OFFICIAL REPORT
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DRAFT

# Criminal Justice Committee

**Wednesday 11 June 2025**

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

# Wednesday 11 June 2025

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## CRIMINAL JUSTICE COMMITTEE
**19th Meeting 2025, Session 6**

**CONVENER**

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

**DEPUTY CONVENER**

*Liam Kerr (North East Scotland) (Con)

**COMMITTEE MEMBERS**

*Katy Clark (West Scotland) (Lab)
*Sharon Dowey (South Scotland) (Con)
Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Rona Mackay (Strathkelvin and Bearsden) (SNP)
*Ben Macpherson (Edinburgh Northern and Leith) (SNP)
*Pauline McNeill (Glasgow) (Lab)

*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Maggie Chapman (North East Scotland) (Green)
Angela Constance (Cabinet Secretary for Justice and Home Affairs)
Michael Matheson (Falkirk West) (SNP) (Committee Substitute)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The David Livingstone Room (CR6)

# Scottish Parliament

## Criminal Justice Committee

*Wednesday 11 June 2025*

*[The Convener opened the meeting at 09:00]*

## Subordinate Legislation

### Firefighters' Pension Scheme (Amendment) (Scotland) Regulations 2025 (SSI 2025/149)

**The Convener (Audrey Nicoll):** A very good morning, and welcome to the 19th meeting in 2025 of the Criminal Justice Committee. We have received apologies from Fulton MacGregor; Michael Matheson joins us in his place.

Our first agenda item is consideration of a Scottish statutory instrument that is subject to the negative procedure—SSI 2025/149. I refer members to paper 1, which sets out the purpose of the instrument. Do members wish to make any recommendations on the instrument?

As members have no recommendations to make, are we content for the instrument to come into force?

**Members** *indicated agreement.*

**The Convener:** We will have a brief suspension to allow the cabinet secretary and her officials to join us.

09:00

*Meeting suspended.*

09:02

*On resuming—*

### Home Detention Curfew (Amendment of Specified Time Periods) (Scotland) Order 2025 [Draft]

**The Convener:** Our next agenda item is an oral evidence-taking session on the draft Home Detention Curfew (Amendment of Specified Time Periods) (Scotland) Order 2025, which is an affirmative instrument. I welcome to the meeting the Cabinet Secretary for Justice and Home Affairs, who is joined by Scottish Government officials Ruth Swanson, solicitor, and Kevin Fulton, community justice division. I refer members to paper 2. I intend to allow up to 20 minutes for this evidence session.

I invite the cabinet secretary to make some opening remarks on the SSI.

**The Cabinet Secretary for Justice and Home Affairs (Angela Constance):** Good morning. I thank the Parliament clerks, the Delegated Powers and Law Reform Committee and the Criminal Justice Committee for agreeing to accommodate the scrutiny of the SSI within the minimum SSI laying period of 40 days.

I hope that the committee and the wider Parliament will support the proposals, which will allow us to complete the SSI process before Parliament rises for the summer recess. That will provide the Scottish Prison Service and justice social work staff with as much time as possible to make preparations before the proposed changes come into force on 20 October.

As members will be aware, the changes that are set out in the SSI relate to a commitment that was made in the programme for government for 2024-25. They are part of our on-going efforts to achieve an effective balance between the use of custody and the use of community alternatives, and they will support our efforts to achieve a sustainable population across our prisons.

Home detention curfew is a long-standing part of the prison system that is consistently deployed as a method of easing the transition from prison sentence back to the community. Home detention curfew provides a structured way to manage that transition, placing the individual under clear licence conditions and a nightly curfew, while allowing them to readjust to life in the community and engage with any support that they need.

The foundation of home detention curfew is the individualised risk assessment that is conducted by the Scottish Prison Service, with evidence provided by community-based justice social work staff before any individual is permitted release on home detention curfew. I assure members that the proposals in the SSI will not alter any of the risk assessment aspects of the HDC process.

The SSI proposes to allow home detention curfew to be granted from an earlier point in a prisoner's custodial sentence, from the current point of 25 per cent of their sentence served in custody to 15 per cent. That change will help to realign the home detention curfew process with the new automatic release point for eligible short-sentence prisoners at 40 per cent. It will enable individuals to spend a similar proportion of their sentence on HDC to what they would previously have done. The SSI includes a further proposed change to increase the maximum permitted period that an individual can be granted home detention curfew, from 180 days to 210 days. That change will affect only a minority of prisoners, whose sentence length and other circumstances make it

possible for them to be granted a longer period of HDC.

All eligible individuals will continue to have to pass the risk assessment and community assessment process before they are granted home detention curfew. HDC will continue to be based around the same risk assessment of each eligible individual. It is therefore not expected that those changes in time criteria will produce a significant increase in the number of individuals being granted HDC. Instead, it will facilitate suitable individuals to be granted more time on HDC than they currently can be, following the change in the automatic release point. That is likely to result in more individuals being in home detention curfew at any one time. However, the number of prisoners who will access home detention curfew in the future will continue to be shaped by the number of eligible individuals in the prison population at any one time and by how many of them pass the risk and community assessments.

Overall, the proposed changes are relatively straightforward. They are intended to enable individuals who are eligible and have been assessed as suitable to be granted more of the days on home detention curfew that they are eligible for. On that basis, I encourage members to indicate their support for the SSI. As always, I am happy to answer members' questions.

**The Convener:** Before I open up to members for questions, I will kick things off. As you stressed, cabinet secretary, the SSI seeks to alter the timescales around eligibility for HDC. Can I confirm that that does not mean that eligible people will necessarily be in the process for HDC, and that nothing in that regard will change by virtue of the timescales being altered?

**Angela Constance:** As members will be aware from the policy memorandum, there are clear statutory exclusions. Members will be familiar with what they are. That means that there is a cohort of people who are not considered for HDC. There are also other statutory criteria, all of which have to be met. Sentences must be three months or more. People must have served at least a proportion of their sentence—that is one of the things that we are proposing to change. People can be on HDC only for a minimum of 14 days and for a maximum period. The criteria around sentence length, eligibility, proportion of sentence served, and minimum and maximum period all have to be met.

The reality is that if, for example, someone was sentenced to one year, the change to the automatic early release point for some short-term prisoners will mean that they are released after 144 days, rather than after 180 days, which would have been the case before the changes. Due to the changes in relation to the short-term population, the potential time spent in HDC has reduced from 90 days to 54 days.

We want to realign the HDC process with the short-term prisoner 40 per cent programme. It does not mean that every prisoner who is eligible for home detention curfew will be eligible for the maximum time, because it depends on the length of their sentence, how long they have spent on remand, how long the assessment process takes, and how long it takes to gather information, particularly from the community. Of course, people must pass the assessments as well.

**The Convener:** Thank you. It was quite helpful to hear the example, which perhaps helps members to work out the changes in their heads.

**Liam Kerr (North East Scotland) (Con):** What does the data show will be the impact of the reduction on rehabilitation? Arguably, if there is less time in prison, there is less time for prison rehabilitation to work and to prepare people for the outside. One would hope that the data is robust, but I ask the question because it could look like just another way to empty the prisons, with criminals serving ever-shorter sentences, at 15 per cent.

**Angela Constance:** It is certainly not a way to empty our prisons—that is for sure.

I will give an example. At any given time, there are around 3,000 short-term prisoners. Yesterday, there were 106 people on home detention curfew. I hope that that gives a sense of proportionality. There is absolutely no automatic right, even when we change two of the criteria. It is all subject to risk assessment. It is also important to say that home detention curfew has a high rate of successful completions.

On rehabilitation, it is important to point out that our prisons are for rehabilitation as well as punishment, so what happens in relation to the rehabilitative process in prison is important. However, for some prisoners, home detention curfew shifts the balance between time spent in custody and time spent sentenced in the community, and we must bear in mind that they are tagged, electronically monitored, on a licence and on a nightly curfew.

Home detention curfew is a restrictive way to ensure that people can spend part of their sentence in the community. It also enables people to engage with support that they require in the community. It is a managed process of reintegration, and the evidence shows us the value of community-based approaches in comparison with time in custody. I stress that the rate of successful completion of home detention curfew is very high.

**Liam Kerr:** I am grateful for the answer. I say that with great respect, because I enjoy our exchanges, cabinet secretary, but I am not sure that it answered my question, which was about the data and the research that has been done on the impact that the reduction will have on rehabilitation in prison. If you have that data, perhaps you could outline it in your response to my next question.

In your opening remarks, you said that there would be no change to the risk assessments. However, if people are in and out of prison sooner, it would, logically, be more difficult to risk assess them and to address any issues that they are bringing with them from the outside. You say that there will be no change to those assessments, but has there been any investigation as to whether there might be a need for such a change, or has it just been assumed that there is not?

09:15

**Angela Constance:** On your first point, the successful completion rate for home detention curfew, from the latest figures available, is 93 per cent, which means that there is a 7 per cent recall rate.

On your point about how rehabilitative opportunities can be supported if people are in custody for a very short time, the reality is that, although someone currently becomes eligible at the 25 per cent point in their sentence—that is one of the eligibility criteria; we are advocating that we change that—that does not mean that they will be released at that point, because they cannot be released until the risk assessment process is complete.

That process is significant—it would start with screening for eligibility. It is important to say that application is voluntary; prisoners cannot be made to go out on home detention curfew, and not every prisoner wants to be released on that scheme, which speaks to the restrictive nature of it—it is a licence tag curfew.

Once an application for home detention curfew has been submitted, the prisoner has to undergo a full risk assessment. I can talk you through that if need be—there are practice standards for that. If the assessment is positive, the prison will contact justice social work, which will look at suitability of address and speak to other individuals at the address. Information from social work and police is important.

To get to the nub of your question, a person cannot be released if they are not eligible and have not passed the risk assessment process.

**Liam Kerr:** Has any research and investigation been done, prior to the laying of the instrument, into the impact of reducing the threshold for time served to 15 per cent on victims and/or on the general public's respect for and perception of sentencing in Scotland, given that a criminal can be sentenced to prison but may serve only 15 per cent of their sentence inside?

**Angela Constance:** With regard to research, home detention curfew has been with us for a long time—for decades now—and it is rooted in the Prisoners and Criminal Proceedings (Scotland) Act 1993. As a concept for the justice agencies to work with and assess, therefore, it is well established. It runs in parallel with the victim notification scheme, in which I know the committee has taken a great interest; there are improvements to that scheme in the Victims, Witnesses, and Justice Reform (Scotland) Bill.

On whether there has been any research on the specific change, the answer is no, but the change is being made to align ourselves with the position that we took before changes were made to the short-term prisoner automatic release scheme. Before the Prisoners (Early Release) (Scotland) Bill was passed by the Parliament at the end of last year, on any given day, we had around 150 people on home detention curfew. Because of those changes, and particularly the changes to the transition period, in which people were released in three tranches, the numbers reduced to between 70 and 80, but they have slowly increased since then.

Essentially, the order is a realignment to optimise HDC so that it is at the level that it was prior to the changes to the point of automatic early release for some short-term prisoners.

**Liam Kerr:** Finally, you said that there would be more people out on HDC—although not significantly more, to be fair. Logically, your 7 per cent failure rate will increase if more people are subject to the regime. Ultimately, it is for the SPS to consider breaches and whether or not to recall people. What research has been done on the SPS's freedom to make a decision, given the context, which is that our prisons are full? Does that stay the SPS's hand when deciding whether to recall people from HDC?

**Angela Constance:** If someone is recalled from HDC, that would have to be proportionate in relation to the breach of licence. The decision would be framed by whether someone has breached their licence and the circumstances around that. Although optimising the use of home detention curfew assists with the management of a very large prison population, it is also a reintegration tool. It is certainly not a silver bullet for our large prison population. I reassure Mr Kerr that the operational decisions that the SPS makes are based on an assessment of risk, its partnership work with communities and the information that it has about whether someone has

breached their licence or not. Those are the things that determine when a decision has to be made about whether someone is recalled. If it is helpful, I could ask the Prison Service to provide more information to the committee on that point.

**Liam Kerr:** I would be grateful if you could do that.

**The Convener:** The next item of business is consideration of a motion to approve the draft affirmative SSI on which we have just taken oral evidence.

*Motion moved,*

That the Criminal Justice Committee recommends that the Home Detention Curfew (Amendment of Specified Time Periods) (Scotland) Order 2025 [draft] be approved.—[*Angela Constance]*

**The Convener:** The question is, that motion S6M-17635 be approved. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McNeill, Pauline (Glasgow) (Lab)
Clark, Katy (West Scotland) (Lab)

**Against**

Kerr, Liam (North East Scotland) (Con)
Sharon Dowey (South Scotland) (Con)

**The Convener:** The result of the division is: For 6, Against 2, Abstentions 0.

*Motion agreed to.*

**The Convener:** Are members content to delegate responsibility to me and the clerks to approve a short factual report to the Parliament on the affirmative instrument?

**Members** *indicated agreement.*

**The Convener:** The report will be published shortly.

I suspend the meeting briefly to allow for a change of officials before we begin our next agenda item.

09:24

*Meeting suspended.*

09:28

*On resuming—*

# Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill: Stage 2

**The Convener:** Our next agenda item is stage 2 consideration of the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill. I ask members to refer to their copies of the bill and to the marshalled list of amendments and the groupings.

Yesterday, a supplement to the marshalled list was issued. It contained an additional amendment, amendment 93, which was lodged as a manuscript amendment under rule 9.10.6 of standing orders. I decided that amendment 93 may be moved during the stage 2 proceedings. It will be debated in the group entitled "Use of digital productions" and will be called immediately after amendment 46 and before amendment 47.

I welcome to the meeting Angela Constance, Cabinet Secretary for Justice and Home Affairs, and her officials. I also welcome other members of the Parliament, who will speak to their amendments later on.

I will stop at an appropriate point in proceedings to allow for a short comfort break. I do not want to curtail debate on what is an important bill, but I ask members and the cabinet secretary to be as succinct as possible while making their points clear.

## Section 1—Electronic signatures and alternative methods of sending documents

09:30

**The Convener:** Amendment 56, in the name of Sharon Dowey, is grouped with amendment 57.

**Sharon Dowey (South Scotland) (Con):** Together, amendments 56 and 57 seek to clarify that, when someone indicates that they wish to receive a paper copy of a document or does not express a willingness to receive it electronically, it will be available on request.

Throughout our evidence sessions on the bill, the committee heard concerns about the ability of certain vulnerable individuals to read and sign electronic copies. In a written submission, Age Scotland told the committee:

"More than a third of older people who have access to the internet lack the basic digital skills to use it effectively and safely."

Older people in particular may not feel comfortable with, or fully know how to navigate, the system of

electronic documents. Even if they receive help or guidance on that, there is still a need to allow for access to physical documents. Victim Support Scotland welcomed the ability for individuals to choose. In their contributions, Age Scotland and Victim Support Scotland emphasised the need for reassurance that physical documents would still be available.

The cabinet secretary has provided reassurance that the bill

"does not remove the scope to communicate in the traditional way".—[*Official Report*, *Criminal Justice Committee*, 19 February 2025; c 22.]

However, my amendments seek to clarify that everyone will continue to have access to physical documents on request, so that there is no confusion or misunderstanding.

I move amendment 56.

**The Convener:** As no other members wish to come in, I invite the cabinet secretary to speak.

**Angela Constance:** I understand Ms Dowey's intentions, but I cannot support amendments 56 and 57, for several reasons.

Prior to the Coronavirus (Scotland) Act 2020, the transmission of legal documents took place by having the hard-copy document physically couriered between parties or organisations, or by personal service on individuals. Since the provisions relating to electronic transmission were introduced in 2020, they have become firmly embedded in Scotland's justice system, thereby modernising many justice processes and making them more efficient and cost effective.

Ms Dowey's amendments would make it a legal requirement to provide hard copies on request, which might not be possible in every circumstance. In particular, amendment 56 does not specify who would be entitled to make such a request or who would be required to respond to it, which might impact on existing rules and policies about public access to case papers held by the courts or by the parties.

I am concerned that amendment 57 might impact on existing rules about how non-electronic service of documents works. The Criminal Procedure (Scotland) Act 1995 contains detailed rules about how non-electronic service of different types of document on different recipients is to be carried out; methods range from postal service to personal service by an officer of law, such as a constable, sheriff officer or prison officer. None of those is dependent on a request being made, and the methods generally involve delivering a document directly to a recipient rather than making it available. It is unclear how amendment 57 is intended to interact with those rules, and the consequences would need to be properly considered.

The bill already permits individuals to receive documents in hard copy. The provisions simply offer an additional option to those who wish to, and are able to, use electronic means.

Although I cannot support the amendments in their current form, I would be happy to work with Ms Dowey in advance of stage 3 to explore whether any provision is required to achieve her intentions, while ensuring that no disruption is caused to operational practices that have been in place for five years or, in some situations, longer. The Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunals Service have indicated that they would be happy to be involved in that.

On that basis, I ask Ms Dowey not to press amendment 56 or to move amendment 57.

**Sharon Dowey:** Given the cabinet secretary's comments, I will work on the amendments before stage 3, so I will not press amendment 56.

*Amendment 56, by agreement, withdrawn.*

*Amendment 57 not moved.*

*Section 1 agreed to.*

### Section 2—Virtual attendance at court

**The Convener:** The next group is entitled "Virtual attendance: criteria for when virtual attendance applies". Amendment 33, in the name of Pauline McNeill, is grouped with amendments 35 to 40.

**Pauline McNeill (Glasgow) (Lab):** Good morning. I thank the cabinet secretary and all her officials for their helpful exchanges, which helped me to understand some of the technicalities in the bill. Some of my amendments were drafted before we had our most recent conversation, so I ask people to bear that in mind.

I wish to probe some important issues relating to how the provisions on virtual attendance at our courts would be used. I am fully supportive of the principle of virtual attendance being a permanent feature of our courts, because that is important for the proper functioning of courts and, as Crown Office officials said in their very good evidence to the committee, it is important for victims who would not otherwise come to court. Excellent framework legislation on vulnerable witnesses has been introduced in successive parliamentary sessions, so the provisions do not stand alone.

Amendments 33, 35 to 37, 39 and 40 would give the Lord Justice General the power to issue a determination to change the default mode of attendance to virtual attendance in certain

circumstances, but not for certain types of cases. I confess that, on reading the bill, some things were not clear to me. I think that, depending on the case and the type of trial or proceeding, virtual attendance would be for individuals. I note that the Lord Justice General has exercised the power quite sparingly, but, if we grant an extensive power, it could be used much more regularly.

The default mode of attendance being virtual already applies to certain types of hearings, including preliminary hearings, some sentencing hearings, full committal hearings and bail appeal hearings. I have no particular concerns about any of that, because those hearings are administrative in some senses and do not really involve witnesses, although the Scottish Solicitors Bar Association has raised concerns in relation to custody appearances. I want to be clear that the Lord Justice General, who has used the current powers in relation to those hearings, could not say that a category of trials, for example, should be virtual. I do not think that that is the case—the cabinet secretary is already shaking her head—but I want to be sure about where the powers stop and start.

Amendment 38 prescribes that, if virtual attendance is to be agreed, it must have the approval of both parties—the accused and the complainer. That is probably already accounted for. The cabinet secretary will probably say that the test is whether it is in the interests of justice for that to happen. That is fair enough, but I hope that she will appreciate that I am testing where the line is drawn for hearings that already have virtual attendance.

In its report, the committee highlighted an issue to do with

"the criteria which should be used by the Lord Justice General in making a determination in favour of virtual attendance in particular categories of case. The Bill does not elaborate on what the criteria should be, beyond that it should not prejudice the fairness of proceedings or be contrary to the interests of justice."

The committee's view is that there should be

"additional criteria which the Lord Justice General must take into account before making a determination."

It is simply a case of taking a belt-and-braces approach in that regard.

During the committee's evidence sessions, Sharon Dowey asked about the case for virtual appearances in custody cases. Paul Smith and Simon Brown had concerns about ensuring proper co-ordination with the person they were representing if there was virtual attendance. They also raised concerns about the issue of the quality of the connection, which I share. I will not go through those again, but I have seen that issue for myself.

I would have thought that, if we are going to rely much more on virtual attendance in courts, it would be a prerequisite to ensure that we are clear about where that approach can be used, and that the connection should be as good as it can be. In particular, we should ensure that virtual attendance does not detract from the current arrangements, especially—as Paul Smith said in his evidence—where an accused person has never been through the court process before. It would not be fair to prejudice their interests. It is important that we are clear that those aspects are all brought together in a satisfactory way.

I move amendment 33.

**Angela Constance:** The bill provides for virtual attendance in criminal proceedings by making permanent the legislative underpinning that has been in place since 2020. The framework for virtual attendance is, admittedly, somewhat complex, which is inevitable given that it must account for the complexity and range of scenarios that arise day to day in the criminal justice system.

I am afraid that the amendments in this group would unpick that framework and shift the balance away from individual decision making case by case to an approach in which there is less flexibility and a greater role for blanket determinations and decision making, and powers of veto. I appreciate that that might not have been Ms McNeill's intention, but I am sure that she and the committee will understand that I have to respond to the effect of the amendments according to their terms and the operational impact that they would have.

The amendments would erode—and, in some cases, eliminate—the ability of our courts to consider the full range of facts and circumstances of the cases that they hear in making decisions on virtual attendance. I therefore cannot support any of the amendments in the group.

Under the bill, the default position is that people attend court in person. In individual cases, the court can opt to disapply that default and direct individuals to attend court by virtual means, after taking into account what is in the interests of justice and any representations that are received from the parties. The exception to that would be proceedings in which the only party is a public official, such as police officers or prosecutors seeking warrants or court orders, where the default position is virtual attendance. Again, the court can disapply that default case by case and require physical attendance.

The bill gives the Lord Justice General the power to issue determinations to disapply the default for physical attendance in certain types of cases and in certain circumstances. Currently, there is an important limitation on that power: the

Lord Justice General cannot issue determinations in relation to trials or for hearings at which the only party is a public official.

Amendments 33, 35 and 40 would remove that limitation and expand the scope of the Lord Justice General's power to make determinations to any form of criminal proceedings. That would give the Lord Justice General the power to effectively set virtual attendance as the default for criminal trials, should he choose to do so. That would be a substantial expansion of the power and a significant departure from the current approach. I do not believe that the committee heard any evidence at stage 1 that would support such a change, nor did it make such a recommendation in its report.

In addition, I have not heard any support for the amendments that relate to guidance that is issued by the Lord Justice General. Amendment 37 would require courts to "comply with" such guidance rather than "have regard to" it. Amendment 39 would require that the guidance must set out when virtual attendance must "always apply" and when it must "never apply".

Again, those amendments represent a departure from recognising that the courts will need to consider cases and circumstances on an individual basis in order to balance all relevant interests. After taking into account such information, it should ultimately be for a court to decide how individuals should appear before it at trial.

09:45

Amendments 36 and 38 would further erode the court's flexibility. Amendment 36 would, in some circumstances, create further procedure overall. When there had been a change in circumstances between the pre-trial hearing and the trial, with the result that a witness required to give evidence remotely, amendment 36 would mean that an additional hearing would have to be convened to allow parties to be heard on the matter. The existing drafting is more efficient, as it gives the court the ability to make a direction, which the other party could object to at trial if they so desired.

In relation to amendment 38, I do not agree that it is appropriate for complainers or the accused to be able to unilaterally veto the virtual attendance of another person, such as a police witness or a forensic scientist. Such matters are properly decisions for the court, which will balance the interests of those involved. The bill requires the court to hear representations from the parties and to consider whether such a direction would prejudice fairness or otherwise be contrary to the interests of justice.

Taken together, the amendments in this group would lead to a more prescriptive framework that would restrict the court's ability to be agile and responsive, and to take into account individual circumstances and make informed decisions, when determining how individuals appear at court. For that reason, I cannot support any of the amendments in this group.

As Ms McNeill and colleagues will recall, the virtual custody court provisions have been paused until the issues have been fully resolved.

**The Convener:** I invite Pauline McNeill to wind up and to press or withdraw amendment 33.

**Pauline McNeill:** I am broadly content with what the cabinet secretary has said. I put on record the fact that, when working on my amendments, I had asked for drafting that would provide clarity on how the power of the Lord Justice General could be used in relation to hearings and trials. When I read the bill, the explanatory notes and the policy memorandum, I could not see the distinction clearly set out that I think that the cabinet secretary has said is there, and I am content with that. That is what I had asked to be drafted, but I accept that what was produced is not quite what I had intended.

As I hope that the cabinet secretary will acknowledge, the committee's biggest concern was the one that legal representatives had raised in relation to some of the practicalities—as opposed to the principle—of virtual attendance at custody courts, which is why the provisions have been paused.

I would like to come back to that issue at stage 3, as I would not want us to simply let go of it and to pass the bill while the matter is on-going and unresolved. We are talking about granting powers. Once those powers have been granted, there will no coming back from that, if we get it wrong.

On that basis, I seek to withdraw amendment 33.

*Amendment 33, by agreement, withdrawn.*

**The Convener:** Group 3 is on virtual attendance: requirements for attending virtually. Amendment 34, in the name of Pauline McNeill, is grouped with amendments 41 to 43.

**Pauline McNeill:** Amendments 34 and 42 seek to prescribe whether a location would be deemed a suitable location for remote attendance by specifying that the location must have a court official in attendance and an adequate speed of connection. I have previously mentioned my experience in relation to the connection issue, which is one that was raised by all the witnesses.

An issue that I am sure that the Government will address is that of ensuring that there is equality in

people's ability to attend virtually. For example, Age Scotland told us that older people might struggle with getting online. There are issues affecting certain groups of people that must be considered.

It might well be that the cabinet secretary is content that the bill sets out clear criteria for how evidence should be given and where it should be given, as previously mentioned. On the taking of evidence by commissioner, that measure has been a great success. I have seen the facilities for myself, and I thought that that would be the standard.

When I was discussing the issue with the legislation team, I wanted to prescribe some things that would make sense. Maybe they are the wrong things, but I would not be content just to say that people could give evidence in any circumstances and anywhere. It is a court of law, and giving evidence virtually must have some requirements. I would have thought that everyone would be content with the fact that the location should have an equivalency to a courtroom. That is all that I am trying to achieve with these amendments.

I move amendment 34.

**Liam Kerr:** My amendments 41 and 43 are both relevant to section 2, which deals with virtual attendance at court. When we look at what section 2 does, we need to ask whether, as drafted, it covers all necessary matters. On page 6 of the bill, proposed new section 303K of the Criminal Procedure (Scotland) Act 1995 addresses the ability to attend by electronic means. That section states that someone who is excused from a requirement to physically attend court must do so by electronic means

"in accordance with a direction issued by the court."

Proposed new section 303K(3) sets out what that direction should include. My amendment 41 simply asks that one part of that direction is

"to set out the location of where the person is to appear by electronic means".

That reflects concerns that were raised in the committee's report, which said:

"We recommend that the Bill is amended to include an additional requirement for the court to issue a direction in relation to the appropriateness of the location from which an individual participates, to address the concerns highlighted in evidence."

It is, of course, entirely at the court's discretion to determine what and where that location might be, and it would naturally take into account all the facts of the case.

On a practical level, I presume that that would be done only after consultation with the person concerned on the appropriateness of the locations that were available to them.

I move to amendment 43. Virtual attendance will be a pretty new concept to us, so the question is whether it will work. I think that it will, but there is a much remarked-on dearth of data and outputs in this Parliament generally. I seek to remedy that in amendment 43, at least at this level, because I am seeking to insert a new section—after section 2—to require a report on how the virtual attendance is working. The report would cover various elements such as reliability and resourcing, and I would like it to be published no later than two years after section 2 comes into force.

Again, that is in line with concerns that witnesses raised with the committee about virtual appearances being dependent on proper resourcing and current issues with technology. I remind the committee that the sheriffs principal told us:

"We would observe that virtual hearings are heavily dependent on the adequate resourcing of technology and infrastructure."

The Faculty of Advocates told us:

"These undoubted and important benefits do come at a cost to the justice system. Valuable court time is regularly lost due to delays in establishing remote links and reestablishing failed remote links."

That is also in line with a letter that I have received from the chief executive of the Scottish Courts and Tribunals Service, which I can make available to anyone who requests it. I raised questions about the operation of virtual courts, and, in response, it was conceded that

"SCTS does receive feedback that live links are not always as effective as they could be."

Therefore, my amendment 43 seeks to have a report on what is happening once the measure is brought in.

For completeness, I listened carefully to Pauline McNeill's representations earlier on. If her amendment 34 goes through, I do not entirely understand how the costs and logistics might work. I will listen carefully to Pauline McNeill's closing remarks, but, at this stage, I am not persuaded by amendment 34.

Similarly, I am not persuaded by Pauline McNeill's amendment 37, as I worry about fettering the courts' discretion and ability to manoeuvre. Again, I will listen carefully to her closing remarks.

**Angela Constance:** The requirement for virtual attendance was a clear focus of the committee throughout stage 1. However, it should be acknowledged that forms of virtual attendance have been practiced in our courts for decades. Vulnerable witnesses have routinely given evidence remotely; pre-pandemic, it was possible

for an accused person to be sentenced via videolink from prison.

There are a number of benefits to allowing more witnesses to give evidence remotely. It reduces travel time and costs and reduces disruption for witnesses, making our justice system more accessible and responsive to the needs of all its users. Ms McNeill's amendment 34 would therefore be a step in the wrong direction. A requirement for a court official to be in attendance with any person attending a trial virtually is wholly unworkable in practice and would place an unsustainable burden on court officers, leading to unquantifiable but significant costs.

The use of virtual attendance for police and professional witnesses giving evidence in high court cases is currently the norm. It allows police, and doctors in the national health service, to be removed from their front-line duties for less time. In his submission in January, Malcolm Graham of the Scottish Courts and Tribunals Service confirmed that

"Since January 2022 more than 952 police officers and more than 371 expert witnesses have provided evidence remotely to the High Court of Justiciary."

**Pauline McNeill:** I do not have experience of that—I have only seen instances in which people have given evidence in Victim Support Scotland's headquarters, which, as I said, are very impressive. Who checks when someone is giving evidence from whatever location? I presume that those giving evidence still have to take the oath and so on, and I think that we all agree that there should not be anyone else in the room who might interfere. Who checks that? Is there a way of doing that?

I totally acknowledge that it might not be practical for a court official to do that—I concede that to Liam Kerr and to you, cabinet secretary—but surely there should be some checks and balances. If people are not giving evidence from Victim Support Scotland's lovely, well-established offices, who will check that the conditions in that location are the same as they would be if they were giving evidence in court? It just my lack of understanding that makes me ask.

**Angela Constance:** I understand Ms McNeill's point, but if I go back to stage 1, the evidence from the Crown Office emphasised that its expectations for vulnerable and non-vulnerable civilian witnesses were that, when attending remotely, they would do so either from a Scottish Courts and Tribunals System remote site or from another designated site, whether that is a Victim Support Scotland facility or a designated site such as a bairns' house. The Crown Office has confirmed that that remains its position.

I know that Ms McNeill did not quite ask this, but witnesses are not routinely giving evidence from their homes. In fact, that is exceptionally rare—I have been told that that is vanishingly rare. That would happen when a witness has a medical condition—perhaps agoraphobia—or is medically unfit. Before the emergency legislation, there was always scope to make an application to the court to enable such an arrangement, if that was crucial. The court would have to specifically sanction any such arrangement. That was the case previously, and it remains the case under the emergency legislation and the bill.

Ms McNeill has spoken about the fact that we continue to invest in evidence by commissioner suites for pre-recorded evidence. She is correct that witnesses must still take an oath and that the Crown Office sends guidance to witnesses. That is about ensuring that people understand the solemnity of the proceedings.

10:00

The guidance is quite detailed, so I will not read out a lot of extracts from it, but I can perhaps ensure that the committee receives a copy. It includes information such as that the procurator fiscal will inform the witness via telephone when it is their time to join. There are very clear expectations that people must be heard and that they need to be able to see the proceedings.

**Ben Macpherson (Edinburgh Northern and Leith) (SNP):** I wonder whether you can build on that response by saying what engagement the Government has had with the courts on those points between stages 1 and 2.

**Angela Constance:** As you would expect, our contact with the court service is on-going, particularly in relation to our understanding in more detail the sorts of operational aspects that politicians and civil servants are not involved with daily.

On the information that is provided to witnesses, I remind members that the bill already provides that, when a witness gives evidence remotely, a direction will set out how the witness will attend and will provide for the witness to use electronic means to enable them to be seen and heard by all parties, including the judge and, where applicable, the jury. Information is also sent out about how to join the platform, which is Webex. The guidance looks quite clear to me, although I am not the most electronically able person.

We can ensure that the committee receives a copy of the guidance that is sent to people on the witness protocol, if that would be helpful. Before they sign into Webex, there are certain things that witnesses must make sure of. I will not read it all out, unless the convener wants me to, but I will

send a copy of the guidance to members, if that will be helpful.

**Ben Macpherson:** Yes, please.

**Angela Constance:** In every circumstance in which remote evidence is used, it is delivered in a way that is consistent with the solemnity and integrity of court proceedings. As the Crown Office set out in its evidence,

"Professional witnesses are sent additional information on what is expected of them"

if they are cited to attend a trial virtually.

The Scottish Courts and Tribunals Service, the Crown Office, the Faculty of Advocates and the Law Society of Scotland have also agreed a witness protocol that sets rules that must be complied with by all witnesses who are giving evidence remotely—I have already referred to that. The protocol includes the rule that, while a witness is giving evidence, no one else can be in the same room or be able to overhear what has been said, unless the court gives express permission.

Moreover, when hearing remote evidence, the court has all its normal powers to regulate proceedings, either of its own accord or in response to an objection raised by parties. As such, if there were concern that the integrity of proceedings had been compromised, because the witness was not complying with the rules, the court would be able to address that appropriately.

Ms McNeill has previously probed the lack of a requirement in the bill for a witness to attend a Scottish Courts and Tribunals Service site or other approved place to give remote evidence. Again, I refer to the evidence of the Crown Office, which was supportive of the flexibility that could be afforded to police and professional witnesses and which highlighted that the framework of special measures to support vulnerable witnesses to give their evidence remains in place.

I would also point out that, in its stage 2 evidence, Victim Support Scotland highlighted its opposition to the amendment. Witnesses can, and continue to, give evidence remotely using SCTS remote sites and other purpose-built facilities. Therefore, I do not share Ms McNeill's concerns and, with respect, ask her not to press or move her amendments.

My officials have engaged with justice agencies on amendments 41 and 42. On amendment 41, committee members will note the briefing from Victim Support Scotland, which cautions against such an approach and opposes that amendment.

There are a number of concerns about amendment 41. Again, as noted by Victim Support Scotland, there might be significant confidentiality and security concerns for some witnesses in having their addresses made available. There are also concerns that, when the direction is made—which is often far in advance of the trial—prosecutors might not know the location that remote evidence will be taken at, if it is subject to, say, witnesses' working arrangements. As such, extra time and procedure will routinely be required to vary directions when, closer to the trial date, the location changes. A further concern is that being restrictive about location would limit the witness's ability to be responsive to any pressures arising, where such matters might lead them to work from a location that is not their usual place of work.

On amendment 42, it is not clear how those requirements could be enforced, other than by the court reacting if there were real difficulties with the evidence being given. As the court would already be able to respond to that appropriately, I would be wary of placing an additional onerous and potentially impracticable obligation on the Scottish Courts and Tribunals Service.

The bill already provides, at subsection 3 of proposed new section 303K of the Criminal Procedure (Scotland) Act 1995, that the court must set out in its direction that enables a person to attend virtually how they ought to do that. In practice, that is achieved by providing them with information on how to use the Webex platform. The guidance is publicly available and, as I have mentioned, I can send it on.

As with in-person attendance, issues with individual cases will no doubt crop up from time to time. However, I am satisfied that over the past five years of the operation of those provisions, partners have refined the process and have no concerns about implementation when it comes to remote evidence. As with any aspect of operational practice, they will continue to keep matters under review. I acknowledge that things have not been as smooth with virtual custodies, and they are being paused to allow the development of an improved model that better meets the needs of all users.

As for Mr Kerr's amendment 43, I do not think that it would be possible, as currently drafted, to deliver the required report. Information on technical issues is not collected and reported on in a systemic way, and to require that in relation to everything that might be considered a technical issue would be resource intensive.

However, if the report were to focus on improving understanding of how virtual attendance is delivering greater efficiency and effectiveness, and if it were more closely linked to existing data collection processes, we might be able to explore that further. If Mr Kerr's concerns relate to virtual custodies, that will be addressed by the work that is being led by Malcolm Graham of the Scottish

Courts and Tribunals Service. I am of course happy to engage further with Mr Kerr on that in advance of stage 3.

To conclude, I ask Mr Kerr and Ms McNeill not to move or press their amendments in this group.

**The Convener:** I call Pauline McNeill to wind up, and to indicate whether she wishes to press or withdraw amendment 34.

**Pauline McNeill:** That was a helpful exchange. I just want to put on record that I hope that my intention here is not misunderstood—I do support the use of virtual attendance. The cabinet secretary has clarified that, whatever the location, the proceedings will be delivered with solemnity et cetera, which is important. I do not think that the committee should settle for anything less; if this is going to be a permanent feature of the Scottish criminal justice system, we have to ensure that it is done to everyone's satisfaction. However, we all recognise that it can reduce delays and make things easier for victims.

I should say that it was not me who brought up the issue of locations. The Law Society and the Scottish Solicitors Bar Association raised concerns about people giving evidence from home, and it was mentioned by another witness, too. That is why I addressed it. I share their concerns, although I think that there is a distinction to be drawn here, and the cabinet secretary makes an important point when she says that someone could have a specific reason for giving evidence from home. I think that that would be okay, but I am not in favour of people giving evidence at home for the sake of convenience, because I do not believe that that would satisfy the test. I would prefer it if we nailed that issue down at stage 3 so that it is clear in the bill, because at the moment it is, as far as I can see, silent on the matter.

It is important that we future proof this legislation. I presume that, if we improve electronic connection, this approach might be used a bit more, and we have to be clear about when it can be used in the interests of justice.

I accept what the cabinet secretary has said about public officials and the giving of virtual evidence as a vital component of their work. However, I was surprised by the evidence from the police with regard to their concerns about it, for reasons that I think are, once again, related to connection.

I did not comment on Liam Kerr's amendments at the time, but on his amendment 41, I am not clear about why that provision should apply in all circumstances. I can see why, in some circumstances, you might not publish the location. The location could be checked, for reasons that we have already discussed. In any case, I am not too clear about that; after all, if you give evidence in court, you are giving evidence in a known location with a known address.

I do support what was said about Liam Kerr's amendment 43. If there is to be a report, it has to be about more than just gathering data. There are some reservations about whether virtual attendance is all that it is said to be, and I hope that the Government will consider what might be done to give us the kind of report that will mean something, given that this is a substantive—indeed, permanent—change. We did what we needed to do during the pandemic, but the fact that we did something then as a necessity to get through trials should not be an argument for continuing to do it now.

I hope that, before we close the door on this at stage 3, the Government will give more thought to it. That said, I will not be pressing amendment 34.

**Angela Constance:** I just want to put on record two things with regard to what Ms McNeill has said about people giving evidence at home—forgive me if I am repeating myself, convener. I appreciate that she was articulating evidence that was given by others, but, according to our justice partners, giving evidence from home is not the norm. Indeed, it has been described to me as vanishingly rare. Where legislation on that already exists, it existed prior to the bill and, indeed, prior to the Covid legislation. To summarise, the existing legislation says that it remains under the control of the court whether evidence can be given at home. I am happy to write to the committee to lay that out further.

The point that I was trying to make about Mr Kerr's amendment 43—which I think resonates with the point that Ms McNeill made—is not that I would close the door on it but that I want reporting conditions that are more meaningful and more rounded. The report should give us information that means something when it comes to scrutiny but also when it comes to delivering greater efficiency and effectiveness. Having data is important, but that is a broader aim. I think that, sometimes, we go on a quest to gather more and more data, as opposed to looking at how existing data can be better joined up and how different data can speak to each other.

10:15

**Pauline McNeill:** Thank you for that clarity. I was not aware that legislation on the matter existed prior to the pandemic, so it is useful to know that. That is fair enough.

However, I still say that, given that the bill's purpose is to modernise—to make those things permanent—you must envisage greater use being made of that power. However, the bill is silent on when it can be used. What we are here to do

when we legislate is to correct anything that might not have been right in the first place. That might just involve being satisfied that the requirements for the conditions under which this approach would be allowed are clear to the Parliament before we put it in the legislation as a way of modernising the court system and making that better.

*Amendment 34, by agreement, withdrawn.*

*Amendments 35 to 42 not moved.*

*Section 2 agreed to.*

**After section 2**

*Amendment 43 not moved.*

*Section 3 agreed to.*

**Section 4—Digital productions**

**The Convener:** The next group is on the use of digital productions. Amendment 44, in the name of Liam Kerr, is grouped with amendments 1 to 4, 45, 5, 6 and 46 to 49.

**Liam Kerr:** I will speak to amendment 44 and then to amendments 45 and 46, relating to section 4, which starts on page 8 of the bill. Taken together, those amendments are aimed at ensuring that, although digital productions will be possible, all parties would have the right to view physical evidence and that physical evidence could be produced.

Amendment 44 would delete section 4(2) of the bill. The reason is that subsection (2) refers to section 68(2) of the Criminal Procedure (Scotland) Act 1995, which provides that the accused is entitled to see the physical productions in specific places, depending on in which court the trial diet is happening. Section 4(2) of the bill would change the default position, such that the accused would no longer be able to see the production physically if it were available in electronic form and the accused had had the opportunity to see it in electronic form. I do not quite understand that, because it feels as though it is a removal of rights for no discernible benefit. My amendment 44 would therefore remove section 4(2) from the bill, such that the default position would continue to apply and the accused would be able to see the physical production on request.

I turn to amendment 45. Section 4(4) of the bill provides that an image of physical evidence

"is ... to be treated for evidential purposes as if it were the physical evidence".

Again, I am not sure that we should be putting handcuffs on the court and the processes that it follows. My amendment 45, therefore, would simply wind us back from the absolute, such that the image "may" be treated as if it were the physical evidence, if the court wants to do so—thus giving the court a more proactive discretion over whether that should be done, rather than accepting it as the default.

My amendment 46 builds on that principle to provide that, where the court has directed that the image of the evidence

"be treated ... as if it were the physical evidence",

all parties and the judge may still request to see the physical item.

Once again, my authority for the amendments is the committee's report, which, on page 20, says:

"At any point, up to and including during a trial, any party, including the judge, who wished to see the physical production should not be prevented by this Bill. We recommend that the Scottish Government strengthens these provisions on the face of the Bill to make it clearer that this would be the case."

That was in line with the Faculty of Advocates, which, in its submission to the call for views, said:

"in some cases, the item may have certain distinctive physical characteristics which are less obvious in an image. This may be of particular importance in determining whether the item can be seen in CCTV footage. There may be limited occasions when this is the case. However, on such occasions the items themselves may provide decisive evidence to incriminate or exculpate an accused. It is important if the court is not satisfied by the use of an image in place of the physical evidence that it remains open to the court to otherwise direct that the original item be produced."

That is what I have sought to capture in my first three amendments in this group.

Amendment 49 is slightly different, but it would also apply to section 4 on digital productions. The amendment was suggested to me by the Law Society of Scotland. I remind colleagues that I am a member of and am regulated by the Law Society. Amendment 49 simply says that, even though there is now a valid image of the physical evidence, the actual physical evidence

"may not be destroyed while proceedings are ongoing".

That includes until after any appeal is completely finished.

Again, that is in line with the committee's report, which says:

"it is not clear how long that object must be retained for beyond that point. The concern from some organisations was that, in the absence of any guidance to the contrary, the existence of a digital image might make it more likely that the original physical object would be disposed of. This clearly would be inappropriate if there was the chance that the object may be required in any future court proceedings."

That was the reason for my lodging amendment 49.

Pauline McNeill's amendment 48 is similar. It is very helpful, but it goes beyond what I am proposing. At this stage, I am not persuaded by

amendment 48 and what it proposes in relation to the Scottish Criminal Cases Review Commission. We know that the SCCRC can accept a request to investigate at any time, potentially years after a conviction. Should amendment 48 be agreed to, presumably the original productions would always need to be retained—perhaps in perpetuity—which would undermine the point of the proposal.

I remain to be persuaded by Pauline McNeill's remarks on amendment 48, but my starting position is that it might go too far and undermine the proposal.

I move amendment 44.

**Angela Constance:** Apologies, convener—I have quite a long speaking note for this group of amendments.

I will first speak to amendments 44 to 46, which were lodged by Mr Kerr, and amendment 93, which was lodged by Pauline McNeill.

Amendment 44 would not be compatible with the roll-out of the digital evidence sharing capability—DESC—system. Where electronic evidence is stored on DESC, as opposed to on a tape or disc, there will be nothing that can be physically lodged and the list of productions will simply note that the item in question is a digital production. Given that the amendment would require the lodging of a physical item, it would not permit the use of DESC to store digital evidence and share it in court.

Amendment 45 would have the effect of making the use of physical productions the continued default. That would also significantly inhibit the roll-out of DESC and require substantial amounts of court time and resource to be taken up with applications to allow images to be used.

Amendment 46 is unnecessary and would serve no practical purpose. The ability for both the defence and the prosecution to apply for a judicial direction where they consider the image to be insufficient already provides a mechanism to deal with those issues clearly and promptly.

**Liam Kerr:** Forgive me, cabinet secretary, as I order my thoughts, but I heard that amendments 44 and 45 would not work because of the progress that is being made on digital evidence sharing capacity—DESC—which the committee heard about and was very positive about. On a legislative level, should the law be led by what is happening in practice, or should the law seek to lead, such that the practice follows?

**Angela Constance:** That will be a decision for legislators—that will be for you and me. I am not going to make a blanket determination on that.

**Liam Kerr:** I am worried that the cabinet secretary appears to be rejecting my amendment because of something that is happening in practice, whereas I am saying that best practice is what I am seeking to bring to the legislation. Is it not for practice to follow what the legislators have decided is the way forward?

**Angela Constance:** I would consider best practice to be aligned to modernising our criminal justice system so that—in the example of DESC—evidence can be shared from crime scene to courtroom. That supports the overall efficiency and effectiveness of the justice system and is to the benefit of everybody who comes into contact with it. As a programme of work, DESC has benefited from £33 million of investment and has the support of our justice partners. I hope that you understand my reticence about rolling back on the use of DESC. It is right and proper that I, with respect, point out that amendment 44 would not permit the use of DESC to store digital evidence and share it in court, which is one of the main benefits of that significant programme of reform.

My comments on amendment 46 also apply to Ms McNeill's amendment 93. The bill, and my amendment 5, which I will come on to, clearly set out the process by which parties can apply for a judicial direction to have a physical item produced. Amendment 93 would give parties an unqualified right to have items produced when they requested it, with no role for the court to decide whether that was necessary to avoid prejudicing the fairness of proceedings.

I take this opportunity to reassure Mr Kerr and Ms McNeill that there is an existing common-law right for the defence to examine any physical item whose condition is critical to the case against the accused, even when it will not be produced at trial. There is nothing in the bill that interferes with that right, which will continue to apply even when an image is used at trial. That right should be exercised promptly after the defence is made aware of the item through disclosure by the Crown and should inform any application to require the physical item to be produced in court instead of the proposed image.

**Pauline McNeill:** It is useful to know that there is a common-law provision to allow parties to examine the item. I will speak to what I and Liam Kerr are driving at. If you think that it is in the interests of justice for the jury to see the weapon—if it is a weapon—it should surely be an unqualified right. There is a difference between examining something and it going before the court.

**Angela Constance:** I will try to address most of those points as I proceed. If I do not, Ms McNeill will, I am sure, intervene on me again.

I turn to Mr Kerr's amendments 49 and 47, and Ms McNeill's amendments 47 and 48, which set out new requirements for the retention of physical

productions. The bill has always been about using digital transformation to protect the rights of victims, witnesses and the accused, while supporting justice partners in modernising their operational practices, including those around retention.

10:30

As I have mentioned, common law already gives the defence the right to examine any physical item whose condition is critical to the case against the accused, and our provisions do not interfere with that right. Prosecutors have always been able to determine which productions need to be retained and for how long. There are obviously fundamentally different factors to take into account in relation to, for example, marijuana plants in drug offences, personal items belonging to victims and witnesses, and alleged murder weapons. The bill will not alter the nature of those operational decisions.

We sought feedback from justice partners about how these amendments would impact them. During stage 1, they had already expressed to the committee their concerns about retaining physical productions for lengthy periods, and they have confirmed that the amendments would be financially devastating. It is already common practice for some evidence to be returned to people prior to the conclusion of a trial, and these amendments would prevent that—for example, when a vehicle is involved in an accident and a photograph is taken of the damage, the vehicle would still need to be retained. Similarly, at present, when evidence is the property of victims or witnesses, the items tend to be returned with a label or image used in their place during proceedings. If the amendments are agreed to, the victims' property would not be returned until a considerable time after the case had concluded.

In the case of the reference in amendment 48 to the Scottish Criminal Cases Review Commission, it is difficult to see how the items could ever be returned. That is clearly inappropriate for personal items; we already know about the distress that even limited retention can cause in relation to the retention of mobile phones, for example.

The amendments would also have the strange effect that, in cases in which images of physical production are used, the physical evidence would need to be retained for much longer than if the physical evidence itself had been produced.

Overall, the amendments would have a significant resource implication for justice partners, who would have to store the items for longer—perhaps indefinitely—and they represent a regressive approach to retention that, when applied to personal items, would have distressing implications for many victims. I therefore ask Mr Kerr not to press amendment 44 and Ms McNeill not to move her amendments.

I turn to my amendments. During stage 1, the committee heard a range of views on the use of digital productions and the need to protect the rights of all parties during a trial, while ensuring that the benefits of using digital productions are fully realised. Only last week, there was a news story about how more than 30,000 prosecutions in England and Wales collapsed between October 2020 and September 2024 because of lost, damaged or missing evidence. It is only right that, in Scotland, we use technology to support justice partners managing large quantities of evidence, many of which are not required to be produced for trial. I have therefore lodged amendments that provide more certainty on the use of digital evidence.

Amendment 5 provides detail on the process by which parties can apply to the court for a direction that images are not to be used in place of physical evidence. It sets out a timescale for making an application and requires the court, when considering an application, to assess whether the use of an image in place of the physical evidence would prejudice the fairness of proceedings. In summary cases, the amendment will allow parties 28 days after being given access to the images of physical productions to object and seek a direction from the court requiring the use of the physical production. In solemn cases, the same time limit applies from either service of the indictment or the defence lodging a list of productions.

In addition, the amendment will enable the court to consider any application to object to the use of images that is made after those deadlines have passed, when the party can demonstrate that they made the application as soon as reasonably practicable.

Amendments 1 to 4 will make consequential adjustments to the bill to allow the timescales provided by amendment 5 to have effect and to enable an application to be dealt with at the first diet in solemn proceedings.

Amendment 6 clarifies that, where the bill refers to images of physical evidence, it means both moving and still images. Ultimately, our ambition for the provisions is to promote the use of modern technology, including DESC; support greater efficiency across the criminal justice system; and enhance the way that evidence is led in order to create improvements in the court experience.

During stage 1, Victim Support Scotland provided a powerful example of where physical evidence being passed around in court in a sexual offences case can have a traumatising impact on victims and how that could be addressed through

the use of digital productions. That represents just one of the many ways in which the use of digital productions and the digital evidence sharing capability can be transformative for victims, witnesses and the accused.

I am confident that that approach balances the rights of the parties and provides greater certainty about the use of productions, while supporting the desire of partners to move towards greater digitisation. I therefore ask that members support amendments 1 to 6 in my name.

**Pauline McNeill:** Amendment 47 would ensure that any change to, or increase in, the use of digital productions in court will not have an impact on the current arrangements for the storage of physical evidence. Amendment 48 would ensure that the physical evidence of the case cannot be destroyed while the case against the accused is on-going, right up until appeal or review by the Scottish Criminal Cases Review Commission.

I thank the convener for allowing amendment 93 as a manuscript amendment; it is one of the amendments that got lost in the midst of all the emails. The amendment would ensure that, before a trial begins, either the prosecution or the defence can request to view the physical item, and they can request that it is produced in court. That is similar to the amendments from the cabinet secretary and Liam Kerr.

It is important that we establish the principle of what the modernisation of this part of the system does. Where does it benefit the court administration and the interests of justice?

With regard to the production of physical evidence, there are a lot of cases in which one would think that it does not matter whether the evidence is produced digitally, but, in some cases, it does. For example, in a murder case in which a weapon is used, I would have thought that it is really important that the jury sees that.

I turn to the cabinet secretary's amendment 5. Although I think that it is helpful, it seems not to be founded on the principle that it must be in the interests of justice for either party, whether it is the Crown or the defence, to be able to say, even if they have missed the deadline, that they wish the evidence to be produced in court. I am not comfortable with there being a deadline, so that we say, "If you've missed the 28 days, you cannot have that produced in court". There is a best-evidence rule—that is the principle in our system; we need the best-quality evidence. I am concerned, therefore, that the bill might throw away important principles.

Generally speaking, I am interested in the status quo. I confess that I am not au fait with all the principles of the status quo around the retention of evidence, but I note that there will be benefits to the smooth running of the court system. It is important to separate the issues of retention of evidence—how long it is kept for and what form it is kept in—and the production of evidence. We are dealing with two different things there.

If there was a digital image of a bag of heroin, and you were confident that everybody knew what that looked like, you would not worry too much. However, you might not be confident about that, and it is important to ensure that there is the full ability for that evidence to be produced in court.

**The Convener:** I refer back to some of the cabinet secretary's comments with regard to circumstances in which a court can find itself, given the huge range of types of productions that can be relevant to a case. I acknowledge that some productions can be perishable. One example is contaminated clothing, and I think that marijuana was an example that the cabinet secretary gave.

In addition, we should consider that trauma can be caused where, for example, a mobile phone that has significant evidence on it is required to be retained as a production. That in itself can be quite traumatising for a victim, in particular. Huge and significantly bulky items such as a car or a sofa, or anything like that, can also be required as evidence.

I just want to flag up those points to Pauline McNeill.

**Pauline McNeill:** I agree with the convener. I am content with the status quo—whatever that is. However, the bill says that the other items that I am talking about could be digitally produced. If the defence or the Crown, for whatever reason, does not apply for the item to be produced in court, it will not be produced, which would be contrary to the interests of justice. I accept that this is a huge area, but I wonder whether there should be a bit more detail in the bill to prevent that from happening. My amendment says that there should be no deadline. Why should there be a deadline at any point before the trial in relation to producing a weapon in court if it is practical—it might not be—and in the interest of justice to do so?

**Angela Constance:** It is important to emphasise that, when the physical production of evidence is critical to a case, we would, of course, expect the Crown to protect its position in relation to producing the physical item. I note that Ms McNeill does not think that there should be any deadline to parties being able to object to an image being produced as opposed to a physical object. I reiterate my point that applications could be made after that point if it can be demonstrated that the application was made as soon as was practicable.

My final point—I appreciate Ms McNeill's indulgence—is that my broad concern about her amendments and Mr Kerr's amendments is that they would not protect the status quo, because they would move us backwards. I appreciate that members will have views about any proposed changes and how we move forward, but the amendments would not protect the status quo and would make things worse for victims and justice partners.

**Pauline McNeill:** I am not sure that I agree with your final point. I am trying to make the point that, if the default will be the digital production of evidence, that cannot be done at the expense of the interests of justice. Although I acknowledge that what we are talking about could happen in court, the court could say, "We're not allowing it."

I wonder whether this is human rights proof. Let us say that the evidence is a murder weapon and the court says, "No, we will not allow the physical production"—for whatever reason—which it is entitled to do under the legislation. How can that be fair if the Crown or the defence thinks that such evidence is important for its case? It has to answer to the court, but these things happen all the time. That is why I want to explore the issue, and Liam Kerr's amendments are probably a bit more comprehensive than mine.

Paul Smith of the Edinburgh Bar Association said:

"At the moment, if someone is charged with possession of a knife, that knife needs to be retained and physically produced in court. Section 4(4) will allow the police to take a photograph of the knife and that photograph to become the evidence, so they will not need to produce the knife. That might lead to the original knife being lost or destroyed and not available for the defence to inspect. My concern is that, if the police know that a photograph is as good as the real thing, they will take a photograph and dispose of the real thing, and thereafter it will be lost."—[*Official Report*, *Criminal Justice Committee*, 22 January 2025; c 27.]

It would be helpful to tidy up some of these concerns before stage 3. Although the convener outlined lots of benefits to the bill, I would be deeply concerned if all eyes were to be on getting everything digitised because that is much more efficient. If we lose some of the things that we already have, that will be contrary to the interests of justice.

**The Convener:** I call Liam Kerr to wind up and to press or seek to withdraw amendment 44.

10:45

**Liam Kerr:** I thank the cabinet secretary and colleagues for what they have said during the debate. I find myself persuaded by the cabinet secretary's arguments for her amendments to section 4 and by her arguments on my amendments 44 and 45, particularly regarding the burden on courts of applications and the use of DESC. There is an interesting side question about technology-constraining legislation, but we will explore that at another time.

However, I will be moving amendment 46, because it is in line with the committee's recommendations and, with respect, I did not hear strong arguments against it. I heard pretty persuasive arguments by Pauline McNeill for her amendments 47 and 93, which are largely similar to my amendment 46 but take it further.

I am not persuaded by the cabinet secretary's argument on my amendment 49, because, to my mind, all that the amendment says is that evidence will not be destroyed until the appeal has been determined; it does not say that it should be kept for ever. If you will forgive me, that sounds like common sense. The Law Society of Scotland has told us that that is necessary and is a good idea. I remind the committee that I am a member of the Law Society. If it tells me that something is a good idea, I often listen to it. The cabinet secretary made a reasonable and important point that the provision might be financially burdensome, but it seems to me that someone's liberty might be on the line here, and that is priceless. As I outlined in my opening comments, the Faculty of Advocates told us that physical items

"may provide decisive evidence to incriminate or exculpate an accused."

That is why amendment 49 is so important.

I seek to withdraw amendment 44, but I look forward to the convener asking me the questions on my other amendments.

*Amendment 44, by agreement, withdrawn.*

*Amendments 1 to 4 moved—[Angela Constance]—and agreed to.*

*Amendment 45 not moved.*

*Amendments 5 and 6 moved—[Angela Constance]—and agreed to.*

*Amendment 46 moved—[Liam Kerr].*

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

**Members:** No.

**The Convener:** There will be a division.

**For**

Clark, Katy (West Scotland) (Lab)
Dowey, Sharon (South Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)
McNeill, Pauline (Glasgow) (Lab)

**Against**

Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Matheson, Michael (Falkirk West) (SNP)

Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 4, Against 4, Abstentions 0. As the votes are equal, I will use my casting vote as convener to vote against the amendment.

*Amendment 46 disagreed to.*

*Amendment 93 moved—[Pauline McNeill].*

**The Convener:** The question is, that amendment 93 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Clark, Katy (West Scotland) (Lab)
Dowey, Sharon (South Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)
McNeill, Pauline (Glasgow) (Lab)

**Against**

Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 4, Against 4, Abstentions 0. As the votes are equal, I will use my casting vote as convener to vote against the amendment.

*Amendment 93 disagreed to.*

*Amendments 47 and 48 not moved.*

*Amendment 49 moved—[Liam Kerr].*

**The Convener:** The question is, that amendment 49 be agreed to. Are we agreed?

**Members**: No.

**The Convener:** There will be a division.

**For**

Clark, Katy (West Scotland) (Lab)
Dowey, Sharon (South Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)
McNeill, Pauline (Glasgow) (Lab)

**Against**

Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 4, Against 4, Abstentions 0. As the votes are equal, I will use my casting vote as convener to vote against the amendment.

*Amendment 49 disagreed to.*

*Section 4, as amended, agreed to.*

*Section 5 agreed to.*

**After section 5**

**The Convener:** The next group of amendments is on body-worn video. After this group, we will have a break—I am sure that members will be happy to hear that. Amendment 7, in the name of the cabinet secretary, is the only amendment in the group.

**Angela Constance:** Amendment 7 will allow the time, date and location, as displayed on the footage captured by a body-worn video camera issued by Police Scotland, to be treated as sufficient evidence of those matters without police officers or staff needing to attend court to give evidence on them. There are safeguards in place for the accused, who will be able to object, within seven days, to the recording being treated in such a manner if they believe that the footage does not, in fact, accurately display the time, date or location of the events recorded.

Amendment 7 will put in place an evidential rule that allows for some non-controversial aspects of body-worn video evidence to be accepted by the court. That will reduce the need to routinely cite police officers to speak to those aspects, and it will benefit victims and witnesses by allowing cases to be brought to court sooner. That is in line with the current practice and legislation for fixed camera video footage, such as that taken on closed-circuit television, which is contained in section 283 of the Criminal Procedure (Scotland) Act 1995.

Amendment 7 provides that the Scottish ministers may, by regulations, enable other organisations such as the British Transport Police and the Scottish Prison Service to be added in the future to allow recordings from their body-worn cameras to be covered by the provision. That will ensure that primary legislation will not be necessary in order for other organisations to benefit from the bill.

I move amendment 7.

**The Convener:** I note that no other member wishes to come in and that the cabinet secretary has indicated that she does not wish to wind up.

*Amendment 7 agreed to.*

**The Convener:** There will be a short suspension to allow for a comfort break.

10:54

*Meeting suspended.*

11:03

*On resuming—*

**Section 6—Increase of fixed penalty limit**

**The Convener:** The next group is on fixed penalties. Amendment 50, in the name of Liam Kerr, is grouped with amendment 58. I call Liam Kerr to move amendment 50 and speak to both amendments in the group.

**Liam Kerr:** Amendment 50 relates to section 6, which will permanently increase the limit of the fixed penalties from £300 to £500. Sections 6(1)(b) and 6(1)(c) allow Scottish ministers to further increase that by regulations should they wish to do so. My amendment 50 seeks to simply delete that power, thus preventing ministers from straightforwardly increasing the fixed penalty amount to a higher level.

My reason for lodging the amendment is that I am concerned about the knock-on impact of a further increase to the fiscal fine level, which could mean that far more serious crimes are dealt with by fiscal fine. The increase to £500 can be entirely justified on inflationary grounds and we know that, at that level, it will cover offences such as shoplifting—which is, admittedly, causing huge problems for retailers, but that is another matter that we will need to address in another forum.

However, if ministers used the power in the bill to increase the maximum fine to, for the sake of argument, £1,000, it is not difficult to see how that would lead to more serious crimes being dealt with by fiscal fine. A £500 fine might not be considered sufficient punishment, so a matter would be dealt with in another way, but a fine of £1,000 might well be seen as a sufficient punishment. To me, that seems to bring problems.

The committee's report illustrates some of those problems when it states:

"One final point made about the use of fiscal fines for offences such as shoplifting was that the public might perceive their use as diminishing the importance with which the justice system treats such offences."

It goes on to say:

"Simon Brown of the Scottish Solicitors Bar Association commented: 'At a practical level—this has been picked up in the press—we see the effective decriminalisation of shoplifting. Shoplifting becomes an offence that is viewed as a low-level crime and is dealt with by fiscal fines.'"

A related point is that the Scottish Conservatives obtained statistics that show that, between 2018 and 2021, more than one in three people who refused the offer of a fiscal fine had no further action taken against them—so, in effect, they faced no punishment for their crime. I can supply that data to the cabinet secretary afterwards, if she wishes. The more fines are issued and the higher they are, the more serious the crimes are that people are, in effect, getting off with.

For that reason, I move amendment 50.

**Sharon Dowey:** My amendment 58 would require the Scottish ministers to publish a one-off report within a year of section 6 coming into force on the impact of the permanent increased scale of fiscal fine penalties. That report would cover

"an assessment of the number of fixed penalties issued",

the impact of the permanent higher sum on reoffending and on victims, and whether the permanent

"increase in the scale of fixed penalties has a positive or negative impact on the courts."

The Scottish ministers would also be able to determine other elements to include in the report.

My amendment is intended to complement and tie in with Liam Kerr's amendment 50 in this group, which would, as we have heard, remove the power of Scottish ministers to increase fiscal fines beyond £500 by regulation. The committee heard some concern about the impact of permanently increasing the level of fiscal fines, such as the ability of certain individuals to pay them. It is important to monitor the impact of the increased scale of fiscal fines on reoffending rates and on victims.

We support the permanent increase in fiscal fines, in line with the general support from stakeholders and recognition of inflation. However, it should be monitored to ensure that the fines are used effectively. In its written submission, the Scottish Women's Convention noted that it holds "strong reservations" about the permanent increase. It stated that the majority of those who receive fiscal fines

"reside in the most deprived areas in Scotland"

and it believes that,

"in most cases, fines worsen an individual's outcomes, placing many into further financial hardship."

Adult justice services at the City of Edinburgh Council indicated support for the permanent increase in fiscal fine penalties, but acknowledged that there must be

"a realistic prospect that a fine imposed will be paid, otherwise the proposal could increase pressure on the justice system."

In recent discussions with the Law Society and Victim Support Scotland regarding the bill, both stakeholders indicated support for my amendment to monitor the use and impact of the permanent increase.

Amendment 58 would improve our understanding of the use and impact of fiscal fines, address concerns that stakeholders have raised, ensure that we measure the impact that the increase has on reoffending and ensure that the use of those fines gives justice to victims.

**Angela Constance:** Amendment 50 would remove an existing power of the Scottish ministers to increase the maximum level of fiscal fines by subordinate legislation. Fiscal fines are an important tool that is available to prosecutors to use in appropriate circumstances as a proportionate response to lower-level offending. For those penalties to be effective, they need to be set at an appropriate level to address the range of circumstances for which they might be used. Modification of the maximum level is therefore required from time to time to ensure that they continue to be effective and to allow court and other resources to be focused on more serious cases.

The maximum level was set at £300 in 2007 and it remained there until the Coronavirus (Scotland) Act 2020 was put in place. As well as reducing the burden on the courts during the pandemic period, the increase enabled inflation to be taken into account. Requiring primary legislation to change the maximum level of fiscal fines would not represent an efficient use of parliamentary time. It would unacceptably restrict responsiveness to inflationary pressures, lead to inefficiencies in the justice system and fundamentally reduce the effectiveness of fiscal fines.

I emphasise that the power has existed since 2007. All that the bill will do is to update the power to make any changes more accessible to those who look at the statute book by ensuring that changes are made in the act. I therefore cannot support amendment 50.

**Liam Kerr:** I understand the point that is being made, but if that is right, why not simply provide that the sum will be increased by the level of inflation, so that it is tied not to crime inflation but to fiscal inflation? If the cabinet secretary is not minded to do that, under which circumstances could she envisage increasing the level of fiscal fines?

**Angela Constance:** At this point in time, I have no thoughts or plans in the immediate or short term to use the power, if Scottish ministers retain it. It is not a subordinate power that has been used very often. The committee should bear in mind that the upper level did not increase from 2007 until the coronavirus pandemic hit. I put on the record that I do not have any plans to use the power post this legislation, but it is important that it is future proof.

**Liam Kerr:** In that case, does the cabinet secretary concede that, if the Scottish ministers set the level at £500 and decide that that is the appropriate level, it should simply go up with inflation, rather than be tied to any decision by ministers to include more crimes within the ambit of fiscal fines?

**Angela Constance:** I know that Mr Kerr and some of his colleagues have a very keen interest in fiscal fines. The matter was debated every time the coronavirus legislation rules were extended during the annual debates that we had at that time. I repeat that the introduction of a higher level of fiscal fines increases the number of cases and does not increase the number of offences that are encompassed. It is, in my view, appropriate that ministers have that power to make such subordinate legislation. It is subject to the affirmative process, so it must be fully democratic and transparent.

On the matter of the increases being linked to inflation, that is an action for Mr Kerr to pursue. I am focused on pursuing other actions right now, and making further changes to fiscal fines is not at the top of my list.

On amendment 58, in general terms, I note that the increased level of fiscal fines has been available to prosecutors since 2020, and the Parliament has had a number of opportunities to scrutinise and test the available evidence in support of their continued use. That included during the passage of the Coronavirus (Recovery and Reform) (Scotland) Act 2022 and subsequent annual extensions, each of which required ministers to carry out a review and consultation before publishing a statement of reasons for extension. I am not persuaded that a further review of those embedded measures is needed.

On the specifics of amendment 58, the report would have to include an assessment of the number of fiscal fines that had been issued. That data is already published in the annual criminal proceedings data, as well as in statistics that are published by the Crown Office. I also understand that the Lord Advocate has regularly written to the committee on the use of the higher levels of fines and has offered to continue doing so.

11:15

The report would also have to cover the impact of the higher sum on reoffending levels and on victims. However, it would not be possible to produce anything robust on either of those aspects. There are many variables that will impact reoffending and victim experience, and it would not be possible to isolate and narrate the impact of a higher level of fiscal fines. The numbers that are issued are also too small to allow robust conclusions to be drawn.

Further, although I agree that it is always important to consider the impact on victims, I refer to the correspondence that the committee received from Victim Support Scotland in February, in which its chief executive said:

"victims have frequently told us that delays in the justice system can be a distressing and frustrating experience. VSS is satisfied with the notion that court time will not be tied up in prosecuting crimes that can be disposed of with a fiscal fine. Furthermore, we see a benefit for witnesses who will not have to attend court to give evidence if the offer for a fine is accepted."

Finally, the report would have to cover the impact of the new level of fines on the courts. It is unclear how that could be assessed other than by looking at the numbers that had been issued and accepted, or deemed to be accepted, and noting that those were all cases that did not take up court time. As I mentioned, that information is already available.

For those reasons, I cannot support amendment 58.

**The Convener:** I call Liam Kerr to wind up and press or seek to withdraw amendment 50.

**Liam Kerr:** I thank the cabinet secretary for her contribution to the debate, but I am afraid that I do not accept the argument. If the issue was truly about sticking at an appropriate level and not crime inflation, as it were, I cannot see why we would not make rises from the £500 level based only on inflation. The committee has already seen the consequences of fiscal fines, with the Scottish Solicitors Bar Association telling us its view that shoplifting is effectively decriminalised, which I mentioned earlier.

**Angela Constance:** For the record, I assure Mr Kerr that we are still incarcerating people for shoplifting offences. Of course, people will have their own views on whether that is a positive or a negative thing.

**Liam Kerr:** I understand the point that is being made but, as I said, Simon Brown of the Scottish Solicitors Bar Association told this committee:

"At a practical level … we see the effective decriminalisation of shoplifting. Shoplifting becomes an offence that is viewed as a low-level crime".—[*Official Report*, *Criminal Justice Committee*, 22 January 2025; c 32.]

I understand the point that the cabinet secretary is making, but we have to consider how the offence is viewed, and that is the point that was made by that witness to this committee.

Finally, there is one more reason why I am not persuaded by the cabinet secretary's arguments. She said clearly that she has no plans to increase the level of fiscal fines and that she has other things to deal with. Of course, I completely understand that. However, there is a reshuffle going on right now, as I understand it, and an election pending in less than 12 months. I would argue that, when the cabinet secretary said in her remarks that we need to future proof the legislation, she made my point for me.

For the reasons that I have outlined, I press amendment 50.

**The Convener:** The question is, that amendment 50 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Clark, Katy (West Scotland) (Lab)
Dowey, Sharon (South Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)
McNeill, Pauline (Glasgow) (Lab)

**Against**

Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 4, Against 4, Abstentions 0. As convener, I use my casting vote to vote against the amendment.

*Amendment 50 disagreed to.*

*Section 6 agreed to.*

### After section 6

**The Convener:** Does Sharon Dowey wish to move amendment 58?

**Sharon Dowey:** I take the cabinet secretary's comments on board. I am still not convinced that enough is being done or that I could say that the penalties are effective. However, I will look at the comments after the meeting and bring the issue back at stage 3.

*Amendment 58 not moved.*

### Section 7—National jurisdiction for custody cases in sheriff courts and JP courts

**The Convener:** We move to the next group. Amendment 59, in the name of Sharon Dowey, is grouped with amendments 51, 8, 52, 9, 53, 10 and 11. I remind members that if amendment 8 is agreed to, I cannot call amendment 52. I call Sharon Dowey to move amendment 59 and speak to other amendments in the group.

**Sharon Dowey:** Amendment 59 would ensure that, when deciding whether there should be a national jurisdiction calling from custody, there must be consideration of the

"individual circumstances of the case"

by the Lord Advocate or procurator fiscal. That could include circumstances such the travelling time and expense incurred by victims, witnesses, the defence and the prosecution. Amendment 59 addresses the various practical issues related to the travel and cost implications of national jurisdiction that were raised by stakeholders such

as Victim Support Scotland, the Law Society of Scotland, the Scottish Solicitors Bar Association, the Edinburgh Bar Association and Police Scotland.

From my recent discussions on the bill with Victim Support Scotland, I know that it is keen to ensure that there would be no undue burdens on the ability of victims and witnesses to travel. Victim Support Scotland emphasised that victims cannot be expected to travel long distances and take additional time out of their day to attend court. There needs to be a strong consideration of expanding the options for remote evidence, including the acceptable locations from which witnesses can give evidence, which my colleague Liam Kerr's amendments have tried to deal with. Amendment 59 would simply require that all circumstances in an individual case must be considered before making a national jurisdiction calling from custody. It aims to ensure that there is no unfair burden on any one of the parties who are involved.

**Pauline McNeill:** My amendment 51 would ensure that national jurisdiction can be used only for the initial custody hearing and, beyond that, only with the agreement of the defence. Following that, jurisdiction should remain linked to the locus of the offence. Simon Brown from the Scottish Solicitors Bar Association said that:

"The issue is the plummeting number of defence solicitors available to deal with this work, and the concomitant difficulties that places on being able to deal with cases outwith one's normal practice area. If we were in a situation where I had a Sheriff and Jury accused out on bail for a case, and I assume that it would be prosecuted at Kilmarnock, I would be faced with considerable logistical difficulties were that matter to be indicted in, say for example, Greenock."

My amendment 52 would ensure that national jurisdiction would end at the point of liberation on bail. Further to that, Simon Brown also said, when I asked him, that:

"The issue is, though, that those fully committed for trial and therefore remanded in custody are only a relatively minor percentage of solemn cases. The vast majority of solemn proceedings commence with the case against the accused being continued for further examination and the accused liberated on bail. We would require a similar undertaking that national jurisdiction would end at the point of liberation on bail to make the system workable."

I welcome the cabinet secretary's amendments 8 and 10, which provide the clarity that I was seeking at stage 1 about how far national jurisdiction would be allowable in relation to various proceedings. In simple terms, I think that that would not be the trial, but could be proceedings before that.

Although I am sure that I do not need to mention it again, you have heard from Sharon Dowey and from me about the crisis that we are experiencing in terms of the loss of criminal defence lawyers. That was mentioned in the press again this week. The Government does not seem to have taken that into account when legislating for national jurisdiction. We have to hope that everyone will be sensible about it and that we will not have lawyers or victims going up and down the country. It is less about victims, because the provisions relate to procedural hearings, but it will cause practical difficulties for defence lawyers and accused persons, particularly as people are leaving the criminal bar.

It is sensible to have national jurisdiction for custody hearings. My reading of the bill is that the default will be virtual appearances for custodies, which makes sense—you can see the efficiency in that. However, we must remember that national jurisdiction is about not just virtual but physical appearances. I am concerned about the practical impact on solicitors' ability to conduct their business if they have to be in different sheriff courts for different things.

**Angela Constance:** We are in the unusual yet fortunate position that many of the provisions in the bill mirror those that have been in force for more than five years, since the emergency legislation that was passed in the early weeks of the pandemic.

Throughout that time, we have engaged with justice partners to identify how the provisions have been working in practice, and the committee has heard evidence on that, through the stage 1 process and, in previous years, when considering extension of the temporary framework.

Stakeholders and justice partners have consistently told us that national jurisdiction provides flexibility to allow custody hearings to be managed quickly and efficiently, ensuring that the accused does not have to be transferred from one court to another for what are often short hearings. When the accused is subject to a number of outstanding warrants, national jurisdiction hearings can also facilitate bringing them together for pleas and sentencing, thereby minimising churn in court business.

I turn to Sharon Dowey's amendment 59. Prosecutors take decisions that are based on the public interest. They are bound by the "Prosecution Code" and guidance that is issued by the Lord Advocate. It is not necessary to require them to consider the facts and circumstances of the case, as that is a fundamental part of their approach.

It would not be appropriate for them to make decisions that are based on cost and expense incurred by others. National custody jurisdiction does not include trials, so the requirement to consider the travelling time and expenses of

witnesses is not relevant. In any event, it is unclear how prosecutors would know that type of information at the stage of marking a custody. They might not even know the identity of the accused's lawyer at that point. Amendment 59 would introduce unnecessary and onerous obligations on prosecutors and, therefore, I cannot support it.

The other amendments in this group seek to adjust the end point of national jurisdiction. Ms McNeill's amendments 51 and 53 would provide for the continuation of national jurisdiction—beyond the initial custody appearance—to be subject to the accused's agreement. I am not persuaded of the merits of an approach in which matters of the court's jurisdiction would be subject to a veto by the accused.

Ms McNeill's amendment 52 would replace the provision in the bill that ends national jurisdiction in solemn proceedings on full committal, with a provision that would end it after bail has been granted. Although that might be intended to provide a clear end point before a trial, the effect would actually be to extend the court's national jurisdiction in solemn custody cases, when the accused has been fully committed and not released on bail. That is contrary to the approach of the past five years and the committee's stage 1 recommendations. Therefore, I cannot support any of Ms McNeill's amendments.

I have lodged my own amendments, which I urge the committee to support. I believe that they address what I see as the intention behind Ms McNeill's amendment 52.

My amendments 8 and 10 make it clear that the default will be for national jurisdiction to end following initial custody hearings, and only in specific circumstances will national jurisdiction continue until the conclusion of a case. The amendments provide that national jurisdiction in solemn proceedings will come to an end at the point at which the accused is fully committed. They also recognise that not all accused will be fully committed, as that is not a compulsory step when the accused has been bailed. As such, my amendments further provide that, when there is no full committal, national jurisdiction can continue only when an accused pleads guilty before the first diet. The amendments also make it clear that first diets, and any subsequent solemn proceedings, cannot be heard under national jurisdiction.

11:30

**Pauline McNeill:** I want to check that I understand what you have said. National jurisdiction could apply up to full committal. That means that some hearings, such as procedural and preliminary hearings, could be held under national jurisdiction. Did you say that you expect national jurisdiction to be used mainly for custody appearances, or do you expect it to be used in other circumstances? The big problem is that, if hearings can be heard anywhere in Scotland prior to full committal, that might involve lawyers running up and down the country. Did you say that you expect the custody hearing—the first appearance—to be held under national jurisdiction?

**Angela Constance:** What I said is that amendments 8 and 10 make it clear that the default will be for national jurisdiction to end following initial custody hearings. National jurisdiction will continue until the conclusion of a case only in very specific circumstances. The amendments recognise that, in solemn proceedings, not all accused people will be fully committed. Full committal is not a compulsory step if, for example, the accused has been bailed.

Amendment 8 sets out the changes for sheriff court proceedings, both summary and solemn, and amendment 10 replicates the changes for proceedings in the justice of the peace court.

Amendments 9 and 11 respond to concerns that Katy Clark raised with me about how national jurisdiction applies to an accused who appears following an earlier failure to appear in principal proceedings and who is due to be sentenced in respect of those principal proceedings. My amendments provide that, in those circumstances, the national jurisdiction court can pass a sentence or otherwise dispose of the principal proceedings only when there has not been an evidence-led trial or, if there has been an evidence-led trial, only in circumstances in which it is considered to be in the interests of justice to do so. An example of that might include circumstances in which the accused changed their plea to guilty early on in the trial, with the result that very limited evidence was heard.

Amendment 9 covers proceedings in the sheriff courts and amendment 11 covers those in the justice of the peace courts.

Although I have lodged amendments that clarify the end point for national jurisdiction, as well as adding some limitations to sentencing under national jurisdiction, justice partners have warned of the risks of introducing additional complexity by making disproportionate changes to a system that is well understood by justice partners and practitioners.

I ask members to support my amendments, which respond to the committee's recommendation at stage 1 and provide clarity on the end point of national jurisdiction, while preserving the progress that has been made in

making better use of resources, as well as protecting the rights of the accused.

**The Convener:** I invite Sharon Dowey to wind up and to press or withdraw amendment 59.

*Amendment 59, by agreement, withdrawn.*

*Amendment 51 not moved.*

**The Convener:** I remind members that, if amendment 8 is agreed to, amendment 52 will be pre-empted.

*Amendments 8 and 9 moved—[Angela Constance]—and agreed to.*

*Amendment 53 not moved.*

*Amendments 10 and 11 moved—[Angela Constance]—and agreed to.*

*Section 7, as amended, agreed to.*

*Section 8 agreed to.*

**After section 8**

**The Convener:** The next group is on review of jurisdiction for connected proceedings. Amendment 54, in the name of Maggie Chapman, is the only amendment in the group.

**Maggie Chapman (North East Scotland) (Green):** Before I begin, I refer colleagues to my entry in the register of members' interests. I worked for a rape crisis centre before I was elected.

Amendment 54 seeks to address the widely acknowledged and long-standing problem of how domestic abuse is treated in child contact proceedings. It comes out of conversations with Scottish Women's Aid and others, as it has become clear that we need to tackle the issue.

Professor Marianne Hester of the University of Bristol has written about the three planet model. She describes the domestic violence planet, where domestic violence is the crime in question. The—usually—father's behaviour is recognised by the police and other agencies as being abusive to the mother, so he could be prosecuted or have orders taken out against him. At the same time, support agencies provide protection and refuge for the mother and civil and criminal laws provide intervention and support mechanisms. On this planet, the focus is on violent male partners who need to be contained and controlled in some way to ensure that the women and children are safe.

Then we have the child protection planet. When children are living with a mother who is experiencing domestic violence, this other planet, where a different set of professionals live, becomes involved. Here, public law deals with child protection and the emphasis is on the welfare of the child and its carer. In order to protect the children, social workers are likely to insist that the mother removes herself and her children. Despite professionals identifying that the threat of violence comes from the man, the mother is seen as responsible for dealing with the consequences and the violent man effectively disappears from the picture.

On the third planet, the child contact planet, there is yet another population, because a different set of professionals reside here, governed by private, not public, law. That has tended to place less emphasis on child protection and more on the idea that children should have two parents. In this context, an abusive father may still be deemed to be a good enough father, who should at least have contact with, if not custody of or residence with, his child, post-separation. The mother, who tried to protect the child from its father's violent behaviour by calling in the police and supporting his prosecution on the domestic violence planet, and by leaving him, as instructed, on the child protection planet, is now ordered to allow contact between her violent partner and her children, leaving her confused and potentially fearful, again, for the safety of her children.

The challenge is how we bring those three planets into alignment so that the safety of women and children becomes paramount. That requires a better understanding of the dynamics of domestic violence and a co-ordinated approach by all the agencies and services involved. It is also vital that the gap is closed between violent men on the one hand and fathers on the other, so that they can be dealt with at the same time.

This is a cross-jurisdictional problem. In the Scottish context, the issue has been discussed by the Law Society for Scotland, the Children and Young People's Commissioner Scotland and others. A recent report by the Scottish Centre for Crime and Justice Research identified key problems, including a lack of mechanisms for communicating information between different court proceedings, and the judiciary's limited and siloed understanding and consideration of domestic abuse.

Various recommendations have been made, some of which have been implemented, but we know that the problems persist, often at huge cost to the wellbeing of women and children.

Scottish Women's Aid has suggested that a significant and potentially highly effective reform would be to ensure that, when possible, the same sheriff hears both the domestic abuse and the child contact case. That would make it much more likely that the evidence of abuse and its effects would be properly considered in all their depth and breadth, and that the gulf between the planets that Marianne Hester described could be bridged.

**The Convener:** You may have covered this already in your opening remarks, Ms Chapman—perhaps I missed it. Are you aware of any evidence or feedback that suggests that, to a certain extent, courts are already attempting to make your proposals work, without legislative provision being required?

**Maggie Chapman:** There are non-legislative mechanisms in place, but there are still questions and concerns around the sharing of information and data and, importantly, around an understanding of the consequences for women and their children of having to appear in those different settings with different professionals. They may be retraumatised as a result of having to tell their stories again and having to justify to a different set of professionals why they are afraid of allowing child contact. That is still happening, and I believe that if we are serious about taking a genuinely trauma-informed approach to our justice system as a whole, there is more that we can do in that respect.

I originally wanted to lodge an amendment that would, where possible, allow for the same sheriff to cover both domestic abuse and child contact cases, but I appreciate that that is outside the scope of the bill. My amendment 54, therefore, while it would not require that reform, would require a review to be carried out with the benefit of expert input from the Lord Advocate and other specialist organisations with deep experience and expertise in such issues. It should not be beyond the wit of both our legal systems and our politicians to work out a way to better support and protect women—and children in particular—in domestic abuse and any related or connected child contact situations.

I move amendment 54.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** I thank Maggie Chapman for lodging amendment 54. I completely agree with everything that she said, and it is good that the issue has been raised. My only concern is that the bill before us might not be the correct bill for her proposed new section—it should perhaps go in the Victims, Witnesses, and Justice Reform (Scotland) Bill; maybe the cabinet secretary will address that. Nevertheless, I completely understand and agree with Maggie Chapman's argument.

**Angela Constance:** The Scottish Government recognises the issues that Ms Chapman seeks to address in her amendment. There is—entirely understandably—a growing focus on domestic abuse in civil cases and, as Ms Chapman's amendment mentions, in particular in family cases relating to matters such as child contact and residence. The civil-criminal interface on domestic abuse is of specific concern, given that there could be a criminal case on domestic abuse and parallel civil proceedings on child contact in which the domestic abuse is raised.

The Scottish Government has a programme of work to consider and tackle the problems in this area. I outlined the work that we are doing or plan to do when I responded on 12 March this year, during stage 2 of the Victims, Witnesses, and Justice Reform (Scotland) Bill, to an amendment that had been lodged by Russell Findlay. I will briefly run through again what we are doing.

First, we have on-going work that is using improvement methodology to consider the criminal-civil interface in relation to domestic abuse. That included two workshops last year with justice agencies and with the voluntary sector, and we are considering possible changes to take forward.

Secondly, as I said on 12 March this year, the Scottish Government will carry out further research on integrated domestic abuse courts, which can look at both civil and criminal aspects of domestic abuse. Such courts operate in some other jurisdictions. Our work on that research has started, and we will publish our findings.

Thirdly, I also said on 12 March that the Scottish Government would prepare a policy paper on proposed civil court rules, which will go to the Scottish Civil Justice Council. Rules are made by the courts rather than by Government, but we can and do put forward proposals. That paper will propose changes to court rules on the information regarding domestic abuse and sexual assault that is provided to civil courts. A draft of that policy paper will be ready by the start of stage 3 of the Victims, Witnesses, and Justice Reform (Scotland) Bill.

Finally, we intend to consider whether the Scottish ministers should make regulations to confer on the courts a power to make an order in relation to a person who has behaved in a vexatious manner in civil proceedings. That reflects the suggestion that has been made to us that some people may raise repeated court cases in order to continue their domestic abuse. Before making any such regulations, the Scottish ministers must consult the Lord President, which I intend to do.

As I said, although I am not entirely certain that they are matters for the bill before us, I nonetheless very much recognise the concerns that have been raised by Ms Chapman. Given that the Scottish Government already has a number of pieces of work under way in this area, I ask Ms Chapman not to press amendment 54.

11:45

**Liam Kerr:** I have a question on that point, which relates to Rona Mackay's comment. If the cabinet secretary is not persuaded that amendment 54 is for this bill, would she be receptive to Maggie Chapman lodging it at stage 3 of the Victims, Witnesses, and Justice Reform (Scotland) Bill?

**Angela Constance:** Bearing in mind the scope of the work that I described, I think that that is a possibility. However, I want some of that work to come to fruition before I make a commitment now—in June—in relation to proceedings that are still a few months away. I have sought to demonstrate to Ms Chapman and other members that extensive work is on-going in this area.

I will say more about the timelines. The research on integrated domestic abuse courts is being undertaken now. The project initiation document has been finalised, and our intention is to complete and publish the research in early 2026. As I have said, the policy paper for the Scottish Civil Justice Council on court rules will be ready by the beginning of September, prior to or as we embark on stage 3 of the Victims, Witnesses, and Justice Reform (Scotland) Bill. Obviously, it is not for me to place timescales on the Scottish Civil Justice Council.

As I have said, I am seeking advice on regulations under section 102 of the Courts Reform (Scotland) Act 2014 with a view to giving powers to the civil courts to make orders in relation to a person who has behaved in a vexatious manner. I will be writing to the Lord President—as I said, I have to consult him—later this month.

**Maggie Chapman:** I appreciate those comments, and thank you for providing the timelines, which are helpful to know.

When you were listing the work that is under way, you talked about work to improve the civil-criminal interface. In conversations that I have had in the past few weeks with Scottish Women's Aid, there has been a sense that some of that work has shifted in focus, that we have lost the focus of supporting and protecting the victim/survivor and any children in those cases, and that there has been a shift back to a non-trauma-informed approach. Will you say more about that?

**Angela Constance:** I would be happy to engage directly with Scottish Women's Aid on that, because I do not want that to be the perception or the reality. As Ms Chapman mentioned, in the on-going improvement work following the workshops that we undertook with partners, 10 areas have been identified in which more detailed work is needed, including training, data sharing, court processes and structured case management. Ms Chapman spoke about some of the work that needs to be developed.

Rather than make promises now that I cannot keep—other than to say that I will want to give a fair hearing to all of this—I will simply say that we will consider matters further over the summer. I have a meeting arranged with Mr Findlay, and I would also be happy to meet Ms Chapman, separately or together with Scottish Women's Aid, over the summer, so that we can at least ensure that we look with a fresh pair of eyes at where we are, what the timescales are and what the journey ahead is.

**The Convener:** I call Maggie Chapman to wind up and to press or withdraw amendment 54.

**Maggie Chapman:** I am grateful to the cabinet secretary for her comments, and I will take her up on that offer to have further discussions. On that basis, I seek leave to withdraw amendment 54.

*Amendment 54, by agreement, withdrawn.*

**The Convener:** Our next group is on a report on time limits for solemn proceedings. Amendment 55, in the name of Liam Kerr, is the only amendment in the group.

**Liam Kerr:** Amendment 55 comes right at the end of part 1, which deals with the modernisation of the court provisions. As we know, on 30 November 2025, the current temporary provisions that extend certain time limits in solemn cases will revert to the previous pre-pandemic time limits for new cases that enter the system. That is an issue that the committee has interrogated quite a lot during the bill process, and there was some recent movement on the issue on the part of the cabinet secretary, which I welcome and believe is commendable.

However, during the process, significant concerns were raised that the reversion was not without risk. As the committee's stage 1 report notes, the Law Society told the committee that, due to issues around the capacity of the courts to accommodate trials,

"It is very difficult to see the courts getting back on track to the point where we will have trials within, for example, the 12-month time limit that applies in a bail case."

The stage 1 report also notes that the Scottish Solicitors Bar Association said:

"The time limits are being extended on a daily basis. They are nowhere near pre-pandemic time limits. Time bars are being extended in just about every solemn case that I deal with."—[*Official Report*, *Criminal Justice Committee*, 22 January 2025; c 29, 28.]

Finally, our report quotes the SCTS, which, when asked whether the system was on track for a return to pre-pandemic time limits, said:

"The short answer is no."—[*Official Report*, *Criminal Justice Committee*, 29 January 2025; c 21.]

My amendment 55, therefore, simply seeks to address those concerns. It provides that ministers must prepare and publish a report within one year of the solemn courts reverting to pre-pandemic time limits, in order to determine whether courts have been able to meet the time limits and what further measures might be needed if they are not being met.

I move amendment 55.

**Angela Constance:** I have listened carefully to Mr Kerr and the position that he has put forward. I am, of course, aware that there has been a great deal of debate on the subject of the extended time limits that have been put in place to assist the criminal justice system to manage the backlog of cases that has built up as a result of the pandemic. There has been significant progress in addressing those backlogs, and it is for that reason that the only time limit extension provisions that remain in effect as of today are those that relate to solemn cases. Those provisions will expire later this year, on 30 November.

As I set out to members when the committee considered the Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Saving Provisions) Regulations 2025 in April this year, justice agencies have not raised concerns with me about the transition back to pre-pandemic time limits, provided that appropriate saving provisions are put in place.

I understand that amendment 55 is focused on how prosecutors and courts manage the transition. However, I have concerns about how it is framed. I do not think that it would be appropriate for the Scottish ministers to report on the ability of the courts to comply with criminal procedure time limits. That is because, under the Judiciary and Courts (Scotland) Act 2008, which was supported by all parties in this Parliament, the Lord President, as head of the judiciary, is responsible for the management of court business. The role of prosecutors is relevant, too, and they are, of course, also operationally independent of the Scottish ministers. The proposed reporting requirement would, in effect, result in the Scottish ministers being asked to offer an opinion on how court business was being managed by the Crown Office and the judiciary, and I do not think that that would be appropriate.

I also think that it is important to highlight a number of other issues with amendment 55. The amendment would require information to be broken down by reference to the positions before and after the changes that were made by the Coronavirus (Recovery and Reform) (Scotland) Act 2022 came into effect. However, that act simply re-enacted changes to time limits that were first made in the Coronavirus (Scotland) Act 2020, which was passed in the early weeks of the pandemic. As such, the use of that reference point would, in effect, provide information about the extended time limits but not information on the pre-pandemic time limits.

Further, there is an issue in relation to the concept of a time limit being met. Both time limits can be extended on application to the court on a case-by-case basis. It is not clear whether it is intended that those would be considered to have been met, because there was a new, extended time limit, or not met, because the extension had to be applied.

The proposed reporting period of one year from the date on which provisions in the 2022 act cease to have effect is also too short. That is because, in the light of the Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Saving Provisions) Regulations 2025, cases that are subject to the time limits that were set by the Coronavirus legislation will continue to be in the system for a considerable time after the provisions themselves have expired. Indeed, there will still be cases subject to the pandemic-era time limits in the system for six months beyond the point at which the amendment would require the report to be published. Further, as the pre-pandemic time limit for commencement of a trial in which an accused is granted bail is 12 months, no cases would have breached that time limit at the point at which the report had to be published.

More generally, I am not persuaded that such a reporting requirement is the best way to monitor the transition back to pre-pandemic time limits. The Scottish Courts and Tribunals Service already publishes extensive information about court business on its website on a monthly basis, including the average time between pleading diets and evidence-led trials in sheriff court cases, solemn cases and High Court cases. That has informed the Scottish Government's understanding of how the courts have been managing the backlog of cases that built up during the pandemic. Of course, if, for any reason, the committee or any MSP wanted to garner more specific information, it would be open to them to request additional information from any justice agency.

For the reasons that I have outlined, I ask Mr Kerr not to press amendment 55. If he does, I ask the committee to vote against it.

**The Convener:** I invite Liam Kerr to wind up and to press or withdraw amendment 55.

**Liam Kerr:** I listened with great interest to the cabinet secretary, and I am sympathetic to an awful lot of what she put before us. I might counter

that, although the Lord President is, of course, the head of the service and is independent, surely, in the system that we have, ministers must have some oversight of what is going on. Bear in mind that I am not asking for an opinion; I am asking for some way of scrutinising compliance with the timescales and the ability of the service to meet the timescales, and for this Parliament and the Government to help to properly resource the system to make sure that it works as well as possible.

We heard very powerful testimony, which I referred to earlier, about what is happening in the courts and what might happen when the timescales revert, which I am sure causes fellow committee members great concern.

That said, I think that the cabinet secretary spoke persuasively, and I accept that my amendment is perhaps not the right route to achieve my aims, so I will not press it to a vote today. I would like to work with the cabinet secretary offline to work out what the best way of achieving the end game is—I know that the cabinet secretary is receptive to that sort of thing—because I suspect that we share the drive to do things as efficiently as possible and in the best way that we can. However, I accept that there might be a better way to do that than through amendment 55. For that reason, I seek leave to withdraw amendment 55.

*Amendment 55, by agreement, withdrawn.*

### Section 9—Domestic homicide or suicide review

**The Convener:** The next group is entitled "Part 2 reviews: expansion to include events after death". Amendment 12, in the name of the cabinet secretary, is grouped with amendments 13, 19 and 21.

12:00

**Angela Constance:** My amendments in this group will provide for the expansion of domestic homicide and suicide reviews in certain defined circumstances. At present, the bill will enable reviews that can learn lessons from the death and the circumstances that led up to it, but not beyond it. The amendments will allow a review to consider the aftermath of a death in circumstances in which the victim and perpetrator were partners or ex-partners and where, at the time of the death, either of them had a child who was a young person or an adult at risk. That will also apply if there was a young person who was not their child living in their household at the time of the death.

The amendments will enable a greater understanding of what happens to such bereaved persons following a death, whether their views are sought on decisions that impact them and whether those views are considered by professionals in making their decisions.

Amendment 19 will make provision to allow the remit for the reviews to be expanded beyond the point of death while setting out the persons to whom the expansion applies and the parameters of what can be examined within an expanded review. The amendment also sets out that the consent of the Lord Advocate will be required before the remit of a review can be expanded. That is to ensure that any live criminal investigation or proceedings are not jeopardised.

Amendments 12 and 13 will make consequential changes to section 9, which describes what a domestic homicide and suicide review is. That simply reflects the fact that, under amendment 19, in some cases, a review will now be expanded beyond the point of death.

Amendment 21 will make consequential changes to section 17 to require that the terms of reference of a review reflect any expansion of the remit. The amendment will also allow the review remit to be adjusted later to cover any cases in which it is appropriate to revisit the initial decision on whether to expand the review remit. That will allow for flexibility. However, it continues to be the case that the Lord Advocate's consent will be required for any extension, so the same safeguards will apply as to any initial decision on whether to expand the remit of a review.

The expansion of the reviews to consider relevant bereaved persons following a domestic homicide or suicide is in line with the United Nations Convention on the Rights of the Child—specifically, article 12, which states that children and young people have the human right to have opinions and for those opinions to be heard and taken seriously. By expanding the review model in such circumstances, domestic homicide and suicide reviews will help to learn from the aftermaths of such deaths to improve practice, implement change and better safeguard children, young people and supported adults.

I move amendment 12.

*Amendment 12 agreed to.*

*Amendment 13 moved—[Angela Constance]—and agreed to.*

**The Convener:** Our next group is entitled "Part 2 reviews: familial homicide and honour killing". Amendment 60, in the name of Sharon Dowey, is grouped with amendments 61 to 66, 16, 67 to 76 and 78 to 91. If amendment 31, which is in the group entitled "Part 2 reviews: case reports", is agreed to, I cannot call amendment 91 in this group, due to pre-emption.

**Sharon Dowey:** Some of the cabinet secretary's amendments will restrict the definition of domestic abuse in the bill to the definition in the Domestic Abuse (Scotland) Act 2018—namely, to abusive behaviour between partners and ex-partners. That reflects the concerns that the committee heard from experts during its evidence gathering on the potential for the bill to undermine the definition of domestic abuse, as was acknowledged in the committee's stage 1 report.

We support those amendments. However, my amendments to introduce familial homicide and honour killings as part of a domestic homicide or suicide review conflict with them. My intention was to reflect the support for the inclusion of honour killings in particular in the scope of the bill, as mentioned in the committee's stage 1 report. For example, EmilyTest, Victim Support Scotland and the Equality and Human Rights Commission all indicated support for a wider definition.

My amendments would extend the scope of reviews to cover familial homicide and honour killings. The amendments provide two options—to include that in the bill immediately or to require ministers to create regulations to allow for that within two years of the bill coming into force. The amendments also provide a definition of "family" for that purpose.

As a result of the cabinet secretary's amendments, I will not press or move my amendments in this group today, but I will look at how best to bring them back at stage 3. Given that the bill retains the ministers' ability to expand the scope of reviews in future, and that the cabinet secretary referenced honour killings specifically in her letter to the committee as one of the reasons for that, I ask her to confirm under what circumstances she would use the powers to include honour killings in the scope of reviews, and whether she has a timeline for doing so.

I move amendment 60.

**Angela Constance:** I make it clear to the committee that I fully intend to include so-called honour killings in the review model. However, there is on-going work that needs to be concluded before that can be achieved. I am referring to work that is currently being undertaken by the Scottish Government and stakeholders to develop a policy definition of what so-called honour abuse means in a Scottish context. That will lay the foundation of how we then look to define such deaths for review purposes.

Although I share Ms Dowey's ambition to bring so-called honour killings into the scope of the review model, I cannot support amendments 60 to 76 or amendments 78 to 91, for a number of reasons. I acknowledge Ms Dowey's remarks about her intentions, but I will go through the reasons anyway, because it is helpful to put them on the record—it will, I hope, help us as we work together.

The first reason why I cannot support the amendments is that, at present, neither familial homicide nor honour killings is defined in a Scottish context. Although I recognise that amendment 67 includes time for a definition of familial homicide to be developed, there is no such work under way. My understanding is that there is not sufficient appetite to include familial homicide without an honour context in the model, although there is a strong desire to see so-called honour killings included.

I turn from the regulation-making power to the amendments that would include the extra category of death in the model with immediate effect. Those amendments look to define so-called honour killings in fairly broad terms in order to capture the wider set of relationships that such abuse and deaths include. However, the consequences of broadening the scope in such a way are that it would significantly expand the model and create delivery risks.

The broadening of the scope to include familial homicide would also cover circumstances in which there is no domestic abuse link or so-called honour killing link. Such deaths go outwith the focus of the proposed review model and would risk overwhelming it if they were to be included from the outset.

The amendments make no reference to the important context of perceived—I emphasise that it is perceived—dishonour and shame that a victim is said to have brought upon their family, extended family and community. At the same time, I am concerned that the definition is too narrow in the context of so-called honour killings, as it captures only close family members and does not cover the full range of possible perpetrators. Therefore, although the definition is, on the one hand, too broad and would bring a wider range of deaths into the model scope, it is, at the same time, likely too narrow and would cut across the work that is being undertaken by stakeholders to define what so-called honour abuse means in a Scottish context.

For similar reasons, I cannot support amendment 67, which would require the Scottish ministers to make regulations in relation to both familial homicide and honour killings. The coverage—which includes familial homicide, not just honour killings—is too broad. However, I give my commitment that reviews will be extended to include so-called honour killings. In the event that there is a desire in the future to include broader familial homicide, the bill already contains powers to extend the scope of the model with the necessary flexibility.

Therefore, I cannot support the amendments, but I reiterate my absolute commitment to ensure that the review model extends to so-called honour killings at the appropriate time and when the crucial preparatory work to which I have referred has been undertaken. I would be happy to discuss the issue further with Ms Dowey ahead of stage 3 to set out the detail of the work that is already happening in that regard. I therefore ask Ms Dowey not to press those amendments, and she has intimated that she will not do so.

Amendment 16 would amend the regulation-making power in section 10 of the bill. That power will enable Scottish ministers to expand the review model to include further types of death arising from abusive behaviour, and it will be used to add so-called honour killings to the review model. Amendment 16 would allow adjustments to be made to the considerations to be weighed by the review oversight committee at the sift stage, so that the sift can be altered when the scope of the review model is being adjusted.

Amendment 16 has been prompted by the need that we identified to adjust the sift criteria at stage 2, in light of my amendment 14, in the next group, which relates to anchoring reviewable deaths in a domestic abuse context. It has been shown that it will not necessarily always be possible to alter the scope of the review sufficiently through a change to the definition alone, and it might be necessary to combine definition changes with changes to the sift mechanism to get the correct result. The same may well apply when the scope of reviews is widened under section 10 in future. So-called honour killings are a salient example of where there will be a need to adjust the sift criteria.

Amendment 16 is therefore an important amendment that will help to future proof the model in the event of changes in social and cultural circumstances that may lead to modification of the types of deaths and events that the model may look to review in time. It also demonstrates my commitment to include so-called honour abuse in the model and ensures that that inclusion will be able to take place in the way that I believe that we all want.

I therefore ask committee members to support my amendment 16. I reiterate my offer to discuss so-called honour killings further with Ms Dowey and ask that she does not press her amendments in this group.

**The Convener:** As no other member wishes to come in, I invite Sharon Dowey to wind up and press or withdraw amendment 60.

**Sharon Dowey:** I appreciate the comments from the cabinet secretary. I will withdraw amendment 60.

*Amendment 60, by agreement, withdrawn.*

**The Convener:** Our next group is entitled “Part 2 reviews: link to domestic abuse”. Amendment 14, in the name of the cabinet secretary, is grouped with amendments 15, 17 and 18. I call the cabinet secretary to move amendment 14 and speak to all the amendments in the group.

**Angela Constance:** The amendments in this group address points that were raised by the Crown Office and the committee during stage 1 proceedings and address the request for reassurance that nothing contained in the bill will undermine the commonly understood definition of domestic abuse in Scotland.

Amendment 14 provides that the deaths of children who are killed by a parent where there was not domestic abuse, or where it was not believed that there was domestic abuse, will not be included in the domestic homicide and suicide review model. It does that by requiring there to have been, or to appear to have been, domestic abuse between the perpetrator and a current or former partner before the death can be a reviewable death.

That ensures that abusive behaviour is out of scope of a domestic homicide and suicide review if it is not anchored in domestic abuse between partners or ex-partners. I would clarify that that does not create or leave a gap in respect of deaths of minors, because cases that are, for instance, purely child abuse-related would continue to be reviewed, as they currently are, through existing child protection learning reviews.

With similar reasoning, amendment 14 also provides that a suicide will be reviewable only if it is thought to have been contributed to by abuse by the partner or ex-partner of the deceased. That means that children who are bereaved by domestic homicide or suicide who then die by suicide, or children who die by suicide where their parent was experiencing domestic abuse, would not be included in the review model. Where the child is a minor, such deaths would continue to sit within the remit of child protection learning reviews, although those can be brought into the scope of the review in future through the enabling power in section 10.

**Liam Kerr:** The definition point is a good one and I propose to vote for it. I am looking back at our report and see that many witnesses expressed concern about widening the definition, so I understand why the amendments are being made. However, there were witnesses who said that they prefer the original definition as drafted and gave various reasons for that. What does the cabinet secretary say to them? Obviously, their view is not the preferred view.

12:15

**Angela Constance:** The committee will recall that my initial position was that the purpose of the review is different from that of the prosecution of domestic abuse. They are clearly different. One is about holding perpetrators to account and one is about learning for the purposes of prevention. However, I have reflected on the committee's view as expressed in your stage 1 report. If things change in future, there is the enabling power in section 10. It has been a matter of fine judgment, but the overall view of the committee and others was that we need to anchor domestic abuse in our gold-standard definitions.

Amendment 15 makes a consequential adjustment to the concept of a connected death of a young person. A connected death is when a young person is killed in an attack on another primary victim. The amendment provides that, when the primary victim has survived, the connected death is reviewable only if the primary victim's death would have been reviewable. If that would not have been the case because there was no context of partner domestic abuse, the connected death would also be outwith scope.

Amendment 17 adjusts the sift criteria in line with the changes in scope, so that the review oversight committee is tasked with considering whether and to what extent there is any link between partner domestic abuse and the death. It will also sift out cases that have some history of domestic abuse but that is not linked in any way to the death of the victim. That will involve an exercise of judgment based on all the facts and circumstances, so it is not possible for the initial notification stage.

Amendment 18 is a minor technical amendment to correct the terminology used in section 16(3)(a), to match the rest of the section.

I move amendment 14.

*Amendment 14 agreed to*

*Amendment 15 moved—[Angela Constance]—and agreed to.*

*Amendment 61 not moved.*

*Section 9, as amended, agreed to*

**After section 9**

*Amendment 62 not moved.*

**Section 10—Power to modify matters in relation to reviews**

*Amendments 63 to 66 not moved.*

*Amendment 16 moved—[Angela Constance]—and agreed to.*

*Section 10, as amended, agreed to.*

**After section 10**

*Amendment 67 not moved.*

**Section 11—Review oversight committee**

*Amendment 68 not moved.*

*Section 11 agreed to.*

**Section 12—Case review panels**

*Amendment 69 not moved.*

*Section 12 agreed to.*

*Section 13 agreed to.*

*Schedule agreed to.*

**Section 14—Notification of deaths**

*Amendment 70 not moved.*

*Section 14 agreed to.*

*Section 15 agreed to.*

**Section 16—Determination as to whether to hold a review**

*Amendments 71 to 73 not moved.*

*Amendments 17 and 18 moved—[Angela Constance]—and agreed to.*

*Amendments 74 and 75 not moved.*

*Section 16, as amended, agreed to.*

**After section 16**

*Amendment 19 moved—[Angela Constance]—and agreed to.*

**Section 17—Carrying out of review**

*Amendment 76 not moved.*

**The Convener:** The next group is entitled, "Part 2 reviews: notification to next of kin". Amendment 77, in the name of Sharon Dowey, is grouped with amendment 92.

**Sharon Dowey:** My amendment 77 would require the review oversight committee to notify a family member who is next of kin to the victim when a domestic homicide or suicide review is being carried out. The proposed new section 17(1B) would define

"a family member who is a next of kin"

as either a sibling, parent or step-parent, grandparent, child or step-child or guardian. In addition, to reflect that all families are different, it would include any other such person whom Scottish ministers prescribe in regulations.

My amendment 92 is consequential to amendment 77.

Amendment 77 aims to ensure that a victim's family is aware of the review and that there is sufficient communication throughout the review process. The committee heard in its evidence sessions that it is important to communicate with the family throughout. In recent discussions, Victim Support Scotland highlighted the importance of communicating with the family at each stage of the review process. Amendment 77 would help to ensure that.

Amendment 77 aims to ensure that notifying families of a review is not overly burdensome on the review oversight committee, as it would be required to notify only a single next of kin. The amendment would also leave it open to Scottish ministers to include other family members, if needed, beyond the immediate family.

I move amendment 77.

**The Convener:** As no other member wishes to speak, I call the cabinet secretary.

**Angela Constance:** Family is an integral part of the review model; therefore, I very much appreciate Ms Dowey's rationale in lodging amendments 77 and 92. However, in their current form, the amendments are problematic for a number of reasons.

First, the next of kin in the context of domestic homicide or suicide is often the perpetrator. Although the amendments would allow the review oversight committee to select which particular family member was contacted—I appreciate that partners and ex-partners are not on the list in amendment 77—that list is not exhaustive. In cases where the only family member was the perpetrator, the committee would be obliged to notify them, or if no other family members could be located, there would still be a statutory duty to notify, which the oversight committee would be unable to fulfil.

A further risk in the oversight committee attempting to fulfil its duties would be when the committee contacted a family member who was not appropriate. I have said that it is my intention to include in the review model so-called honour killings, once the necessary work to define what that means in Scotland has concluded, both from a policy and a legal perspective. As I said earlier, in such cases, there are often multiple perpetrators of honour abuse in the family, extended family and community. Therefore, when there is a duty to notify in such cases, it might not be clear who the appropriate person to notify is.

Although it is not currently required by the bill, it was always expected that the review oversight committee would take all reasonable steps to contact relevant persons to make them aware that a review would be undertaken. The intention is to set out further detail in the statutory guidance, using the existing power in the bill, to ensure that that happens. That would provide more flexibility to take a considered approach to the circumstances of the case and to determine who, if anyone, is to be notified.

I hope that those comments about the use of guidance are sufficient to reassure Ms Dowey that nothing more is needed on that front. However, if she remains concerned, I would be happy to discuss the matter with her further and, if appropriate, work with her to bring back an amendment at stage 3 that would achieve the aspiration of the current amendments, while ensuring that it is sufficiently flexible to adapt to the wide-ranging considerations that all need to be taken into account in relation to family and next of kin in the context of domestic abuse, homicide and suicide reviews. On that basis, I ask Ms Dowey not to press amendment 77 and not to move her other amendment.

**The Convener:** I call Sharon Dowey to press or withdraw amendment 77.

**Sharon Dowey:** Given the issues that the cabinet secretary has raised, I would appreciate working with her towards an amendment at stage 3.

*Amendment 77, by agreement, withdrawn.*

**The Convener:** The next group is entitled, "Part 2 reviews: minor and technical". Amendment 20, in the name of the cabinet secretary, is grouped with amendment 30. I call the cabinet secretary to move amendment 20 and to speak to both amendments in the group.

**Angela Constance:** There are two Government amendments in this group, both of which are minor technical amendments to provide clarity. Amendment 20 would replace the word "joint" in section 17(2)(a) of the bill with the word "combined" when referring to a

"review of two or more deaths".

That is to avoid confusion as to what is meant by a "joint review". The bill as introduced states that a joint review is a review of more than one death. However, stakeholders have adopted the term "joint review" to refer to a review that is carried out together with another type of review—for instance, a domestic homicide review and a child protection learning review. The amendment therefore looks to replace the term "joint" with "combined" to allow the term "joint review" to continue to be used as stakeholders are using it presently and to avoid any confusion.

Amendment 30 is another minor technical amendment, which relates to who, under section 25 of the bill, must have regard to guidance issued by the Scottish ministers. The amendment ensures that there is no doubt that references to

the Scottish ministers' "functions" mean the functions of the review oversight committee and case review panels. Although that is how the provision would likely have been understood, the amendment puts the issue beyond doubt.

I move amendment 20.

**The Convener:** No other member wishes to come in and the cabinet secretary has no other comment.

*Amendment 20 agreed to.*

*Amendment 78 not moved.*

*Amendment 21 moved—[Angela Constance]—and agreed to.*

*Amendment 79 not moved.*

*Section 17, as amended, agreed to.*

12:30

### Section 18—Lord Advocate's power to order suspension or discontinuation of review proceedings

*Amendment 80 not moved.*

**The Convener:** Our next group is entitled "Part 2 reviews: interaction with inquiries". Amendment 22, in the name of the cabinet secretary, is grouped with amendments 23 to 26. I call the cabinet secretary to move amendment 22 and speak to all amendments in the group.

**Angela Constance:** Amendments 22 to 26 in my name relate to an operational matter with regard to domestic homicide and suicide reviews. As introduced, the bill makes provision for the Lord Advocate to be able to order

"the suspension of consideration of a death ... or of a domestic homicide or suicide review, for such period as appears to the Lord Advocate to be necessary to allow for

(a) the completion of any other investigation, or

(b) the determination of any criminal proceedings"

or a fatal accident inquiry. There is a similar power for the Lord Advocate to be able to discontinue the review altogether.

The amendments extend the powers of the Lord Advocate to cover

"an inquiry under the Inquiries Act 2005 for which the Scottish ministers are solely responsible",

which will ensure that, when a public inquiry is examining a death, perhaps as an alternative to a fatal accident inquiry, the Lord Advocate's powers can also be used in relation to such an inquiry in the same way as they could be used in relation to an FAI.

Prior to the introduction of the bill, we sought the views of the United Kingdom Government on whether similar provision was necessary in relation to public inquiries that it has established. The UK Government stated that such instances would be rare, and it does not consider that, in such instances, a domestic homicide or suicide review in Scotland would need to pause or stop. Therefore, my amendment expands the provision in respect of Scottish inquiries only.

The bill also makes provision in section 19 for a protocol to be developed and agreed between the Scottish ministers, the chair of the review oversight committee, the Lord Advocate and the chief constable, on how those new reviews will interact with other proceedings. Together, those protections are to avoid prejudice to criminal investigations, proceedings or an FAI. Amendment 26 will now expand the protocol to include public inquiries for which the Scottish ministers are solely responsible, as a consequence of section 18 being expanded by amendments 22 to 25.

I move amendment 22.

*Amendment 22 agreed to.*

*Amendment 81 not moved.*

*Amendment 23 moved—[Angela Constance]—and agreed to.*

*Amendment 82 not moved.*

*Amendments 24 and 25 moved—[Angela Constance]—and agreed to.*

*Section 18, as amended, agreed to.*

### Section 19—Protocol in relation to interaction with criminal investigations etc

*Amendment 83 not moved.*

*Amendment 26 moved—[Angela Constance]—and agreed to.*

*Section 19, as amended, agreed to.*

### Section 20—Duty on public authorities to co-operate

*Amendments 84 and 85 not moved.*

*Section 20 agreed to.*

*Section 21 agreed to.*

### Section 22—Reports on case reviews

*Amendment 86 not moved.*

**The Convener:** Our next group is entitled "Part 2 reviews: case reports". Amendment 27, in the name of the cabinet secretary, is grouped with amendments 28, 29, 31 and 32. Due to pre-emption, if amendment 31 is agreed to, I cannot call amendment 91, which is in the group entitled "Part 2 reviews: familial homicide and honour killing". I call the cabinet secretary to move

amendment 27 and speak to all amendments in the group.

**Angela Constance:** The following amendments seek to strengthen what is to be included within case review reports and to include a dispute resolution mechanism within the model.

Amendment 27 makes a change to require a case report, where the case is about partners or ex-partners, to include an analysis of the social connections of the victim and perpetrator in the lead up to the death. That analysis should include the strength of those connections—whether they were strong or perhaps fractured or strained—and any changes in those relationships prior to the death. Such connections would include friends, family, work colleagues and relevant others. The change reinforces the importance of safeguarding those who experience domestic abuse, and it will help to identify risk factors that have not previously been considered. Recent research on domestic homicide cases has identified the absence of such a requirement. Without it being included, potential risk factors could be missed. This provision will ensure that that analysis is a feature within case review reports.

The purpose of amendment 28 is to broaden the scope of section 22 in order to include the recording of instances of good practice. Currently, there is provision in the bill requiring case review reports to include discussion of where there are lessons to be learned from missed opportunities in order to safeguard those who are affected by abusive domestic behaviour and to promote the wellbeing of victims of abusive domestic behaviour. The change will ensure that lessons can also be learned and shared from identifying and outlining good practice. In addition to helping to reduce any defensiveness on the part of agencies participating in a review, requiring good practice to also be reported will strengthen the review process. The amendment will demonstrate a focus on openness to learning, rather than on blame, and emphasise that there are positives that are important to learn from, too.

It would be possible, under the bill as introduced, for the report to include the things that are mentioned in both amendments, as the bill is not exhaustive in relation to what a report must include. However, those issues are felt to be sufficiently important that steps should be taken in primary legislation to ensure that they are considered in every instance.

Amendment 29 addresses a potential slight gap in the bill in the event where a dispute between the review oversight committee and a chair of a case review panel cannot be resolved. That would most likely be in cases where the panel chair has submitted a case review report to the oversight committee and the chair does not agree with a direction made by the committee to resubmit that report with changes. I anticipate that, in such an event, the committee and the panel chair will usually be fully capable of resolving any disputes through dialogue, and it is unlikely that a mechanism will be needed. However, in the event that that cannot be achieved, there is currently no process to resolve such matters. The amendment will therefore ensure that a mechanism is in place if needed. The risks of not having a dispute resolution mechanism available include delay in signing off and publishing a case review report, which would obviously negatively impact on bereaved families.

A further risk is that, where there is no route to resolve disputes about changes to reports, that could lead to case review chairs stepping down. That would also be problematic for bereaved families, as a panel chair might well be undertaking more than one review at the same time. A rapport with bereaved family members would need to then be established by a new chair.

To prevent such risks, amendment 29 introduces a regulation-making power, which would be subject to the affirmative procedure under amendments 31 and 32, to enable disputes to be resolved. The resolution could either be provided by the Scottish ministers directly or through the Scottish ministers appointing an appropriate person.

As I mentioned, it is anticipated that, if there are disputes between the oversight committee and panel review chairs, those will normally be able to be resolved through discussion, which the amendment also accounts for. However, I believe that it is necessary to ensure that the bill includes a mechanism to facilitate the resolution of such disputes, should that be required.

I move amendment 27.

*Amendment 27 agreed to.*

*Amendment 28 moved—[Angela Constance]—and agreed to.*

*Amendments 87 and 88 not moved.*

*Amendment 29 moved—[Angela Constance]—and agreed to.*

*Amendment 89 not moved.*

*Section 22, as amended, agreed to.*

*Section 23 agreed to.*

**Section 24—Periodic reports**

*Amendment 90 not moved.*

*Section 24 agreed to.*

### Section 25—Guidance by the Scottish Ministers

*Amendment 30 moved—[Angela Constance]—and agreed to.*

*Section 25, as amended, agreed to.*

### Section 26—Regulation-making powers

**The Convener:** I call amendment 31, in the name of the cabinet secretary. I remind members that, if amendment 31 is agreed to, I cannot call amendment 91, due to pre-emption.

*Amendments 31 and 32 moved—[Angela Constance]—and agreed to.*

*Amendment 92 not moved.*

*Section 26, as amended, agreed to.*

*Sections 27 to 29 agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the bill. I thank everyone for the constructive way in which they have engaged with the debate and our collective endeavours. I thank the cabinet secretary and all her officials for their contributions.

We will not meet next week, as the committee will be visiting HMP Edinburgh as part of our inquiry into reducing harm from substance misuse in Scottish prisons.

*Meeting closed at 12:45.*

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