not be an effect on, for example, whether an individual cuts off or otherwise tampers with a tag. As I said, I can come on to that later, when Liam Kerr speaks to his amendments. Amendments 89 and 91 should not have the effect about which Daniel Johnson is concerned.

I will move on to the other technical amendments. Amendment 92 will add a subsection to section 12 to clarify that the obligations to wear, use and refrain from tampering with or damaging the device

"include any apparatus linked to the device".

Section 14(3) states that evidence of a breach

"may be given by way of"

an automated "document" containing relevant information. Section 14(4) states that "This includes" specific types of information. Amendment 94 will change that phrase in section 14(4) to "Examples are". That is a minor change for sense in the wording of section 14.

On amendment 95, section 14(4) refers to information about

"the offender's whereabouts at a particular time".

Amendment 95 will change that to the "device's whereabouts" to reflect the logic that the automated evidence is of the device's whereabouts rather than the offender's whereabouts, although the latter will often be easily shown by or inferred from the former.

Section 14(4) states the types of information that can be included in an automated statement from the device. Amendment 97 will add to the list the

"connectivity ... or working of the device"

and the

"wearing ... or use of the device ... at a particular time".

Coupled with information about the device's whereabouts, that should assist in showing that the offender was wearing the device at the time.

Section 14(4)(b) provides that automated information includes "the presence of alcohol" and so on "in the offender's body". Amendment 98 provides that the automated evidence will include the presence "or level" of alcohol and so on. That ties in with amendment 87, to which I spoke earlier.

Amendment 99 will clarify section 14(4)(b), which provides that automated information includes "the presence of alcohol" and so on "in the offender's body", by having it state that the automated evidence will be the presence of alcohol in the "wearer's or user's" body. That is to reflect the logic that the automated evidence is of consumption by whomever is wearing the device, although—again—it will often be easily shown by or inferred from related facts that it is the offender.

Amendment 100 is a minor correction to change "a" to "the" at the start of section 14(6)(c).

That summarises the proposed changes that will be made through the amendments in the group. As I said, they are merely for improved understanding of how the monitoring system is intended to work, and will have little substantive or practical effect. I again note the concerns that Daniel Johnson has raised. I will perhaps come on to them in a little more detail in considering amendments that we are yet to debate.

I move amendment 84.

The Convener: For the avoidance of doubt, will you clarify what amendment 93 will do? It appears that it will allow non-compliant prisoners to avoid recall to custody. Is that the case?

Humza Yousaf: I did not speak to amendment 93.

The Convener: I apologise. Amendment 93 is not in this group.

Amendment 84 agreed to.

Amendment 17 moved—[Daniel Johnson].

The Convener: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 17 agreed to.

Section 4, as amended, agreed to.

Section 5—Requirement with licence conditions

Amendments 18 to 25 moved—[Daniel Johnson].

The Convener: The question is, that amendments 18 to 25 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendments 18 to 25 agreed to.

Section 5, as amended, agreed to.

Section 6—Particular rules regarding conditions

Amendments 26 to 28 moved—[Daniel Johnson].

The Convener: The question is, that amendments 26 to 28 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendments 26 to 28 agreed to.

Section 6, as amended, agreed to.

Section 7—List of the relevant conditions

Amendment 29 moved—[Daniel Johnson].

The Convener: The question is, that amendment 29 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 29 agreed to.

Amendment 85 moved—[Humza Yousaf]—and agreed to.

Amendment 30 moved—[Daniel Johnson].

The Convener: The question is, that amendment 30 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 30 agreed to.

Section 7, as amended, agreed to.

After section 7

The Convener: Amendment 31, in the name of Daniel Johnson, is grouped with amendment 131.

Daniel Johnson: Both amendments in this group arise from the same insight, which I alluded to earlier in relation to one of Liam Kerr's points, to do with information sharing.

HMIPS, in its "Report on the review of the arrangements for home detention curfew within the Scottish Prison Service", was clear and robust on the issues around information sharing in relation to Craig McClelland's tragic death. The report stated:

"Whilst an assessment process clearly existed, it may not be regarded by some to meet the definition of 'robust'."

It went on to say:

"Those making decisions to release an individual on HDC do not have access to intelligence held by Police Scotland, nor is it easy for them to access information regarding any outstanding charges, or ongoing investigations relating to the HDC application. This situation makes it difficult to come to an informed decision about an individual's overall suitability for HDC."

The report recommended that, prior to making a decision,

"The person charged with making the decision to release someone on HDC should have ... access to information and intelligence held by Police Scotland, the Scottish Court and Tribunals Service and the Crown Office and Procurator Fiscal Service".

Amendment 31 would ensure that there is a legal obligation on those agencies and bodies to share exactly that information with the SPS and, therefore, with individuals making the decision about whether to grant someone HDC. Putting that in law is of fundamental importance, so that the tragic circumstances that arose cannot happen again. There would be a legal obligation—a legal requirement—on agencies to share information, exactly as HMIPS recommended.

11:00

Amendment 131 relates to decisions made about an individual during the court process. It strikes me that many of the considerations that are relevant in deciding whether to grant an HDC are similar to those when deciding whether to grant bail or to remand someone who appears on charges—looking at whether the person is a risk and whether there are relevant issues or concerns, for instance. While we should acknowledge that circumstances can change—obviously, there will be a period of time spent in prison or in another context in which a person can reform; and I am not saying that that cannot happen—the decision made by the judge or sheriff about whether to bail or to remand someone is clearly relevant to someone making a decision about HDC. I realise that there are issues around the use of remand in Scotland, which I would like to explore further while we are considering these amendments. Nevertheless, we should have regard to the information and the evidence that the courts used when we are establishing the risk in relation to granting an HDC and, more broadly, electronic tagging.

I hope that members will consider those issues when looking at these amendments.

I move amendment 31.

Fulton MacGregor: I have quite a lot of sympathy with the proposal. I apologise if amendment 31 is intended as a probing amendment but, as I said in relation to Liam Kerr's amendment, I think that it needs a wee bit more work with regard to what information would be shared and what information would be relevant. I do not see any detail in that regard. The landscape is quite complicated and we would need to consider the proposal a lot more closely, paying particular attention to human rights and data protection in relation to sharing information, because not every piece of information would be relevant.

I am interested to hear what the cabinet secretary says about the proposal. I think that it has merit, but I do not know whether the approach is developed enough for me to support it at this stage. If it is a probing amendment, that is fair enough, and perhaps the issue could be brought back at stage 3.

The Convener: It strikes me that these amendments would make the process of early release more robust.

Liam Kerr: I endorse that comment; I think that the amendments are good. I hear what Fulton MacGregor says, but I—respectfully—disagree. There is plenty of detail in the amendments and they would make the process more robust. I look forward to supporting them.

Humza Yousaf: Again, I thank Daniel Johnson for bringing his amendments before the committee. My concerns about the amendments are around their drafting, the unintended consequences that they might have and whether they are necessary. I will try to deal with each of those points as briefly as I can.

On amendment 31, while the sharing of information between criminal justice organisations can, where appropriate, assist organisations in making decisions on an individual before and after conviction, the key consideration is the extent to which the amendment is necessary. All of the bodies that are named in amendment 31 already routinely feed information into the HDC decision-making process. The information that is currently shared with Scottish ministers by the Scottish Courts and Tribunal Service, for the purposes of HDC, includes a copy of any social work report or psychiatric report that was made available to the court; and the police share information, which, as a result of the review of HDC, now includes intelligence information relating to serious organised crime links. Social work departments routinely feed into the HDC release decision-making process, particularly through their role in the assessment of the home environment into which the individual will be released. Therefore, given the breadth of information that is already routinely shared among criminal justice organisations for the purposes of HDC, I am not convinced that a statutory obligation is required.

There are also some concerns about the drafting of amendment 31. First, the amendment would only require the Scottish ministers to request information prior to releasing a prisoner on HDC; there would be no obligation to wait for a response or to consider the information that is provided. Although I accept that that is no doubt implied in the underlying terms of the amendment, the language is not specific or precise.

Secondly, the description of the information that should be requested is very wide, as Fulton MacGregor noted. It includes any information that is relevant to monitoring the prisoner but it is not clear what specific information should be requested by the Scottish ministers or what information should be provided by the relevant organisations.

Although I respect the intention behind amendment 31, I ask that the amendment not be pressed. As ever, I am willing to work with the member in advance of stage 3 to give reassurances, where I can.

Liam McArthur: In your remarks about Liam Kerr's amendment on social work reports, I got the impression that you were not minded to frame an alternative to the provision in the bill, but I get the impression from what you are saying here that the language in this part of the bill could potentially be tightened up to address the concerns that have been outlined. Is that the case? Do you have an issue with the phraseology and the precision of amendment 31, rather than believing that the proposed new section should not be included in the bill?

Humza Yousaf: My issue is with the need for it and the precise wording. I am not convinced that the proposed new section is necessary. As I have said, a lot of work is being done on risk management. That aside, the fact that the language and the technical drafting of the amendment are such that it could have unintended consequences concerns me. I would be happy to engage in dialogue in advance of stage 3 to provide reassurances. It might well be the case that, despite those reassurances, members still want to lodge amendments in this area at stage 3. However, I hope that having the discussion in advance of stage 3 would help to inform any potential stage 3 amendments.

I turn to amendment 131. Compared with the decision about whether to release someone on HDC, the decision to release, or to refuse to release, someone on bail is taken at a different point in time, by a different person, for a different purpose and using different information. Someone

might not be granted bail because, for example, it has been assessed that there is a risk that they will not appear at court. That might be because they have a chaotic lifestyle at the time. That judgment is very different from the process of determining whether someone presents a risk of harm. Those are crucially important differences.

John Finnie: Would you not acknowledge that someone's propensity to disregard bail conditions should be an important factor in the overall assessment?

Humza Yousaf: Yes, I accept that point. I am making the point that different factors have to be taken into account depending on whether bail is being considered or another form of monitoring. It is important to put those differences on the record. I am not convinced that amendment 131 recognises that fact.

John Finnie: I was talking about someone having a history—a pattern—of not adhering to bail conditions, which ultimately results in a custodial sentence. If consideration is given to releasing such a person early on a home detention curfew, surely that would be a factor to consider. I am not saying that someone should be refused early release on HDC for previously having breached bail conditions, but it is a relevant consideration.

Humza Yousaf: Yes, I do not doubt that it is relevant. However, there are different considerations in the two circumstances. Not everybody will have a pattern of not adhering to bail conditions, because it might be the first time that they have appeared before a court. Notwithstanding that, John Finnie's point is important.

The substantive point that I want to make is that any decision by a public authority must be made in the light of the relevant information, and information that is irrelevant to the matter at hand should be disregarded. Amendment 131 risks placing an obligation on the Scottish ministers to consider information that, in many circumstances, might be irrelevant to the decision about whether to release a prisoner on HDC. That could leave a decision to release someone—or to refuse to release someone—on HDC at risk of legal challenge. Moreover, it would also place an administrative and financial burden on the Scottish Courts and Tribunals Service, as the process of collecting the data and recording it in a transmittable form would be likely to involve a judicial member's time. Accordingly, I ask that amendment 131 not be moved and, if it is moved, I urge the committee to reject it.

In summary, we should allow the work that is under way with justice partners, looking at HDC guidance and governance, to conclude; and we should be led by the Risk Management Authority, which is the body that can best provide advice on the factors that have the greatest relationship with risk. In my view, prescribing what that information should be first is not the correct approach.

I recognise Mr Johnson's desire for some on-going parliamentary involvement in these issues. We are not due to discuss the convener's amendment 130 today, but it seeks to oblige the Scottish ministers to prepare statutory guidance on HDC and to have it laid before the Parliament. I am minded to support that amendment and, if Mr Johnson is content not to press his amendment, I would be happy to work with him and the convener on that amendment to find a form of words that sets out what HDC guidance should cover in respect of information exchange.

Daniel Johnson: I will deal with amendment 131 before I deal with amendment 31. I acknowledge much of what the cabinet secretary has said about amendment 131, but there is a broad principle here, which the committee has encountered a number of times, about decisions and information that have been available to the courts but which, subsequently, are not accessible to decision makers, and that point needs to be addressed. I recognise that the process is perhaps much more complicated than amendment 131 suggests it is, so I will not move amendment 131 on that basis.

The cabinet secretary mentioned the need to bear in mind the fact that the Risk Management Authority looks at risk factors, and I turn to amendment 31 and the issues that have been raised about its broad nature. The amendment is broad because it is important that legislation is flexible. Putting specific risk factors in the bill and in black-letter law would be an error. That is precisely why the amendment is structured as it is. Subsection (4) of the amendment states:

> "The Scottish Ministers may by regulations make further provision for the purposes of and in connection with this section."

That is precisely so that ministers can specify in more detail and keep under review the manner in which information must be shared by them and, therefore, with the Scottish Prison Service, as it will discharge the Scottish ministers' duties with regard to much of the bill.

I will press amendment 31. I am very much aware of what members have said about the lack of specificity in the amendment, but that is deliberate. It is important that the legislation is flexible, and subsection (4) would enable that.

More broadly, although the cabinet secretary stated that the amendment does not recognise what already happens and talked about whether it is necessary, the reports by HMIPS and HMICS

spell out in detail exactly why it is necessary: the situation has failed with tragic consequences. Information has not been shared in a timely or relevant manner and it certainly has not been acted on. Given those failures, we must put into law a provision to ensure that there is a legal requirement to share information so that it can be acted on. That is why it is necessary to put the amendment into law. It is not about saying what is or is not happening; the aim is simply to state what must happen.

Humza Yousaf: I mentioned that point in my remarks; what Daniel Johnson is trying to do might not give effect to that good intention. All that his amendment would oblige the Scottish ministers to do would be to request information; they would not have to wait for that information to come back to make a decision on HDC release. I do not doubt the consequences, but the wording is simply about requesting information as opposed to being about waiting for the information to come back, digesting it, poring over it and making an informed decision based on it. The practical effect of that might not fulfil what Daniel Johnson has articulated.

Daniel Johnson: I will reply slightly impudently, if I may: I am sorry to hear that the cabinet secretary has such a pessimistic view of how public bodies might respond to ministerial requests.

In all seriousness, a number of measures and powers are set out in law in terms of requests. If the principle is correct, I would be more than happy to look at the amendments at stage 3 to improve the robustness of the approach.

I will press amendment 31 because it is important. If it is not agreed to, I will look at how it could be improved and lodge an amendment at stage 3, as the issue is of fundamental importance.

Amendment 31 agreed to.

Amendment 131 not moved.

Section 8—Approved devices to be prescribed

Amendment 32 moved—[Daniel Johnson].

11:15

The Convener: The question is, that amendment 32 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 32 agreed to.

Amendment 86 moved—[Humza Yousaf]—and agreed to.

Amendment 33 moved—[Daniel Johnson].

The Convener: The question is, that amendment 33 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 33 agreed to.

Amendments 87 and 88 moved—[Humza Yousaf]—and agreed to.

Section 8, as amended, agreed to.

Section 9—Use of devices and information

Amendment 34 moved—[Daniel Johnson].

The Convener: The question is, that amendment 34 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 34 agreed to.

Amendment 89 moved—[Humza Yousaf]—and agreed to.

Amendment 35 moved—[Daniel Johnson].

The Convener: The question is, that amendment 35 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 35 agreed to.

Amendment 36 moved—[Daniel Johnson].

The Convener: The question is, that amendment 36 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 36 agreed to.

Section 9, as amended, agreed to.

Section 10—Arrangements for monitoring system

Amendment 37 moved—[Daniel Johnson].

The Convener: The question is, that amendment 37 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 37 agreed to.

The Convener: Amendment 90, in the name of John Finnie, is in a group on its own.

John Finnie: This amendment is fundamentally about one's position with regard to public money and whether one feels that there is a role for the private sector. In our scrutiny of the bill, what became apparent was the reliance on the private sector to provide information in advance of that scrutiny or thereafter. It seemed to play a very pivotal role.

Actually, I do not think that there should be a role for the private sector in this important area, and I am not alone in thinking that. Indeed, I have a very lengthy list of examples of the party of Government being against it, too. In 1999, the Scottish National Party said that it remained

"totally opposed to private prisons";

in 2001, it passed a motion calling for a halt to the privatisation of prisons; and its 2003 manifesto says:

"First, we will ensure public services should be just that—public. Government money intended to provide public services must do ... that and should not be wasted through inefficiency or ... taken out of the system to pay excessive private profit."

In 2005, in a BBC documentary on Her Majesty's Prison Kilmarnock, the then SNP justice spokesperson said:

"Public safety is too important an issue to be at the whim of private profit."

The SNP's 2007 manifesto said:

"We are committed to a publicly owned and run prison service."

In 2007, the SNP blocked the plans for the replacement prison in Bishopbriggs. The list goes on. Most recently, we heard the argument from one of the cabinet secretary's predecessors in an article in *The Herald* titled "Time to expose the lies behind the clamour for private prisons".

At the moment, two of Scotland's most important public services—the Scottish Prison Service and the police service—use an

intermediary for monitoring. That is unhelpful in relation to something as important as community safety. I see no reason why those two services, jointly or individually, should not take charge of this important situation.

From recent press coverage, I know that the Scottish Government's position is that anyone is able to bid for facilities—whether they relate to ferries, prisons or the police—but that is entirely what is wrong with the system. Such contracts should be based on public service and providing a service to the public, not on who can put together the best bid for a franchise or whatever.

I hope that the cabinet secretary will lend his support to my amendment, as that would be entirely in line with his party's long-stated position on the issue, and I look forward to hearing his view.

I move amendment 90.

Daniel Johnson: I am far from reticent about extolling the virtues of the private sector. Prior to coming into Parliament, I worked in it for 15 years and ran my own business, but there are limits to the benefits of the private sector. We must be cautious about its role in public service provision generally, but particularly in the criminal justice sphere, given the serious nature of criminal justice matters.

John Finnie's amendment 90 is well drafted for two reasons: one is practical and the other is a point of principle. On the practical matter, there is no doubt that the issues that we encountered when we examined HDC related to information sharing and how efficient that has been. Additional agencies or organisations being involved in that chain of information sharing—the sequence of information being passed from one end of the process to the other—will simply complicate that process. Therefore, I question whether it would be an advantage for an additional and unnecessary agency to be introduced, regardless whether it is a public sector or private sector organisation.

In addition, there is a point of principle in whether it is right for private companies to earn a profit from the incarceration of individuals and the monitoring of them thereafter. That question needs to be addressed. John Finnie made a good case by using the party of Government's own record on the matter, and he made his arguments very well.

The only slight caveat that I add is that I am not entirely convinced that the addition of a third sector organisation or a registered charity would necessarily improve matters greatly, particularly in relation to practicality, but also in relation to the bidding system.

John Finnie: The amendment is about giving the option. My preference is that public sector organisations should be used, but the motivation of a third sector organisation or charity is not the creation of profit. Maximising profit for the shareholders is the obligation that is placed on present providers.

Daniel Johnson: I agree with that, but two other issues have been encountered with probation services that are delivered by third sector organisations south of the border. Organisational complexity and the bidding process, which has encouraged a race to the bottom, have meant that probation services south of the border are widely recognised as having been degraded.

I will support amendment 90 and I merely raise that point as a question mark and a point of detail. This is a well-stated amendment and I will support it.

Rona Mackay: I agree with amendment 90 but point out that, at the moment, we are still governed by EU law and procurement law and, as such, public and private bodies are entitled to tender. If we do not allow private bodies to tender, we might be in contravention of that law.

The Convener: Does John Finnie want to respond to that?

John Finnie: I simply say that this is a competent amendment or it would not be here.

Liam Kerr: I will vote against the amendment, which will not come as a surprise. The amendment starts from the flawed position that the public sector is automatically better and more efficient than the private sector. I just do not think that that stacks up.

Mr Finnie says that this is about who provides public service. To an extent, this is about who gives the best service and value for money. Daniel Johnson went on to suggest that, if something is so important, it must be publicly owned but, with respect, that argument is facile and it sacrifices the best delivery for dogma.

Daniel Johnson: My point was not that it would be better; it was about whether it is right for a private organisation to make a profit out of delivering a service such as this.

Liam Kerr: That suggests that Mr Johnson would sacrifice delivery for principle and that he puts ideology over the delivery of the best service to the public.

I will vote against the amendment. However, when Mr Finnie is summing up, I would be interested to hear about the cost of the proposal. I presume that, if we are looking to put the provisions into the legislation, cost will need to be a serious consideration. Where will that money come from? I also seek confirmation that Mr Finnie

will support my amendment 76, which says that the proposals in the bill must be appropriately resourced before it can be passed.

Liam McArthur: I have reservations about the amendment. I hear what Daniel Johnson said about the practicalities and the principle, but I can point to examples of casework that have passed across my desk in the past 10 years that show that communications between entirely public service providers have fallen short of what they ought to be. Daniel Johnson's point about the importance of communication is absolutely right. However, the assumption that somehow communication is overly complicated and falls down with the introduction of players from outwith the public sector, whether they are in the private sector or, indeed, the third sector, as provided for by John Finnie's amendment, does not naturally follow.

In relation to the principle, I hear what John Finnie is saying. That is why the contracts for the procurement process had to be tightly defined. We need to ensure that the delivery against those contracts is absolutely right, whether it is done by the public, private or third sector. That is a discussion that I and John Finnie have had in the right spirit in relation to ferry contracts. I realise that those are of a different nature to the sort of contracts that we are dealing with here, but they still provide a lifeline to the communities that rely on them, so the principle holds. Concentrating on what it is that is procured and making sure that it is of the highest quality is ultimately the primary concern. With those comments, I confirm that I will not support Mr Finnie's amendment.

Fulton MacGregor: We have still to hear from the cabinet secretary, but, at this stage, I am inclined to vote against the amendment, reluctantly. I say "reluctantly" because John Finnie has championed the issue throughout the evidence sessions and I agree with the principle. However, that is what it is: it is a principled amendment, and I am not sure that it would achieve the goal that Mr Finnie desires. I wonder whether it would be better placed in the policy context of the Government of the day. John Finnie is right to say that it is generally an SNP principle, but perhaps his amendment is more something for the policy of the Government of the day rather than something that should be in the bill.

I am interested to hear what the cabinet secretary has to say but, at this point, reluctantly, I am inclined to resist.

The Convener: I note the ideological argument that several members have put forward. For me, the crux of this amendment is that it could potentially preclude the very best people—who may very well be in the private sector as opposed to the public sector—to monitor someone effectively and efficiently to ensure public safety. For that reason, I cannot support it.

11:30

Humza Yousaf: I thank John Finnie for lodging this amendment. I had a shiver up the spine when Liam McArthur and John Finnie started on about the ferries debate, which I remember only too well.

I agree with Fulton MacGregor's remarks about understanding and having sympathy with the principle, but I will be urging members to resist amendment 90 for very good reasons.

Rona Mackay's point should be given a fair bit of weight and not be dismissed, although I know that John Finnie was not dismissing it. What we can do in this area is governed by European Union procurement law. We do not know what will happen in the coming months and years, but at the moment we must treat economic operators "equally and without discrimination". Any amendment may be considered outside competence if it is incompatible with any of the convention rights or EU law, and it could potentially be considered ultra vires and open to challenge.

Daniel Johnson: I am sure that that will remain the case only if the service is subject to a tendering process. Why does the Scottish Government not simply give the duty to the Scottish Prison Service or Police Scotland, so that it would not be subject to a tendering process and therefore not subject to European laws?

Humza Yousaf: That would be incredibly difficult to do. The ability to provide the service is currently not in the skill set of the Scottish Prison Service, which is why we ended up putting it out to tender for very good reason. I will come to that point in a second with regard to other public agencies or third sector organisations. I am not convinced that it would be the best use of the SPS's time to put a tag on somebody's ankle and monitor it, for example. There is potentially a role for the private sector or collaboration of third sector organisations, but it is not in the skill set of SPS.

John Finnie: Will the cabinet secretary take an intervention?

Humza Yousaf: I would like to make progress.

John Finnie: My point is pertinent.

Humza Yousaf: In that case, of course—if it is on that point.

John Finnie: My point is about the continuing role for the Scottish Prison Service. Its throughcare and aftercare, and the role that officers play in the community, are very positive. Is there any threat of that role being privatised?

Humza Yousaf: We are not talking about privatising throughcare support. Electronic monitoring is very different, for a variety of reasons. Throughcare—

John Finnie: What about aftercare?

Humza Yousaf: Throughcare can be an important element to complement electronic monitoring, but it is not the same thing.

Nothing currently precludes public or third sector providers from bidding to provide the monitoring service—as several members have said, including John Finnie. Indeed, some did so the last time that the service was put out to tender. The Scottish Government sets the standard of service and assesses bidders on a number of criteria, including their organisational values, which allows us to ensure that any provider operates with organisational values that are well aligned with the service that Scottish ministers want to see in Scotland. It is important to say that, for any provider that has tendered successfully and won a contract from the Scottish Government, we set in the contract the technical standards and rules about how data is held and managed. I hope that that provides some reassurance on safeguards that exist, irrespective of provider.

I note that that element of the service, whether provided by a private contractor or the public sector, was not a substantive part of the stage 1 evidence. It is important that any of our actions in this area are led by evidence, and it is important to separate out how the service is delivered from how it is sometimes reported, especially as the focus of reporting can often be providers in England and Wales, where the service is vastly different.

The electronic monitoring working group, whose work was the genesis for much of the bill, made a recommendation in this area that we should consider. It suggested that there could be improved integration of electronic monitoring. The bill has taken steps to address that, with stricter movement requirements being added to community payback orders imposed at the first disposal. That means that social work will be much more closely involved in the conversation.

I want to point out the importance of joint working. If we restrict how we contract for a service in the way that amendment 90 would require, not only would we risk not complying with our legal obligations, but such an approach might not allow for any joint working arrangements. I am not aware of anywhere in the world where this service is delivered without some element of private sector provision.

Daniel Johnson: My understanding is that, in most countries, the devices are procured from the private sector but administered by the public sector. We are on our own in getting the private sector to provide both elements. Will the cabinet secretary acknowledge that point?

Humza Yousaf: I will look into the detail of that and reflect on what Daniel Johnson says. He makes the point that there is some private sector involvement, and that is a fact that we cannot get away from. It is important to make the point—given that John Finnie was almost quoting previous SNP manifestos—that we have not built private prisons. It is a point of principle for us. However, we have to accept that, almost everywhere in the world, there is some element of private sector involvement in the justice system—exactly as Daniel Johnson, who will be supporting John Finnie's amendment, has said.

As I have already said, I am not of the view that it is the best use of the time of a qualified social worker or throughcare support worker to travel out to put a tag on someone's ankle. It is important that we bring together the respective strengths of public bodies and third sector operators in supporting the service in Scotland. I am not convinced that that is best done by requiring them to take on responsibility for monitoring the service.

On a more technical drafting point, the amendment prohibits the Scottish ministers from contracting with an individual who is not employed in the public sector. It arguably does not prohibit ministers from contracting with a private sector corporate body and may not therefore achieve the result intended by Mr Finnie.

I hope that Mr Finnie will not press amendment 90 for the reasons that I have provided, although I suspect that he will. If he does so, I ask the committee to reject the amendment.

John Finnie: I will be pressing amendment 90. I note what the cabinet secretary said about not having private prisons as a point of principle. I am sure that he would accept that the party of Government is not the only party allowed to hold points of principle.

One thing that is important here, as my colleague Daniel Johnson pointed out, is that the contract is an issue because it is put out to tender. Of course the private sector has some involvement in everything, because the police service does not make its own equipment and so on. It has a role—it is called capitalism and it is where we are. That is reality.

However, the amendment is competent, or we would not be discussing it. It is not helpful to talk about challenges—anything can be open to challenge. We are in a situation where information is increasingly available. We can see that and people are concerned about the growth of the amount of information that is held. It is a fact that

people are particularly concerned when such information is held by private bodies.

Humza Yousaf: Can John Finnie give a specific Scottish example of private sector involvement being the problem with the service?

John Finnie: I share the cabinet secretary's view that private sector involvement in the prison service is unhelpful. The Scottish Government is behind the Tory UK Government on the issue, because only yesterday, the UK Government took the contract away from Birmingham prison.

Humza Yousaf: We have never built a private prison. I do not accept that insinuation.

John Finnie: Your point of principle, cabinet secretary, was about whether there is a role for the private sector. Any limited company is obliged to maximise profit. Liam Kerr talks about where the money will come from, but the money is there already: the service is already being funded. The question is about who delivers it.

The Convener: The question is, that amendment 90 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Johnson, Daniel (Edinburgh Southern) (Lab)

Against

Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 90 disagreed to.

Section 10, as amended, agreed to.

Section 11—Designation of person to do monitoring

Amendments 38 to 45 moved—[Daniel Johnson].

The Convener: The question is, that amendments 38 to 45 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendments 38 to 45 agreed to.

Section 11, as amended, agreed to.

Section 12—Standard obligations put on offenders

Amendment 46 moved—[Daniel Johnson].

The Convener: The question is, that amendment 46 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 46 agreed to.

Amendment 91 moved—[Humza Yousaf]—and agreed to.

Amendments 47 to 51 moved—[Daniel Johnson].

The Convener: The question is, that amendments 47 to 51 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendments 47 to 51 agreed to.

The Convener: I suspend the meeting for five minutes, to allow for a comfort break.

11:42

Meeting suspended.

11:48

On resuming—

The Convener: Amendment 73, in the name of Liam Kerr, is grouped with amendments 74 and 132.

Liam Kerr: Amendments 73 and 74 are very simple and clear. During stage 1, all committee members were concerned that, as the bill stands, offenders can cut off or tamper with their tag without that being considered a criminal offence. Amendment 73 would rectify that by making it an offence for an offender to cut off or tamper with their tag, regardless of the form of licence condition or community order to which the electronic monitoring conditions are attached.

My authority for lodging amendment 73 comes, in part, from Scottish Women's Aid's evidence to the committee at stage 1, when we heard that a criminal offence for such breaches is needed to create a credible deterrent. In addition, Victim Support Scotland, Community Justice Scotland and Positive Prison? Positive Futures talked about the need for a robust response to breaches of monitoring conditions. Amendment 73 would ensure that there was such a response.

Amendment 74 would simply ensure that the police would have powers of arrest if an offender cut off their tag, for example. Again, I lodged the amendment in response to evidence that was given to the committee. We heard from the police that there are grey areas with regard to their powers to apprehend. Amendment 74 will put things in black and white in the bill and will give the police the powers that we all heard they need.

I move amendment 73.

The Convener: Amendment 132, in my name, would cover a situation in which there had been a breach of an electronic monitoring order. In its stage 1 report, the committee recommended that breaches be swiftly investigated and, if found to be substantive rather than due to a technical fault, for example, responded to quickly and effectively. In particular, the committee noted the powerful evidence from Scottish Women's Aid and others who expressed concern about how breaches will be responded to in real time in domestic abuse or sexual offence cases. Given the nature of such cases, if an offender has breached electronic monitoring conditions and has entered an exclusion zone, there is likely to be a real danger of something adverse happening very quickly.

Amendment 132 would ensure that, if there were a suspected breach of the terms of a disposal or other conditions, relevant bodies would be contacted. Police Scotland is specifically mentioned, but the Scottish ministers would have the scope to expand the approach to cover any pertinent body. I drafted the amendment in that way because the bill team advised that I could not focus on domestic abuse and sexual offence cases. Amendment 132 would therefore apply to all cases. I recognise that its scope could be too wide to be effective; it is a probing amendment to enable the cabinet secretary to clarify how the Government envisages that substantive, not technical, breaches relating to domestic abuse and sexual offence cases will be responded to in real time—for example, if someone has entered an exclusion zone. Such offences are quite different in nature from many other offences, and I would like to know how victims can be protected from potentially grave breaches.

Daniel Johnson: I will speak briefly in support of all the amendments in the group, albeit that I acknowledge that amendment 132, in the convener's name, is a probing amendment.

Liam Kerr put it well: there needs to be a robust and swift response to breaches. When someone is released on a tag, that is a substitute for a prison term. They are out in society but on an electronic tag. That is a correct approach, but a breach of the conditions—particularly when it is a substantial breach such as cutting off a tag—has to be viewed as if it were a serious breach of prison conditions.

If someone cuts off a tag, that must be regarded with the same seriousness as their going over a prison wall. The situation is, in effect, comparable. I have had conversations about the need for an element of reasonableness in parts of the bill, and I am concerned about all breaches of all conditions being covered—particularly the technical breaches that the convener has just highlighted. What if someone breaches their curfew conditions by 10 minutes simply because their bus is late? Such matters need to be considered carefully, but Liam Kerr is right to frame the amendment in such stark terms. I will listen to what people have to say about the technical aspects.

The information-sharing provisions of amendment 132 are well stated and are very much in line with some of my own amendments on information sharing. The convener might not wish to press the amendment at this time, but I am interested in exploring the issues.

John Finnie: All three amendments in this group are interesting and, indeed, address what I thought was one of the most interesting pieces of evidence that we received during our scrutiny of the bill. As others have touched on, Pete White from Positive Prison? Positive Futures said that the counterbalance to what might be seen as a more liberal criminal justice regime is a robust response. I look forward to hearing what the cabinet secretary has to say on that, but I am always a wee bit wary in such circumstances, given that there will be occasions when discretion is appropriate. The person who makes the decisions must be empowered to do just that, and that will always be something of a challenge.

Fulton MacGregor: I agree with John Finnie. This was one of the more substantial issues to be raised at stage 1 and highlighted in our report, and Liam Kerr is right to lodge his amendments for debate. Perhaps Mr Kerr will address this concern when he sums up. On my initial reading, the main driver behind amendments 73 and 74 seems to be punishment instead of an attempt to address concerns about electronic tags being cut off. I am therefore not inclined to support his amendments just now, although he was certainly right to raise the issue. Perhaps it is more a matter for stage 3.

Liam McArthur: I appreciate that amendment 132 is essentially of a probing nature and that there is perhaps a bit of work to be done to finalise its wording. Nevertheless, it illustrates the benefit of lodging amendments at stage 2 to ensure that such things can be done ahead of stage 3.

Further revision of amendments 73 and 74 might well be necessary. I very much echo John Finnie's point about our wanting a more liberal and progressive regime on the one hand but needing robust safeguards on the other if such a regime is to carry the confidence of the wider public. I will listen with interest to what the cabinet secretary has to say. I suspect that changes to the amendments will probably be required, but they serve a useful purpose in putting down a marker at stage 2.

The Convener: I forgot to state my support for the very robust approach that I think is needed in the event of a tag being cut off or tampered with. I, too, look forward to hearing what the cabinet secretary has to say.

Humza Yousaf: Convener, I thank you and Liam Kerr for lodging the amendments in this group. I recognise that amendment 132, in your name, is a probing amendment, but I will do my best to address some of the concerns that you have rightly highlighted. I also thought that Liam Kerr articulated well the intention behind amendments 73 and 74, particularly with regard to the well-founded fears that have been expressed by survivors of domestic abuse and, indeed, victims of a variety of offences. However, like the convener, we recognise the unique nature of domestic abuse offences, which have rightly been in the spotlight this week.

As I have said, I will do my best to address many of the concerns that have been raised. I am conscious of the very good intentions behind the amendments in this group, but we will not be able to support them, because of our concerns about, if nothing else, unintended consequences, which I will highlight in a second. It might also be the case that, when some of these amendments were lodged, members had not had sight of the Government's amendments creating the new offence of remaining unlawfully at large and our wider amendments on home detention curfew. The committee might want to consider the amendments that we are discussing in that context.

12:00

Amendment 73 would make it an offence to contravene the electronic monitoring requirements that are set out in sections 12(2) and 12(3) of the bill, being the duty to obey instructions on how to use and/or wear the tag and the duty to refrain from tampering with, damaging or destroying the tag. However, that offence would apply to all forms of electronic monitoring, whether imposed by a court alongside a community sentence or imposed by the Scottish ministers on early release from prison.

The amendment does not provide for any form of defence for an individual who contravenes the electronic monitoring requirement. An individual who had a reasonable excuse for cutting off a tag would still be committing an offence. That point has been raised by a number of members. Daniel Johnson asked what would happen if the bus turned up 10 minutes late. Amendment 73, as it is drafted, does not provide for any reasonable excuse for cutting off a tag.

Liam Kerr: What would the cabinet secretary see as a reasonable excuse for cutting off or tampering with a tag?

Humza Yousaf: I will come to that. There may be, for example, a medical reason why someone had to cut off a tag. They may have injured their leg so that the leg was bleeding from a wound exactly where the tag was. I think we would all agree that, if medical treatment had to take place and the tag had to be cut off, that would be a reasonable excuse. However, that would not be permitted under amendment 73. I accept that it would be an exceptional case, but the law must allow for such flexibilities and reasonable excuses.

Daniel Johnson: This is an important detail. Does the cabinet secretary acknowledge the

argument that, when someone deliberately removes a tag with the intent of evading the conditions of an HDC, that should be an explicit offence? Will he consider a form of words that would make it an offence, albeit with conditions that, when someone has a reasonable belief that they will come to harm because they are tagged, that may be an excuse?

Humza Yousaf: I have touched on the point about having a reasonable excuse, and I hope that Daniel Johnson gives me time to develop the argument slightly. I am not convinced that that element alone should be an offence, and I will come to why that is. There are issues with creating hierarchies—there are unintended consequences—and the approach that the Government is taking on individuals being unlawfully at large is the best approach to allay the fears that exist.

Another issue with the drafting of amendment 73 is that the proposed offence would be triable only in summary proceedings, with a maximum sentence of 12 months imprisonment or a fine at level 5 on the standard scale, or both. If Parliament agrees, for the presumption against short sentences, to raise the length of a short sentence to 12 months, there would be a presumption against imprisonment for the new offence and the individual would be more likely to receive a fine. The new offence does not clarify what should happen if an individual cuts off their tag and receives a fine for breaching the underlying community sentence. An individual who cuts off their tag and therefore breaches their community sentence could, in the case of an RLO or a CPO, be fined by the court and the underlying order could continue to be in force. A further fine could be imposed for the new offence created by amendment 73, thereby enabling two separate financial punishments to be imposed on the individual for the same course of conduct.

Part of the rationale for not making cutting off a tag or a general breach of licence conditions a further offence is that there are already sanctions for those who cut off an electronic tag or otherwise breach the conditions of their licence or community sentence. An individual who breaches their licence conditions can be recalled to prison to serve the requisite part of their sentence. A short-term prisoner on HDC would be required to return to prison until their automatic release at the halfway stage. A long-term prisoner on HDC or parole would be likely to see their parole withdrawn and would be re-released only once the Parole Board for Scotland considered it appropriate. Currently, if an individual serving a community sentence cuts off an electronic tag or otherwise breaches the conditions of their licence, they can be returned to court and fined, and the terms of the underlying community sentence can also be varied in response. Alternatively, the court can revoke the community sentence and sentence the individual afresh, which could involve imposing a sentence of imprisonment.

The bill provides an electronic monitoring requirement that can be imposed in community sentences and licence conditions. The electronic monitoring requirement is that the individual must wear an electronic tag and refrain from damaging or tampering with the tag. The bill currently provides that a breach of the electronic monitoring requirement constitutes a breach of the underlying court order or the underlying licence conditions. That enables the breach provisions that have already been discussed for early release and community sentences to be triggered when an individual cuts off an electronic tag. The bill expressly provides that, if a breach of an underlying community sentence constitutes an offence, that offence will not be committed by breaching the EM requirement.

In addition, we have lodged a stage 2 amendment to make it an offence for an individual to remain unlawfully at large. In that respect, we agree with Liam Kerr that an additional punishment is required beyond the return of the individual to prison and the impact of that on their future release. The new offence provides that additional punishment. The offence also fulfils the recommendation that was made in October 2018 by Her Majesty's inspectorate of constabulary for Scotland without further offences being required. An individual on licence who cuts off their tag will be recalled to prison and, if they fail to return timeously, they will be committing the offence of remaining unlawfully at large. An individual who is serving a community sentence and who cuts off their tag can be fined or imprisoned under existing legislation.

We propose to resist the amendment for the following reasons. The existing breach procedures for parole, HDC and temporary release already enable the immediate recall of the individual to prison. The existing breach procedures that are applicable to community sentences already enable the court to punish an individual who cuts off their tag. The new offence of cutting off a tag would sit alongside the existing punitive measures that are available to the court in relation to community sentences, which could result in the individual being fined twice over. The creation of an offence of remaining unlawfully at large reduces the need for the offence of cutting off a tag in the context of those released from prison on licence, and—this is an important point—the offence of remaining unlawfully at large would apply to all breaches of licence conditions, including the cutting off of a tag, when the individual was recalled and did not comply timeously. In addition, the offence of remaining unlawfully at large would, by definition,

exclude community sentences and thereby side-step the need for a similar measure in relation to those orders.

There is a final, crucial point: if the offence were to be restricted to just cutting off or damaging the tag, we could be elevating the EM licence condition above all other conditions, even if those other conditions were more important in relation to protecting the public. For example, an individual staying in their house and cutting off the tag would be committing an offence, but an individual breaching a condition not to go near a school might not.

Daniel Johnson: I accept what you are saying, to some extent. However, we are dealing with electronic monitoring and it is the tag that makes those conditions possible. If you cut off the tag, you cut off the very thing that makes it possible for those conditions to be monitored. For that reason, it is of a more fundamental order.

Humza Yousaf: I take some exception to that, and refer you to the example that I gave. Under the proposal, someone who keeps their tag on and who has been told that a licence condition is that they should not go near a school, for very good reasons, might breach that condition but be deemed not to have committed an offence, whereas someone who cuts off their tag and sits in their house would be deemed to have committed an offence.

We can argue about which of those acts would be worse, or which would be a worse breach of a condition, but the point is that I do not disagree with the general intent behind what Liam Kerr is trying to do. My suggestion is that the offence of remaining unlawfully at large would cover all those potential breaches, including cutting off a tag. That is why it is a better approach than that of elevating one particular breach of licence—albeit a serious and important one—above others.

Amendment 74 provides a power of arrest when a constable suspects that an individual has committed the offence that is created in amendment 73. Amendment 74 does not specify whether that arrest can be effected with or without a warrant. The amendment is unnecessary, regardless of whether the amendment 73 offence remains in the bill. Section 1(1) of the Criminal Justice (Scotland) Act 2016 empowers a constable to

"arrest a person without a warrant if the constable has reasonable grounds for suspecting that the person has committed or is committing an offence."

We therefore propose to resist amendment 74 on the ground that it duplicates existing legislation, thereby creating confusion as to which provision would apply in any given case.

John Finnie: Does the cabinet secretary acknowledge that that is not what we heard from the police? The police told us that they did not have such a power of arrest.

Humza Yousaf: We will try to ensure that our amendment introducing the offence of remaining unlawfully at large and further amendments give clarity on the powers of arrest that are and are not available. However, I am clear about the current powers. We have checked and double-checked that in relation to section 1(1) of the 2016 act. That is not to take away from the recommendations that were made by HMICS in its report.

Liam Kerr: I want to pick up on that point, because I share John Finnie's concern. The committee heard clearly from officers that if, of an evening, they were to find somebody who they clearly felt was unlawfully at large, they would not have the power to arrest that person. I am paraphrasing, but that was certainly the evidence that I heard and that I believe the committee heard—officers do not have that power. The cabinet secretary seems to be suggesting that that is a misunderstanding on the part of the police. Is that correct?

Humza Yousaf: No, I am not suggesting that in the slightest. There is a difference between the powers of arrest when there is a suspected breach and the powers when a breach has been confirmed. That is a really important point.

Where the police need clarification, we are happy to provide that through amendments that we will bring forward. I am not convinced that Liam Kerr's amendment 74, which is tied to amendment 73, is the right way to do that. I am happy to give those reassurances where we can with any amendments that we bring forward.

If an individual breaches a community sentence, the court has the power to issue a warrant for their arrest. If an individual breaches their licence conditions, they can be recalled to prison and, on recall, they are deemed to be unlawfully at large. An individual who is unlawfully at large can be arrested without a warrant, and a constable can obtain a warrant to enter and search premises to arrest an individual who is unlawfully at large. That latter power is being clarified in the bill. There are existing powers for a constable to arrest an individual who cuts off the electronic tag, and I think that that makes amendment 74 unnecessary.

Amendment 74 does not refer to the offence that is created in amendment 73. Accordingly, the amendments are not co-dependent, so I suppose that the rejection of one does not necessitate the rejection of the other. That being said, we recommend the rejection of both amendments, for the reasons that I have outlined.

I accept that amendment 132 is a probing amendment, but the points that the convener made are important nonetheless. The amendment would place an obligation on the designated person to report every suspected breach of the community sentence or licence conditions to the police, whether or not the designated person considered that the breach should be addressed by the police. An individual who is five minutes late for their home detention curfew would require to be reported to the police, even though the police would not act on that information unless the individual had been recalled. Similarly, an individual who is five minutes late for a restriction of liberty order curfew would require to be reported to the police, even though the police would have no interest in that case unless the court issues a warrant for the arrest of the individual.

All that said, the convener raises important points regarding the offence of domestic abuse. Issues of support and compliance with electronic monitoring were developed with partners as part of the EM user requirement working group. To give the convener some reassurance on that, Victim Support Scotland, Scottish Women's Aid, Turning Point and Positive Prison? Positive Futures are all members of that group.

The drafting of amendment 132 would mean that the proposed new section would apply when the individual was suspected of having breached a section 3 disposal or section 7 licence conditions. There is no reference to an electronic monitoring requirement, so arguably the new section could capture any breach of a disposal or licence listed in section 3 or section 7.

The Convener: I understand that it is a flawed amendment—that is because it is a probing amendment. The substantial reason for raising the issue is to address domestic abuse and sexual offences because, with those offences more than with any other, if a tag is tampered with and the offender enters an exclusion zone, the likelihood is that that is being done with one purpose in mind and with the victim in mind, and that there will be an adverse consequence. How do we address that in the bill?

Humza Yousaf: I suspect that some of that will come down to the guidance that we produce on electronic monitoring. To return to the EM user requirement working group, Scottish Women's Aid is on that group to try to address some of those concerns. The offence of remaining unlawfully at large will help to give an element of comfort. Draft updated guidance will be submitted to Social Work Scotland's justice standing committee when the review is complete and will be shared with local authorities thereafter. The working group will make sure that the Government provides assurances.

12:15

The Convener: If I understand the direction in which the cabinet secretary is heading, we would pass the legislation and then look at the guidance later, in the hope—and just the hope—that we would get it right. I do not think that that is good enough for the victims of domestic abuse or sexual offences, when we know that the legislation could be putting them in danger in real time. How can we address that issue in the bill, and can we include it in the bill at stage 3? The legislation may be inappropriate for those offences.

Humza Yousaf: I always work with members in advance of the various legislative stages to give as much reassurance as I can. However, I am not convinced that the bill is the appropriate place for those assurances. I may be proved wrong and I am open to persuasion in advance of stage 3. We will have conversations with organisations such as Scottish Women's Aid and others to determine whether they have—

The Convener: The suggestion—

Humza Yousaf: If you let me finish the point, I will ask you to respond.

The Convener: Absolutely.

Humza Yousaf: We have given reassurances on the offence of remaining unlawfully at large. When we choose to adopt new technologies in electronic monitoring—be it global positioning systems or others—the EM user requirement working group will be consulted. However, I am open to working in advance of stage 3 to see whether we can give further reassurance to you and other members.

The Convener: The proposal was that domestic abuse and sexual offences should be looked on as categories in which, by the nature of the offence, there would be an automatic swift response by the police to investigate, attend and establish whether there might be a potential danger.

Humza Yousaf: Again, I am happy to look at the issue and to have that conversation. In some cases, breaches will be a matter for the courts and not for the police. That is the nature of the law, depending on the type of licence on which an offender is released. I am open to looking at your point about particular offences.

The Convener: Forgive me, but if we do not pass this legislation those offenders will be behind bars and, in those circumstances, there will be no threat to the groups that I am talking about. Passing the legislation now could put them in danger, and I am asking you to look at that issue at stage 3.

Humza Yousaf: I will happily look at that with you in advance of stage 3.

The Convener: Thank you. I invite Liam Kerr to wind up.

Liam Kerr: Thank you, convener. I thank members and the cabinet secretary for their very interesting contributions to the debate.

Fulton MacGregor was concerned that amendments 73 and 74, rather than being designed to address concerns, were punitive. I can reassure him that that is not correct; they directly address the evidence that the committee took and certain tragic events. I associate myself very much with some of Daniel Johnson's comments on how seriously we should view the act of cutting off or tampering with a tag, and in particular with his characterisation of those actions as being as serious as going over a prison wall.

Fulton MacGregor: Nobody disputes that cutting off the tag is a serious action, and members generally agreed with the principle of Liam Kerr's amendment 73. It may be an oversight, but if the main driver of the amendment is to address a concern, rather than to be punitive, why does it include nothing about individual circumstances such as those around health concerns that the cabinet secretary pointed out?

Liam Kerr: The fact that it is a very serious action is precisely why I raised Scottish Women's Aid and the need for a credible deterrent. Positive Prison? Positive Futures has been mentioned several times, quite rightly, in the context of the need for a robust response.

To answer your question directly, I thought that John Finnie and Liam McArthur made some important points on individual circumstances. There will be occasions on which we need discretion, but, above all, we need a safe regime.

I understand the ethos behind the bill, but we need a robust counterbalance. In that regard, I turn to the cabinet secretary's comments. I do not accept that my proposed approach is too punitive. We had a very interesting discussion about the Government's amendment on the offence of remaining unlawfully at large; perhaps we will consider that in more detail later. I could support that as an alternative, but I do not want to, because I want amendments 73 and 74 to be agreed to. Amendment 122, which will apply to persons who are unlawfully at large, will apply only to home detention curfew, which is just one of the 10 disposal types that are listed in the bill. My concern about that is that we might be seen not to have learned the lessons from Craig McClelland's murder, which Daniel Johnson raised. We must learn the lessons from that case to ensure that there is zero tolerance across the board.

I see the principle behind what the cabinet secretary is trying to do, but I think that the Government's amendment 122 on the offence of remaining unlawfully at large, which we will debate at a later date, is insufficiently powerful. I understand that the proposed offence will be committed when the offender does not immediately return to custody once the licence is revoked. That is just not powerful enough.

Humza Yousaf: To clarify, the provision on remaining unlawfully at large does not apply just to HDC; it applies to parole and temporary release, too. Any breach of a licence condition will be looked at, with the result that somebody could be recalled. Why does Mr Kerr think that an individual breaching a condition such as going near a primary school when they should not is a lesser offence than cutting off a tag? Why does he want to create that hierarchy? Our proposed offence of remaining unlawfully at large will not create such a hierarchy and will rightly punish anybody who goes unlawfully at large.

Liam Kerr: I do not accept that what I propose would create a hierarchy. Daniel Johnson dealt with that point pretty well—I refer to what he said in his intervention.

Amendment 74 seeks to give a constable the power to arrest an offender in such circumstances. In my view, that power is needed. The Government's offence of remaining unlawfully at large risks putting into the system a delay before the offender is brought back into custody. As we saw in the Craig McClelland case, any delay or inability to bring someone straight back into custody can have tragic and irreversible consequences, and I do not think that we should risk that. We need a robust power of the kind that amendments 73 and 74 would provide.

Without amendments 73 and 74, I see no guarantee that an offence will be committed if a tag is cut off. That is what my amendments will provide, and I encourage members to vote for them. I accept what the cabinet secretary has said, and I hear his concerns. However, I encourage members to vote for amendments 73 and 74. The cabinet secretary will be able to lodge amendments on defences at stage 3, once we have the power in place.

The Convener: I presume that you are pressing amendment 73.

Liam Kerr: I am.

The Convener: The question is, that amendment 73 be agreed to. Are we agreed?

Members: No.

For

Johnson, Daniel (Edinburgh Southern) (Lab)
Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

Against

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 73 disagreed to.

Amendment 74 moved—[Liam Kerr].

The Convener: The question is, that amendment 74 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

Against

Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)

Abstentions

McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 4, Against 4, Abstentions 1. I therefore use my casting vote in favour of the amendment.

Amendment 74 agreed to.

Amendment 92 moved—[Humza Yousaf]—and agreed to.

Section 12, as amended, agreed to.

Section 13—Deemed breach of disposal or conditions

Amendment 52 moved—[Daniel Johnson].

The Convener: The question is, that amendment 52 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 52 agreed to.

Liam Kerr: On a point of order, convener. Every time that Daniel Johnson moves his amendments—there are a significant number of them—I will oppose them. Is there some process by which we can avoid going through them all?

The Convener: If it helps, we will go only as far as amendment 53 today, given the time constraints and the fact that we have other items on the agenda. We must ensure that each amendment is given the fullest consideration and debating time, which is why I will finish this item of business following the committee's decision on amendment 53. I hope that that solves your dilemma, Mr Kerr.

Amendment 53 moved—[Daniel Johnson].

The Convener: The question is, that amendment 53 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Johnson, Daniel (Edinburgh Southern) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 53 agreed to.

The Convener: We will finish today's consideration of amendments at stage 2 at that point. I thank the cabinet secretary for his attendance.

12:27

Meeting suspended.

12:28

On resuming—

Subordinate Legislation

Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Ordinary Cause Rules Amendment) (Taxation of Judicial Expenses) 2019 (SSI 2019/74)

The Convener: Agenda item 2 is consideration of a negative instrument. The Delegated Powers and Law Reform Committee has considered and reported on the instrument and had no comments to make. I refer members to paper 1, which is a note by the clerk.

Does the committee agree that it does not wish to make any recommendations in relation to the instrument?

Members *indicated agreement.*

Decision on Taking Business in Private

12:29

The Convener: Does the committee agree to take item 4, which is on our work programme, in private?

Members *indicated agreement.*

The Convener: That concludes the public part of today's meeting. At our next meeting, on Tuesday 23 April, we will continue our stage 2 consideration of the Management of Offenders (Scotland) Bill. I wish everyone a happy Easter.

12:29

Meeting continued in private until 12:54.

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