

# **MEETING OF THE PARLIAMENT**

Wednesday 28 April 2004  
(*Afternoon*)

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2004.

Applications for reproduction should be made in writing to the Licensing Division,  
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ  
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate  
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The  
Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now  
trading as The Stationery Office Ltd, which is responsible for printing and publishing  
Scottish Parliamentary Corporate Body publications.

---

# CONTENTS

Wednesday 28 April 2004

## Debates

Col.

<b>TIME FOR REFLECTION</b> .....	7753
<b>BUSINESS MOTION</b> .....	7755
<i>Motion moved—[Patricia Ferguson]—and agreed to.</i>	
<b>CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) BILL: STAGE 3</b> .....	7756
<b>CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) BILL</b> .....	7817
<i>Motion moved—[Cathy Jamieson].</i>	
The Minister for Justice (Cathy Jamieson).....	7817
Mr Stewart Maxwell (West of Scotland) (SNP).....	7819
Margaret Mitchell (Central Scotland) (Con).....	7820
Margaret Smith (Edinburgh West) (LD).....	7821
Pauline McNeill (Glasgow Kelvin) (Lab).....	7823
Nicola Sturgeon (Glasgow) (SNP).....	7824
Colin Fox (Lothians) (SSP).....	7825
The Deputy Minister for Justice (Hugh Henry).....	7826
<b>BUSINESS MOTION</b> .....	7828
<i>Motion moved—[Patricia Ferguson]—and agreed to.</i>	
<b>PARLIAMENTARY BUREAU MOTIONS</b> .....	7829
<i>Motions moved—[Patricia Ferguson].</i>	
<b>DECISION TIME</b> .....	7830
<b>CHIROPODY</b> .....	7833
<i>Motion debated—[Mary Scanlon].</i>	
Mary Scanlon (Highlands and Islands) (Con).....	7833
Maureen Macmillan (Highlands and Islands) (Lab).....	7835
Shona Robison (Dundee East) (SNP).....	7837
Mike Rumbles (West Aberdeenshire and Kincardine) (LD).....	7837
Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP).....	7839
Mr David Davidson (North East Scotland) (Con).....	7840
Brian Adam (Aberdeen North) (SNP).....	7842
The Deputy Minister for Health and Community Care (Mr Tom McCabe).....	7843

---



## Scottish Parliament

Wednesday 28 April 2004

(Afternoon)

[THE PRESIDING OFFICER *opened the meeting at 14:30*]

### Time for Reflection

**The Presiding Officer (Mr George Reid):** Good afternoon. The first item of business this afternoon is time for reflection. Our time for reflection leader today is Sister Helen McLaughlin of the House of Prayer in Edinburgh.

**Sister Helen McLaughlin (House of Prayer, Edinburgh):** Good afternoon. Thank you for the invitation to share this time with you.

My reflections come out of the work in which I am engaged in the House of Prayer in Nile Grove in Morningside. The centre is ecumenical—it welcomes men and women from all Christian traditions. We offer a variety of activities that are designed to help participants to grow in their own life of prayer and in their ability to reflect on the connection between prayer, life and action.

In my work there, I have seen that it is essential to reflect on one's own life and on what is happening in our country and in our world, and to do that in the light of faith. That is nothing new, as in pre-Christian times Socrates said:

"An unreflected life is not worth living."

How many reflections were made after the tragedies of September 11 and March 11! A native American grandfather was talking to his grandson about how he felt about the tragedy of 9/11. He said:

"I feel as if two wolves are fighting in my heart. One wolf is vengeful, angry, violent. The other wolf is loving, forgiving, compassionate."

The grandson asked him:

"Which wolf will win the fight in your heart?"

The grandfather answered:

"The one I feed."

Since 9/11, we have had a collective opportunity to show to the world the loving, forgiving and compassionate face of Christ, but it is also possible to feed the other part of the heart. That very real possibility offers us matter for reflection.

In the New Testament, Jesus challenges all human beings to be compassionate as he is compassionate. Compassion is certainly not absent from our world; it exists. We all know

people who bear witness to Christ's compassion and practise it in a radical, even heroic way, but being compassionate as a way of life is far from easy. Compassion—suffering with—to the point of being stirred to the depths upsets our comfortable, sometimes selfish lives. Because it upsets us, we can try to lull it to sleep and to reduce it to what we sometimes call armchair compassion: the kind that we feel fleetingly when the television screen shows us scenes of violence, fighting or great suffering.

Compassion implies a link with justice. Being compassionate means having the courage to take a stand when circumstances require it. When I read what Thucydides the Greek said many centuries ago, I was really challenged. His answer to the question of when justice would come to Athens was:

"Justice will come when those who are not injured are as angry as those who are."

Let us conclude by praying to the God of compassion to help us.

Come to us, Father of the poor.  
Help each one of us  
to look on our country, our world, as you do.  
Give us the wisdom to see what to do  
and the courage to carry it out.

## Business Motion

14:35

**The Presiding Officer (Mr George Reid):** The next item of business is consideration of business motion S2M-1220, in the name of Patricia Ferguson, on behalf of the Parliamentary Bureau, on the timetable for stage 3 consideration of the Criminal Procedure (Amendment) (Scotland) Bill.

*Motion moved,*

That the Parliament agrees that, during the Stage 3 proceedings of the Criminal Procedure (Amendment) (Scotland) Bill, debate on each part of those proceedings shall be brought to a conclusion by the time-limits indicated (each time-limit being calculated from when Stage 3 begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended or otherwise not in progress):

Groups 1 and 2 – no later than 35 minutes

Groups 3 and 4 – no later than 1 hour 10 minutes

Groups 5 to 8 – no later than 1 hour 35 minutes

Groups 9 to 13 – no later than 1 hour 55 minutes

Motion to pass the Bill – no later than 2 hours 25 minutes.—[Patricia Ferguson.]

*Motion agreed to.*

## Criminal Procedure (Amendment) (Scotland) Bill: Stage 3

14:36

**The Presiding Officer (Mr George Reid):** We move on to the stage 3 proceedings of the Criminal Procedure (Amendment) (Scotland) Bill. Members should have a copy of the bill as amended at stage 2, the marshalled list, which contains all the amendments that have been selected for debate, and the groupings.

As usual, each amendment will be disposed of in turn. However, when we have a series of amendments that have been debated already and that are consecutive in the marshalled list, I will invite the minister to move them en bloc. Unless any member objects, I will put a single question on the series of amendments. I will employ that procedure only if members agree. I am quite prepared to put the question on amendments individually when that is preferred. I will allow a voting period of two minutes for the first division in the afternoon. Thereafter, I will allow a voting period of one minute for the first division after a debate on a group. All other divisions will be 30-second divisions.

### Section 1—Preliminary hearings

**The Presiding Officer:** Group 1 concerns the prevention of delay in trials: time limits, grounds on which limits may be extended, consequences of breach of limits, and bail under section 65(8C). Amendment 91, in the name of Margaret Mitchell, is grouped with amendments 92 to 100, 109 to 114, 30, 59, 60 to 62 and 122.

I point out to members that if amendment 109 is agreed to, I cannot call amendment 110 for reasons of pre-emption. If amendment 113 is agreed to, I cannot call amendments 114 and 30, also for reasons of pre-emption. [*Interruption.*] Order.

**Margaret Mitchell (Central Scotland) (Con):** The effect of amendment 91 would be to retain the 110-day rule—[*Interruption.*]

**The Presiding Officer:** Order. Please excuse me. There is still far too much extraneous noise in the chamber.

**Margaret Mitchell:** The 110-day rule is a fundamental principle of the criminal justice system. It has been in existence for many centuries. The effect of amendment 91 makes provision for a preliminary hearing to be heard not less than 14 days—in other words, by the 94<sup>th</sup> day—after the service of indictment, which must be no later than the 80<sup>th</sup> day. The early disclosure measures in the bill should mean that that is easily

achievable, as we move from working to deadlines to dealing with business as soon as possible. It is crucially important that the 110-day rule is retained. It ensures that dealings with the accused work on the established principle of innocent until proved guilty and that they are not kept in custody any longer than is absolutely necessary. Amendments 92 to 100 are consequential amendments that make provision for the retention of the 110-day rule.

The effect of amendment 110 is that, if the 110-day rule is breached, the accused is admitted to bail. They would be released on bail, but would be brought to trial within the 12-month time limit. That would be a huge improvement on the current situation in which, if the rule is breached, the accused is liberated forthwith. Amendments 111 and 112 are consequential on amendment 110.

Amendment 114 is a drafting amendment, which is again consequential on amendment 110. Amendment 122 is consequential on changes being made to the bill. If the retention of the 110-day rule is agreed to by the Parliament, the amendment would alter the title of the bill to accommodate that change.

I move amendment 91.

**Colin Fox (Lothians) (SSP):** My amendments 109 and 113 seek to maintain the 12-month rule, whereby an accused has the right to be brought to trial within 12 months of being indicted. While I appreciate the Executive's argument about the need to extend the 110-day rule by 30 days to accommodate the preliminary hearing, and its assurance that 140 days is the final line and must be held at all costs, I do not agree with its point on the 12-month rule. I do not see the same pressing need to withdraw the 12-month rule and the protection that that right provides.

That right is to be withdrawn for reasons entirely different from those for withdrawing the 110-day rule. The right to be freed after a year will become the right to be considered for bail, which is an illiberal measure. It is an erosion of an age-old protection against the state holding a charge over a person for a long time. It is another illustration of a failure on the state's side to bring a case to trial, a failure of police and procurator fiscal resources, and a failure of court management, judges' availability and evidentiary deadlines. As a result, the defendant's right, to be tried within a year or be freed, will be withdrawn. That protection ought to be retained.

**The Presiding Officer:** I call the Deputy Minister for Justice to speak to amendment 30 and others in the group.

**The Deputy Minister for Justice (Hugh Henry):** Thank you, Presiding Officer. *[Interruption.]*

**The Presiding Officer:** Order. I am sorry, there is still too much noise in the chamber. These are important matters.

**Hugh Henry:** The bill contains a package of measures that were proposed by Lord Bonomy, which we believe will be workable in relation to defence preparation and trial planning. Amendments 91 to 100, 110 to 112 and 114, in the name of Margaret Mitchell, are similar to amendments that were lodged at stage 2, and I repeat what I said then. One of the key objectives of the bill is that parties are fully prepared for trial, and that trials proceed on the date set by the court. That will create greater certainty for victims and witnesses, and reduce the unacceptable level of adjournments.

The retention of the 110-day time limit, as proposed by those amendments, would jeopardise the package of measures. The proposals in the bill retain the right of an accused to have a hearing within that timescale, while at the same time allowing adequate time for preparation, and therefore allow for greater certainty that trials will be ready to proceed on the date fixed. The amendments would undermine the objectives of the bill, and would disturb that balance, therefore I ask Margaret Mitchell to withdraw amendment 91 and not move amendments 92 to 100, 110 to 112 and 114. If she does not do that, I ask the Parliament to reject them.

Section 9 seeks to amend the current provisions relating to breaches of the custody time limits. It provides that if the custody time limit is breached, an accused would be entitled to be admitted to bail, but proceedings against him may continue subject to the 12-month time limit. That prevents the situation where an accused can be released from custody and be forever free from prosecution on the charges of the indictment because, for example, of an administrative error in calculating the time limits. By allowing the accused to be entitled to be admitted to bail, we are striking the right balance between the accused's right to a fair trial and the victim's right to expect to see an accused face trial.

Colin Fox's amendments 109 and 113 would retain the current position. As Lord Bonomy pointed out in his review, the effect of the present provisions is that someone who is charged with a particularly serious and odious crime could be released and not tried on that charge due to a human error of miscalculation. Surely that is not right. We accept that the accused should not be detained in custody any longer than is necessary. I believe that the provisions in the bill safeguard that right, as well as protecting the rights of victims and their relatives. I therefore ask Colin Fox not to move amendments 109 and 113. If he does not do that, I ask the Parliament to reject them.

Executive amendments 30 and 59 to 62 are consequential upon section 9, which will introduce for the first time an entitlement to bail for accused persons at the expiry of the custody time limit, where that custody time limit cannot be met. Amendment 30 provides for the continued detention of the accused for a period of up to 72 hours, where the prosecutor appeals against a refusal to extend the time limits. Amendments 59, 60, 61 and 62 seek to modify the general provisions on bail in part III of the Criminal Procedure (Scotland) Act 1995 so as to fit with the particular circumstances of bail granted because the custody time limits have not been met.

14:45

**Margaret Smith (Edinburgh West) (LD):** The bill contains a package of measures that seeks to bring greater certainty to the court system. One of the most contentious issues has been the extension of the 110-day time limit in custody cases. The reforms will introduce a realistic system that can be delivered. The introduction of a further 30 days to accommodate the new preliminary hearing and to reflect better the complexity of many modern High Court cases is sensible. The prosecution will still have to indict the accused at 80 days, but the extra days should reduce the number of adjournments, many of which are currently requested by the defence. It became clear to the committee that the so-called jewel in the crown—the 110-day rule—was already unattainable and was a moving target. The average additional length of time that is spent in custody at present is 34 days, which takes us up to around the 140-day target. The new target should be achievable and will allow the package of measures to be achieved.

The committee heard mixed evidence on the matter, including the concerns that the Law Society of Scotland raised, but in the end the committee members, with the exception of Margaret Mitchell, were persuaded that 140 days is a more realistic limit and is still a much shorter period than is in operation anywhere else. However, every effort should be made to ensure that 140 days is the exception rather than the rule and that ministers monitor the situation closely.

Colin Fox's amendment 109 seeks to retain the status quo on breach of time limits. The bill seeks to change the existing situation in which, on breach of time limits, an accused is "liberated forthwith" to a situation in which the accused is

"entitled to be admitted to bail".

While I agree that every effort should be made to minimise the time for which an accused is kept in custody, it is not in the interests of justice—as the general public would understand that concept—to

let a person who may have committed rape, murder or other serious crimes go free.

**Tommy Sheridan (Glasgow) (SSP):** So that we can have an informed debate, I ask Margaret Smith whether she has information about the number of criminals who have not been brought to justice within 12 months and who have therefore fallen through the loophole to which she refers.

**Margaret Smith:** I do not have that information off the top of my head.

We are trying to introduce a package that provides discretion for the judiciary and balances the rights of the accused with those of victims. If a time limit is breached, the bill will give the accused the right to seek bail in the normal way in the knowledge that the trial will commence. If the prosecutor does not make an application to extend the time limits, or if an application is denied, the accused will have the right to apply for bail in the normal way before the judge, at which time conditions may be applied. I discourage support for Colin Fox's amendment 109.

**Pauline McNeill (Glasgow Kelvin) (Lab):** The committee considered carefully the package of measures in the bill and dissected the time limits that will be imposed under the new procedures. If we are to have preliminary hearings in order to reduce the number of adjournments, we must accept the whole package. Margaret Mitchell's amendments would move the process back because the indictment would have to be served within 60 days. The committee took the view that that is a tall order for the Crown to achieve and that the period should be 80 days. If we want to have the package of measures, including the preliminary hearing, which is the centrepiece of the bill, we need the time limits that the bill will introduce. As Margaret Smith said, it became apparent to the committee that, even when there is a motion to extend the time limit of 110 days, the limit is still referred to as 110 days, whether it is 115 or more. We were not aware of that point.

On Colin Fox's point about the breaching of time limits, Parliament should note that the committee considered that issue carefully. No one has taken the new provision lightly. Indeed, for the benefit of the Parliament I seek assurances from ministers that they do not want an increase in the number of breaches under the new time limits. We must ensure that we monitor the situation when the bill becomes law. There should be no dramatic increase in the number of breaches of the time limits once we change them.

Since the European convention on human rights was incorporated into our law, the courts have been quick to address the issue of undue delay. I am sure that that would apply should the time limits under the 12-month rule be breached, and I



am also sure that defence lawyers would be quick to point out any undue delay. I note that the Lord Advocate has already put on record his intention to aim for a nine-month target, which I think the Parliament would welcome.

**Mr Stewart Maxwell (West of Scotland) (SNP):**

This has been an interesting process for members of the Justice 1 Committee. This is a technical bill, and it took some of us some time to grasp the more intricate points and complexities of this part of the legal system.

I have some sympathy for what Margaret Mitchell said. I started out firmly of the opinion that the 110-day rule should be kept in place. The evidence on the matter was not clear either way. Many people in the legal profession and many people in the civil liberties field said that the 110-day rule should be kept. I have a great deal of sympathy for the argument that, if early disclosure succeeds and we speed up the trial process—if the early part of the process of justice is speeded up—then the 110-day rule could be maintained.

On Colin Fox's amendments in the group, I would say that Lord Bonyon's report was clear about the need to move forward, although there might be a difference of opinion as to exactly what should and should not be done in various parts of the bill. To retain the current position is not acceptable, however, and we will be opposing those amendments.

I had hoped that the minister would mention proposed new section 65(8D)(a) of the Criminal Procedure (Scotland) Act 1995, which amendment 30 inserts. The latter part of that reads:

"or for such longer period as the High Court may allow".

Keeping a person detained under a committal warrant for no more than 72 hours seems reasonable in circumstances where the application for bail has been refused, but the second part of that paragraph suggests that the period could be open ended. I wonder if the minister could express an opinion on what that wording means. To have 72 hours to get things sorted and allow a new application to come forward, or for the period to expire after 72 hours—and therefore for the appeal to be disposed of—seems okay. However, to leave things open ended at that point seems to leave the possibility of a person being detained in custody for an unknown period while the matter is sorted out. I had hoped that the minister would have mentioned that in his opening remarks on this group—I wonder whether or not he wishes to say something now. No? Okay.

**The Presiding Officer:** I will give the minister a chance to come back on that, if he wishes to do so, before the closing speech for the group.

**Bill Aitken (Glasgow) (Con):** There is a very important point of principle here, and I wish to say

at the start that I recognise the fact that there are arguments on both sides. I fully accept that crime tends to be more complex nowadays, and that evidence, including forensic and DNA evidence, sometimes takes a lot more time to gather. It is not quite as simple as it used to be.

The fact remains that the 110-day rule, as Margaret Mitchell eloquently stated, has been a jewel in the crown of the Scottish legal system for some centuries. It provides a very valuable protection to accused persons. No one is stronger than I am in saying that those who are convicted of crimes should be punished and locked up—but I would rather require that they are found guilty first. We operate on the basis of a presumption of innocence, which is a very important principle of Scots law. Before their trial, and while they are on remand, there is a presumption that people are not guilty of the crime with which they have been charged.

We must think very seriously before interfering with what is a bulwark and a protection for accused persons. It is not good enough simply to say that our legal process in Scotland is tremendously efficient, that the only faster jurisdiction in the world is that of China and, without actually looking at the system, say that we must retain it as it is. If one considers the speed with which the Chinese process is carried out, one finds that it usually finishes with a somewhat painful end for the accused, and I do not think that any of us are suggesting that the same system should apply here. We are taking a chance that the system of Scots justice, which has been much admired throughout the world, will lose the respect that it holds.

When the 110-day rule has looked like being breached, there has always been the opportunity to apply for an extension. The minister, quite properly, pointed out that in most cases such an extension is granted. However, that is at the discretion of the judge, so there is a built-in safeguard in that respect. It is probably a highly unusual situation that the Conservative group is the one that is arguing strongly in favour of a civil liberties issue, but we have no hesitation in doing so on this important issue. Even at this late stage, rather than prevailing on Margaret Mitchell to withdraw her sensible and highly principled amendment, I call on the Minister for Justice to think again on a matter that could have serious consequences.

**Nicola Sturgeon (Glasgow) (SNP):** Someone who is a member of a party led by former Home Secretary Michael Howard has a bit of a nerve standing up in any chamber and uttering the words "civil liberties", let alone expounding further.

I will be brief, because the 110-day rule has been discussed at length. I am not a member of the Justice 1 Committee, but I have read its stage 1 report in full. It is a well-worn cliché to say that the 110-day rule is the jewel in the crown of the Scottish legal system, but it is. I suppose that those who argue that it should not be sacrosanct would say that it is virtually unique and that therefore we place demands on our legal system that no other country in Europe or beyond places on its. However, just because the rule is unique, that does not make it wrong. Rather than diluting the safeguards that we have built into our legal system over many years, perhaps we should be encouraging other jurisdictions to emulate those principles.

I have a remaining concern about the extension of the 110-day rule. Stewart Maxwell said rightly that the evidence that the Justice 1 Committee took at stage 1 was not conclusive either way. A considerable body of evidence given at that time expressed concerns about the extension, including evidence from a legal perspective from the Law Society of Scotland and evidence from the Scottish Human Rights Centre, which was concerned about the human rights and civil liberties aspects.

**Pauline McNeill:** I am glad that it is acknowledged that all members of the Justice 1 Committee considered in great detail what members will know is a highly technical issue. However, only the Scottish Human Rights Centre and Margaret Mitchell have argued that we should move back the whole process to serve the indictment within 60 days. No one else has suggested that.

**Nicola Sturgeon:** With respect to Pauline McNeill, I did not say that anyone else had suggested that; I said that several people, including witnesses from the Scottish Human Rights Centre and the Law Society of Scotland, expressed concern about extending the 110-day rule. I know that we should not be driven by the media, but I want to give an example that encapsulates what I think is the concern about the provision, which is that the bill is intended to speed up justice. I heard a radio discussion in which it was said that today the Scottish Parliament will pass a bill that is intended to speed up the Scottish justice system and deal with cases more quickly and as part of that it will dismantle the long-held 110-day rule and extend it to 140 days. That is a simplification, but it sums up what is at the heart of my concern: it is inconsistent and somewhat illogical to say that we will speed up the system, but we will extend the time limits. I accept that there are arguments, including the argument that Pauline McNeill has advanced, that if we insert into the process a preliminary hearing, we have to take account of it in other parts of the

process. Nevertheless, there is an inconsistency at the heart of the bill that has perhaps not been addressed properly. Perhaps the minister will return to that, if he wishes to sum up on this group of amendments, before we move to the vote on amendment 91.

**The Presiding Officer:** Do you have any further comments, Mr Henry?

**Hugh Henry:** Specifically on the question that Stewart Maxwell raised about amendment 30, it would be for the court to determine whether the provision introduced by the amendment is consistent with the precedent in section 32(7) of the Criminal Procedure (Scotland) Act 1995 whereby the prosecutor appeals against the grant of bail. Giving the court discretion allows for investigations to be made, and for the court to take account of any other special circumstances that might arise. That discretion provides the desirable flexibility and I will be content to move and press amendment 30.

**Margaret Mitchell:** I am not persuaded by what the minister has said. Given that the 110-day rule is a fundamental part of Scots law that has served us well for many centuries, I will press amendment 91. I urge Nicola Sturgeon and other SNP members to vote in favour of it, given that they have understandable reservations about the bill in that regard. I want to correct Pauline McNeill. I am not arguing for the indictment to be served within 60 days of committal; it would still be possible to serve it within 80 days. The preliminary hearing would take place not less than 14 days later.

**Pauline McNeill:** Margaret Mitchell does not understand the provision in the bill. We could not have a preliminary hearing on the 94<sup>th</sup> day, because we have to allow a 30-day window before the start of the trial, which is the centrepiece of the system. If we keep the 110-day rule, we would have to move everything back to accommodate the 30-day window in which to fix the trial, which would mean that the indictment would have to be served within 60 days. John Scott, of the Scottish Human Rights Centre, accepted that those would be the new time limits if Margaret Mitchell's argument were accepted.

15:00

**Margaret Mitchell:** The 80<sup>th</sup> day is the absolute limit for the indictment. The proposal in amendment 91 would set the limit for the preliminary hearing at the 94<sup>th</sup> day, which would give 16 days to set the trial. That should be enough. The ethos of the bill on which we are working involves the parties working together to deliver early disclosure. They should not be working to deadlines, which happens so often in the criminal justice system, but should be

prepared early when they go to trial in relation to cases that are not complex and that can be dealt with more speedily. That would be the effect of amendment 91 and it seems bizarre to me that, although the Executive is concerned about the prison population, it is proposing a measure that keeps people in custody 30 days longer than is necessary. That is totally unacceptable and is a principle that the Conservatives cannot support. That is why I will press the amendment.

**The Presiding Officer:** The question is, that amendment 91 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Adam, Brian (Aberdeen North) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Baird, Shiona (North East Scotland) (Green)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Fox, Colin (Lothians) (SSP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kane, Rosie (Glasgow) (SSP)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 Lochhead, Richard (North East Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Martin, Campbell (West of Scotland) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Mundell, David (South of Scotland) (Con)  
 Neil, Alex (Central Scotland) (SNP)  
 Robison, Shona (Dundee East) (SNP)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, John (Ayr) (Con)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Swinney, Mr John (North Tayside) (SNP)  
 Tosh, Murray (West of Scotland) (Con)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)

#### AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 May, Christine (Central Fife) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McMahan, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

**The Presiding Officer:** The result of the division is: For 52, Against 62, Abstentions 0.

*Amendment 91 disagreed to.*

**The Presiding Officer:** Group 2 concerns amendments consequential on the Vulnerable Witnesses (Scotland) Act 2004. Amendment 1, in the name of Hugh Henry, is grouped with amendments 2 to 10, 22 to 26, 31 to 35 and 64 to 67.

**Hugh Henry:** The amendments in relation to the Vulnerable Witnesses (Scotland) Act 2004 bring the procedure on preliminary notices into line with the procedure that is to be introduced by the bill. They do not in any way change the policy intention behind that act.

The bill will introduce preliminary hearings in the High Court and we hope that all preliminary matters will be dealt with at that hearing. Included in that will be hearings ordered by the court where the court is not satisfied that the special measures in the notices lodged under the 2004 act are the most appropriate for the purposes of taking that witness's evidence. That is the substance of amendments 64 and 65.

The 2004 act prohibits, in certain cases involving child witnesses under the age of 12, an accused person from conducting his defence personally. Amendment 25 extends that prohibition to preliminary hearings. The other amendments are of a more minor and technical nature.

I move amendment 1.

*Amendment 1 agreed to.*

*Amendments 2 to 10 moved—[Hugh Henry]—and agreed to.*

**The Presiding Officer:** Group 3 is on floating trial diets. Amendment 11, in the name of Hugh Henry, is grouped with amendments 11A, 27, 107, 28, 29 and 108.

**Hugh Henry:** At stage 2, I undertook to see whether it would be possible to provide a further affirmation of the policy intention that fixed diet trials should be the first option when the court fixes trials in the High Court. We believe that that will be the case, but good court management dictates that standby cases should utilise court time that is freed up when cases go off at the last minute due to unforeseen circumstances. Amendment 11 allows that by providing that the court may appoint a trial diet to be a floating diet if it indicates that when it fixes the trial diet and if it considers that to be appropriate.

We believe that in appropriate cases the court should be able to appoint a trial as a standby trial for a limited time. It would be wrong to state the type of cases that we consider should be included, as that depends on the facts and circumstances of the case that are given to the court at the preliminary hearing when the parties indicate that a trial is necessary. Equally, we do not believe that there should be an on-cause-shown test before

the court can appoint a standby trial, as Nicola Sturgeon's amendment 11A suggests. We believe that the matter is primarily one of court programming, based on information that is provided by the parties at the time and subject to the court being satisfied that the facts and circumstances of the case mean that it is appropriate to appoint a floating trial diet.

Section 8 introduces new section 83A to the Criminal Procedure (Scotland) Act 1995 and provides for the continuation of trial diets. Amendments 27, 28 and 29 extend those provisions to cover floating trial diets that have been called and adjourned. It provides that cases that have been appointed as floating diets may be continued from day to day, without being commenced, up to the maximum number of days to be prescribed in the act of adjournal. We do not know the number of days that will be prescribed, so it may not be possible to indicate that 48 hours' notice must be given subsequent to the appointed diet. However, as parties will need to be present at the appointed diet, it should be possible to give an informed view at that stage about when the trial will commence. We therefore believe that amendment 107 is unnecessary.

In addition, parties will give notice of the availability of counsel at the preliminary hearing and the trial will be fixed within that window of availability. Therefore, the competing claims for counsel's time that we see at present should not occur. Floating trials are standby cases and they should be able to commence with the minimum of delay. That is another reason why we think Nicola Sturgeon's amendments 107 and 108 are unnecessary and I ask her not to press them. If she does, I ask the Parliament to reject them.

With those assurances about fixed trial diets becoming the norm, I move amendment 11.

**Nicola Sturgeon:** As the minister said, the bill's policy intention is to create certainty in High Court procedure and to address the old problem with the churning of cases. The provision of fixed trial diets means that all parties in the system will know with certainty when a trial will commence. The minister is right to say that, in the interests of maximum court efficiency, it will be in everybody's interest to provide for floating diets in some cases. Amendment 11A provides for an on-cause-shown test. On reflection, and having listened to the minister, I am not sure that amendment 11A adds much to the minister's amendment 11, which states that the court will appoint a floating diet only when it is satisfied that it is appropriate to do so. I am happy with that amendment, which represents an important step forward. Accordingly, I will not move amendment 11A.

I will briefly address the other amendments in my name in the group. Amendment 107 provides

that the accused and his or her legal representative will be given 48 hours' notice of the intention to start a trial when the trial has a floating diet. The amendment tries to avoid the situation that pertains at present, in which, because of uncertainty about when a case will call, cases often have to be put off because witnesses or, more commonly, counsel are not available. The amendment would retain some of the flexibility afforded by floating diets, but would ensure greater certainty in the system than currently exists. Therefore, I commend amendment 107 to the Parliament.

Amendment 108, although not quite consequential, follows on from amendment 107 in that it provides a definition of the accused's legal representative, which would be necessary if amendment 107 were agreed to.

**Margaret Mitchell:** I, too, am persuaded by the minister's argument that a floating diet would be appointed only if the court was satisfied that it was appropriate. I very much welcome the presumption in favour of a fixed trial diet, which reflects a concern that was raised at stage 2. I also support Nicola Sturgeon's amendment 107, which would ensure that 48 hours' notice was given of the intention to commence a trial diet. That would lead to better management of the court and more certainty for witnesses.

**Pauline McNeill:** Amendment 11 concerns a provision in the bill to replace the current sittings system with a fixed trial diet when possible and a floating trial diet when that is not possible, to allow for flexibility in the system. That represents an onerous task for the Scottish courts system as well as for the Crown and the defence. They are committed to the new system, but Parliament must recognise that the task is onerous. The Justice 1 Committee's view is that an effective diary system is essential to ensure that there is efficiency and that there is no double-booking. Without that, we are back to where we started and trials will be adjourned on that basis.

The committee is grateful to the Faculty of Advocates, which first drew our attention to the fact that new section 83A does not reflect the Executive's intention that most trials should have a diet fixed at the preliminary hearing, which is how we will get more certainty into the system. When someone goes for their preliminary hearing, they will bring to the court the issues that they are prepared for and will, we hope, get a diet fixed at that point.

One of the big advantages of a fixed trial diets system is that, in cases of sexual offence or rape, it provides more certainty that the trial will proceed. That is the desire of Scottish Women's Aid, which put that point to the committee. However, the committee is clear—as are virtually

all those who gave evidence to it—that, in law, the Crown should remain the master of instance, although in reality the courts system will have a lot more to do in ensuring that we have a more efficient system and that trials go ahead on the appointed day. I very much welcome the provision.

**Margaret Smith:** As we have heard, one of the main drivers behind the bill is the need to bring greater certainty, as floating diets increase the stress for victims, witnesses, the accused, their families and those in the system generally. We have struggled to find a form of words that delivers what we all want: a fixed trial diet in most cases. There does not seem to be a way of eliminating floating diets totally, although some of the existing reasons why cases are adjourned will be removed through better communication and disclosure, managed meetings and the preliminary hearing.

The Executive's amendment 11 is to be welcomed. In requiring the court to apply a specific action to get a floating trial, the bill shifts the emphasis in the system to show that the fixed trial diet is the norm. A trial diet will be fixed unless there is a good reason why it should not be. We will support amendment 11.

*Amendment 11A not moved.*

**The Presiding Officer:** As Nicola Sturgeon has not moved amendment 11A, she loses her right to sum up. I therefore ask the minister to sum up on amendment 11.

**Hugh Henry:** I have nothing further to say.

*Amendment 11 agreed to.*

*Amendments 92 to 100 not moved.*

15:15

**The Deputy Presiding Officer (Trish Godman):** Amendment 12 is grouped with amendments 13, 14, 115, 40, 40A, 41 to 52, 118, 53, 54 and 63.

**Hugh Henry:** The amendments relate to section 11, which amends section 92 of the 1995 act in relation to the circumstances in which a trial may take place in the absence of the accused.

As introduced, the bill provided for trials in absence of the accused from the outset of the trial. However, at stage 2, we indicated that we accepted in principle an amendment from Bill Butler to the effect that trials in absence could take place only after evidence against the accused had been led. We believed that it was right to accept a compromise on that position.

At that stage, I indicated that I wanted to consider the precise terms of the amendment and whether any further amendments would have to be made to clarify the matter. From comments that

were made in the committee debate, it was apparent that the intention behind Bill Butler's amendment was that there had to be a body of evidence before the court before it could allow the trial to continue when an accused had absconded. Indeed, there was an amendment at stage 2 that was similar to amendment 115, in the name of Nicola Sturgeon, to the effect that all the evidence would have to be led. I acknowledged what Bill Butler and the committee sought to achieve at stage 2 and I indicated that we would reflect on the necessity for further amendments.

That is why we have lodged amendment 40 today. Amendment 40 requires there to be evidence that implicates the accused before a trial can be allowed to continue when the accused has absconded before the end of that trial. In addition, the court must be satisfied that it is in the interests of justice for a trial to proceed in the absence of the accused and must have regard to the stage that the trial has reached when an accused absconds. I stress that it is only when the court is satisfied on all three elements that it will allow the trial to continue.

We have considered amendment 40A, which seeks to strengthen further amendment 40, to strengthen what was agreed at stage 2. I recognise that it is the will of the Justice 1 Committee that, and there is a body of opinion that holds that, the Executive ought to move from its original position. We have moved and I am prepared to accept that we should move again and accept amendment 40A.

However, we believe that it is right that the court should have the discretion to decide whether it is appropriate that the trial should continue in the absence of the accused. The amendments before Parliament today strike the correct balance between the rights of the accused, of which we are acutely aware, and—I stress this—the rights of victims and witnesses.

Amendment 44 is consequential on amendment 40; the wording removed by the former will be incorporated in the latter. Amendment 45 removes wording that is considered to be unnecessary. Bill Butler's stage 2 amendment spelled out that if the trial proceeded in the absence of the accused, a verdict could be returned. However, if the trial is allowed to continue, the normal procedure of leading evidence and returning the verdict would follow. The words are therefore unnecessary and we seek to delete them.

Amendment 115 in the name of Nicola Sturgeon—the subject matter of which was debated fully at stage 2—would mean that a trial in absence could take place only after all the evidence had been led. However, the accused person is a competent witness at his own trial, so if the accused failed to attend after the conclusion

of the Crown evidence, his agent could intimate that the accused was to be called as a witness and the trial would have to be abandoned. All the witnesses would then be required to come back to court to give their evidence—some of which might be distressing—all over again. That cannot be right. In cases involving serious sexual offences, the victim might be forced to give traumatic and distressing evidence for a second time. We argue that that is not right. That is why I ask members to reject amendment 115.

We agree that accused persons, even if they abscond, should continue to be legally represented. Amendments 42, 43, 46, 47 and 48 provide for that.

Amendments 12 to 14, 49 to 54 and 63 are consequential on amendments that were made at stage 2 that provided that trials in absence against accused individuals may take place only if the accused has absconded after evidence has been led. The possibility of a trial in absence from the outset will remain for bodies corporate. Amendments 12 to 14 provide that, where a body corporate has been cited to attend a preliminary hearing and fails to attend, the hearing may continue in the absence of the body corporate, which will be treated as having pled not guilty so that a trial diet can be appointed. Amendments 49 to 54 and 63 make further consequential amendments for the application of the trial in absence provision to bodies corporate.

I move amendment 12.

**The Deputy Presiding Officer:** I point out that if amendment 117 in group 7 is agreed to, amendment 48 in this group will have been pre-empted.

**Nicola Sturgeon:** Amendment 115, and the consequential amendment 118, would ensure that a trial could not proceed in the absence of the accused until all the Crown evidence had been led. As we know, a long-established principle in Scots law is that a trial should proceed in the presence of the accused. I am not here to defend the rights of accused persons who deliberately absent themselves from their trial, but those people deserve to have their rights protected for their own sake.

I completely understand the frustrations that victims and witnesses experience when trials cannot proceed because the accused has failed to appear. As we heard during stage 1, that happens in about 3.5 per cent of cases. However, it is questionable that an accused could be said to have had a fair trial if he or she was not present when the evidence was led against them.

Legitimately, some might say, "So what? If an accused deliberately absents himself or herself, it is not for anyone else to worry about the

implications for a fair trial.” However, if the absence of the accused at the trial and the consequent inability of the accused to question Crown evidence properly and put forward his or her own account were to become a ground for challenge or a reason for ordering a retrial, that would undermine the motive that the minister outlined of protecting victims and witnesses from inconvenience and added anxiety. There is the potential that victims and witnesses would have to endure the ordeal of giving evidence on more than one occasion.

We are perhaps at one with the minister on the policy objective, but we have serious doubts about whether trials in absence would achieve that objective. I doubt whether the provisions have been properly thought through. However, the minister’s acceptance of amendment 40A, in the name of Bill Butler, in addition to the amendment that Bill Butler secured at stage 2, is a helpful step forward.

I was interested to hear the minister say that Executive amendment 44 was simply consequential. I had wondered whether the deletion of the sentences that amendment 44 will leave out might have the same effect as my amendment 115 would have, because, on first reading, amendment 44 seems to preclude the leading of further evidence when the accused is no longer present. Perhaps the minister could clarify that. If amendment 44 is simply consequential and does not have such an effect, I intend to move amendment 115.

**Bill Butler (Glasgow Anniesland) (Lab):** One proposal that caused the committee deep concern throughout stage 1 was the proposal to have trials in the absence of the accused from the outset. It is clear from the majority of the evidence that we heard that there were grave concerns about that. In paragraph 140 of its stage 1 report, the committee was unanimous in rejecting the proposal that accused persons should be able to be tried in their absence from the outset. We believed and continue to believe that there was little evidence to support the proposal, that there was little justice in it and that it was far too inflexible.

I am glad that the Executive has moved away from its previous position. The amendments that I lodged at stage 2 reflected the evidence that was taken by the committee and paragraphs 140 and 141 of the committee’s report. They were an attempt to strike a balance—to reach a compromise—that ensured fair treatment in the High Court both of the accused and of witnesses and victims.

I am grateful to the minister for saying today that the Executive is minded to accept amendment 40A in my name, which adds the word

“substantially” to amendment 40, so that the bill will read “which substantially implicates the accused in respect of the offence charged in the indictment”. Theoretically, a prosecution case could be opened and a police officer could appear and say his or her name before collapsing. I accept that under the amendments that I lodged at stage 2, especially the amendment that inserted the words

“after evidence has been led against the accused,”

in that situation it could be said that evidence had been led. That is highly unlikely, but I am sure that the Executive is attempting to put a belt and braces on the provision. My addition of the word “substantially” is an attempt to ratchet up and strengthen Parliament’s direction to the judge when he or she must decide whether a substantial amount of evidence has been led that implicates the accused.

The problem with amendment 115, in the name of Nicola Sturgeon, is that it would leave open to a small minority of people who are accused the possibility of deserting and flying off from the proceedings whenever it suited them. In that situation, the rights of the victim or victims and witnesses would be set to one side and the rights of the accused would be paramount. I am trying to establish a balance—a compromise—that allows both sets of rights to be regarded equally.

The Executive amendment, as amended by the amendment in my name that seeks to insert the word “substantially”, allows greater flexibility and strikes the balance that ought to be struck between the rights of the accused and the rights of victims and witnesses. That is the spirit in which I lodged my amendments at stage 2 and amendment 40A.

**Margaret Smith:** Other speakers have already indicated that this is the most controversial part of the bill and that the Justice 1 Committee had a number of concerns about it. However, we recognised the problem that the Executive was trying to address. Absconding affects nearly 500 court cases in Scotland, including 90 in the High Court. More important, it affects not only hundreds of accused but hundreds of victims and thousands of witnesses, subjecting them to extra distress.

We seek a way of balancing the rights of those on all sides and of providing safeguards. I have suggested in the past—and suggest again today—that, through the Sentencing Commission, the Executive may want to consider the possibility of setting stiffer sentences for those who abscond, as another way of addressing the issue.

Today we will support amendment 40. I recognise the movement that the minister has made on this matter. The amendment improves the situation that arose at the end of stage 2—Bill

Butler has already alluded to some of the difficulties that would arise if the bill stood as amended by his amendment at stage 2. I am pleased that the Executive has accepted amendment 40A, which will strengthen the position and ensure that for a trial to proceed a body of evidence must have been led that substantially implicates the accused.

15:30

**Pauline McNeill:** Margaret Smith addressed earlier the question of what else the Executive should do in relation to the provision. Does she agree that it is worth emphasising that the Justice 1 Committee suggested further consideration of why the accused persons did not turn up in the 90 cases that we were told about? It is worth examining whether anything else can be done to prevent that situation from happening in the first place.

**Margaret Smith:** I agree that we should pursue anything that can be done to ensure that there are only a small number of cases in which the accused fails to appear. We have all sought to introduce important safeguards into the process. However, as the minister said, some safeguards are in the bill. In cases in which evidence has been led before an accused absconds, a judge will have to consider three tests. The first is whether the evidence that has been heard has substantially implicated the accused. That is a reasonable test for a court. Secondly, a judge will also have to take into account the stage of the proceedings. We would not be happy about a trial continuing in the absence of an accused at an early stage of the trial. Thirdly, a judge will have to decide whether continuing a trial would be in the interests of justice. All those decisions will be in the hands of the court, which will bear in mind the particular trial details.

Overriding all those tests is article 6 of the ECHR, which is the right to a fair trial. I seek the minister's reassurance today that a judge, as well as taking into account the three tests, will take into account article 6 of the ECHR. There is no easy answer, but if Parliament accepts amendments 40 and 40A, the bill will strike the correct balance between the rights of the accused and the rights of victims and witnesses.

**Margaret Mitchell:** As other members have said, the proposal to try an accused in his absence is probably one of the most contentious aspects of the bill and concern has been expressed about it at every stage. I welcome and support the policy objective behind amendment 40, because an accused should not be allowed to disrupt court proceedings and evade justice by deliberately absenting himself. However, amendment 40 will allow a trial to continue in the absence of an accused after evidence has been led that

implicates the accused. I feel that that is a recipe for disaster.

I do not believe that amendment 40A, which proposes that the accused should be "substantially" implicated, will improve amendment 40. I fear that there will be appeals and that, rather than aid the smooth running of the court, that will result in more business for the High Court. We will vote against amendments 40 and 40A.

Amendment 115 could be workable if the minister gave us a bit more information about his concern that if an accused did not have the right to be a witness, that could be ground for an appeal. I would have thought that if an accused deliberately absented himself, he had forgone that right and as good as stated that he did not intend to be a witness. In that case, amendment 115 should be competent.

**Colin Fox:** I understand the motivation behind Lord Bonyon's attempts to undermine defendants who wilfully refuse to turn up in court and who, by doing nothing, effectively undermine the system and escape justice. However, in a fully resourced judicial system, there are better ways of getting round such abuse than by withdrawing a defendant's right to be tried in their presence. As other members have said, that proposal has been widely opposed. The proposal to press ahead with a trial in the absence of the person who is perhaps the most important party in any trial is regarded as a descent into the abyss.

It seems to me that the latest position—as outlined by Bill Butler and others—at the very least reflects the view that the bill's initial plans were unacceptable. The suggested compromise of proceeding with a trial in absence when a defendant was present at its beginning or when evidence against them has been led is still unsatisfactory. What if new evidence emerges during a trial and counsel is unable to contact their client to advise them of the way forward? That seems likely to lead to the very delays that we are trying to avoid in the first place. Equally, the defendant's rights to appeal would appear to be stronger and a safe conviction would be jeopardised. In fact, we might end up further along a road that we do not want to go down, having breached a fundamental right in the process. We should reject the idea that is behind trials in the absence of defendants.

**Mr Maxwell:** As Margaret Smith and other members have said, the issue was probably one of the most—if not the most—contentious issue in the bill that the Justice 1 Committee considered. The committee was not of a single mind on it—it split. Many of us supported an amendment that said that all the evidence should be led, but others did not—the jury was out in the committee on the issue.



Perhaps the minister can correct me if I am wrong, but I understand that, of the 90 cases that have been mentioned, a very small number involved the accused deliberately absconding and disappearing abroad, which is the stereotypical idea of what happens in such cases. In most cases, the accused does not turn up on day 1, the case is adjourned, there is a minor delay until the following day, the person is picked up and the case goes ahead. If there is indeed only a minor delay in most of those cases, we are talking about a very small number of cases in which somebody escapes abroad and avoids justice, and it seems to be heavy handed to lose a fundamental right, such as a person's right to be tried in their presence, as a result of such a small number of cases.

During the evidence sessions and when we spoke to a number of people in the legal profession, defence lawyers were uneasy about the matter. Many said to us that they would not take on cases in which the accused was not present. In fact, I did not speak to any defence lawyer who said that they would take on a case in which the accused was not present. If the legal profession is so concerned about the matter and thinks that it could not properly represent accused persons who are not present, it does not seem that the matter will be resolved by passing the part of the bill that we are discussing.

Amendments 115 and 118, in the name of Nicola Sturgeon, would resolve the matter and would keep the fundamental principle intact. I am glad that the minister and the Executive have moved and I agree that amendment 40A strengthens amendment 40 a bit. However, we are talking about a person's fundamental right to be tried in their presence and the right to a fair trial. There could be situations in which people are caught after the event and lodge an appeal; if such an appeal were successful, the very people whom we are trying to protect—witnesses and victims—would have to go through a second trial. I expect that some of those appeals—if not all of them—would be successful, as it does not seem to me to be reasonable or fair for a person to be tried in their absence. Therefore, I will certainly support amendments 115 and 118 and I ask the minister to reconsider the matter.

**Hugh Henry:** A number of points have been raised in the debate, which I will try to address.

Nicola Sturgeon asked about amendment 44 in relation to amendment 40. Our view has not changed and is still that amendment 44 is a consequential amendment.

I would like to address some wider points. Nicola Sturgeon spoke about some difficulties with having a trial in the absence of the accused. In passing, I gave some examples and it is worth re-

emphasising the types of traumatic case that we are discussing. One example is of a sensitive sexual case involving two young girls. The case had finished. The judge's charge was all that remained and the case adjourned over the weekend. The accused absconded. The witnesses—the two young girls—then faced having to give evidence again about a serious sexual assault. Moreover, they had the uncertainty and distress of knowing that the perpetrator was free and unable to be dealt with by the courts until he was—

**Nicola Sturgeon:** With the greatest respect to the minister, I fear that he is trying to use emotion to cloud the logic and the facts of the argument. I put it to him that I would have no objection to accused persons who have deliberately absented themselves being tried in absence if I did not think that there was a danger that that would compromise the safety of the convictions. My objection is that if that were to happen, the type of witness whom the minister is talking about might be put through the ordeal again in the event of a retrial being ordered. The provision is a sledgehammer to crack a nut. I think that it will lead to unsafe convictions and the minister's policy intention will be undermined.

**Hugh Henry:** Not at all. It is not about using emotion. The situation that I mentioned is a graphic example of the consequences of accepting the amendments in the name of Nicola Sturgeon. It is not about emotion, apart from the emotions that would be felt by victims and witnesses in such situations.

I will come back to whether concluding the trial would in fact prejudice any conviction and lead to further appeals. The point that Bill Butler made and which Margaret Smith re-emphasised is that the issue is about striking balances and providing safeguards. I will come back to the point that Margaret Smith made about the ECHR.

Margaret Mitchell raised the issue of appeals, as did Nicola Sturgeon. Margaret Mitchell said that she believed that the accused absenting himself would mean that he should forgo his right as a witness. Unfortunately, that is not the case and if we accept amendment 115, the case could still be abandoned if the accused absconded.

Colin Fox said that there must be better ways of doing this and that a safe conviction could be jeopardised because a fundamental right has been breached. Stewart Maxwell also referred to a fundamental right. Let us put the matter into perspective. We already have some trials in absence in Scotland in summary cases, so it is not as if such trials are completely alien to Scots law. There are already trials in absence in other parts of the United Kingdom—they happen in England—and trials in absence are widespread throughout

Europe, so let us not talk as if we are doing something that is unknown in western democracy and western judiciary.

I come back to the important issue about the ECHR that was raised by Margaret Smith. I refer her and Parliament to paragraphs 81 to 84 of the policy memorandum, which are on the impact on human rights. Paragraph 83 states:

“there is nothing in the Strasbourg jurisprudence to suggest that a trial of a criminal defendant held in his absence is inconsistent with the ECHR (see Lord Bingham in *R v Jones* [2002] All ER 113).”

Furthermore, paragraph 82 states:

“In relation to trials in absence, the provisions in the Bill in section 11 raise issues in connection with the rights of the accused under Article 6 of the ECHR. Article 6 confers a right to a fair trial, and in terms of the ECHR jurisprudence that includes a right of the accused to be present at and to take part in a hearing into his case that is adversarial in nature. The European Court of Human Rights has not found a breach of the ECHR where a defendant, fully informed of a forthcoming trial, has voluntarily chosen not to attend and the trial has continued.”

Therefore, the policy memorandum makes the situation clear. I also make it clear that no legislation that is in breach of the ECHR can be passed by the Parliament. We are committed to fulfilling our obligations on that. I further argue not only that there is no breach of the ECHR but that we provide more protection to the accused than is required under the ECHR. We have met all our obligations.

15:45

The Executive is committed to striking a balance between the rights of the accused and the rights of victims and witnesses. We listened to the arguments of a wide range of people and to the arguments that were put forward at the committee. We agreed to the amendment at stage 2 and, because we thought that a bit more needed to be done to give it meaning, we reflected further and lodged amendments at stage 3. We have agreed to move even further in relation to amendment 40A, in the name of Bill Butler, so we have shifted considerably. We have listened to the arguments and we believe that we have struck a proper balance between the rights of all the parties. I urge members to accept that we are not abandoning anything fundamental and that we are not in breach of our obligations. For the first time, we are beginning to strike that proper balance, when in the past many people were let down by the justice system.

*Amendment 12 agreed to.*

*Amendments 13 and 14 moved—[Hugh Henry]—and agreed to.*

**The Deputy Presiding Officer:** We move on to group 5, on the sharing of information before the preliminary hearing. Amendment 101, in the name of Nicola Sturgeon, is grouped with amendments 102, 103, 15 to 21 and 104 to 106. If amendment 103 is agreed to, amendment 15 will be pre-empted.

**Nicola Sturgeon:** Amendment 101 would require the court to ask at the preliminary hearing whether the prosecutor has disclosed all the material evidence that is relevant to the defence's case. During the progress of the bill, the comment has often been made that the bill's effectiveness in speeding up the justice system will very much depend on the principle of early disclosure of relevant information. However, the bill places no clear duty on the prosecution to disclose early information that is likely to support the accused's defence. As Lord Bonyon pointed out, late disclosure of information by the prosecution often leads to delays in trials. The preliminary diets per se will not speed up the process unless steps are taken to ensure that all relevant information is disclosed. That is the purpose of amendment 101.

Amendments 102 and 104 relate to legal privilege. Article 8 of the ECHR enshrines the right to privacy. Scots law has traditionally protected the relationship between a solicitor and his or her client and has made provision for the doctrine of legal professional privilege. Amendment 102 would provide that nothing could be asked at the preliminary hearing that is designed to elicit information that is subject to legal privilege. Amendment 104 would provide that the written record should not contain information that is subject to legal privilege.

Amendment 106 would provide a definition of “information subject to legal privilege”.

Amendment 105 would apply that definition and the definition of the accused's legal representative to new section 72D and new section 72E of the 1995 act.

I move amendment 101.

**Margaret Mitchell:** Amendment 103 was a probing amendment and I do not intend to move it, as I will agree to Executive amendment 15.

I am not persuaded by Nicola Sturgeon's amendments. The ethos of the bill is that both parties should co-operate with each other and engage in full disclosure, which should enable them to say at an early stage in the process whether a trial will go ahead. To hide behind legal privilege at that stage would not be helpful. Whether there is a matter of legal privilege should be for the judge to decide at the preliminary hearing, and proceedings should continue unless there is something that the judge deems is not

covered by legal privilege; he should make a judgment at that point. We will be voting against Nicola Sturgeon's amendments in this group.

**Hugh Henry:** One of the bill's objectives is to achieve earlier communication between parties with a view to the court being provided with a written record of their state of preparedness at the preliminary hearing. The record will follow the discussions that parties are required to have under new section 72E of the 1995 act, which the bill seeks to insert.

Those discussions will be informed by the information that is supplied by the Crown to the defence. The Crown Office has drafted a practice note that is the subject of consultation between it and those who practise in the High Court. When the practice note has been finalised, it will be published and will become a public document. It will set out in detail how and when the Crown will inform the defence of the progress of its case.

At the preliminary hearing, the court will be able to ask the Crown whether it has complied with the practice note and, if not, why not. It is perhaps more important that, if the practice note has not been complied with, the defence will be able to say what effect that has had on its preparation for trial. We would expect that to be reflected in the written record that is lodged with the court. We believe that those safeguards are sufficient and that Nicola Sturgeon's amendments are unnecessary. Therefore, I ask her to consider seeking to withdraw amendment 101.

New section 72E of the 1995 act, which section 2 will introduce, provides that the prosecution and defence must prepare and jointly lodge a written record of their state of preparedness for trial not less than two days before the preliminary hearing. Amendments 15 and 17 seek to strengthen that provision by providing that the prosecutor and the accused's representative shall

"communicate with each other with a view to jointly preparing"

the written record to be lodged with the court. Amendments 16, 18, 19, 20 and 21 are consequential.

The intention of the bill is that parties have a discussion about their case and prepare a written record of the state of their preparedness. It is implicit that, in their report to the court, parties are expected to be as full and frank as is consistent with their duty as officers of the court. However, it is recognised that there will be communications between an accused and his legal representative that are confidential, and I emphasise that the bill does not seek to require an agent to breach that confidentiality. We believe that if, in accordance with his responsibility as an officer of the court, a legal representative indicates to the court that to

disclose something in answer to a question from the court would involve the divulging of privileged information, the court will accept that that is the case. We believe that that is the present situation in criminal proceedings. We are doing nothing to change that and we see no need to legislate on the matter.

I hope that Nicola Sturgeon will accept that assurance and not move amendments 102, 104 and 106. One of the effects of amendment 15 would be to make amendment 103 redundant, so I hope that Margaret Mitchell will consider not moving it.

**Margaret Smith:** Everyone agrees that, for the bill to succeed, we need culture change and that sharing of information and better communication between prosecution and defence are critical to that. I welcome amendment 15, as it is an attempt to include reference to the need for better communication in the bill. It also makes it clear that it is for both sides jointly to prepare the written report that will form the basis of discussion at the managed meeting.

On reflection, I agree with the minister's view that to include details of the managed meeting in the bill would have been too prescriptive and that primary legislation would have been necessary to amend those details. However, it is important that we are clear about what issues will be addressed at the meeting, whether or not it is face to face. It is right that those issues should be decided by the court through an act of adjournment. That is mentioned in the bill.

I have some sympathy for amendments 101 and 102, but I am reassured by the minister's assertion that the relevant issues will be covered in practice notes from the Crown.

**Nicola Sturgeon:** I simply ask the minister to reconsider, particularly on amendments 101 and 102. I believe that the need for early and full disclosure of all the information that is relevant to a case is at the heart of the bill. If that part of the process breaks down for any reason, I fear that many of the other provisions in the bill will not be as effective.

I hear what the minister said about the amendments not being necessary because that is what is supposed to happen anyway. However, I take the view that, to be true to Lord Bony's recommendations, it would be better—indeed, it would result in a much stronger and more robust bill—if the obligation on the prosecution were to be shown clearly on the face of the bill.

**Margaret Mitchell:** Does the member accept that there is also an obligation on the defence to give full disclosure as far as that is possible?

**Nicola Sturgeon:** Absolutely; there should be full and early disclosure by both sides. However, very often in a trial, it is the prosecution that has information that is relevant to the defence. Very often, it is the preparation of the defence that is held up because of the delays in handing over information. It is often the Crown and the prosecution that determine the speed at which things can move. Although I agree with Margaret Mitchell's point, I believe that it is absolutely key to the bill for the obligation to be placed on the prosecution. For that reason I will press amendment 101.

**The Deputy Presiding Officer:** The question is, that amendment 101 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Adam, Brian (Aberdeen North) (SNP)  
 Baird, Shiona (North East Scotland) (Green)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Fox, Colin (Lothians) (SSP)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hyslop, Fiona (Lothians) (SNP)  
 Kane, Rosie (Glasgow) (SSP)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 Lochhead, Richard (North East Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 MacDonald, Margo (Lothians) (Ind)  
 Martin, Campbell (West of Scotland) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Neil, Alex (Central Scotland) (SNP)  
 Robison, Shona (Dundee East) (SNP)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)

#### AGAINST

Aitken, Bill (Glasgow) (Con)  
 Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Davidson, Mr David (North East Scotland) (Con)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Finnie, Ross (West of Scotland) (LD)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Gorrie, Donald (Central Scotland) (LD)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McMahan, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Mundell, David (South of Scotland) (Con)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Tosh, Murray (West of Scotland) (Con)  
 Wallace, Mr Jim (Orkney) (LD)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 35, Against 76, Abstentions 0.

*Amendment 101 disagreed to.*

*Amendment 102 not moved.*

### **Section 2—Written record of state of preparation in certain cases**

*Amendment 103 not moved.*

*Amendments 15 to 21 moved—[Hugh Henry]—and agreed to.*

*Amendments 104 to 106 not moved.*

### **Section 3—Appeals**

*Amendments 22 to 24 moved—[Hugh Henry]—and agreed to.*

### **Section 4—Prohibition on accused conducting case in person in certain cases**

*Amendments 25 and 26 moved—[Hugh Henry]—and agreed to.*

### **Section 8—Continuation of trial diet**

*Amendment 27 moved—[Hugh Henry]—and agreed to.*

*Amendment 107 moved—[Nicola Sturgeon].*

**The Deputy Presiding Officer:** The question is, that amendment 107 be agreed to. Are we agreed?

**Members:** No.

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

#### **FOR**

Adam, Brian (Aberdeen North) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Baird, Shiona (North East Scotland) (Green)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Fox, Colin (Lothians) (SSP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kane, Rosie (Glasgow) (SSP)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 Lochhead, Richard (North East Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Martin, Campbell (West of Scotland) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)

Maxwell, Mr Stewart (West of Scotland) (SNP)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Mundell, David (South of Scotland) (Con)  
 Neil, Alex (Central Scotland) (SNP)  
 Robison, Shona (Dundee East) (SNP)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, John (Ayr) (Con)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Tosh, Murray (West of Scotland) (Con)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)

#### **AGAINST**

Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McMahan, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)

Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Wallace, Mr Jim (Orkney) (LD)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### ABSTENTIONS

MacDonald, Margo (Lothians) (Ind)

**The Deputy Presiding Officer:** The result of the division is: For 48, Against 61, Abstentions 1.

*Amendment 107 disagreed to.*

*Amendments 28 and 29 moved—[Hugh Henry]—and agreed to.*

*Amendment 108 not moved.*

#### Section 9—Time limits

16:00

**The Deputy Presiding Officer:** I remind members that if amendment 109 is agreed to, I cannot call amendment 110 because of pre-emption.

*Amendment 109 moved—[Colin Fox].*

**The Deputy Presiding Officer:** The question is, that amendment 109 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Baird, Shiona (North East Scotland) (Green)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Fox, Colin (Lothians) (SSP)  
 Harvie, Patrick (Glasgow) (Green)  
 Kane, Rosie (Glasgow) (SSP)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 MacDonald, Margo (Lothians) (Ind)  
 Martin, Campbell (West East Scotland) (SNP)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Swinburne, John (Central Scotland) (SSCUP)

#### AGAINST

Adam, Brian (Aberdeen North) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Davidson, Mr David (North East Scotland) (Con)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Finnie, Ross (West of Scotland) (LD)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marilyn (North East Scotland) (Lab)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grahame, Christine (South of Scotland) (SNP)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lochhead, Richard (North East Scotland) (SNP)  
 Lyon, George (Argyll and Bute) (LD)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McMahan, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Mundell, David (South of Scotland) (Con)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Neil, Alex (Central Scotland) (SNP)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robison, Shona (Dundee East) (SNP)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)

Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Tosh, Murray (West of Scotland) (Con)  
 Wallace, Mr Jim (Orkney) (LD)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### ABSTENTIONS

Cunningham, Roseanna (Perth) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 14, Against 96, Abstentions 1.

*Amendment 109 disagreed to.*

*Amendments 110 to 114 not moved.*

*Amendments 30 to 35 moved—[Hugh Henry].*

**The Deputy Presiding Officer:** The question is, that amendments 30 to 35 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Adam, Brian (Aberdeen North) (SNP)  
 Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baird, Shiona (North East Scotland) (Green)  
 Baker, Richard (North East Scotland) (Lab)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Fox, Colin (Lothians) (SSP)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)

Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Kane, Rosie (Glasgow) (SSP)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 Lochhead, Richard (North East Scotland) (SNP)  
 Lyon, George (Argyll and Bute) (LD)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 MacDonald, Margo (Lothians) (Ind)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Campbell (West of Scotland) (SNP)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McMahan, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Neil, Alex (Central Scotland) (SNP)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robison, Shona (Dundee East) (SNP)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, Tavish (Shetland) (LD)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Tosh, Murray (West of Scotland) (Con)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### AGAINST

Brown, Robert (Glasgow) (LD)

**ABSTENTIONS**

Aitken, Bill (Glasgow) (Con)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Johnstone, Alex (North East Scotland) (Con)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Mundell, David (South of Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)

**The Deputy Presiding Officer:** The result of the division is: For 100, Against 1, Abstentions 13.

*Amendments 30 to 35 agreed to.*

**Section 10A—Procedure where trial diet does not proceed**

**The Deputy Presiding Officer:** Group 6 is on the procedure where a trial diet does not proceed. Amendment 36, in the name of the minister, is grouped with amendments 37 to 39.

**Hugh Henry:** The amendments are technical. They clarify that, in all cases in which a trial has been fixed and is not proceeded with for whatever reason, the Crown is not precluded from reindicting under proposed new section 81(5) in the 1995 act.

I move amendment 36.

*Amendment 36 agreed to.*

*Amendments 37 to 39 moved—[Hugh Henry]—and agreed to.*

**Section 11—Trial in absence of accused**

*Amendment 115 moved—[Nicola Sturgeon].*

**The Deputy Presiding Officer (Murray Tosh):** The question is, that amendment 115 be agreed to. Are we agreed?

**Members:** No.

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

**FOR**

Adam, Brian (Aberdeen North) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Baird, Shiona (North East Scotland) (Green)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Fox, Colin (Lothians) (SSP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)

Gallie, Phil (South of Scotland) (Con)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kane, Rosie (Glasgow) (SSP)  
 Lochhead, Richard (North East Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 MacDonald, Margo (Lothians) (Ind)  
 Martin, Campbell (West of Scotland) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Mundell, David (South of Scotland) (Con)  
 Neil, Alex (Central Scotland) (SNP)  
 Robison, Shona (Dundee East) (SNP)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, John (Ayr) (Con)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)

**AGAINST**

Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollak) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)



McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 48, Against 65, Abstentions 0.

*Amendment 115 disagreed to.*

*Amendment 40 moved—[Hugh Henry].*

*Amendment 40A moved—[Bill Butler].*

**The Deputy Presiding Officer:** The question is, that amendment 40A be agreed to. Are we agreed?

**Members:** No.

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

**FOR**

Adam, Brian (Aberdeen North) (SNP)  
 Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baird, Shiona (North East Scotland) (Green)  
 Baker, Richard (North East Scotland) (Lab)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)

Finnie, Ross (West of Scotland) (LD)  
 Fox, Colin (Lothians) (SSP)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Kane, Rosie (Glasgow) (SSP)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lochhead, Richard (North East Scotland) (SNP)  
 Lyon, George (Argyll and Bute) (LD)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 MacDonald, Margo (Lothians) (Ind)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Campbell (West of Scotland) (SNP)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Neil, Alex (Central Scotland) (SNP)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robison, Shona (Dundee East) (SNP)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, Tavish (Shetland) (LD)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)

Swinburne, John (Central Scotland) (SSCUP)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### AGAINST

Aitken, Bill (Glasgow) (Con)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Johnstone, Alex (North East Scotland) (Con)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Mundell, David (South of Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)

**The Deputy Presiding Officer:** The result of the division is: For 100, Against 14, Abstentions 0.

*Amendment 40A agreed to.*

**The Deputy Presiding Officer:** The question is, that amendment 40, as amended, be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Adam, Brian (Aberdeen North) (SNP)  
 Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Fox, Colin (Lothians) (SSP)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grahame, Christine (South of Scotland) (SNP)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Jackson, Dr Sylvia (Stirling) (Lab)

Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Kane, Rosie (Glasgow) (SSP)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lochhead, Richard (North East Scotland) (SNP)  
 Lyon, George (Argyll and Bute) (LD)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 MacDonald, Margo (Lothians) (Ind)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Campbell (West of Scotland) (SNP)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McMahan, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Neil, Alex (Central Scotland) (SNP)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robison, Shona (Dundee East) (SNP)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Scott, Tavish (Shetland) (LD)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### AGAINST

Aitken, Bill (Glasgow) (Con)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Johnstone, Alex (North East Scotland) (Con)

Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Mundell, David (South of Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)

#### ABSTENTIONS

Baird, Shiona (North East Scotland) (Green)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Harvie, Patrick (Glasgow) (Green)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)

**The Deputy Presiding Officer:** The result of the division is: For 94, Against 13, Abstentions 6.

*Amendment 40, as amended, agreed to.*

*Amendments 41 to 47 moved—[Hugh Henry].*

**The Deputy Presiding Officer:** The question is, that amendments 41 to 47 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Adam, Brian (Aberdeen North) (SNP)  
 Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marilyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grahame, Christine (South of Scotland) (SNP)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lochhead, Richard (North East Scotland) (SNP)  
 Lyon, George (Argyll and Bute) (LD)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)

MacDonald, Margo (Lothians) (Ind)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Campbell (West of Scotland) (SNP)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McMahan, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Neil, Alex (Central Scotland) (SNP)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robison, Shona (Dundee East) (SNP)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### AGAINST

Baird, Shiona (North East Scotland) (Green)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Fox, Colin (Lothians) (SSP)  
 Harvie, Patrick (Glasgow) (Green)  
 Kane, Rosie (Glasgow) (SSP)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Sheridan, Tommy (Glasgow) (SSP)

#### ABSTENTIONS

Aitken, Bill (Glasgow) (Con)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Johnstone, Alex (North East Scotland) (Con)

McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Mundell, David (South of Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)

**The Deputy Presiding Officer:** The result of the division is: For 90, Against 10, Abstentions 14.

*Amendments 41 to 47 agreed to.*

**The Deputy Presiding Officer:** We are almost out of time for this section of the debate. Group 7 is on trial in the absence of the accused where there is no solicitor and the duties of the solicitor appointed. There is time only to move the amendments and have the divisions, so I must simply ask Ms Sturgeon whether she wishes to move amendment 116.

*Amendment 116 moved—[Nicola Sturgeon].*

**The Deputy Presiding Officer:** The question is, that amendment 116 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Adam, Brian (Aberdeen North) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Baird, Shiona (North East Scotland) (Green)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Fox, Colin (Lothians) (SSP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kane, Rosie (Glasgow) (SSP)  
 Lochhead, Richard (North East Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 MacDonald, Margo (Lothians) (Ind)  
 Martin, Campbell (West of Scotland) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Mundell, David (South of Scotland) (Con)  
 Neil, Alex (Central Scotland) (SNP)  
 Robison, Shona (Dundee East) (SNP)

Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, John (Ayr) (Con)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)

#### AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)

Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 48, Against 67, Abstentions 0.

*Amendment 116 disagreed to.*

*Amendment 117 not moved.*

*Amendments 48 to 52 moved—[Hugh Henry]—and agreed to.*

*Amendment 118 not moved.*

*Amendments 53 and 54 moved—[Hugh Henry]—and agreed to.*

### Section 12—Obstructive witnesses

**The Deputy Presiding Officer:** We come to group 8, which is the last grouping in this section of the debate. There is no time, so I simply call on the minister to move amendment 55, which is in a group on its own.

*Amendment 55 moved—[Hugh Henry].*

**The Deputy Presiding Officer:** The question is, that amendment 55 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Adam, Brian (Aberdeen North) (SNP)  
 Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Fox, Colin (Lothians) (SSP)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grahame, Christine (South of Scotland) (SNP)

Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Kane, Rosie (Glasgow) (SSP)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 Lochhead, Richard (North East Scotland) (SNP)  
 Lyon, George (Argyll and Bute) (LD)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 MacDonald, Margo (Lothians) (Ind)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Campbell (West of Scotland) (SNP)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McMahan, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Neil, Alex (Central Scotland) (SNP)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robison, Shona (Dundee East) (SNP)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Scott, Tavish (Shetland) (LD)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

**ABSTENTIONS**

Aitken, Bill (Glasgow) (Con)  
 Baird, Shiona (North East Scotland) (Green)  
 Ballance, Chris (South of Scotland) (Green)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Harvie, Patrick (Glasgow) (Green)  
 Johnstone, Alex (North East Scotland) (Con)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Mundell, David (South of Scotland) (Con)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)

**The Deputy Presiding Officer:** The result of the division is: For 96, Against 0, Abstentions 18.

*Amendment 55 agreed to.*

**The Deputy Presiding Officer:** Group 9 is on remote monitoring as a bail condition and the circumstances in which it may be used. Amendment 69, in the name of Margaret Mitchell, is grouped with amendments 70 to 89.

16:15

**Margaret Mitchell:** Amendments 69, 70 and 71 are consequential to the main amendment in the group, which is amendment 72, the effect of which is to remove the provision to grant bail subject to a remote monitoring restriction. If it was deemed originally that an accused should not be eligible for bail, they should not be granted bail by virtue of the fact that a remote monitoring device restricting their movement would be imposed. That provision seems to be totally against the interests of public safety, which must be paramount at all times. Amendments 73 to 89 are consequential to amendment 72 and, as such, they need no further explanation.

I move amendment 69.

**Hugh Henry:** I oppose amendment 72 and the amendments that are consequential to it, because they are similar to amendments that we discussed at stage 2. I will repeat the points that I made then. New section 24A(1) of the 1995 act offers the court the option of an additional condition of bail, which can be used in cases when it considers that the monitoring would provide the additional security sufficient to allow someone who would otherwise be remanded to remain in the community. We have had the debate about that previously and I hope that, if Margaret Mitchell does not agree to not move amendment 72, Parliament will oppose it.

**Margaret Mitchell:** I have no further points to make. I will press amendment 69. Public safety is

paramount. If the granting of bail was deemed not to be suitable originally, bail should not be granted by virtue of the remote monitoring condition.

**The Deputy Presiding Officer:** The question is, that amendment 69 be agreed to. Are we agreed?

**Members:** No.

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

**FOR**

Aitken, Bill (Glasgow) (Con)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Fox, Colin (Lothians) (SSP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kane, Rosie (Glasgow) (SSP)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 MacDonald, Margo (Lothians) (Ind)  
 Martin, Campbell (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Mundell, David (South of Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Sheridan, Tommy (Glasgow) (SSP)

**AGAINST**

Adam, Brian (Aberdeen North) (SNP)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baird, Shiona (North East Scotland) (Green)  
 Baker, Richard (North East Scotland) (Lab)  
 Ballance, Chris (South of Scotland) (Green)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lochhead, Richard (North East Scotland) (SNP)

Lyon, George (Argyll and Bute) (LD)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Neil, Alex (Central Scotland) (SNP)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robison, Shona (Dundee East) (SNP)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Wallace, Mr Jim (Orkney) (LD)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 21, Against 81, Abstentions 0.

*Amendment 69 disagreed to.*

*Amendment 70 moved—[Margaret Mitchell].*

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

**Members:** No.

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

#### FOR

Aitken, Bill (Glasgow) (Con)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Fox, Colin (Lothians) (SSP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Goldie, Miss Annabel (West of Scotland) (Con)

Johnstone, Alex (North East Scotland) (Con)  
 Kane, Rosie (Glasgow) (SSP)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 MacDonald, Margo (Lothians) (Ind)  
 Martin, Campbell (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Mundell, David (South of Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Sheridan, Tommy (Glasgow) (SSP)

#### AGAINST

Adam, Brian (Aberdeen North) (SNP)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baird, Shiona (North East Scotland) (Green)  
 Baker, Richard (North East Scotland) (Lab)  
 Ballance, Chris (South of Scotland) (Green)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Hyslop, Fiona (Lothians) (SNP)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lochhead, Richard (North East Scotland) (SNP)  
 Lyon, George (Argyll and Bute) (LD)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Murray, Dr Elaine (Dumfries) (Lab)

Neil, Alex (Central Scotland) (SNP)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robison, Shona (Dundee East) (SNP)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Wallace, Mr Jim (Orkney) (LD)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 21, Against 84, Abstentions 0.

*Amendment 70 disagreed to.*

*Amendment 71 moved—[Margaret Mitchell.]*

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

**Members: No.**

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

#### FOR

Aitken, Bill (Glasgow) (Con)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Fox, Colin (Lothians) (SSP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kane, Rosie (Glasgow) (SSP)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 MacDonald, Margo (Lothians) (Ind)  
 Martin, Campbell (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Mundell, David (South of Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Sheridan, Tommy (Glasgow) (SSP)

#### AGAINST

Adam, Brian (Aberdeen North) (SNP)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baird, Shiona (North East Scotland) (Green)  
 Baker, Richard (North East Scotland) (Lab)  
 Ballance, Chris (South of Scotland) (Green)

Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marilyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lochhead, Richard (North East Scotland) (SNP)  
 Lyon, George (Argyll and Bute) (LD)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McMahan, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Neil, Alex (Central Scotland) (SNP)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robison, Shona (Dundee East) (SNP)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)



Stevenson, Stewart (Banff and Buchan) (SNP)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Wallace, Mr Jim (Orkney) (LD)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 21, Against 85, Abstentions 0.

*Amendment 71 disagreed to.*

#### **Section 14—Bail conditions: remote monitoring of restrictions on movements**

*Amendment 72 moved—[Margaret Mitchell.]*

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

**Members:** No.

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

#### **FOR**

Aitken, Bill (Glasgow) (Con)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Fox, Colin (Lothians) (SSP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kane, Rosie (Glasgow) (SSP)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 MacDonald, Margo (Lothians) (Ind)  
 Martin, Campbell (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Mundell, David (South of Scotland) (Con)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Sheridan, Tommy (Glasgow) (SSP)

#### **AGAINST**

Adam, Brian (Aberdeen North) (SNP)  
 Baillie, Jackie (Dumarton) (Lab)  
 Baird, Shiona (North East Scotland) (Green)  
 Baker, Richard (North East Scotland) (Lab)  
 Ballance, Chris (South of Scotland) (Green)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)

Finnie, Ross (West of Scotland) (LD)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lochhead, Richard (North East Scotland) (SNP)  
 Lyon, George (Argyll and Bute) (LD)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McMahan, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Neil, Alex (Central Scotland) (SNP)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robison, Shona (Dundee East) (SNP)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Wallace, Mr Jim (Orkney) (LD)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 21, Against 87, Abstentions 0.

*Amendment 72 disagreed to.*

*Amendments 73 to 82 not moved.*

**The Deputy Presiding Officer:** Group 10 is on remote monitoring as a bail condition. Amendment 56, in the name of the minister, is grouped with amendments 57 and 58.

**Hugh Henry:** At stage 2, I undertook to review the options that would be available for regulation-making powers under proposed section 24B of the Criminal Procedure (Scotland) Act 1995, which is introduced by section 14 of the bill. My undertaking was given in response to the committee's desire to have some scrutiny over the areas in which the provisions would be piloted. Amendments 56 and 57 address the matter by providing for an affirmative regulation-making power in relation to the first set of regulations to be made under section 24B, which will apply to the pilot scheme. A negative resolution power would be used for subsequent regulations.

That arrangement will provide Parliament with the opportunity to debate the first regulations under the affirmative procedure for the pilot scheme. At that point, we would be in a position to provide any detail that was required on the proposed operation of the pilot schemes. The pilot schemes will be subject to evaluation and I propose that the results of the evaluation be made available to the committee.

Amendment 58 is a technical amendment to rectify a typing omission.

I move amendment 56.

**Pauline McNeill:** I welcome the fact that the Executive has responded to many concerns that the committee raised in relation to section 14. I have strong reservations about the provision, which is intended to provide that, where a court has refused to admit a person to bail, it must, on receipt of an application from that person, consider whether imposing an electronic tag would make it possible to admit the person to bail subject to a condition restricting their movements. My concern about that provision is that everyone who has been refused bail will use that provision to apply. That concern is shared by the Sheriffs Association, in so far as it believes that there are some practical issues attached to the proposal, although I know that the Executive has addressed those concerns.

I welcome the Executive's assurance that it will not roll out the provision until Parliament has full information on the courts in which the system will be piloted and that Parliament will get a full report on the result of the pilots. At the moment, however, my position is reserved. Further, I think

that the general public would be concerned about the proposal. Given the concerns that have been raised about the number of offences that have already been committed while people are on bail, the public might be concerned about the prospect of people who have been refused bail being granted bail subject to electronic monitoring.

Given the Executive's assurance that Parliament will have an opportunity to judge whether any of my reservations or those of the committee are justified, I welcome the amendments.

*Amendment 56 agreed to.*

*Amendment 57 moved—[Hugh Henry]—and agreed to.*

*Amendment 83 not moved.*

*Amendment 58 moved—[Hugh Henry]—and agreed to.*

*Amendments 84 to 89 not moved.*

#### **Section 19—Citation of witnesses for precognition**

**The Deputy Presiding Officer:** Group 11 is on the citation of witnesses for precognition. Amendment 120, in the name of Nicola Sturgeon, is grouped with amendment 121.

**Nicola Sturgeon:** Amendment 120 would provide for the personal citation of witnesses for precognition. The amendment would ensure that a witness would not be found guilty of an offence for failure to attend for precognition unless the citation had been served personally on the witness. Serving the citation in that way would ensure that the witness was aware of the date, time and place of the precognition and it would remove the possibility of a witness being found guilty of an offence for failure to appear when they were, for example, on holiday and had therefore not received the citation.

Amendment 121 deals with legal privilege. It provides that a witness who attends for precognition shall not be obliged to disclose information subject to legal privilege for the reasons that I outlined earlier in relation to article 8 of the European convention on human rights. The amendment also contains a definition of

"information subject to legal privilege".

I move amendment 120.

**Margaret Mitchell:** I support Nicola Sturgeon's amendment 120. If a witness is to be cited, it is essential for the citation to be served in person to ensure that they have received it. Legal privilege is a matter for the judge to manage and we are therefore not in favour of amendment 121.

**Hugh Henry:** We do not consider that it is necessary to require police constables to serve

citations in person on people whom the prosecutor wishes to precognosce. We do not believe that that is the best use of resources.

It is recognised that there will be confidential communication between an accused and his legal representative. The provisions must be read against the background of the general law, and we do not believe that anything in them could be taken to require information to be disclosed if the witness has legitimate grounds for refusing to disclose it. That applies whether those grounds are based on confidentiality or on some other protection that is afforded by the law, such as the right not to give information that would incriminate oneself. We do not believe that it is appropriate to introduce specific provision in relation to one ground on which a witness might refuse to disclose information.

I hope that amendment 120 will be opposed and that amendment 121 will not be moved.

**Nicola Sturgeon:** It is my understanding that amendment 120 would not require personal citation in every case. If a witness did not turn up for precognition, a citation would have to be served on them in person before they could be found guilty of an offence. That approach is eminently sensible; it would not lead to the waste of police resources that the minister talked about because it would not demand personal citation in every case. It would be inequitable and unjust to find someone guilty of a criminal offence for not turning up for precognition if they were not aware that they were supposed to turn up because they were away when the details were delivered. Amendment 120 has common sense to commend it. I have no further comment to make on amendment 121.

**The Deputy Presiding Officer:** The question is, that amendment 120 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Adam, Brian (Aberdeen North) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Baird, Shiona (North East Scotland) (Green)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Fox, Colin (Lothians) (SSP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)

Gibson, Rob (Highlands and Islands) (SNP)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harper, Robin (Lothians) (Green)  
 Harvie, Patrick (Glasgow) (Green)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kane, Rosie (Glasgow) (SSP)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 Lochhead, Richard (North East Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 MacDonald, Margo (Lothians) (Ind)  
 Martin, Campbell (West of Scotland) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Mundell, David (South of Scotland) (Con)  
 Neil, Alex (Central Scotland) (SNP)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Robison, Shona (Dundee East) (SNP)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, John (Ayr) (Con)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)

#### AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)

Martin, Paul (Glasgow Springburn) (Lab)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 52, Against 65, Abstentions 0.

*Amendment 120 disagreed to.*

*Amendment 121 not moved.*

### Schedule

FURTHER MODIFICATIONS OF THE 1995 ACT

*Amendments 59 to 62 moved—[Hugh Henry]—and agreed to.*

**The Deputy Presiding Officer:** Group 12 is on the grounds on which late evidence, productions and witnesses are allowed. Amendment 90, in the name of Pauline McNeill, is in a group on its own.

**Pauline McNeill:** Amendment 90 concerns the use of section 67(5) of the 1995 act, which states that

“in any trial it shall be competent with the leave of the court for the prosecutor”

to put forward evidence two days before the jury is sworn in. The intention of the bill was to change the test of that to “in special circumstances”. The Justice 1 Committee had some concerns about that provision. In reaching our objective of reducing the number of adjournments and increasing certainty in the courts system, we would not want to undermine the general principles of justice. We felt that, if there was not a proper wording in the new provisions, that may make it harder for the Crown to make its case.

It is acknowledged that the Crown makes frequent use of the provision. It is important that the Crown does not become complacent by having a provision in the bill that would allow late evidence to be put forward. Under the new system, the Crown already has five days less in which to submit its evidence in advance of the preliminary hearing. The Executive has said that it would be inclined to support the position that late evidence could be produced on cause shown before the jury was sworn in. I hope that it will support that position today.

I welcome the Executive's response so far to this important provision, and I move amendment 90.

**Hugh Henry:** We are quite happy to shift to changing the test to on cause shown, as described by Pauline McNeill. We support amendment 90.

*Amendment 90 agreed to.*

*Amendments 63 to 67 moved—[Hugh Henry]—and agreed to.*

**The Deputy Presiding Officer:** Group 13 is on prohibition on the accused personally conducting defence in victim statement proofs. I ask the minister simply to move amendment 68.

*Amendment 68 moved—[Hugh Henry]—and agreed to.*

### Long Title

*Amendment 122 not moved.*

## **Criminal Procedure (Amendment) (Scotland) Bill**

### **The Deputy Presiding Officer (Murray Tosh):**

The next item of business is a debate on motion S2M-1100, in the name of Cathy Jamieson, that the Criminal Procedure (Amendment) (Scotland) Bill be passed. I will have to enforce the indicative time limits quite severely. I call Cathy Jamieson to speak to and move the motion. You have five minutes, minister.

16:34

### **The Minister for Justice (Cathy Jamieson):**

I am very pleased to have the opportunity to speak in the debate. Our partnership agreement gives us a clear commitment to reform the operation of the High Court. The bill takes a further step towards delivering the stronger, safer Scotland that we all desire.

I have set out previously in Parliament the problems that the bill tries to address, and we have heard about them again today. I will not dwell on those any further; I will instead focus on the solutions that are being put in place. We want to introduce greater certainty into proceedings—a particularly important outcome for victims and witnesses. We also want to foster a culture of better communication between prosecutors and the defence and earlier preparation by both parties. Those objectives have not been plucked out of thin air; they follow on from the extensive consultation and discussion by Lord Bonomy and his review team and the further consultation by the Executive. I put on record the Executive's thanks to Lord Bonomy, whose vision and recommendations the bill largely embodies. I wish him well as he heads for pastures new.

I also express our thanks to the many other bodies and individuals who have contributed in one way or another to developing the proposals—the bill team, and the Justice 1 Committee and its staff for considering the bill so carefully. The reform package is now much stronger than it was a year ago precisely because so many people have taken the time and trouble to engage so constructively. Indeed the progress that has been made since the stage 1 debate on 25 February—for example, in relation to trials in absence and electronic monitoring—is further evidence of constructive engagement by all parties in producing that stronger package.

I will say a few words about the principle of early disclosure. The success of the High Court reform package depends on a culture change among all High Court practitioners. Most important, prosecution and defence teams will have to get into the habit of communicating meaningfully at an

earlier stage in the process. The requirement in the bill for parties to communicate with each other, to prepare a written record of the state of their preparation and to lodge the report prior to the preliminary hearing is designed to ensure that the judge can reach a view on how good or otherwise that communication has been.

I am grateful to the Crown Office for releasing during stage 2 a draft of its practice note on disclosure. That demonstrates the Executive's absolute commitment to ensuring that the defence receives crucial documents at an earlier stage, while protecting the rights of vulnerable Crown witnesses. I understand that a useful dialogue on the draft is now taking place between the Crown Office, the Law Society of Scotland, the Faculty of Advocates and others.

I am well aware that the consultation and legislative phases have been exhaustive and, for some, exhausting. Those phases represent only the beginning of the reform process. Our overall aim is that all court users should have a better experience of the system. We want justice to be swifter as well as better. The bill will provide the toolkit to enable all practitioners, working together, to achieve those desired outcomes. However, a toolkit is of little use unless it is used appropriately and, at times, imaginatively. That is why we will be investing a great deal of time during the next few months in making sure that everyone connected with the High Court is ready to use that toolkit properly.

Officials from the Justice Department, the Crown Office and the Scottish Court Service are already working closely with all the relevant interests to ensure a smooth transition to the new procedures. A programme board is driving that process, and it will develop plans for training and for the monitoring and evaluation of the reform programme.

I stress that this should not be regarded in any way as a top-down implementation process. I have been impressed by the extent to date of the dialogue between different groups of practitioners and their willingness to discuss possible obstacles and develop new approaches. I want the implementation process to be developed in the same spirit, so that detailed training early next year can reflect the views of as many people as possible.

As I have said before, Scotland deserves to have a world-class justice system. The bill, which will modernise our High Court, is a vital component in our package of reforms. It will enable us to take a vital step forward in delivering a justice system fit for the 21<sup>st</sup> century. I am delighted to commend the bill to Parliament and, in moving the motion in my name, I ask members to give it their full support.

I move,

That the Parliament agrees that the Criminal Procedure (Amendment) (Scotland) Bill be passed.

16:38

**Mr Stewart Maxwell (West of Scotland) (SNP):**

The committee took many months to examine the bill. As the minister mentioned, it was a tough process, but I think that it was enjoyable for all members of the committee. We learned a lot, we did a lot of visits and we spent time in the courts. From my point of view, it was certainly an enjoyable experience and we learned a lot about legal processes and some of the problems in the system.

Early disclosure has been one of the most important issues. It is crucial to the success of the bill, and I am slightly disappointed that the bill does not, at this point, contain more formal measures. However, I will not go back over the arguments that we had during stage 2. It is important that the culture change happens and that there is co-operation and goodwill from all sides if we are to achieve the ends of speeding up justice and making it fairer and more reliable for all concerned.

Given that there is no formal process for early disclosure and that we are relying heavily on goodwill and co-operation, I ask the Executive to pay close attention to what happens after the bill is passed so that we get that co-operation and culture change and that there is movement towards a speedier process. I hope that the Executive and the minister will return to the committee with evidence about how the process is moving on.

Early disclosure of evidence by the prosecution is required for the time limits. When we debated whether the time limit should be 110 days or 140 days, the case was made that early disclosure of evidence in the first part of the system would have allowed the retention of the 110-day rule, but I will not go back over those arguments. Now that we have taken the decision to extend the time limit from 110 days to 140 days, I hope that the result will still be speedier justice. I also hope that 140 days will indeed be the outer limit of the time constraint.

The requirement for preliminary hearings is one of the most widely welcomed measures in the bill. All parties agree that the introduction of preliminary hearings will make a difference. It should mean that we get earlier pleas, which should free up space within the High Court. I certainly welcome the measure, which I hope can be introduced smoothly into the system.

The presumption that trial diets will be fixed is an excellent idea, although I still have concerns—as I

have had from the beginning—that the intended policy aim will not be achieved. I hope that there will be fixed trial diets, but we will still have the flexibility of floating trial diets. Although I understand why floating trial diets will still be available, I am concerned that in a couple of years' time we will be told that people use that loophole to get round problems within the system, such that we end up with most trial diets still being floating ones. I hope that that does not happen but, given those concerns, I hope that the Executive will spend time monitoring that issue to ensure that we do not end up in that situation.

On trials in the absence of the accused, I still hold to the position that I expressed earlier. It would have been better if we had required that all the Crown evidence had been led before the trial of an accused who had absconded could go ahead. Such cases could still have proceeded to judgment if our amendment 115 had been accepted. It is a shame that, once the bill is passed, we will lose the principle that the trial should take place in the presence of the accused, which should be a fundamental right.

Finally, one of the most pleasing aspects of the bill's passage has been the way in which we have moved from using the language of "reluctant witnesses" to that of "obstructive witnesses". As members are aware, the committee debated that issue at length and it has now been made clear that the bill deals with obstructive, rather than reluctant, witnesses. That clarification has been a great help to committee members and to all members of the Parliament.

We will support the bill.

16:42

**Margaret Mitchell (Central Scotland) (Con):** I begin by thanking the clerks. I want to acknowledge their support and the work that they and the committee convener have carried out on what has undoubtedly been a very technical and complicated bill.

The bill will go some considerable way towards realising our objective of achieving greater certainty in High Court proceedings through the introduction of a more managed system. In particular, I welcome the provisions on sentence discounting for early pleas which, together with early disclosure, are at the heart of the bill.

I welcome the introduction of the preliminary hearing, but I deeply regret the fact that the minister did not include the requirement for a managed meeting, which I believe is key to ensuring that both defence and prosecution are fully prepared and that all the issues that could be resolved are discussed at as early a stage as possible. However, I welcome the Executive's

amendment 15, which requires that there be communication between the parties before the written record is lodged. I hope that that amendment will go some way towards filling what I perceive to be a gap.

Crucial to the success of the bill will be the extent to which it is resourced. Concerns were raised about the amount of resources that have been provided for forensic services and for the Procurator Fiscal Service. It remains to be seen whether those resources will be adequate.

I hope that the preliminary hearing will be a meeting at which everything can be clarified rather than a meeting that is simply adjourned. Again, we will need to see how that pans out. The preliminary hearing has the potential to move things on considerably, which is certainly to be welcomed.

Given that witness citation has been a problem area in the past, I deeply regret the fact that there was no opportunity to consider the proposals in the McInnes report, which include some worthwhile suggestions. Regrettably, the timing of stage 3 did not allow us to consider those proposals, which could have helped with witness citation and with ensuring that witnesses attend court.

Finally, it would be unusual if I failed to say something about the 110-day rule. It is a matter of considerable sadness that the 110-day rule has today been scrapped. The rule served us well because it protected the presumption of innocence and ensured that nobody would be in custody any longer than was absolutely necessary. I still believe that to scrap the rule before other measures come into effect is to put the cart before the horse. However, we shall see how things progress.

The bill contains a huge number of worthwhile proposals that I hope will result in increased efficiency in High Court proceedings for all those involved—victims, witnesses and other court users—so that the net effect at the end of the day is increased public confidence in the criminal justice system.

16:45

**Margaret Smith (Edinburgh West) (LD):** The bill is about delivering good justice by cutting delays and uncertainty in our courts. It balances the rights of victims of crime with those of the accused. The bill has rightly been welcomed by many sides of the justice community.

As we have heard, the case for reform is powerful. Last year more than half of the trials in Glasgow High Court were adjourned. Today we are taking decisive action to address the growing

adjournment culture. The bill will improve the justice system and is part of the on-going Executive package to do that.

As Stewart Maxwell said, working on the bill has been an illuminating, if exhausting, experience. I thank the committee clerks, our advisers, the ministers, the bill team, Lord Bonomy and his team and those who gave us evidence, both formally and informally. It was useful to hear the informal evidence that we received and to have the discussions that we had with practitioners and others.

The bill makes a number of key improvements. It introduces mechanisms that I hope will help to improve communication between the prosecution and the defence—through the managed meeting, the joint written report and, crucially, the introduction of a preliminary hearing, which will improve the current situation substantially.

Early disclosure is critical. From the comments that we have heard from the Crown Office and others, it is noticeable that culture change is happening and that some of the issues are being addressed. The introduction of a presumption in favour of a fixed trial diet, where possible, rather than a floating one, is an improvement. The Executive amendment on that issue that was agreed to today has improved the position.

I welcome the tightening up of the late evidence provisions, to which Pauline McNeill referred, and the end of automatic release as a result of breached time limits. That measure will be good for justice in this country.

Some remaining issues will need to be monitored, including the transfer of 20 per cent of High Court business to the sheriff courts. That measure must be properly resourced and carried out in the light of the McInnes report. It is also right that we will subject the pilot schemes for remote monitoring of bail conditions to further parliamentary scrutiny.

I acknowledge some of the comments that the minister has made about support for witnesses. It is right that we have shifted from the original provision, which referred to reluctant witnesses, to one that refers to witnesses who are downright obstructive. There are many reasons why people do not want to give evidence. We should support them to give evidence, rather than see them as obstructive.

I welcome the minister's reassurances about trials in the absence of the accused. I hope that that power will be used only in a small number of situations. I also hope that by agreeing to the provision today we will send a message to those who are tempted to abscond that that is not the way forward, either for them or for the justice system.

I welcome the bill and hope that the chamber passes it today.

**The Deputy Presiding Officer:** There is only a short time for open debate.

16:49

**Pauline McNeill (Glasgow Kelvin) (Lab):** I thank the committee sincerely for the hard work that it has done on the bill. It must be remembered that this is an amendment bill. That makes scrutiny slightly more difficult than usual, because it means amending an existing act—we had to have both the bill and the Criminal Procedure (Scotland) Act 1995 in front of us when discussing amendments. I assure the chamber that all members of the committee worked really hard—harder than they work normally, which is not easy.

A cross-party approach has influenced the outcome of the bill process. We had our differences at the end, but I feel that we assisted the Executive in ensuring that the bill is in good shape. Margaret Mitchell made her points eloquently, but we disagreed about the 110-day rule.

We cannot underestimate the radical nature of what we have done with the bill. We are all concerned about making changes to a system that has served Scotland well, but the bill is a radical one that will make the most immense changes to the system. The crucial point is that everyone has signed up to the bill.

I must put on record a vote of thanks from the committee to Chris Gane and Paul Burns, without whose support we could not have understood some of the bill's provisions.

I hope that members get the impression that the bill is not just about a new procedure involving a preliminary hearing or a new culture of early disclosure. The whole bill will make a massive difference—if everyone does what they told us they would do. Margaret Smith is correct, in that there is unfinished business to which the committee, I believe, should come back.

The bill places a great responsibility on the Crown and I am full of admiration for how it addressed the bill—for example, through its promises about early disclosure. I also admire the commitment that the defence side made, in the spirit of a culture change, to its responsibilities regarding early disclosure.

The role of judges will fundamentally change. They will have to roll up their sleeves, bang heads together in the courts and ask whether counsel are prepared. The judges are ready for that role, but we must ensure that we give them the necessary support and resources.

The committee was concerned about one issue in particular. We share Lord Bonomy's view that the issues that the Scottish Legal Aid Board will consider in relation to legal aid payments are crucial. Whatever we think about legal aid payments, if we do not get them right, the system will not work. The nature of the work will change in particular for the defence, because there will be more preparation meetings and it will have to be paid for that work. Currently, the system is designed only to pay people for the work that they do on their feet. I believe that we need to return to that issue.

I support the shift of business from the High Court to sheriff courts, as do prosecutors, who welcome that shift as an aspiration. However, we should not underestimate the burden that the shift will place on the Crown and we must ensure that we continue to support its work. There is an issue about representation in relation to the automatic right of an accused to be represented by counsel, on which I believe that further work must be done. There is a greater role in the system for solicitor advocates and that issue should be fully addressed.

The committee did not get a chance to touch on many issues—for example, sentence discounting. That important feature of the system will help it to work and will bring about change. However, we decided to leave some decisions to the Sentencing Commission, so we did not address that feature in detail.

I welcome the bill and I hope that Parliament will pass it this afternoon.

16:53

**Nicola Sturgeon (Glasgow) (SNP):** I join the minister in thanking Lord Bonomy for his work in the field of High Court reform, and I wish him well in his new post. I am sure that the Executive would agree that, notwithstanding other events this week, he will be sorely missed.

The bill has been interesting. Although I am not a member of the Justice 1 Committee, I have nevertheless felt at times as if I was back in criminal law lectures at university, such has been the bill's technicality. The bill is a positive one. The vast majority of its provisions are sensible; in fact, they are common sense. The bill's provisions have the potential—in time, if not immediately—to speed up justice considerably and to deliver a much better system for the victims of crime and for those who are accused of crime.

It is important to reflect on the fact that the bill creates a framework for change. As other members have said, the bill's success will depend—this is where true radicalism is required—on a radical culture change on the part



of all those who are engaged in the system. The minister and others have already recognised that. The bill will require a much more active judiciary and although I accept that judges are up for that, I suspect that it will come easier to some than to others. We should be prepared for that approach to take time to bed in. Nevertheless, its importance in making the bill work cannot be overstated.

Making the bill work will also take a willingness by Crown and defence agents to take down the walls that sometimes exist between them; they must also be prepared to communicate and co-operate much more freely and openly. Again, that will come easier to some people than to others, and it may take some time for the culture to change and for that properly to take effect.

From the amendments that SNP members have moved this afternoon, it has been evident that we still have concerns at the margins over some of the bill's provisions. Like others, I would have liked to have seen some important principles, particularly relating to early disclosure, cemented in the bill. Even after all three stages, I still have concerns about the extension of the 110-day rule and trials in absence, although important concessions have been made at stage 2 and today to ensure that any compromising of safe convictions is minimised by trying people—or partially trying them—in their absence.

Those are my lingering concerns. Overall, however, the bill will be a positive piece of legislation that will provide the impetus for change. The real, hard work must still be done by people who work in the system rather than by us. I wish those people well with that work and I will be happy to support the bill.

**The Deputy Presiding Officer:** I can give Colin Fox one minute.

16:56

**Colin Fox (Lothians) (SSP):** Such generosity.

**The Deputy Presiding Officer:** The alternative is zero.

**Colin Fox:** That is even less generous.

Obviously, nobody in the chamber or in the country wants the guilty to walk free—that would not be justice and would not be fair. I understand that the Justice 1 Committee, the minister and others have not taken decisions lightly, but if the 110-day rule is the jewel in the crown, it has been sold far too cheaply.

As the Presiding Officer said, I have only a minute, so I must skip to the chase. The bill arises from a shortage of resources in the criminal justice system. We are asking the defendant to pay far too great a price in abridging his rights. The

fundamental right to a fair trial is under assault. If I had more time, I would put that in the context of Belmarsh prison and people being in jail for more than a year without charge, never mind without a trial.

I have grave concerns about the 110-day rule and trial in the absence of defendants and—if I can say so, Presiding Officer—I will not support the bill; I will abstain. There is much that I like about the bill, but I do not have enough time to elaborate.

**The Deputy Presiding Officer:** Okay. You have made your point.

**Colin Fox:** Taking the bill as a whole, abstaining is the way forward.

Thank you for your time, Presiding Officer.

**The Deputy Presiding Officer:** I apologise to the two members to whom I cannot give any time at all and invite Hugh Henry to wind up the debate. He has four minutes.

16:57

**The Deputy Minister for Justice (Hugh Henry):** We heard Colin Fox articulate a new political philosophy when he said that abstaining is the way forward.

Today marks an important step in reforming our legal system and our criminal justice system in particular. It is right that thanks should be recorded in the *Official Report* to a number of external agencies that made significant contributions during the progress of the bill. The final product is a good reflection of people being able to contribute through the committee system and of the Executive working closely with committees in order to bring proposals to the Parliament.

I thank the committee for its rigorous examination of the bill and for a full debate. We recognise that we have shifted position and that we have made changes, and the final product is better for having had such a debate.

Like Cathy Jamieson, I want to record in the *Official Report* my thanks to the bill team, who worked hard in difficult circumstances and within difficult timescales to produce information and to progress the bill. I want not only to thank those who are here today, but to record in the *Official Report* Cathy Jamieson's thanks and my thanks to Moira Ramage, who is one of the bill team. She cannot be here today because she was injured yesterday in a car crash. I send her our and the Parliament's good wishes and hope that she has a speedy recovery. [*Applause.*]

There have been welcome improvements to the bill and a number of members have discussed significant changes. Members have rightly talked

not only about the legal changes that we are making, but about the cultural changes—the shifts in attitude—that will be required to put the measures in place. That is a big challenge for many people who have been set in their ways for many years. I would like to hear from Nicola Sturgeon who is up for the change and who is not; perhaps at some point she will put on record the names of the guilty and the names of those who are willing to move forward.

Today marks a very important change. I hope not only that the right of the accused to a fair trial will be properly reflected in the future but that the bill will be seen as a continuing part of a process that fundamentally recognises the rights and needs of witnesses and victims. What we have achieved today is a very good package of proposals and I commend them to Parliament.

## Business Motion

17:00

**The Presiding Officer (Mr George Reid):** The next item of business is consideration of business motion S2M-1216, in the name of Patricia Ferguson, on behalf of the Parliamentary Bureau, setting out a business programme.

*Motion moved,*

That the Parliament agrees—

(a) the following programme of business—

Wednesday 5 May 2004

2.30 pm Time for Reflection

*followed by* Parliamentary Bureau Motions

*followed by* Stage 3 of the Nature Conservation (Scotland) Bill

*followed by* Business Motion

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business

Thursday 6 May 2004

9.30 am Parliamentary Bureau Motions

*followed by* Stage 3 of the National Health Service Reform (Scotland) Bill

12 noon First Minister's Question Time

2.00 pm Question Time—  
Enterprise, Lifelong Learning and Transport;  
Justice and Law Officers;  
General Questions

3.00 pm Executive Debate on Scotland's Beaches - A National Resource

*followed by* Nomination of Commissioner for Public Appointments in Scotland

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business

and (b) that the period for lodging questions for First Minister's Question Time on 6 May 2004 should end at 2 pm on Friday 30 April 2004; and the period for lodging questions for First Minister's Question Time on 3 June 2004 should end at 4 pm on Thursday 27 May 2004.—[Patricia Ferguson.]

*Motion agreed to.*

## Parliamentary Bureau Motions

17:01

**The Presiding Officer (Mr George Reid):** The next item of business is consideration of four Parliamentary Bureau motions, two on the designation of a lead committee and two on the approval of Scottish statutory instruments.

*Motions moved,*

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2004 (SSI 2004/149).

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the Act of Sederunt (Fees of Solicitors and Witnesses in the Sheriff Court) (Amendment) 2004 (SSI 2004/152).

That the Parliament agrees that the draft Sexual Offences Act 2003 (Travel Notification Requirements) (Scotland) Regulations 2004 be approved.

That the Parliament agrees that the draft Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2004 be approved.—[*Patricia Ferguson.*]

## Decision Time

17:01

**The Presiding Officer (Mr George Reid):** There are five questions to be put as a result of today's business. The first question is, that motion S2M-1100, in the name of Cathy Jamieson, that the Criminal Procedure (Amendment) Scotland Bill be passed, be agreed to. Are we agreed?

**Members:** No.

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

**FOR**

Adam, Brian (Aberdeen North) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baird, Shiona (North East Scotland) (Green)  
 Baker, Richard (North East Scotland) (Lab)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Davidson, Mr David (North East Scotland) (Con)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)  
 Finnie, Ross (West of Scotland) (LD)  
 Gallie, Phil (South of Scotland) (Con)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harper, Robin (Lothians) (Green)  
 Harvie, Patrick (Glasgow) (Green)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Lochhead, Richard (North East Scotland) (SNP)  
 Lyon, George (Argyll and Bute) (LD)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)

MacDonald, Margo (Lothians) (Ind)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Campbell (West of Scotland) (SNP)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Mather, Jim (Highlands and Islands) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McMahan, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Mundell, David (South of Scotland) (Con)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Neil, Alex (Central Scotland) (SNP)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robison, Shona (Dundee East) (SNP)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Swinney, Mr John (North Tayside) (SNP)  
 Tosh, Murray (West of Scotland) (Con)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Welsh, Mr Andrew (Angus) (SNP)  
 White, Ms Sandra (Glasgow) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### ABSTENTIONS

Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Curran, Frances (West of Scotland) (SSP)  
 Fox, Colin (Lothians) (SSP)  
 Kane, Rosie (Glasgow) (SSP)  
 Leckie, Carolyn (Central Scotland) (SSP)

**The Presiding Officer:** The result of the division is: For 112, Against 0, Abstentions 5.

#### *Motion agreed to.*

That the Parliament agrees that the Criminal Procedure (Amendment) (Scotland) Bill be passed.

**The Presiding Officer:** The second question is, that motion S2M-1210, in the name of Patricia Ferguson, on the designation of a lead committee, be agreed to.

#### *Motion agreed to.*

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2004 (SSI 2004/149).

**The Presiding Officer:** The third question is, that motion S2M-1211, in the name of Patricia Ferguson, on the designation of a lead committee, be agreed to.

#### *Motion agreed to.*

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the Act of Sederunt (Fees of Solicitors and Witnesses in the Sheriff Court) (Amendment) 2004 (SSI 2004/152).

**The Presiding Officer:** The fourth question is, that motion S2M-1212, in the name of Patricia Ferguson, on the approval of a Scottish statutory instrument, be agreed to.

#### *Motion agreed to.*

That the Parliament agrees that the draft Sexual Offences Act 2003 (Travel Notification Requirements) (Scotland) Regulations 2004 be approved.

**The Presiding Officer:** The fifth question is, that motion S2M-1213, in the name of Patricia Ferguson, on the approval of an SSI, be agreed to.

#### *Motion agreed to.*

That the Parliament agrees that the draft Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2004 be approved.

## Chiropody

**The Deputy Presiding Officer (Trish Godman):** The final item of business is a members' business debate on motion S2M-1144, in the name of Mary Scanlon, on chiropody care. The debate will be concluded without any question being put.

### *Motion debated,*

That the Parliament recognises the importance of regular chiropody and foot care in keeping Scotland's elderly population mobile, pain free and independent; considers that the Scottish Executive should specify who is eligible for NHS chiropody and podiatry care, noting that local access policies differ throughout Scotland and promote variances in the provision of foot care, and further considers that NHS boards should ensure that access to foot health services are maintained in a fair and equitable manner to all patient groups including the elderly and schoolchildren.

17:05

**Mary Scanlon (Highlands and Islands) (Con):** I thank everyone who has supported the motion and those who have remained in the chamber to hear the debate. Not only is this the first debate on chiropody in the Scottish Parliament, but I understand that chiropody care has never been debated in the Westminster Parliament.

A chronic shortfall in national health service foot health services threatens the health, mobility and independence of many thousands of elderly and frail people in Scotland. We spend millions on care in the community and on hospital care, some of which could be saved if high-quality, accessible and regular foot care was provided by trained professionals.

Chiropodists—or podiatrists, as they are now known—are highly trained, specialist clinicians who are deservedly well respected by their peers and greatly valued by their patients for the essential care that they provide to ensure people's mobility and independence. Podiatrists provide comprehensive treatment for all foot disorders, including basic foot care for the elderly and infirm, wound care, management of the diabetic foot, minor surgery, complex bony procedures and biomechanics. They also undertake the screening and correction of gait abnormalities in children and young adults. If such abnormalities are left untreated, they can lead to debilitating skeletal conditions in later life, such as knee and hip arthritis.

Such care should form a central plank of health care policy, but unfortunately elderly foot care and podiatric screening services are largely things of the past. NHS podiatry care is being removed from one in three patients in the Highlands, so many patients who used to enjoy NHS foot care are now being denied the service. In care homes throughout the Highlands, chiropody is becoming

an emergency call-out service, rather than an integral part of patient care.

Until six years ago, the NHS provided a comprehensive foot health care service throughout Scotland to a number of priority groups, including schoolchildren, pregnant women, pensioners and patients with contributory medical problems—such as diabetes, arthritis or vascular disease—that might compromise their foot health. The value of clinical intervention by podiatrists cannot be overstated, in terms both of the cost benefits to health care and of quality of life.

The current crisis is not in the quality but in the quantity of care. In Scotland, 664 full-time-equivalent NHS podiatrists provide nearly 500,000 episodes of care every year to more than 300,000 patients. There are three times as many physiotherapists and twice as many occupational therapists and radiographers. Given that there are about 1 million pensioners in Scotland and that it is estimated that 70 to 90 per cent of people over 65 suffer from a foot problem that could benefit from the intervention of a podiatrist, the lowest estimate of what is required is a doubling of the existing capacity of the NHS podiatry service—just for starters.

When we consider other priority groups, such as the 250,000 people with diabetes—and that figure is set to rise drastically, as we all know—not to mention the thousands of people who suffer from other disabling conditions and who desperately need regular foot care, it is obvious that the capacity of the NHS podiatry service is grossly inadequate to meet the foot health needs of Scotland's population. Indeed, I was told today that, if we properly addressed the podiatry needs of everyone with diabetes in Scotland, no one else would get care. We are facing a crisis.

Many NHS boards in Scotland seem to ignore or assign a low priority to the foot health needs of their local population. The service redesign that has been carried out during the past six years has led NHS boards unilaterally to change the eligibility criteria that determine access to NHS podiatry care. Instead of the traditional priority groups, only patients who are classified as high risk can now qualify for free foot care in Scotland's NHS. I gave the example of the Highlands, but many thousands of patients throughout Scotland have had their care withdrawn and must pay to receive what is an essential service in the private sector, irrespective of whether they can afford it.

The NHS is founded on the principles of fairness and equity. I ask the minister whether it is really fair that a fit and active 25-year-old person with diabetes who is in full-time employment is eligible for free podiatry care when an 85-year-old pensioner whose mobility depends on foot care is not.

Podiatry managers are being faced with the impossible task of having to make cuts in the service while meeting care of the elderly and national service frameworks, even though the service is receiving no additional funding and resources, let alone work-force planning.

**Carolyn Leckie (Central Scotland) (SSP):** I am delighted to support Mary Scanlon's motion; it is unfortunate that I will have to leave the debate early. However, I am a wee bit concerned about the member's comparison between a 25-year-old in full-time employment and a pensioner. I ask her to clarify that she does not mean that 25-year-olds should pay for podiatry services. Surely she agrees with me that there should be universal free provision.

**Mary Scanlon:** My point is that, under the national service framework for people with diabetes—which I think most members would support, given the complex issues relating to foot care and diabetes—a 25-year-old in full-time employment who is earning a wage of whatever amount is entitled to free foot care, whereas a pensioner on the minimum pension whose mobility depends on podiatry is denied access to it. I hope that I have made that clear.

To plan and deliver podiatry services effectively and in line with health and social policy, I ask the Executive to specify what should be available and to whom it should be available. Clarity is needed on access and eligibility criteria, together with funding to service the demand from those who qualify for free foot care. Only through national guidelines will NHS boards cost and implement progressive rather than restrictive strategies that will help our elderly to keep mobile, pain free and independent. Perhaps then NHS boards might be able to reinstate the screening service for our children and give them a chance of a life free from the crippling disorders that blight the lives of many of today's older generation.

17:12

**Maureen Macmillan (Highlands and Islands) (Lab):** I thank Mary Scanlon for lodging a motion for debate on chiropody. She has been concerned about the issue for a long time and probably knows more than most of us about the condition of feet in the Highlands. I know that she has made it a special interest to follow the progress of chiropody services in the north.

I am glad that my mother made me wear sensible shoes when I was a child. I did not like wearing sensible shoes—I had to wear lace-up brogues in the winter and Clarks sandals in the summer. It was only when I got to university that I managed to get into stilettos and winkle-pickers, the result of which is that my big toes are a bit squint. However, I have no corns and no bunions

and I do not wear winkle-pickers any more. Sixteen years' teaching made me realise the benefits of comfortable shoes and my position remains the same.

I am lucky that I do not have foot problems, but I know that many people—older people in particular—do. There is great puzzlement among members of the older generation about what has happened to chiropody services; they cannot understand why the services that they used to get locally have disappeared. I had a constituent who had severe arthritis in her feet—she did not just want her toenails to be cut—and had been used to having her feet done in Dingwall. She was told that she had to go to Alness but, as she had no means of transport, she could not keep the appointments and that affected her foot problems and her general health.

We must try to sort out the problem. I know that there is a difference between people who have severe foot problems because of arthritis, for example, and people who do not have severe problems—in other words, people who need their toenails to be cut. I do not know whether chiropodists or podiatrists are the appropriate people simply to be cutting toenails. When I asked the health board about that, it spoke about implementing a service whereby nurses could do a certain amount of work on feet—I was going to say "footwork"—that would free up podiatrists to concentrate on the more critical conditions. I want to know where foot care lies in terms of free personal care for the elderly. I presume that it should be part of free personal care in one way or another. How is it being delivered? We have to get the whole business sorted out.

There also seems to be confusion about orthopaedic footwear. It seems that it is possible to get some kinds of footwear repaired on the NHS but not other kinds. I tried to find out from my local health board where the difference lies, but I have not yet had a satisfactory answer. As Mary Scanlon said, a lot more clarity is required about who is entitled to what.

**Mary Scanlon:** That is what always happens—it is difficult to get an answer. I cite the example of Alex Bochel in Nairn, who was asked to have his toenails removed in order to get him off the list.

I was at the chiropodist in Inverness on Monday, for a normal annual appointment. Care of toenails is a small but essential part of overall foot care. If an untrained person does the job, they will not pick up on the other problems that are associated with the foot. Complex issues are involved.

**Maureen Macmillan:** I agree. However, enhanced training means that nurses can do other things; podiatry might be one of the areas that they could develop.

17:16

**Shona Robison (Dundee East) (SNP):** I thank Mary Scanlon for securing this important debate. My concern is that, as with so many other important services, we are yet again seeing a postcode lottery of chiropody and podiatry services in Scotland.

As Mary Scanlon said, the service is driven by local access policies. She also mentioned the shortage in trained podiatrists. Obviously, that means that the number of podiatrists does not meet the demand for the service. It is also worth putting on the record the fact that the public value the service, which has one of the lowest did-not-attend rates of any service—that gives a sense of how much the public value and want access to podiatry services.

As members know, it is crucial that people with diabetes have regular access to chiropody and podiatry services in order to prevent serious complications from arising. Diabetes creates a special challenge for podiatry services. Under the Scottish diabetes framework, people with diabetes should have appropriate access to identified key health services, including podiatry. In a recent overview of services, it was found that provision of and access to podiatry services for people with diabetes were generally good across NHS Scotland. Same-day or next-day access to services for urgent podiatry problems was found to be available in the majority of health board areas. Of course, that is to be welcomed. However, as Mary Scanlon suggested, the concern is that, by meeting the framework's standards, resources could be moved away—indeed, I understand that they are being moved away—from other people who require the services. Meeting the framework's standards could mean that podiatry services are taken up almost wholly by people with diabetes.

I have a number of questions for the minister, the first of which concerns the roll-out of the diabetes framework. How are crucial podiatry needs to be met? What funding will be available? How many more podiatrists does the Scottish Executive aim to have employed in the NHS in future? How will it ensure not only that people with diabetes have prompt access to podiatry services—as seems to be the case at the moment, which is to be welcomed—but that other groups of people can access those services? I am thinking in particular of the elderly, who rely greatly on the service. I look forward to hearing the minister's answers at the end of the debate.

17:20

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** First, I have an interest to declare, in as much as my wife is a state-registered podiatrist who has a private practice in Banchory.

I, too, congratulate Mary Scanlon on securing this debate on chiropody care. It is an important and somewhat neglected area of health care that deserves to be the subject of debate in this chamber. I agree entirely with the motion, which I supported when Mary Scanlon lodged it, but I will concentrate my comments on one or two issues that might be missed in the debate.

Chiropody or podiatric medicine is not solely directed at the elderly. It is not specifically for the elderly population or the very young, but should be widely available through our NHS for every person who needs to access podiatric medicine. We should be focusing not on the age of the patient, but on the individual needs of the patient.

There is, among the general public, a great deal of misunderstanding about podiatric medicine. The Society of Chiropodists and Podiatrists is the professional body that represents 8,500 practitioners in the national health service and in private practice throughout the United Kingdom. For many years, the professional image of chiropodists and podiatrists has been dogged by the fact that there has been a problem in respect of closure of the profession—anyone has been able to set themselves up as a chiropodist with the minimum of training. They cannot practise within our national health service, but the general public do not know that. Graduate entry has been required for state registration for some time, but that has not helped to clarify in the public's mind exactly who is a qualified chiropodist and who is not.

If one looks in the "Yellow Pages"—the first port of call for many people—to find a qualified chiropodist or podiatrist, one sees that some adverts helpfully have a display advert that states:

"The British Chiropody and Podiatry Association.

The Practitioners listed below are all fully qualified and can be consulted without referral by a doctor. Always ensure your chiropodist is qualified."

A helpful warning to unsuspecting members of the public—that they should

"Always ensure your chiropodist is qualified"—

does not tell them that those chiropodists are not state registered and are not qualified to work in the NHS. That is deliberately misleading and almost dishonest.

Our state-registered chiropodists practise podiatric medicine; they are not simply involved in toenail clipping. As has already been explained, podiatrists diagnose, evaluate and treat a wide range of lower-limb disorders. After starting their careers in general clinics, they often go on to specialise in areas such as biomechanics or caring for high-risk patients.

With further study, podiatrists are becoming involved in foot surgery. Indeed, the Society of Chiropodists and Podiatrists has worked closely with the Royal College of Surgeons of Edinburgh and the Royal College of Physicians and Surgeons of Glasgow to establish the first ever course in podiatric surgery to be run jointly by Glasgow Caledonian University and Queen Margaret University College in Edinburgh. The first students will start the course in September. That is a major step forward. There is an issue over pump-prime funding for that historic course. I know that the Scottish Executive is keen to support the new programme for podiatric surgery, as it is keen to support the development of the profession into consultancy roles, but there is an issue about the funding of those developments. Perhaps the minister would like to comment on that in his summing up.

While those major developments in the role of podiatric medicine are taking place, we must not forget the need for basic foot care. I am well aware that there is a problem for patients in accessing chiropody care, which is what Mary Scanlon focused on. There is no question but that the NHS's chiropody and podiatry service is unable to cope with the demands that are placed upon it, hence the common misconception that such care is available only for the elderly or the very young. We must ensure that everyone who is in need of attention receives it. I am pleased that the Scottish Executive agreed in the partnership agreement to increase by 1,500 the number of professionals allied to medicine who will be available to the NHS in Scotland. I hope that a large number of them will be podiatry graduates who will fill the large gaps in our service.

I am pleased to have been able to participate in this valuable debate. I am sure that we will return to the issues in the future.

17:24

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** I warmly congratulate Mary Scanlon on securing the debate, which I believe is the first debate on the topic in any Parliament in the United Kingdom. Mary Scanlon has rightly taken up the case of an individual in Nairn, although I am sure that, like me, she acknowledges the high quality of the chiropody service that patients receive from the NHS in the Highlands.

Mary Scanlon, Shona Robison and others highlighted the extent to which senior citizens require chiropody services. The estimates in the briefings that members have received are that seven or nine out of 10 senior citizens require assistance. Anyone who has suffered pain in their feet will know how debilitating it is—it affects

mobility and the capacity to carry out basic daily functions. The pain can be excruciating, as I found when canvassing in Cradlehall during the 1997 election campaign and was virtually incapacitated. I suppose that that may have been good news for my opponents, but it was bad news for me. To give another piece of information that I am sure members are anxious not to hear, ever since then I have had orthotic insoles with metatarsal lifts. The insoles, which were prescribed by a registered chiropodist, cost only about £20, but they completely removed the pain.

Mike Rumbles is correct that the fact that the issue of regulation has not been tackled is an obvious flaw. We would not expect a person to be able to call himself or herself a doctor without proper qualifications. Westminster must get to grips with that. In the United States, chiropody and podiatry are recognised as being equivalent to medicine, rather than as being an allied health speciality. Of course, one could make a case that other allied health specialities should be regarded similarly, but it is interesting that chiropody has achieved that status in America. It has been recognised that the issue of painful feet is fundamental and affects all life.

Rationing is an extremely difficult issue. Unlike our departed colleagues in the Scottish Socialist Party, I do not believe that the answer to every problem is to climb the mountain, go into the great cave where all the money is hidden and get some out for the blank cheques that will solve all the problems known to man.

The minister has a difficult problem. We have heard much about whether the access criteria should be based on age. Mike Rumbles is right that they should not be, but the fact remains that many elderly people are unable to reach their toes at all, never mind touch them while standing up. Therefore, age is a criterion that the minister will obviously take into account.

I wish the minister many happy returns on his 50<sup>th</sup> birthday. I am sure that he will not regard that age as the cut-off point in his review of the access criteria. I wait with interest to hear whether he will offer us hope of a fairer system, an end to the rationing that Shona Robison talked about and more access to services, particularly for those who suffer acute pain but who may not receive the treatment that they need at present.

17:29

**Mr David Davidson (North East Scotland) (Con):** I congratulate Mary Scanlon on securing this important debate and wish happy returns to the deputy minister. I hope that, as he grows old, he will do so graciously.

From the comments that have been made so far, it seems that the issue boils down to capacity.



To resolve that issue, more manpower is required. There are also the overlying problems about whether services are available through the NHS, about rationing of resources within the NHS and about what can be delivered through the NHS.

Many members have spoken about a new emerging profession that will include people who have degree skills and who are at a new entry level. I agree with many others that, as with other professions, there is a tremendous need to regulate standards of entry and of the people who are currently in practice. I agree with Mike Rumbles and other members that people sometimes pass themselves off as having skills that they do not have. There is also a danger that people in the health sector, including in my profession—pharmacy—are offering patients assistance that might actually compound their problems; in this case, by handing out lifts and so on. They do not necessarily have the essential skills to allow the long-term view to be taken, and people can end up being given foot supports or braces that might lead to greater problems in later life.

Many people have, in previous debates, heard me talk about early intervention, particularly with regard to children. We politicians need to grow up and realise that not everything can be delivered tomorrow, and we need to move away from the idea that it is sufficient to treat elections as the only target. We need instead to invest for the future and look to longer-term health benefits. I know from experience that someone's gait can be thrown because of a damaged instep. That person can have back problems as a result of that, which can go on for the rest of their life, which costs a fortune in care. We have to balance that when we look at the whole picture.

People have talked about inequality of access, ability to pay and where such treatment leads into free personal care. I look forward to hearing the minister's answer to the questions that Shona Robison put to him.

Private practice is not regulated properly at the moment. Therefore, there is a risk that the public are being exposed to certain dangers. Unfortunately—to pick up on comments that were made earlier—there is no tiering in the profession; there is accreditation according to skill base. A person can say that they are qualified to do one particular task, but nothing else. There is more specialisation in the profession, so it is important that we label people appropriately in order that there is no danger to the public and so that the health service knows how best to access specialist care.

Biomechanics and gait represent a huge issue. There is a proliferation of sports medicine and injury clinics, many of which would benefit from the

highly skilled people who are coming into podiatry, who have modern degrees and who can assess the corrective aids that are available and teach people how best to transport themselves and how to deal with some of their injuries, which can come back to haunt them in later life. As members will know, Bill Aitken had a problem that went back many years to his days as a professional footballer. His knees eventually gave out when he had an accident at the end of last year. Such things catch up with people, so we should try to nip them in the bud.

I call on the minister to recognise the need for mapping of the profession and the skills of the individuals in it. The information from such a mapping exercise would tell us what skills are out there and, perhaps, how best to apply them. That must be balanced against the changing demography of Scotland and the increase in chronic conditions such as diabetes, but if we are to do that, as well as modernise the profession and get the legislation and accreditation correct, we will be able to move on to decide what should be delivered in the NHS and what could be contracted out by the NHS to private practice. That brings us back in a full loop to accreditation.

17:33

**Brian Adam (Aberdeen North) (SNP):** Maureen Macmillan was right to refer to Mary Scanlon's known interest in this subject. She did not go quite so far as to accuse Mary of being a foot fetishist. It would be easy to make fun of the subject—there are all sorts of easy hits to be made. There is no doubt that chiropody has been regarded by many health boards as a Cinderella service as a result of changes that have been made recently.

Problems that are associated with the feet are rarely life threatening, but there is no doubt that they significantly affect the quality of life of many people. That ranges from discomfort to more significant issues of mobility. Many people have severe and enduring illnesses, which require regular attention. With many other severe and enduring illnesses there is widespread free access to services; people are not directed towards private health care. It is rather unusual that people are being directed towards the private sector for treatment of the sort of illness that we are talking about.

We could draw parallels between someone getting their toenails clipped and getting their hair or their nails done, or receiving some other cosmetic treatment, but that would be inappropriate. There might be a hint of that kind of comparison in the decision-making processes in various health boards. There is no doubt whatever that there are differences in how policies are applied in different areas.

In the first six months after I was elected as the member for Aberdeen North, I made a point of going round the sheltered houses in my constituency. The issues that people raised with me were, naturally enough, to do with where they were living, but the one issue that came across time and again was that people had been denied access to chiropody services, which I was not aware of. We can picture a situation in which two old ladies—we are talking mostly about old ladies—have to sit opposite each other doing each other's feet, because they cannot get access to services. That is not the kind of picture that I want to have of the country in which I live, given that, in the previous session, Parliament wisely granted free personal care to the elderly. Mary Scanlon is to be commended on her motion and I hope that the minister will respond positively to it.

**The Deputy Presiding Officer:** I call Tom McCabe to respond to the debate. Happy birthday, minister; I know that you are growing old gracefully.

17:36

**The Deputy Minister for Health and Community Care (Mr Tom McCabe):** Words fail me to express my appreciation for those kind remarks, Presiding Officer. I am grateful for the kind wishes that my colleagues have expressed, but I will have to check the figures, because I feel much younger.

Like others, I congratulate Mary Scanlon on securing the debate. I was unaware that this was the first time that the subject has been debated either in this Parliament or the Parliament down south. That highlights our ability in the Parliament to home in on and examine specific subjects, which the debate has already shown to be useful. I am sure that it highlights to people in Scotland that we now have an ability to act that was deficient in the past.

The debate has highlighted the organisation of services in different parts of the country and the experience of individual patients, which is, of course, important. As we would expect, we have also heard demands for change, which is only right. We must remember that there are real benefits for patients from the podiatry services that are delivered day in, day out in our national health service. I am sure that members accept that it would not be appropriate for me to comment on individual cases, but I will do my best to address some of the issues that have been raised.

It goes without saying that the Executive acknowledges the significant contribution of podiatrists in the NHS. They are highly trained professionals who provide both general and specialist interventions. The narrow view that is

held by some, of the NHS podiatry service as a nail-cutting service, is clearly outdated and must change. The motion underlines the need for NHS podiatry services to be provided fairly and equitably, which must mean that those with the greatest clinical need have priority.

We have heard about the demand for podiatry services and the ability of local NHS services to meet that demand. The latest information that we have from NHS boards, which was gathered in December 2002, is that there were in the community 582 whole-time equivalent podiatrists, providing 1.4 million clinical treatments to more than 430,000 patients. In the entire NHS, there are about 677 podiatrists; the figure that I gave related to community-based services. The figures provide an indication of overall activity, but what we need to know for the future is whether the activity is targeted appropriately in the face of demand on the service.

Justifiable concern has been raised about the general impression that people have of the profession and the ease with which some people can set themselves up under false pretences and mislead the public about the level of professionalism that they can expect of the services that they offer. The Health Professions Council protects the titles of professionals in the NHS and I can tell members that, from 2005, it will become illegal for people to use such titles inappropriately.

**Mike Rumbles:** It is my understanding that, although we are rightly moving to protect the terms podiatry and chiropody, unqualified people will still be able to say that they provide a chiropody service. Therefore a problem remains.

**Mr McCabe:** Such matters are reserved but I will seek more information on that subject and I assure Mike Rumbles that I will relay that information to him.

I want to spend a few moments looking to the future before I turn to the action that is already under way. The challenges that podiatry faces have a wider implication for the overall delivery of our health services. As members in the chamber are only too well aware, Scotland's population reached a peak in 1974 and, since then, has gradually declined by around 0.2 per cent a year. Scotland's population is aging, with a higher proportion in the older age group and a smaller proportion in the younger age groups. Based on 2002 population projections, by 2023, there will be an 18.4 per cent reduction in the number of children under 15 and an increase of 48.4 per cent in the number of people aged over 75.

That has important implications for the planning of NHS services and puts greater emphasis on chronic disease and the conditions associated with

an aging population. NHS podiatrists have a key role in preventing the onset and progression of a number of diseases and conditions. The importance of podiatry services in such areas has been underlined in the Scottish diabetes framework and in the work that has been done on developing the older people's agenda.

Changing demography has important implications for the work force. We recognise the need to have the right number of professionals with the right skills and the appropriate support. Action to address that is already under way. The Executive has put in place a strategy for the allied health professions, and solid progress is being made across a number of initiatives. The Executive is engaging directly with the profession to support professional development.

Measures are in place to aid recruitment and retention together with targets to increase the number of allied health professionals. In response to some of the points that were made by Shona Robison and Mike Rumbles, I can say that the partnership agreement contains a commitment to increase the number of allied health professionals by 1,500 by 2007. We are investing £400,000 to support return-to-practice initiatives, the development of specialist practitioner roles and the development of support workers.

**Mary Scanlon:** How many of the extra 1,500 allied health professionals will be podiatrists, given that there is a chronic shortage of workers in that profession?

**Mr McCabe:** It is for each board to assess the level of need in its area and to recruit appropriately up to the targets that are set by the Scottish Executive. In a few moments, I will outline some of the action that we have taken in the recent past in relation to local health boards.

All of the initiatives that I mentioned are set within the context of the broader reform agenda set out in the "Our National Health" and "Partnership for Care" documents. For example, allied health professionals will be integral to the work of the community health partnerships that will be set up as a result of the National Health Service Reform (Scotland) Bill.

Recently, I discussed podiatry issues with the Scottish Pensioners Forum and I have asked that the issue be included for discussion at the next meeting of the older people's consultative forum. I have also discussed the way in which services are organised throughout the country with officials, including the allied health professions officer, and only this month I communicated the importance of NHS podiatry services and their organisation to NHS boards.

It is important to stress again that clinical need, not central direction, should dictate access to

services. The planning and provision of NHS services are matters for NHS boards. However, if there is mounting evidence of a disparity in access to provision in Scotland, the Executive will not turn its head away from that. We have contacted boards, we have discussed the development of podiatry services, particularly with older people's forums, and we will continue to monitor the situation through our allied health professions officer.

A number of NHS boards have redesigned podiatry services recently. They have improved access and responsiveness and they are ensuring that services are provided appropriately on the basis of clinical need. A national project is under way to ensure that the right information is collected to inform service planning. The Scottish faculty of management podiatrists, working with NHS Scotland's Common Services Agency, has completed a pilot study on the development of definitive national podiatry information categories. Analysis of those data is under way and will provide a better picture of service provision throughout the country.

Of course, there are lessons to be learned. We hope that experiences will be discussed in the near future at a study day that is being organised with the profession. The profession welcomes the opportunity for professionals to share information and experiences and to learn how to shape services that address communities' needs in a far better way.

I am encouraged by the proactive measures that have been taken by the Executive, the podiatry profession and NHS boards throughout Scotland to improve the position. We understand that the service is important and that, given the demographic changes to which I alluded, it will become more important. We will remain aware of that and we will continue to monitor the situation.

*Meeting closed at 17:47.*



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

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

**Wednesday 5 May 2004**

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

#### PRICES AND SUBSCRIPTION RATES

##### DAILY EDITIONS

*Single copies: £5*

*Meetings of the Parliament annual subscriptions: £350.00*

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

*Single copies: £3.75*

*Special issue price: £5*

*Annual subscriptions: £150.00*

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

**The Stationery Office Bookshop**  
71 Lothian Road  
Edinburgh EH3 9AZ  
0870 606 5566 Fax 0870 606 5588

**The Stationery Office Bookshops at:**  
123 Kingsway, London WC2B 6PQ  
Tel 020 7242 6393 Fax 020 7242 6394  
68-69 Bull Street, Birmingham B4 6AD  
Tel 0121 236 9696 Fax 0121 236 9699  
33 Wine Street, Bristol BS1 2BQ  
Tel 01179 264306 Fax 01179 294515  
9-21 Princess Street, Manchester M60 8AS  
Tel 0161 834 7201 Fax 0161 833 0634  
16 Arthur Street, Belfast BT1 4GD  
Tel 028 9023 8451 Fax 028 9023 5401  
The Stationery Office Oriel Bookshop,  
18-19 High Street, Cardiff CF12BZ  
Tel 029 2039 5548 Fax 029 2038 4347

**The Stationery Office Scottish Parliament Documentation**  
Helpline may be able to assist with additional information  
on publications of or about the Scottish Parliament,  
their availability and cost:

**Telephone orders and inquiries**  
0870 606 5566

**Fax orders**  
0870 606 5588

**The Scottish Parliament Shop**  
George IV Bridge  
EH99 1SP  
Telephone orders 0131 348 5412

**RNID Typetalk calls welcome on**  
18001 0131 348 5412  
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

**Accredited Agents**  
(see Yellow Pages)

and through good booksellers